

CASE STUDY MATERIALS

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Level 6
CIVIL LITIGATION
Subject Code L6-15



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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.

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* 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 **Bansom Bricks Limited (BBL)** file (file ref: BBL/AT/67/13). Kempstons are acting for BBL. Your client company makes bricks for the construction industry. It is based in Northampton. Its customers range from builders operating as sole traders to large public companies constructing many hundreds of houses. Your client company recently entered into a contract with Carding Construction Limited, a medium sized construction company, for the supply of fawn coloured bricks to be used in the building of 40 houses on a new development just outside Coventry. The contract was for the supply of 220,000 bricks for delivery by 13 April 2013. The total price for the bricks was £88,000 and, in accordance with the terms of the contract, 50% of the price was paid immediately before delivery (a copy of the contract **is not** included in the case study materials). Your client company has supplied all the bricks under the terms of this contract but the final payment of the contract price (£44,000) has yet to be made.
- 2) The **Clarissa Harper** file (file ref: CH/AT/54/13). Kempstons act for Clarissa Harper. Further details can be obtained from an attendance note attached with these case study materials and marked as **Document 1** and the extract of a letter marked as **Document 2**.
- 3) The **Susan Molloy** file (file ref: SM/AT/33/13). Kempstons act for Ms Susan Molloy in connection with her claim for loss and personal injury sustained in an accident at work when she was burned by toxic chemicals. Further details can be obtained from the attendance note attached with these case study materials and marked as **Document 3**.
- 4) The **Heather Bitterton** file. (file ref: HB/AT/36/13). Kempstons act for Ms Heather Bitterton (HB). She had purchased her home from Tipton Construction Ltd (TCL) and problems have arisen. Further details can be obtained from the attendance note, further documents and extracts of documents on this file which are attached with these case study materials and marked as **Document 4, Document 5 and Document 6**.

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DOCUMENT 1

Attendance Note**Attending:** Clarissa Harper (CH)**Attendance by:** Mark Jones**Date:** 14th May 2013**Time engaged:** 1 hour**Matter:** Road traffic accident on 17th November 2012

Clarissa Harper

Date of Birth: 20th August 1985 (currently aged 27 years)

Address: 44 Calcutta Street, Bedford MK42 7GH

Tel: 07800123654

Working Hours: Not returned to work.

CH was involved in a road traffic accident on 17th November 2012 as she cycled home from work shortly after 8 a.m. (she had been working nights that week).

The accident happened at the Keystone traffic lights. CH was travelling in the direction of Luton on the A6. She was stationary at the traffic lights as they were on 'red' and she was positioned within the cycle lane. It was raining and grey and not quite light. She was wearing a high visibility jacket, had lamps on the front and rear of her bike (these were on) and reflectors on her waterproof over-trousers. She told me that the police checked her bike and confirmed that the lights and brakes were all working satisfactorily. She further informed me that a witness (Mohammed Sitari) at the scene had given a statement to the police. This statement confirmed that she was stationary and in the cycle lane.

A Subaru Impreza (registration number PAP 15), driven by Joseph Bridlington, crashed into her. She was propelled off her bike, hit her head on the kerb and landed heavily on her back against the kerb.

She remembers very little of the events immediately after the accident. She was taken to Bedford Hospital and was in a medically induced coma for two weeks because of the swelling in her brain.

She has since been told that the witness, Mr Sitari, was the person who called the emergency services.

Mr Sitari's statement says that the Subaru driven by Mr Bridlington was going too fast and was unable to stop at the lights. The car skidded and Mr Bridlington lost control of his vehicle – this was when he collided with CH. Mr Bridlington was charged, and convicted, of careless driving at Bedford Magistrates' Court on the 3rd February 2013. He was disqualified from driving for 6 months. Mr Bridlington's insurers are the Polemic Insurance Co Ltd.

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In addition to the swelling in her brain, immediately after the accident CH suffered other serious injuries – she had a skull fracture and injury to her cervical column. The spinal injury has meant that she is paralysed and now confined to a wheelchair. She explained that her consultant has said that the prospect of a full recovery is not hopeful and that she may not walk again.

CH gave me a note containing the full details of the hospital where she was treated, her consultant's name and her GP – this document is on the file. (This is **not** included with the case study materials).

Prior to the accident CH was a Physiotherapist earning £31,000 per annum. She has had to resign her post because of the length of time of her recovery and as she is now in a wheelchair. She is currently on state benefits. She does not want to face the prospect of not working and has been looking at training for an alternative career. In the months since the accident she has had a lot to think about and has had to make a great deal of adjustments to her life and her approach to life. She says she does not intend "to wallow in her misfortune".

She has decided that she wants to re-train so that she can teach. She wants to start her training in September but applications need to be submitted by the end of next month. She is currently waiting for further surgery on her spine to alleviate some of the pain she is in. The recovery period for this operation would be 6 weeks. She wants to have this operation now so that she is able to start her training to be a teacher in September. She does not have the money to pay for the operation and she understands that an operation date under the NHS will be "within 3 months". This timescale may be too late for her as she might not be fit enough to start her course in September and then she will have lost a whole year before she can start to train for her new intended career. She feels that would set her back into the depression she had soon after the accident.

Mark Jones gave CH the following advice:

(The advice given is **not** included with the case study materials)

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An extract of a letter from the solicitors acting for Mr Joseph Bridlington

Dear Sirs,

Without prejudice save as to costs — offer to settle under Part 36

We refer to the above matter in which we act for Mr Joseph Bridlington. We refer to previous correspondence in this matter. Our client is confident that he has a strong case against your client's claim for the substantial damages she seeks. Nevertheless, our client is keen to resolve this matter and is mindful that under the Civil Procedure Rules litigants are expected to try to resolve their disputes whenever possible. We are, therefore, authorised by our client to make the following offer to settle under Part 36.

This Offer is intended to have the consequences set out in Part 36 of the Civil Procedure Rules. In particular, our client will be liable for your client's costs up to the date of notice of acceptance, which must be in writing in accordance with CPR 36.10, if the offer is accepted within the relevant period. The relevant period shall be within 21 days from the date of receipt of this letter.

TERMS OF THE OFFER

Our client is willing to settle the whole of your client's claim on the following terms:

- Our client will pay your client, within 14 days of accepting this Offer, the sum of £300,000.
- The settlement sum does not include costs and, as mentioned above, our client will be liable to pay your client's costs on the standard basis, to be assessed if not agreed, up to the date of service of notice of acceptance if this Offer is accepted within the relevant period.
- The settlement sum is inclusive of interest until the relevant period has expired.

FAILURE TO ACCEPT THIS OFFER

If your client does not accept this Offer, and your client fails to obtain a judgment which is more advantageous than this Offer, our client intends to rely on CPR 36.14. In other words, our client will be seeking an order in the following terms:

- Our client to pay your client's costs, on the standard basis, up to the expiry of the relevant period.
- Your client to pay our client's costs on the standard basis from the date on which the relevant period expired, with interest on those costs. Your client additionally being responsible for her own costs from the date on which the relevant period expired.

We look forward to hearing from you.

Yours faithfully

Attendance Note**Attending:** Susan Molloy (SM)**Attendance by:** Mark Jones**Date:** 23rd May 2013**Time engaged:** 1 hour**Matter:** Accident on 17th April 2013

Susan Molloy

Date of Birth: 13th April 1979 (currently aged 34 years)Address: Highfields House, Conway Road, Olney, Buckinghamshire
MK46 4GG

Tel: 07770003344

Working Hours: 8.15 am. – 3.45 pm. (Call above number after 4.15pm any
day)

SM works at Pilling Antiques & Son. The business is owned by Charles Pilling – he has the workshop (where SM works) and a retail shop in Milton Keynes where he sells antique furniture. SM's work is in the restoration and repair of antique furniture before it is placed in the shop for sale. SM says that there are four people working in the business – she and Charles Pilling in the workshop and two sales staff in the shop. Sometimes, when the workshop is quieter, Mr Pilling also works in the shop.

SM has worked there for nine years – she loves her job. It has variety, it is creative and she is trusted and valued by Mr Pilling. He pays her a basic income of £27,000 p.a. (a good wage for this type of work) and there is a bonus scheme. Mr Pilling buys furniture at auctions and in house clearance sales. If he acquires a piece of furniture inexpensively, and she restores it well and it sells for a good profit she receives a part of the profit. The 'bonus scheme' is not a rigid percentage of the profits; it has been a bonus Mr Pilling pays to her on an ad hoc basis. However, she has never seen the point of seeking to put her bonus scheme on a contractual basis as she believes Mr Pilling is very fair with her. The bonuses she receives often give her between £6,000 and £10,000 extra income each year.

On 17th April SM was restoring an 18th century dresser. Her work often requires her to use toxic chemicals – used to remove paint, or lacquer from furniture so that she can then begin to bring the wood back up to its natural condition with various polishes. She is well aware of the dangers of some of these chemicals and is always careful using them. On this day, however, she had been extremely busy all day and Mr Pilling had also been in the workshop doing a lot of work on some other furniture. He was anxious to get new stock into the shop and was unusually cross that day. He was quite impatient with SM when he found her outside having a cigarette. He said, "hurry up with that fag Susan, you've had too many already this morning and we need to get these pieces finished. You'll be here until midnight if you don't get a move on". In an effort not to anger or upset him any further she stubbed out her cigarette and rushed back into the workshop.

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As she stepped into the workshop, her left foot hit a large container of oxalic acid and she fell to the floor. Mr Pilling had been using the oxalic acid that morning. It was in powder form. This form of the acid is mixed to a paste with water and it is used on the uprights in a piece of furniture. The flat surfaces can have the liquid form of the acid applied to it (more commonly known as paint stripper) but the uprights (such as the furniture legs) or less accessible parts of a piece of furniture have the acid applied as a paste mixed from the powder.

Mr Pilling said that he must have left the container on the top step as he came outside to tell her to hurry up. He said it was a stupid place to leave the container and he was very apologetic when she fell over it.

Unfortunately, the container spilled open its contents onto the floor when her foot hit it. She landed in the powdered oxalic acid when she hit the floor and got the powder over her left arm, left leg and her face.

Oxalic acid is highly toxic and burns the skin on contact. SM was burned on her left arm and leg and her face. She has had treatment but the burns have left scars. She says the scars on her arm are the worst and the whole outside of her arm from the shoulder to her wrist is badly burned and very unsightly. The scars on her left leg and face are not too bad. She has been told that she can have plastic surgery and much of the scarring could be greatly improved by this but there may be little improvement to the scars on her arm as they are so extensive.

She returned to work a month after the accident. Mr Pilling has continued to be very apologetic for what happened to her. She had no intention of seeking any legal advice concerning the accident as she believes it was very much an accident and that no one was to blame for it. However, in the past month she developed a nasty cough and after two weeks was coughing up blood. She has seen her GP and though she is waiting for a specialist's appointment she realises that the powdered oxalic acid must have got into her lungs. This is a dangerous condition and she is well aware that if the damage to her lungs is extensive she may not be able to continue working at Pilling Antiques & Son any longer.

She is very distressed about this but has been urged by her family to seek some legal advice to understand what her position may be legally.

Mark Jones gave SM the following advice;

(The advice given is **not** included in these case study materials).

DOCUMENT 4

Attendance Note

Attending: Heather Bitterton (HB)

Attendance by: Mark Jones

Date: 20th March 2013

Time engaged: 1.5 hours

Matter: Bittern House

Client address: Bittern House, Goode Street, Milton Keynes (MK46 2AP)

Contact: 07888333444 (any time)

HB brought the following documents with her to the meeting:

- Copy correspondence between herself and Tipton Construction Ltd (TCL). One of these letters was marked 'Letter before Claim'. HB says she had ignored the last few letters, including this one, as she was so cross with TCL.
- Claim Form
- The Response Pack
- Colour photos taken on 14th March 2013 (None of the documents referred to above have been included with the Case Study Materials)
- Quotation re turfing of rear lawn (**Document 5**)
- Particulars of Claim (**Document 6**)

Heather explained that she had been contacted by the court recently. MJ quickly read the Particulars of Claim. He then asked HB to explain her understanding of the retention arrangements and what happened when she bought her property from TCL and what happened after completion. MJ would then go on to advise and discuss a way forward.

HB said that she had had nothing but distress and anxiety with TCL in the purchase of her barn conversion (Bittern House). There had been delays but it was always agreed that the house would be completed and ready for her to move into before Christmas. Contracts were exchanged in November 2012 with a completion date agreed for 12th December 2012. However, on the day of completion it was clear that not all items agreed had been completed; this included the rear garden lawn. She did not want to delay completion and although she was bitterly disappointed that there were a number of items not finished by the 12th December 2012 she reluctantly agreed to go ahead with completion because she wanted to be in her house before Christmas. It was agreed that she would complete on condition that she could withhold £5,000 from the purchase price until the list of items to be completed had been completed. As far as she recalls, there was no written agreement to this "retention agreement". She did pay £5,000 over to her lawyer.

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In relation to the outstanding items, she agrees that all were completed by February 2013 apart from the lawn. The lawn was re-done but she says it is far from satisfactory. She is desperately upset about it.

According to TCL's advertising brochure for the barn conversions it stated that the: "Gardens will be turfed to the front and rear". The front page of the brochure referred to the development being "...to the highest quality specification". Whilst the lawn has been completed, she says that it has not been completed to this specification. There are brown patches, excessive moss growth, there are dips and when it rains heavily, these fill with rainwater and partially flood the lawn. She also thinks they have used an inferior turf but the worst problem is that she has found bits of builder's rubble jutting out from the lawn such as old bricks and plastic.

Fortunately, as she was so interested in the latter stages of the fitting out of the barn, she went to her barn conversion frequently as it was being converted and she remembers seeing all sorts of builder's rubbish in the back garden. She only has photos illustrating the current condition of the lawn with her today but she has others at home taken earlier in the development.

HB says she has "no intention" of paying TCL any part of the retention until the lawn has been re-turfed and completed to her satisfaction (and only then will she authorise the release of the funds retained). She has taken the liberty of obtaining a quotation from Peter Moss which she has also brought with her (**Document 5**). She acknowledges that the quote specifies a significant amount of money for a replacement lawn but that is what it would cost to have it done properly.

HB was advised on the following:

- Who would be doing the work on her case, who is the supervising partner and who is the complaints partner. A letter covering these matters would be sent to her.
- Her funding options. Again a letter would be sent to her confirming what was discussed and reiterating these options.
- Alternatives to defending litigation.
- The procedure for acknowledging and defending with a counterclaim.
- That she has reasonable prospects of success but there is a significant litigation risk as the specification is vague and the standard of the lawn could be a subjective question. The possible cost risk she carries by not responding to the Letter before Claim.

MJ asked her to let him have the brochure, any other relevant documents and the remaining photos. In the meantime, as instructed by HB, MJ would contact TCL's solicitors, file a Notice of Acting with the court, complete and file the Acknowledgement of Service and draft her Defence and Counterclaim.

£400 on account of costs was paid by HB.

QUOTATION

17th March 2013

Dear Ms Bitterton,

- Remove approx. 100mm of turf and soil
- Bring in good topsoil and lay over prepared area approx. 100mm deep
- Level lawn area taking out any dips
- Lay lawn using good quality turf approx 1200sq.mt
- As there are no land drains in place, dig new land drains 100mm diameter to run the full length of the lawn
- Run new drains along hedge plus 3 spurs out into an existing drainage ditch in farmer's field
- All fences that are removed to be refitted and site to be left clean and tidy

Quoted total cost incl. VAT	£18,600
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DOCUMENT 6

In the Northampton County Court

Claim No: NH40405

Between

Tipton Construction Limited

Claimant

and

Ms Heather Bitterton Defendant

Particulars of Claim

1. The Claimant company is and was at all times a property development company.
2. The Claimant company built a property known as Plot 3 (now known as Bittern House), Goode Street, Milton Keynes, MK46 2AP ("the property"). The Defendant agreed to purchase the property for the sum of £420,000 pursuant to a contract made between the parties dated 12th November 2012. Completion of the sale was agreed to take place on the 12th December 2012.
3. On the agreed day of completion (12th December 2012) it was noted that a number of items of work remained incomplete including the turfing to the rear garden.
4. In order to secure completion of these items, Clive Donn, director of the Claimant company, verbally agreed with the Defendant on or about the morning of the 12th December 2012 that the Defendant could retain £5,000 from the purchase price payable upon completion of the identified items provided that such a retention was paid into a stakeholder account operated by the Defendant's solicitors and that the retention was paid to the Claimant company within 7 days of the date on which the agreed outstanding items were complete.
5. The sale and purchase of the property was completed at 3pm on 12th December 2012. The Claimant company received the purchase price less the sum of £5,000 which was paid into the Defendant's solicitors stakeholder account.
6. All the items, including the rear turfing, were completed by 21st February 2013. The Defendant did not pay the retention to the Claimant company within 7 days thereof as previously agreed. Payment of the retention monies was formally requested by letter dated 28th February 2013. Despite this letter, further letters and telephone calls, the Defendant has failed to pay the retention of £5,000. The full amount of the retention therefore remains due and owing.

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7. The Claimant company further claims interest pursuant to section 69 of the County Court Act 1984 at a rate of 8% from 28th February 2013 to date in the sum of £18.70 and continuing interest at a daily rate of 2 pence per day until judgment or sooner payment.

AND THE CLAIMANT COMPANY CLAIMS:

1. the sum of £5,000
2. interest as stated above.

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimant company to make this statement.

.....

Clive Donn
Director of Tipton Construction Limited

Dated this 17th day of March 2013

Messrs Sales, Livesey and Co.
Solicitors for the Claimant company
3rd Floor
List House
24 Timet Street
Bedford
BF3 4TG

End of Case Study Materials

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