



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

## Unit 3 Examination Paper

12 June 2021

**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 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.

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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. Identify and discuss the formalities that must be complied with when an individual or organisation engages with a solicitor to provide legal services.

(10 Marks)

2. Discuss how the law in relation to Solicitors' liens has evolved, if not changed considerably, over the past decade.

(10 Marks)

3. Explain why, since the abolition of the recovery of success fees, there has been debate regarding conditional fee agreements entered before 1 April 2013.

(10 Marks)

4. Explain how the relaxation of common law rules has led to the growth of the litigation funding market in England and Wales.

(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 work as an in-house Costs Lawyer for an SRA regulated firm, Butlers Law, located in Bristol. The firm specialises in clinical negligence, private client and commercial litigation. You have been asked to work on the file of Mrs Tremors.

Mrs Tremors had undergone a caesarean section at a hospital operated by the Defendant, North Bristol NHS Trust, in March 2017. Complications arose. In due course Mrs Tremors instructed your firm and issued proceedings against the Defendant. At all stages the claim for damages was expressly limited in value to £50,000. Liability was disputed.

There was a Costs Management Conference before HHJ Thompson on 19 September 2019. Amongst other things the parties were, by the Judge's Order, given permission to rely upon their updated costs budgets as presented and modified at the hearing. The total, including both incurred costs and estimated future costs, being put forward on behalf of Mrs Tremors for time costs and disbursements came to £167,000. The Judge recorded no comment on the figure relating to incurred costs, which amounted to some £108,000 of the £167,000. No appeal was sought to be made against the Judge's Order.

Shortly before the trial fixed for October 2020 the case was settled. The Defendant agreed to pay the Respondent £20,000, together with costs on the standard basis.

You have now prepared a bill of costs of £147,000 and are about to commence detailed assessment proceedings. You require approval of the bill from Mrs Tremors and provide advice on the next steps in the detailed assessment proceedings and what she can expect to happen up to, and including, the Detailed Assessment Hearing.

Prepare the body of a letter to Mrs Tremors enclosing the bill of costs and setting out the next steps in proceedings.

(Total: 20 Marks)

### **Question 6: Costs Pleadings**

You are a Costs Lawyer at a busy SRA regulated firm, Dominos and Denton LLP, in Canterbury. You have been working on the file of Debbie Maryland. The fee earner with conduct of the matter is Amrit Singh. Debbie Maryland is the Claimant in a personal injury matter. Her claim was issued in the County Court, valued at approximately £120,000. You drafted the budget on the matter, which was filed and served in accordance with the deadline under the Civil Procedure Rules.

After service and filing of the budget, Amrit received medical expert evidence in the case. Initially the case appeared to concern a probable mild traumatic brain injury, but the evidence now shows that Debbie had a neuropsychiatric condition, which caused her to become seriously disabled needing assistance from the State in her day to day care. This meant that the value of the claim would need to be increased to somewhere in the region of £2.5m.

The evidence was received less than a month after the budget had been filed and just before the budgeting hearing. A revised schedule of loss was pleaded, but it was not feasible to seek to revise the budget at the hearing because the impact of the new medical evidence, other than on value, was not clear at that time. At the hearing directions were made, budgets approved, and the case transferred to the High Court.

You have now been asked for your advice on the matter. Amrit has instructed that the case has turned out to be more complex than previously anticipated. In the original budget assumptions, you had indicated much of the disclosure had already taken place. The assumptions state that 5 lever arch files had been disclosed. You budgeted future costs on the assumption there would be follow up

disclosure requests and had also assumed that there was likely to be a 4 day trial in the County Court and that 8 files would be needed at trial. Disclosure has now grown to 10 files and it is expected that there will be a further 10. Amrit wishes to know whether an application should be made to amend the budget, or if the matter is best left to be dealt with when costs are assessed.

You are required to write the body of an email to Amrit setting out the steps that should be taken in the matter, particularly whether an application should be made to amend the budget, or if it is a matter best left to assessment.

(Total: 20 Marks)

### **Question 7: Special Courts**

As a self-employed Costs Lawyer, you take instructions from various firms across the country. You have been instructed by an SRA regulated firm, Hampton and Hill LLP, in Dulwich. The firm act for Trebor, a firm beneficially owned by Mr Tomlinson. They wish for you to provide advice on how the provisions of the Arbitration Act 1996 govern the assessment of costs.

