



Candidate Number _____

Unit 2 Examination Paper

15 June 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. Explain how and why the CLSB prohibit costs lawyers from handling client money.

(5 marks)

2. Explain, with reference to the relevant authority, the circumstances when a retainer may be terminated.

(10 marks)

3. Contingency fee agreements are unenforceable. Critically discuss this statement.

(10 marks)

4. Critically discuss the jurisdiction first tier tribunals have to make a costs order.

(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 are instructed by Mr Donovan of Donovan and Dawson Solicitors. On the 30 July 2015, the firm entered into a retainer with Mr and Mrs Carr to act for them in litigation concerning a right of way.

Mr Donovan had conduct of the matter. He submitted 38 bills to Mr and Mrs Carr; 27 for solicitor's fees and 11 for disbursements only. Mr and Mrs Carr terminated the retainer with Donovan and Dawson Solicitors and instructed alternative solicitors in October 2017. Mr and Mrs Carr failed to pay Donovan and Dawson Solicitors' final four invoices in the sum of £13,096.22, the last of which was rendered on 22 January 2018.

Write the body of an advice to Mr Donovan setting out the right of the firm to seek payment of the bills through the courts and of any potential action that may be taken by Mr and Mrs Carr.

(Total: 20 marks)

Question 6: Costs in Special Courts

Dereck Blythe is an arbitrator who has just made an award in a matter involving Mr Fendon and Mr Fendon's professional indemnity insurers, DFT. Mr Fendon was the subject of civil liability proceedings. This led to a dispute between Mr Fendon and DFT in relation to the extent of his policy coverage. The dispute about coverage was referred to ad hoc arbitration seated in London.

In an award dated 17 May 2018, Dereck Blythe found that the civil liability claim was not covered by Mr Fendon's policy and ordered that Mr Fendon reimburse DFT for the civil liability claim defence costs which it had already paid. Mr Blythe also awarded costs against Mr Fendon in relation to the arbitration on the basis that there was no reason to depart from the principle that costs follow the event. This was made despite neither DFT nor Mr Fendon having made submissions in relation to arbitration costs.

Mr Fendon has now approached your firm requesting advice in relation to the power of Mr Blythe to make such an order. Prepare the body of a letter of advice setting out how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter must be referred to the court and the rules on enforcement in an arbitration matter.

(Total: 20 marks)

Question 7: Funding

Mr Rupert Brown, a recently qualified solicitor who has been tasked with taking over the caseload of a recently retired colleague, has instructed you. Mr Brown works in the civil department at Rothams LLP, a high street firm in Basingstoke. Unfortunately, it appears that Mr Brown has inherited a number of legal aid matters and his experience of such matters is extremely limited.

Accordingly, Mr Brown has requested your advice and, specifically, a brief description of the implications of each of the following:

- a) A revocation of a substantive certificate. The certificate was issued to Mrs Khan who apparently concealed income from a rental property when advising the Legal Aid Agency of her means.
- b) A notice to show cause issued by the Legal Aid Agency on the 9 April 2016 in respect of a funding certificate issued to Mr Borris Nelson, a claimant in a clinical negligence matter. The defendants had evidently been petitioning to the LAA to discharge the funding certificate for some time.
- c) A discharge of a funding certificate following completion of an action brought on behalf of Jessica Frightwell (d.o.b 05.07.2016). The certificate had been live since 7 February 2017 and the notice of discharge is dated 11 February 2018.

Provide the **body** of a letter of advice on the particular circumstances on the files and any action that should be taken.

(20 marks)

Question 8: Funding

You work in-house for a firm of solicitors, Kaur and Martin Solicitors, and are considering the file of Lesley Leeson. The file is a personal injury matter. On 2 December 2012, Lesley Leeson instructed Jarvis and Jarvis LLP, to pursue a claim for damages on her behalf. Lesley had tripped and fallen whilst attending the defendant's supermarket on 6 July 2012. She was heavily pregnant at the time and suffered damage to her ligaments as a result of her fall. The cause of the accident was an area of defective pavement within the control of the defendant.

On the date of instruction Ms Leeson entered into a CFA with Jarvis and Jarvis LLP under which she, among other things, agreed to pay a 100% success fee in the event that she won her case (which subsequently she duly did). A letter of claim was sent on 1 February 2013 and liability was admitted on 17 May 2013.

However, during the course of the retainer, Jarvis and Jarvis LLP decided that personal injury litigation was no longer economically viable as a result of the LASPO reforms. Jarvis and Jarvis LLP wrote to the claimant on 12 March 2013 explaining that, due to the reforms, they believed that only "the biggest personal injury firms will be able to continue to operate" and proposed to transfer her case to a larger and more specialist firm, Kaur and Martin Solicitors, unless the claimant instructed them otherwise. The claimant was content with

the transfer and communicated the same to Jarvis and Jarvis LLP. The Firm transferred all their personal injury clients to Kaur and Martin Solicitors on 28 April 2013.

Detailed assessment is now underway and it is the claimant's position that she is entitled to recover her costs under the CFA dated 2 December 2012, including the success fee, from the defendant. This is because that CFA has been assigned to Kaur and Martin Solicitors. The defendant is resisting paying the success fee and contends that a new CFA was entered into on 28 April 2013 under which the claimant would only be entitled to her base costs.

Draft a note upon the circumstances in which the claimant may be able to recover the success fee under the CFA dated 2 December 2012.

(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 and principals at the firm.

You have been asked to provide information in relation to the management of client money for the family department. The family department have always dealt with only legally aided work but are now expanding to deal with private work. This is because an opportunity was identified by the head of the family department, Mr Horting, when a rival firm closed its local office so that it could focus on its London based clients.

Mr Horting has therefore identified a training need. The department needs a guidance note producing that covers the operation of client accounts, including when withdrawals may be made. Additionally, the department also need a refresher on who is responsible within the firm for ensuring compliance with the SRA Accounts Rules.

Provide the body of the guidance notes to Mr Horting on the particular aspects he wishes to cover.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER