

## 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 PRACTICE**

**Question 1**

Reference: Question relates to **Document 1 and Document 2** of the Study Materials.

- (a) Which Protocol is most likely to apply to this case?

Give reasons for your answer.

In your answer you should also consider whether, with reasons, any other protocol or other pre-action procedure could be relevant.

**(7 marks)**

- (b) What action will Kempstons take on receipt of the Letter of Claim (**Document 2**)? Briefly state your reasons for each of the steps, or responses which should be taken.

You should consider **only** the immediate steps that would be taken at this time.

**(7 marks)**

- (c) If this matter were to proceed to litigation in which court would the claimants be likely to issue the claim and which track is the case likely to be allocated to?

Give reasons for your answer.

**(6 marks)**

- (d) Assume this matter proceeds to litigation. The claimants seek the permission of the court to obtain expert reports in three fields of expertise:

- orthopaedic surgeon (to comment on the leg injuries);
- a plastic surgeon (to comment on the cosmetic effects of the facial scarring)
- an ophthalmic surgeon (to comment on the effect of the eyelid injury).

What response is the defendant likely to make to such a request?

Give reasons for your answer.

**(5 marks)**

**(Total: 25 marks)**

## Question 2

Reference: Question relates to **Documents 3, 4 and 5** of the Case Study Materials. On the file you see that proceedings had been commenced against Mrs Singh by Paul Stalls in which he seeks the sum of £25,000 for the kitchen he installed for her. In her defence (**not** included) she has stated the problems with the oak panels, work surfaces and floors and she counterclaims the costs of replacing all this. You have an extract of Mr Stall's defence to her counterclaim as **Document 5**.

- (a) Consider the extract from the defence to counterclaim filed by Mr Stalls (**Document 5** with your Case Study Materials).

What advice, and how much technical information, will you give your client in the light of this part of the defence to counterclaim?

Give reasons for your answer.

**(8 marks)**

- (b) Consider the information you have on this file (**Documents 3, 4 and 5** with your Case Study Materials). It seems clear that Mrs Singh has not raised any complaints about the electrical goods supplied with the kitchen which Mr Stalls has installed for her.

**If you were acting** for the **claimant** in this action (Mr Stalls) what action would you advise could be taken?

Give reasons for your answer.

**(10 marks)**

- (c) This action is resolved at trial. Neither party fully 'won' their case. The judge did not make any order for costs in favour of either party. What matters would the judge have considered when making a 'no costs' order of this nature and could your client take any action if she disagreed with the judge in making this order?

Answer briefly.

**(5 marks)**

**(Total: 23 marks)**

### Question 3

Reference: Question relates to **Document A** included with this Question paper.

- (a) The directions order in this case states that disclosure between the parties, defined as 'standard disclosure', should take place within 4 weeks of allocation.

What is 'standard disclosure' in this context and what is the procedure the parties will have followed to deal with disclosure?

**(6 marks)**

- (b) It is clear from your review of the file as requested by Mark Jones, that the time for exchanging witness statements is very soon. On the file there is a draft witness statement (**Document A** attached with this Question paper).

Indicate, by a bullet point list, with your reasons, what you believe needs to be amended in the draft witness statement to make it compliant with the CPR and be ready for exchange.

**(10 marks)**

- (c) Shortly after the exchange of witness statements, Kempston's receive a formal Part 36 offer from the claimants. In that offer the claimants seek to settle the action upon payment of one half of their claim, a sum of £12,000.

What are the likely consequences for your clients if they decided to reject the offer and proceeded to trial and at trial were ordered to pay the claimant's £12,000?

**(6 marks)**

**(Total: 22 marks)**

**Question 4**

Reference: Question relates to **Document 6** of the Case Study Materials.

- (a) Having considered the information in **Document 6** (included in the Case Study Materials) draft a letter of advice to Mouse Appeal Ltd as to the best course of action against Dr Elton.

**(15 marks)**

- (b) In the light of your advice Ms Luton, for Mouse Appeal Ltd, has given instructions to proceed with the application (that you advised in your letter in your answer to question 4a above).

Outline the steps you would take to proceed with the application.

**NOTE: You are not being asked to draft any of the documents but you should indicate what you would have prepared and what the purpose was of the document or procedure.**

**(10 marks)**

- (c) Your client company is successful in the application. As a result of the steps taken neither side is willing to continue with protracted litigation. Dr Elton is prepared to re-negotiate his terms of employment with Mouse Appeal Ltd and Mouse Appeal Ltd wish to retain him within the company as he is the best designer in the field. The parties have agreed terms of settlement that are acceptable to both sides.

How could the litigation be concluded and what steps would need to be taken to do this?

**(5 marks)**

**(Total: 30 marks)**

**DOCUMENT A**

**(This relates to question 3(b))**

IN THE  
BEDFORD COUNTY COURT

Claim No: 4BHO4696

Between

Exclusive Marquee's

Claimant

and

Mr. Edward and Mrs. Penelope Middlehow

Defendants

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**Witness Name: Dorothea Cosgrove**

**Witness Address: Over Valley, Back Lane, Olney, Buckinghamshire MK44 7RF**

**Witness Occupation: Dress maker and dress shop owner.**

I am a trainee Legal Executive with Messrs. Kempston's Solicitors for the above named Defendant and have the conduct of this case under the supervision of my supervising partner.

I am duly authorised by the Defendants to make this statement on their behalf. The information and facts that I refer to are either within my own knowledge or from the source stated.

I Dorothea Cosgrove of Overvalley, Back Lane, Olney, Buckinghamshire MK20 7GG will say as follows,

I have known Mrs. Middlehow (Penny) for over 20 years. Penny asked me to be her personal helper for her wedding last year. For this purpose I arrived at Stargate House (the home of the defendant) on Wednesday 28<sup>th</sup> September to help Penny make her final preparations for her wedding to be held on Saturday 1<sup>st</sup> October.

Penny told me that the marquees had been due to be erected the previous day, on Tuesday 27<sup>th</sup> September, but that there had been a delay and they were arriving the next day – 29<sup>th</sup> September. At about 11 a.m. on Thursday morning (29<sup>th</sup> September) a lorry arrived saying they had come with Marquees for Exclusive Marquees. They were not instructed to erect the marquees, just deliver them.

After many telephone calls I finally managed to speak with a man called Mr Green at Exclusive Marquees – he said his men would be arriving early on Friday morning to erect and line the marquees.

On Friday morning 2 men arrived to erect the Marquees – it was clearly not enough and by 4.30 pm only 2 of the 3 marquees had been erected but not yet lined. The kitchen Marquee was not yet erected. After many more telephone calls I did finally manage to speak to Mr Green, who I believed to be the owner of Exclusive Marquees. He told me not to worry and all would be finished in time – he was sending 2 more men. They did not arrive until 8 pm by which time it was getting dark. They started erecting the kitchen marquee but were unable to finish it that night. I was told all the men would arrive by 7.30 a.m. on Saturday 1<sup>st</sup> October.

The caterers were due to arrive to begin preparing the food at 10 a.m.

On the morning of the wedding there was a huge amount of activity. The kitchen marquee was not completed before 10 a.m. This delayed the caterers. The final decoration of the main marquee was not finished until 11.30 a.m. this meant the florists could not start the flower arrangements to decorate the marquee until just before 12 noon. The wedding was to take place at 2.30 pm and the wedding party due to return by 3.30 p.m. It was all very frenetic and hugely stressful for Penny.

Another problem – that could not be resolved – was that the main marquee was not as big as the one Exclusive Marquees had agreed to erect – this meant that the tables were too close together and the marquee felt cramped once all the guests arrived.

All these problems ruined the defendant's enjoyment of their wedding day.

In my opinion all the problems were the fault of Exclusive Marquees.

*Dorothea Cosgrove*

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Dorothea Cosgrove

Dated 25<sup>th</sup> May 2012

**End of Examination Paper**

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