

CASE STUDY MATERIALS

January 2019
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**

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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 professional rules of conduct and Civil Procedure Rules which learners may find particularly relevant to this examination:

SRA Code of Conduct 2011

The Principles

Chapter 4

Civil Procedure Rules

CPR 1

CPR 13

CPR 26

CPR 31

CPR 36

CPR 39

CPR 44 and PD

CPR 47

CPR 70

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 Andrew Haynes. On occasions, you also assist Verity Flintoff. Your local County Court is situated in Bedford.

You are assisting Andrew and Verity with the following clients' cases:

1) Heath College (file ref: AH/Heath/67/18)

Kempstons is acting for Heath College, a regular client of the firm. The main contact at the college is Seamus O'Brien, who is the college bursar.

Further facts and issues concerning this matter are contained in the documents attached to these case study materials and marked as **Document 1** (Attendance note) and **Document 2** (Extract from Court Order).

2) Sasha Richards (file ref: AH/Richards/56/18)

Kempstons acts for Ms Richards in connection with her claim for personal injuries and losses sustained following a road traffic accident on 4 November 2017.

Further information concerning this case is contained in the documents attached to these case study materials and marked as **Document 3** (File note) and **Document 4** (Letter from Masters and Moneysmith LLP) (Caleb Robertson's solicitors) to Kempstons.

3) Princeton Builders Ltd (file ref: VF/Princeton/35/18)

Kempstons acts for Dennis Princeton, who is the managing director of Princeton Builders Ltd. A claim was made against Princeton by Estelle and Desai Choksey, who alleged that, in excavating tree roots from the Chokseys' garden terrace, the builders caused damage to the foundations of their house.

Further information concerning this case is contained in the documents attached to these case study materials and marked as **Document 5** (Email from Dennis Princeton to Verity Flintoff) and **Document 6** (File note from Verity Flintoff to fee-earner).

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DOCUMENT 1

Attendance note

Fee-earner: Andrew Haynes
Attending: Seamus O'Brien (Heath College Bursar)
Re: Imagine Images Ltd
Date: 14 January 2019
Time engaged: 10 units

Seamus tells me that, having been sent a promotional leaflet by Imagine Images, he placed an order with them for the printing of 1,500 welcome packs for new full-time and part-time students enrolling at the college in September 2018. He first spoke to Imagine Images in early May 2018, and a company representative came into the college for a meeting in late May.

Given the assurances received from Imagine Images, Seamus was confident that the work could be done to the deadline of 15 August 2018, and that it would be of high quality. He was shown samples of the work produced by the company and received an acceptable quote for the work. He placed an order and was told by the company that an introductory discount of 10% would be applied and would be shown on the invoice.

The welcome packs were delivered on 1 August 2018 but, as this was earlier than expected, Seamus was not at the college, as he was on a two-week holiday and did not return to college until 15 August 2018. On that day, Seamus inspected the packs, but found that the weight of the paper was not the same as that which he had been shown and that the quality of the printing was not of the expected high standard. Many of the images were blurred and the page-binding was flimsy. The company's invoice for payment was taped to the top of one of the boxes containing the materials. Seamus noticed that the 10% discount had not been applied to the order. The terms of payment were said to be within 30 days of delivery.

Seamus rang the company on 15 August and spoke to an assistant in the customer services team. Seamus explained the problem and asked what could be done to resolve it. He was promised a call back but heard nothing. The next day, Seamus emailed the company, setting out the problems and said that the invoice would not be paid until the problems identified with the materials had been rectified. He received an email in reply, saying simply that the complaints were not justified and payment of the invoice was requested in accordance with the agreed terms.

Seamus did not pay the invoice and took no further action to contact the company, as he was very busy at the beginning of term. Seamus decided that the college had no option other than to hand out to the new students the welcome pack materials that had been delivered.

At the end of August and again at the end of September, Seamus received reminders from Imagine Images that the invoice was outstanding. On 30 November 2018, he received a standard letter, stating that the invoice was being referred to Imagine Images Ltd's debt collection department, but he did not hear from them.

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Then, on 11 January 2019, Seamus received a court order dated 9 January 2019 (**Document 2**), which he says came out of the blue. I confirmed that the order meant that proceedings had been issued against the college and asked him whether he had received notice of them, as they should have been served at the college. Seamus had already had a quick look but will look again more thoroughly and let me know whether they have, by chance, been overlooked.

Seamus wants us to take the necessary action to protect the college's position and would also like things kept confidential, to avoid any embarrassment.

I advised him that we will take action to sort this out and I told him all about a similar situation with a different printing company, which I have with another of my clients, Digby Chapman. It's a small world, as it turns out that Seamus knows Digby, as he attends the same gym as him.

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DOCUMENT 2

Extract from Court Order

Judgment for claimant (in default)

In the County Court Money Claims Centre	Claim No 7YK982634
Imagine Images Ltd	Claimant
Heath College	Defendant
9 January 2019	

To the Defendant

You have not replied to the claim form.

It is therefore ordered that you must pay the claimant £11,467 for debt and interest to date and £703.35 for fixed costs.

You must pay to the claimant a total of £12,170.35.

Warning

If you ignore this order your goods may be removed and sold, or other enforcement proceedings may be taken against you. If this happens further costs will be added. If your circumstances change and you cannot pay, ask at the court office what you can do.

DOCUMENT 3

File note

From: Andrew Haynes
To: Fee-earner
Client: Ms Sasha Richards
Re: Caleb Robertson
Date: 8 January 2019

I spoke to the client last week. I discussed funding options with her and promised I would get on with this matter, but I have not yet had time to issue proceedings as instructed and need you to take matters forward for me. I will let you know what I need doing.

This is not an RTA Protocol matter. Although you can get much of the detail from the letter of claim and the defendant's reply, briefly, Sasha was involved in a road traffic accident on 4 March 2018. She was driving her car (a Nissan Micra) along the B4580 towards Little Huffington on her way to work. It was a new car and she had not quite got used to it. She was approaching a sharp right-hand bend in the road. She was driving at about 45 mph, so just over the speed limit of 40mph, but she was late for work. As she entered the bend, she saw a tractor travelling on the opposite side of the road, moving very slowly. Suddenly a vehicle (a Ford Fiesta driven by Caleb Robertson) overtook the tractor and tried to pull in front of it, but instead drove into collision with Sasha's car.

Sasha remembers that the driver of the Ford Fiesta flashed his lights at her, but does not recall hearing a horn being sounded. She says that she braked heavily and swerved left into the kerb. The collision point on Sasha's car was the front and side off-side. The vehicle driven by Caleb Robertson was only damaged on the front off-side. Both vehicles came to rest on Sasha's side of the carriageway and Sasha's recollection is that the Ford Fiesta was on the wrong side of the road when the collision took place. The police and ambulance services attended the scene and both drivers were taken to Bedford District Hospital. Sasha was treated for serious head and facial injuries, for which she is receiving ongoing treatment. I understand that she has been referred to a plastic surgeon and that further surgery is likely. Initially, she was in hospital for three days, but Caleb Robertson was found not to have been injured and was released after a check-up. Sasha has only just returned to work full-time and I am in the process of compiling her schedule of loss, which is likely to include a claim for disadvantage on the labour market. No prosecution was brought against either party.

One thing I should flag up is that, just before the collision occurred, Sasha had taken off her seat belt, as she wanted to reach down to take off her sandal as it kept slipping off her foot and getting stuck in between the pedals. Sasha received a Fixed Penalty Notice for driving without a seat belt and paid a fine of £100.

Thanks for your assistance,
Andrew

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DOCUMENT 4

Letter from Masters and Moneysmith LLP

Kempstons
The Manor House
Bedford
MK42 7AB

Our ref: JB/Robertson/14657
Your ref: AH/Richards/56/18

17 June 2019

Dear Sirs,

Re Sasha Richards v Caleb Robertson

Further to our without prejudice discussions last week, we have taken our client's instructions on your client's proposals for settlement.

Whilst we were willing to listen to your proposals, and relay them to our client, our client has asked us to make it clear that the only appropriate resolution of this claim will be for your client to discontinue her claim.

Moreover, it has come to our attention since our meeting that in March 2019 your client was convicted after trial before the Bedford Magistrates' Court of driving without due care and attention following an incident in January this year. We intend to adduce evidence of this conviction at the trial of this matter should it proceed as we believe that it is relevant to the facts in this matter. In any event, we expect that you will now disclose notice of this conviction and we await your explanation as to why this was not disclosed at the relevant time in accordance with the case management directions.

We trust that you will advise your client appropriately and look forward to hearing from you as soon as possible, and preferably with a notice of discontinuance.

Yours faithfully,

Josh Burns

Masters and Moneysmith LLP

DOCUMENT 5

Email from Dennis Princeton to Verity Flintoff

From: Dennis.Princeton45@gmail.com
To: Verity.Flintoff@Kempstons.org
Subject: Choksey
Date: 29 August 2018

Hi Verity,

Further to the trial yesterday, I can't deny I'm disappointed but at least we got the amount down to £17,500. I think I got what you were saying about paying the judgment sum within 14 days, but that is going to be tricky. It's not that I won't pay, it's more that I can't pay on time, as I've got cash flow issues at the moment. I don't want to risk my house and car being taken away.

Any help would be appreciated as to where we go from here.

Best,
Den

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DOCUMENT 6

File note from Verity Flintoff to fee-earner

From: Verity Flintoff
To: Fee-earner
Client: Princeton Builders
Re: Estelle and Desai Choksey
Date: 11 January 2019

Sorry to hand you this just as I am away for the next couple of weeks, but we need to action it. Just briefly, we act for Dennis Princeton of Princeton Builders Ltd. Unfortunately, we lost this case at trial on 28 August 2018. However, it was a major win in some ways as the judgment sum was reduced from a claim of £85,000. Quantum was always a bit of an issue and numerous arguments were made in the particulars of claim, which did not succeed. The bill of costs has just been served today. NB: We had no informal schedule of costs.

The bill is put at £45,670 for profit costs alone when the last costs budget pre-trial was £30,000. Check back, but I think this is the case where we made every effort to resolve the dispute out of court. You will see that there are many holding letters and telephone calls from their solicitors when they were struggling to get the clients' instructions. The trial bundle also comprised four lever-arch files.

Client file and bill attached.

I'll leave it with you – thanks for your help.

Verity

[NOTE TO CANDIDATES: The bill of costs does not form part of the case study materials.]

End of Case Study Materials

