



Candidate Number _____

Unit 2 Examination Paper

5 August 2017

Time allowed: 3 hours

To pass this examination candidates must obtain a mark of 50% or above. **You must answer ALL of the questions in Section A and THREE out of FIVE questions in Section B.**

Write in full sentences – a yes or no answer will not earn any marks. 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.

Please put your candidate identification number at the top right corner of each sheet of paper (NOT your name) and number the pages. At the end of the examination, attach your answers to the examination papers and put your paper in proper order in the envelope. Please hand the envelope to the invigilator and sign the registration form to confirm that you have handed in the paper.

Please write legibly, on one side of the paper only: **Marks may be lost if the examiners cannot read your answers.**

Do not turn over this page until instructed by the Invigilator.

Section A

You must answer **ALL** of the questions in this section.

1. The CLSB Code of Conduct for Costs Lawyers prohibits costs lawyers from handling client money. Explain what is meant by client money and why the CLSB prohibits costs lawyers from handling the same.

(5 marks)

2. Describe when a solicitor may terminate a retainer and explain the implications should a retainer be wrongfully terminated.

(10 marks)

3. Distinguish between novation and assignment and explain why these concepts are important when determining how a pre-LASPO CFA has been transferred.

(10 marks)

4. Explain the provisions contained within sections 59-65 of the Arbitration Act 1996.

(15 marks)

Total for Section A: 40 Marks

Section B

You must answer **THREE** questions in this section out of the following five.

Question 5: Lawyer and Client Costs

You work as a costs lawyer for a costs firm based in Liverpool. You have been approached by Mr Daniel Rancher, solicitor in the firm of, Mundsters LLP, to advise on a file of papers and the firm's right to seek payment of its bills. The file relates to a commercial client, Carrie's Carriages Limited. Mr Rancher has advised you that Carrie's Carriages Limited has been a client for a number of years and, until recently, there had been no issues with the payment of bills. However, the company has become very slow to pay the last few bills and has raised what he considers to be nit-picking points to delay payment. In the latest matter where there have been problems recovering fees from Carrie's Carriages Limited, proceedings were issued in the substantive claim. You have noted that this was in accordance with the express authority of the client. There has now been a stay in those proceedings to allow time for the parties to try to reach a settlement. You have been asked to advise Mr Rancher on the firm's right to seek payment of its bills, particularly in respect of this latest matter. You have not had sight of the full file of papers, but have been forwarded a number of bills headed 'on account of costs' which are signed and have been sent via first class post.

Prepare the **body** of an advice to Mr Rancher setting out the right of the firm to seek payment of its bills through the courts and of any potential action that may be taken by Carrie's Carriages Limited.

(Total: 20 marks)

Question 6: Costs in Special Courts

You are a costs lawyer working in-house for a firm of solicitors in Birmingham. The firm specialises in personal injury matters, but a regular client, Jemma Hargreaves, has asked her solicitor, Michael Colman, for some advice in respect of a potential claim for disability discrimination suffered by her seven-year-old daughter, Poppy. Jemma believes that Balderdash Primary School discriminated against Poppy in the admissions process and when making arrangements for deciding who will get a place in the school because Poppy has cerebral palsy.

Jemma had advised Mr Colman that, recently at a dinner party, she was warned by a family friend against making a claim because of the potential costs consequences. Jemma therefore would like advice on the power of lower tribunals to make an order for costs and in what circumstances they may be likely to make an order that she pays the costs.

Mr Colman does not consider himself to have sufficient knowledge to advise Ms Hargreaves. However, he knows that you have had experience of such matters and has asked you to assist.

Prepare the body of an email to Ms Hargreaves setting out the rules in the lower

tier tribunals in respect of costs and specifically when a costs order may be made against a claimant.

(Total: 20 marks)

Question 7: Funding

Harrisons Ltd is a small high street firm which has a franchise with the Legal Aid Agency and provides civil legal aid. You are a trainee costs lawyer in the firm and have been passed the file of Aarif Abbasi, the claimant in an action for unlawful detention. Mr Abbasi was represented by Lynnette Harrison, a senior partner at the firm.

The claimant was an Afghan national who, following the death of his parents when he was 4 years old, was taken to Iran by his grandmother. He came to the UK in 2012 when he was 15 years old and claimed asylum, as a child, following the death of his grandmother. He had no memory of living in Afghanistan. The claimant's asylum claim was refused on the 14 November 2013 by the First Tier Tribunal with permission to appeal also being refused. Although it was noted that the claimant would be at real risk of serious harm in Kabul and that removal would breach the UK's obligations under Article 15C Qualification Directive, the judge found that the claimant should be returned to Iran. Permission to appeal was initially refused. Ultimately, however, after protracted proceedings, leave to remain was granted.

Following the outcome of the proceedings, Mr Abbasi commenced an action for unlawful detention against the Secretary of State for the Home Department. Judicial review proceedings were issued on the 10 February 2017 and the matter concluded with an apology with "no order as to costs". The matter was funded by the LAA (Certificate Number HOP697078A-A2) and the certificate was issued on the 1 February 2017. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. The certificate appears to remain live. The profit costs recorded on the file total £10,370 exclusive of VAT. You have been asked to consider the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause.

Prepare a **summary** of the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause.

(20 marks)

Question 8: Funding

You are a costs lawyer working for a costs firm in Manchester. You have been instructed by Felicity Smith, a solicitor who works for Tower LLP, a large firm in Blackpool which conducts a large volume of slip and trip cases under Conditional Fee Agreements (CFAs). The firm has been approached by a small high street firm, Shinjin and Colt LLP, which is a local two-partner firm. The firm is facing financial hardship because of the problems with the economy and the recent extension of the fixed costs regime. The work undertaken by that firm is mainly claimant based and the firm has a number of claimants who signed CFAs

in 2012 which provided for a success fee (of up to 100% of base costs) to be recovered from the losing party if they were successful.

It has been mooted that Borris Colt may become a partner in Tower LLP. Mr Colt has assured Felicity that he has provisionally spoken to a number of clients who have agreed for Tower LLP to carry on with their compensation claims.

Felicity is aware that the provisions of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force on the 1 April 2013. She is also very aware of recent case law developments on issues around the transfer of CFAs and, as such, she has requested that you provide her with an advice as to the transfer of CFAs in such circumstances.

Prepare the **body** of a letter to Mrs Smith providing her with an advice as to the transfer of CFAs from one firm to another, having particular regard to the specific circumstances referred to.

(20 marks)

Question 9: Legal Accounts

You are a costs lawyer considering setting up a firm with your best friend from university who is a solicitor specialising in clinical negligence. Initially, you plan to draft the budgets and bills on the files of the clients your firm takes on, but, ultimately, you wish to expand your business and take external instructions from other firms in relation to their costs needs.

You are drafting a business proposal for the bank to consider in order that you may secure a loan to set up the firm. Within that business proposal you have been asked to consider the risks and regulations associated with going into practise. Specifically, you need to adequately demonstrate that the firm will be alert to, and take responsibility for, managing risks as to its delivery of legal services. You therefore need to write a summary to include in your business proposal in respect of the money laundering regulations that you must comply with and set out your understanding of the role of compliance officers.

Prepare the **summary** that you will include in your business proposal on the aspects detailed above.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER