



Candidate Number _____

Unit 2 Examination Paper

12 June 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. Outline the relevant procedure to be adopted where a Claimant feels there is no compelling reason for their claim to proceed to a trial and the Defendant has no real prospect of successfully defending the claim or issue.

(10 Marks)

2. Explain which cases qualified one-way costs shifting applies to, when costs protection under the rules may be lost and whether it represents a departure from the general rule that the loser pays the winner's costs.

(10 Marks)

3. Explain what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers should comply with their duty to the Court in the administration of justice.

(10 Marks)

4. Outline the rules that set out that Costs Lawyers must not accept client money and explain whether there are any exceptions to the rule.

(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 for an SRA regulated firm, Irving and Cummings LLP. You are contacted by a fee earner, Tracy Callaghan, who has requested help on the file of Dominic Puissant.

You have acted for Mr Puissant in relation to his accountancy business in the past. He has returned from Portugal having been on an extended holiday and found that Judgment has been entered against him by Mystic Machines Ltd.

Mr Puissant had not replied to the Claim Form and it was therefore ordered that he pay Mystic Machines £16,900, being the amount claimed, plus interest to the date of Judgment, and £240 for costs. Mr Puissant disputes the money is owed. Mystic Machines Ltd supplied him with a computer system and that system failed to work properly and in its current state is unusable.

Your firm have been instructed to make an application to the Court to set aside the Default Judgment. Tracy Callaghan has asked that you write a letter of advice to Mr Puissant explaining what a Default Judgment is, how the Judgment has been obtained and upon what basis the Court may set aside a Default Judgment.

Write the body of a letter to Mr Puissant providing advice on Default Judgments.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

As a self-employed Costs Lawyer, you take instructions from various firms across the country. You have recently been instructed by Ms Lister, a senior solicitor at Harrison and Clarkson LLP based in Norwich.

The firm are regulated by the Solicitors Regulatory Authority and specialise in clinical negligence claims.

You have been working on the file of Mr Harper. Mr Harper sought damages against Barts Health NHS Trust for clinical negligence. His claim was settled for £5,750. You drafted his bill of costs, which totalled £19,201.22. This included the recoverable element of the ATE insurance premium of £5,189. The policy was a block-rated policy.

The Respondent produced a lengthy set of Points of Dispute. Many of the points were generic and repetitive, with numerous references to authorities and requests for further information. A challenge to the ATE insurance premium was also made, but this was included in a separate set of submissions. This document also included lengthy citation of authority, together with a paragraph about the public purse. The paragraph stated that as a matter of public importance, the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums.

The Respondent's submissions then suggested that at the outset Mr Harper's prospects of losing the case were very low and calculated what was described as a reasonable and proportionate premium to be £250. In the alternative, the Respondent put forward what it said was a comparable policy which had been obtained with a premium of between £1,900 and £2,003.20.

The costs were the subject of a provisional assessment by Deputy District Judge Topper and you've now had sight of the outcome of that assessment. As to reasonableness, Deputy District Judge Topper concluded that it was reasonable to incur the ATE premium. As to proportionality, however, he noted that a comparable premium approach had been adopted in satisfaction of achieving the overriding objective and proportionality. He reduced the premium to £2,003.20, adopting the comparable policy value put forward by the Respondent.

You are of the view that an application should be made for a review of the provisional assessment, the main point in issue being the recoverability of the ATE insurance premium. Write the body of an

email to Ms Lister advising why you believe there should be a review in this case.

(Total: 20 Marks)

Question 7: Professional Ethics

You work in the Costs Department for an SRA regulated firm, Browne and Smith LLP. You are working on a file where your firm are instructed by the Defendant, Trishners Ltd, in a claim brought by Hillary Manning.

On 10 July 2019, Ms Manning visited a client in a block of flats owned by Trishners. When leaving the flats, she tripped over a doorstep in the floor and fell heavily on her right side. She suffered no bony injury, but considerable soft tissue injuries to her right hand, arm and shoulder. On 13 November 2019, Ms Manning wrote a letter before claim to Trishners, understanding them to be the owner of the relevant premises. On 16 January 2020, Trishners admitted liability.

Trishners made several offers of settlement, including a Part 36 offer of £50,000 on 18 March 2020. Ms Manning accepted that offer late, on 12 April 2020, on the basis that Trishners would also pay her costs.

Detailed Assessment Proceedings were commenced and a Bill of Costs was prepared on behalf of Ms Manning by a self employed Costs Draftsman. The bill was certified by the solicitor who had conduct of the matter. You drafted points of dispute, which included a request for disclosure of the conditional fee agreement, a question over what other methods of funding were available and a point challenging the hourly rates on the basis that they were high.

Upon receipt of the replies, it has become evident that the hourly rate claimed was not the rate included within the conditional fee agreement, the rate claimed was in fact considerably higher. There was also no evidence that a higher rate had ever been agreed between Ms Manning and her solicitors. You are also now aware that Ms Manning had the benefit of Before the Event Insurance.

You are of the view that the hourly rate that has been certified is "unlawful", in the sense that it was more than the rate Ms Manning was obliged to pay her solicitors and therefore breaches the indemnity principle. You believe that this may be a case where the Court would consider making a Wasted Costs Order against the solicitors that had conduct of the matter and you need to prepare an advice to Trishners setting out what a Wasted Costs Order is and when the Court can make a Wasted Costs Order against a legal representative.

Prepare the body of a letter to Trishners Ltd advising on Wasted Costs Orders.

(Total: 20 Marks)

Question 8: Professional Ethics

You work for Truman & Raggett Costs Services, a large, reputable firm of costs professionals based in Liverpool. The firm predominately undertake work for receiving parties.

You have just qualified as a Costs Lawyer. One of the supervising Costs Lawyers has approached you to draft some training materials. She is aware that the area of ethics and professional standards is one which you have recently studied as part of your training course and considers that you are the most suitable person to prepare the materials.

The materials are for all fee earning staff at the firm and need to outline the reserved legal activities a Costs Lawyer can undertake and the principles of the CLSB Code of Conduct. You have been asked to have particular regard to the principles which apply when preparing bills of costs and during negotiations. She would also like you to explain why it may be that staff at the firm may not be able to act in accordance with instructions provided to them.

Prepare the body of the training materials as requested by the supervising Costs Lawyer.

(Total: 20 Marks)

Question 9: Legal Accounts

You are a Costs Lawyer and head the Costs and Accounts Department at Harrold Henderson LLP, a large high street firm in York. You work alongside Henrietta Tandy, who is the Compliance Officer for Finance and Administration.

Henrietta has asked you to assist with the drafting of a business proposal for the bank to consider in order for the firm to secure a loan to expand its client offering. The firm wishes to set up a Conveyancing Department. This means that the firm will need to recruit many new members of staff for the department and you need to satisfy the bank that all staff will have the required training to safeguard against risks.

You have been asked to produce a written piece of information on the risks and regulations of running a Conveyancing Department. Specifically, the checks the department will need to take to confirm the identity of clients and the source(s) of any funds the firm receives. Therefore, you will need to write about money laundering and the associated offences.

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

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER