



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 11 – TACTICS AND COSTS IN COMMERCIAL LITIGATION*

Time allowed: 1 hour and 30 minutes plus 30 minutes' reading time

Instructions to Candidates

- You have been provided with a copy of the supporting materials for you to use in this examination.
- You have **THIRTY** minutes to read through the supporting materials and this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the supporting materials and this question paper fully.** However, you may make notes on the supporting materials, this question paper or in your answer booklet during this time, if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

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**

Question 1

Reference: Question 1 relates to **Documents 1 and 2** of the supporting materials and is concerned with the matter of **Callington Homes Ltd v Sparks & Johnson Electrical Installation Ltd**.

(a) Explain how mediation and arbitration differ. **(6 marks)**

(b) Identify **two** examples of the benefits of mediation and explain how they would benefit Callington Homes Ltd in this dispute, rather than engaging in litigation. **(4 marks)**

(c) Explain whether Sparks & Johnson Electrical Installation Ltd could be forced to enter into a form of Alternative Dispute Resolution (ADR). **(4 marks)**

(d) Should the matter proceed to mediation, relevant documentation will be required.

Identify what documentation would be relevant and useful for a mediation meeting, the draft mediation agreement having already been drafted.

(4 marks)

(Total: 18 marks)

Question 2

Reference: Question 2 relates to **Document 1** of the supporting materials and is concerned with the matter of **Callington Homes Ltd v Sparks & Johnson Electrical Installation Ltd**.

Attempts at Alternative Dispute Resolution (ADR) were not successful, with Sparks & Johnson Electrical Installation Ltd refusing to consider ADR. You therefore issue proceedings for the sum of £39,000 plus interest.

The Claim Form and Particulars of Claim were posted by the court to the defendant on 2 May 2017.

- (a) Calculate the earliest date on which an application for default judgment can be made. Explain your answer.

(4 marks)

The defendant files a defence within the prescribed time and soon thereafter makes a Part 36 Offer of £32,000 inclusive of interest.

- (b) Advise your client of the implications of:

- (i) accepting the offer;

(4 marks)

- (ii) declining the offer and failing at trial to recover more than £32,000.

(7 marks)

Callington Homes Ltd decline the offer and the matter proceeds. Sparks & Johnson Electrical Installation Ltd have made an interim application for security of costs.

- (c) Explain on what basis such an application is made.

(3 marks)

- (d) In relation to the interim application for security for costs, explain how the court will treat the issue of costs, should the defendant's application fail.

(4 marks)

(Total: 22 marks)

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Question 3

Reference: Question 3 relates to **Documents 1, 3 and 4** of the supporting materials and is concerned with the matter of **Sohdip Ltd v Daniel Forth t/a Tenyth Hazardous Waste Disposal**.

A letter of claim is sent and proceedings are issued after 30 days with no reply. Daniel Forth submits a defence, which is a bare denial that any money is owed. The documentation shows that he is representing himself in the proceedings.

- (a) Explain what grounds must be established by the claimant to succeed in an application for summary judgment.

(3 marks)

The application is made and the defendant attends the hearing. Daniel Forth explains that he was unsure how to complete the Acknowledgment of Service form and that the storage unit is faulty.

- (b) Explain how this may affect the outcome of the application and the range of orders that the court can make.

(5 marks)

The application is determined and the matter proceeds to trial. As expected, Soh dip Ltd are successful at trial and costs are to be subject to detailed assessment.

- (c) Identify **four** factors that the courts generally take into account when determining costs, on the standard basis, through detailed assessment.

(4 marks)

- (d) Summarise the procedure for detailed assessment of costs, up to but not including a detailed assessment hearing.

(5 marks)

(Total: 17 marks)

Question 4

Reference: Question 4 relates to **Documents 1 and 5** of the supporting materials and is concerned with the matter of **Dilly Doll Beveridge Vans Ltd v Nice Ice Conversions Ltd**.

Jenny Simpson asks you to draft a valid consent order implementing the terms recorded in **Documents 1 and 5**.

- (a) (i) Draft a valid Consent Order.

You **do not** need to include the heading of the document.

Begin with:

'UPON the parties having agreed terms of settlement and BY
CONSENT IT IS ORDERED THAT:'

(5 marks)

- (ii) Draft the Schedule to the Order.

(5 marks)

Costs are to be assessed on the 'standard basis'.

- (b) Explain what is meant by the 'standard basis'.

(3 marks)

(Total: 13 marks)

End of Examination Paper

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