



Candidate Number _____

Unit 3 Examination Paper

11 August 2018

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 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 to do so by the Invigilator.

Section A

You must answer **ALL** of the questions in this section.

1. Explain how a law firm may be structured to ensure responsibilities can be divided among functional divisions, so that each employee can focus on certain types of work, whilst the firm retains a core part of their organisation that exerts key influence over those divisions.

(10 Marks)

2. Explain what a compliance officer is and outline their responsibilities for the management of functional areas of a firm regulated by the Solicitors Regulation Authority.

(10 Marks)

3. Explain how firms regulated by the Solicitors Regulation Authority may demonstrate they are taking a risk-based approach to compliance and managing their business.

(10 Marks)

4. Explain the legal considerations for a law firm when implementing strategies to manage individuals to enable them to achieve their goals whilst aligning these with the organisation's objectives.

(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: Case and costs management

You are a costs lawyer working for a firm of solicitors, Damson and Berry LLP, located in Oswestry. Your firm act on behalf of the Defendants, former directors of Street Bank, in a group litigation matter. There are 3,400 claimants. Mr Blunt is the solicitor that has conducted the matter and he has approached you to give advice in relation to an application to amend a costs budget.

The Claimants originally sought an order for costs budgeting and costs were budgeted by agreement. Both budgets were agreed without any budget phases being set by the court. The Claimants' budget was agreed at a total of £16,609,030.53. The total of the Defendants' budget is £18,140,266.24. The trial is underway. The trial commenced on the 22 July 2018. Oral submissions started on the 2 August 2018. The trial is due to conclude on the 12 September 2018.

Mr Blunt has highlighted the following developments in the litigation which he believes would justify an amendment to the Defendant's budget:

1. an extension to the trial timetable;
2. the Defendants' application for specific disclosure which led to the provision of 784 additional documents by the Claimants; and
3. service by the Claimants' of an additional expert report.

You are required to write the body of a memo to Mr Blunt setting out whether an application should be made to amend the budget or if it is a matter best left to assessment. Your advice should cover whether you consider the case developments are significant enough to justify a departure from the budget.

(20 Marks)

Question 6: Civil procedures and protocols to professional negligence and clinical negligence claims

You are a costs lawyer who heads the costs department at, Harney Nicks LLP, a large firm in Birmingham. You have been asked to advise on the merits of an appeal following the provisional assessment and oral hearing in a clinical negligence matter. Your firm act on behalf of Miss Lenton who brought proceedings against Burbridge NHS Trust.

Miss Lenton suffered a miscarriage in February 2015. In April 2015 she underwent a scan at Burbridge Hospital and was told there was no retained product. A routine scan on 20 July 2015 revealed some retained product and on 21 July 2015 she had an operation to remove this. Due to the delay she suffered continuous bleeding and prolonged pain. Her depressive symptoms were also exacerbated.

On 13 July 2016 Miss Lenton instructed solicitors and on 15 July 2016 she entered into a Conditional Fee Agreement. On 22 August 2016 Harney Nicks LLP wrote to the Trust notifying them of the potential claim and requesting their client's medical notes. On 28 August 2016 (before receipt of the medical notes) Miss Lenton took out an ATE insurance policy with PATCH. The total premium including insurance premium tax (IPT) was £6,042. £5,088 of the premium (including IPT) was stated to be recoverable from Miss Lenton's opponent whilst the remainder was to be paid out of her damages. On 2 July 2017 the Trust made a Part 36 offer in the sum of £2,500 which was accepted on 8 July 2017. Miss Lenton had still not received any expert medical advice.

Miss Lenton's bill of costs was served on 24 September 2017 totalling £15,795, including disbursements and VAT, of which £5,088 was the recoverable element of the ATE insurance premium. The bill was provisionally assessed on 1 January 2018 with the premium allowed in full. Burbridge NHS Trust then requested an oral hearing solely in respect of the premium. On 17 May 2018 the court found, in favour of the Trust, that it was unreasonable for the policy to have been taken out when it was, before Miss Lenton's solicitors had seen her

medical records to confirm the facts, and therefore before there could be any assessment of risk.

On 15 June 2018 Miss Lenton was given permission to appeal. Today is the 17 June 2018 and you are tasked with writing a letter of advice on the merits of the appeal, namely:

1. does the recoverability of ATE premiums engage the CPR;
2. does the new test of proportionality apply to clinical negligence premiums; and
3. should the timing of acquiring the policy affect its recoverability.

Prepare the body of a letter of advice advising of the merits of appeal in this particular case.

(20 Marks)

Question 7: Civil Procedure Rules to land and family law matters heard in the civil courts

You work for a city Law firm, Hentons Law. Tom Hampson, a Partner in the firm, has approached you for advice in relation to a case he has conducted in which he is acting for Mr and Mrs Thomas. The matter concerns a child called Sally.

Sally is a 7 year old girl whose mother died of cancer a year ago. The issue in the case is with whom Sally should live: her father or Mr and Mrs Thomas. Mr and Mrs Thomas were family friends of Sally's mother. Proceedings commenced prior to the mother's death as the mother had made it clear that her wish was for Mr and Mrs Thomas to care for Sally. In the first instance proceedings it was decided that, upon the mother's death, Sally should live with her father.

Mr and Mrs Thomas have appealed that decision and the appeal has been allowed. They are arguing that when the original decision was made the judge presiding had erred in applying a 'presumption' of natural parent care and had attached too great a significance to the biological ties of Sally to her father. Mr and Mrs Thomas have been advised that the court are required to balance Sally's right to be raised within her own family, the benefit to Sally of continuity of care (she had been living with Mr and Mrs Thomas for around two years), and Sally's ability to grieve properly and healthily from the loss of her mother. The psychological evidence is that Sally's ability to grieve will be assisted by her living with Mr and Mrs Thomas. A re hearing has been directed.

Tom Hampson believes Sally's father should contribute to Mr and Mrs Thomas' costs because in the last year the father has made unsuccessful interlocutory applications (or has unsuccessfully opposed interlocutory applications) on at least four occasions; the three most notable are:

1. The father opposed Sally attending a bereavement day at a local bereavement charity because it would interfere with his contact schedule.
2. The father opposed Mr and Mrs Thomas' application for Sally to make a trip to Alaska for her maternal cousin's wedding. Six informal requests for his permission were made over a period of time before he stated his formal opposition, four of those requests were ignored. The father opposed to the trip because of the threat of military action by terrorists both in the UK and the United States, the risk that Sally would not be returned and that there had been no written confirmation of the wedding. The father did not attend the hearing.
3. The father made two unsuccessful applications to substitute the expert and applications for disclosure. He did not attend the hearing listed to deal with the requests and his application was not made in the proper form.

Write the body of a memo setting out how costs in family cases are usually dealt with and how the costs in this particular case are likely to be dealt with.

(20 Marks)

Question 8: Civil Procedure Rules in relation to a contentious probate and judicial review

You work for a costs firm, Costs Heroes Ltd, located in Milton Keynes. You have received instructions from Mr Skiller of Skiller and Harper LLP in relation to his client Asif Moazzam.

In February 2017 Mr Moazzam was arrested by West Midlands Counter Terrorism Command and charged with seven offences under terrorism legislation. He was remanded in prison. Mr Moazzam denied that he was ever involved in terrorism but he accepted that he had been in Syria and had been involved, between November 2015 and April 2016, in providing basic fitness training to "some individuals who might later become involved in resistance to a military onslaught". The Crown Prosecution Service ("CPS") disclosed material which fleshed out the details of the allegations against Mr Moazzam. On 14 March 2017 HM Treasury froze the funds and economic resources of Mr Moazzam for the same reasons given in the criminal allegations.

Six months later, on 1 October 2017, the CPS stated that it would no longer proceed with the prosecution. It offered no evidence in relation to the charges brought and Mr Moazzam was formally acquitted. An Assistant Chief Constable of the West Midlands police told the press that Mr Moazzam was "innocent". Mr Moazzam was released from prison where he had been since his arrest.

On 2 October 2017, Mr Skiller wrote to HM Treasury stating that the freezing of Mr Moazzam's funds should cease immediately and that the decision should be quashed because it had been made unlawfully. On 14 October 2017 the freezing of the funds was revoked but the initial decision was not quashed.

On 17 December 2017 Mr Moazzam's bank wrote to him and indicated that it intended to close his bank account because Mr Moazzam fell outside the "risk appetite" of the bank. Subsequently other banks have refused to continue to provide him banking facilities.

Mr Moazzam now wishes to apply for a protective costs order in relation to his application for judicial review in respect of the decision. The issue before the court will be whether HM Treasury had reasonable grounds for believing, at the time, Mr Moazzam was or had been involved in terrorist activity and it was necessary to impose financial restrictions on him.

Write the body of a memo to Mr Skiller setting out the statutory tests for costs capping orders in judicial review cases.

(20 Marks)

Question 9: Explain the law and procedure relating to injunctions in litigation claims

You work for a firm of solicitors, Hathrop and Skiller, located in St Albans. You have been approached by Mr Marc Hamilton, an Assistant Solicitor at the firm, for your input into a matter upon which he has just received initial instructions.

Mr Hamilton has been instructed by Hatfield Borough Council in relation to an application they wish to make for an injunction in respect of 22 Canary Road, Hatfield, Hertfordshire ("the site"). The site lies on the western bank of the river and within the green belt. Over the years the site and adjacent sites have been used for leisure purposes. Planning law enables small and unobtrusive buildings to be erected but moveable structures, such as caravans, for permanent residential use are not permissible.

The council's officers have been monitoring the site for some time because of suspicions that it may be developed by gypsies and travellers. In recent months this has involved regular visits and the taking of photographs as to activity on the site.

The council now wish to apply for an injunction, pursuant to town and country planning legislation, prohibiting:

1. causing or permitting any caravans, mobile homes, or other residential accommodation or structures to be stationed on the site; and
2. occupying or causing or permitting the occupation of caravans, mobile homes or other residential accommodation that are stationed on the site.

As part of the initial advice to the client Mr Hamilton wishes to advise on how costs are usually dealt with on applications for interlocutory injunctions. Write the body of an email advising Hatfield Borough Council whether costs are likely to be ordered in favour of the claimant in the event of a successful application or if the costs should be reserved.

(20 Marks)

Total for Section B: 60 Marks

END OF PAPER