



Candidate Number _____

Unit 2 Examination Paper

4 December 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 procedure and the usual costs consequences set out in the Civil Procedure Rules where a Claimant chooses to discontinue all or part of their claim.

(10 Marks)

2. Describe when a Costs Order made in favour of a party to proceedings who has taken out an After The Event costs insurance policy may include provision requiring the payment of an amount in respect of all or part of the premium of the policy.

(10 Marks)

3. Describe the authority that should be considered where the Court is considering making a Wasted Costs Order against a Costs Lawyer.

(10 Marks)

4. Explain the principle that a Costs Lawyer cannot handle client money and whether that principle is relevant where a Costs Lawyer works for an SRA regulated firm.

(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 in the Litigation department of an SRA regulated firm, Hargreaves and Timble LLP. You are contacted by a fee earner, Julie Barnes, who has requested help on the file of Tremurs Ltd.

The Claimant is suing your client for breach of data protection legislation, breach of confidence and misuse of private information. The Claimant is claiming damages of up to £10,000 for 'psychological distress, stress, inconvenience and financial loss.'

On 23 August 2021 the Claimant's solicitors sent a letter before claim to your client by post and email. No response was received. On 8 September 2021 the Claimant's solicitors sent a second letter by post and email giving your client a further seven days to respond pointing out that your client was in breach of the pre-action protocol. Again, no response was received.

On 23 September 2021 the UK Government put the country into 'lockdown' because of the COVID-19 pandemic. On that day the Prime Minister said that people were going to be required to stay at home and work at home. All but essential workers were required, by law, to stay at home. There were only limited exceptions, such as for exercise and the purchase of essential items. It was a criminal offence to be outside if an exception did not apply. Social distancing of 2m had to be observed, apart from in respect of people living in the same household.

The claim form and particulars of claim were issued and posted on 25 September 2021, which meant that the deemed date of service was 27 September 2021. Your client's Acknowledgement of Service was therefore due on or before 9 October 2021. By 10 October 2021, your client had not filed an Acknowledgment of Service. The Claimant

therefore applied for judgment in default on 15 October 2021. This was granted by Senior Master Harvest on 17 October 2021.

Julie Barnes has approached you and asked for you to write a letter of advice to Tremurs Ltd explaining what a Default Judgment is, how a Judgment may be obtained and whether you believe that it will be possible to apply for the Judgment to be set aside.

Write the body of a letter to Tremurs Ltd providing advice on Default Judgments.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

You work as a Trainee Costs Lawyer in-house at Ferguson and Hewitt. Your firm is acting for the Defendant in proceedings, Mr Pablo Perez, in respect of a claim that was issued in the County Court at Manchester on 12 December 2020.

The Claimant, Sylvia Smith, was claiming between £1,000 and £10,000 damages for pain, suffering and loss of amenity allegedly suffered as a result of a slipping accident, which it was said had occurred at the El Celler De Can Roca restaurant, which is owned and run by your client.

The claim had been allocated to the fast track and the trial before District Judge Mister was on 3 November 2021. The Court heard evidence from the Claimant herself and also from Betty Williams, who claimed to have been lunching with the Claimant at the time she sustained her alleged injury. The District Judge also heard evidence from two witnesses for the Defendant who were working in the restaurant on the day of the alleged accident.

The claim was dismissed because the District Judge was not satisfied that Sylvia Smith slipped while she was leaving the restaurant. He reached that conclusion because the evidence was so riddled with inconsistencies and when he tested that evidence against objective contemporaneous evidence, it led him to conclude that he could not rely on anything that Sylvia Smith and Betty Williams said in relation to the circumstances giving rise to the claim.

The District Judge also disapplied the protection afforded to claimants in personal injury cases by the qualified one-way costs shifting provisions contained within the Civil Procedure Rules. It is this element of the decision that you have been asked to advise.

Write the body of a letter to Mr Pablo Perez advising when a Claimant is entitled to the protection of QOCS, in what situation that protection may be lost and the consequence of the decision made by District Judge Mister.

(Total: 20 Marks)

Question 7: Professional Ethics

You work in-house as a Costs Lawyer for a firm of solicitors. You have previously prepared the bill of costs in the matter of Mr David Deane, the Claimant in a breach of contract matter. Mr Deane successfully sued a local taxi firm for the sum of £30,000 owed for fitting a number of computers in the firm's office. Your opponent is Miss Lena Grace. She is not an authorised person but is instructed by the firm that represented the owner of the taxi firm.

It is apparent from several phone calls with Miss Grace that the Defendant has asked her to raise an issue with every item in the bill and make lengthy disputes. Furthermore, she has advised you "off the record" that the Defendant has indicated that he is in possession of some documents which would probably assist your client but intends to dispose of these. She says that the Defendant has already lost a significant amount of money and feels he has nothing to lose. You have pointed out to her that the Court will not take a favourable view of this conduct. Her response was that she would, of course, say that she had no knowledge.

You have considered the file and are of the view that, on the whole, the file was well run and the costs claim is broadly reasonable. You are hoping that by writing a letter to your opponent she will re-consider her stance and deal with the matter in a proper fashion, so that you are able to reach an amicable settlement without incurring unnecessary expense on both sides.

Prepare the body of a letter to Miss Grace, in appropriate business language, attempting to persuade her to deal with the matter in a proper fashion. You should set out why it will be in the interests of all parties involved that she deals with the matter in an ethical manner

and should have regard to relevant principles of professional standards.

(Total: 20 Marks)

Question 8: Professional Ethics

You are working for a firm of Costs Lawyers in Leeds. You have recently been instructed by Mr Edgar John, who had previously been acting as a Litigant in Person. Recently Mr John's work commitments have increased and he has decided he would benefit from professional representation. Whilst he believes that he has been doing a good job himself, he has funds and has decided that instructing your firm will save him some time.

Upon meeting with him in a Conference at your firm's offices, it rapidly becomes clear that Mr John is very forthright in his views and his expectations may be difficult to manage. At the very first interlocutory hearing, Mr John's opponent won on a technical point. Your view is that it could have gone the other way, but that the decision was certainly well within the bounds of fairness.

However, Mr John has thereafter made repeated Applications to overturn this decision. He argued that the Judge conspired to favour his opponent. Upon being refused Leave, he sought to Appeal to the Court of Appeal. The appeal was, again, based on the allegations of conspiracy.

Mr John's opponent now has a Final Costs Order against Mr John. Mr John has therefore now instructed you to conduct the Detailed Assessment on his behalf, but he is insistent that you must argue his conspiracy theory, which you believe to be both ridiculous in the extreme and an abuse of the Court process. The firm has therefore asked you to produce a file note explaining the implications for you as a Costs Lawyer if you do what is asked.

Write the body of a file note setting out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit you from arguing unarguable points and the implications if you act on Mr John's current instructions.

(Total: 20 Marks)

Question 9: Legal Accounts

You work at an SRA regulated firm in the Costs and Accounts Department. Your firm have been instructed by Mr Timothy Hotlace, a solicitor, who is facing a number of allegations that have been made by the SRA.

The allegations against the Mr Hotlace are that while in sole practice as a solicitor at Hotlace-Law, on multiple occasions between November 2017 and May 2021, he caused or allowed monies to be paid into or out of the Firm's client accounts, other than in respect of an underlying legal transaction or a service forming part of the normal regulated activities of solicitors. It is also alleged that from around November 2017 he failed to establish the sources of funds received into the client account in relation to a number of entities and he received and transferred funds from a number of third parties without undertaking any or adequate steps to verify the identity of the payers, or properly scrutinise such transactions.

You have been asked to produce a file note on the potential ramifications for Mr Hotlace. The file note needs to cover why Hotlace-Law should be able to show a reasonable connection between the underlying legal transaction for which they have been instructed to advise on with any funds the firm are asked to hold, or payments the firm are asked to make.

The file note also needs to cover the requirement for Hotlace-Law to undertake proper due diligence before accepting any funds into a client account and why the firm should have declined to act if they did not fully understand the transaction on which they were being asked to advise.

Prepare the body of the file note that covers the risks associated with the use of client accounts and the potential ramifications for Mr Hotlace.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER