



Candidate Number _____

Unit 2 Examination Paper

4 August 2018

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, collate your answers to the examination paper and put your answer only in proper order in the envelope. Please hand the envelope and your exam paper 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. Describe the provisions relating to client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules.

(5 marks)

2. Explain the nature of a lien and how a solicitor with unpaid fees may have a lien over a client's property.

(10 marks)

3. Explain, using recent common law developments, the difference between a CFA which has been novated from a CFA which has been assigned.

(10 marks)

4. Describe the jurisdiction of first tier tribunals 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 small firm of solicitors. One of the solicitors in that firm, Miss Sheree Morgan, has been instructed by Mr Arshad Chowdhury. Mr Chowdhury is the proprietor of a company specialising in furniture removals. For over ten years Mr Chowdhury had instructed another firm of solicitors for his business purposes but recently he has encountered a number of issues with that firm. These difficulties include problems with one of the assistant solicitors, Mr Harrold Bishop.

For some time, Mr Bishop hadn't returned any of Mr Chowdhury's calls or emails. Mr Chowdhury became even more concerned when Mr Bishop failed to put in a timely defence and counterclaim in one of the commercial matters being dealt with by him. This had serious implications for Mr Chowdhury and proceedings are continuing with Mr Chowdhury applying to the court for acceptance of a late served defence and counterclaim.

Mr Chowdhury made a formal complaint to the senior partner, Mrs Nigella Heath, at Mr Bishop's firm. Mr Chowdhury met with Mrs Heath in their office to discuss the complaint. Two days later Mr Chowdhury received a letter through the post from Mrs Heath advising him that the firm was no longer going to act on his behalf. A gross sum bill for a very large sum of money was attached to the letter, it was headed 'final bill'.

Miss Morgan would like to accept Mr Chowdhury's instructions to continue with the current proceedings and to advise Mr Chowdhury in relation to his liability to pay the final bill rendered by Mr Bishop. Miss Morgan does not have sufficient knowledge as to whether the previous solicitors acted properly in terminating their retainer with Mr Chowdhury and is seeking your opinion. Mr Chowdhury has not been able to provide a lot of information because his own records are minimal and disorganised. For example, he is not able to advise whether there was ever a written retainer and he does not have one within his papers.

Prepare the body of an email of advice to Miss Morgan advising:

- a) when a retainer between a solicitor and client may be terminated and the potential costs implications of wrongful termination; and (10 marks)
- b) the meaning of a final bill and any right Mr Chowdhury has to obtain a more detailed breakdown of the costs claimed by Mr Bishop. (10 marks)

(Total: 20 marks)

Question 6: Costs in Special Courts

You work in-house for a city firm of solicitors. Mr George Beachy, one of the solicitors in that firm, has been instructed by Westend Ltd. Westend LTD had contracted with a Malaysian company (Awang Construction), in respect of a project in Iraq. A dispute arose and, as per the agreement between the parties, the matter is proceeding to arbitration.

A sole arbitrator has been appointed by the London Court of International Arbitration pursuant to a request made in April 2018. The arbitrator is an American lawyer who is a partner of an American law firm.

Mr Beachy has approached you to assist him in drafting his initial letter of advice to Westend Ltd. He has asked that you provide him with information in relation to the assessment of costs in arbitration proceedings.

Prepare the body of a memo to your solicitor colleague. Describe the procedure for the assessment of costs in arbitration, in what circumstances an assessment must go to court and how an award may be enforced.

(Total: 20 marks)

Question 7: Funding

You have been instructed by Martin Tinder who is a solicitor who works for a large solicitor's firm in Durham. He has just inherited an ex colleague's case load and discovered the file of Hannah Newman. The firm had acted on behalf of Ms Newman in proceedings against Durham Children's Home, a children's home where Ms Newman had resided since she was 5.

Whilst residing at the home Ms Newman had suffered sexual abuse at the hands of the care workers. The firm took initial instructions during an attendance at Ms Newman's property on the 14 June 2015 when she instructed that she had suffered many emotional and psychological problems as a result of rape and the sexual abuse. Ms Newman further disclosed that, as a result of her feelings, she has a long history of criminal convictions; she had been involved in petty offences since the age of 12 and has a history of drug and alcohol misuse.

The matter concluded with an apology with "no order as to costs". The matter was funded by the LAA (Certificate Number LSP193079A-B2) and the certificate was issued on the 1 July 2015. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. The profit costs recorded on the file total £9,300 exclusive of VAT. The funding certificate was discharged on the 19 June 2016.

You have been asked to provide advice on the next steps, how the costs in the claim should be assessed, the impact of the notice to show cause and the impact of the delay in dealing with the matter. Prepare the body of an advice to Mr Tinder.

(20 marks)

Question 8: Funding

You work for Commercial Costs Ltd, a firm dealing in legal costs. You have been instructed on a regular basis by Mr Alfred Hitch who is a solicitor. He has recently taken on a new job with a local firm where he is responsible for running the commercial litigation department. He has contacted you in respect of one of his clients.

Mr Hitch is acting on behalf of Mr Patel. Mr Gregson, a former Member of Parliament, has brought proceedings for libel against Mr Patel over allegations broadcast on television that he took cash in return for asking questions in the House of Commons. Mr Gregson has been able to issue his libel action because of a fighting fund to which a number of individuals are contributing.

Whilst funding of matters in this way is now a regular occurrence in substantial commercial litigation and international arbitration Mr Hitch is aware of the theory but has little experience of the practice of third party funded actions.

Prepare a summary of advice for Mr Hitch of the circumstances in which a litigant might wish to use third party funding, the ethical issues that might arise, the type of proceedings for which funding might be available and what that funding might cover.

(20 marks)

Question 9: Legal Accounts

You are a costs lawyer working in-house for a firm of solicitors, Hoggarts LLP, in the South East of England. Your role has recently diversified, you now work as a legal cashier within the firm's accounts department two days a week. The role requires you to work closely with the COFA and principals at the firm.

You are currently working on the file of Teresa Harrison. Ms Harrison's matter was a claim for personal injuries arising from an accident at work. Ms Harrison is a privately paying client. On 1 July 2018 a negotiated settlement was achieved in the sum of £25,000 plus costs in respect of the claim.

On 9 July 2018 your firm received a cheque from the other side's solicitors payable to the firm. The cheque was in the sum of £32,000. The accompanying letter confirmed that £32,000 was in full and final settlement of Ms Harrison's claim. The costs on the file are estimated to be £8,500.

On receipt of your final invoice Ms Harrison has been in touch with your firm and asked for an invoice for VAT purposes. She has also asked for your firm to set out the law governing both input and output tax.

Provide the body of a letter of advice to Ms Harrison setting out how the firm has dealt with the cheque received and setting out the law governing both input and output tax. Your advice should cite any relevant rules.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER