



Candidate Number _____

Unit 3 Examination Paper

1 August 2020

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. Critically discuss Mintzberg's ways of structuring an organisation.

(10 Marks)

2. Outline the legislative framework you need to consider if you were to make an application to become an SRA licensed entity.

(10 Marks)

3. Explain how the SRA Handbook encourages firms to monitor and manage risk.

(10 Marks)

4. Explain the risks faced by firms when implementing performance management strategies.

(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 work in-house at Honey and Muster LLP. Your firm is acting for the claimant, Joanne Smith, in respect of an action against the police. Mr Muster, a senior partner of the firm, has conduct of the matter.

Joanne had brought claims for damages under the Data Protection Act 1998 (DPA) and the Human Rights Act 1998 (HRA), for misfeasance in public office, the misuse of private information and psychological harm. All claims were funded by a CFA dated 1 January 2018 and proceedings were issued on 23 March 2018.

The defendant admitted liability under the DPA and the HRA. The claims for damages for misfeasance and misuse of private information went to trial. The claimant lost on the former but won on the latter. The trial judge rejected the claimant's claim for personal injury damages arising out of the defendant's conduct.

Ms Smith failed to beat the defendant's Part 36 offer. The issue has now arisen as to whether Ms Smith is entitled to QOCS protection in relation to her costs liability.

Mr Muster has approached you to write a letter to Ms Smith setting out what cases QOCS applies to, when costs protection under the rules may be lost and whether, in your view, Ms Smith has QOCS protection in respect of her claim.

Write the body of a letter to Ms Smith advising when a claimant is entitled to the protection of QOCS and in what situation that protection may be lost.

(Total: 20 Marks)

Question 6: Civil Procedures and Protocols to Professional Negligence and Clinical Negligence Claims

You work in house for a defendant firm, Donnelly and Donoghue LLP, specialising in medical negligence matters. One of the partners, Deborah Donnelly, acted for Shrewsbury Eye Hospital NHS Foundation Trust in a claim that was brought by Mr Peter Parker. Mr Parker had instructed Honey and Muster LLP and the claim was funded under a CFA and by way of an After the Event (ATE) policy.

Mr Parker alleged that the defendant failed to refer him for imaging and had the defendant done so a melanoma would have been found twelve months earlier than was the case.

Mr Parker first instructed his solicitors on 7 August 2017 and a letter of claim was sent to the defendant on 20 May 2018. In a letter of response dated 12 November 2018 the defendant's insurer admitted breach of duty but denied causation. Proceedings were issued on 10 December 2018.

After lengthy negotiations, the claim settled and a consent order was sealed by Shrewsbury County Court on 14 November 2019 whereby judgment was entered for the claimant in the sum of £6,500 with the defendant to pay the claimant's costs of the claim on the standard basis.

The claimant's solicitors have now served their bill of costs in the sum of £69,320.85. This includes an ATE insurance premium of £29,323.57.

Deborah Donnelly now seeks your advice on the recoverability of the premium, specifically in relation to the experts.

Write the body of a memo to Deborah Donnelly advising on the recoverability of the ATE premium in this matter and advise on the possibility of the premium being reduced on assessment.

(Total: 20 Marks)

Question 7: Civil Procedure Rules to Land and Family Law Matters Heard in the Civil Courts

You work as a costs lawyer for Sutton Solicitors. Mr Sutton is an experienced family lawyer that acts on behalf of high net worth clients. Mr Sutton has approached you for your assistance in relation to one of his clients, Mrs Patricia Dongle.

After 22 years, Mr and Mrs Dongle's marriage came to an end in 2018. There were two children of the marriage and during the course of their partnership the couple had built up vast wealth. At the time of separation they owned a plane, a helicopter and a 115m super yacht called Doris.

The divorce has been bitter. Mr Dongle has fought hard to avoid having to share any of the family wealth with Mrs Dongle. The High Court has already made findings that Mr Dongle had hidden assets in a Bermuda Trust with the intention of evading his legal obligations to Mrs Dongle and Mr Dongle even went so far as to invent stories that the couple had already divorced in Russia, producing forged documents within proceedings.

The final hearing in respect of the couple's finances is now listed to take place on 20 August 2020. Mrs Dongle is seeking in excess of £370m plus the art collection worth approximately £97m. This is an amount equivalent to 39.5% of the couple's wealth. An offer for settlement in these terms was made by Mrs Dongle on 20 March 2019.

You are required to write the body of an email to Mr Sutton 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 8: Civil Procedure Rules in Relation to a Contentious Probate and Judicial Review

You work as an in-house costs lawyer for an SRA regulated firm, Hornets Ltd, located in Hammersmith. The firm specialises in clinical negligence, private client and commercial litigation. Simon Spratt, a solicitor within the firm, has asked for your advice in relation to his client Mr Billy Britton.

Mr Britton's mother, Freda Britton, died in 2017. Mrs Britton was 92 when she died. She had signed a Will three years earlier which bequeathed Billy an equal share of £600,000 along with his two sisters. However, his sisters, Penny Harper and Catherine Chiltern were arguing that they were meant to receive more inheritance than Billy. The sisters consider that an earlier executed Will, where they would each receive 40% of the estate and their brother the remaining 20% should be accepted as their mother's final wishes instead.

Billy's sisters are both claiming that their mother was too weak to understand what she was signing in 2014 and argue that the Will that she had signed in 2013 should be treated as her final wishes. They are claiming that Freda had suffered a fall five days before signing the Will so nobody can be completely satisfied that she knew and approved the 2014 Will. They are also arguing that the Will was not properly witnessed and there had been inadequate family discussions before or after the 2014 Will was signed.

Billy insists that following the death of his father he had carried out the express instructions of his father's Will and worked collaboratively with his mother to ensure that her wishes were fulfilled.

A caveat has been issued by the Probate Registry and the Executors of the estate of Mrs Britton have applied to the court under the CPR Part 7 procedure to prove the will in solemn form.

Write the body of a memo to Simon Spratt setting out the rules on costs in contentious probate matters with specific consideration of the general rule under the CPR.

(Total: 20 Marks)

Question 9: Explain the Law and Procedure Relating to Injunctions in Litigation Claims

You work for an SRA regulated firm, Pear and Peach LLP, located in Derbyshire. Mr Pear is instructed by Mr Bernard Botch who has suffered loss and damage following a series of postings on a social media

platform, My Book. The postings were made over a number of months and started 18 months ago.

When instructing previous solicitors, Harper and Lee LLP, Mr Botch had unsuccessfully attempted to obtain an injunction in libel. That application had been made without notice. The matter has now been listed for a hearing of an on-notice application. My Book has been appropriately served and it is expected the company will be represented at the hearing.

Very recently Mr Botch indicated that he did not want to pursue the application because he was concerned about the costs. Mr Pear has worked very hard to obtain the consent of My Book to the granting of an interim injunction within proceedings on the balance of convenience. Mr Pear has advised his client that the costs should usually be reserved until the trial of the substantive issue. Mr Pear has now asked for your assistance with writing to the client to set out what it means for costs to be reserved.

Write the body of a letter of advice to Mr Botch setting out what it means for an injunction to be granted on the balance of convenience and the way costs will be determined in such a case. Your advice should detail how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in this instance.

(Total: 20 Marks)

Total for Section B: 60 Marks

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