



Candidate Number _____

Unit 2 Examination Paper

15 June 2019

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 bottom 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 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 what the CLSB Costs Lawyer Code of Conduct means when it states that costs lawyers must not accept client money save for disbursements and payment of their professional fees.

(5 marks)

2. Summarise the relevant authority and explain the circumstances when a solicitor may terminate a retainer and pursue the client for their fees.

(10 marks)

3. Critically discuss whether regulations should be introduced to ensure that third party litigation funders are subject to statutory duties and obligations.

(10 marks)

4. Explain 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 a trainee costs lawyer in a small high street costs firm in Buckinghamshire. You are instructed by Mr Donovan of Harwich and Donovan Solicitors, a large firm in Milton Keynes.

Harwich and Donovan Solicitors undertook some work for a building company, Let's Go Construction Ltd. Approximately eight months into the litigation they were dismissed and Borris and Beckett LLP took over the case on their undertaking to return the papers and preserve Harwich and Donovan Solicitors' lien. The case on behalf of Let's Go Construction Ltd was successfully concluded and the papers returned.

Harwich and Donovan Solicitors subsequently submitted a bill and the defendant demanded the bill be assessed. Harwich and Donovan Solicitors require the papers for assessment and Borris and Beckett LLP also require the papers for assessment against the unsuccessful party in the concluded action.

Mr Donovan has asked you to advise on whether there are grounds for Harwich and Donovan Solicitors to hold the papers until their bill is paid. Prepare **the body of an email** of advice to Mr Donovan. The advice must explain what a lien is and whether it is possible to have a lien over a file of papers.

(Total: 20 marks)

Question 6: Costs in Special Courts

Henry Carlisle is an arbitrator who has just made an award in a matter involving Hatfield Horticultural Equipment Ltd (HHE Ltd) and Ainsley Motor Ltd (AM Ltd). The award found HHE Ltd liable to AM Ltd for repudiatory breach of contract and sums due but unpaid. HHE Ltd was found liable to AM Ltd in the total sum of £112,000 which included around £17,000 in respect of the costs order.

Henry Carlisle was highly critical of HHE Ltd's conduct which he described as setting out to cripple AM Ltd financially by refusing to make payment resulting in AM Ltd's managing director, Jeremy Holmer, remortgaging his home and the company having no alternative but to resort to third-party funding which, on expert evidence, was on standard market terms. In those circumstances, and because of unsubstantiated personal attacks and accusations of fraud, Henry Carlisle ordered HHE Ltd to pay costs on the indemnity basis.

Henry Carlisle also held that AM Ltd was entitled to recover the costs of the litigation funding which remained to be quantified but would be in the region of just over £4,250. HHE Ltd had argued, unsuccessfully, that "other costs" did not include the costs of funding the arbitration.

Prepare the **body of a letter** of advice to Jeremy Holmer. The advice must explain what an award is and set 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

You are a trainee costs lawyer in a small high street firm, Bonnets, which has a franchise with the Legal Aid Agency to provide civil legal aid. You have been passed the file of Khalid Mohammed, the claimant in an action for unlawful detention. Mr Mohammed was represented by Jeremey Clerk, a senior partner at the firm.

The claimant is a 29 year old Moroccan national. On 5 March 2003, at the age of 15, the claimant entered the United Kingdom. Shortly after his arrival, he claimed asylum. This claim was refused, but the claimant was granted Discretionary Leave to Remain until his 18th birthday. On 4 February 2008, the claimant was made subject of a deportation order because of his offending history. For one reason or another Mr Mohammed has not been deported and he has continued to offend and spend periods of time detained.

The Secretary of State detained the claimant, pursuant to immigration powers, from 12 July 2016 until 3 May 2017. The file relates to an application for judicial review of the lawfulness of this period of detention. The outcome of protracted proceedings was that the claimant was unlawfully detained from 12 July 2016 to 3 May 2017 and the Secretary of State was found liable to pay the claimant damages in the sum of £40,000 with “no order as to costs”.

The matter was funded by the LAA (Certificate Number KM1223078A-A1) and the certificate was issued on 1 February 2018. Proceedings were issued on 15 February 2018. The certificate appears to remain live. The profit costs recorded on the file total £15,920 exclusive of VAT. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. 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 are a costs lawyer working for a costs firm in Manchester. You have been instructed by Felicity Evans, a solicitor who works for Pickle and Branston LLP, a large firm in Blackpool which conducts a large volume of slip and trip cases under Conditional Fee Agreements (CFAs). Mrs Evans has recently acted on behalf of Mrs Cricket.

On 17 May 2012 the claimant, Mrs Cricket, was involved in a road traffic accident. On 27 May 2012 the claimant entered into a conditional fee agreement with

Monster Law providing for a 100% success fee. The original conditional fee agreement was in the form of the Law Society model conditional fee agreement. On 26 April 2014 Monster Law issued proceedings on behalf of the claimant.

In November 2015, Monster Law decided to close their personal injury department. In a letter to the claimant and other clients, they wrote that they propose to transfer Mrs Cricket's claim to, Pickle and Branston LLP, another firm who undertook personal injury work. They stated that Pickle and Branston LLP would continue to act on her behalf and represent her on the same basis as was agreed by Monster Law.

On 10 December 2015 the claimant signed a new CFA with Pickle and Branston LLP. On 11 December 2015 notice of change of solicitors was filed with the Court. On 17 May 2016 the defendant made a Part 36 offer of £22,500 which was accepted by the claimant, the defendant therefore having to pay the claimant's standard basis costs under the deemed costs provisions applying under CPR Part 36.

Costs assessment is now underway. The defendant has raised an argument that Monster Law, having chosen not to continue with the claim for the claimant, are not entitled to be paid. Further, the Defendant is also arguing that the success fee in the CFA between the claimant and Pickle and Branston LLP is also not recoverable.

Prepare the **body of a letter** of advice to Mrs Evans advising on the transfer of CFAs from one firm to another, having particular regard to the specific circumstances referred to.

(20 marks)

Question 9: Legal Accounts

You are a costs lawyer and have been recruited on a consultancy basis to advise on the setting up of an SRA regulated firm of solicitors. The proposed new firm will specialise in personal injury and clinical negligence matters. They have approached you because of your costs knowledge but also because of your previous experience in the legal accounts and compliance department at a leading law firm.

You have been asked to assist 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. You have been asked to specifically advise on the risks and regulations associated with going into practise. The business proposal needs to adequately demonstrate 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 you must comply with and the handling of client money.

Prepare a **summary** that you will include in your business proposal on the

aspects detailed above.

(20 marks)

Total for Section B: 60 Marks

END OF PAPER