

August 16: Marker Guidance: Unit 1

The marking rubric and guidance is published as an aid to markers, to indicate the requirements of the examination. It shows the basis on which marks are to be awarded by examiners.

However, candidates may provide alternative correct answers and there may be unexpected approaches in candidates' scripts. These must be given marks that fairly reflect the relevant knowledge and skills demonstrated. Where a candidate has advanced a point that is not included within the marking rubric please do make a note of the same so that it can be raised at the standardisation meeting.

Mark schemes should be read in conjunction with the published question paper and any other information provided in this guidance about the question.

Before you commence marking each question you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- the marking rubric

The marking rubric for each question identifies indicative content, but it is not exhaustive or prescriptive and it is for the marker to decide within which band a particular answer falls having regard to all of the circumstances including the guidance given to you. It may be possible for candidates to achieve top level marks without citing all the points suggested in the scheme, although the marking rubric will identify any requirements.

It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this.

Where you consider this to be the case you should make a note on the script and be prepared to discuss the candidate's response with the moderators to ensure consistent application of the mark scheme.

SECTION A (5 QUESTIONS; ALL COMPULSORY – 40%)

Question 1:	In what circumstances would it be appropriate to apply for a Default Costs Certificate?	
Total Marks Attainable		5
Fail = 0-2.4 Pass = 2.5+ Merit = 3+ Distinction = 3.5+		
Indicative Content		Marks
Required explanation of what a Precedent H is:		1 Mark
Order for payment of costs as claimed by the RP when there has been no receipt of PODs following the expiry of the time for serving the same.		A pass must include an explanation of what a DCC is
Required explanation of the Procedure:		Up to 2 Marks
CPR 47.9 (2) requires POD to be served 21 days after the date of service of the NOC CPR 47.9 (4) The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD.		A pass must include an explanation
Any other relevant point to describe DCCs e.g:		1 Mark
Why obtained? For payment of costs due in default of POD When obtained? The period for serving POD must have expired with no receipt by the RP of the POD How obtained? CPR 47.11(1) Application for requesting a DCC is on Form N254 Circumstances for setting aside? CPR r 47.12(2) court may set aside or vary if it appears to the court that there is some good reason why the DA proceedings should continue (see also CPR PD 47 para 11.2(3)) Steps to set aside? Make application supported by evidence (see CPR r 47.12 PD 11.2(1))		
Credit any other points made e.g.:		Up to 4
CPR 47.9 (5) If any party serves POD before the issue of a DCC the court may not issue the DCC. Implications of a DCC? Order made for payment of the costs as claimed. CPR 47.12(1) Court will set aside if RP not entitled to the order		To achieve more than a pass candidates must not simply cite the examples, but should show a holistic

<p>CPR r 47 PD 11.2(2): matters to which the court must have regard include whether the party seeking the order made the application promptly</p> <p>CPR 47.11(2) Will include an order to pay costs to which the DCC relates</p> <p>CPR 47.11(3) Sum payable is set out in PD (£80 fixed costs plus court fee – CPR PD 47 para 10.7)</p> <p>CPR 47.12(1): The court will set aside a default costs certificate if the receiving party was not entitled to it</p> <p>CPR 47.12(3): S.194(3) of the Legal Services Act 2007 pro bono orders, the receiving party must send a copy of the order setting aside or varying the default costs certificate to the prescribed charity</p>	understanding of DCCs
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Question 2:	Explain what is meant by the indemnity principle.	
Total Marks Attainable		5
Fail = 0-2.4 Pass = 2.5+ Merit = 3+ Distinction = 3.5+		
Indicative Content		Marks
Required explanation of the indemnity principle:		1 Mark
Define the indemnity principle e.g: The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors.		A pass must include an explanation
Any other relevant point to describe the principle e.g:		Up to 2 marks
It is very common for paying parties to dispute or at least question the terms of the receiving party's retainer agreement, and furthermore demand sight of the retainer. The indemnity principle does not apply in certain circumstances e.g legal aid		A merit/distinction will include some analysis of the principle
Credit any case law/points of law cited e.g:		Up to 4
<ul style="list-style-type: none"> • Harold v Smith (1860) - costs award should not be seen as a punishment; • Gundry v Sainsbury (1910) - unsuccessful party should not have to pay more to the successful party's solicitor than the individual successful party; • General of Berne Insurance v Jardine (1998) - look at the costs on an item by item basis, not globally; 		To achieve more than a pass candidates must not simply cite cases but should show a holistic understanding of

