

**The Institute of Legal Executives**  
**LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW**  
**CIVIL LITIGATION**

**Time allowed: 3 hours and 15 minutes**

**The first 15 minutes are for you to read the question paper. During the 15 minutes reading time you may make notes on the perforated notes page at the back of this question paper ONLY. These notes must be securely attached to your answer booklet at the end of the examination. You will then have 3 hours in which to complete the examination.**

**Answer question 1 which is worth 70 marks, and EITHER question 2 OR question 3, each of which is worth 30 marks. Question 1 relates to a case study, the documentation for which is supplied with the paper – Documents 1 to 3.**

**Full reasoning must be shown in answers – a yes or no answer will earn no marks.**

**Authorities and decided cases should be cited where appropriate**

1. You are a trainee legal executive with Eliot & Co of Bank Chambers, London Road, Middlemarch. You are consulted by Shamina Kausar, who is the Training Director of Middlemarch Law LLP. Middlemarch Law LLP is a large solicitors firm specialising entirely in corporate and commercial work, which does no litigation and which from time to time refers clients to your firm when litigation is required. In this instance Miss Kausar wishes you to act for her firm itself in a dispute with Middlemarch Training Limited, a company which provides legal and other training, particularly for Continuing Professional Development purposes.

You take a detailed statement from Miss Kausar about the subject matter of the dispute **(Document 1 with two annexes)**.

Miss Kausar instructs you that her firm would like to recover the £30,000 referred to in her statement, on the basis that the services offered by Middlemarch Training Limited were entirely unsatisfactory over virtually the whole period of the contract. She suggests that for the purpose of the claim she is willing to “keep it simple” by merely asking for the return of the sum paid in advance, without going on to consider other possible heads of loss, as explained in her statement.

As you have acted before for Middlemarch Law LLP in its own litigation including landlord and tenant litigation about the premises it occupies, and employment issues, you can confirm to her that you are acting on your standard terms and in due course send her a client care letter **(not supplied)**.

**P.T.O.**

- (a) You write a letter to Middlemarch Training Limited and receive in response a letter (**Document 2**). Explain what Middlemarch Training Limited means by the last paragraph of that letter; whether you consider that the suggestion is useful and if so what steps you might take to implement it; and how you will advise your client about the implicit risks of not doing so, to which the letter refers.

**(10 marks)**

- (b) Your client decides to proceed with the litigation. Draft the particulars of claim to accompany the claim form. (**Note:** you may incorporate the schedule attached as **Annexe A** to Miss Kausar's statement by reference without setting it out in full).

**(15 marks)**

- (c) In due course a detailed defence is received (**not supplied**). It responds as indicated in the earlier letter (**Document 2**) and now incorporates a counter claim for the balance of £50,000 payable to the 1<sup>st</sup> March 2007, whilst accepting that in view of the parties' poor relationship, the contract can be treated as terminated from that point. You send a copy to your clients for information and receive from Miss Kausar a further letter (**Document 3**). Indicate how you will advise her in response to the query she raises (do **not** write a letter).

**(10 marks)**

- (d) You are generally dissatisfied with the detail contained in the defence and supplied on disclosure of documents. In particular the defence is vague as to the times when your client allegedly cancelled lectures/seminars at short notice; the dates when lecturers attended at your client's office only to find that no seminar room was available or members of staff had not been released to attend lectures; and even the names and qualifications of the lecturers who allegedly attended on those occasions. In addition, your informal requests for copies of the lecture handouts and the PowerPoint presentations, which your client wishes to use to demonstrate that the teaching was not of an appropriate nature or standard have been ignored. Indicate how you will go about obtaining the necessary details and documents, describing any procedures you will undertake.

**(10 marks)**

- (e) As trial approaches you consider the following items of evidence:-

- (i) A further statement from Miss Kausar (**not supplied**) in which she exhaustively analyses the teaching materials provided and wishes to give evidence that these are inadequate. She indicates that she, as a former University lecturer and professional trainer herself, is an expert. There is no direction permitting expert evidence.

What problems do you foresee, if any, about this?

**(5 marks)**

- (ii) Miss Kausar has obtained a witness statement (**not supplied**) from John Pike, the training partner at another local firm of solicitors, who had employed the defendant, in which John Pike expresses similar dissatisfactions to those expressed by Miss Kausar in his dealings with the defendant in the year 2005. The type of firm, the lecturers concerned, and the areas taught are rather different however.

Explain whether this evidence is admissible and of any assistance.

**(5 marks)**  
**P.T.O.**

- (iii) The defendant has supplied a witness statement from Sandra Lark, the senior partner of Lark and Co, a New York firm who last year opened an office in Middlemarch, confirming that in her view the training provided for their staff by the defendant company was of the highest quality.

Indicate whether you consider this is admissible and/or relevant.

**(5 marks)**

- (f) The trial lasts two days, since there were nine witnesses. At the conclusion the claim is allowed in the sum of £27,000, there being a slight reduction to take into account some teaching which the Judge found to be adequate; the termination of contract by the claimant is found to be proper in the circumstances; and the counter claim is dismissed. The claimant is awarded costs of the claim and counter claim.

Describe the procedure by which your client's costs will be assessed by the court.

**(10 marks)**

**(Total: 70 marks)**

## **ANSWER EITHER QUESTION 2 OR QUESTION 3**

2. Write detailed notes thoroughly explaining the procedure/practice in relation to any **three** of the following:-

- (i) Fixed recoverable costs.
- (ii) After the event insurance.
- (iii) The extent to which it is possible to resile from a pre-action admission in personal injury litigation.
- (iv) The way in which a court which has struck out a claim for failure by the claimant to abide by orders for directions should approach an application for relief from sanctions.
- (v) The principles to which the court should have regard on an application by a defendant to instruct its own experts in opposition to the experts of the claimant in fast track and multi track cases.

**(30 marks)**

3. (a) You have recently joined a firm of solicitors from a smaller high street firm. Your new employers have just obtained a new client, a firm of insurers who offer legal expenses insurance as an add-on to other insurance products. The legal expenses insurance includes advice and representation on consumer disputes and thus it is anticipated that your firm will be acting for consumers in relation to cases on the small claims track. The litigation department of your new employers has little experience of such litigation and you have been invited to give a talk outlining the important differences between litigation on the small claims track and other litigation.

Explain how you will approach giving this talk and to what particular features of litigation on the small claims track you will draw attention as being significantly different from those on other tracks.

**(15 marks)**

**P.T.O.**

- (b) You are acting for a defendant involved in commercial litigation. Although it is agreed that English law applies to the issues, much of the dispute has arisen in relation to transactions performed in Indonesia between the claimant and defendant.

Comment on the following matters of evidence:

- (i) You are served with a witness statement from the claimant's Finance Director, which contains a good deal of vital evidence. It is accompanied by a Civil Evidence Act notice indicating that the Finance Director will not be called to give evidence at the trial on the basis that he does not wish to return to the UK because he fears being extradited to the USA in connection with money laundering charges. You are anxious to prevent this statement being given in evidence without him being available for cross examination.

**(6 marks)**

- (ii) If any applications you make about the matter are unsuccessful and the court rules that his written statement may be given in evidence, how will you be able to attack his credibility generally?

**(6 marks)**

- (iii) If the Finance Director already has a conviction against him in his absence from the courts in Switzerland based on fraudulent conduct which you wish to use to further attack his credibility, explain whether and how you will do so.

**(3 marks)**

**(Total: 30 marks)**

## **DOCUMENT 1**

Shamina Kausar, training partner of Middlemarch Law LLP, Queensway Tower, Middlemarch, states:-

I am a solicitor of the Supreme Court (admitted 1993) and am the Training Director of Middlemarch Law LLP. I did my training contract with a large London firm and after being admitted, spent three years as a University lecturer and also did a good deal of continuing education training before moving to Middlemarch Law LLP in 1999, at first as an associate partner until I was appointed Training Director in 2004. We are a specialist corporate and commercial firm, but we do no litigation. We have 60 fee earners in one office.

In early 2006 I received an approach from Middlemarch Training Limited, which is a company which had recently split off from a rather bigger company in London and we decided if possible to rationalise our training and to go with one provider.

I provided a detailed specification of what we would need across all the relevant areas of law and dealing individually with the training requirements of all our members of staff and after a very lengthy and detailed series of meetings with Peter Simpson and Caroline Pickup, the two main Directors of Middlemarch Training Limited, we devised an outline schedule, leaving a good deal of flexibility as to dates and exact subject matter and signed a contract to run for three years from 1<sup>st</sup> March 2006 on a payment basis of £400 per hour for all teaching in whatever format, with a minimum of 200 hours teaching to be provided in each of the three years. The annual payment was thus to be £80,000 minimum with the possibility of our exceeding this figure on reasonable request and reasonable notice, for example if complex new legislation or regulations were enacted which might require specialist seminars, or indeed if there were dramatic case law developments in any of the areas relevant to our work.

I agreed to pay £30,000 as an advance against the first year's contract minimum price of £80,000. The arrangement was that as soon as the £30,000 had been exceeded, Middlemarch Training Limited were to bill us monthly for all the work done until the following 1<sup>st</sup> March 2007, at which time a further £30,000 advance would be paid on account of the following year's teaching, and so on.

I was very impressed with the list of lecturers/course leaders who were put forward, which included some noted practitioners as well as eminent academics. I stressed throughout that as a specialist high profile firm, we would require genuine experts to teach our staff.

The teaching programme commenced in April 2006 and a number of partners went to the early seminars. It is fair to say that the first couple of seminars (which I attended) were at least adequate. The first was presented by a specialist barrister speaker and the second by a noted academic and I had no real complaints about those.

As the programme progressed in spring and summer 2006, however, I began to receive, on the feedback sheets which are distributed to our participants, worrying indications that the teaching was rather less practical and focused than had been hoped.

I had gone to some trouble to get an advance indication of each speaker and subject area to fulfil the criteria I had put forward to Middlemarch Training Limited, but it became clear from the feedback sheets that the training was not being pitched at the right level for our people.

A general complaint was lack of attention to the appropriate area, practicality and subject matter and also poor provision of handouts and teaching materials. Some speakers seemed to think it was adequate to give a PowerPoint presentation, which had impressive graphics, but worryingly little in the way of heavyweight content.

**P.T.O.**

I attach to this statement a schedule of the complaints from a number of seminars over the period April-September 2006. (This is attached to my statement **Annexe A**).

Of course I did not let things lie and began raising our dissatisfactions with Caroline Pickup from June onwards. I had found her very affable and easy to get on with and unfortunately conducted this discussion almost entirely over the telephone, although I did send her copies of some of our feedback sheets. She kept promising to "look into it" and assured me that our business was very important and she would ensure that all the lecturers were thoroughly briefed on what was required, but there was no noticeable improvement.

On September 27<sup>th</sup> I reluctantly concluded that this simply wasn't good enough. By that stage 27 of the 34 sessions had been considered generally unsatisfactory, and there was another problem, namely a "no show" by the lecturers on four other occasions, which was hugely disruptive and time wasting for our staff, who had all of course been released from their fee earning activities to attend the sessions, most of which were for two or three hours and thus often a whole afternoon was wasted.

I accordingly gave notice to Caroline Pickup that I was terminating the agreement on September 28<sup>th</sup> 2006 (letter attached – **Annexe B**).

In my view the training provided was simply not adequate. Of course there were some, perhaps six or seven sessions, that were at least adequate, but the failure to implement the whole programme in the structured way I had hoped, and been promised, is a very serious breach of contract in my view. Of course with the end of the CPD year fast approaching, we then had to make a number of ad hoc arrangements for our staff to fulfil their training hours with external organisations at considerable cost and disruption. Taken together with the wasted time releasing our fee earning staff to inadequate training sessions, I think we would probably have a very substantial claim indeed, but frankly we are too busy to bother formulating it and we are simply happy if you can recover the £30,000 on the basis of "keeping it simple".

I have had no response from Caroline Pickup to my letter nor any suggestion that they will carry on with further seminars and therefore I take it that she has accepted our repudiation of the contract.

*Shamina Kausar*

**P.T.O.**

## **ANNEXE A**

<u>Date</u>	<u>Speaker</u>	<u>Subject</u>	<u>Complaint</u>
April 18 <sup>th</sup>	Professor Gamgee	Agency Agreements	Not practical – theoretical and academic only.
April 25 <sup>th</sup>	David Gollum QC	Competition law update	Junior barrister attended in place of speaker, no handout or materials supplied. Low level.
April 29 <sup>th</sup>	Simon Baggins FCA	Issues in Directors' contracts and remuneration	Little legal content. 3 hour session only lasted 1 hour 50 minutes.
May 5 <sup>th</sup>	Professor Elrond	Patents Update	No show – no explanation or apology.
May 16 <sup>th</sup>	Professor Pauline Took	Issues in pensions law	Largely arithmetical with little legal content. Not focused on requirements.

(SCHEDULE CONTINUES IN SIMILAR WAY – 23 MORE COMPLAINTS MAY – SEPTEMBER 06)

**P.T.O.**

## **ANNEXE B**

Middlemarch Law LLP  
Queensway Tower  
London Road  
Middlemarch  
MM4 3LZ

Telephone: 01457 865433  
(20 lines)

28<sup>th</sup> September 2006

Middlemarch Training Limited  
Bank House  
Bank Street  
Middlemarch  
MM1 4PL

Dear Sirs

Re: Continuing Education – March 2006-March 2007

We refer to the writer's several conversations with you over recent weeks (Kausar/Pickup).

You will be aware that we have been extremely dissatisfied with the considerable majority of the teaching sessions provided in pursuance of our verbal agreement, which we concluded in March this year.

I have previously sent you a schedule incorporating feedback sheets from our participants, which have largely concluded that the sessions are ill-planned and at inappropriate levels. Further, contrary to our agreement, named speakers have often not attended, sending junior replacements. Full handouts have often not been supplied and in particular recently a number of presentations have been in PowerPoint format only, contrary to our agreement which was that the majority of the teaching would not be in a passive lecture format, but would be a presentation followed by seminar/workshop discussion.

Also I am afraid on a number of occasions lecturers have simply not appeared at all, causing considerable disruption and waste of fee earner time.

For all these reasons I am terminating the agreement with immediate effect. In our view so few of the sessions have been satisfactory that we are entitled to a refund of the entire £30,000 paid to you, given our potential claim for wasted time and disruption caused by inadequate lectures.

We should be grateful therefore to receive the return of the £30,000 within the next 14 days.

Yours faithfully

*Shamina Kausar*

**P.T.O.**



## DOCUMENT 2

Middlemarch Training Ltd  
Bank House  
Bank Street  
Middlemarch  
MM1 4PL

November 7<sup>th</sup> 2006

Eliot & Co  
Bank Chambers  
London Road  
Middlemarch  
MM4 3LZ

Dear Sirs

Re: Middlemarch Law LLP and Ourselves

Thank you for your letter of 1<sup>st</sup> November 2006.

I am afraid that this company is unable to accept the allegations made in your letter, and indeed in previous correspondence from your clients.

The facts are that we were given very little in the way of detailed specification, and certainly nothing in writing as to what was required by your client's company in terms of the age or experience of the delegates who would be attending the teaching sessions. We were told to supply a list of speakers several weeks in advance (which we did) and we did not receive any indication that those speakers were unsatisfactory, nor that the proposed subject matter was inappropriate.

Our speakers have attended and their own feedback forms to us indicate that they were warmly received with interest, many questions, and even applause at the end of some sessions.

We have no record of any dissatisfactions being expressed directly by delegates at the time.

We do not accept that there were any "no shows" by any lecturers without a good deal of notice being given. It is true that on three occasions lectures were cancelled, twice with several days notice because of professional difficulties for our speakers; and once due to illness on the day, on which at least three hours notice was given. Frankly we do not see why busy fee earners in a commercial firm such as your clients could not immediately adapt to doing other useful work if a lecture is cancelled, certainly with some hours notice as happened on these occasions and therefore, we would repudiate any suggestion that your clients have suffered any form of loss.

So far as we are concerned we are willing to complete the terms of the contract. Given the tone of your letter and the previous correspondence from your clients, however, we can understand that in view of the distrust that now apparently exists in this area it is probably inappropriate to insist on our full contractual right to complete this contract over the full three years. Accordingly, we will accept the repudiation of the contract, but only as up to March 2007 and therefore we expect to be remunerated to the minimum agreed figure of £80,000 by your clients, which will involve a further payment of £50,000. We remain quite willing to provide further teaching over the balance of the year to March 2007.

**P.T.O.**

Finally, since you have threatened immediate litigation, given the professional nature of the work and the status of both our organisations, we consider that this is an appropriate dispute for Alternative Dispute Resolution to be considered in one or other format. We invite you to give active consideration to this possibility before litigation is commenced and you will no doubt be well aware of the potential costs penalties that may be imposed if this proposal is not given proper consideration.

We await to hear from you.

Yours faithfully

*Caroline Pickup*

Director

**P.T.O.**

### DOCUMENT 3

Middlemarch Law LLP  
Queensway Tower  
London Road  
Middlemarch  
MM4 3LZ

Telephone: 01457 865433  
(20 lines)

14<sup>th</sup> February 2007

C Casaubon  
Eliot & Co  
Bank Chambers  
London Road  
Middlemarch  
MM4 3LZ

Dear Chris

Re: Ourselves v Middlemarch Law Training Limited

Thank you for passing on a copy of the defence which, although anticipated in view of their correspondence, is extremely annoying.

It seems to me very vague and doesn't respond directly to the specific allegations of inadequate teaching/no shows set out in the schedule attached to our particulars of claim, which is based on the information I gave you, in itself based on the feedback sheets.

I am wondering if there is anything we can do to stop this going all the way to trial, which I suppose will be way on into the autumn. It is a long time since I did any civil litigation, but is this not an appropriate case to apply for summary judgment in view of the vague and unsatisfactory nature of the defence? Could you at least consider whether this is a possibility so I can report back to the partners.

Regards.

*Shamina*

**P.T.O.**

**NOTES PAGE**  
**The Institute of Legal Executives**

During the 15 minutes reading time you may make notes on this notes page **ONLY**.

Write your candidate number in the place provided at the top of this page and securely attach these notes to your answer booklet at the end of the examination.