

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 the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the 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 relates to the 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 text books into the examination.
- In the examination, candidates must comply with the ILEX Examination Regulations.

Turn over

* This unit is a component of the following ILEX 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 STUDENTS

You are a trainee Legal Executive in the firm of Kempstons of The Manor House, Bedford, MK42 7AB. You are in the civil litigation team and your supervising partner is Mark Jones. Your local County Court is situated in Bedford.

You arrive at work on Monday morning and receive a call from Mark. He advises you that he is unable to come to 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 **Driza Limited** file (file ref: DL/AT/67/11). Kempston's are acting for Driza Limited. Your client company has developed an innovative method of coating silks and linens to make them water resistant though still retaining the softness of the fabric. The research for this new method was undertaken by Lisette Levine for your client company. She is a specialist in fabrics. The research was undertaken under the terms of a contract between Ms Levine and Driza Limited dated 2nd March 2011 (the contract). The contract included a confidentiality clause because of the ground breaking nature of the research.

Driza Limited has invested heavily in new machinery for the production of the new fabric. They believe it will be a great success. They have planned a launch and extensive advertising and marketing campaign for the new product in 3 months time once they have production systems in place to meet the anticipated orders.

Serena Pollard, the managing director of Driza Limited called Mark Jones this morning concerning the activities of Swallow Cover Limited who are Driza Limited's main competitor. The call was taken by Mark's secretary Catherine. Details of that call are set out in **Document 1** attached with these Case Study Materials.

Consideration of any issues of intellectual property is **not** necessary. Your clients concerns are to preserve the status quo until they have more information.

- 2) The **Pink Limited** file (file ref: PL/AT/54/11). Kempstons act for Pink Limited a company that employs Disc Jockey's (D.J.'s) and supplies sound equipment for parties, weddings and other events. The company is the defendant in a claim by Frank Golden. Frank Golden's claim is for personal injury, loss and damage sustained by him when speakers on the dance floor toppled on him at a wedding.
- 3) The **RLC and Associates** file (file ref: RLC/AT/31/12). Kempstons act for RLC and Associates. They are a property development firm. The matter relates to a barn conversion that your clients had completed as part of a development of three barn conversions. All the barns have now been sold. An issue arose with the sale of the last barn. Further details of the nature of this case are set out in the attendance note attached with these Case Study Materials as **Document 2**.

CASE STUDY MATERIALS

- 4) The **Potbank Mould Limited** file (file ref: PM/AT/2/11). Kempston is the Claimant in this action (Potbank Mould Limited). It is a matter in which your client seeks recovery of a debt of £25,000 from Eldcraft Limited in breach of a contract for the supply of a tunnel kiln. The defendant, in its defence, has alleged that the kiln cars do not run smoothly and as a result some of the pottery on the kiln car is getting damaged. A joint expert's report is not very conclusive either about whether the kiln cars run less smoothly than is acceptable for a kiln of this value (which is in the modest to budget range) or whether the running of the kiln cars would cause the damage alleged. Further clarification is awaited.

Both parties are feeling the pressure of this uncertain litigation. Assume the trial date for the case has been fixed for the 23rd March 2012.

Turn over

From: Serena Pollard (MD of Driza Limited)
To: Mark Jones
Taken by: Catherine
Date: 19 January 2012

Serena wishes to see Mark Jones today or tomorrow morning if at all possible.

She mentioned that Swallow Cover Limited had yesterday placed advertisements in the National Fabric Advertiser, and also 3 national newspapers. The advertisements offer "A new and revolutionary water resistant fabric that is – 'water resistant yet soft retaining all the characteristics of the pre-treated fabric'". The additional descriptions in the advertisements of the qualities of the new fabric makes it clear to Serena that this is in direct competition with Driza Limited's new fabric. The financial consequences of such a fabric coming on the market 3 months before Driza's launch of the new coated fabric are serious.

Serena further explained that she had made a few telephone calls to discover more about Swallow Cover Limited's activities. She also called Lisette Levine and learned that Lisette has been a consultant for Swallow Cover Limited for the past 3 months.

CASE STUDY MATERIALS

BLANK PAGE

StudentBounty.com

Turn over

Attendance Note – Kempstons.**Mark Jones****Date:** 5 January 2012**Attending:** Robert Corne**Time:** 1 hour (10 units)

Mark Jones attending on Robert Leonard Corne at 10.00 am on Monday 5th January 2012.

In advance of our meeting, I had sent to him our standard litigation client care letter in duplicate. At the meeting, he gave me a signed copy of the client care letter and a cheque in the sum of £1,000 as a payment on account.

He explained to me that his property development company is run by him as sole proprietor. He is assisted by David Phillips who is his sales and finance manager. The business is called RLC and Associates.

He requires advice in connection with one of three barn conversions on a site near Northampton known as High Barn Farm. Plot 3 was sold to Mrs. Heather Bellon. This was the last of the barns to be sold and exchange took place on 12th May 2011 with anticipated completion in the afternoon of 12th August 2011. The purchase price was £470,000.

It became apparent immediately before completion that a number of items were unfinished. Turfing of the rear garden lawn was one of these items. Robert Corne told me that he took a commercial decision and agreed verbally with the purchaser Heather Bellon on the morning of the 12th August 2011 (the day of completion of the sale) that she could retain £9,000 from the purchase price until those items had been completed, provided that such a retention was paid into a stakeholder account operated by her solicitors and that the retention was paid to him within 7 days of the date on which the agreed outstanding items were complete.

Robert Corne confirmed to me that all the outstanding works identified as uncompleted on 12th August 2011 were completed by 21st September 2011, including the rear garden. He telephoned and wrote to Heather Bellon's solicitors on several occasions after 21st September 2011 requesting the return of the retention of £9,000 but they refused indicating that their client was not satisfied with the standard of the rear lawn. Robert Corne said she has unrealistic expectations of how the finished lawn should appear. He said that she wanted it to be like a bowling green.

I asked Robert Corne to explain to me what had been agreed in relation to the standard of the lawn. He said there was no written specification for the lawn other than the photograph that appeared in the brochure for the development itself. He had made no written or verbal representations as to the quality of the rear lawn.

CASE STUDY MATERIALS

He explained that the development was a rural setting and the gardens on the plots were turfed following the natural contour of the ground.

I enquired as to how the turfing had been laid for Heather Bellon's plot. He told me that his original landscape gardener, Claire Topping, did not complete the turfing to plot 3 as she did not have the workforce to resource the job therefore he subcontracted the remaining work to another gardener, Michael Bute, who finished it off by laying the turf and rolling it. Robert Corne's view is that the rear lawn was of a satisfactory quality and if Heather Bellon does not think it is, then it is her own doing as she has not treated it properly. In any event he has photos that he took last week which show the lawn to be in a very good condition.

Robert Corne told me that he has always found Heather Bellon to be a very difficult and demanding lady and nothing ever seems good enough for her. He feels that his retention monies have been outstanding for long enough and wants some firm action taken quickly.

I advised Robert that it would appear that he had the basis of a breach of retention contract claim although evidentially there was some considerable work to be done to persuade a court. There was also the possibility that Heather Bellon would defend. I explained that we could not simply issue proceedings without first entering into the spirit of "protocol" and explained what this was to him. He instructed me to write a letter of claim.

I explained to him what I saw as his funding options and the cost implications of commencing a low value but potentially lengthy piece of litigation especially where there was a likelihood of a counterclaim which would delay matters and increase costs generally. All these needed careful thought. I also discussed ADR generally. We also considered whether Heather Bellon was financially able to meet a damages and costs award against her.

He confirmed to me that he wished to proceed on a private basis for the moment. I informed him that I would update him next week and confirm our discussions today in a letter also making a request for the following documents: brochure, plans, contract and transfer documents, photos and copy correspondence passing between himself and Heather Bellon.

I also asked him to speak to Claire Topping and Michael Bute and put them on notice about providing me with witness statements.

Time 1 hour
Mark Jones

DO NOT CONCERN YOURSELF WITH THE NATURE OF THE CONTRACT FOR THE PURCHASE OF THE PROPERTY BETWEEN THE PARTIES OR ANY NHBC ISSUES.

End of Case Study Materials

© 2012 Institute of Legal Executives

CASE STUDY MATERIALS

BLANK PAGE

StudentBounty.com