<ul style="list-style-type: none"> Hollins v Russell (2003) - applies to CFA cases; Bailey v IBC (1998) - signature of Bill is sufficient to show that indemnity principle has not been breached 	the development of the principle
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Question 3:	When may summary assessment take place? Outline the procedure.	
Total Marks Attainable		10
Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+		
Indicative Content		Marks
Required: CPR 44.6 procedure for assessing costs - 1 (a) the court may make a summary assessment of costs CPR PD 44, 9.2: <ul style="list-style-type: none"> at conclusion of a fast track trial any other hearing which has lasted not more than 1 day 		Up to 2 A pass must include an explanation.
Any other relevant point to describe summary assessment e.g: CPR PD 44, P.D 9.5 It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs. Each party who intends to claim costs must prepare statement of costs (N260) or schedule must be filed: <ul style="list-style-type: none"> not less than 2 days for fast track trial not less than 24 hours for other hearings CPR PD 44, 9.6: failure to comply will be considered when looking at the costs CPR PD 44, 9.8: no time to summarily assess. CPR PD 44, 9.10: disproportionate and unreasonable costs		Up to 4 To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base
Any other relevant point to describe the content of the Schedule or N260: The Schedule (N260) must include: <ul style="list-style-type: none"> the number of hours to be claimed; the hourly rate to be claimed; the grade of fee earner; the amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing; the amount of legal representative's costs to be claimed for attending or appearing at the hearing; counsel's fees; and 		Up to 3 To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base

<ul style="list-style-type: none"> • any VAT to be claimed on these amounts. • The schedule must be signed by the party or parties legal representative. 	
<p>Credit any case law/points of law cited e.g:</p> <p>Williams & Gergiou v Wayne Hardy builders (SCCO) (unreported 2014): highlights the importance of filing N260 on time. As no N260 was filed 24 hours prior to hearing no costs were allowed</p> <p>MacDonald v Taree Holdings (2000)</p>	<p>Up to 2</p> <p>At least one other point of law must be cited to acquire a distinction</p>

Question 4:	Explain what funding is available for a personal injury matter.
<p>Total Marks Attainable</p> <p>Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+</p>	10
Indicative Content	Marks
<p>Required:</p> <p>A summary is required dealing specifically with funding in personal injury matters. Response should include reference to a lack of legal aid and a dominance of CFAs and LEI.</p>	<p>1 Mark</p> <p>A pass must identify the relevant law/procedure</p>
<p>Consideration of the main types of funding available:</p> <p>Legal Expenses Insurance (Before the Event Insurance): These type of insurances can be found in a variety of places: home contents, buildings policies, credit cards or other club memberships.</p> <p>After the Event Insurance: Is a policy that can be taken out by your solicitor, on your behalf, to ensure that in the event of a claim not being successful you are not left liable for the payment of any legal fees. For claims made before the 1 April 2013 if the claim is successful, the cost of the premium is usually recovered but for those made after that date the premium is no longer recoverable from the other side – candidates are being asked to prepare promotional material so pre 1/4/13 cases are not relevant here.</p> <p>Conditional Fee Arrangements: Such agreements have the following characteristics:</p> <ul style="list-style-type: none"> • Representative only recovers costs if the case is successful • Some cases client will take out ATE • Client will pay disbursements and insurance as case progresses 	<p>Up to 5 Marks</p> <p>To achieve a merit or distinction candidates must state specifically that it is C who would apply in this instance because the D has no real prospect of defending the claim i.e they must show an ability to apply the law to the scenario rather than just cite the law</p>

<ul style="list-style-type: none"> • A success fee/uplift can be claimed from the other party (Note: Rules differ on recovery deepening on when the CFA was entered) <p>Under s58 of the Courts and Legal Services Act 1990 a CFA must:</p> <ul style="list-style-type: none"> • be in writing • not relate to criminal or family proceedings • the percentage of any success fee must be specified • the success fee must not exceed 100% of the base costs <p>For CFAs entered into before the 1 April 2013 success fees were fixed for low value road traffic and employer’s liability cases. Also they could not exceed 100% of costs. If a party was successful, both the success fee and ATE premium were recoverable providing notice had been given to the other party (Form N251). Ss 44 and 46 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 amended section 58 CLSA 1990 and Success fees and ATE premiums are no longer recoverable from the losing party, these are now to be deducted from the winning party’s damages. The aim of this amendment was to make claimants have a financial interest in their claims. Success fees are still still calculable as a percentage of costs chargeable to the client. There is a maximum Limit (or ‘cap’) on personal injury cases of 25% and all other claims of 100%. The success fee applies to general damages and past losses – does not apply to future loss and should be calculated on Solicitors Base Costs.</p> <p>Candidates at the upper end of the marking scale may also consider:</p> <p>Legal Aid: very limited, e.g. birth injuries</p>	
<p>Credit any discussion on DBAs including the lack of uptake e.g:</p> <p>Damages Based Agreements: These are contingency fee agreements whereby solicitor gets fees if their client wins and the payment comes from their damages. S45 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 introduced this new type of funding which became operational on April 1 2013.</p>	1 Mark
<p>Credit any other relevant description given e.g:</p> <p>Private funding: The traditional method of civil claims funding, depends on the terms of the retainer. This would involve the client paying at an hourly rate out of his or her own funds. The essential feature is that the client always remains responsible for the payment of his/her solicitor’s costs regardless of the outcome of the case, EVEN if there is an order from the court at the end of the claim for the opponent to pay the costs. The privately paying client can recover the costs order from the opponent to cover the amount that they owe to the solicitor, but the contractual obligation is always for the client to pay the solicitor directly. The ordered costs may not, in some circumstances, match exactly the amount owed by the client to the solicitor, and the client will have to stand those additional costs his/herself. In civil claims also the danger is always that if a privately paying client loses the claim, he/ she may be ordered to pay all or most of the opponent’s costs. For</p>	<p>Up to 3 marks</p> <p>To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base</p>

a private paying client, everything depends on the terms of the retainer.	
Third party funding: generally commercial, but are becoming more widely available and are being seen in some PI matters.	

Question 5:	Explain when it may be appropriate to apply for default judgment.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	Marks
Required an explanation of Default Judgments: CPR 12: If the defendant does not respond at all after 14 days, or acknowledges service within 14 days but does not file and serve a Defence within 28 days, the claimant can apply for 'judgment by default'. The date of service is determined by the rules set out and considered on previously.	1 Mark To pass students must describe default judgments with reference to timescales for service
May also raise further points on the application for a default judgment: A default judgment is requested by completing and returning to the court Form N225 - Request for judgment and reply to admission. This form is also used in cases of admissions, considered in the next section. CPR 12.2: default judgments may not be used in the following types of claim: <ul style="list-style-type: none"> • Part 8 claims • Where the Claimant cannot prove service • Part 7 claims for: delivery/return of goods; provisional damages; and admiralty, arbitration, possession of land or contentious probate actions. Under CPR 12.10 default judgments may only be obtained by a claimant with the permission of the court (for which an application under CPR Part 23 will be required) in the following cases: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Defendant was served outside the jurisdiction <input checked="" type="checkbox"/> Defendant is a child or protected party <input checked="" type="checkbox"/> Claimant seeks costs (other than fixed costs) <input checked="" type="checkbox"/> Tort claims between spouses or civil partners <input checked="" type="checkbox"/> Claimant wants delivery of goods, not simply damages 	Up to 6 Marks To achieve a distinction candidates should demonstrate knowledge of the procedure for applying for a default judgment and circumstances where it may not be appropriate.
Any other relevant points e.g a discussion on setting aside a default judgment:	Up to 4 Marks

<p>CPR Part 13 deals with how a Defendant may have a Judgment in default set aside. There are two general grounds for setting aside.</p> <p>CPR 13.2: The mandatory grounds, upon which the court <i>must</i> set the judgment aside – These are largely confined to where there has been some oversight either by the court or the Claimant and the Defendant has not in fact defaulted, e.g. where the Defendant has complied with the rules, the claim was satisfied before judgment, the Defendant had applied for summary judgment against the Claimant, or the Defendant has filed an admission with request for time to pay</p> <p>CPR 13.3: The discretionary grounds, upon which the court <i>may</i> set the judgment aside – Under this rule, the court has to be satisfied that Defendant ‘has a real prospect of success’ OR ‘there appears to be some other good reason why’ the judgment should be set aside. The court will take into account the following factors:</p> <ul style="list-style-type: none"> • Delay – but only in the conduct of the proceedings – pre-action delay is irrelevant • Any explanation offered by the Defendant for failure • The prejudice suffered by Claimant if set aside vs prejudice to Defendant if not • Strength (or weakness) of Defendant’s proposed defence <p>NOTE: Under CPR 3.1(3) a court may make setting aside conditional on the Defendant paying the Claimant’s wasted costs and/or money for the whole or part of the claim being paid into court.</p>	
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SECTION B (4 QUESTIONS; ALL COMPULSORY – 60%)

<p>Question 6:</p>	<p>You run a small costs firm in the South East of England and are considering undertaking the costs lawyer qualification because you believe it will have a positive impact on your performance. In order to do the qualification, you will need approval from a partner at the firm, Mr Josh Harrison. You are adamant that completing the course will be beneficial to the business; being regulated will ensure compliance with rules on professional conduct and allow you to undertake reserved legal activities. However, you believe that Mr Harrison will have very different views.</p> <p>Outline the principles of the CLSB code of conduct and give examples of when those principles may be applicable.</p>
<p>Total Marks Attainable</p> <p>Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+</p>	<p>10</p>
<p>Indicative Content</p>	<p>Marks</p>

<p>Required, identification that the CLSB are responsible for the setting of standards and role in monitoring compliance with those standards:</p> <p>S176(1) LSA 2007- Pursuant to this Costs Lawyers to adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB.</p> <p>CLSB set and publish the CL Code of Conduct (2014 amendments) x7 principles</p>	<p>Up to 2 Marks</p>
<p>Required specific principles must be referred to:</p> <p>CL COC:</p> <p>Principle 1: Act with integrity and professionalism.</p> <p>Principle 2: Comply with your duty to the court in the administration of justice.</p> <p>Principle 3: Act in the best interests of your client.</p> <p>Principle 4: Provide a good quality of work and service to each client.</p> <p>Principle 5: Deal with the regulators and Legal Ombudsman in an open and co-operative way.</p> <p>Principle 6: Treat everyone with dignity and respect.</p> <p>Principle 7: Keep your work on behalf of your clients confidential.</p>	<p>Up to 4 Marks</p> <p>Candidates must cite the relevant principles from the CL COC and show examples of how they would apply in practice to achieve more than a pass.</p>
<p>Credit any consideration of the regulatory framework e.g:</p> <p>ACL, CLSB, SRA:</p> <p>Candidates should demonstrate a knowledge of the roles of the ACL and CLSB and an understanding of entity regulation. For a pass candidates must refer to the CL COC.</p> <p>Candidates do not work in house. However, reference could and should be made to the relevance of the SRA COC.</p> <p>ACL is approved regulator (LSA S20(5))- Independent regulatory authority is CLSB. Approved regulators under the LSA (section 20(5) of the LSA 07), regulate those undertaking reserved legal activities (s12 and Sch 2 LSA 07) i.e authorised persons (s18 LSA 07) which can include an entity. CLSB not currently regulate entities but are applying to.</p>	<p>Up to 3 Marks</p>
<p>Any other relevant point to describe the reserved legal activities undertaken by CLs e.g:</p> <p>The 6 Reserved Legal Activities are found at Section 12 and Schedule 2 of the LSA 2007 which are:</p> <p>Section 12(1)(a) Exercise of rights of audience – relevant to Costs Lawyer’s Role, Section 12(1)(b) Conduct of litigation – relevant to</p>	<p>Up to 2 Marks</p>

Costs Lawyer's Role, Section 12(1)(c) Reserved instrument activities, Section 12(1)(d) Probate activities, Section 12(1)(e) Notarial activities, Section 12(1)(f) Administration of oaths – relevant to Costs Lawyer's Role.	
Credit any consideration of the rules from the Practising Rules e.g: <ul style="list-style-type: none"> • Rule 4: application for practising certificate • Rule 8: notification requirements • Rule 9: continuing professional development • Rule 10: insurance 	Up to 2 Marks

<p>Question 7: You work for Costs Consultants Ltd in Bolton and have been instructed by the Paying Party on a matter listed for detailed assessment. The assessment is before a Deputy District Judge. The receiving party has instructed a costs draftsman from Southampton, and, to date, your experience of him has not been entirely positive. You have been inundated with correspondence from him about petty points. In your opinion he has argued the case in a way which you know is wrong. The most recent correspondence threatened you with wasted costs orders if you did not respond by return.</p> <p>Prepare a summary on what is meant by a wasted costs order and when the court may be minded to make such an order.</p>	
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	Marks
Required a description of the courts discretion and jurisdiction to make a wasted costs order: S 51 of the senior court act 1981 and CPR 44.2: costs payable by one party to another are the discretion of the court. CPR 46.8: The Court can order a party or legal representative to pay a specified sum (or can disallow a specific sum) where costs have been wasted	Up to 2 Marks An explanation should be given as to the discretion of the court when making an order for costs
May also raise points on conduct e.g: Buxton v Mills-Owen [2010] - lawyers shouldn't plead matters that are meritless. Duty to the Court Personal liability for costs CLSB/SRA Code of Conduct	Up to 1 To achieve a distinction candidates should demonstrate knowledge of the ethical considerations raised in the

	problem question
<p>Any other relevant point to describe wasted costs orders e.g:</p> <p>Wasted costs applications should be left until the end of the Trial.</p> <p>Applications are usually raised by the aggrieved party but can be made by the Court of its own initiative.</p> <p>CPR 46 PD 5.4 A party may apply for a wasted costs order – (a) by filing an application notice in accordance with Part 23; or (b) by making an application orally in the course of any hearing.</p>	Up to 2 Marks
<p>Credit any case law/points of law cited e.g:</p> <p>Ridehalgh v Horsefield (1994) CA: The Court should only make a Wasted Costs Order where the legal representative has acted improperly, negligently or unreasonably - a mistake is not enough</p> <p>Harley v McDonald [2001] AC: Wasted Costs Orders are discretionary and should be reserved for unjustifiable conduct</p> <p>Orchard v S E Electricity Board [1987] QB: Wasted Costs Orders should not be used as a threat to intimidate the other party -</p> <p>Symphony v Hodgson [1994] QB: Wasted Costs Orders should not be motivated by a resentment or inability to obtain an effective costs order against an impecunious litigant</p> <p>Harrison v Harrison [2009] wasted costs were neither a punitive nor a regulatory jurisdiction, but rather a compensatory one.</p> <p>Persaud v Persaud [2003] Court of Appeal held that it was not right to interfere with the judge's discretion to overturn a wasted cost order. [so basically once its made your unlikely to get it appealed]</p>	Up to 6 Marks

<p>Question 8:</p> <p>You work for X & Y Solicitors, a large, reputable firm of solicitors in Manchester. You have just qualified as a costs lawyer. You firm accepts external instructions in costs matters and you have received an email from Mr Toby Carrington, a solicitor within a small high street firm. He has contacted you having received a bill of costs from an opponent who successfully defended a debt claim valued at £100,000. He has no prior experience of detailed assessment and needs you to explain the procedure and next steps.</p> <p>Prepare the body of an email in response to Mr Carrington.</p>	
<p>Total Marks Attainable</p> <p>Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+</p>	20

Indicative Content	Marks
<p>Required format and content:</p> <p>Candidates are required to prepare the body of an email directed to a solicitor, so the language should be appropriate. The content is the procedure for DA/PA.</p>	<p>Up to 2</p> <p>Question requires candidates to draft the body of an email directed to a solicitor. A pass may not be achieved if appropriate language is not used.</p>
<p>Required consideration of the procedure for DA/PA:</p> <p>Procedure for assessing costs: rule 44.6</p> <p>CPR PD 44, PD 8.1:</p> <p>Rule 44.6 allows the court making an order about costs either –</p> <p>(a) to make a summary assessment of the amount of the costs; or</p> <p>(b) to order the amount to be decided in accordance with Part 47 (a detailed assessment).</p> <p>CPR 47.1: Takes place at conclusion of proceedings</p> <p>CPR 47.6 (1) Detailed assessment proceedings are commenced by the receiving party serving on the paying party</p> <ul style="list-style-type: none"> • notice of commencement in the relevant practice form; and • a copy of the bill of costs. <p>CPR 47.6 (2): The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in Practice Direction 47.</p> <p>Practice Direction 47 deals with the form of a bill</p> <p>CPR 47.7: sets out the period for commencing detailed assessment proceedings.</p>	<p>Up to 5 marks</p> <p>To pass relevant CPR should be identified.</p>
<p>Discussion on next procedural steps e.g:</p> <p>CPR 47.9 (1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute</p> <p>CPR 47.9 (2) The period for serving points of dispute is 21 days after the date of service of the notice of commencement.</p>	<p>Up to 6 marks</p> <p>To pass relevant CPR should be identified.</p>

<p>CPR 47.14 (6) Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission.</p> <p>CPR 47.13 (1): Where any party to the detailed assessment proceedings serves POD, the RP may serve a reply on the other parties to the assessment proceedings.</p> <p>CPR 47.13(2): RP may do so within 21 days after being served with the POD to which the reply relates.</p> <p>CPR PD 44, 12.1: Replies must be limited to points of principle and concessions only, must not contain general denials, specific denials or standard form responses.</p> <p>CPR PD 47, 12.2: When practicable Replies must be set in the form of Precedent G.</p>	
<p>Discussion on Request for a Hearing e.g:</p> <p>CPR 47.14 and CPR PD 47, 13: governs Detailed Assessment Hearings.</p> <p>CPR 47.14: RP must file request for DA Hearing within 3 months of expiry of period for commencing DA proceedings.</p> <p>CPR PD 47, PD 13.1 – Reiterates the above position.</p> <p>Because of value DA not PA appropriate (oral hearing)</p> <p>CPR PD 47, 13.2: N258 needs to be filed plus NOC, Bill, Order/Judgment/Doc giving right to DA, Precedent G PODS and Replies, Any other orders, Fee notes and written evidence of disbursements (over £500 as per CPR PD 47, 5.2)</p> <p>Statement signed by legal representative and estimate of the length of time the DA hearing will take.</p> <p>Court fee will also need to be paid.</p>	<p>Up to 5 marks</p> <p>To achieve more than a pass candidates must show a greater depth to their knowledge base</p>
<p>Credit any case law/points of law cited e.g:</p> <p>CPR PD 47, 13.4: On receipt of request for DA, Court will fix a date for hearing</p> <p>CPR PD 47, 13.6: Court will give at least 14 days notice of time and place of hearing.</p>	<p>Up to 3 marks</p> <p>To achieve more than a pass candidates must show a greater depth to their knowledge base</p>
<p>Credit any discussion of the powers of an authorised court officer at DA e.g:</p> <p>CPR 47.3(1)(a): Can make wasted costs orders</p> <p>CPR 47.3(1)(b): can make an order in relation to conduct and for the delay in commencing DA proceedings</p>	<p>Up to 4 marks</p> <p>To achieve more than a pass candidates must show a greater depth to their knowledge base.</p>

