



Candidate Number _____

Unit 3 Examination Paper

20 September 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. Distinguish, with reference to the form and content, between an interim invoice on account and an interim statute bill.

(10 Marks)

2. Explain what is meant by an entire contract and when a retainer may be terminated before an action has concluded.

(10 Marks)

3. Explain the distinction between assignment and novation and outline the relevance of these principles to the transfer of conditional fee agreements that were entered before 1 April 2013.

(10 Marks)

4. Discuss whether Third Party Funding should be recognised as an acceptable option for mainstream litigation.

(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: Costs Pleadings

You are a Costs Lawyer for an SRA regulated firm, Templeman Law. The firm specialises in commercial litigation. You have been asked to work on the file of Rollinsons Financial Services Ltd ('Rollinsons') and prepare an advice on the outcome of a hearing.

Rollinsons was a Defendant in proceedings brought by Mr Harper, who had sued the firm as being vicariously liable for alleged deceits and negligence of one of their employees, a Mr Villeroy. Mr Justice Blume found that none of the deceits in relation to the earlier schemes that Mr Villeroy had recommended to Mr Harper were made out, that claims of negligence in relation to both these schemes and the later scheme were statute barred, and that other claims in relation to the later scheme were barred because of his Findings of Fact on what was called the 'knowledge issue'.

A hearing for the consequential matters took place on 13 September 2021. At that hearing, there was no dispute that the Claimant should pay the Defendant's costs of the proceedings on the indemnity basis, to be the subject of detailed assessment if not agreed. It is this hearing which you are required to advise upon.

Prepare the body of a letter to Rollinsons advising on the consequence of the order made and the next steps.

(Total: 20 Marks)

Question 6: Costs Pleadings

You are a Costs Lawyer at an independent costs firm, Express Cost Services. You are based in Liverpool but undertake work all over the country. You have received instructions from Forest and Hunter LLP

who are acting on behalf of the Defendant in clinical negligence proceedings.

The Claimant has been successful in her claim for damages and the Defendant is therefore responsible for her costs. Forest and Hunter LLP believe that there is good reason to depart from the budgeted costs in two phases, the experts phase and ADR/Settlement phase. It is on this point that you have been asked to provide advice.

The Cost Management Order was made by DJ Mansfield and it does not record the assumptions applied by her. She reduced the experts phase by £22,000 from the figure claimed by the Claimant in her precedent H and you are content, from the attendance note on the file, that DJ Mansfield properly directed herself in assessing what figure fell within the range of reasonable and proportionate costs for each particular phase.

Having considered the Bill of Costs and Defendant's file of papers, you are of the view that the figures for the two phases are higher than might have been expected for the stage that the parties had reached within each phase.

You are required to write the body of an email to Forest and Hunter LLP setting out what the Court will consider when determining whether there is a good reason to depart and whether early settlement means there should be a reduction of the figures set out in the budget.

(Total: 20 Marks)

Question 7: Special Courts

You are a Costs Lawyer at a small SRA regulated firm, Lyons and Haversham LLP, in Maidstone. You have been working on the file of Aiguo Liu. The fee earner with conduct of the matter is Ronald Buch and he is writing a preliminary advice to Mr Liu. He would like to include some information on costs and has asked for your assistance with that part of the letter.

The file concerns a dispute between the Aiguo Liu, Thomas Saffron and Leonard Dahl, which arises out of their practice together as

accountants in an accountancy partnership. The partnership has existed for around 12 years. The dispute concerns the circumstances of Mr Dahl's departure from the partnership.

In summary, Mr Liu and Mr Saffron are claiming a sum in excess of £500,000 as damages, which are said to arise from misrepresentations made by Mr Dahl as to the state of his health and his intention to work following retirement from the partnership. Mr Liu and Mr Saffron contend that Mr Dahl requested retirement on the grounds of ill-health and said that he would not work again, save in a consultancy capacity for the partnership. Mr Dahl has stated that it was always his intention to set up business by himself, or he was at least contemplating that possibility.

The Partnership Deed contains an arbitration clause providing for disputes to be determined by an arbitrator appointed by the President of the Institute of Chartered Accountants for England and Wales. The clause provides that the Arbitration Act 1996 is to apply and that the decision of the arbitrator would be final and binding.

Prepare the body of an advice to Aiguo Liu. The advice must set out how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter may be referred to the Court and the rules on enforcement in an arbitration matter.

(Total: 20 Marks)

Question 8: Advanced Civil Procedure

You work as a Costs Lawyer for Tarrant and Marshall Solicitors, who are based in Maidstone. Mr Tarrant is a family lawyer at the firm, who specialises in divorce, property and finance. He has approached you and asked you to write to one of his clients, Mr Tom Little.

Tom met his wife, Cheryl, in England in 1999. They married in 2000. At the time, Cheryl was a businesswoman and Tom was an art student. Cheryl came from a very wealthy family. In 2006 Tom asked Cheryl for a divorce, but Cheryl refused. Between 2006 and 2019 the parties remained married and living together.

Tom issued divorce and financial proceedings in June 2020 and November 2020 respectively. In December 2020, Cheryl offered £300,000, which would cover Tom's then outstanding legal costs of £155,000 and give him capital of £145,000. Your firm were unable to obtain Tom's instructions, so did not respond to this offer. In May 2021 Cheryl increased her offer to £336,000, which would cover £236,000 towards his costs and £100,000 on top. In August 2021, four weeks before the Final Hearing, Tom sent Cheryl a counter-offer requesting the transfer of Cheryl's flat worth £400,000 and a lump sum of £527,000.

The Final Hearing is next week. Mr Tarrant believes that this case should have been relatively easy to settle and that there is a risk that the Court may find that the reason it has not was because of the way Tom had chosen to run his case. Mr Tarrant thinks that although Cheryl's first offer was light, had there been a sensible (or any) response to her offer, there would have been a quick resolution of this case. Mr Tarrant is concerned that Tom may be at risk of an Adverse Costs Order being made.

You are required to write the body of a letter to Tom Little setting out how costs in family cases are usually dealt with, how the costs in this type of case should be dealt with and what rules the Court should consider when making a Costs Order.

(Total: 20 Marks)

Question 9: Advanced Civil Procedure

You work for a costs firm, Civlo Ltd, located in Buckingham. You have received instructions from Mr Leon, a partner at Leon and Dennis LLP, in relation to his client Aaban Afridi.

An application for judicial review has been brought by Mr Afridi challenging the decision of Buckingham Town Council to revise market pitch fees at the market held in Buckingham town centre. The essence of the Mr Afridi's case is that the decision is unlawful because a fair process of consultation did not take place.

The Defendant submits that, in essence, there was no duty to consult over the changes in the fees before they were determined. Secondly, the duty was adequately discharged and, thirdly, if the duty was not adequately discharged, the Court should not grant relief in any event.

Mr Afridi is a local resident, not a market trader, raising an issue of local importance. He has some serious medical conditions, which make him heavily reliant on the Market. It is of great importance both to him and to others in the community. Mr Afridi is in receipt of Employment and Support Allowance benefits

Mr Leon is of the view that this may be a case where it is appropriate to apply for a Costs Capping Order and it is this aspect upon which he is seeking your assistance. He has asked that you provide an advice in relation to Costs Capping Orders in judicial review cases.

Write the body of an email to Mr Leon setting out the statutory tests for Costs Capping Orders in judicial review cases.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER