

**PRACTICAL LEGAL RESEARCH
& WRITING****ASSESSMENT QUESTION 10**

Legal Practice Course

**P R I C E P R I O R
M E M O R A N D U M**

To: Trainee

Date: Today

From: Erica Underwood (Partner)

Ref: EU/9276549

Subject Matter: Swordfish Limited

We are acting for a firm of accountants, Swordfish Limited ('Swordfish'). Swordfish was the auditor of Milner-Brown Limited ('Milner-Brown') for a number of years. Swordfish and Milner-Brown are both UK based companies. Milner-Brown is now insolvent and in the process of being wound up. The liquidators have brought an action for fraudulent trading against one of Milner-Brown's directors, Mr Eric Forth. The action is based on Mr Forth's alleged dishonesty in running the company. Mr Forth was the CEO of Milner-Brown.

It now appears that the liquidators want to bring Swordfish into the action by way of contribution proceedings. The liquidators are going to base this claim on Swordfish's alleged 'involvement' or knowledge in the matters which are currently being considered in the fraudulent trading action against Mr Forth.

I need to advise Swordfish on its position. As yet I have no specific information as to Swordfish's precise involvement – that will follow once I have met the Managing Director, Masie Arkwright, who is conducting a full internal inquiry.

In the meantime, I need to know whether, in principle, the liquidators can bring our client into the action by way of contribution proceedings and if so, how could Swordfish defend the claim being made by the liquidators and on what basis – i.e. what would the liquidators need to show and could Swordfish defend any action on the basis that any dishonesty was on the part of Mr Forth and Mr Forth alone?

You do not need to deal with the civil procedure aspects of the action, nor need you consider any issues relating to tort/professional negligence or the defence of illegality.

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Please research the law relating to the matters mentioned above and let me have a record card on the relevant issues. Please also draft a letter of advice from me to Ms Arkwright at Swordfish, setting out the relevant law in detail as it will be reviewed by Swordfish's in-house legal team. The address is below. I will need both of these documents by 5 pm tomorrow.

Thank you.

Erica

Address for letter

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