



Candidate Number \_\_\_\_\_

## Unit 2 Examination Paper

20 September 2021

**Time allowed: 3 hours**

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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.

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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. Explain how a failure to file an Acknowledgment of Service or a Defence, within the time limits laid down in the Civil Procedure Rules, may result in the Claimant entering Judgment in Default.

(10 Marks)

2. Describe what is meant by Qualified One-way Costs Shifting and outline the circumstances where a Defendant may recover their costs from a losing Claimant.

(10 Marks)

3. Outline what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers must act at all times to ensure the client's interest is paramount

(10 Marks)

4. Explain the exceptions to the principle that a Costs Lawyer cannot handle client money.

(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, Tremble and Taylor LLP. You are contacted by a fee earner, Mary Contrary, who has requested help on the file of Havisham Ltd.

Havisham Ltd are the Defendant in proceedings, they are a small department store based in Whitby. They sell some children's clothes and shoes. They entered into a contract with Kids Kicking Shoes Ltd for the supply of £15,000 worth of children's shoes to be delivered to their warehouse in Whitby on the 6 May 2021. However, the shoes did not arrive until 5 June and, having inspected the shoes, Havisham Ltd was of the opinion that too many of the boy's pairs were of a poor standard. Havisham Ltd sought to reject the consignment on the same day. They contacted Kids Kicking Shoes Ltd to come and collect the shoes. The Managing Director of Kids Kicking Shoes Ltd, Henry Marvin, telephoned on 12 June, stating that they would not collect the shoes and that they wanted their invoice to be paid.

On 14 June, Havisham Ltd received an incorrect invoice for £15,500, which it refused to pay. Kids Kicking Shoes Ltd has since issued proceedings. Mary Contrary has filed a defence on behalf of Havisham Ltd, but she considers that the claim is weak and has advised Havisham Ltd to apply for a Summary Judgment.

Mary Contrary has approached you and asked for you to write a letter of advice to Havisham Ltd explaining what a Summary Judgment is, how a Judgment may be obtained and the possible outcomes of an application for Summary Judgment.

Write the body of a letter to Havisham Ltd providing advice on Summary Judgments.

(Total: 20 Marks)

## **Question 6: Personal Injury and Clinical Negligence Claims**

You work in the Costs department of Carpenter and Harris LLP which is a firm regulated by the Solicitors Regulatory Authority. The firm specialise in clinical negligence and catastrophic injury claims. Your colleague, Sarah Chileno, has requested your help on the file of Miss Cleo Morgan.

Miss Morgan successfully brought a claim against Dr Timothy Tarpan. The claim concerned the Defendant's negligent treatment and a misdiagnosis. The matter settled during negotiations for £20,000 and a Consent Order was sealed by Central London County Court on 15 January 2021. You drafted the Bill of Costs, which totalled £35,201.22. This included the recoverable element of the ATE insurance premium of £6,139. The policy was a block-rated policy.

Sarah Chileno has now received the Respondent's Points of Dispute. She has emailed you expressing concern, particularly in relation to point 5, and has asked for you to provide your preliminary views before you draft the Replies. You have had the chance to consider the points and are of the view that they are lengthy, that many of the points are generic and some of the points are repetitive.

Point 5 of the points raises a number of challenges to the insurance premium, those are:

- I. the premium does not comply with section 58(C) of the Courts and Legal Services Act 1990;
- II. the premium does not comply with the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013; and
- III. the premium is not reasonable and proportionate.

Write the body of a memo to Sarah Chileno that sets out your advice in how to respond to point 5 of the Respondent's Points of Dispute.

(Total: 20 Marks)

## **Question 7: Professional Ethics**

You work in the Costs department for an SRA regulated firm, Turner and Grey LLP. You have been asked to advise on the Standard Ways Ltd file. Standard Ways Ltd are clients of your firm and they are Defendants in proceedings.

On 7 September 2019, before proceedings were started, Standard Ways Ltd offered £5,000 in settlement. This offer was not accepted. Proceedings were issued on 31 March 2020 and the Claim Form quantified the claim at approximately £150,000. On 13 September 2020 Standard Ways Ltd made a Part 36 offer of £2,000. On 7 January 2021 the offer was increased to £4,000. On 27 January 2021 the Claimant accepted the £4,000 and thereby became entitled to his costs of the proceedings up to the date of serving notice of acceptance on the standard basis if not agreed.

The Claimant's solicitors started detailed assessment proceedings. The total sum claimed in the bill of costs was £27,029.63. The bill was certified by the solicitor who had conduct of the matter. The certificate as to accuracy read as follows:

*"I certify that this bill is both accurate and complete and... the costs claimed herein do not exceed the costs which the receiving party is required to pay me/my firm."*

You drafted points of dispute, which included a request for disclosure of the retainer, a point challenging the hourly rates and a point arguing that the costs were disproportionate because of the manner in which the claim had been conducted by the Claimant's solicitor.

When you received the replies, you discovered that the hourly rates claimed in the bill were not the rates included within the retainer and that there was no evidence that a higher rate had been agreed with the Claimant. You are of the view that there has been misconduct in the way in which the bill was certificated because the indemnity principle has been breached. You believe that the Court should be asked to make a Wasted Costs Order against the Solicitor with conduct of the matter.

Prepare the body of an advice to Standard Ways Ltd setting out what a Wasted Costs Order is and when the Court can make a Wasted Costs Order against a legal representative.

(Total: 20 Marks)

### **Question 8: Professional Ethics**

You are a Costs Lawyer working for an external costs firm, Expert Costings, in Brighton. Your firm is acting for Miss Lucy Sweeny who engaged your firm to look at what her previous solicitors had charged her in her personal injury claim.

An application was made for the delivery of a Bill of Costs. The court found that Miss Sweeny had a statutory right to challenge the charges through detailed assessment and that she could not exercise that right until a Final Statute Bill had been delivered to her. For this reason, the application was successful and an order was made for the delivery of the bill.

Costs of the application are to be paid by the Defendant and the assessment of those costs is listed for a 30 minute Summary Assessment Appointment. You had undertaken the bulk of the work in this case, but were assisted by Jenny Harper and Dominic Adams, who are Costs Draftsmen who work at your firm. The Defendant has told you that they will be arguing that a Costs Lawyer cannot delegate reserved legal activities such as the exercise of a right of audience or the conduct of litigation and that you cannot recover the cost of any of your colleagues' work. You now need to write to Miss Sweeny and advise on the Defendant's argument.

Write the body of a letter to Miss Sweeny setting out what an authorised person is, what a reserved legal activity is and whether, in your view, the costs of the work undertaken by Jenny Harper and Dominic Adams are recoverable.

(Total: 20 Marks)

### **Question 9: Legal Accounts**

You are a Costs Lawyer working in-house for a firm of solicitors in Blackpool, Aman Legal LLP. The Costs department works closely with the Accounts department and you have been asked to assist by putting together some guidance on Money Laundering for the firm's Compliance Officer For Finance and Administration (COFA), Mrs Nadine Wong.

The guidance needs to highlight why the firm must 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 guidance must emphasise that a client account should not be used as a banking facility for funds unrelated to any underlying transaction that the fee earner is carrying out.

The guidance also needs to cover the requirement of the firm to undertake proper due diligence before accepting any funds into a client account and why the firm should decline to act if they do not fully understand the transaction on which they are being asked to advise.

Prepare the body of the guidance that covers the risks associated with the use of client accounts.

(Total: 20 Marks)

**Total for Section B: 60 Marks**

**END OF PAPER**