



Candidate Number _____

Unit 3 Examination Paper

15 June 2019

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 bottom 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 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. Describe Handy's ways of structuring an organisation.

(10 Marks)

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

(10 Marks)

3. Critically discuss how the SRA Handbook encourages leaders to monitor and manage risk.

(10 Marks)

4. Explain the legal considerations for a firm 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 are a costs lawyer working for a firm of solicitors located in Bradford, Harrisons LLP. Your firm is acting on behalf of the claimants in an unusual claim arising out of an incident at a hotel and spa when a violent criminal gained access to two hotel rooms and attacked your clients causing very serious injuries. Mr Cavendish is the solicitor that has conduct of the matter and he has approached you to give advice in relation to the costs budget.

There has been a direction for a trial on liability only. At a CCMC, on 1 January 2019, Master Truman approved the parties' budgets for that trial. The claimants' budgets was approved in the total sum of £922,195. Mr Cavendish was expecting somewhere between 1,000 and 1,500 documents to be disclosed, which he expected would fill twenty to thirty lever arch files. This was not included in the assumptions of the budget. However, they have actually received 3,250 documents filling fifty-five lever arch files. The scale of disclosure is double what was expected. In the approved budget the phase for disclosure was approved at £52,724.

Following conversations with Mr Cavendish you believe that the actual spend on disclosure is more likely to be in the region of £100,000. You believe most of the increase will be in solicitors' hours but you also believe that the figures allowed for disbursements, counsel and experts are also too low. The question now is whether you consider an application should now be made to amend the budget or if it is a matter best left to assessment.

You are required to write the body of a memo to Mr Cavendish 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 and whether the court will approve specific hours and disbursements.

(20 Marks)

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

You are a costs lawyer working for a costs drafting firm in Bolton. You have been approached by a solicitor, Harry Hinton, for your advice on the recoverability of an ATE premium.

Mr Hinton's firm represented a claimant in a claim against an NHS Trust. On 26 November 2017 the claimant suffered a fractured ankle. He was admitted to the King's Medical Centre in Bradford and discharged on 30 November 2017. On 5

December 2017 he returned to hospital in severe pain and was advised to elevate his leg. On 15 December 2017 he suffered further severe pain and shortness of breath. On re-attending the hospital he was diagnosed with a pulmonary embolism. As the blood clot had moved from his calf to his lung he also suffered a chest infection and pneumonia. He remained an in-patient until 26 December 2017. He suffered breathlessness well into 2018 and suffered from discomfort, worry and stress.

In January 2019 the claimant instructed Mr Hinton, entered a CFA and immediately took out ATE insurance. The total premium was £6,127. Under the terms of the ATE policy the claimant has no personal liability to pay the premium. If the claim succeeded the expectation was that it would be paid by the unsuccessful defendant. If the claim had failed, or not all the premium was recovered from the defendant, the insurers would bear the loss. The claim settled for £11,500 in February 2019 by the claimant accepting an offer of compensation before any proceedings were issued and before any expert report was commissioned.

You are required to write the body of an email to Mr Hinton setting out whether or not the premium of £6,127 is recoverable and what challenges may be made as to the recoverability, proportionality and reasonableness of the premium.

(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 Dutton Solicitors. Mr Dutton is a family lawyer and he has approached you in relation to one of his clients, Mr Tony Barrett. Mr Barrett separated from his wife 7 years ago and at that time the firm dealt with proceedings in relation to the children of the family and in relation to his divorce from his wife. When the finances were dealt with, a periodical payments order was made and Mr Barrett had complied with this order and had been paying his former wife £1,500.00 a month since then.

12 months ago Mr Barrett contacted Mr Dutton because his financial circumstances had changed and he could no longer afford to make payments at that level. Mr Dutton applied to vary the periodical payments order on behalf of his client. The periodical payments order was varied and the sum was reduced to £900.00 per month.

At the hearing, Mr Barrett's ex-wife sought an order that the husband should pay her costs in the sum of £140,000. The application was rejected by the Court on the basis the costs were 'not properly proportionate to the issues being investigated' but ordered the husband to pay £20,000 towards the wife's costs on the basis that the husband had failed to explain his financial circumstances adequately until the final hearing and that the position set out in the husband's Form E gave 'a deliberately misleading impression'.

Mr Barrett wishes to appeal the judgment. He has been granted permission to do so. Mr Dutton is seeking you advise as to whether or not the appeal may be based on the fact that the judge failed to adequately consider the relevant rules

relating to costs and that his reasoning on establishing the basis for his assessment of costs was inadequate.

You are required to write the body of an email to Mr Dutton 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 have considered when making the order.

(20 Marks)

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

You are a costs lawyer working for a firm of solicitors located in Central London, Tylers LLP. Your firm represents Mr Hargreaves in proceedings against Foodelivery, a hybrid marketplace for online food delivery.

Mr Hargreaves' claim form seeks a declaration that the defendant was required under the Value Added Tax Regulations 1995 to provide him with a VAT invoice in relation to the supply of food delivery services he benefitted from on 15 March 2017. He ordered food and delivery through the defendant's online app for the benefit of his business. The value of the delivery service said to have been supplied was £6.34 and the amount of VAT that would be payable was £1.06. Mr Hargreaves did not contend that the case was about his ability to recover that amount as input tax, but rather raised issues of principle.

The defendant denies that it provided delivery services and is arguing that it merely acted as an intermediary between the user, the third-party food outlet and delivery drivers so they are the only people from whom the claimant could be entitled to receive a VAT invoice, and that whether one would be provided would depend on whether they were registered for VAT.

Mr Hargreaves wishes to apply for a protective costs order in proceedings against the defendant. He has instructed your firm to seek an order that, in the event of the claim failing in part or whole, the amount of any order for costs to be paid by him should be limited to £20,000. Mr Hargreaves contends that the principle that arises is one of great public importance because of the substantial amount of VAT that would be payable to HMRC if it were to be established that the defendant was liable to account for VAT when users of its app ordered food to be delivered, and to maintain public trust and confidence in the fair administration of VAT. Mr Hargreaves' description of the public interest pins on the mischaracterisation of the relevant relationship between the defendant, the third parties and the user of the service.

Write the body of a letter of advice to Mr Hargreaves setting out the statutory tests for costs capping orders in judicial review cases and whether or not you believe he will be successful in obtaining the order he wants.

(20 Marks)

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

You work for a firm of solicitors, Baron and Earl LLP, located in Berkshire. Mr Baron has been instructed by Mr Henry Duval who is seeking advice in relation to a number of posts that have been made on a social networking site, Chirper Ltd. The posts started approximately 12 months ago and there have been a substantial number of them.

Mr Duval has suffered damage to his reputation as a result of being defamed on Chirper Ltd and wishes to seek redress. Mr Duval has contacted Chirper Ltd numerous times about the posts, seeking their removal, but his correspondence has gone unanswered. An application has been made, on notice, to obtain an injunction in libel. The matter has been listed for a hearing. Chirper Ltd have been appropriately served and it is expected the company will be present and represented at the hearing.

Over the past few days, Mr Duval has telephoned the office and left a message. He now says he does not want to pursue the application because he is concerned about the costs.

Mr Baron has sought instructions from Mr Duval. He has left a voicemail for Mr Duval asking if he would agree to Mr Baron attempting to obtain the consent of Chirper Ltd to the granting of an interim injunction within proceedings on the balance of convenience. Mr Baron would like to send a follow up letter of advice and is seeking your assistance with drafting the same.

Write the body of an email advising Mr Baron on 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 if the injunction is made on the balance of convenience.

(20 Marks)

Total for Section B: 60 Marks

END OF PAPER