



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 ballpoint 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**

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Question 1

Reference: Question relates to **The Advance Instructions to Candidates Documents 1, 2, 3 and 4** of the case study materials.

- (a) State the application that the defendant in this action is making.

You should include in your answer the grounds and the procedure to be followed in making such an application and the costs order that the court may make in the application.

(10 marks)

- (b) On the basis of the two witness statements that you have (**Documents 3 and 4**):

State whether you believe the defendant's application will succeed or not succeed, giving reasons for your answer.

(7 marks)

- (c) From the facts of this case contained in **Documents 3 and 4** indicate:

- (i) whether protocol steps, if any, have been complied with;
- (ii) the possible consequences for a party or the parties, in any action, if they do not comply with protocol;
- (iii) whether you think that any of these consequences will be applied in this case.

(8 marks)

(Total: 25 marks)

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Question 2

Reference: Question relates to **The Advance Instructions to Candidates Document 5** of the case study materials.

- (a) Tosha tells you that she believes that the only way her case can be funded would be to enter into a Conditional Fee Agreement with your firm.

State whether Tosha's view is correct and the information and advice you would give her in response.

(5 marks)

Assume that you have complied with the Pre-action Protocol for Personal Injury Claims in this case, which has failed to reach any settlement. The van driver's employers' and their insurers are denying liability. Ms Khan has instructed you to issue proceedings.

- (b) In your answer booklet draft the part of the Particulars of Claim for your client that sets out the cause of action and remedies claimed.

(9 marks)

- (c) State, with your reasons, which court you would issue this claim in and which track the court is most likely to allocate the case to.

(5 marks)

- (d) State whether the court is likely to give permission for expert evidence to be adduced in this case.

You should give reasons for the answer you give.

(6 marks)

(Total: 25 marks)

Question 3

Reference: Question relates to **The Advance Instructions to Candidates Documents 6** of the case study materials.

- (a) Refer to the e-mail you have received from Mark Jones (**Document 6** of the case study materials).

State:

- (i) if it is possible for the Claimant in this action to use the conviction referred to in support of his case;
- (ii) if it is possible, what steps would the Claimant need to take in order to do so, taking account of the fact that we are close to preparing the case for trial.

(6 marks)

- (b) Explain the nature of Indira's defence in this action and give brief details of the steps that would have been taken when filing a defence of this nature.

(6 marks)

Assume that matters have moved on in this case.

- (c) It is now a week before the trial of this action and Indira has come into the office with an overhead plan of the place where the accident happened. This clearly shows that Indira could not have seen Sadiq just before the accident as a view of him was obscured by a post-box. You consider this to be of value to increase the level of contributory negligence that is alleged against Sadiq.

Explain whether you can secure its admission in evidence. Briefly discuss both law and procedure.

(8 marks)

- (d) At trial, Sadiq Hussein succeeds in his claim. His claim had been commenced in the county court and he has been awarded damages in the total sum of £14,000.

State the factors that will affect the costs orders that may be made at the conclusion of the trial.

(5 marks)

(Total: 25 marks)

Question 4

Reference: Question relates to **The Advance Instructions to Candidates Documents 7** and **8** of the case study materials.

Assume that all the attempts to settle this action have failed and that Tank Holding Limited (THL) have instructed you to issue proceedings. The Claim Form and Particulars of Claim have been issued and served (for the purposes of this examination these documents are not included).

Metals Direct Limited (MDL) has now filed a Defence (**Document 8** of the case study materials). All time limits have been complied with.

You review the Defence and are of the opinion that it is weak and is unlikely to succeed at trial.

- (a) Explain, with your reasons, what actions you will recommend to your client in dealing with the claim at this stage.

(8 marks)

- (b) State the procedure (including any documents which must be completed) and the conditions which must be satisfied, in order to take the action you advised may be taken in your answer to Question 4(a).

(8 marks)

The Court decides that the matter should continue to trial. The parties complete their Directions Questionnaires and these are filed with the Court.

The first court direction deals with disclosure and inspection of documents. You write to your client explaining the duty of disclosure and your client then faxes you a list of all the documents which it has in relation to this matter. This is **DOCUMENT A** (attached with this question paper).

- (c) In your answer booklet explain which of the documents, as listed on **DOCUMENT A**, must be disclosed as part of standard disclosure and which documents will be privileged. You must give reasons for your answer.

(9 marks)

(Total: 25 marks)

DOCUMENT A
(To be used with Question 4(c))

FAX
Tank Holding Limited

From: Bill Waters
To: Mark Jones

1. Attendance Note of telephone conversation between Bill Waters and Sarah Gilly dated 11 November 2013.
2. Hand written notes taken by Bill Waters at his meeting with Sarah Gilly on 14 November 2013.
3. Letter from Bill Waters to Sarah Gilly dated 21 November 2013 proposing a further meeting on 2 December 2013.
4. Minutes of meeting marked WITHOUT PREJUDICE between Bill Waters and Sarah Gilly dated 2 December 2013.
5. Copy of Purchase Order signed by Bill Waters dated 2 December 2013.
6. THL bank transfer receipt (value of £200,000 to MDL) dated 13 December 2013.
7. Report of Mr Fowler, Metallurgy Expert, dated 17 December 2013, commissioned by THL.
8. The draft witness statement amended by Bill Waters.
9. Attendance Note taken by Bill Waters of a telephone conversation with Mark Jones of Kempstons LLP discussing the legal and factual issues of the dispute with MDL.
10. Letter from Kempstons LLP to the defendant marked **WITHOUT PREJUDICE**, containing an offer to settle during the pre-action stage.

End of Examination Paper

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