



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

## Unit 3 Examination Paper

21 September 2020

**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. Explain, using academic theory, ways a costs firm may be structured.

(10 Marks)

2. Outline the legislative requirements for SRA regulated firms to have compliance officers and how the SRA rules ensure that a firm complies with the regulatory requirements and reduces risk to the consumer.

(10 Marks)

3. Explain how the SRA Standards and Regulations encourage firms to monitor and manage risk.

(10 Marks)

4. Explain any risks a costs firm may face if they wished to implement 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 Perch and Halibut LLP. Your firm is acting for the claimant, Dominic Topper (a taxi driver) in respect of an action against the defendant, Boris Holter. Mr Perch, a senior partner of the firm, has conduct of the matter.

In 2018, the claimant was driving his taxi. He pulled out onto a main road behind another vehicle and the defendant's vehicle was driving behind both vehicles. As they approached the junction, the lead vehicle suddenly turned left. The claimant slammed on his brakes, coming to a stop. Unfortunately, the defendant was unable to avoid the collision and hit the claimant in the rear.

The claimant is pursuing claims for personal injury and to recover damages for vehicle damage, recovery, storage and credit hire. His total claim is for over £35,000 plus costs.

The defendant has denied liability, maintaining that he was travelling at a safe speed and safe distance behind the claimant. He is arguing that the accident was caused as a result of the sudden unnecessary braking by the claimant in the circumstances, particularly as the lead vehicle had cleared his path. The defendant has put the claimant to proof that this was not a deliberate "slam-on" incident.

During the course of disclosure, the claimant was ordered to provide full financial disclosure in support of his claim for credit hire. He served bank statements but having reviewed the disclosed financial documentation, the defendant is alleging that the claimant holds other accounts or credit cards which he has not disclosed. The claimant has instructed Mr Perch to respond to Part 18 Questions saying that he does not have any other bank accounts, nor does he have any credit cards. Mr Perch is concerned that this may not be true.

Mr Perch has approached you to write a letter to Dominic setting out what cases QOCS applies to, when costs protection under the rules may

be lost and whether, in your view, Dominic is at risk of losing QOCS protection if he is not telling the truth.

Write the body of a letter to Mr Topper 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 an SRA regulated firm, Bobtail and Sparrow LLP, specialising in medical negligence matters. One of the partners, Angela Sparrow, acted for Jemimah Jefferies in her claim against Derby Hospitals NHS Foundation Trust. The claim was funded under a conditional fee agreement (CFA) and by way of an After the Event (ATE) policy.

The Claimant miscarried her baby in February 2018. In June 2018 an ultrasound scan detected retained products which were promptly removed. Solicitors were instructed and the CFA was signed in July 2018. The patient accepted the NHS's part 36 offer to settle for compensation of £7500 in July 2019. No court proceedings were ever issued.

A bill of cost has been drawn and it includes a claim for an ATE insurance premium in the sum of £5,088 in respect of the fees incurred for liability experts. The total of the bill of costs is £27,714.44.

The premium claimed is for a block-rated ATE insurance set by reference to a wide "basket" of cases, rather than being individually assessed. Bobtail and Sparrow LLP were obliged through their contract with the ATE insurer to offer the policy to their client.

Angela Sparrow has now received Points of Dispute in relation to the bill of costs. The points challenge the premium and state:

- a) It is a matter of public importance that the court ensures that ATE premiums, if held to be recoverable in principle, are assessed in proportionate and reasonable sums because of the potential substantial impact on the public purse.
- b) Ms Jefferies' prospects of losing the case were very low and that an appropriate premium sum of £827.75 should be allowed because of comparable alternative products that were available.

Angela now seeks your advice on the recoverability of the premium.

Write the body of a memo to Angela Sparrow 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 Marrow and Marrow Solicitors. Mr Marrow is an experienced family lawyer, he has approached you for assistance in relation to one of his clients, Mrs Tory Potter.

In 2019, after 17 years, Mr and Mrs Potter's marriage came to an end. The couple did not have any children. At the time of separation the matrimonial assets were valued at £778,000, £80,000 of which Mrs Potter had previously inherited during the relationship from the estates of her parents. The matrimonial home is registered under only Mr Potter's name and he has continued to live in this property after the divorce. The parties also own another property, Brookside Cottage, which has been valued at £350,000. That property is currently being rented by Mr Potter's father.

Mrs Potter has repeatedly offered Brookside Cottage to Mr Potter by way of settlement, which represents 45% of the matrimonial assets. Mr Potter has declined this offer.

The final hearing in respect of the couple's finances is now listed to take place on 28 September 2020. Mrs Potter is seeking the remaining 55% of the matrimonial assets (£428,000) and Mr Marrow believes, given the circumstances of the case, this is a realistic outcome. Mrs Potter wishes to know whether Mr Potter will be ordered to pay her costs if she achieves this at the hearing given the offer she has made. Mr Marrow has approached you to advise on the same.

You are required to write the body of an email to Mr Marrow 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, Bonnet and Bow Ltd, located in Bradford. Bonnet and Bow Ltd have a large private client department which is headed by Doris Grey. Ms Grey has asked you for advice in relation to her client, Tim Tucker.

Mr Tucker was the executor and beneficiary of his aunt's will. He had taken his aunt to a solicitor so that a will could be prepared on her behalf. Instead of executing her will in the solicitor's office, however, his aunt executed it elsewhere, in circumstances that some of the beneficiaries found dubious.

Mr Tucker's aunt died in 2019 and Mr Tucker's sisters, Ms Tucker and Mrs Lockwood are challenging the validity of the will. Ms Tucker is accusing Mr Tucker of unduly influencing his aunt. Mrs Lockwood's position is slightly different, she has not put forward a positive claim that the will was invalid, but is simply insisting the will be proved in solemn form.

Mr Tucker's application for the court to declare his aunt's will as valid is due to be determined on the 28 September 2020. The court will also determine the appropriate costs order. Ms Tucker and Mrs Lockwood have made it clear that they do not believe they should have to bear

any costs because the litigation is Mr Tucker's fault for not ensuring that his aunt properly executed her will. Ms Grey has asked you to consider the likely costs order should Mr Tucker be successful.

Write the body of a memo to Ms Grey 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 in the costs department for an SRA regulated firm, Harp and Harris LLP, which has a number of high profile clients. The firm is located in Devon. Mr Harp, a partner at the firm, is instructed by Ms Barbra Bangles. Ms Bangles is the sister of Bo Bangles, the lead singer of a famous rock band.

Ms Bangles has sought advice in relation to a privacy injunction. She has instructed Mr Harp that she believes over 7,000 photographs have been stolen when her cloud storage account was illegally accessed by an unknown third party. Those photos feature her, members of her family (including Bo) and her friends.

The alleged theft was discovered when Bo Bangles' publicity and legal team were contacted by a tabloid newspaper who informed the team that they had been offered a number of compromising photos. The newspaper had described some of the images and it was apparent that they had been obtained from Ms Bangles account.

As part of the preliminary advice offered to Ms Bangles, Mr Harp wishes to set out the position in relation to how the costs of any injunction proceedings would ordinarily be dealt with. As the matter relates to costs he has asked you to provide him with the necessary information so he can then write to Ms Bangles.

Write the body of a memo to Mr Black detailing how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in this particular instance.

(Total: 20 Marks)

**Total for Section B: 60 Marks**

**END OF PAPER**