

CASE STUDY MATERIALS

January 2013
Level 6
CIVIL LITIGATION
Subject Code L6-15



CHARTERED INSTITUTE
OF LEGAL EXECUTIVES

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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 CILEX Examination Regulations.

Turn over

* This unit is a component of the following CILEX 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 lawyer 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 into 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 **Dual Effects Limited (DEL)** file (file ref: DE/AT/67/13). Kempstons are acting for DEL. Your client company sells used cars that it has converted to dual control for driving instructors. Further details can be obtained from an Attendance Note attached with these Case Study Materials as **Document 1**.
- 2) The **Computers Inc Limited** file (file ref: CIL/AT/54/13). Kempstons act for Computers Inc Limited. This company is a major manufacturer of computer hardware and is a long standing client of Kempstons. This current matter concerns problems it has incurred after a change of supplier of the electrical wiring needed for the manufacturing division of the company (this division manufactures computer hard drives and software). The new supplier of the wiring they needed was a local company: Hard Wire Limited. Further details can be obtained from an Attendance Note attached with these Case Study Materials as **Document 2**.
- 3) The **Mohammed Sarwar** file (file ref: MS/AT/33/12). Kempstons act for Mr Sarwar in connection with his claim for loss and personal injury sustained in a road traffic accident when a car travelling in the same direction as him, at excessive speed, collided with the rear of his vehicle and pushed him off the road and into a ditch. Mr Sarwar, who is 38 years old, suffered extensive injuries. These have left him with a permanent limp, the loss of the use of his right arm and extensive scarring to his face and torso. He has not been able to return to work. Further details can be obtained from the two File Review Notes attached with these Case Study Materials as Documents **3a and 3b**.
- 4) The **Design Studio Limited** file (file ref: DS/AT/36/12). Kempstons act for the defendant Design Studio Limited in an action against the firm by Graphics Software Limited. Further details can be obtained from the extracts of documents from the file and attached to these Case Study Materials as **Documents 4a and 4b**.

DOCUMENT 1

Attending: Chris James (MD of Dual Effects Limited)
With: Mark Jones
Time: 1 hour
Date: Monday 7 January 2013

Mr Christopher James (CJ) Managing Director of Dual Effects Limited (DEL).

Company address (and registered office):
Unit 8, Raleigh Hall Industrial Estate, Milton Keynes MK12 8GH
Tel: 01234 111111
Email: info@dualeffects99ltd.co.uk
Web: dualeffects99@bmnetwork.co.uk

DEL's business is the selling of used cars. As part of these sales the company also specialises in supplying used cars that it has converted to dual control for sale to driving schools and driving instructors. This part of the business accounts for about half the sales turnover.

The modification of the cars sold with dual control is undertaken by DEL in DEL's garage workshop and the company fitters. DEL has a national reputation for supplying modified cars to the learner driver market.

DEL has sold modified cars to Midlands Motoring School (MMS) (based at 123 Hagley Road Edgbaston Birmingham BS15 6TG) for about eight years. It sells, on average, 10 – 14 modified cars to them each year.

In late May 2012, MMS made enquiries to buy seven more dual control vehicles from DEL (it had already ordered the usual number of modified cars from DEL and these had been delivered and paid for earlier in the year). The reason for the additional vehicles was because MMS were setting up a new branch in Devon. They indicated when they made the enquiry in May that the additional vehicles would probably be needed in about September or October 2012. MMS said they would be in a position to sign an order "within a few days". CJ pointed out at this stage, when he sent the quotation for the additional vehicles, that DEL would require sufficient time between the date of the order and the delivery date to be able to source suitable vehicles and undertake the necessary modifications.

CJ said that the promised order from MMS did not arrive until October 2012. The order from MMS required delivery of the ordered vehicles to the new office in Devon by 1st December 2012, which was the date of the launch of MMS's new branch office in Devon.

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Only with extreme effort was DEL able to fulfil this order in the time MMS had required. However the order was fulfilled and the seven cars were delivered to the new branch in Devon by 1st December 2012. An invoice was raised at the same time. This provided for payment in full within 14 days.

Payment for the vehicles has not been met. CJ has made calls to MMS's head office and the branch in Devon, emails had been sent but all had been met with "a wall of silence".

CJ is extremely concerned about the lack of payment and "wall of silence" to his demand for payment. However, MMS are also valuable customers.

CJ seeks advice on how to seek a resolution as soon as possible. He also explained that DEL were experiencing cash-flow problems at the moment due to the slow recovery of the economy and general downturn of business and he is concerned that DEL could be in a difficult position financially unless payment was made very soon.

CJ had all the documentation relating to this order, most held electronically, and he would send this to me when he got back to the office – at the latest by tomorrow.

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DOCUMENT 2

Attending: Denise Hurling (a Director of Computers Inc Limited (CIL))
With: Mark Jones
Time: 1 hour
Date: Thursday 3 January 2013

Denise Hurling (Denise) Director of Computers Inc Limited (CIL)

Company address:

Units 1 and 2 Hardware House, Yardley Burnham, Northampton NN01 0JH

Tel 01604 111111

Email Dhurling@CILTD.co.uk.

Denise explained that CIL had recently had a meeting with the directors of Hard Wire Ltd (HWL), (attending that meeting was Denise and CIL's Product Sourcing Manager, Nerish Singh). HWL was CIL's proposed new supplier of all the electric cabling and wiring CIL uses in the manufacture of many of its computer hardware products (mostly in the production of monitors and hard drives).

She explained that previously all of CIL's wiring and cabling had been supplied by a company that had gone into administration. CIL was therefore keen to secure a new supplier that was able to fulfil all of CIL's requirements. The meeting had taken place at HWL's head office (1023 Coventry Road, Coventry CV0 0HQ). HWL's sales director is William Fence. He was keen to talk about HWL's reputation in the field of wiring and cabling supplies and of the many significant customers the company had on its books. Denise and Nerish were given a tour of HWL's factory and shown the place where the cabling and wiring was made up. The works were clearly installed with the most up to date machines and the organisation of production was excellent. They were also shown the base materials which were clearly of the highest quality – this was a stipulation CIL always put in the contracts with its suppliers. William assured her that HWL only ever used the highest quality metals and plastic coatings. William also assured Denise and Nerish that HWL was well placed to deal with the significant increase in orders they would receive if HWL became CIL's new supplier. Denise explained the importance of consistency of supply and that delivery on time was crucial. She explained that CIL had just received a very lucrative and important new order from the Bank of Europe plc for the supply and installation of 800 new computers in the Bank's new head office in Paris.

At the meeting, Denise and Nerish agreed with William that HWL would supply CIL with 1,000 metres of cabling and wires as specified in a contract dated 1 October 2012 (you have **not** been provided with a copy of the contract). William assured Denise and Nerish that they would not be disappointed. The price for the 1,000 metres was also agreed at this meeting at £22,000 plus VAT.

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The documentation relating to this contract was dealt with the following day by email. It contained all the terms agreed at the meeting. (You have **not** been provided with a copy of this correspondence).

The wire and cabling was duly delivered by HWL to CIL in accordance with the terms of the contract. Payment was made in full as agreed in the contract seven days after delivery.

Denise explained that the wire and cabling supplied by HWL was utilised to fulfil the order for 800 computers to The Bank of Europe plc.

Denise explained that CIL had received a letter (**not** supplied with these case study materials) from the Bank of Europe plc last week which stated that all the new computers supplied by CIL had shown one or more of the following faults:

- 'ran slowly';
- 'crashed more frequently than any other computers the bank had previously used';
- and
- 'some of the wiring was showing signs of degeneration, wear and over-heating'.

In the letter the bank is seeking immediate replacement of all the computers. CIL immediately sent its engineers to the Bank of Europe's head office in Paris to inspect the new computers and it has reported that the problems most probably lie with poor quality wiring. CIL took the decision to replace all the computers as a gesture of goodwill and in the interests of good business relations. CIL wished to keep the Bank of Europe plc as customers as it was currently negotiating a considerably bigger contract with Bank of Europe for the supply of 3000 new computers at various branches throughout Europe.

DOCUMENT 3a
An extract of the Quantum Review Note on file

File Review Note – Kempstons

File: Mohammad Sarwar, Personal Injury Claim

Quantum Review undertaken by: Mark Jones

Date: Thursday 22nd November 2012

Time engaged: 1 hour

Current position and injuries sustained:

A limp;
Loss of use of right arm;
Extensive scarring (face and torso);
Not yet returned to work.

The fields of expertise where evidence is likely to be required are:

An orthopaedic surgeon - to give opinion evidence on the injuries sustained by Mr Sarwar.

An occupational health consultant - to give opinion evidence on the effect of Mr Sarwar's injuries on his prospects of future employment and when, or if, he may be able to return to work in his previous employment (as a taxi driver) or alternative career options.

A psychiatrist - to give opinion evidence on the psychological impact of the injuries.

DOCUMENT 3b
An extract of the Evidence Review Note on file

File Review Note – Kempstons

File: Mohammad Sarwar, Personal Injury Claim
Evidence Review undertaken by: Mark Jones
Date: Monday 7th January 2013
Time engaged: 1 hour

Witness evidence.

The defendant has identified three witnesses for his case:

- James – The defendant, who states all the matters contained in his defence (a copy of the defence is **not** included with these case study materials).
- Harriet – Who states that she witnessed the accident. She confirms the defendant's version of the accident. Harriet challenges the way the claimant says the accident happened and supports the defendant's version. Though she states that she witnessed the accident she did not come forward to offer any assistance at the time of the accident. Nor did she come forward to any police officer who arrived at the scene to say that she had witnessed the accident in which Mr Sarwar was injured. Her witness statement is dated some ten months after the accident.
- Claude – His evidence challenges the impact of the injuries the claimant has suffered. He claims to have seen the claimant undertaking activities that the claimant has stated he can no longer do.

Turn over

DOCUMENT 4a

**AN EXTRACT OF THE LETTER BEFORE CLAIM
SENT BY GRAPHICS SOFTWARE LIMITED**

Our client seeks payment for the:

- supply and installation of Cadman software;
- 5 colour laser printers;
- service agreement.

as detailed in a contract made on the 4 May 2012 under invoice number 12/223344.

The relevant terms of the contract were for:

- The supply of 5 QW12 ZE colour laser printers.
- Installation of the supplied laser printers to client's existing computers and network.
- Supply and installation of Cadman software to 10 of client's own networked computers.
- The provision of 60 hours training to 3 employees of the client.
- An on-going service and support contract for 24 months up to a maximum of 6 hours in any calendar month.

The total contract price agreed: in the sum of £36,250 payable by Design Studio Limited.

Payment, by cleared funds to this office by noon on 1 June 2012.

Unless payment is received as specified we have instructions to commence proceedings against you for recovery of the contract price.

Document 4b

**AN EXTRACT OF DESIGN STUDIO LIMITED'S FORMAL RESPONSE TO
LETTER OF CLAIM**

We have been instructed by Design Studio Ltd and we acknowledge receipt of your Letter before Claim in this matter.

From the instructions we have received it is accepted that the contract referred to in the Letter before Claim and the terms specified are correct save that:

- It was an express term of the contract that the supplied goods would be of the 'very latest' specification.
- It was an express term of the contract that the laser printers would be installed properly and be fully compatible with our clients existing computer network.

We have instructions that after installation of the Cadman software and laser printers it became apparent that the laser printers supplied were the old 2010 model not the latest 2012 model. Further the laser printers incurred numerous printing errors and failures and became jammed frequently.

For the above failures and breach of contract terms our client denies that it is indebted to your client as claimed.

End of Case Study Materials

