



Candidate Number _____

Unit 2 Examination Paper

21 September 2020

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. Outline the relevant procedure to be adopted by a claimant if the defendant fails to file an acknowledgement of service after the claim form has been issued and served.

(10 Marks)

2. Explain the application of qualified one-way costs shifting in a personal injury matter and how it represents a departure from the general rule that the loser pays the winner's costs.

(10 Marks)

3. Describe the authority that should be considered where the court is considering making an order that a Costs Lawyer is personally liable for costs.

(10 Marks)

4. Describe the provisions relating to client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules.

(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: Civil Procedure

You work for Beaton & Beaton Solicitors, a firm based in Birmingham. You are currently undertaking some work for the litigation department and Morris Beaton, a partner at the firm, has asked for you to write to his client, Miss Gemma Smith.

Gemma was involved in a road traffic accident on 10 March 2019. She was on her way to work driving her car along the A465 towards Dewberry. It was a new car and she wasn't yet confident driving it. She was driving at about 45 mph, just over the speed limit of 40mph. She approached a sharp right-hand bend in the road and as she entered the bend, she saw a tractor travelling on the opposite side of the road, moving very slowly. Suddenly a vehicle overtook the tractor.

Gemma thought that the driver of the car flashed his lights at her but does not recall hearing a horn being sounded. She said that she braked heavily and swerved left into the kerb. The cars collided. Both vehicles came to rest on Gemma's side of the road and Gemma's recollection is that the other car was on the wrong side of the road when the accident happened. The police and ambulance services attended the scene and both drivers were taken to Hospital.

Proceedings were issued on the 15 August 2019. Following the filing of the defence, a letter was received from the Defendant's solicitors making it clear that they felt the only appropriate resolution of the claim was for Gemma to discontinue her claim. Upon review of the evidence, Mr Beaton also thinks it would be appropriate for Gemma to consider discontinuing the claim. He has therefore asked for you to draft some preliminary advice to Gemma about the procedure by which a claimant may discontinue their claim.

Write the body of a letter to Miss Smith advising when a claimant may discontinue a claim, when discontinuance would take effect and the costs consequence of discontinuance.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

You work in house for an SRA regulated firm, Bobtail and Sparrow LLP, specialising in medical negligence matters. One of the partners, Angela Sparrow, acted for Jemimah Jefferies in her claim against Derby Hospitals NHS Foundation Trust. The claim was funded under a conditional fee agreement (CFA) and by way of an After the Event (ATE) policy.

The Claimant miscarried her baby in February 2018. In June 2018 an ultrasound scan detected retained products which were promptly removed. Solicitors were instructed and the CFA was signed in July 2018. The patient accepted the NHS's part 36 offer to settle for compensation of £7500 in July 2019. No court proceedings were ever issued.

A bill of costs has been drawn and it includes a claim for an ATE insurance premium in the sum of £5,088 in respect of the fees incurred for liability experts. The total of the bill of costs is £27,714.44.

The premium claimed is for a block-rated ATE insurance set by reference to a wide "basket" of cases, rather than being individually assessed. Bobtail and Sparrow LLP were obliged through their contract with the ATE insurer to offer the policy to their client.

Angela Sparrow has now received Points of Dispute in relation to the bill of costs. The points challenge the premium and state:

- a) It is a matter of public importance that the court ensures that ATE premiums, if held to be recoverable in principle, are assessed in proportionate and reasonable sums because of the potential substantial impact on the public purse.

- b) Ms Jefferies' prospects of losing the case were very low and that an appropriate premium sum of £827.75 should be allowed because of comparable alternative products that were available.

Angela now seeks your advice on the recoverability of the premium.

Write the body of a memo to Angela Sparrow advising on the recoverability of the ATE premium in this matter and advise on the possibility of the premium being reduced on assessment.

(Total: 20 Marks)

Question 7: Professional Ethics

You work as a costs lawyer for Quick Smart Costs, a costs firm in the North of England. You have recently been asked by the Head of Billing to undertake some work for a new client, Bodger and Badger LLP.

Your contact at Bodger and Badger LLP is Henry Carton, a paralegal at the SRA regulated firm. Henry has sent you a file which requires a bill of costs to be drawn. The file is a personal injury matter, a Noise Induced Hearing Loss claim, that settled for £2750 damages. Harry has instructed that the fee earner with conduct of the matter is a grade C Solicitor with 3 years litigation experience.

You draft the bill but in accordance with your usual practice you check the experience of the fee earner and discover her LinkedIn profile states she has worked for Bodger and Badger LLP for 18 months and it does not appear she has any previous legal experience or qualifications. Accordingly, you telephone Henry to discuss how to proceed.

Upon phoning Bodger and Badger LLP you are informed by the receptionist that Harry is out for lunch and he is not expected to return to the office that afternoon so you leave a voicemail for Harry setting out the position and asking him to confirm that he is happy for you to describe the lead fee earner as a paralegal and use a Grade D rate.

Later that afternoon Harry emails and sets out that his instructions were clear and that a grade C should be claimed.

You believe that you are being asked to make a fraudulent misrepresentation in relation to the level of experience of the fee earner and discuss the same with the Head of Billing. He advises that you should draft an email to Harry setting out that you are regulated by the CLSB and have a duty not to mislead the Court.

Write the body of an email to Harry setting out what it means to be regulated, outlining your duty to the Court and the potential ramifications for you if you follow his instructions.

(Total: 20 Marks)

Question 8: Professional Ethics

You work in the costs department for an SRA regulated firm, Harp and Harris LLP. You are contacted by an old friend, Akio Lee, who heads the litigation department at a firm in Bournemouth. Akio asked if you would consider taking external instructions to do costs work. Unfortunately, the head of your department is not keen on the idea and you have to decline the work.

Two days later, you receive an email from Akio asking for your help. He has contacted a number of costs firms and, other than price, cannot decide what criteria he should use to help him decide who to instruct. He tells you that he has identified two potential suppliers to send the work to, both are sole traders, but one describes herself as a costs lawyer and the other describes himself as a costs consultant.

Akio provides you with the names of the two costs professionals and you discover that one of the individuals is regulated and the other is not. You have no knowledge of their competence but wish to set out for Akio what this may mean for him when arriving at a decision of who to instruct.

Write the body of an email to Akio setting out any potential benefits an SRA firm may gain from instructing an external regulated costs professional over a costs professional that is not regulated.

(Total: 20 Marks)

Question 9: Legal Accounts

You are a costs lawyer who heads the costs and accounts department at Sidney Weaver LLP, a large high street firm in Saint Albans. The role requires you to work closely with the COFA at the firm, Bob Andrews.

Sidney Weaver LLP have a large residential property department and, following a recently published report on the disparity of legal costs in different regions of the Country, have started to get a lot of instructions from clients based in the London area. This has meant that the firm have had to recruit a lot of new members of staff for the department to cope with the increased work load.

Bob is keen to ensure that all new staff undertake mandatory training on the reason behind the checks the department takes to confirm the identity of clients and the source(s) of any funds the firm receives. He wants all new staff members, irrespective of their previous training, to be clear on the risks the firm faces which are associated with purchasing property in the UK. Therefore, Bob has approached you to write a guidance note that covers the definition of money laundering, the risks the firm faces and the associated offences.

Provide the body of the guidance note for Bob on the particular aspects he wishes to cover.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER