

CASE STUDY MATERIALS

June 2012
Level 6
CIVIL LITIGATION
Subject Code L6-15

ilex

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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.

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* 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 Bedford CC file no. 4 (file ref: BCC4/1234)** Kempstons act for the local authority who are the potential defendants in an action. Claire Hobson was injured when a council refuse lorry was reversing. More details of this case can be obtained from the copy file note attached with these Case Study Materials as **Document 1** and the Letter of Claim as **Document 2**.
- 2. The Amelia Singh file (file ref: AS/4321)** Kempstons act for Amelia Singh concerning litigation between the supplier of a bespoke fitted kitchen and herself. Proceedings have been issued against her for the recovery of the sum due under the contract she has with Mr Paul Stalls (the contract is **not** produced but the invoice is produced as **Document 4**). Further details of this case can be obtained from the copy attendance note attached with these Case Study Materials as **Document 3**, the copy invoice as **Document 4** (please note the schedule and design drawings referred to in the invoice are **not** included) and an extract of the defence to counterclaim filed in this action as **Document 5**.
- 3. The Mr and Mrs E Middlehow file (file ref: EM/6789)** Kempstons act for Mr and Mrs Middlehow in connection with a claim against them by Exclusive Marquees. They are defending the claim which is seeking to recover the sum of £24,000 for the supply of three marquees, linings, tables and chairs for their wedding in October last year. Your clients' defence raises several major breaches of the contract for the supply of these marquees. The action has been allocated to the fast track. Mark tells you that allocation and a standard directions order was made "a few weeks ago" and he wants you to review the file and prepare any necessary action.
- 4. The Mouse Appeal Limited file (file ref: MAL/9876)** Kempstons have instructions from Mouse Appeal Limited. More details of this case can be obtained from the copy attendance note attached with these Case Study Materials as **Document 6**.

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DOCUMENT 1

FILE NOTE: BEDFORD COUNTY COUNCIL AND CLAIRE HOBSON

A potential claim by Claire Hobson DoB : 20.08.87.

(Represented by Mr George. Messrs Dolby's Solicitors. Tel: 01234 56789.)

Address: 5 Green Hill, Yadley Hostings, Nr Northampton. NN12 4FG

Date of accident: Wed 22 February 2012

Place/time of accident: Curlings Road. 8.35 a.m.

Letter of Claim received?: Yes

Claim issued: No

Brief Details:

Refuse Lorry (Reg no. DY09 2GH) driven by Mark Easton alleged to have collided with Claire Hobson as the lorry was being reversed.

Documents on file: Correspondence.

DOCUMENT 2

Messrs Dolbys Solicitors
Legal House 3rd Floor
High Street
Northampton
NN2 16HT

Tel: 01604 555555

E-mail: Dolbys@mnet.com

www.dolbys.co.uk

Messrs Kempstons Solicitors
The Manor House
Bedford
MK42 7AB

24 April 2012

Your ref: **BCC4/1234**

Our ref: **CH/12/12**

LETTER OF CLAIM

Dear Sirs

Re: Claire Hobson of 5 Green Hill, Yadley Hostings, Nr Northampton. NN12 4FG

Employed by: Mills and Spenders plc.

Your Client: Bedford County Council

Further to earlier correspondence we are now sending you this formal Letter of Claim.

We are instructed by the above named to claim damages in connection with a road traffic accident which happened on Wednesday the 22nd February 2012 at Curlings Road, Bedford at about 8.35 a.m.

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If your client's are insured for a claim of this nature please confirm the identity of the insurers and confirm that they have been notified of this claim.

The circumstances of the accident are:

A refuse lorry (registration number DY09 2GH), driven by your client's employee Mark Easton, was reversing on Curlings Road Bedford at about 8.35 a.m. and collided with our client as she was crossing Curlings Road.

The reason why we are alleging fault is:

Your client's employee, Mark Easton, was negligent in that he failed to observe or warn our client of his impending reversing manoeuvre, reversed the lorry when it was unsafe to do so and drove the lorry without care and proper observation of the surrounding area.

Bedford County Council was negligent in failing to properly maintain their vehicle and allowed it to be used with a faulty reversing warning.

A description of our client's injuries is as follows:

Broken left ankle and torn ligaments. The ankle was set in plaster. The plaster was removed after 6 weeks. There was continuing swelling and pain for a further 4 weeks.

She had to walk with crutches for a period of 6 weeks, and with a stick for a further 2 weeks.

A deep cut to her left cheek reaching to the bottom of her left eyelid – approximately 5 cms long. This will leave a permanent scar and has left her eyelid slightly skewed. Plastic surgery will be needed to correct the damaged eyelid.

The leg injuries cause continuing pain in some movements.

She missed one week off work and was absent from work on 4 further days for treatment.

The following personal items were damaged:

1 wrist watch – value £300

Torn sports clothes – value £125

She has incurred further expenses:

Taxi fares to hospital - £35

She was treated at The Bedford Infirmary, The High Rise, Pleasing Walk, Bedford MK7 4HF on the 22 February 2012 under reference number: 2012/A4321

Our client is still suffering from the effects of her injury and further surgery will be required. We invite you to participate with us in addressing her immediate needs by use of rehabilitation.

She is employed as a shop assistant and has had the following time off work:

22 February 2012 – 28 February 2012

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1 March 2012, 6 April 2012, 13 April 2012, 25 April 2012

Her approximate net and gross weekly income is £418 (£538 pw gross).

We have obtained a police report and have supplied you with a copy of the same and you have agreed to pay one half of the fee.

We have not sent a copy of this letter to your client's employee as agreed in correspondence. Would you please confirm in writing that your client accepts that they are liable for the actions of Mark Easton. If we do not receive your confirmation of this in writing within 21 days we shall take steps to include Mr Easton in our client's claim. Please note that we shall ask the court to take account of the additional costs in taking the action necessary to include Mr Easton and shall seek, in any subsequent proceedings, an order for indemnity costs for this work.

At this stage of our enquiries we would expect the following documents to be relevant to this action:

The maintenance and service records of vehicle registration number DY09 2GH

Any relevant conviction of Mark Easton

Any accident report prepared by Bedford County Council.

Please note that we have entered into a conditional fee agreement with our client which is dated 21st May 2012 in relation to this claim which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990. Our client has taken out an insurance policy with Cover-All plc of Prospect House, Mile Lane, Milton Keynes, Bucks MK10 4RF to which section 29 of the Access to Justice Act 1999 applies. The policy number is CH8765/12 and the policy is dated 25 May 2012.

We believe that this is a case where expert evidence should be from an agreed expert in the field of orthopaedics. We have listed in an attached schedule (this schedule is **not** re-produced for the purposes of the examination) the names, qualification and address of the experts our client proposes should be instructed. Please let us know if there are any on the list whom your client would object to being used.

In accordance with the Personal Injury protocol we expect an acknowledgment of this letter within 21 days by yourselves or your client's insurers.

Yours faithfully

Dolbys Solicitors

Regulated and Authorised by the Solicitors Regulation Authority

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DOCUMENT 3

FILE NOTE: Attending Mark Jones
 Mrs Amelia Singh
 Date: 11th April 2012
 Time: 1 hour 15 minutes

My full name is Amelia Singh. I live at Hillcrest, Sayling Lane, Olney, Bucks MK46 6TG.

In late 2011 I decided to arrange for a new kitchen to be fitted at my home (the address above). I love wood and believe oak to be the most beautiful wood. I wanted an oak kitchen.

I obtained a number of quotations and eventually entered into a written contract with Paul Stalls dated 1st December 2011. Mr Stalls specialises in hand-made kitchens which are designed and built by him to the customer's detailed specifications. My plan was to have an oak kitchen with oak panels fitted to the walls above the oak units. The work surfaces were also to be made of oak. Mr Stalls suggested an oak floor to complete the look. He had shown me samples of the oak he would use and it varied from a light brown to a much richer colour. The idea was to have variations in the oak colours between the wall panels and the work-surfaces, the units and the floor.

I made it very clear to Mr Stalls that I am a keen cook and regularly have guests for dinner. I asked if it was possible to have the work surfaces treated so that they could be capable of taking hot dishes straight from either the oven or hob. Mr Stalls assured me that the work surfaces would be treated in a special way to allow for this.

The work appeared to go well and all was finished by 1st March 2012. The kitchen looked fabulous. I received Mr Stalls invoice (**Document 4**) which was claiming the sum we had agreed for the work to be completed - £25,000.

However, problems with the unit surfaces became evident immediately. When I placed a hot dish on the work surface it left a burn mark which I was not able to remove. I stopped placing dishes directly onto the work surfaces once I realised the problem, but by this time there were already two bad burn marks on the wood.

The problems with the wall and floor panels took a couple of weeks to become apparent. I had guests for dinner on several evenings following completion of the kitchen. Given the amount of food preparation, I was regularly washing the surfaces, including the wall and floor panels. Within a couple of weeks, both the floor and wall panels started to expand and prise up and to come loose. This has made cleaning difficult. As the weeks have continued the problem has become worse and worse and now affects all the wall panels and most of the floor.

There are no problems with the appliances supplied by Mr Stalls.

I tried to contact Mr Stalls on a number of occasions. Each time I managed to speak to him he blamed the supplier of the wood, and refused to take any action. He kept chasing me to pay the account but I told him I would not pay until the problems had been resolved.

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I contacted a local surveyor who has provided a report. The report makes the wood is not suitable for the kitchen and will have to be replaced (this report is included with these Case Study materials).

I am at my wits end.

Advice given:

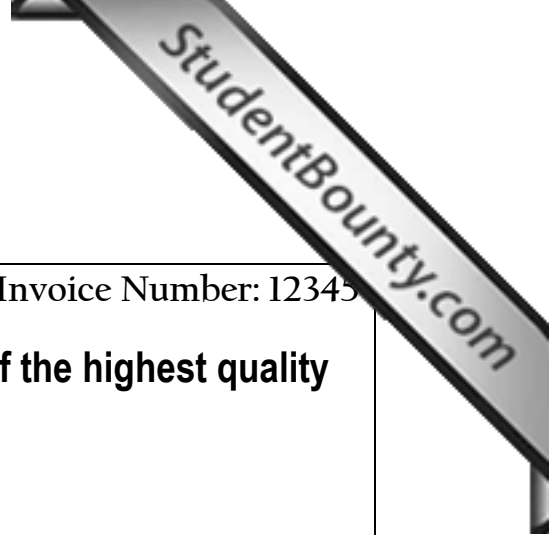
(The advice given is not included)

Signed:

Amelia Singh
11th April 2012

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DOCUMENT 4



PAUL STALLS

Invoice Number: 12345

Cabinet Maker and Builder of bespoke kitchens of the highest quality

Paul Stalls
1 Raleigh Hall industrial Estate
Olney
Buckinghamshire
MK46 6UJ

Telephone: 01234 111111

e-mail: *paulstalls@bmnetwork.com*

Design and build kitchen as per attached plans and specification at:

Hillcrest
Sayling Lane
Olney
Bucks
MK46 6TG.

For Mrs Amelia Singh

£25,000
(all inclusive)

The above includes the supply of kitchen appliances as specified in the schedule in the sum of £6,000

Signed:

Paul Stalls

Date: 1st March 2012.

DOCUMENT 5

Extract from the defence to counterclaim filed by Mr Stalls.

4. The claimant denies that he is in breach of contract and denies that the materials he has supplied are not of satisfactory quality. If there is a problem with the wood (which is denied) the responsibility for this rests with BushMills Quality Wood Supplies Ltd of Unit 7, Raleigh Hall Industrial Estate, Olney, Buckinghamshire.

The claimant states that there is no problem with his design and installation of the kitchen.

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Attendance Note

FILE NOTE: Attending	Mark Jones Cordelia Luton (for Mouse Appeal Ltd)
Date:	15 th May 2012
Time:	1 hour 25 minutes

Attending Cordelia Luton, the commercial director of Mouse Appeal Ltd on 15th May 2012.

A problem has arisen concerning the activities of the company's senior product development technician, Dr. Charles Elton, who, for the past 12 months, has been engaged in the development of a range of ergonomically advanced desktop products that were to be launched by Mouse Appeal Ltd at the internationally renowned Munich Computer and Technology Systems Trade Convention from 7th to 10th June 2012.

Yesterday at around 6pm, Ms Luton noticed a copy of an e-mail that had been left on the photocopier. It was to Dr Elton, care of "Ergonomic Applications Direct Ltd". It was clear from the contents of the e-mail that Dr Elton was intending to take an exhibitors' stand at the NEC Office Equipment Expo, a smaller trade fair to the Munich event, but because it was earlier than the Munich event was still a rival event for show-casing new innovations in the Computer and Technology world. Dr Elton had booked annual leave to cover the entire period of the NEC event from 24th to 27th May 2012.

This morning when Dr Elton arrived at work he handed Ms Luton his letter of resignation giving the two-months notice period required under his contract.

Ms Luton says that receiving Dr Elton's unexpected resignation left her stunned. She made no mention to Dr Elton that she had seen the e-mail or was aware of his intentions concerning the NEC show and his apparent involvement in a competitive business.

Ms Luton has two immediate concerns. The first is to do with a project that Dr Elton was working on with his assistant late last year. They produced prototype designs for an entire range of keyboard-user accessories made from silicon gel or a similar compound within a skin of lycra that were revolutionary in that they could be adjusted by the user to give an optimum level of support or resistance. One of the items, a computer mouse mat with integrated wrist support, actually got to the initial production stage. However, Dr Elton had, rather suddenly she now thinks, decided that none of the designs were workable and he had informed the directors of Mouse Appeal Ltd in November 2011 that the production costs were too high and the project was not worth pursuing. The board meeting accepted Dr Elton's conclusions. Consequently, the Board decided that further development of this range should be shelved for the time being as it was clear they would not be ready for launch at the all important annual trade fair in Munich.

Ms Luton has looked for the original designs of this range with the technical specification but could only find poor photocopies and she could not find any

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documents with the technical specifications of the intended range. She is sure Dr Elton has taken them, as he is the only non-director with access to the document safe located in the Boardroom. Also, he is party to the computer code giving access to the design software and files for all products that Mouse Appeal Ltd employees have designed.

The second matter of great concern is the confidentiality of the company's customer database consisting of over 8,000 British and overseas companies that Mouse Appeal Ltd has traded with or taken an enquiry from in the past five years. The database, which contains addresses, telephone contact numbers and names of relevant personnel, is kept up to date and only the five directors have access to it. Since learning that Dr Elton had handed in his notice, Ms Luton's secretary, Henrietta Fellows, has revealed that she found Dr Elton in her office when she arrived unusually early one morning last week. He was startled to see her walk in and was, at the time, disconnecting some kind of device from her PC. She has said that it looked like a portable "zip" drive which is capable of storing large amounts of data.

Ms Luton is extremely concerned that Dr Elton is preparing to launch his own business with the range of products that he had caused Mouse Appeal Ltd to pull out of last November. She has also checked the costs data that Dr Elton had produced to that board meeting (to prove that the range was not going to be economic) and has discovered that the report has been prepared by a company she has never heard of and cannot trace anywhere, and there is a continuous tone when she tried to call the number on the report and an e-mail to the company has bounced back. It seems that the report is probably fictitious.

If Dr Elton were to launch new products from this range within a new company (she suggests this to be the company referred to in the e-mail she had seen), he would gain a special market position that rightfully should belong to Mouse Appeal Ltd. The development costs of that range had been substantial.

Ms Luton had also made enquiries of the company name appearing on the e-mail she had seen - Ergonomic Applications Direct Ltd. The results of a "Google" search against that name, revealed a website for Ergonomic Applications Direct Ltd. There is no address given for the new business, but a company search reveals that the subscribers to the company are Bryony Smith and Clive Birtin. Bryony is Dr Elton's partner and mother of his two young children.

Ms Luton also informed me that Dr Elton had the double garage attached to his home converted into an office earlier this year, so it is highly likely that any documents and material connected with the venture and any material taken from Mouse Appeal's premises will be found there.

I gave the following advice:

Note: The advice given is not included.

End of Case Study Materials

