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| Title | Resolving a Commercial Dispute in England and Wales | |
| Level | 4 | |
| Credit value | 10 | |
| Learning outcomes | Assessment criteria | Knowledge, understanding and skills |
| The learner will: | The learner can: | |
| 1 Understand the context of commercial litigation within the English and Welsh system | 1.1 Distinguish between the civil and criminal jurisdiction in England and Wales | 1.1 The purpose of the case or action (to compensate rather than to punish); who starts the case or action (individual or other legal entity whose rights have been affected, rather than Crown Prosecution Service on behalf of the monarch); legal terminology (claimant and defendant, not prosecution and defence); standard of proof (balance of probabilities, not beyond reasonable doubt) |
| | 1.2 Analyse the scope of commercial litigation | 1.2 Wide range of types of clients/parties; actions will principally be claims for breach of contract and negligence; brief outline of actions in other areas, some specialist: <ul style="list-style-type: none"> - Claims relating to breach of duty e.g., breach of trust/fiduciary duty/directors' duties/employers' or employees' duties - Claims relating to personal property e.g., conversion/ trespass to goods - Claims relating to real property e.g., nuisance/ trespass to land - Claims relating to intellectual property e.g., breach of copyright, trademark infringement, |

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| | | <p>patent infringement</p> <ul style="list-style-type: none"> - Claims relating to insurance and shipping - Claims relating to companies and insolvency |
| | 1.3 Analyse the overriding objective of the Civil Procedure Rules (“CPR”) | 1.3 Civil court procedure governed by the CPR; overriding objective (CPR 1) – courts to actively manage cases justly (CPR 1.4), dealing with cases proportionately, saving time and costs, encouragement to settle/use ADR alongside litigation process; importance of objective when court exercises its powers; duty of the parties to help the court further the objective |
| | 1.4 Explain the meaning of Alternative Dispute Resolution (“ADR”) | 1.4 Meaning of “ADR” – e.g., alternatives to court based litigation such as mediation, expert determination and arbitration; usual aim of using ADR is to resolve dispute more quickly, saving cost and/or to keep the dispute out of the public eye; importance of considering ADR in terms of potential adverse costs orders and need to comply with Practice Direction - Pre-action Conduct and Protocols |
| 2 Understand the procedures which a litigant should follow before court proceedings are issued | 2.1 Explain the general obligations of a claimant and defendant under the Practice Direction on Pre-Action Conduct (“PD-PAC”) | 2.1 Obligation to follow the PD-PAC; requirements e.g. early exchange of information and documents, steps to be taken before issuing claim, considering the possibility of settlement without litigation, including possibility of Part 36 offer; must follow PAs or general guidelines under PD-PAC if no specific protocol; effect of non-compliance e.g. possible impact on directions and costs orders |
| | 2.2 Analyse the specific obligations of a claimant and defendant in relation to a claim for breach of contract (other than a simple debt claim) | 2.2 Need to comply PD-PAC – no specific protocol for contract claims; and comply with overriding objective Overview of principles: parties should exchange sufficient information to allow them |

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| | | <p>to understand each other’s position and to make informed decisions about settlement and how to proceed and must make appropriate attempts to resolve the matter without resorting to proceedings including making any Part 36 offers; parties must act reasonably and proportionately</p> <p>Exchanging information before starting proceedings: letter before claim and full written response from defendant; suggested procedure contained in Annex A to PD-PAC</p> <p>ADR: parties should consider ADR including discussion/negotiation, mediation, early neutral evaluation and arbitration; parties must continue to consider possibility of settlement at all times</p> |
| | <p>2.3 Explain the specific obligations of a claimant and defendant in relation to a claim for professional negligence</p> | <p>2.3 PAP Professional Negligence claims(as amended 28 July 2015):</p> <p>Students need an awareness of the scope of the Protocol e.g. requirements for :preliminary notice, letter of claim, letter of acknowledgement, investigations, letter of response, and letter of settlement, documents, experts, ADR, stocktake, proceedings; approach if liability admitted or denied</p> |
| | <p>2.4 Evaluate the information required to prepare a letter before claim</p> | <p>2.4 Claimant needs to</p> <ul style="list-style-type: none"> - identify the parties - provide a chronological summary with key dates and documents attached/enclosed - request any documents which are required - specify allegations against the defendant - explain how the defendant has caused the claimant loss e.g. the basis on which each claim is made identifying the principal contractual terms and provisions |

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| | | <p>relied on</p> <ul style="list-style-type: none"> - quantify the financial loss suffered and how calculated with supporting documents e.g. if pursuant to contract, how loss has been calculated - confirm whether expert appointed, if appropriate. - suggest possible methods of ADR - request that letter be forwarded to insurers |
| | 2.5 Identify the sanctions which the court may impose if the parties fail to comply with their pre-action obligations | 2.5 Possible sanctions: stay of proceedings/costs/interest sanctions - Para 16 PD-PAC (as at 28 July 2015); also affects costs under CPR 44 (Part 44.4); understanding the court's discretion as to costs (CPR44.2) |
| | 2.6 Apply knowledge of procedures pre-issue to a given situation | 2.6 Application to a complex scenario |
| 3 Understand how to commence and serve civil proceedings | 3.1 Evaluate the roles of the County and High Courts | 3.1 Differences between County Court and High Court in terms of jurisdiction and enforcement of judgments; possibility of using Money Claim Online for claims up to £100,000 as alternative to issuing in the County Court Money Claims Centre; majority of commercial cases in High Court; different divisions of High Court – QBD, (sub-divisions: Technology and Construction Court, Commercial Court) Chancery; overview of types of cases suitable for each court; consequences of issuing in wrong court |
| | 3.2 Analyse the procedure for issuing and serving a claim where the defendant is within the jurisdiction | 3.2 Understanding of link to relevant limitation period and need for issue within the limitation period; understanding meaning of "within the jurisdiction" e.g. defendant in England & Wales; CPR 7 procedure (and PD 7A) e.g, documents and fee required to issue claim, issue at County Court Money Claims Centre |

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| | | <p>(Salford) ; service by court or by claimant (need for certificate of service); 4 month validity period of claim form; consequence of late service of claim form; link with CPR3.9</p> <p>CPR 6 - service of documents e.g. 6.3, 6.4 and 6.6 Particulars of Claim can be with claim form or served within 14 days afterwards but no additional longstop provision over 4 months - <i>Venulum Property Investments Ltd v Space Architecture Ltd 2013</i>; CPR 7.4 Methods of service under CPR 7.5; calculation of deemed date of service (6.14)</p> |
| | <p>3.3 Analyse the procedure for issuing and serving a claim where the defendant is outside of the jurisdiction</p> | <p>3.3 Same documents required as above but 6 month validity period for claim form; deemed service does not apply; overview of methods of service overseas</p> <p>Need permission to serve outside of jurisdiction if defendant is outside UK and outside EU; CPR 6.36/37 and PD6B (only grounds relating to contract and tort); serve order giving permission with claim form</p> <p>No need for permission if defendant is within Scotland/Northern Ireland; CPR 6.32; overview of claims which the court has jurisdiction to determine under Civil Jurisdiction and Judgments Act 1982 – only in relation to contract, tort and jurisdiction agreements; serve N510 stating grounds with claim form</p> <p>No need for permission if defendant is within Scotland/Northern Ireland or within EU; CPR 6.32 and 6.33; overview of claims which the court has jurisdiction to determine under the Brussels Regulation – only in relation to contract, tort and jurisdiction agreements; serve N510 stating grounds with claim form</p> |

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| | 3.4 Draft a claim form for a given dispute | 3.4 Completion of N1 claim form in relation to scenario |
| | 3.5 Analyse the content and structure of Particulars of Claim | 3.5 Rules on contents of Particulars of Claim as set out in CPR 16.4 and PD16; simple drafting to include e.g. basis of cause of action and allegations made; establishing the link to the damage/loss; calculation of loss; application of relevant statutory authority for entitlement to claim interest e.g. s35A Supreme Court Act 1981, s69 County Courts Act 1984, Late Payment of Commercial Debts (Interest) Act 1998; calculation of simple interest on liquidated damages claim; meaning of statement of truth and who should sign; ability to identify issues in defective draft and make corrections |
| | 3.6 Apply knowledge of drafting, issuing and serving proceedings to a given situation | 3.6 Application to a complex scenario |
| 4 Understand how the defendant can respond to proceedings | 4.1 Explain the options available to the defendant upon receipt of a claim form | 4.1 CPR 9; requirement for response - only if particulars of claim served with/on claim form ; if particulars served, options include making admissions, serving defence or acknowledging service; disputing the court's jurisdiction CPR 11 (overview); requesting extension of time for service of defence CPR 15.4; Part 18 request if clarification required of Particulars of Claim |
| | 4.2 Analyse the dates by which the defendant must acknowledge service and/or serve a defence to avoid default judgment | 4.2 Knowledge of deemed date of service (as above) as trigger date; CPR 10.3 & 15.4; longer time limits where defendant is overseas – CPR 6.35, 6.37 and PD6B; calculating actual dates based on scenario |
| | 4.3 Analyse the range of responses that can be made to a claim | 4.3 knowledge of, and understanding of what is meant by responses defendant may make – admit/deny (CPR 16.5 & PD16)/neither admit nor deny – and implications of those responses for the parties |

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| | 4.4 Evaluate the range of potential counter claims that can be presented | 4.4 CPR 20; what constitutes a counterclaim against a claimant; what constitutes a set off (in brief); distinguish between making positive allegations, e.g., contributory negligence as part of defence to the claim and bringing a separate claim against claimant |
| | 4.5 Evaluate the additional claims that can brought in dispute proceedings | 4.5 Claims by defendant against co-defendants; difference between claims for contribution and indemnity; Civil Liability (Contribution) Act 1978 or arising from contractual provisions; claims by defendant against persons not currently party to the proceedings |
| | 4.6 Explain the procedures for bringing a counterclaim and for bringing additional claims | 4.6 CPR 20.4 (against claimant) 20.5 (against other party); CPR 20.6 – contribution/indemnity notice; CPR 20.7 - Part 20 claim form and particulars of Part 20 claim CPR 20.3 – which CPR provisions apply to Part 20 claims; relevant that additional claim shall be treated as if it were a claim |
| | 4.7 Explain the options available to a claimant in receipt of a defence and/or counterclaim | 4.7 Consideration of any partial admissions and possibility of judgment; optional reply to defence; option to apply to strike out the defence (CPR 3.4) and/or apply for summary judgment (CPR 24.2); must serve defence to counterclaim (Part 20.3 - additional claim treated as if it were a claim and so default judgment provisions apply to counterclaim;; time-limits for service of defence to counterclaim and reply CPR 15.4 & 15.8; Part 18 request if clarification required |
| | 4.8 Apply knowledge of responding to and defending claims to a given situation | 4.8 Application to a complex scenario; calculating deadlines for responding to claim, how to respond; considering Particulars of Claim and |

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| | | understanding implications of its contents |
| 5 Understand how the court manages cases | 5.1 Analyse the criteria used by the court to decide an appropriate track for an action | 5.1 CPR 26.3, 26.6,26.8; provisional allocation to track, role of directions questionnaire, contents of directions questionnaire, overview of matters relevant to allocation to track f for small claims track, fast track and multi-track ; recognising what is the "normal track" on given facts |
| | 5.2 Complete a directions questionnaire in relation to a given situation | 5.2 Completion of directions questionnaire including information in relation to witnesses, experts, trial length, possible interim applications, costs |
| | 5.3 Explain the procedure which the court is likely to adopt in order to manage a multi-track case. | 5.3 CPR 29; case management conferences ("CMC") at which court sets directions; importance of CMC as tactical stage; who should attend CMC; obligation of parties to consider provision of case summary and to agree directions based upon specimen directions; directions will be "usual" types of orders which will be made (clarifying/amending case, stay for ADR, disclosure and inspection, witness statements, expert evidence, split trial on preliminary issues, further CMC, fixing trial date or period, pre-trial checklists); court will require costs budgets CPR 3.12/13 and PD3E); application of overriding objective (CPR 1) and general case management powers (CPR 3) |
| | 5.4 Explain the sanctions which the court may apply if a party fails to comply with a case management direction | 5.4 Range of sanctions described under CPR3; understanding that failure to comply sufficient to attract sanction (CPR 3.8 e.g. unless orders) unless relief from sanction is sought (CPR 3.9); |
| 6 Understand the rules relating to documentary | 6.1 Explain how a lawyer should go about | 6.1 Commercial cases commonly document heavy; obtaining and analysing client |

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| <p>evidence</p> | <p>obtaining and organising a client's documents</p> | <p>documentation; advice on duties of disclosure when first taking instructions; questions lawyer should ask at outset about client documents/document storage/computer systems</p> <p>Organising documents logically for easy and repeated access e.g., categorising, removing unnecessary duplicates, chronological order, numbering; separating out any documents which attract privilege</p> <p>Electronic files: use of software to search and organise</p> <p>Hard copy files: need to maintain integrity of original client files e.g., professional negligence cases; requirement to produce originals at trial</p> <p>NB CPR 1 proportionality/time/cost</p> |
| | <p>6.2 Analyse the criteria for standard disclosure.</p> | <p>6.2 Meaning of disclosure (CPR31.2) and meaning of standard disclosure obligations (CPR 31.5 and 31.6); relevant criteria are e.g. documents which exist and are relevant to matters in issue upon which a party relies and includes documents which may be adverse to a party's case</p> <p>Extent of parties' duty to search for documents falling within standard disclosure: CPR 31.7; meaning of control: CPR 31.8; completion of lists: CPR 31.10; continuing duty of disclosure: CPR 31.11; PD31A regarding extent of search; effect of the disclosure statement (31.10(5) and (6) and implications of signing without having done what is certified to have been done</p> |
| | <p>6.3 Analyse how electronic documents impact on standard disclosure</p> | <p>6.3 Definition of document CPR 31.4; what might constitute an electronic document; special rules in PD31B; parties to confer at early</p> |

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| | 6.4 Explain what inspection is | 6.4 CPR 31.3 - process by which opponent obtains/reads client's documents; various methods e.g., requesting copies, attending inspection appointment; reasons for withholding inspection CPR 31.3(1)(b) and 31.19 e.g. privilege |
| | 6.5 Explain the basis upon which a party may claim a right to withhold documents from inspection | 6.5 Types of legal professional privilege e.g. legal advice privilege and litigation privilege, and procedural requirements to claim legal professional privilege: CPR 31.19(3) |
| | 6.6 Apply the criteria for disclosure to the classification of documents in a given situation | 6.6 Application of the principles of standard disclosure and inspection to scenario including managing issues of privilege – completing an N265 in a simple scenario |
| 7 Understand the rules relating to witness evidence | 7.1 Evaluate the requirements for statements of witnesses of fact | 7.1 CPR 32: requirement that facts to be proved need evidence to be adduced from witnesses of fact, distinction between witnesses of fact and expert witnesses/opinion, mandatory service of witness statements; consequences of failure to serve (CPR 32.10, 3.8 and 3.9) Formalities under PD32: statement of truth and consequences of verifying false statement; |
| | 7.2 Analyse the circumstances in which the court will permit expert evidence | 7.2 Only experts may give opinion evidence on issues as reasonably required to resolve proceedings: CPR 35: no expert evidence permitted without the court's permission – obtained at CMC: court will permit expert evidence where needed to resolve issues in case; tight control over number and type of experts and instruction e.g. single joint expert ; separate experts ; concept of "hot-tubbing" at trial if parties agree e.g. concurrent hearing of expert opinion; expert |

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| | | evidence can relate to liability or quantum; relevance of CPR 1 factors e.g. expense, proportionality, complexity |
| | 7.3 Summarise the duties of an expert witness | 7.3 PD35 - expert's duty is to the court, not the party instructing him; general requirements of expert's report and how its form and content embodies the expert's duties |
| | 7.4 Explain how a lawyer could go about locating and selecting an expert witness | 7.4 Identification of experts e.g., directories, firm approved list, recommendation; obtain CVs to include details of experience and suitability of expertise relevant to subject-matter of dispute, availability to report/attend trial in line with timetabled directions |
| | 7.5 Apply the rules about witnesses to a given situation | 7.5 Identifying which facts must be proved by witnesses of fact and upon which issues expert evidence is required based on scenario |
| 8 Understand what is required to prepare for and attend the trial | 8.1 Analyse pre-trial preparation requirements | 8.1 Preparing trial bundles; booking and briefing Counsel; holding pre-trial conference with Counsel; ensuring all witnesses (including client) will be present – issuing witness summonses if necessary or consideration of need to serve Hearsay Notice (CPR 33.2 and Civil Evidence Act 1995) ; keeping all persons involved fully informed as to arrangements for trial and maintaining list of contact details; awareness of implications if client does not attend (CPR39.3) lodging trial bundles at court for judge and witness box; ensuring relevant IT is available; knowing where relevant services might be obtained |
| | 8.2 Complete a pre-trial checklist in a given situation. | 8.2 Completion of pre-trial checklist – details of any special arrangements necessary e.g., IT, video |

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| | 8.3 Explain how a lawyer can compel a witness to attend trial | 8.3 CPR 34: appreciating that the client is a party and a witness and the implications under CPR39.3; service of witness summons; time limits e.g. service at least 7 days before required date of attendance; N20 plus conduct money; consequences of failing to comply e.g. link with CPR 32.2: cannot rely on witness' evidence if not present |
| | 8.4 Analyse the requirements for trial bundles | 8.4 Claimant's responsibility; format under PD39A; agree index with opponent; chronological order; pagination; number of copies (1 for each party plus 1 for each advocate, 1 for judge, 1 for witness box); time limits for lodging |
| | 8.5 Explain which other documents may be required by the court in advance of the trial | 8.5 Types of documents and their typical contents e.g. skeleton arguments, case summaries, lists of issues |
| | 8.6 Analyse what happens in court on the day of the trial | 8.6 Overview of trial procedure – opening summary, order of opening speeches, what is meant by oath/affirmation, examinations in chief (status of witness statement previously served), cross-examination, re-examination, order of closing speeches, costs arguments Who sits where, role of representing lawyers and advocates at trial Etiquette – modes of address, dress and need for appropriately respectful conduct |
| | 8.7 Explain the options available for recording and reviewing evidence given at trial | 8.7 Attending lawyers take notes of evidence and particularly of the judge's questions and witnesses'/representatives' answers; daily transcripts or real-time transcripts; obtaining court transcript from stenographer or digital recording |
| 9 Understand orders and | 9.1 Analyse the contents of a judgment or order | 9.1 Requirements under CPR 40.2; when judgment or order takes effect (CPR 40.7) |

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| judgments | | immediately unless otherwise stated; contents reflect terms of resolution (e.g. consent order) or court finding, providing, as appropriate, for liability, damages (or other remedy) and for costs; time for complying with a judgment /order (CPR40.11); meaning of consent order |
| | 9.2 Explain who is responsible for drawing up and serving a judgment or order | 9.2 Requirements under CPR 40.3 (e.g. court unless otherwise provided) and 40.4 |
| | 9.3 Explain when interest accrues on a judgment or order for the payment of money | <p>9.3 When interest is payable and current rates (8% as at April 2015)</p> <p>High Court - Section 17 Judgments Act 1838, all debts</p> <p>County Court - Section 74 County Courts Act 1984, County Court (Interest on Debts) Order 1991; debts of £5,000+ only where payment not postponed</p> <p>Runs from date of judgment, unless otherwise ordered, until judgment debt is paid in full (CPR 40.8)</p> |
| | 9.4 Analyse the enforcement remedies available to a successful party | 9.4 Options available to a party if the terms of the judgment/order are breached; time limits for enforcement; order to obtain information CPR 71; Writs of control (High Court) or Warrants of Control (County Court) - Part 3 Tribunals Courts and Enforcement Act 2007 and CPR 83 - application compliant with CPR 23); optional transfer for enforcement to High Court of County Court judgments ; Third party debt order (CPR 72); Charging orders (CPR 73); Attachment of earnings (CCR Ord 27); brief overview of bankruptcy/winding up as alternative option |
| | 9.5 Explain the procedure by which an unsuccessful party may appeal an order or | 9.5 Process outlined in CPR52 and PD52; need for permission to appeal and grounds for |

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| | judgment | permission; need to apply for stay of judgment; time-limits for filing notice of appeal; grounds for appeal; which judge will hear appeal; requirements for appeal bundles; respondent's notice |
| | 9.6 Apply the rules about judgments, order, interest, enforcement and appeals to a given situation | 9.6 Application to a complex scenario |

| Additional information about the unit | |
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| Unit aim(s) | The learner will understand the difference between Civil and Criminal Law in England and Wales. They will also understand how to prepare, progress and manage a commercial litigation case. |
| Details of the relationship between the unit and relevant national occupational standards (if appropriate) | N/A |
| Details of the relationship between the unit and other standards or curricula (if appropriate) | N/A |
| Assessment requirements specified by a sector or regulatory body (if appropriate) | N/A |
| Endorsement of the unit by a sector or other appropriate body (if required) | N/A |
| Location of the unit within the subject/sector classification | 15.5 Law and Legal Services |
| Name of the organisation submitting the unit | Chartered Institute of Legal Executives (CILEx) |
| Availability for delivery | 1 st April 2013 |