

CASE STUDY MATERIALS

January 2018
Level 6
CIVIL LITIGATION
Subject Code L6-15



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – CIVIL LITIGATION*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or textbooks except a Statute Book, where permitted, into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

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* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

Guidance for Learners studying for the Level 6 Unit 15 Civil Litigation Examinations

Learners studying for, Level 6 Unit 15 Civil Litigation are advised that, when revising for these units, they should have knowledge and understanding of the Civil Procedure Rules and of the Solicitors Code of Conduct.

Learners are advised that they should be fully familiar with the relevant current unit specification and may be tested on any aspect of it. Where Civil Procedure Rules are given in the specification, learners are expected to be broadly familiar with the content of those rules and their practical application.

Listed below are the Civil Procedure Rules which learners may find particularly relevant to this examination:

SRA Code of Conduct

Principles

Chapters 1 and 5

Civil Procedure Rules

Part 1 – the overriding objective

Pre-Action Protocols

Part 2 –Application and Interpretation of the Rules

Part 3 – The Court’s Case Management Powers

Part 16 –Statements of Case

Part 24 – Summary Judgment

Part 25 – Interim Payments

Practice Direction 25B – Interim Payments

Part 31 – Disclosure and Inspection of Documents

Part 32 - Evidence

Part 36 – Offers to Settle

Practice Direction 36 –Offers to Settle

Part 40 – Judgments and Orders

Practice Direction 40B -Judgments and Orders

Part 44 – General Rules about Costs

Practice Direction 44 – General Rules about Costs

Part 71 - Orders to Obtain Information from Judgment Debtors

ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer in the firm of Kempstons LLP (Kempstons) of the Manor House, Bedford, MK42 7AB.

You are in the civil litigation team and your supervising partner is Brigitta Cartwright. Your local County Court Hearing Centre is situated in Bedford.

You are assisting Brigitta with her cases generally, and she has asked that you be particularly involved with the following client matters:

1) Anton Ferrara (file ref: BC/AF/01/17)

Kempstons is acting for Anton Ferrara in connection with his claim for personal injuries arising from an accident at Long Meadow Garden Centre, when he fell on an uneven path and broke his ankle. It is a substantial claim, including a claim for special damages. Further information concerning this case can be obtained from **Document 1** (Memorandum), **Document 2** (Telephone attendance note) and **Document 3** (Extract from letter from Charlesworth LLP to Kempstons LLP).

2) Jules Bosworth (file ref: BC/JB/05/16)

Kempstons is acting on behalf of Jules Bosworth against Flair Garages Ltd, a specialist classic car company. Jules bought, from Flair Garages, what he believed to be a valuable and rare classic car for £30,000. He now claims damages, as the car is not as it was represented to be and is considerably less valuable. He drafted, issued and served the claim form and particulars of claim himself. He has now instructed Kempstons to represent his interests. Further details of this case can be obtained from **Document 4** (Extract from Particulars of Claim drafted by Jules Bosworth) and **Document 5** (Extract from defendant's lawyers' letter (Fortress Law LLP) regarding terms of settlement).

3) Hana Krawitz (file ref: BC/HK/03/16)

Kempstons is acting for Hana Krawitz, who sustained personal injuries in a road traffic accident. Liability is denied and the matter has been allocated to the multi-track and directions have been given. She has one witness, Felix Shotton. Further details of this case can be obtained from **Document 6** (Email from Hana Krawitz to Brigitta Cartwright).

4) Rawlings Property Development Ltd (file ref: BC/RD/04/16)

Kempstons is acting for Rawlings Property Development Ltd, against whom proceedings have been issued by Katja Beresford, a purchaser of a property built by Rawlings. Katja claims that the land is subject to regular flooding and that Rawlings should have made her aware of this when offering the property for sale. Further details of this case can be obtained from **Document 7** (Extract of notes from meeting with Peter Rawlings).

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DOCUMENT 1

MEMORANDUM

To: Trainee lawyer
From: Brigitta Cartwright
Re: Anton Ferrara v Long Meadow Garden Centre
File ref: BC/AF/01/17
Date: 14 May 2018

I have just served a claim on behalf of this client in his personal injury claim. You will remember the file, having drafted the letter of claim a while ago. As a recap, on 4 May 2015, the client was visiting Long Meadow Garden Centre, when he fell over a garden ornament. He broke his ankle and spent a week in hospital for surgery and post-operative mobilisation. He is still having significant problems.

The claim form was sent by first class post on 10 May 2018 to the defendant's solicitors, Charlesworth LLP. This morning, I have received a letter from Charlesworth, suggesting that we have issued and served the claim out of time. I've checked our papers. The claim form was issued on 8 May 2018, but we hand-delivered the claim form to the court on 3 May 2018 and asked the counter clerk to date-stamp the covering letter, which was done. Please look into it. I need to respond on this as soon as possible.

Thank you.

Brigitta

DOCUMENT 2

TELEPHONE ATTENDANCE NOTE

Fee earner: Brigitta Cartwright
Attending: Anton Ferrara
Date: 16 July 2018
Time engaged: 3 units

Client rang in some distress. His employer has terminated his employment, by giving him one month's notice. He thought this might happen and he says he can understand their point of view, as he has had so much time off work since the accident.

I reminded him that we have already made a claim for loss of earnings (and this loss looks likely to continue) and for losses and expenses to date, but apparently there are other expenses that the client is now incurring. He mentioned window cleaning and gardening. The client would like to buy a mobility scooter, as he is really struggling to get around. His treating consultant is concerned about the time it is taking to recover from the ankle surgery, and ankle instability remains a significant concern, as is the inability to walk long distances or over uneven surfaces.

I have already explained to him that, as soon as we can, we will open negotiations with the other side. He understood that we cannot do that yet, as we are awaiting a prognosis from the medical expert following further physiotherapy. I was only able to give him a broad idea of the claim value at this stage and he understands that we will be in a position to evaluate the claim fully once we have the further report from the medical expert. For the moment, I have told him that he should expect to recover about £120,000 in total, of which general damages are likely to be about £40,000 (subject to the prognosis in the further medical report).

In the meantime, I said that I would consider what we might be able to do to help him, and told him to keep me informed generally on his progress.

Brigitta Cartwright

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DOCUMENT 3

LETTER FROM CHARLESWORTH LLP
TO KEMPSTONS LLP

Charlesworth LLP
Howard House
Trinity Street
Bedford
MK40 1HT

Kempstons LLP
Manor House
Bedford
MK42 7AB

Our ref: AB/LMGC/17/3489
Your ref: BC/AF/01/17

18 July 2018

Without prejudice save as to costs

Dear Sirs,

Re: Ferrara v Long Meadow Garden Centre

Further to correspondence in this matter, we are instructed by our clients to offer the sum of £114,000 gross in full and final settlement of your client's claim. This offer is made pursuant to Part 36 of the Civil Procedure Rules 1998. The offer includes relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits) Act 1997. We have not yet received a certificate of recoverable benefits.

If the offer is accepted within 21 days of service of this letter, our client will be liable for your client's costs.

The offer is to settle the whole of your client's claim. There is no counterclaim.

We look forward to hearing from you, when you have taken your client's instructions.

Yours faithfully,

Charlesworth LLP

DOCUMENT 4

EXTRACT FROM JULES BOSWORTH'S PARTICULARS OF CLAIM

In the County Court Money Claims Centre

Claim No: BD17809

Mr Jules Bosworth (Claimant)

v

Flair Garages Ltd (Defendant)

Particulars of Claim

1. I am the claimant in this action and a classic car enthusiast.
2. On 14 May 2017, I bought from the defendant company a classic car.
3. Before that date, I had discussed with Mr Guy Flair, the Managing Director of the defendant company, my requirements and I had made it clear in my conversations with him that I wanted to purchase a classic car that was roadworthy.
4. On the morning of 14 May 2017, I attended at Flair Garages Ltd's premises and I was shown a car which was represented to me by Guy Flair as being roadworthy.
5. I was informed that it was company policy that none of its cars could be test-driven unless a non-refundable deposit of £1,000 had first been paid.
6. I refused to pay the deposit but I wanted to buy the car. I relied upon the representation made by Guy Flair as to the car's roadworthiness and I agreed to buy the car for the sum of £30,000.
7. In breach of that representation as to fact, the car was not roadworthy and I have incurred repair costs of £16,000.
8. Further, as the car engine has required rebuilding, the car's value has depreciated....

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DOCUMENT 5

**DEFENDANT'S LAWYERS' LETTER
REGARDING TERMS OF SETTLEMENT**

Fortress Law LLP
15 Argent Street
Bedford
MK41 62Y

Kempstons
Manor House
Bedford
MK42 7AB

Our ref: KT/BG/14657
Your ref: BC/JB/05/16

16 April 2018

Dear Sirs,

Re: Jules Bosworth v Flair Garages Ltd

We refer to our telephone conversation of today's date. We are pleased to have received your client's confirmation that he accepts our client's offer of settlement in the sum of £33,000 in full and final settlement inclusive of interest.

We note that your client is unhappy at our suggestion that this sum be paid by way of instalments over a six-month period. We have taken our client's further instructions and would be grateful if your client will agree to the sum being paid by three equal instalments of £11,000 per month. For accounting purposes, the first payment would be made on or before 28 April 2018. The remaining instalments will be paid on the 28th day of each month.

As a concession to your client, our client agrees that, should the whole or part of any instalment remain unpaid on the due date, the whole of the remaining balance would become payable. Naturally, the stay of proceedings would be removed and your client would be free to enforce payment of the sums outstanding plus interest at 8% from the due date.

Finally, we record our agreement that our client will pay your client's costs on the standard basis to be subject to detailed assessment, if not agreed.

We trust that we can finalise agreement as set out above.

Yours faithfully

Dan Moghul
Fortress Law LLP

DOCUMENT 6

EMAIL FROM HANA KRAWITZ TO
BRIGITTA CARTWRIGHT

From: HanaKrawitz45@hotmail.com
To: BCartwright_Kempstons@hotmail.com
Subject: My claim

Hi Brigitta,

Thanks for letting me know that Felix is apparently away on holiday and you haven't yet got a signed statement from him. I am not so sure that he really is on holiday. I know that he really doesn't want to be involved in helping me with my claim and is very worried about attending court. I think that is the real reason why he has not signed his statement.

I have been as helpful as I can be to him. He was a little vague at first on the details, but I was able to remind him what he saw when I sat with him to fill in the witness questionnaire that you sent to him. I do think that's a very useful idea – it must make it much easier to prepare the witness statement.

Anyway, I have thought about what more I can do to try and encourage him to be willing, and I think the least I can do is to offer him £500 for his time and trouble, if he will agree to signing the statement and giving evidence which is in my favour. I think it would be far better if this comes from you, as it would then be more formal. You have his address, so please do go ahead and make him this offer, so we can just get on with the claim.

Thanks,

Hana

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DOCUMENT 7

EXTRACT OF NOTES FROM MEETING WITH PETER RAWLINGS

Date: 16 November 2017
Fee earner: Brigitta Cartwright
Subject: Meeting with Peter Rawlings

Peter Rawlings is the Managing Director of Rawlings Property Development Ltd. He has been involved in property development for the last 15 years. He bought a plot of land from a farmer in 2014. He had been in negotiations for several years before that. He had even got as far as getting a surveyor's report back in 2011. After he had managed to agree on the sale, he got planning permission and he began building on the site, known as MerryFields, three years ago.

He began selling houses at MerryFields in February 2016 and sold the last house in March 2017. He started getting complaints from Katja Beresford about flooding after a wet winter over 2016/17. He couldn't understand it at all. When he had looked at some old plans, he had been concerned about the risk presented by an underground stream, but the farmer had assured him that there had been no problem as far as he was concerned and that he had farmed there for over thirty years. Although not relevant now, the surveyor's report from 2011 mentioned that there was always a small risk of flooding with underground running water, but nothing more than usual. It certainly wasn't something that worried Peter, and so he didn't want to worry buyers by telling them. He is certain that he was as honest as he could be in selling the properties in good faith. He blames the unusually wet winter for the problems that have arisen.

End of Case Study Materials

