



Candidate Number _____

Unit 3 Examination Paper

12 August 2017

Time allowed: 3 hours

To pass this part of the 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 earn no 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). 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. Using academic principles and examples to illustrate your answer, explain how an organisation may be structured. (10 Marks)

2. Describe how a licensing authority should carry out its function under the Legal Services Act 2007. (10 Marks)

3. Evaluate how the SRA requires risk to be managed within SRA regulated firms. (10 Marks)

4. Discuss the proposition that performance management can only have a positive impact on a business. (10 Marks)

Total for Section A: 40 Marks

Section B

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

Question 5: Case and costs management

You are a costs lawyer working in-house for a solicitors' firm specialising in personal injury, predominantly on behalf of paying parties. One of the partners, Michael Baldwin, acted for the defendant, Ski Mania Ltd, in a claim that was brought against the travel company by Ms Judy Punch. Ms Punch had sustained an accident during a ski lesson with Nicky Hodge, an independent ski instructor, which had been arranged for her by Ski Mania Ltd as part of the package holiday. Ms Punch brought her action under Regulation 15 of the Package Travel, Package Holidays and Package Tour Regulations 1992. Ski Mania Ltd denied liability and brought Nicky Hodge, the ski instructor, into the action as a third party through the CPR Part 20 procedure. Ski Mania Ltd argued that if the accident had been caused by negligence at all then the negligence had been that of Nicky Hodge.

At trial, the judge dismissed the claimant's claim against Ski Mania Ltd and also dismissed Ski Mania Ltd's claim against Nicky Hodge. In respect of costs, the judge ordered that the claimant should pay the costs of Ski Mania Ltd, but, pursuant to CPR 44.13 and 44.14, the order was not to be enforced. It was also ordered that the defendant company should pay Nicky Hodge's costs, but that order was, similarly, not to be enforced.

Mr Sam Snow of Ski Mania Ltd sent Mr Baldwin a copy of the final order. As you are the costs specialist, Mr Baldwin has asked that you write to the client setting out the reasons behind the costs orders made by the court explaining the relevant provisions on enforcement.

Prepare the **body** of a letter to Mr Snow dealing with the matters detailed above.

(20 Marks)

Question 6: Civil procedures and protocols to professional negligence and clinical negligence claims

You work as an in-house costs lawyer for a firm specialising in medical negligence matters, predominantly on behalf of claimants. One of the associates, Miss Tamsin Marshall, acted for Mr Tommy Ferguson in a claim in respect of his late wife's death. You have just drafted the bill of costs in this matter.

Mr Ferguson is the widower of Mrs Jill Ferguson, a 61 year-old nurse, who sadly died on the 5 December 2012 during the course of operation at Makem's Hospital, Henningborough. Mr Ferguson sought damages from the defendant hospital, alleging that his wife's death was caused by the negligence of the hospital's clinical staff during the course of that operation. Proceedings were issued on the 14 February 2015 and the claim for compensation settled in the sum of £29,960 following Mr Ferguson's acceptance of a Part 36 offer made by

the defendant. As a result of accepting the offer, Mr Ferguson obtained the authority to recover costs on the standard basis from the defendant.

The claimant was funded by way of a CFA entered into on the 15 January 2013 and an ATE insurance premium taken out on the 30 April 2013. You have drafted the bill of costs in two parts; part 1 in the sum of £25,620.50 for work carried out prior to the 1 April 2013 and part 2 in the sum of £87,028.35 for the work carried out post the 1 April 2013. You have claimed a success fee of 100% on all profit costs.

Write the **body** of a memo to Tamsin Marshall enclosing the bill of costs and advising on the recoverability of the ATE premium in this matter and on the possibility that the premium may be reduced on assessment.

(20 Marks)

Question 7: Civil Procedure Rules to land and family law matters heard in the civil courts

You work in-house at Harrison and Hawkin LLP as a costs lawyer. The firm has a large family litigation department specialising in ancillary relief. The firm does not have a legal aid franchise. Tommy Talbot, a senior partner at the firm, has requested some costs advice in relation to the following matters:

- a) On the file of Mr Daniels in respect of Ms Monet's application under the Trusts of Land and Appointment of Trustees Act 1996, pursuant to which she claims a beneficial interest in their last home. Mr Daniels and Ms Monet had been in a relationship for 14 years. The claim is for a 50% beneficial interest or share in a property called Moonbeam House.
- b) On the file of Miss Timothy who has a child with Mr Monsieur who was conceived during a brief relationship between the parties whilst they were work colleagues in 2012. Mr Monsieur moved to France in 2014. It was not until 2015 that Miss Timothy, through the authorities in France, was able to contact him and seek maintenance in respect of the child under the arrangements for reciprocal enforcement of maintenance. The parties agreed maintenance, but, as these arrangements were not legally binding, Miss Timothy made an application in England and Wales under Schedule 1 of the Children Act 1989.
- c) On the file of Mr Everett who married in November 2011, after a brief romance during the summer of 2011. There are no children of the family. The matrimonial home is in the sole name of Mr Everett and is worth £1.4 million and is free of mortgage. Proceedings have been issued by Mrs Everett for financial relief following the pronouncement of the first decree within divorce proceedings.

Write the **body** of a memo to Mr Talbot setting out how costs in these three family cases would usually be dealt with.

(20 Marks)

Question 8: Civil Procedure Rules in relation to a contentious probate and judicial review

You work as an in-house costs lawyer for a firm of solicitors, Lundy and Hawkin LLP, located in Wimbledon. The firm specialises in family, private client matters and commercial litigation. David Delby, a solicitor within the firm, has asked for your advice on the file of Mrs Womble.

Mrs Mavis Womble lived with her partner of 27 years, Gordon Womble. Gordon had two sons from his first marriage and a daughter from an extra marital relationship. Mr Womble's relationships with his children were difficult and, at times, he was not speaking to some or all of them.

Mr Womble was suffering from terminal cancer so he and Mavis made the decision to marry. Beforehand, Mr Womble executed a will 'in contemplation of marriage' which passed his residuary estate to Mavis absolutely, making no provision for his children because he believed they were 'independent'. The principal asset in Mr Womble's estate was his company shareholding, professionally valued for probate purposes at £2m. A caveat was issued by the Probate Registry and the estate of Mr Womble have applied to the court under the CPR Part 7 procedure to prove the will in solemn form.

Write the **body** of a memo to David Delby, setting out the rules on costs in contentious probate matters with specific consideration to the general rule under the CPR.

(20 Marks)

Question 9: Explain the law and procedure relating to injunctions in litigation claims

You work in the costs department for a firm of solicitors, Kain and Flanders LLP, which has a string of very high profile clients. The firm is located in Devon. Ms Marcy Grey, the sister of a famous actress, has consulted with Mr Brian Black, a solicitor in the firm, about applying for a privacy injunction.

It is understood that more than 3,500 photographs featuring Ms Grey, members of her family and friends were stolen when her cCloud account was illegally accessed by an unknown third party. The matter came to Ms Grey's attention when a tabloid newspaper contacted Ms Grey's representatives to inform them that they had been offered material for sale. Ms Grey has been caused considerable distress as a consequence of the alleged theft of material from her cCloud account.

As part of the preliminary advice offered to Ms Grey, Mr Black wishes to set out the position in relation to how the costs of any injunction proceedings would ordinarily be dealt with. As the matter relates to costs he has asked you to provide him with the necessary information so he can then write to Ms Grey.

Write the **body** of a memo to Mr Black detailing how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in this particular instance.

(20 Marks)

Total for Section B: 60 Marks

END OF PAPER