



THE CHARTERED 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 CILEx 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 CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

Question 1

Reference: Question relates to **the Advance Instructions to Students** in the case study materials.

Your client company, Bansom Bricks Limited has consulted you as, despite requests for payment, and promises that payment would be made, Carding Construction Limited have failed to pay the balance due under the contract.

- (a) What steps would you advise your client company to take before issuing proceedings to recover the sum due?

(8 marks)

Having carried out the steps that you advised should be taken in Question 1a, and with no payment having been made by Carding Construction Limited, you are instructed to prepare and issue proceedings to recover the debt. This you have done and you have served Form N1, the Particulars of Claim and the Response Pack (Form N9) by first class post to Carding Construction Limited's registered office on the 1st May 2013.

- (b) State the steps that you must take at the time you issued proceedings that enabled you to arrange service on the defendant. Also state the date when the Defendant will be deemed to have been served with the documents you sent.

(5 marks)

- (c) What other method, or methods, of service could have been available to the Claimant in this action? With your reasons, state whether any other available method of service would have been better or more effective.

(5 marks)

The date for the Defendant to file its Acknowledgement of Service or file a Defence passed and nothing had been filed at court by the Defendant. On instructions from your client company you have sought and obtained judgment in default under CPR 12. The day after obtaining judgment in default you receive a telephone call from Smith & Co, solicitors, who tell you that they have been instructed to act for Carding Construction Limited in this matter. They ask if you would consent to their intended application to set aside the default judgment to allow Carding Construction Limited to file a Defence and for the matter to proceed in litigation. They further tell you that in their opinion the Defendant company has a good defence to the action.

- (d) State what your immediate response would be to this request and the advice you will give to your client upon receiving this request.

(7 marks)

(Total: 25 marks)

Question 2

Reference: Question relates to **the Advance Instructions to Students and Documents 1 and 2** of the case study materials and **Document A** attached with this Question paper.

- (a) Review **Document A** which is a draft Particulars of Claim for this action (attached to this Question paper) and state, with your reasons:
- any amendments that will need to be made to the draft document; and
 - any further details that should be added.

Note: You are **NOT** being asked to draft the Particulars of Claim in its entirety. Your answer should be contained **in your answer booklet.**

(15 marks)

DO NOT detach Document A from the question paper

Consider **Document 2** (attached with your case study materials).

- (b) List, with reasons, the matters you would cover in the letter you would write to your client informing her of the Part 36 offer and of the matters she now needs to consider or be advised of.

(10 marks)

(Total: 25 marks)

Question 3

Reference: Question relates to **the Advance Instructions to Students Document 3** of the case study materials.

This matter has progressed on from the initial advice Mark Jones had given Susan Molloy. Proceedings have not yet been commenced but unless more progress is made to settle Susan's claim Kempston's now have instructions from Susan to issue proceedings.

During the exchanges between Kempstons and Pilling Antiques & Son's insurers it became clear that one of the reasons that Susan was so extensively burned on her arm was because she had taken off her protective jacket and gloves and had not put them back on before entering the workshop as she was supposed to do. If she had done this she would not have received the burns to her left arm. Susan tells you that this is correct; she is supposed to wear her protective clothes at all times in the workshop.

- (a) What allegation would Pilling Antiques & Son be making in response to Susan's claim for the injuries she sustained if they say in their defence that she would not have received the burns on her arm if she had been properly dressed? Also state what impact this might have on Susan's claim in this action.

(5 marks)

- (b) State the heads of damage that Susan's claim would include. You should give a brief description of what claims could be made under each head of damage.

(9 marks)

- (c) State the evidence that you would seek to adduce to establish each of the heads of damage you describe in your answer to Question 3(b) and include an explanation of how you would ensure that you could adduce this evidence at court.

(8 marks)

(Total: 22 marks)

Question 4

Reference: Question relates to **the Advance Instructions to Students Document 4, Document 5 and Document 6** of the case study materials.

- (a) When you received your first instructions from your client in this case it was apparent that she had ignored the Letter before Claim.

State the impact this may have in the subsequent litigation.

Give reasons for your answer.

(5 marks)

- (b) Consider the information that you have on this file.

In your answer booklet draft only those parts of the Defence and Counterclaim that clearly sets out the basis of your client's Defence, and the claim being made in the Counterclaim.

(Note: you are **not** required to draft the whole document)

(10 marks)

- (c) State, with your reasons, which track this case would be allocated to. You should include in your answer the impact allocation to that track will have on **THIS** case and how the court might respond to a request by the parties for several witnesses to be called and a request for expert evidence to determine the quality of the rear lawn.

(7 marks)

Matters have moved on in this case; the directions orders have all been complied with and the case is listed for trial in two weeks. Both parties are now nervous about the outcome and cost of trial. After further discussions the parties have reached a compromise.

The agreement contains provisions that the trial date be vacated, the £5,000 retention monies are returned to the Defendant, and the Claimant company will provide three days labour and the materials to remove some of the worst dips in the lawn and re-seed it where necessary. Each party will pay their own costs.

- (d) State how this settlement could be achieved in a way that best protects your client's position. Give reasons for your answer.

(6 marks)

(Total: 28 marks)

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DOCUMENT A
(To be used with Question 2(a))
IMPORTANT NOTE

DO NOT detach Document A from the question paper.

BETWEEN

and **Ms CLARISSA HARPER** **CLAIMANT**

Mr JOSEPH BRIDLINGTON **DEFENDANT**

PARTICULARS OF CLAIM

1. On 17th November 2012 the Claimant was travelling along the A6 when the Defendant collided with her on her bicycle and knocked her off it.

Particulars of Negligence

The Defendant was negligent in that his vehicle collided with the Claimants bicycle.

2. By reason of the above the Claimant has suffered personal injuries, loss and damage.

Particulars of Injury, Loss and Damage

The Claimant suffered a fractured skull.

Further the Claimant is disadvantaged on the labour market.

AND THE CLAIMANT CLAIMS:

1. Damages
2. Interest pursuant to the said statute for such period and at such rate as the court deems just.

Signed:

Solicitor for the Claimant

Dated:

Filed by: Messrs. Kempstons
 The Manor House
 Bedford
 MK42 7AB

Ref: CH/AT/54/13

Solicitors for the Claimant

To the District Judge

To the Defendant

End of Examination Paper

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