



Association
of Costs
Lawyers

Candidate Number _____

Unit 2 Examination Paper

24 June 2016

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. Explain what client money is and what the Costs Lawyer Code of Conduct and Practising Rules provide in relation to client money.

(5 marks)

2. Explain the nature of a lien and how a solicitor with unpaid fees may have a potential lien over a client's property. Write a summary, considering any relevant law and discussing briefly how the lien may be exercised.

(10 marks)

3. Explain the advantages and disadvantages of third party funding with specific reference to Champerty and maintenance.

(10 marks)

4. Which of the first tier tribunals have the power to award costs? In what circumstance(s) can a tribunal make an order for costs?

(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 in-house for a local firm of solicitors. One of the solicitors in that firm, Miss Elise Gold, has recently been instructed by a new client, Mr Kevin King. Mr King is the proprietor of a fish and chip shop. For some years he had instructed another firm of solicitors for his business purposes, but encountered a number of issues with them. He had specific difficulties with one of the assistant solicitors, Mr Matt Smith who had been allocated to matters relating to Mr King's business affairs. For some time, Mr Smith hadn't returned any of Mr King's calls or emails and he was concerned that Mr Smith was deliberately avoiding him. Any correspondence which Mr King did have was in disarray. When Mr Smith had been communicating with Mr King he asked him on several occasions to return documents which Mr King had already returned. Mr Smith also asked for information that had already been provided and receipt acknowledged.

Mr King became extremely concerned when Mr Smith failed to put in a timely defence and counterclaim in one of the commercial matters being dealt by the firm. This had serious implications for Mr King and proceedings are continuing with Mr King applying to the court for acceptance of a late served defence and counterclaim. A heated discussion took place between Mr King and the senior partner at the original firm, Mrs Fatima Westwood. Unfortunately for Mr King, the very next day he received a letter through the post (1st class) from Mrs Westwood advising him that the firm was no longer going to act on his behalf. A bill for a very large sum of money was attached to the letter.

Miss Gold would like to accept Mr King's instructions to continue with the current proceedings and any other business-related work, but she does not have sufficient knowledge as to whether the previous solicitors acted properly. Mr King has not been able to provide a lot of information as his own records are minimal and disorganised. He is not able to advise whether there was ever a written retainer. He does not have one within his papers.

Prepare the **body** of a letter of advice to Miss Gold advising:

- a) in what circumstances a contract of retainer between a solicitor and client may be terminated **(15 marks)**; and
- b) what are the implications as to costs where a solicitor wrongfully terminates a retainer **(5 marks)**.

(Total: 20 marks)

Question 6: Costs in Special Courts

Wendy Jenkins is an assistant solicitor. She has recently started to sit as an arbitrator once a fortnight, and is, as yet, inexperienced. She would like your assistance with some queries and has asked you to prepare a memo to her answering these queries with specific reference to the provisions of the Arbitration Act 1996. Prepare the **body** of one memo incorporating the response to the following queries.

- a) In her first arbitration (a commercial matter), Mrs Jenkins has decided to make an award in favour of Build Limited following its action against The Garden Centre Limited. She is thinking of making an order that The Garden Centre Limited pay Build Limited's costs with the direction that she should undertake the assessment of those costs. She would, briefly, like to know the best approach to the procedures for the assessment of costs and, particularly, how the provisions of the Arbitration Act 1996 affect this situation.

(10 marks)

- b) In her second arbitration the unsuccessful party, Norths Limited, has advised Mrs Jenkins that, as arbitrator, she is not able to assess the costs herself and must refer the matter to court. This occurred last Friday afternoon and the matter will resume on her next sitting. Mrs Jenkins would like your advice as to whether there is any truth in the statement made and in what circumstances the assessment must go to court.

(3 marks)

- c) In the same arbitration as (b), Norths Limited is represented not by an expensive legal team, but by the CEO, Mr Nigel North. Whilst he could have afforded legal representation, he decided to appear in person. This could have been a factor in Norths Limited not succeeding, but that factor is to be left aside. The matter of some concern to Mrs Jenkins is that Mr North shouted to the successful party's representative, Miss South of Souths Limited, that she would "never see a penny of the money anyway!" Mrs Jenkins would like to know how an arbitration award is enforced so she can tell Mr North, in no uncertain terms, what will happen if he fails to pay.

(3 marks)

- d) Finally, also in the arbitration between Norths Limited and Souths Limited, Mrs Jenkins is deeply concerned about some comments which Mr North made to her personally. He said that he did not believe that such a young woman could know anything about the subject matter of the arbitration. Whilst Mrs Jenkins, 45, was flattered that Mr North thought her to be younger, she was concerned that he was making derisory comments. Whilst she had been practising in the relevant area of law her entire career, as a novice arbitrator she wants reassurance as to the situations when an arbitrator's award may be challenged. She has asked you to briefly outline these situations and advise whether any possible challenges are of relevance here.

(4 marks)

(Total: 20 marks)

Question 7: Funding

Miss A Rusty, a recently qualified solicitor who has been tasked with taking over the caseload of a recently retired colleague, Mr Jonathan Strachan, has instructed you. Miss Rusty works in the civil department at Tenterden LLP, a high street firm in Maidstone. Miss Rusty has inherited a number of legal aid matters and her experience of such matters is extremely limited. Accordingly, Miss Rusty has requested your advice and, specifically, a brief description of the implications of each of the following items:

- a) A discharge of a funding certificate following completion of an action brought on behalf of Harry Kentish (d.o.b 02.02.2015). The certificate had been live since 19 March 2015 and the notice of discharge is dated 19 February 2016.
- b) A revocation of a substantive certificate issued to Mr Piers Trumpet, who apparently concealed income from an investment portfolio from the Legal Aid Agency (LAA) when advising them of his means.
- c) A notice to show cause issued by the LAA on the 9 April 2014 in respect of a funding certificate issued to Mrs Beverly Arnett, a claimant in a clinical negligence matter (in respect of which the defendants have evidently been petitioning the LAA to discharge the funding certificate).

Provide the **body** of a letter of advice on the particular circumstances on the files and any action that should be taken.

(20 marks)

Question 8: Funding

You are a costs lawyer working in-house for a firm of solicitors, Smarties LLP. You have a matter, the file of Ms Josephine Harlett, which would normally have been dealt with within the provisional assessment regime, but has been listed before for a detailed assessment hearing on 9 September 2016, pursuant to an order made by District Judge Jones on 23 March 2016. The order listing the matter for a detailed assessment hearing was made because there is a particularly contentious issue to be resolved, namely whether or not the conditional fee agreement (CFA) that the claimant entered with one firm of solicitors had been validly assigned to a second firm of solicitors, and, if not, what the consequences were.

Ms Harlett sustained an accident at work on 27 July 2012. On 3 February 2012 Ms Jones entered into a CFA with Trapest solicitors. The CFA was a valid one in the light of the CFA regulations as they then were. It was largely based on the Law Society model CFA, although amended in parts. It imputes the usual obligations on both solicitor and client. It records that the person primarily responsible for the conduct of the claim would be Mr Sidhu, a partner at Trapest, although it clearly envisaged that other fee earners may also be involved.

At some point prior to 17 January 2014, Trapest became insolvent and administrators were appointed. They decided to sell Trapest's personal injury work to your firm of solicitors, Smarties LLP. On 21 January 2015, a document entitled "Deed of Assignment" was executed between the administrators of Trapest and Smarties LLP which sought to assign the benefits and obligations of 418 retainers between Trapest and various clients, including Ms Harlett, to Smarties LLP.

Provide the **body** of a memo of advice on the particular circumstances of this case setting out when a retainer may be validly assigned. Your advice should also consider whether it is possible to transfer insurance from one firm to another.

(20 marks)

Question 9: Legal Accounts

You are a costs lawyer working in-house for a firm of solicitors, Bibird LLP. Your role has recently diversified and you are now required to undertake 2 days a week in the firm's accounts department as you have previous experience. Your friend has also just started working for the firm in the accounts department and is very confused by the accounting rules that apply in practise. You have agreed to go through the file of Imran Khan (Ref: IMKH00440011) with her. This file involves a claim by Mr Khan for personal injuries sustained arising from an accident at work. Mr Khan is a privately paying client.

In compliance with Rule 1 of the SRA Account Rules 2011 the firm keep and use separate bank accounts for client and office money. The firm also uses dual cash accounts and Mr Khan has his own client ledger. Your friend is unsure why this is the case.

On 1 February 2016 Mr Khan came in to the office to pay his most recent invoice. Mr Khan wished to pay the total sum, £2,762.90, in cash. He was eventually persuaded to pay that sum by cheque.

On 20 April 2016 a negotiated settlement was achieved in the sum of £35,000 plus costs in respect of Mr Khan's personal injury claim. On 1 May 2016 your firm received a cheque from the other side's solicitors payable to the firm (Bibird LLP). The cheque was in the sum of £45,000. The accompanying letter confirmed that £35,000 was in full and final settlement of Mr Khan's claim. The costs on the file are estimated to be £25,000 and the remaining £10,000 of the cheque related to a payment on account of costs.

On receipt of your final invoice Mr Khan has been in touch with your firm and asked for an invoice for VAT purposes. He has also asked for your firm to set out the law governing both input and output tax.

Provide the **body** of a memo of advice to your friend/colleague on the particular circumstances raised by her. Your advice should cite any relevant rules.

(20 marks)