

Unit 15



Title:	Civil Litigation
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the main underlying features that enable an act of litigation	<p>1.1 Explain the key rules of professional conduct</p> <p>1.2 Explain different methods of financing litigation</p> <p>1.3 Explain the legal principles upon which most civil litigation is based</p> <p>1.4 Analyse a given legal situation on these underlying features in order to offer practical advice and assistance</p>	<p>1.1 The Solicitors rules of conduct including the rules on: conflicts of interest (Code of Conduct Rule 3); confidentiality (Rule 4); litigation and advocacy (Rule 11); duty of honesty in disclosure of documents</p> <p>1.2 Private funding: an explanation of privately paid costs; an understanding of special funding arrangements, such as legal expense insurance, conditional fees and ATE policies; public funding, in outline, and the implications of the Funding Code</p> <p>1.3 An underpinning knowledge of the principles of the laws of contract and tort, including the law of negligence and occupiers' liability</p> <p>1.4 Analysis of a complex scenario to offer advice and assistance, eg, principles of best practice when accepting new instructions, including the requirement to provide accurate estimates of costs and regular progress updates</p>
2 Understand what pre-action steps should	2.1 Describe the key features of the Civil	2.1 The overriding objective of the CPR (rules 1.1,

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<p>be considered before a claim is issued</p>	<p>Procedure Rules (CPR)</p> <p>2.2 Explain alternative methods of resolving debt actions under the Insolvency Act 1986</p> <p>2.3 Describe limitations to actions</p> <p>2.4 Analyse a defendant's financial circumstances</p> <p>2.5 Identify remedies available, including the assessment of damages and interest</p> <p>2.6 Explain current pre-action protocols and practices in litigation</p>	<p>1.2); pre-action protocols; Alternative Dispute Resolution (ADR) (Rule 1.4(2)(e))</p> <p>2.2 The use of the statutory demand procedure as a debt-collection tactic, ie, when it may be used and its key restrictions</p> <p>2.3 Understanding of the key principles of the Limitation Act 1980; an awareness of the court's discretion to extend the limitation period</p> <p>2.4 Financial enquiries of the viability of pursuing a potential defendant, including the use of enquiry agents, company searches, the register of judgments, credit reference agencies and orders to provide information (CPR part 71)</p> <p>2.5 Establishing quantum in personal injury cases, including an appreciation of categories and examples of pecuniary and non-pecuniary losses; the effect of a fatal accident and application of the Law Reform Act (Miscellaneous Provisions) Act 1934; the availability of periodic payments and structured settlements; establishing quantum in commercial cases and the application of the Commercial Debts (Interest) Act 1998, including calculating interest and the provisions applied to commercial debts; ability to explain relevant equitable remedies available, such as injunctions</p> <p>2.6 Pre-action protocols; an understanding of where a published protocol applies; all published protocols including those for: personal injury (inc low value personal injury), clinical negligence, professional negligence,</p>
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	<p>2.7 Analyse a given legal situation on pre-action steps in order to offer practical advice and assistance</p>	<p>claims for disease and illness, judicial review, construction claims, defamation, housing disrepair, and housing repossessions; requirements of the protocols in clinical negligence and professional negligence in outline only; duty of mutual co-operation; pre-action disclosure and inspection; ADR; letters before action and without prejudice correspondence</p> <p>2.7 Analysis of a complex scenario to offer advice and assistance, eg, analysis of the facts, establishing potential grounds of liability, preparing written advice to a client, outlining any pre-action steps to be taken and an explanation of the merits of an action in relation to the benefits outweighing the costs</p>
<p>3 Understand the initial stages of proceedings</p>	<p>3.1 Explain in which court proceedings should be issued</p> <p>3.2 Analyse a claim form</p> <p>3.3 Explain the procedure for issuing and serving a claim</p> <p>3.4 Analyse a defence to a claim, including</p>	<p>3.1 Jurisdiction of the Court; location and awareness of the specialist High Court lists, such as the Commercial Court, Technology and Construction Court and Administrative Court lists; knowledge of the practical and procedural differences in these Courts is not required</p> <p>3.2 Contents of the claim form (both Part 7 and Part 8 claims), assessment of a Particulars of Claim; the Statement of Truth (Part 22) and the consequences of making a false statement; understanding of the special requirements in PI claims (Practice Direction 16)</p> <p>3.3 Issuing a claim, including knowledge of the Money Claim Online scheme; address, methods and deemed dates of service (Part 6)</p> <p>3.4 The contents of a defence (Parts 9 & 15);</p>

	<p>evaluation of potential counterclaims</p> <p>3.5 Explain how additional claims can be brought by a defendant</p> <p>3.6 Explain the procedure for obtaining more information about an opponent's statement of case</p> <p>3.7 Analyse how and when a statement of case can be amended</p> <p>3.8 Analyse a given legal situation on the initial stages of proceedings in order to offer practical advice and assistance</p>	<p>assessment of a defence; timescales for filing defence or acknowledgment of service (Part 10); penalties for late filing and applications for extensions; an explanation of the procedure for issuing a counterclaim; assessment of circumstances when a counterclaim should be made; distinction between a counterclaim and 'set off'</p> <p>3.5 Assessment of a counterclaim or claim against an additional party for contributions and indemnities; procedural steps for bringing an additional claim and the court's use of its case management powers</p> <p>3.6 Requests for further information (Part 18), ie, procedure for making a request, format and how to respond to a request</p> <p>3.7 Powers and procedure for amending a statement of case (Part 17)</p> <p>3.8 Analysis of a complex scenario to offer advice and assistance; drafting of a Particulars of Claim, a defence, and a counterclaim or claim against a third party</p>
4 Understand when a matter can be terminated without a trial	<p>4.1 Describe the process of ending proceedings where no defence is filed</p> <p>4.2 Describe the procedure for obtaining judgment where a party admits some or all of the claim</p> <p>4.3 Analyse when a case is weak and identify the rules and procedure for disposing of it early</p>	<p>4.1 Applications for judgment in default (part 12) and setting aside default judgments (part 13)</p> <p>4.2 Judgments on admission (Part 14), ie, procedure for making an admission; types of admissions and their effect</p> <p>4.3 Applications for summary judgment (Part 24); who may apply; tests used by the court including any relevant case law, eg <i>ED & F Swain v Hillman (2001)</i> 1 All ER 91; what orders may be made and the cost implications</p>

	<p>4.4 Analyse the effect of reaching a negotiated settlement before judgment</p> <p>4.5 Distinguish between discontinuing and abandoning proceedings</p> <p>4.6 Analyse a given legal situation on when a matter can be terminated without a trial in order to offer practical advice and assistance</p>	<p>4.4 Stay of proceedings; contracts of compromise and the use of Tomlin orders</p> <p>4.5 Discontinuance (part 38) and abandoning heads of claim (Part 17)</p> <p>4.6 Analysis of a complex scenario to offer advice and assistance; drafting of Tomlin orders, applications for default and summary judgments</p>
5 Understand the track allocation system	<p>5.1 Explain the criteria used by the court to decide an appropriate track for an action</p> <p>5.2 Analyse the significance of allocation to each of the tracks</p> <p>5.3 Analyse a given legal situation on the track allocation system in order to offer practical advice and assistance</p>	<p>5.1 An explanation of: Small Claims, Fast Track and Multi-Track; High Court; criteria for determining the correct track and reasons considered by the court; contents of the allocation questionnaire (N150); possibility of reallocation during a case</p> <p>5.2 Small Claims track, ie, the extent of the court's powers and the rules on costs; Fast track, ie, likely directions, general form of case management, timetabling, listing questionnaire, restrictions on costs, re-allocation of certain issues; Multi track, ie, duties of case management, case conferences, pre-trial reviews, variation of the case management timetable, use of listing questionnaires</p> <p>5.3 Analysis of a complex scenario to offer advice and assistance</p>
6 Understand the key steps made in the progress of a matter to trial	<p>6.1 Explain what is meant by "directions"</p>	<p>6.1 Directions, ie, preparation of example contents and/or orders; standard directions and those produced after a case management conference; directions to include, for eg, appointment of experts (where applicable) and subsequent report, disclosure of documents</p>

	<p>6.2 Explain the rules of disclosure</p> <p>6.3 Explain the purpose of witness statements and summonses, and the accompanying practical considerations of preparing evidence</p> <p>6.4 Analyse how expert witness reports are used by the parties and the court</p> <p>6.5 Analyse a given legal situation on the key steps made in the progress of a matter to trial in order to offer practical advice and assistance</p>	<p>and subsequent exchange, preparation of witness statement and exchange.</p> <p>6.2 Part 31 rules of disclosure and inspection; the nature of standard and specific disclosure; disclosure and disproportionality; mutual disclosure of witness statements; requirement to serve and use of statements at trial (part 32 and the Civil Evidence Act 1995); privilege and withholding privileged documents; procedure for making or challenging claims to privilege</p> <p>6.3 The importance of preparing witness statements early (“front-loading litigation”) and the need for exchange; how evidence is adduced including the rules relating to the preparation and exchange of witness statements, witness summons and the form and nature of affidavits (PD32)</p> <p>6.4 The use of experts and where it is appropriate to request a report; the criteria used by the court in relation to expert witnesses (Part 35), eg, experts are court officials and, thus, impartial; instructed by the parties; overriding duties; rules relating to evidence of opinion; methods of giving expert evidence; general requirements to give written reports; written questions to experts; courts power to order discussion between experts and the experts right to ask for directions</p> <p>6.5 Analysis of a complex scenario to offer advice and assistance</p>
<p>7 Understand offers of settlement and interim payments and remedies</p>	<p>7.1 Explain formal offers to settle</p>	<p>7.1 Part 36 offers; nature of the offer when made by claimants and defendants; rules and procedure for making and withdrawing an</p>

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	<p>7.2 Explain the use of interim payments</p> <p>7.3 Explain other interim remedies available</p> <p>7.4 Analyse a given legal situation on offers of settlement and interim payments and remedies in order to offer practical advice and assistance</p>	<p>offer; cost consequences of an offer made by claimant and defendant respectively including any relevant case law e.g. <i>Carver v BAA Plc (2008)</i>; EWCA Civ 412 ; interest and the deduction of benefits including the role of the compensation recovery unit.</p> <p>7.2 Nature and availability; procedure and grounds for making a payment (Part 25); voluntary payments</p> <p>7.3 Procedure and grounds for granting an interim order; interim remedies available under Part 25 including, eg, declarations, inspection of property, search orders freezing orders</p> <p>7.4 Analysis of a complex scenario to offer advice and assistance</p>
8 Understand trial procedure	<p>8.1 Explain the procedures involved within a trial</p> <p>8.2 Explain the rules of civil evidence and their effect at trial</p> <p>8.3 Analyse the principle of costs and its application at trial</p> <p>8.4 Analyse a given legal situation on trial</p>	<p>8.1 Procedures at the trial, ie, witness attendance, production of documents, trial bundles and skeleton arguments/reading lists/authorities; order of events including sequence of events</p> <p>8.2 The rules relating to hearsay; evidence of admissions and the provisions of the Civil Evidence Act 1968 and 1995</p> <p>8.3 How costs usually follow the event and are added to the judgment debt (claimant) or awarded to the defendant if claim fail; rules relating to summary assessment (Part 46 and Supreme Court Costing Office (SCCO) Guide to Summary Assessment) and knowledge of the procedure</p> <p>8.4 Analysis of a complex scenario to offer advice</p>

	procedure in order to offer practical advice and assistance	and assistance
9 Understand orders and judgments, how they are enforced and the procedure of appealing a judgment	<p>9.1 Outline the orders available and describe how decisions of the court become judgments</p> <p>9.2 Explain the enforcement remedies available to a winning party</p> <p>9.3 Explain the appeals procedure</p> <p>9.4 Analyse a given legal situation on orders and judgments in order to offer practical advice and assistance</p>	<p>9.1 Types of judgments available, including interim payments, payments by instalments, orders requiring an act to be done (“unless orders”), penal notices and consent orders; rule of drawing up judgments (Part 40); the use of consent orders and correction of errors to judgments</p> <p>9.2 General rules about enforcement (Part 70); obtaining information (Part 71); third party debt orders (Part 72); charging order (Part 73); warrant of control/writ of control; attachment of earnings; warrants of delivery; bankruptcy</p> <p>9.3 Nature of appeal; the appeals framework; procedural steps (Part 52), including applications for staying execution</p> <p>9.4 Analysis of a complex scenario to offer advice and assistance; drafting of suitable consent orders</p>
10 Understand the civil costs regime	<p>10.1 Identify the rules relating to costs</p> <p>10.2 Analyse the impact of legislation and litigation on the costs regime</p> <p>10.3 Analyse a given legal situation on the civil costs regime in order to offer</p>	<p>10.1 An outline of Parts 43 to 48 of the CPR and related Practice Directions; in particular, the rules relating to detailed assessment of costs</p> <p>10.2 An understanding of the extension of the fixed fee regime; litigation surrounding conditional fee agreements and breaches of the indemnity principle; eg, <i>Pilbrow v Pearlless De Rougemont & Co (a firm) (1999) 3 All ER 355 CA</i>; the move towards challenging firms’ retainers for failure to fully comply with the rules of professional conduct</p> <p>10.3 Analysis of a complex scenario to offer advice and assistance, eg, an analysis of when</p>

	practical advice and assistance	funding may become an issue in litigation and what steps should be taken; the application of the principles of costs to a scenario
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Civil Litigation
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 44 Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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