



Candidate Number _____

Unit 2 Examination Paper

16 June 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. Explain why the Costs Lawyer Code of Conduct prohibits costs lawyers from handling client money. Your answer should be supported by appropriate authority.

(5 marks)

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

(10 marks)

3. Explain why third party funding is a relatively new concept in litigation funding within England and Wales.

(10 marks)

4. Explain, with reference to appropriate authority, what jurisdiction first tier tribunals have to 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 firm of solicitors and are considering the file of Aamirah Dawud, which was a commercial litigation matter. Harry Hall had conduct of the file and proceedings were issued in accordance with the express authority of the client. Mr Hall has requested your advice on the right to seek payment of his bills.

You were forwarded the full file of papers and have access to the case management system and ledgers. When perusing the file, you concluded that it was clear that the firm had agreed with the client that they would deliver interim bills. There were no natural breaks in the litigation, but the firm did in fact deliver monthly bills each purporting to be a final bill for the period in question (or an interim statute bill). At first, the client paid those invoices regularly, but then stopped, leaving two bills unpaid and one bill partially paid. The client had since alleged that she had been overcharged and was querying a gross sum bill.

Write the **body** of an advice to Mr Hall setting out the right of the firm to seek payment of the bills through the courts and of any potential action that may be taken by Aamirah Dawud.

(Total: 20 marks)

Question 6: Costs in Special Courts

Aleah Basu is an assistant solicitor who has been invited to observe a number of arbitration hearings. In time, it is hoped she will become a professional arbitrator. She is relatively inexperienced in costs in arbitration proceedings and would like your assistance with some queries.

During her first observation of arbitration, Mrs Basu observed an award being made in favour of Dig It Ltd following its action against Rooftop Gardens Ltd. The order was that Rooftop Gardens Ltd pay Dig It Ltd's costs with the direction that the arbitrator would undertake the assessment of those costs.

During her second observation, the unsuccessful party, Souths Ltd, advised the arbitrator that he is not able to assess the costs himself and must refer the matter to court. Souths Ltd is represented, not by an expensive legal team, but by the CEO, Mr Nick South. Whilst he could have afforded legal representation, he decided to appear in person. This could have been a factor in Souths Ltd not succeeding, but that factor is to be left aside. The matter of some concern is that Mr South shouted to the successful party's legal representative, Miss Wilson representing Wests Ltd, that her client would "never see a penny of the money anyway!"

Prepare the **body** of a memo to Mrs Basu explaining how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter must be referred to the court and the rules on enforcement in an arbitration matter.

(Total: 20 marks)

Question 7: Funding

Boris Thompson represented Mohamed Nabulsi in an action for unlawful detention against the Secretary of State for the Home Department. Judicial review proceedings were issued on 6 December 2016.

Boris has now left the firm and the matter has been taken over by Debbie Gill. Debbie has telephoned you and asked you for some advice on the file. Whilst on the telephone, Debbie ran through the following chronology of events with you:

2 December 2016	Exercised delegated functions
23 December 2016	Embargo on certificate
29 December 2016	Funding reinstated
30 December 2016	Hearing
30 December 2016	App 8 completed and forwarded to LAA, request for costs limitation to be increased.
2 January 2017	Amended certificate received (costs limitation £10,000).
9 January 2017	Hearing, Defendant failed to attend. Directions for a further hearing were made. Judge directed that there be a hybrid court with a senior Upper Tribunal Judge and an Administrative Court Judge presiding over the matter. Judge ordered that the transfer to Upper Tribunal be stayed pending the forthcoming hearing and skeleton arguments be prepared.
11 January 2017	Authority sought from the LAA for the instruction of an expert and Queen's Counsel (due to the increasing complexities of the claim and the wider implications of this matter setting a new point of law).
18 January 2017	Prior authority granted by LAA
29 February 2017	App 8 completed and forwarded to LAA, request for costs limitation to be increased.
19 March 2017	Amended certificate received (costs limitation £20,000).

Boris told Debbie before he left that he believed a Very High Costs Case Plan would be needed on this file.

Provide the **body** of a memo to Mrs Gill, in appropriate business language, on the circumstances surrounding the public funding certificate and advice on Very High Costs Case Plans.

(20 marks)

Question 8: Funding

You are a costs lawyer working for Tiara Costs Ltd. You have received instructions from a local High Street firm, which conducts a large volume of slip and trip cases under Conditional Fee Agreements (CFAs). The firm recently settled a claim for £18,000 against Higham District Council after Miss Icenì Gotto, on 14 July 2016, injured her left wrist and knee after she tripped on a tree root that had grown up through the path at Higham Country Park. Miss Gotto was a self-employed fitness instructor and the accident had a severe impact on her business.

Higham District Council has instructed a costs lawyer to deal with the matter and points of dispute upon your bill have been served. Amongst other disputes, these seek to challenge the validity of the CFA. Your instructing solicitor, Mrs Rashpal Shinjin, is extremely nervous about this particular point because of prior experience. Mrs Shinjin had previously had a CFA ruled invalid at her former firm in 2012. The repercussions for that firm and her career were significant as she had used the same CFA on twelve other files.

As such, Mrs Shinjin has requested that you draft a note upon the circumstances in which this CFA might be ruled invalid and unenforceable.

(20 marks)

Question 9: Legal Accounts

You are a costs lawyer working in-house for a firm of solicitors in Doncaster, Magnolia Legal LLP. The costs department works closely with the accounts department and you have been asked to assist in putting together a training session. The head of the accounts department, Mr Jez Yohan, is aware that lots of clients have tried to pay invoices in cash and that the reception staff have been unsure how to manage queries from those clients.

You have been tasked with writing some training notes on the money laundering regulations.

Mr Yohan would like employees to understand more about the SRA's aim that firms take responsibility for managing risks to their delivery of legal services. Mr Yohan recognises that the roles of Compliance Officers for Legal Practice (COLPs) and for Finance and Administration (COFAs) are an integral part of the SRA's move to outcome-focused regulation. Mr Yohan therefore wishes to advise new starters of the role of the Compliance Officers for Finance and Administration (COFAs).

Provide the **body** of the training notes to Mr Yohan on the particular aspects he wishes to cover.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER