



**Tutorial Pack: Civil
Procedure
(Foundation)**

Introduction

Important: The assignment brief for this module requires you to consider the information and documentation contained in this tutorial pack.

You are a trainee solicitor in the civil litigation department of Earnshaw LLP (Earnshaws). The firm's address is 1 Thrushcross Grange, The Moors, Wuthering Heights WH1 1WH. As part of your training, you are working with Catherine Earnshaw, a partner in the firm, on:

- a) the Peter Parker file (reference CE.PP.0003): Catherine Earnshaw is acting on behalf of Peter Parker in connection with his claim for personal injuries following his involvement in a road traffic accident (see document 1).
- b) the Edgar Linton File (reference CE.EL.0001): Catherine Earnshaw is acting on behalf of the claimant, Edgar Linton, who sustained personal injuries and loss following an accident during the course of his employment. She would like you to be involved in this matter, but she will supervise your work (see documents 2-5).
- c) the Rumpole Business Consultants LLP file (reference CE.RBC.0004): Catherine Earnshaw is acting for Rumpole Business Consultants in connection with a claim for breach of contract (see document 6).
- d) the Fabulous Fish file (reference CE.FabFish.0002): Catherine Earnshaw has been instructed by Wanda Gershwitz, the owner of Fabulous Fish in connection with its dispute with the local authority (see document 7).

Following are a number of documents in relation to those case files. At the end of these file documents, starting on page 12, you will find a number of tasks that should be worked on both independently and during tutorials.

Note: You are expected to keep abreast of the law as it develops but will not be assessed specifically on law introduced within the six month period immediately preceding the assessment, credit will however be given if such authority is used by a student.

Document 1: Attendance note with Mr Peter Parker

ATTENDANCE NOTE

Client: Mr Peter Parker, claim for personal injuries

File reference: CE.PP.0003

Date: 13th October 2019

Time in attendance: 30 minutes

Catherine Earnshaw (CE) attending our client Peter Parker (PP) regarding a potential claim for damages following a personal injury sustained by him. On 14 May 2019, PP was driving his Ford Focus (registration number FD14 FRD) in Forest Hills High Street when a Mini Cooper, registration number MN16 MIN, driven by Gwen Stacy (GS), pulled out from a side street and collided with his car. PP was taken by ambulance to Forest Hills General Hospital, where he received treatment for a fractured pelvis. This was a significant injury from which the recovery has been slow but, fortunately, any permanent disability should be relatively minor.

The police were called and ensured that the necessary details were exchanged. Both drivers were breathalysed and tested negative. The accident was witnessed by Ben Reilly, who works in a nearby shop, who later gave a statement to the police.

PP had to have three months off work following the accident and lost £7,500 pay from his job as a self-employed journalist. His other losses comprise:

- £500 for some private physiotherapy to aid his recovery;
- £50 for painkillers; and
- £250 for taxi fares to attend medical appointments.

He will provide documents to substantiate these losses.

GS was a visiting lecturer at Forest Hills University and returned to York in September 2019. PP wrote to her when she was still in Forest Hills. He received no reply but has obtained GS's address in York from one of her former colleagues at the university. He now wants to claim compensation for what has happened. CE considers that, subject to liability, general damages for PP's pain and suffering and loss of amenity would be in the region of £20,000.

Document 2 – Internal Memorandum

MEMORANDUM

To: Trainee

From: Catherine Earnshaw

Date: 1st December 2019

Re: Edgar Linton – accident at work Our Ref CE.EL.0001

I have recently seen this new client and would like you to assist me with his claim, should he decide to pursue this.

Mr Linton had an accident on 7th November 2018 at the premises of Thrushcross Ltd, which is a carpeting specialist. He was at Thrushcross in connection with his job as a delivery driver. He was walking through the company's main Wuthering Heights depot, in the dark, when he tripped over a pile of carpets and landed heavily breaking his leg. This seems to have been quite a nasty injury.

Mr Linton brought in a copy of the hospital discharge summary (see document 3) which describes his treatment and recovery. Occasionally, he still gets aches and pains in his leg. On the basis of what Mr Linton has told me and the contents of the hospital discharge summary, it appears that general damages for his pain, suffering and loss of amenity should be in the region of £17,500. His son is training to be a barrister and, with his help, Mr Linton has prepared a statement containing a list of the expenses he has incurred as a result of his accident (see document 4).

Mr Linton never went back to his driving job and was unemployed for some time following the accident, but he now works in a local factory.

I have given him some preliminary advice on funding and he will get back to me about this shortly.

Document 3: Discharge summary from Miss Bessie Lee

Wuthering Heights Hospital

Wuthering Heights NHS Trust
WU4 2HO

Telephone: 01234 556677 (orthopaedics)

Our reference BL/EL/1

Dr E Reed
The Surgery
The Moors

Wuthering Heights
WU3 1AA

Dear Dr Reed

Re: Discharge summary 10th March 2019 for Mr Edgar Linton DOB 7th June 1964

This patient was admitted under my care, from our Accident and Emergency Department, following an injury at the premises of Thrushcross Ltd, where he was making a delivery on 7 November 2018. Mr Linton is a delivery driver and had fallen over a pile of flagstones in the dark, injuring his right upper leg and grazing his right hand and elbow.

Initial treatment

X-rays showed a comminuted fracture of the upper part of the right femur and associated soft tissue injury. The wounds were cleaned, and the fracture reduced under general anaesthetic and held in place with a plate and seven screws.

Post-operative progress

He was discharged from the ward on 18 November 2018 and reviewed thereafter in my fracture clinic. On 30 December 2018, his plaster was replaced by a cast brace allowing knee movement together with a pelvic support to allow hip movement. When he was reviewed on 26 February 2019, the cast brace was removed and he was allowed partial weight bearing for two weeks followed by full weight bearing.

I reviewed Mr Linton today and discharged him from the clinic.

Present condition

Mr Linton still complains of intermittent jabbing pain on the inner side of his right knee and a clicking type of sensation underneath his right kneecap when he bends and straightens his knee. He says he has full movement in the knee and that it is quite strong. He also

complains of some slight discomfort in the scar over the outer side of his right thigh and some numbness beneath the scar. He feels he now walks a little more slowly. X-rays taken today show satisfactory healing following fixing with the plate.

On examination, Mr Linton has a scar 32 cm in length on the outer side of the right thigh through which the femur was plated. Posterior to the lower part of the scar, for a distance of approximately 6 cm, there is an area of impaired sensibility to touch. There has been some thickening of the thigh.

Movements of the hip appear to be normal. There is a very small rotational deformity at the fracture site, which gives the impression that there is an excessive degree of internal rotation of the hip and a fractional loss of external rotation as compared with the other side. There is no significant difference in leg lengths.

There is an excessive degree of extension of the knee (recurvatum deformity), but Mr Linton states that his knee has always been like this. There is a slight laxity of the ligaments around the knee so that a small amount of rocking from side to side and forwards and backwards is noted.

Mr Linton's treatment and progress to date have been very typical for this injury. On the whole he has made good progress. He is able to walk unaided. He complains of only minor discomfort, although he has not yet been able to resume activities involving stretching and bending.

If the plate causes him pain in future, re-refer him as we may need to think about removing it. This would require reopening the scar site and would necessitate another period in hospital of about five days. After removal of the plate, I would not expect Mr Linton to get any further problems with his leg other than an occasional ache and twinge in inclement weather.

Yours sincerely

Bessie

Bessie Lee FRCS
Consultant Orthopaedic Surgeon

cc Mr E Linton, 100 Lockwood Road, Wuthering Heights WU3 5DD

Document 4: Draft Proof of Evidence of Edgar Linton

1. My name is Edgar Linton and I live at 100 Lockwood Road, Wuthering Heights WU3 5DD. I am 52 years old; my date of birth is 7 June 1964.
2. I am now employed as a factory worker at The Moors factory but I am seeking advice concerning an accident I had at the premises of Thrushcross Ltd, carpeting specialists, at the Wuthering Heights depot. At the time, I was working as a delivery driver for Best Drivers.
3. I had made a few deliveries there before and got to know a couple of the men who work there; John Eyre, who I've seen at Wuthering Heights football matches, and Richard Mason, the supervisor.
4. At about 6.30 pm on 7 November 2018, I had some replacement tiles to drop off at the Thrushcross depot along with some paperwork. When I got there and before I unloaded the van, I wanted to use their outside toilet, so started to make my way through the lorry park to the yard at the back. It was dark by then but there were lights at the main gates and on the side of the warehouse which came on automatically. However, these did not illuminate the whole site.
5. I had to make my way through the yard in what little light there was and, as I went into the back yard from the lorry park, I tripped over something and I landed heavily on my right side on an uneven, hard and sharp surface. I was quite shaken up by my fall and it took a while for me to gather my senses. When I did so, I realised that my right hand and elbow were grazed and bleeding but, much worse, I had seriously injured my right leg.
6. I was in a lot of pain but managed to turn myself so that I could reach into my pocket with my uninjured hand to reach my mobile phone. I knew I needed an ambulance but there was no point in dialling 999 as the ambulance would not be able to get through the security gates. I telephoned John Eyre, as I knew he had a set of keys. He was not very happy about it to begin with, as he was just starting his tea but when I told him I was hurt he said he would come in straightaway.
7. I must have been lying there, hurt and in the dark, for about half an hour although it seemed much longer. Then, suddenly, there were lights and I could see John running towards me. I could also see what I had done; I had tripped and fallen into a pile of flagstones which had been left in the entrance to the back yard.
8. The ambulance arrived not long after John, so I think he must have called them on his way. I was taken to Wuthering Heights Hospital. There, I was cleaned up and X-rayed and then told I had broken my right thigh bone and needed surgery the next morning. Afterwards, the doctors told me that they had put the bone back into position but had had to use a plate and screws to fix it there. I was in hospital for nearly two weeks and then in plaster followed by a brace for about three months. After I was discharged from hospital, as I live alone, my daughter had to take unpaid leave from her job so she could come and stay with me for four weeks to look after me while I was in plaster.
9. I made slow but sure progress. By early March 2019, I was getting around reasonably well, although I was being careful, and the hospital doctors seemed pleased with my recovery when they saw me in the fracture clinic in the late spring.
10. I now walk more or less normally. Sometimes, I do get aches and pains in my right upper leg and knee if I try to do too much, particularly a lot of stretching or bending. This seems to be worse in cold weather. I have spoken to my GP about this and he says, if this gets to be a problem, he will refer me to hospital as I may need to have the plate removed. I would rather avoid more surgery, if I can.

11. After the accident I decided that being a delivery driver was not really for me and I agreed with Best Drivers that I would not go back to work and they would give me one month's full pay. After that I was on Employment and Support Allowance until I started my job at the factory on 7 August 2019. I was lucky to get this and I am on better money there, so I suppose things have turned out quite well for me in the end, so far as work is concerned
12. After I came out of hospital, I talked to John about what had happened. He said it looked like some flagstones had just been dumped rather than being stacked safely and securely in the yard, as they should have been. John said this sometimes happened when a crew got back late. I found out that the firm had, quite recently, expanded into outdoor paving as well as carpeting.
13. I believe Thrushcross owes me compensation, particularly as my leg is still painful sometimes, as they could have prevented my accident. It has been a while since my accident; my first priorities were to get better and then get a job, but now I feel ready to pursue this. I did write to Richard Mason about compensation. I would prefer to resolve this without having to go to court, so I can put this all behind me, but will do so if I have to.
14. I have the following losses:

Details	Further information	Amount
Loss of earnings	Until I started work at the factory	£8,800
Daughter's loss of income	4 weeks @ £200 pw	£800
Cost of replacing damaged clothing	Trousers £50 Underpants £6 Socks £5 Shirt £35	£96
Travelling expenses	To attend hospital outpatient appointments	<u>£45</u>
Total		£9,741

Document 5: Correspondence from Edgar Linton to Richard Mason

100 Lockwood Road,
Wuthering Heights
WU3 5DD

Mr R Mason
Supervisor
Thrushcross Ltd
Wuthering Heights
WU10 3PD

10th March 2019

Dear Richard,

Re: My accident on 7 November 2018

You may remember I broke my leg at your premises. I certainly cannot forget it – I walk more carefully now and suffer the occasional ache and pain.

I never went back to Best Drivers and things were tough for me for a long time afterwards, what with my leg in plaster and everything and only having my dole money to live on.

Though I now have a good job at the local factory, I still need help getting things back on track. I am therefore writing to request some compensation for my accident as it is clearly Thrushcross's fault that it happened.

Cheers
Edgar (Linton)

MEMORANDUM

To: Trainee

From: Catherine Earnshaw

Date: 8th December 2019

Re: Rumpole Business Consultants LLP, contract dispute; Reference CE.RBC.0004)

I have recently seen Horace Rumpole from Rumpole Business Consultants LLP ('Rumpoles'). He wants me to assist with a dispute that Rumpoles has with Featherstone IT Ltd ('Featherstones').

Rumpoles is a family run business consultancy firm and it engaged Featherstones to set up a website to help promote its business consultancy services. The deal was negotiated by Horace Rumpole, the financial director of Rumpoles, and Guthrie Featherstone, one of the senior operations managers at Featherstones.

Rumpoles is alleging that the website set up by Featherstones does not contain all the functions that Rumpoles specified were required. Rumpoles also alleged that the system was too slow to navigate. Rumpoles is claiming £20,000 for breach of contract. Featherstones denies these claims and says that any problems with the website are as a result of Rumpoles' failure to provide a detailed specification and to answer Featherstone's technical enquiries which arose during the setting up of the website.

Horace has already written two letters of complaint to Featherstones and has advised me that he will send me copies together with all other relevant papers that he has.

Document 7 – Email from Wanda Gershwitz dated 20th December 2019

To: Catherine Earnshaw (Catherine@Earnshaws.co.uk)

Subject: Fabulous Fish Your Ref: CE.FabFish.0002

Hi Catherine,

Further to my telephone conversation with your property lawyer colleague Archie Leach, I need some litigation advice about my business, Fabulous Fish. This is a fish shop in Riotown which I own on a 10-year lease. Fabulous Fish is my trading name. Earlier this month, workers employed by Riotown Council started works to the pavement and road on which my shop is located.

As a result of vibrations from the roadworks, I have lost 10 tanks full of tropical fish, worth £5,000 to £10,000 in total. Vibrations through water are 10 times stronger than normal and the fish cannot take the constant assault. Some of these fish are irreplaceable as they are very rare and only found in parts of Japan. Also, as a result of the vibrations and noise of the roadworks, our business has tailed right off. Whereas I usually have 15–20 customers per weekday and sales of £300–£400 per day, since the works started, total sales are down to less than £150 per day and six or fewer customers per day. Some of my customers have told me that there are dead fish in the tanks.

I have complained to the workmen outside and tried to get them to stop. They said the only way to do the work with less noise and vibrations would be to use less powerful drills. This would take longer and increase labour costs, so they have been told to keep going. I have telephoned Riotown Council to complain, but have just been passed from Planning to Environmental to Roadways and back again. I have also written to the council but this has had no effect.

Please can you let me have advice as to our options, as I need to take action and fast! I have approximately £18,500 in savings.

Kind regards.

Wanda

Owner, Fabulous Fish Ltd

Email: Wanda@FabFish.co.uk

Week 1

Activity 1

On the Peter Parker file (reference CE.PP.0003), so that you are able to assist in this matter, Catherine has asked you to read the attendance note with Peter Parker, document 1.

Catherine has asked you to ensure you are fully aware of all the pre-action evidential steps that you will need to undertake on Peter's behalf to ascertain if his claim is viable. She has asked you to make relevant notes.

Activity 2

On the Peter Parker file (reference CE.PP.0003), having undertaken the previous task set, Catherine has asked you to make some further notes so you can explain to her all the pre-action procedural steps that you will undertake on Peter's behalf to progress his claim.

Activity 3

On the Peter Parker file (see document 1), Catherine has asked you to identify the court in which the matter should be issued and to which track the court is most likely to allocate the case.

Activity 1

On the Edgar Linton File (see documents 2-5) you should assume that the claim form has now been issued and returned to you by the court for service and that the particulars of claim have now been finalised.

Catherine has asked you to explain to her what you must do to serve the proceedings on Thrushcross Ltd. Carry out the necessary research and write some notes of the points you will make when you discuss this with her.

Week 2

Activity 1

On the Edgar Linton File (see documents 2-5) now assume that Thrushcross Ltd has filed and served a defence denying liability and blaming the accident on Edgar Linton's lack of care. In addition, Thrushcross Ltd denies any responsibility for the accident, as it has outsourced all security and safety matters for the Wuthering Heights depot to Security R Us Ltd.

Explain what further procedural step you anticipate that Thrushcross Ltd will also take.

Activity 2

On the Rumpole Business Consultants LLP file (reference CE.RBC.0004) so that you are able to assist in this matter, Catherine has sent you a memo, (document 6). Please read this memo. Catherine has since correctly issued and served the claim.

Horace had received no response to the letters he had sent to Featherstones. So, when he saw that Featherstones had a stand at an IT show that he was attending, he took the opportunity of confronting Guthrie. He put forward his allegations. George, an unrelated third party, was at the stand at the time and heard what Horace was saying to Guthrie. He felt it appropriate to advise Guthrie and Horace that he himself had problems with the Rumpoles' website. He said he found it difficult to navigate, he found it very slow and it generally performed very badly. Guthrie ignored both Horace and George and they both left the stand.

In light of the above information, she has asked you to research and make notes as to the various options open to your client to put George's evidence before the court.

Activity 3

On the Rumpole Business Consultants LLP file (see document 6), Catherine has given you an update and there have now been court directions. One of the directions was that the parties were to serve lists of documents by 2nd December 2019. Catherine received Featherstones' List of Documents and discussed it with Horace who advised that an important document was not listed. He advised that it should include minutes of a meeting that both Horace and Guthrie attended when Guthrie had admitted that there were problems with the Rumpoles' website and that Featherstones did have a legal liability to Rumpoles.

Catherine has asked you to make notes as to what action should now be taken on the client's behalf.

Week 3

Activity 1

On the Peter Parker file (see document 1), you continue dealing with the matter by serving the issued claim form and particulars of claim on Gwen Stacy. Her insurer has responded and liability has been denied. Peter is worried about how long it could be until the matter is heard at trial and has advised you that he would be content with settling for the sum of £20,000 if the matter could be dealt with quickly and without having to go to trial.

Catherine has asked you to research and make some notes on the steps that could be taken on behalf of Peter to help persuade Gwen Stacy's insurers to settle her claim. Catherine has asked you to include, within your consideration, the potential financial consequences of the step(s) you propose.

Activity 2

On the Fabulous Fish file (reference CE.FabFish.0002) Catherine has asked you to read the email from the client, Wanda Gershwitz (document 7) so that you are fully apprised of the dispute.

- a) Catherine has asked you to consider what interim application you will advise Wanda to make and what procedural steps you will undertake to achieve this.
- b) Outline the submissions that you will make on Wanda's behalf at the hearing of the interim application, applying the relevant legal test to the facts.

Activity 3

On the Rumpole Business Consultants LLP file (see document 6) Catherine has advised you that Featherstones has now provided the minutes and all other directions have been complied with. The trial has been listed for 5th June 2020. She has asked you to draft a letter to the client explaining what will happen at court on that day. Initially, however, she has asked you to make notes as to what you will include in the letter.

Week 5

Activity 1

Unfortunately, on the Rumpole Business Consultants LLP file (see document 6) the matter did not settle before trial and therefore the matter went before the court. Catherine has advised you that, at trial, Rumpoles obtained judgment against Featherstones for the sum of £18,000 plus costs which were summarily assessed at £7,000. Unfortunately, Featherstones only paid part of the amount due (£5,000) with a number of promises that the remainder of the money was forthcoming. Horace advised Catherine that he had heard that Featherstones owned IT equipment worth over £50,000 and that its most recently filed accounts shows assets of over £200,000. The premises Featherstones occupies are rented.

Catherine has asked you to research and make notes for her as to what method(s) of enforcement you would suggest to Horace.

Activity 2

On the Edgar Linton File (see documents 2-5) explain whether Edgar Linton will have to pay Thrushcross Ltd's legal costs if he loses at trial.

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Herringbone House
Lion Road
Palgrave, Diss,
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