



Candidate Number _____

Unit 3 Examination Paper

24 June 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. Discuss Mintzberg's ways of structuring an organisation. (10 Marks)

2. Describe the statutory requirement for, and the duties of, a HOFA in solicitors' firms. (10 Marks)

3. Describe what is meant by a risk management policy with reference to existing regulatory requirements. (10 Marks)

4. Explain the legal considerations for a firm when implementing performance management strategies. (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 work in-house at Greaves and Muster LLP. Your firm has acted for the claimant, Jonathan Dumbledoor, in respect of his personal injury claim. He initially instructed Harrison and Hawkes in December 2013 and entered into a conditional fee agreement on the 3 March 2014 which was supported by an ATE policy.

Liability was disputed by the defendant and, eventually, Harrison and Hawkes terminated the conditional fee agreement on the 4 April 2015. This had the effect of also terminating the ATE cover pursuant to contractual provisions. Mr Dumbledoor then instructed your firm and entered into a fresh CFA on 6 August 2015. Proceedings were issued in December 2015 and the case came up for trial on the 1 December 2016 when the claim was dismissed. With the order for dismissal was an order that the issue of whether or not the claimant was entitled to the protection of QOCS under CPR 41.13 to 44.17 be directed for determination by the regional costs judge.

Write the **body** of a memo to your solicitor colleague advising when a claimant is entitled to the protection of QOCS and in what situation that protection may be lost.

(20 Marks)

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

You work in house for a defendant firm specialising in medical negligence matters. One of the partners, Derick Donally, acted for Harpurs Eye Hospital NHS Foundation Trust in a claim that was brought by Ms Alexia Ferguson. The claim was funded under a CFA and by way of an ATE policy.

The claim settled and a consent order was sealed by the Warwick County Court on the 6 July 2015 whereby judgment was entered for the claimant in the sum of £3,250 and the defendant was ordered to pay the claimant's costs of the claim on the standard basis.

The claim was brought as a result of the defendant's failure to refer the claimant for imaging and it was alleged that, had the defendant done so, a pituitary tumour would have been found twelve months earlier than was the case.

The claimant first instructed her solicitors, Barnetts, on the 7 August 2013 and letters of claim were sent to this defendant, as well as two other proposed

defendants, on the 20 May 2014. In a letter of response dated the 14 November 2014, the defendant's insurer admitted breach of duty, but denied causation. Proceedings had been issued against this defendant and two other defendants on the 10 December 2014, but the claims against the other defendants were not pursued.

The claimant's solicitor made a Part 36 offer to the defendant to accept the sum of £5,500 in settlement of the claim on the 19 January 2015. This offer was rejected. On the 28 January 2015, the claimant served proceedings on the defendant. On the 28 May 2015, the defendant made a Part 36 offer of £1,500. Following further offers and telephone discussions, a settlement figure of £3,250 was proposed by the claimant's solicitor and was accepted by the defendant on the 8 July 2015.

The claimant's solicitors have served their bill of costs in the sum of £72,320.85. This includes an After the Event (ATE) insurance premium of £31,976.49.

Derick Donally now seeks your advice on the recoverability of the premium, specifically in relation to the experts.

Write the **body** of a memo to Derick Donally advising on the recoverability of the ATE premium in this matter and advise 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 Thomas and Reverend LLP. The firm has a large family litigation department specialising in ancillary relief. The firm does not have a legal aid franchise. Miss Robins, a senior partner at the firm, acts for Mr Marvin Archer, a former cohabitee who was in a relationship with Jenny Dredd.

Miss Robins represents Mr Archer in respect of Ms Dredd'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. The claim is for a 50% beneficial interest or share in their last joint home, a property called Moonbeam House.

The parties met and began their relationship in 1988. They began to live together the following year when Jenny was aged 22 and Marvin was aged 38. They lived together for over 20 years, although, in the last few years of their relationship, there were many difficulties between them. They separated in September 2015. They had no children.

Moonbeam House and its 14 acres of land have been valued, for the purposes of the proceedings, at around £2,300,000. There is borrowing of about £1,400,000 secured upon it. If that borrowing is deducted from the assessed

likely selling price, it leaves about £900,000. If costs of sale are assumed at around £70,000, the net equity is of the region of £830,000.

Miss Robins has sought your advice in relation to how this type of case is like to differ from a 'normal' family law dispute.

Write the **body** of a memo to Miss Robins setting out how costs in family cases are usually dealt with and how the costs in this type of case are likely to be dealt with.

(20 Marks)

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

You work for a firm of solicitors, Maynard, Davidson and Grundy LLP, located in West Yorkshire. The firm specialises in family, private client matters and commercial litigation. It is because of the litigation arm of the firm that more and more contentious probate instructions have been received by the firm.

Mr Harcourt is a costs lawyer who has worked for the firm for about fifteen years. He is the head of the costs department and is also your line manager. It has been common practice for him to attend the initial appointments for any new contentious probate clients so as to offer sound advice at the initiation of a case. He has then been responsible for reviewing all client care letters and retainers before they have been sent out.

Recently, at a department meeting, Mr Harcourt divulged to the costs department that there is increased pressure to provide further support to the commercial litigation department and, as such, he will no longer have any time to devote to the private client department. He has, thus, asked that you draft some training materials so that appropriate training may be provided to the private client department in respect of the potential costs implications in a contentious probate matter.

Write the **body** of the training materials setting out the position, in contentious probate matters, regarding the normal rule under the CPR that 'costs follow the event' and the exceptions to this rule.

(20 Marks)

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

You work for a firm of solicitors, Hathrop and Skiller, located in Shropshire. Mr Skiller has been instructed by Mr Donald Ruff who has complained about a series of postings on a chat room hosted by Rollout Ltd. The postings were made over a number of months starting 9 months ago.

When instructing previous solicitors, Bolton and Kimp LLP, Mr Ruff had unsuccessfully attempted to obtain an injunction in libel without notice. The matter has now been listed for a hearing following an application being made on notice. Rollout Ltd has been appropriately served and it is expected the company will be present and represented.

Very recently, Mr Ruff indicated that he did not want to pursue the application because he was concerned about the costs. Mr Skiller has worked very hard to obtain the consent of Rollout Ltd to the granting of an interim injunction within proceedings on the balance of convenience. Mr Skiller has advised his client that, in such circumstances, the costs should usually be reserved until the trial of the substantive issue. Mr Skiller has now gone on his annual family holiday to Florida. He left his assistant, Mrs Darcy - a junior solicitor - in charge of his files while he was away. Mrs Darcy received a telephone call from the client asking what this means. Mrs Darcy has approached you asking you to explain.

Write the **body** of a memo advising Mrs Darcy what it means for an injunction to be granted on the balance of convenience and the way costs will be determined in such a case. Your advice should detail how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in this instance.

(20 Marks)

Total for Section B: 60 Marks

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