

CASE STUDY MATERIALS

January 2020
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 rules of professional conduct for lawyers issued by the regulatory bodies for CILEx and the SRA.

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.

Over and above familiarity with the relevant current specification, including the rules of professional conduct, listed below are the Civil Procedure Rules which learners may find particularly relevant to this examination:

Part 1
Part 6
Part 7
Part 16
Part 19
Part 20
Part 22
Part 31
Part 32
Part 34
Part 35
Part 36
Part 38
Part 39
Part 44

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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 Lucy Paden. Your local County Court Hearing Centre is situated in Bedford.

You are assisting Lucy in the following cases:

1) The Trevor Mitchell file (file ref: TM/LP/78/19)

Kempstons is acting for Trevor Mitchell in connection with his claim for personal injuries that he sustained at work. Further information concerning this case can be obtained from the following documents in these case study materials:

- DOCUMENT 1** Internal memorandum from Lucy Paden to trainee lawyer
- DOCUMENT 2** Extract from hospital discharge summary note **to Dr Laura Surtees, the claimant's GP**
- DOCUMENT 3** Invoice from Fortune Servicing Limited
- DOCUMENT 4** Attendance note from Fiona Chapman to Lucy Paden

2) The SureFind Recruitment Consultancy Ltd file (file ref: SRC/LP/68/19)

Kempstons is acting for SureFind in connection with its dispute with Tantalum Ltd. Further details of this case can be obtained from the following documents in these case study materials:

- DOCUMENT 5** Internal memorandum from Rosie Wilkins to Lucy Paden
- DOCUMENT 6** Email from Ashraf Rao to Lucy Paden

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DOCUMENT 1

Kempstons Internal Memorandum

From: Lucy Paden
To: Trainee lawyer
Client: Trevor Mitchell
Matter: Accident at work: 28 March 2019
Date: 14 December 2019

Please look through the attached file, to bring yourself up to date with where we are in respect of this claim.

Briefly, Trevor was injured at work on 28 March 2019 during the course of his employment at Gerry's Garden Centre Ltd, which is at Merry Lane, Box Hill, Bedford. Trevor's colleague, Kasja Sitwell, was using a forklift truck to move heavy bales of compost. Trevor tells me that Kasja misapplied the controls and moved forward rather than backward and, in so doing, crushed Trevor against a wall. He sustained serious compression injuries to the chest, including multiple fractures of the ribs and sternum, which has left him with permanent damage. Liability has been denied in pre-action correspondence, on the basis that the forklift truck had recently been serviced by a local company. You will see that there is documentation to this effect, which has already been disclosed to us (**Document 3**).

Trevor has just been in to see me and I have explained how we will now be able to move things forward for him. He has only now been discharged from the care of his hospital consultant and you will see in the file a copy of the hospital discharge summary (**Document 2**), which describes his treatment and recovery. The damage to the lungs has increased the risk of pulmonary problems in the future, including the effects of bronchitis and pneumonia. Trevor is also a smoker and has been advised to give up smoking to minimise the risk. I have told him that it will be necessary to obtain a formal report from a medical expert. I gave an indication that at present I consider that general damages for his pain, suffering and loss of amenity should be in the region of £30,000. He also has significant special damages.

Trevor has returned to work part-time and is presently on light duties. There is a risk that he may not be able to resume his full-time position.

You will see that we have a CFA in place.

When you have read through the file, I will discuss what steps I need you to take.

NB: I did a company check a while ago, and you will see that the registered office for Gerry's Garden Centre is 15 The Plain, Oxworthy, Lincoln, LN14 6RT.

Thanks,
Lucy

DOCUMENT 2

Extract from hospital discharge summary note

Luton District Hospital
Bedfordshire NHS Trust
Thames Road
LUTON
Bedfordshire
LU2 9LM

Telephone: 01582 772211 (orthopaedics)
Our reference: VP/4592014

Dr Laura Surtees
The Surgery
41 Dimmock Close
LUTON
Bedfordshire
LU5 5JT

Dear Dr Surtees

Trevor Mitchell DOB 5 October 1977

Discharge summary 30 November 2019

This patient was admitted under my care, from our Accident and Emergency Department, following a most unpleasant injury on 28 March 2019 at the premises of Gerry's Garden Centre Ltd, where he was assisting a colleague to move bales of compost, when the forklift truck being driven by Mr Mitchell's colleague went into forward drive, rather than reverse, and crushed Mr Mitchell against a wall. He sustained a compression injury to his chest and was rendered unconscious. He was brought to Luton District Hospital by ambulance following an emergency call.

Initial treatment

Mr Mitchell had regained consciousness upon admission and gave a lucid account of his accident. He complained of severe pain over the upper end of the sternum and in the upper lumbar region. He had breathing difficulties and was coughing up blood. X-rays were taken and showed multiple fractures of the ribs and sternum. He suffered a pneumothorax, which caused part of the left lung to collapse. During the following 12 hours, respiration became increasingly laboured, the chest pain worsened despite pain relief and continuous oxygen was administered. The patient was taken immediately to theatre and underwent surgery...

Note to candidates: further detail omitted from case study materials.

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Post-operative progress

He remained in intensive care for two weeks following surgery and was then moved to the thoracic ward, before being discharged from the ward on 30 April 2019, to be reviewed thereafter in my clinic. In the months immediately following discharge, Mr Mitchell suffered repeated chest infections, which is a common consequence of this type of injury, particularly following a pneumothorax, which required a chest drain to be inserted. Mr Mitchell underwent physiotherapy, including breathing exercises.

Present condition

Mr Mitchell was able to return to work on light duties at the end of October, but remains vulnerable to chest infections in the future, particularly bronchitis and pneumonia. This is compounded as Mr Mitchell is a smoker, and I have given him strong advice to stop smoking, if he is to minimise the risk of subsequent chest problems.

Mr Mitchell still complains of intermittent chest pain, and it would be advisable for him to avoid any work that requires him to undertake heavy lifting. X-rays taken today show the fracture sites to be well healed. Mr Mitchell has a scar 30cm in length on the chest above the sternum. The scar has healed well but remains sensitive to touch.

Yours sincerely

Venice Dupree

Venice Dupree FRCS
Consultant Thoracic Surgeon

cc Mr T. Mitchell, The Firs, Scott Road, Luton, Bedfordshire, LU5 2HP

DOCUMENT 3

Invoice from Fortune Servicing Limited

Fortune Servicing Limited
Experts in Forklift Trucks and Servicing



To:
 Gerry's Garden Centre
 Merry Lane
 Box Hill
 Bedford

Invoice date: 21 March 2019

Work Done: 21 March 2019	
To full service of Forklift truck including transport to and from site;	
Additional work (as requested)	
Rectification of mast problem and transmission starting problem.	
Total (net)	£ 1,400 (including parts and oil)
VAT	£280
Grand total to pay	£1,680

Payment terms: strictly 30 days from date of invoice.

Tim Fortune
 Director and Servicing Manager

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DOCUMENT 4

Attendance note

From: Fiona Chapman

To: Lucy Paden

Date: 14 May 2020

Time engaged: 5 units

Trevor would like an update please. He also asked me to tell you that he has contacted Kasja Sitwell and she is very willing to help him, although she no longer works at the garden centre, as she has returned to working as a forklift truck driver in a warehouse.

Apparently, Kasja is an experienced forklift truck driver and says that, after the truck came back from servicing, she had complained to her supervisor that the directional controls were not as they should be, and she was having trouble with them. The supervisor promised to look into it, but told her to continue to use the truck in the meantime.

I said you would call Trevor back.

Fiona

Secretary to Lucy Paden

DOCUMENT 5

Kempstons Internal Memorandum

From: Rosie Wilkins
To: Lucy Paden
Client: SureFind Recruitment Consultancy Ltd
Matter: Dispute with Tantalum Ltd
Date: 3 August 2019

Hi Lucy,

I am happy to refer to you a new matter on behalf of a client for whom I have acted over a number of years. The main contact at SureFind is Ashraf Rao, who was originally trading as a sole trader in recruitment and has recently set up the business as a company.

He is in a dispute with a website design company, Tantalum Ltd, who Ashraf commissioned to create a whole new online look for the company launch. He says that he provided them with a full set of specifications as to how he wanted the site to look and operate. The contract specified that time was of the essence. However, the site was not up and ready for the date of the company launch and eventually came online three weeks after the launch date. Ashraf says that the site frequently experienced glitches, and Ashraf noticed a decline in the number of site visits. Also, there were fewer enquiries from prospective employers and candidates after the launch of the website compared to before the launch. I did tell him that it was probably because he had put up his fees! He says that because of the website issues, his business has suffered a loss, which he puts at £24,000 in lost fees.

Ashraf has made repeated complaints by telephone to Tantalum. Initially, they tried to assist in rectifying the problems, but they now say that the problem is due to Ashraf's hosting of the site from his personal server and that he should have invested more in the website set-up, by having the site hosted professionally. Ashraf says that, although this was briefly mentioned, Tantalum also said Ashraf's own server 'should be OK'.

Over to you!

Yours,

Rosie,
Employment Law Department
Kempstons LLP

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DOCUMENT 6

Email from Ashraf Rao to Lucy Paden

From: a.Rao@Surefind.co.uk
To: L.Paden@Kempstons.co.uk
Date: 14 July 2020
Subject: Expert's report

Hi Lucy,

Thanks for sending me a copy of the expert's report. It seems that the expert has reported mainly for the benefit of Tantalum! I remember you explaining that the court had appointed a single joint expert, but I wish you had picked a different expert who would have been more on my side, although I can see that the expert has also caused the other side a few problems with its case.

I am rather disappointed, but will call you later today, just to chat through my concerns and to consider my options.

Best,
Ash

NOTE: the expert's report, referred to in this email, is not included in the case study materials.

End of Case Study Materials

