

## CASE STUDY MATERIALS

June 2017  
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.

*Turn over*

\* 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**

**ADVANCE INSTRUCTIONS TO CANDIDATES**

You are a trainee lawyer in the firm of Kempstons, The Manor House, Bedford, MK42 7AB. You are in the civil litigation team and your supervising partner is Mark Jones.

You arrive at work on Monday morning and receive a call from Mark. He tells you that he is unable to come into the office and asks that you cover his appointments. He has also asked that you check his post and progress any matters that require attention.

He briefly mentions the following cases:

**1) The Turner Engineering Limited file** (file ref: TEL/MJ/54/17)

Kempstons acts for Turner Engineering Limited (TEL). This is a construction company undertaking large building contracts and renovations. Further details can be obtained from an attendance note (**Document 1**).

**2) The Hussain Chato file** (file ref: HC/MJ/67/17)

Kempstons acts for Mr Hussain Chato (the claimant in this case) in connection with his claim against his employers, for personal injuries that he sustained in an accident in his office car park. Further details can be obtained from the copy of the defendant's medical report on Mr Chato (**Document 2**).

**3) The Cuthbert's Circus and Pleasure Parks Limited file** (file ref: CC/MJ/33/17)

Kempstons acts for Cuthbert's Circus and Pleasure Parks Limited ('Cuthbert's'), which is the defendant company in this case. The action concerns a claim by Patricia Scott for personal injuries that she alleges she sustained in an accident in the Dark House attraction at Cuthbert's travelling pleasure park, situated in Bristol on the 7 April 2017. Further details can be obtained from the file note, draft witness statement and letter (**Documents 3, 4 and 5**).

**4) The Sofa World Limited file** (file ref: SW/MJ/65/17)

Kempstons is instructed on behalf of Sofa World Limited in respect of an unpaid invoice for furniture supplied to Mrs Samantha Green of Flat 8, Skye Building, Edgbaston Road, Birmingham B6 6KL. The invoice is dated 1 April 2017 and is payable from (and including) that date. The outstanding sum is £15,000. [There are no documents from this file attached.] You have been dealing with Max Folders who is the Managing Director of Sofa World Limited in connection with this matter.

## DOCUMENT 1

### Attendance note

**Mark Jones attending: Mr Frank Turner, Managing Director of Turner Engineering Limited (TEL)**

**Date: 14 June 2017**

**Time engaged: 1 hour (6 units)**

Frank Turner is the managing director of TEL of Unit 12 Spire Industrial Estate, Hollyborne, Bedfordshire, MK42 1SB. TEL was established in 1945. This company is a construction company undertaking large building contracts and renovations. It has a reputation for high-quality work. Its current clients include some NHS trusts and local authorities, as well as bigger businesses. The company's place of business is the same as its registered office address. All contracts are made using this address as TEL's place of business.

Frank Turner explained that about 18 months ago, TEL won a contract to carry out refurbishment works to eight theatres in the district of Bedfordshire. TEL's contract for the work is with Bedfordshire County Council (BCC). The total price for the refurbishment work to all eight theatres is £3 million.

Frank Turner met with the Chief Executive of BCC (Paul Sable), but the negotiations for the work were generally conducted by Graeme Halstead. Mr Halstead held a consultancy role for a number of councils and described himself as a 'Climate Change and Environment Adviser'.

Most of the contract that TEL had proposed was readily agreed – as to the nature of the works and the price. The issue that took longest to negotiate was Mr Halstead's insistence on the installation of 'super-low-energy air conditioning units' (the 'units'). Despite TEL's reservations, the installation of the units was agreed and inserted into the contract. The contract with BCC is in the office, but Frank Turner had not brought it with him (he can send a copy to us, and will do so when he returns to the office).

After the contract was finalised, Frank Turner spent some months trying to source a suitable manufacturer for the units that could meet the required standards. Mr Halstead suggested Environmental Services Limited (ESL), a small company based in Olney, Buckinghamshire. Frank Turner then met ESL's Managing Director (and only shareholder, as you later discovered), Ms Claire Posnet.

Ms Posnet confirmed that ESL was able to supply the units (though ESL did not manufacture them). She was not especially forthcoming to Frank Turner about the technical detail of the units, and she generally avoided answering questions from him about the manufacturer of the units. After weeks of pressure, she arranged for Frank Turner to see one of the units working at a small manufacturing factory at an industrial park, again in Olney. They were working according to the specification in TEL's contract with BCC and, with the agreement of BCC, Frank Turner then placed TEL's order for eight units, with each one priced at £25,000 plus VAT.

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The refurbishment work to each theatre, including the installation of the units, had been completed around six months ago.

However, within two months, TEL had begun to receive complaints. These complaints all concerned the operation of the units – that they were noisy and ineffective. These complaints have continued and it is Frank Turner's view that all eight units are likely to have to be replaced. He has calculated that the cost of replacement units and associated works will be in the region of £275,000 plus VAT.

Frank Turner spoke to Ms Posnet as soon as the first of the units had been reported as faulty. She said she would make enquiries, but she has not come back to him with any information and she has not responded to any of his recent calls. Frank Turner established that of the £200,000 plus VAT due to ESL, TEL had only paid £75,000 plus VAT. He has put a stop on any further payments to ESL, so technically £125,000 plus VAT is still outstanding to ESL.

Frank Turner has been getting increasingly worried about TEL's potential exposure to this liability. So a couple of weeks ago, he asked Dr Almira Haw, of Lottingham University and a fellow of the Association of Air Conditioning Engineers, to inspect the units. Dr Haw has seen three of the units so far but has not prepared a report yet (although said she would be prepared to put her findings in writing). However, she rang you to say that:

- the units are externally impressive, giving the appearance of high-quality air conditioners of the sort often fitted to larger buildings;
- the motors, heat exchangers and other components are of a poor quality, and unsuitable for cooling entire buildings;
- she would advise that the units might be suitable to cool a room in a house;
- the units have a real value of about £1,000 plus VAT each.

The small manufacturing factory in Olney that Frank Turner had visited, before placing the contract with ESL, is now empty and has been refurbished by the landlord, who says he knows nothing about an air conditioning unit. He has told Frank Turner that he is left with unpaid rent of £5,000 from the tenant.

Paul Sable (the Chief Executive of BCC) told Frank Turner that Mr Halstead had had an affair with Ms Posnet that ended some three months ago, when he went abroad. There is a rumour that Mr Halstead now lives in northern Cyprus. Frank Turner intends to ask Paul Sable to find out more about these points, but has not yet done so – therefore he cannot add any further information on this point at the interview. Frank Turner believes that it might explain why Mr Halstead recommended ESL.

Frank Turner's key aim for TEL in this matter is to get the matter sorted out as quickly as possible and not waste time before issuing proceedings.

**DOCUMENT 2**

**Copy of the medical report obtained by the defendant's solicitor  
concerning Mr Chato**

**Medical report  
on Mr Hussain Chato**

**M. Hugen-Brown MB, FRCS(Ed) (retired)  
Former Consultant Orthopaedic Surgeon  
at the University Hospital of Northampton**

**ADDRESSED TO: THE COURT**

**INSTRUCTED BY: XYZ Solicitors  
Luton House, Luton Road,  
Luton, Bedfordshire.  
LT2 8AD**

**OUR REFERENCE: Ref: H-C/SCHKE/Cha12**

**DATED: 6 April 2017**

**Date of Accident: 9 December 2016**

Mr Chato works as a General Manager for Prestors Distributions Limited (his employers).

On 9 December 2016, Mr Chato was standing behind his car in his employer's car park. He was just about to open the boot, when a car immediately behind him lurched forwards, striking the back of legs. He felt two impacts before he fell to the ground. The driver of the other car, Julie Lake, who is also an employee of Prestors Distributions Ltd, and a friend who was standing close by, came to help him and called for an ambulance. Later, an ambulance took him to Luton General Infirmary. He did not lose consciousness.

**SUBSEQUENT HISTORY**

Mr Chato was in hospital for ten days. He underwent an operation, on 9 December 2016, in which the fracture of his left tibial plateau was fixed with a metal plate and screws. He went home in a plaster cast, which remained in place for several weeks.

His partner, Georgina, took time off work to care for him for the first two weeks after he returned home. Julie Lake visited Mr Chato in hospital and apologised for what had happened, saying that she had reported problems with her company car (the car that had 'lurched forward' hitting Mr Chato) to Prestors' transport director 'a couple of months' before the accident.

When the cast was removed, Mr Chato paid for some physiotherapy sessions. He had to stop work on the day of the accident and has not yet returned to work. He is on 50% of his usual salary until he resumes work.

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### PREVIOUS MEDICAL HISTORY

Mr Chato has no relevant previous medical history. He is a non-smoker.

### PRESENT SITUATION

Mr Chato tells me that his left leg is still exceedingly painful. The pain seems to be worse when he is resting than when he is walking, but he finds it difficult to walk more than a short distance. He gets pain at night, which often wakes him, for which his doctor has prescribed painkillers. He has returned to driving, but had to acquire an automatic car, as his left leg was too weak to allow him to use the clutch. When he walks, he feels that he tends to draw his left foot inwards.

The plate is still in place and he has been told that it could be removed. He has decided to leave it in place, however, but may have it removed at a later stage. I asked him about hobbies and sports, but he tells me that although he played cricket many years ago, he no longer does any sport or hobbies and did not do so at the time of the accident.

Mr Chato also informs me that he feels very anxious when in the vicinity of motor vehicles. Since the accident, he has had flashbacks and nightmares. He also has panic attacks, where he displays physical symptoms of increased heart rate and pulse, feelings of alienation and sweaty palms.

### MEDICAL RECORDS

I have seen some photocopies of the General Practitioner notes, but have not seen any x-rays or the hospital records.

All sections below within quotation marks are verbatim. Comments in square brackets are mine. I will refer only to the entries that I consider relevant to this report.

I cannot find any reference to any significant pre-existing condition affecting his left knee.

**10.12.2016:** A letter from the hospital consultant treating Mr Chato to Mr Chato's GP states: 'Mr Chato was admitted to Luton Infirmary yesterday. He was between two cars and caught between the bumpers of the car in front and the car behind. When the car behind was started, it was in gear and lurched forward, crushing his tibia. He has abrasions on his shins caused by the impact. He has sustained a fracture of his proximal tibia, which is minimally displaced.'

**13.02.2017:** A letter from Phillippa Griffiths, physiotherapist, states: 'Mr Chato has full active movement in his left knee but has had tightness in his legs on extension. These issues have settled with massage. He can straight leg raise but has weak quads, which will need further work...'

**2.03.2017:** A letter from Mr Dutton, Consultant Orthopaedic Surgeon, states: 'Radiographs show that the proximal tibial fracture appears to be well on its way to healing with good callus formation at the fracture site. He is mobilising independently without a stick now, with a good range of motion. The alignment clinically is satisfactory and the plate is prominent proximally. He wishes to have this removed. This can be arranged in 12 months. Review in one year, with x-rays on arrival for a final check...'

## **CASE STUDY MATERIALS EXAMINATION**

I interviewed and examined Mr Chato on 5 April 2017 at The Nuffield Hospital, Luton Road, Luton. He was not wearing any form of support or bandage on the left leg and walked without a stick or crutch. He was not walking with a limp when he walked towards my door but then did not know that I could see him arriving. He had a noticeable limp when he entered my office.

### **Left leg**

There was a curved anterolateral surgical scar over the proximal left tibia measuring 10cm in length. There were three 1cm scars more distally from insertion of the percutaneous screws of the LISS plate. The proximal end of the plate is easily palpable just under the skin. It is not tender. The knee is cool and there is no effusion. There is no deformity and he has a normal valgus angle. I could not detect any significant ligament laxity. The knee flexes and extends fully but there is some crepitus palpable through parts of the range of movement. Some of the crepitus appears to be patellafemoral, but some may be coming from medial or lateral compartments.

## **RADIOLOGICAL EXAMINATION**

I have not examined any x-rays.

## **PROGNOSIS AND OPINION**

Mr Chato still finds it very difficult to get around and has not returned to his work as a General Manager. He has had nerve conduction studies due to the fact that there does not appear to have been any direct crushing of the part of the thigh where the femoral nerve lies.

Mr Chato has had physiotherapy, and the movement in his left knee is reported to have improved well though he reports that the pain is not much improved. He has been able to return to driving an automatic car, rather than the manual gear change car he drove before the accident because, he tells me, his left leg is too weak to operate the clutch. I could find no physiological reason why this should be so. I would consider that he could have returned to work by now and be fit for normal duties within a month of his return to work.

He is now extremely nervous and unsure of himself, particularly when in the vicinity of motor vehicles. Due to his flashbacks, he has nightmares and he feels an increased heart rate and sweaty palms. I am unsure how much of this is related to his being 'immersed' in this claim. If the claim were settled, I would anticipate that these symptoms would quickly disappear. I suggested that he could obtain some counselling if he continues to feel a need for it, through the National Health Service or privately.

I would suggest that the time absent from work was not to be expected in view of the nature of the injury and the treatment which it necessitated.

Mr Chato reports that he still suffers from aching in the left knee, which tends to be worse when he is resting. The pain often wakes him in the night. When I examined him on 5 April 2017, I found no physiological reason for this.

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It is likely that the residual aching in his knee will improve completely and I expect that he will make a full recovery (at least to his pre-accident capabilities). He has reported not being sporty or particularly active before the accident.

I do not consider that the injury has increased any risk of arthritis in the knee and will not have increased the rate at which any pre-existing degenerative changes will progress.

The plate can be felt quite prominently into the skin. There is no absolute reason for the plate to be removed, but if the protruding proximal end starts to irritate him, then he could have the plate taken out at a later stage. Removal of the plate would require a further operation under general anaesthetic.

When Mr Chato was seen by Mr Dutton in Clinic on 2 March 2017, it was decided that matters would be reviewed in 12 months hence, when a final decision would be made about whether to remove the plate.

**Statement of Truth**

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**M. Hugen-Brown MB, FRCS(Ed)**  
**Consultant Orthopaedic Surgeon (retired)**  
**Nuffield Hospital, Luton**

**[Note to Candidates: No CV or bibliography of sources was attached to this report.]**

**DOCUMENT 3**

**File note**

**From:** Mark Jones  
**To:** Trainee Lawyer  
**Sent:** [yesterday's date]  
**Client:** Cuthbert's Circus and Pleasure Parks Limited ('Cuthbert's')

Kempston's act for Cuthbert's, which is the defendant company in this action.

The case concerns a claim by Patricia Scott for personal injuries she alleges she sustained in an accident in the Dark House attraction at the travelling pleasure park owned by Cuthbert's. The accident happened in Bristol on the 7 April 2017.

Liability in this case is contested – Cuthbert's has produced evidence that Ms Scott could be exaggerating her claim and may not even have been at the pleasure park when she said she was there. The injuries that Ms Scott alleges she received are not major and even on a full liability basis would be unlikely to result in an award of more than £5,000.

Further information about this case can be obtained from the draft witness statement of Hanneke Djork (**Document 4**).

Mark

**Turn over**

DOCUMENT 4

Draft witness statement

Witness Statement of Hanneke Djork

Witness Name: Hanneke Djork  
Occupation: Ground Supervisor with Cuthbert's  
Address: Flat 8, Brompton Court Mews, Oxford, OX2 5RF

1. I have been employed by Cuthbert's for four years. It is my job to supervise 'guests' (the name we give all visitors to the attractions). I work from time to time in all the attractions and I also oversee the training of all staff in matters of Health and Safety. I have to ensure that all the warning signs are up before we open the attraction. Any incidents would be reported to me.
2. I was on duty at the Dark House attraction on 7 April 2017. I know this as I keep records of the daily duties of all staff in the rota book. 'HD1' annexed to this witness statement is a copy of the relevant page of the rota book, showing that I was present on 7 April 2017. **[Note to candidates: HD1 is not attached with these Case Study Materials.]**
3. I am trained in Health and Safety matters and have my Health and Safety Supervisor's certificate. 'HD2' annexed to this witness statement is a copy of that certificate. **[Note to candidates: HD2 is not attached with these Case Study Materials.]**
4. We have CCTV cameras at the entry and exit of the Dark House – we do this so we can be sure that everyone who entered comes out, as it is dark in there. At the end of the day, we always go in with high-beam torches to be absolutely sure that no-one is in there before we lock the doors at the end of the day. I would have carried out that procedure on 7 April 2017, before closing the attraction.
5. In our training we were told that we may have to deal with aggressive behaviour involving swearing, spitting and physical violence against the actors in the Dark House and we were trained on how to deal with this. For any incident, we were told to radio the call sign 'Spooky 9 to attraction'. This call would bring the Duty Manager and two security personnel to deal with the situation. I myself carried a radio all the time in case we needed assistance. If a person needed first aid, we were told to get everyone out of the Dark House, close it, and take the person to First Aid.
6. During this season we did not have anyone dressed as a wolf in the Dark House or as described by the claimant. All characters were of a medical theme, ie doctors and patients. The 'doctors' – who would emerge out of the gloom in the Dark House – wore surgical scrubs, with a small mask over the mouth. 'Patients' wore pyjamas and dressing gowns and they were made up to look as though they had a hand missing or had blood-covered bandages on. During this season, I have only had to close the Dark House once – when someone had an asthma attack.

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7. At no time on this day – 7 April 2017 – did I have to use the radio, or close the Dark House. If I had had to do either of those things, an entry would have been made in my incident report book, and anyway I remember that day, because it was my birthday and I know I did not need to call for any help that day.
8. The audio system throughout the Dark House was working on that day – it broadcasts warnings as visitors enter – ‘Yes it’s scary...so be wary’. If the claimant was injured on this day, which I deny could have happened, she did so through her own fault and failure to obey the required rules, and in those circumstances I allege that she would be ‘the instrument of her own misfortune’.
9. The signs to walk in a straight line and keep a hand on the shoulder of the person in front were all up and I would repeat that as visitors entered the Dark House.
10. The claimant is saying that she injured her leg and wrist when she fell. In my opinion, such a fall as she describes could not have resulted in the injuries she describes, as the processing through the Dark House is very slow.

Signed: Hanneke Djork

Dated: .....

**Turn over**

DOCUMENT 5

**Letter from Kempstons to the Claimant's legal representative**

Dear Sirs,

**Ms Patricia Scott and Cuthbert's Circus and Pleasure Parks Limited  
Without prejudice save as to costs**

We have now considered your client's claim further and continue to refute that your client injured herself at our client's Travelling Pleasure Park as alleged. Evidentially due to the inconsistencies already present in the information provided by you and as a result of our further investigations, our client feels it would prefer to continue to defend this claim. All the evidence we have so far would indicate that our client would be entirely successful in defeating your client's claim.

However, having regard to the costs rules in relation to these types of claims, our client has elected to take a more pragmatic and commercial approach to the matter.

We are therefore instructed to offer the sum of £2,000 inclusive of damages, interests, costs and VAT in full and final settlement of all claims your client may have against our client in relation to the alleged accident.

We believe that this offer is an eminently reasonable offer of settlement on the basis that, as indicated above, your client has failed to establish that she actually attended the Travelling Pleasure Park on the day alleged or that she injured herself. We have extracts from your client's Facebook page, which indicate that she may have hurt herself elsewhere and not at the Travelling Pleasure Park, or at least not in the Dark House attraction. These extracts also indicate that your client is exaggerating her claim. There is also no direct evidence from her that she was in Dark House and she has described aspects of the ride that do not form part of the Dark House attraction. In our opinion your client's credibility as a reliable witness is to be seriously questioned on the basis of her inconsistent evidence. Further, our client will produce two witness statements from workers working at the park that day and in attendance at the Dark House attraction, and they recall no such incident as your client describes.

We will bring all these points and evidence to the attention of the court.

Please take your client's instructions on this offer over the course of the next 14 days and come back to us with your response within that timeframe.

If your client rejects this offer, we shall ask the court for our client's costs of the case, should it proceed, and our client company will allege that your client has deliberately inflated her claim. We will ask the court to take account of that in its costs considerations.

We await hearing from you.

Yours faithfully

**End of Case Study Materials**