



Candidate Number _____

Unit 2 Examination Paper

1 August 2020

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 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 by the Invigilator.

Section A

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

1. Explain, with reference to appropriate authority, why the Costs Lawyer Code of Conduct prohibits costs lawyers from handling client money.

(5 marks)

2. Explain when a lawyer may terminate a retainer. Write a summary, with reference to any relevant law, briefly outlining the implications should a retainer be wrongfully terminated by a lawyer.

(10 marks)

3. Distinguish between novation and assignment and explain why these concepts are important when determining how a pre-LASPO CFA has been transferred.

(10 marks)

4. Explain the provisions contained within sections 59-65 of the Arbitration Act 1996.

(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, Arnold and Timmons LLP. One of the solicitors in that firm, Mr Tony Bacon, has been instructed by Mr Amare Kimathi. Mr Kimathi is the proprietor of a commercial lettings company. For twelve years Mr Kimathi has been instructing Heath and Rogers LLP for his business purposes. However, recently he has encountered a number of problems with that firm which include problems with one of the assistant solicitors, Miss Penelope Church.

Mr Kimathi became concerned when the firm failed to draft a lease in a timely manner. This had serious implications for Mr Kimathi and resulted in the loss of rental income and subsequently proceedings being issued against his firm. Miss Kimathi was dealing with the proceedings but for some time she hadn't returned any of Mr Kimathi's calls or emails.

Mr Kimathi made a formal complaint to the senior partner, Mr Heath, at Miss Church's firm. Mr Kimathi met with Mr Heath in their office to discuss the complaint. Four days later Mr Kimathi received a letter through the post from Mr 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'.

Mr Bacon would like to accept Mr Kimathi's instructions to continue with the litigation. He has also agreed to advise Mr Kimathi in relation to his liability to pay the final bill rendered by Miss Church. Mr Bacon does not have sufficient knowledge as to whether the previous solicitors acted properly in terminating their retainer with Mr Kimathi and is seeking your opinion. Mr Kimathi has not been able to provide a lot of information because his own records are 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 Mr Bacon advising when a retainer between a solicitor and client may be terminated and the

potential costs implications of wrongful termination. The memo should also include details of what is meant by a final bill and any right Mr Kimathi has to obtain a more detailed breakdown of the costs claimed by Miss Church.

(Total: 20 marks)

Question 6: Costs in Special Courts

You are a Costs Lawyer working in-house for a firm of solicitors in Manchester. The firm specialises in clinical negligence matters but a client, Cecily Brown, has asked her solicitor, Derek Tupper, for some advice in respect of a potential claim outside his normal area of expertise. The potential claim is for disability discrimination which she believes her six-year-old son, Kyle, has suffered.

Cecily believes that Manchester Little Priory Primary School (MLPPS) discriminated against Kyle when making arrangements for deciding who will get a place in the school and the admissions process because Kyle has spinal cord injury.

Cecily has instructed Mr Tupper that she had spent some time online in chat rooms and has been warned by another user of the chat room that she should be cautious in bringing a claim because of the potential costs consequences. Cecily would therefore like advice on the power of lower tribunals to make an order for costs and in what circumstances they may make an order that she pays the costs.

Mr Tupper does not consider himself to have sufficient knowledge to advise Ms Brown. However, he knows that you have had experience of such matters and has asked you to assist.

Prepare the body of an email to Ms Brown setting out the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made against a claimant.

(Total: 20 marks)

Question 7: Funding

Harpers LLP is a small high street firm with a Legal Aid franchise. The firm provides civil legal aid. You are a trainee costs lawyer in the firm and have been passed the file of Abdul Muzanni, the claimant in an action for unlawful detention. Sophia Harper, a senior partner at the firm, represented Mr Muzanni.

Abdul Muzanni is an Afghan national whose parents died when he was three years old. He was then cared for by his grandmother. He came to the UK in 2011 after his grandmother died. At the time he was 11 years old. Upon arrival into the UK he claimed asylum. The claimant's asylum claim was refused on the 14 November 2012 by the First Tier Tribunal. Permission to appeal that decision was also refused. It was noted that the claimant would be at real risk of serious harm in Kabul and that removal would breach the UK's obligations under Article 15C Qualification Directive, the judge found that the claimant should be returned to Afghanistan. Permission to appeal was initially refused. However, ultimately, after protracted proceedings, leave to remain was granted.

Following the outcome of the proceedings, Mr Muzanni commenced an action for unlawful detention against the Secretary of State for the Home Department. Judicial review proceedings were issued on the 10 February 2016 and the matter concluded with an apology with "no order as to costs". The matter was funded by the LAA (Certificate Number HOP697078A-A2) and the certificate was issued on the 1 February 2017. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. The certificate appears to remain live. The profit costs recorded on the file total £10,370 exclusive of VAT. You have been asked to consider the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause.

Prepare a summary of the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause.

(20 marks)

Question 8: Funding

You work for the Family Law Agency, an SRA regulated firm specialising in family law. You have been approached by Mr Alfred Hitch who is a senior partner at the firm. He has contacted you in respect of a recent decision made by the High Court that there is no basis to ban the use of third-party litigation funding in divorce cases.

Mr Hitch told you that in that recent case it had been argued that these funding arrangements were unlawful because they were contrary to the public policy against the champertous maintenance of litigation, and specifically the important issue of public policy of whether third-party litigation funding should be permitted in family proceedings. An analogy had been drawn with the exclusion of family proceedings from the rules allowing conditional fee agreements (CFAs).

However, Mrs Justice Torbay found that the fact CFAs are banned in family cases does not mean third-party litigation funding should be too. Torbay J said the analogy with CFAs was misplaced because, unlike with CFAs, the lawyers did not have a financial stake in the outcome.

Whilst funding of matters using third party funders 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. He believes this is something fee earners at the firm may be obliged to provide advice on and is therefore seeking you provide some guidance.

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 and have been recruited as a consultant to an advisory panel to provide advice on the setting up of an SRA regulated firm of solicitors. The proposed new firm will specialise in catastrophic injury cases. You were recruited because of your costs knowledge but also because of your previous experience in the legal accounts and compliance department at a large international law firm.

The panel are assisting with the drafting of a business proposal for the bank to consider in order that the new firm can secure a loan to cover start-up costs. Specifically, your role is to advise on the risks and regulations associated with going into practise. You need to ensure that the business proposal adequately demonstrates that the firm will be alert to, and take responsibility for, managing risks as to its delivery of legal services. You therefore need to write a summary to be included in the business proposal in respect of the money laundering regulations that must be complied with. You also need to provide details about how client money should be handled.

Prepare a summary that you will include in the business proposal on the aspects detailed above.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER