



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

## Unit 3 Examination Paper

22 June 2018

**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 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.

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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. Law firms tend to operate within a matrix, as diversified organisations, where each department is controlled by individual partners. Discuss alternative ways to structure a law firm that may lead to innovation.

(10 Marks)

2. Explain the steps you would need to take in order to get the relevant license to set up a regulated entity.

(10 Marks)

3. Discuss how the SRA requirements to manage and supervise the business may be met by implementing a risk management policy.

(10 Marks)

4. Explain what claims may be brought against a costs firm where the firm have terminated the employment of one of their employees.

(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 for a firm of solicitors, Hathrop and Skiller, located in Oswestry. You are dealing with the detailed assessment of a claim for damages and losses incurred as a result of a fatal accident which occurred on the 26 December 2013. The matter was ultimately compromised at a Joint Settlement Meeting and a final order was made on 3 April 2017 which included authority for costs to be assessed. Miss Green is the solicitor that has conduct of the matter.

The bill of costs in the matter was drafted by a former colleague of yours and it takes into account a costs management order dated 19 July 2016.

You have perused the file and have noted that you are seeking an upward departure from the budget in two phases and in the remaining phases you are seeking less in the bill of costs than was allowed for in the costs management order.

The paying party has indicated that at detailed assessment they will be seeking that if the Master reduces the hourly rates in relation to the incurred costs that s/he also applies the same rates to the budgeted costs. The paying party contends that this should be done by the Master reviewing the estimated hours in the agreed budget and applying the assessed hourly rates to retrospectively arrive at a revised (reduced) figure for each phase.

Write the body of a memo of advice to Miss Green. Set out the hurdles you must overcome in order to achieve a departure from the costs management order in respect of all phases of the budget and the merits of the paying party's position in relation to hourly rates.

(20 Marks)

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

You are a costs lawyer who heads the costs and accounts department at Sidney Weaver LLP, a large high street firm in Saint Albans. You are dealing with the detailed assessment of costs of a successful claim brought by your lay client, Mrs Harriet Tank, against Dr Sydney Carlisle. The claim concerned the defendant's negligent treatment of ovarian endometrioma which was misdiagnosed as a simple cyst. The matter settled during negotiations for £200,000 and a consent order was sealed by Saint Albans County Court on 22 October 2017.

The chronology below has been prepared by your trainee to assist:

- 20.07.16: Mrs Tank first instructed Sidney Weaver LLP
- 17.01.17: Sidney Weaver LLP made a part 36 offer of £230,000
- 21.01.17: Sidney Weaver LLP's offer was rejected
- 23.01.17: Sidney Weaver LLP served proceedings on the defendant
- 10.05.17: Defendant made a part 36 offer of £130,000
- 05.07.17: Agreement reached
- 18.11.17: Sidney Weaver LLP served bill of costs (£78, 250.22). Item 52 of the bill is an ATE premium of £10,000 plus IPT.

Today is 31 March 2018 and you have received the paying party's points of dispute. Point 3 of the points challenges the insurance premium on the following grounds:

1. it does not comply with section 58(C) of the Courts and Legal Services Act 1990;
2. it does not comply with the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013;
3. the premium is not reasonable and proportionate; and
4. the premium should be considered with base costs when considering proportionality.

Write the **body** of a memo to your solicitor colleague that has conduct of the matter that deals with your advice in how to respond to point 3 of the defendant's points of dispute.

(20 Marks)

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

You work for a firm of solicitors, Maynard, Davidson and Grundy LLP, located in West Yorkshire. You have received a memo from John Irvine, an assistant solicitor, who represents Gordon Browne in connection to his divorce and financial proceedings. As part of the financial settlement with his wife, imposed by the Court following a contested final hearing on 30 May 2018, the wife was awarded a lump sum from the sale of the matrimonial home. The order provided that Mr Browne retain the property in Spain and an investment property in the UK. The wife is also to receive 79% of Mr Browne's pensions, periodical payments on a joint lives basis and 25% of Mr Browne's annual bonus also on a joint lives basis.

Mr Browne wishes to appeal the order made on the basis that there should have been a cap on the settlement and that the judge did not intend to make an order requiring a continuing share of the bonus where there was a continuing maintenance provision. Counsel has expressed a view that Mr Browne is likely to be successful because the judge had erred in failing to impose a maximum reasonable maintenance entitlement.

Mr Browne's costs are considerable and he wishes to apply for a costs order against his wife should his appeal be successful. During proceedings the parties elected to embark upon mediation in order to settle the issue of the husband's bonus. Mr Browne agreed to meet the costs of mediation in the first instance. Mediation did not take place because the parties could not agree on a suitable mediator. The judge has found that the wife's approach to mediation was unreasonable; this included her insistence on a top price mediator and insisting that her lawyers were present, which was neither necessary nor reasonable.

John Irvine wants you to advise on the costs element of the matter. Write the body of a memo setting out how costs in family cases are usually dealt with and how the costs in this type of 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 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 the claimants. The claimants are, rather unusually, funding the matter through crowdfunding. When crowdfunding, litigants establish an online presence and get donations from supporters to their case. Donation-based crowdfunding not only enables litigants to raise funds but also to gain community support for their case. The claimants are using an established crowdfunding website, Justicesurfing.com, and once they hit their fundraising target funds are transferred directly to the firm's client account.

The case involves a group of claimants including a high profile Professor, Mr Jeremy Toddler, other senior academics and a team of doctors. The claimants are seeking a judicial review of the plan of the Secretary of State for Health and Social Care to introduce Corporate Care Organisations. Corporate Care Organisations are commercial non-NHS bodies designed to run health and social services. It is proposed that the Corporate Care Organisations would be governed by company and contract law and can therefore be given full responsibility for NHS and adult social services.

The claimants' argument is that the introduction of these organisations could lead to most of a local area's NHS services being provided for under a single budget run by one organisation. They feel that this may then allow for greater privatisation of the NHS. It is the claimants' case that legislation is required, allowing scrutiny of the proposals, before the policy is implemented and any changes to regulations are made.

The claimants have now hit their funding target and are ready to make their application for permission to bring a judicial review challenging the lawfulness of the government's policy to create Corporate Care Organisations. They also wish to apply for a costs capping order and it is this aspect which Mr Hampson is calling upon your expertise.

Write the body of a memo to Mr Hampson 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 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 Holders English Health Metalcraft Ltd. Holders English Health Metalcraft Ltd is the defendant in proceedings which the claimant brought for passing off.

The claimant has supplied hospitals and NHS trusts with metal furniture and other items for a considerable number of years under the name Health Metalcraft. The total sales of Health Metalcraft are approximately £16 million. Mr Skiller's client is a manufacturer of commercial catering equipment and they have incorporated a subsidiary under the name Holders English Health Metalcraft Ltd with the intention of entering the hospital market. Holders English Health Metalcraft Ltd have also registered two domain names using the name EHM.

In January 2018, the claimant sent a letter of claim alleging passing off and seeking to prevent the use of the company name and the domain names. Subsequently, a claim form was issued and the claimant has also applied for interim relief.

Holders English Health Metalcraft Ltd have agreed to change the name of the company and the domain names. They have instructed Mr Skiller not to put in evidence on the application for interim relief or to serve a defence but they have

instructed him to indicate, in correspondence, that they will say that the words "Hospital Metalcraft" were merely descriptive. Holders English Health Metalcraft Ltd have instructed that they will agree to give undertakings at the hearing so the only issue outstanding is the costs of the application.

Write the body of an email advising Mr Skiller whether costs are likely to be ordered in favour of the claimant in any event or if the costs should be reserved.

(20 Marks)

**Total for Section B: 60 Marks**

**END OF PAPER**