

INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – CIVIL LITIGATION*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* 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 LAW AND**

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Question 1

Reference: Question relates to **Document 1** of the case study materials.

- (a) One of the calls Serena had made after seeing the advertisements had been to Lisette Levine to ask her directly whether she had revealed confidential information to Swallow Cover Limited. Lisette Levine's reply had been:

"You'd never be able to prove that and if Driza Limited had any thought of suing me I would have a little fire in my office of any 'unhelpful' paperwork."

Lisette Levine did not deny acting as a consultant for Swallow Cover Limited recently.

What is the most appropriate application that you would advise Driza Limited to take? Give reasons for your answer.

(8 marks)

- (b) What advice will you need to give your client, Driza Limited, about their obligations if they decide to proceed with the application you outlined in your answer to Question 1a? Give reasons for your answer.

(6 marks)

- (c) The litigation in this matter continues and your client, Driza Limited, have secured judgment against Lisette Levine with damages to be assessed. You do not yet have a date for the assessment hearing, which is likely to be several weeks away.

What interim application would you advise Driza Limited to make on securing the judgment order (with damages to be assessed) that would help to alleviate the financial pressures they are under?

Explain the procedure you will follow for the application and indicate, with your reasons, the chances of success of the application?

(9 marks)

(Total: 23 marks)

Question 2

The following questions relate to the information which has been given on the Pink Limited File and detailed in **Case 2** of your case study materials.

- (a) By what legal principles will the claimant have sought to claim for his loss and injury against your client company, Pink Limited? Would your answer in any way be affected by the fact that, on the occasion when the claimant was injured, the disc jockey employed had contravened company procedure by stacking the speakers as he had done?

(6 marks)

- (b) Pink Limited's defence to this action includes an allegation that the claimant had been jumping vigorously near to the speakers immediately before they collapsed on him and that he had been warned during an earlier dance track not to do this. He had returned onto the dance floor and continued his vigorous jumping near the speakers.

What is the basis of this part of the defence and what impact might it have on the claimant's claim?

(6 marks)

- (c) Within the order for directions the court has granted permission to both parties in this action to engage and serve an expert report.

What guidance can you give to your client's expert witness about his duties in the preparation of his report and the involvement he may have in the action?

(10 marks)

(Total: 22 marks)

Question 3

Reference: Question relates to **Document 2** of the case study materials.

Assume a letter of claim had been sent but **not** responded to by Heather Bellon. You now have instructions to issue proceedings.

(a) Draft the Particulars of Claim on this action.

(17 marks)

(b) On the filing and service of the Defence and Counterclaim:

(i) what procedural steps will Kempstons, acting on behalf of RLC and Associates take?

(2 marks)

(ii) what is likely to occur if RLC and Associates do not take the steps you suggest?

(2 marks)

(iii) what step or steps will the court take?

(2 marks)

(c) Assuming the case has been allocated to the fast track and in an effort to try and agree as much as possible with your opponents before returning the completed N150 (Allocation Questionnaire) to the court, draft by way of a bullet point list, the directions your clients propose for the action for consideration by the Defendant's solicitors, having regard to the overriding objective and the requirements for evidence.

Explain and/or justify your proposed directions.

(7 marks)

(Total: 30 marks)

Turn over

Question 4

Reference: The following questions relate to the information you have been given on the Potbank Mould Limited File and detailed in Case 4 of your case study materials and **Document A** attached with this question paper.

Case developments:

You have received a letter from the Defendants (**Document A** attached with this question paper). This letter confirms that settlement has been reached in this action in the terms set out in the letter.

(a) Do the terms of the claimants' offer to settle this action (they being the terms reiterated by the defendant in the letter attached as **Document A**) amount to a CPR Part 36 Offer? Give reasons for your answer.

(6 marks)

(b) Your client is concerned how the agreement can be enforced if the defendants fail to pay as agreed within the 21 days. Your client also wishes to know whether he will still have to attend court on the 23rd March 2012. What advice will you give?

(6 marks)

(c) Time has moved on and it is now the 19th January 2012 (this is the last date when payment of the settlement sum should have been received). Your clients have still not received any money. They are concerned that Eldcraft Limited does not have the means to settle. Unfortunately neither you nor your clients know anything about Eldcraft Limited's financial position.

Advise your client on the steps they should take now. Do any professional conduct issues arise?

(6 marks)

(d) After enquiries you learn that Eldcraft Limited owns the freehold property at 5, Bedford Kiln Lane, Bedford, the Company's net profit is about £52,000 per annum and that it has a reserve fund with Northampton Friendly Bank plc.

Which methods of enforcement are available to your client? Choose **one** method and briefly explain the procedure required to proceed with this method of enforcement.

(7 marks)

(Total: 25 marks)

DOCUMENT A

(This relates to Question 4(a))

Messrs Burland and Co, Solicitors
1st Floor Burland House
Kingsway Lane
Bedford
MK40 8TF

Tel: 01234 111111 Fax: 01234 222222

Web: www/bur/legal E-mail: pm@burland.co.uk

DX: Bur/998877

Messrs Kempstons
The Manor House
Bedford
MK42 7AB

Date: 5th January 2012

Our Ref: PM/AT/2/11/MJ

Your Ref: Eld/SSJ/12

Dear Sirs

Potbank Mould Limited and Eldcraft Limited

Thank you for your letter dated xx xx xxxx setting out details of your clients' proposals to settle this matter.

We have discussed your clients' proposals with our clients and are pleased to confirm that agreement can be reached upon the terms of your clients' offer as follows;

- Our clients will pay the sum of £17,000 as a reduced payment for the kiln supplied by your clients' within 14 days from the date of this letter.
- There be no further claim for production losses

and

- Our clients will pay a contribution to your clients' costs in the sum of £3,500 also payable within 14 days from the date of this letter.

This now concludes this action and we await hearing from you.

Yours faithfully

End of Examination Paper

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