



Candidate Number _____

Unit 3 Examination Paper

12 June 2021

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) and number the pages. At the end of the examination, collate your answers and put your answers only in proper order in the envelope. Please leave the envelope and your exam paper on your desk and wait to be directed to leave the room by the invigilator. Before leaving the room, please sign the registration form to confirm that you have left your paper on your desk.

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 to do so by the invigilator.

Section A

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

1. Describe the organisational models that start-up costs firms should consider to ensure their structures allow for flexibility whilst maintaining professionalism.

(10 Marks)

2. Identify and describe the rules that require authorised bodies to have an individual who is designated as its Compliance Officer for Legal Practice and an individual who is designated as its Compliance Officer for Finance and Administration.

(10 Marks)

3. Outline the rules that require SRA regulated firms to identify, manage and monitor risks to their business.

(10 Marks)

4. Outline the potential pitfalls and risks that a costs firm may face when they implement 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 are a Costs Lawyer at a busy SRA regulated firm, Dominos and Denton LLP, in Canterbury. You have been working on the file of Debbie Maryland. The fee earner with conduct of the matter is Amrit Singh. Debbie Maryland is the Claimant in a personal injury matter. Her claim was issued in the County Court, valued at approximately £120,000. You drafted the budget on the matter, which was filed and served in accordance with the deadline under the Civil Procedure Rules.

After service and filing of the budget, Amrit received medical expert evidence in the case. Initially the case appeared to concern a probable mild traumatic brain injury, but the evidence now shows that Debbie had a neuropsychiatric condition, which caused her to become seriously disabled needing assistance from the State in her day to day care. This meant that the value of the claim would need to be increased to somewhere in the region of £2.5m.

The evidence was received less than a month after the budget had been filed and just before the budgeting hearing. A revised schedule of loss was pleaded, but it was not feasible to seek to revise the budget at the hearing because the impact of the new medical evidence, other than on value, was not clear at that time. At the hearing directions were made, budgets approved, and the case transferred to the High Court.

You have now been asked for your advice on the matter. Amrit has instructed that the case has turned out to be more complex than previously anticipated. In the original budget assumptions, you had indicated much of the disclosure had already taken place. The assumptions state that 5 lever arch files had been disclosed. You budgeted future costs on the assumption there would be follow up disclosure requests and had also assumed that there was likely to be a 4 day trial in the County Court and that 8 files would be needed at trial.

Disclosure has now grown to 10 files and it is expected that there will be a further 10. Amrit wishes to know whether an application should be made to amend the budget, or if the matter is best left to be dealt with when costs are assessed.

You are required to write the body of an email to Amrit setting out the steps that should be taken in the matter, particularly whether an application should be made to amend the budget, or if it is a matter best left to assessment.

(Total: 20 Marks)

Question 6: Civil Procedures and Protocols to Professional Negligence and Clinical Negligence Claims

As a self-employed Costs Lawyer, you take instructions from various firms across the country. You have recently been instructed by Ms Lister, a senior solicitor at Harrison and Clarkson LLP based in Norwich. The firm are regulated by the Solicitors Regulatory Authority and specialise in clinical negligence claims.

You have been working on the file of Mr Harper. Mr Harper sought damages against Barts Health NHS Trust for clinical negligence. His claim was settled for £5,750. You drafted his bill of costs, which totalled £19,201.22. This included the recoverable element of the ATE insurance premium of £5,189. The policy was a block-rated policy.

The Respondent produced a lengthy set of Points of Dispute. Many of the points were generic and repetitive, with numerous references to authorities and requests for further information. A challenge to the ATE insurance premium was also made, but this was included in a separate set of submissions. This document also included lengthy citation of authority, together with a paragraph about the public purse. The paragraph stated that as a matter of public importance, the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums.

The Respondent's submissions then suggested that at the outset Mr Harper's prospects of losing the case were very low and calculated what was described as a reasonable and proportionate premium to be £250. In the alternative, the Respondent put forward what it said was a comparable policy which had been obtained with a premium of between £1,900 and £2,003.20.

The costs were the subject of a provisional assessment by Deputy District Judge Topper and you've now had sight of the outcome of that assessment. As to reasonableness, Deputy District Judge Topper concluded that it was reasonable to incur the ATE premium. As to proportionality, however, he noted that a comparable premium approach had been adopted in satisfaction of achieving the overriding objective and proportionality. He reduced the premium to £2,003.20, adopting the comparable policy value put forward by the Respondent.

You are of the view that an application should be made for a review of the provisional assessment, the main point in issue being the recoverability of the ATE insurance premium. Write the body of an email to Ms Lister advising why you believe there should be a review in this case.

(Total: 20 Marks)

Question 7: Civil Procedure Rules to Land and Family Law Matters Heard in the Civil Courts

You work as a costs lawyer for Brown and Taylor Solicitors, who are based in the West Midlands. Mrs Brown is a family lawyer at the firm who specialises in divorce, property and finance. She is a Collaborative Lawyer and one of the few Family Solicitor/Mediators in the West Midlands. Mrs Brown has approached you for assistance in relation to one of her clients, Mrs Betty Sumpter.

In 2020, after 27 years, Mr and Mrs Sumpter's marriage came to an end. The impact of COVID-19 brought underlying relationship difficulties to a

head. The couple have two children, Jenny Sumpter (d.o.b 10/07/1995) and Harry Sumpter (d.o.b 26/11/1997).

At the time of separation the matrimonial assets were valued at £572,000. The matrimonial home was valued at £450,000. There is no mortgage on the property. Mr Sumpter has a good pension with a cash equivalent value of £122,000. Mr Sumpter is in full time employment earning £72,000 gross per annum and Mrs Sumpter works part time earning £12,000 gross per annum.

The Financial Dispute Resolution (FDR) hearing took place and the District Judge made it clear that she believed the parties should not be in court and she did not want to see the matter proceed to a Final Hearing. She believed the parties could reach a settlement and she indicated that an appropriate settlement in the case would be somewhere in the region of a 55-60% share of the matrimonial assets to Mrs Sumpter.

Costs in the matter are escalating. At the FDR the Form H for each party showed combined legal expenses of £9,500, which were estimated to increase by £15,000 if the matter proceeded to a Final Hearing. Mrs Sumpter desperately wants to reach an agreement, but Mr Sumpter is refusing to engage in meaningful negotiations. Mrs Sumpter is really concerned about the costs in the matter and Mrs Brown has approached you to advise on the same.

You are required to write the body of an email to Mrs Sumpter setting out how costs in family cases are usually dealt with, how the costs in this type of case should be dealt with and what rules the Court should consider when making a Costs Order.

(Total: 20 Marks)

Question 8: Civil Procedure Rules in Relation to a Contentious Probate and Judicial Review

As an independent Costs Lawyer you are instructed by a number of firms on a variety of matters. However, the bulk of your work is costing Court of Protection files. One of the solicitors who regularly instructs you, Mr Terry from Terry and Walsh LLP, has contacted you about a query he

has in relation to a contentious probate matter. Whilst this is not work you routinely do, you have extensive experience in this type of dispute.

Mr Terry's client, Jeremy Henderson, is the executor and a beneficiary of his elderly neighbour's Will. Mr Henderson made the appointment for his neighbour, Mr Henry Cartwright, to make the Will and he also drove Mr Cartwright to the solicitor's office for the appointment. The Will replaced an earlier Will and was not executed at the solicitor's office, but was executed elsewhere.

Mr Cartwright's original Will left his entire estate to be divided equally between his two daughters, Tamsin and Jenny. The later Will left his house, the main asset in the estate, in its entirety to Mr Henderson.

Mr Cartwright died on the 26 March 2020. His daughters are challenging the validity of the Will. Tamsin thinks that Mr Henderson pressurised and coerced Mr Cartwright. She believes that Mr Henderson's forceful personality, together with her father's vulnerability and his dependence on Mr Henderson meant that the later Will is not valid. Jenny's position is slightly different, she has not advanced a positive claim that the Will is invalid, but wants the Will to be proved in solemn form.

As part of the advice to Mr Henderson, Mr Terry would like to include some information on the way costs may be dealt with in contentious probate matters. Mr Terry has therefore approached you for your help.

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

(Total: 20 Marks)

Question 9: Explain the Law and Procedure Relating to Injunctions in Litigation Claims

You work in the costs department for an SRA regulated firm in Peterborough, Kemp and Sweeny LLP. Mr Kemp, a partner at the firm, is

instructed by Harper Investment Partners in proceedings concerning the ownership of the Harper Group. The Harper Group is comprised of several companies.

Mr Kemp was instructed to apply, on short notice, for an Interim Injunction against George Tennyson. The injunction was to restrain the use of certain confidential information and to seek delivery up of a laptop. The form of the injunction was largely agreed between the parties in advance of the hearing. It was granted at the short notice hearing and costs were reserved.

George Tennyson gave his in principle consent to the continuation of the Injunction and the injunction was continued at the return hearing. Additionally, the Judge noted that it had not been “possible or necessary to resolve the underlying merits of what is a clearly a hotly disputed case”, and that he was “not resolving who is right or wrong”.

However, the Judge then went on to order that costs be paid by George Tennyson, with immediate assessment and payment on account. He described this as the “usual order” on the basis that a “successful party’s costs are paid by the unsuccessful party”. George Tennyson has appealed.

It is George Tennyson’s position that the Judge made an error in principle for not following the rule that costs of an Interim Injunction should normally be reserved until determination of the substantive issue. Mr Kemp has approached you for your assistance and has asked you to draft a preliminary advice on the matter, setting out how the costs of any injunction proceedings would ordinarily be dealt with.

Write the body of a memo to Mr Kemp detailing how the costs of any injunction proceedings would ordinarily be dealt with and whether you believe that costs should have been reserved in this instance.

(Total: 20 Marks)

Total for Section B: 60 Marks

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