Mr Tomlinson founded an oil production and exploration company, OILP, which was incorporated in Jersey. It was listed on the London Stock Exchange. In 2019, TSTP acquired 80% of the share capital of OILP and took the company private. The other 20% remained owned by Trebor. On 31 January 2020, Trebor agreed to sell its remaining 20% interest in OILP to TSTP for the sum of £50m.

The first two instalments were paid by TSTP. However, shortly before the final instalment became due on 20 December 2020, Homers LLP, on behalf of OILP, wrote to Trebor asserting claims against Mr Tomlinson and setting out OILP's intention to withhold payment of the outstanding amount payable.

Much correspondence passed between the parties. Eventually an agreement was entered into whereby the disputed payment would be held by a third party whilst the parties attempt to resolve the dispute. The agreement reached contains an arbitration clause that reads:

*“Any dispute or difference (whether contractual or non-contractual) arising out of or in connection with this letter (including any question regarding its existence, validity, interpretation performance or termination) shall be referred to and finally settled by arbitration in accordance with the Arbitration Act 1996.”*

Prepare the body of an advice to Trebor. 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 Brown and Taylor Solicitors, who are based in the West Midlands. Mrs Brown is a family lawyer at the firm who specialises in divorce, property and finance. She is a Collaborative Lawyer and one of the few Family Solicitor/Mediators in the West Midlands. Mrs Brown has approached you for assistance in relation to one of her clients, Mrs Betty Sumpter.

In 2020, after 27 years, Mr and Mrs Sumpter's marriage came to an end. The impact of COVID-19 brought underlying relationship difficulties to a head. The couple have two children, Jenny Sumpter (d.o.b 10/07/1995) and Harry Sumpter (d.o.b 26/11/1997).

At the time of separation the matrimonial assets were valued at £572,000. The matrimonial home was valued at £450,000. There is no mortgage on the property. Mr Sumpter has a good pension with a cash equivalent value of £122,000. Mr Sumpter is in full time employment earning £72,000 gross per annum and Mrs Sumpter works part time earning £12,000 gross per annum.

The Financial Dispute Resolution (FDR) hearing took place and the District Judge made it clear that she believed the parties should not be in court and she did not want to see the matter proceed to a Final Hearing. She believed the parties could reach a settlement and she indicated that an appropriate settlement in the case would be somewhere in the region of a 55-60% share of the matrimonial assets to Mrs Sumpter.

Costs in the matter are escalating. At the FDR the Form H for each party showed combined legal expenses of £9,500, which were estimated to increase by £15,000 if the matter proceeded to a Final Hearing. Mrs Sumpter desperately wants to reach an agreement, but Mr Sumpter is refusing to engage in meaningful negotiations. Mrs Sumpter is really concerned about the costs in the matter and Mrs Brown has approached you to advise on the same.

You are required to write the body of an email to Mrs Sumpter 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**

As an independent Costs Lawyer you are instructed by a number of firms on a variety of matters. However, the bulk of your work is costing Court of Protection files. One of the solicitors who regularly instructs you, Mr Terry from Terry and Walsh LLP, has contacted you about a query he has in relation to a contentious probate matter. Whilst this is not work you routinely do, you have extensive experience in this type of dispute.

Mr Terry's client, Jeremy Henderson, is the executer and a beneficiary of his elderly neighbour's Will. Mr Henderson made the appointment for his neighbour, Mr Henry Cartwright, to make the Will and he also drove Mr Cartwright to the solicitor's office for the appointment. The Will replaced an earlier Will and was not executed at the solicitor's office, but was executed elsewhere.

Mr Cartwright's original Will left his entire estate to be divided equally between his two daughters, Tamsin and Jenny. The later Will left his house, the main asset in the estate, in its entirety to Mr Henderson.

Mr Cartwright died on the 26 March 2020. His daughters are challenging the validity of the Will. Tamsin thinks that Mr Henderson pressurised and coerced Mr Cartwright. She believes that Mr Henderson's forceful personality, together with her father's vulnerability and his dependence on Mr Henderson meant that the later Will is not valid. Jenny's position is slightly different, she has not advanced a positive claim that the Will is invalid, but wants the Will to be proved in solemn form.

As part of the advice to Mr Henderson, Mr Terry would like to include some information on the way costs may be dealt with in contentious probate matters. Mr Terry has therefore approached you for your help.

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

(Total: 20 Marks)

**Total for Section B: 60 Marks**

**END OF PAPER**