

SUPPORTING MATERIALS

12 June 2017
Level 4
TACTICS AND COSTS IN COMMERCIAL
LITIGATION
Subject Code L4-11



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES
UNIT 11 – TACTICS AND COSTS IN COMMERCIAL LITIGATION*
SUPPORTING MATERIALS

Information for Candidates on Using the Supporting Materials

- This document contains the supporting materials for your examination.
- You have **THIRTY** minutes' reading time to read these supporting materials and the question paper.
- It is strongly recommended that you use the reading time to read these supporting materials and the question paper fully. However, you may make notes on these supporting materials, the question paper or in your answer booklet during this time, if you wish.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualification: **LEVEL 4 DIPLOMA IN COMMERCIAL LITIGATION**

SUPPORTING MATERIALS

INSTRUCTIONS TO CANDIDATES

You are working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. The Head of Department, Jenny Simpson, has indicated that she would like you to take a more active role in the department and has provided you with some files relating to commercial litigation matters for you to work on. She has also provided you with a Memorandum that sets out further information on the files provided.

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|-------------------|--|
| Document 1 | Memorandum from Jenny Simpson to Trainee Legal Executive |
| Document 2 | Extract from Draft Agreement between Callington Homes Ltd and Sparks & Johnson Electrical Installation Ltd |
| Document 3 | Invoice from Soh dip Ltd to Daniel Forth t/a Tenyth Hazardous Waste Disposal |
| Document 4 | Letter from Soh dip Ltd to Daniel Forth t/a Tenyth Hazardous Waste Disposal |
| Document 5 | Letter from Atom Solicitors confirming terms of settlement |

DOCUMENT 1

MEMORANDUM FROM JENNY SIMPSON TO TRAINEE LEGAL EXECUTIVE

To: Trainee Legal Executive
From: Jenny Simpson
Date: [Today's Date]

I have left the relevant files on your desk. Please read through them carefully and ensure that you carry out the required work. To assist, I have provided this brief summary.

1. Callington Homes Ltd v Sparks & Johnson Electrical Installation Ltd

We act for Callington Homes Ltd in a potential trade dispute with one of their long-term contractors, Sparks & Johnson Electrical Installation Ltd. Sparks & Johnson are contracted to install the electrics in the houses that Callington build. However, there have been a number of issues with the level of competency of the electricians employed, with two houses found to be unsafe.

Callington Homes have already paid £64,000 to Sparks & Johnson for the work they have completed. They are now seeking the return of £39,000 of the money, representing the amount required to be paid to another contractor to check and correct the work undertaken by Sparks & Johnson. This is money our client can ill afford; their cash flow is severely curtailed until the houses are sold.

This is a matter which could and should be dealt with through mediation; however, there was no ADR clause in the original contract. You will find a draft agreement on the file (**Document 2**). Please arrange for the parties to sign it.

2. Soh dip Ltd v Daniel Forth t/a Tenyth Hazardous Waste Disposal

You will see from the file that we act for Soh dip Ltd, a relatively new company, which contracted with Daniel Forth for the purchase and delivery of one F3000 Temperature Control Storage Unit. The cost of the unit was £47,450 and the unit was delivered and an invoice sent on 14 February 2017 (**Document 3**) for the balance of the monies owing, being £37,960. After more than 14 days had expired, Soh dip Ltd, not having received any communication from Mr Forth, sent a letter requesting payment (**Document 4**). We are instructed by the client to recover the outstanding £37,960.

3. Dilly Doll Beveridge Vans Ltd v Nice Ice Conversions Ltd

We act for Nice Ice Conversions Ltd in respect of a contract matter. Dilly Doll Beveridge Vans Ltd are suing Nice Ice Conversions for the sum of £28,000 for our client's failure to deliver two ice cream vans for the summer period of 2016. Through negotiation we have come to a settlement of £22,000 (**Document 5**). Our client has indicated that the payment should be made in two instalments due to cash flow issues.

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DOCUMENT 2

**EXTRACT FROM DRAFT AGREEMENT BETWEEN CALLINGTON HOMES LTD
AND SPARKS & JOHNSON ELECTRICAL INSTALLATION LTD**

... Callington Homes Ltd and Sparks & Johnson Electrical Installation Ltd, hereinafter referred to as the parties, are parties to a contract entered into on 5 October 2016.

The parties have agreed that all matters in dispute between them shall first be referred to mediation by Joseph Parsons in accordance with the Building Disputes Tribunal's Agreement to Mediate and Standard Terms of Engagement which procedures and rules are deemed to be incorporated by reference herein.

If the said dispute is not settled by mediation within 20 working days of the date of this agreement, the dispute shall be referred to and resolved through arbitration, under the Arbitration Rules of the Building Disputes Tribunal being deemed to have been incorporated by reference herein. ...

DOCUMENT 3

INVOICE FROM SOHDIP LTD TO DANIEL FORTH t/a TENYTH HAZARDOUS
WASTE DISPOSAL

INVOICE

Sohdip Ltd

Unit 3 Tellingford Industrial Estate
Turlford
ME12 7AB
Tel: 01438 493237
Fax: 01438 493101
Email: Soh dip@biz.com

Invoice: 129/221

Invoice and Delivery Date: 14 February 2017

Daniel Forth
Forth Farm
Turlford
ME14 4BP

F3000 Temperature Control Storage Unit	x1	£47,450.00
Less 20% already paid		£9,490.00
Total to Pay		£37,960.00

Delivery Included

Terms & Conditions

1. Payment of the outstanding balance shall be made no later than 14 days following the date of the delivery.
2. Upon receipt of the goods the customer will have 14 days to accept or reject the same. After 14 days the goods cannot be rejected without good reason and the balance will be treated as an outstanding debt.

Co No: 5543289

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DOCUMENT 4

LETTER FROM SOHDIP LTD TO DANIEL FORTH t/a TENYTH HAZARDOUS
WASTE DISPOSAL

Sohdip Ltd

Unit 3 Tellingford Industrial Estate
Turlford
ME12 7AB
Tel: 01438 493237
Fax: 01438 493101
Email: Sohddip@biz.com

7 March 2017

Daniel Forth
Forth Farm
Turlford
ME14 4BP

Dear Mr Forth

Re: F3000 Temperature Control Storage Unit – Outstanding Balance

The outstanding balance of £37,960 was due on 28 February 2017. We have had no communication from yourself and therefore must inform you that if the outstanding balance is not paid by 14 March 2017, we will have no alternative other than to start court proceedings for recovery.

Yours sincerely

J.R. Ronnie

J.R. Ronnie
Managing Director

DOCUMENT 5

LETTER FROM ATOM SOLICITORS CONFIRMING TERMS OF SETTLEMENT

Atom Solicitors
36 Poynton Road
Kempston
MK42 9SZ

30 May 2017

Kempstons LLP
The Manor House
Bedford
MK42 7AB

Dear Sirs,

**Re: Dilly Doll Beveridge Vans Ltd v Nice Ice Conversions Ltd
Claim No. K45604
Kempston County Court**

Further to our recent conversation with Jenny Simpson concerning the above matter, we confirm our client's agreement to settle the matter for the sum of £22,000 inclusive of interest. This will be in full and final settlement of the matter.

Our client has agreed to the sum being paid in two equal instalments of £11,000. The first payment to be made on 1 July 2017 and the second on 1 August 2017. We will supply our client's bank details separately.

Should the whole or part of any instalment remain unpaid on the due date, the whole of the remaining balance will become payable. Should this occur, the stay of proceedings will be removed and our client will enforce payment of the sum outstanding plus interest at the rate of 8% from the due date.

We also note that your client has agreed to pay our client's costs on the standard basis to be subject to detailed assessment if not agreed.

We await a draft consent order from you in the above terms.

Yours faithfully

Mick Swanson

Atom Solicitors

End of Supporting Materials