<p>CPR 47.8: Sanction for delay in commencing detailed assessment proceedings</p> <p>CPR 47.20 (1): The receiving party is entitled to the costs of the detailed assessment proceedings. There are exceptions to this.</p>	
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<p>Question 9:</p>	<p>You work for a firm of solicitors in Doncaster. You have just qualified as a costs lawyer. One of the main reasons you were funded by your employer through the qualification was so that you could start undertaking advocacy at detailed assessments and CCMCs. The senior partner of the firm knows that the area of ethics and professional standards is one which you studied when completing the qualification.</p> <p>You have been asked to have been asked to prepare some training notes on the principles of ethics and professional standards which apply when undertaking advocacy.</p> <p>Prepare the body of the training notes requested by the senior partner.</p>
<p>Total Marks Attainable</p> <p>Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+</p>	<p>20</p>
<p>Indicative Content</p>	<p>Marks</p>
<p>Required format and content:</p> <p>Candidates are required to prepare the body of training notes which can be in any reasonable format.</p> <p>They must refer to both the relevant rules on conduct and specifically the CL's duty to the court in adequate detail in order to pass.</p>	<p>Up to 2 Marks</p>
<p>Identify where the rules on professional conduct for a costs lawyer are found, specifically in relation to the duty to the court:</p> <p>The 7 principles from the COC:</p> <ul style="list-style-type: none"> • Professionalism and integrity, • Administration of justice and duty to court, • Clients interests, • Service and quality of work, • Ombudsman, • Respect and dignity, • Confidential <p>PRINCIPLE 2: Comply with your duty to the court in the administration of justice</p>	<p>Up to 4 Marks</p> <p>To achieve a pass candidates must explain where the duty to the court is found</p>

<p>Reference may also be made to situations where there is a conflict between the duty to the court and duty to the client (PRINCIPLE 3: Act in the best interests of the client)</p>	
<p>May also raise further points on the CLSB Code of conduct:</p> <p>CLSB/SRA Code of Conduct Principle 2:</p> <p>2.1 You must at all times act within the law.</p> <p>2.2 You must not knowingly or recklessly either mislead the court or allow the court to be misled.</p> <p>2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.</p> <p>2.4 You must advise clients to comply with court orders made against them.</p> <p>Further discussions on the conflict of the duty to the court and client:</p> <p>CLSB/SRA Code of Conduct Principle 3.1 You must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client.</p>	<p>Up to 3 Marks</p> <p>To achieve a distinction candidates should demonstrate knowledge of the change in the CL duty from before regulation to now and students may also discuss the fact that where a CL is not on court record the instructing fee earner may not absolve responsibility for the conduct of the proceedings</p>
<p>Credit any case law/points of law cited e.g:</p> <p><i>Ahmed v Powell</i> [2003] EWHC 9011: The solicitors are responsible for the conduct of the detailed assessment proceedings and cannot avoid that responsibility merely by instructing a costs draftsman. Costs draftsmen can appear on behalf of the party only as a duly authorised representative of the solicitor who has instructed him to be there.</p> <p><i>Crane v Canons Leisure Centre</i> [2007] EWCA Civ 1352: Work undertaken by independent costs draftsmen could be treated as part of the instructing solicitor's profit costs such as to attract a success fee.</p> <p><i>Waterson Hicks v Eliopoulos</i> [1997] Costs L.R: The costs draftsman has the same authority as the solicitor would have had to consent to orders.</p> <p><i>Arthur JS Hall & Co v Simmons</i> [2007] 1 AC 615: Lord Hoffman (at page 691): "The fact is that the advocate, like other professional men, undertaking a duty to his client to conduct his case, subject to the rules and ethics of his profession, with proper skill and care"</p> <p><i>Buxton v Mills-Owens</i> [2010] 1 WLR 1997: If a point is not properly arguable, it should not be argued.</p>	<p>Up to 10</p> <p>To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base</p>

<p><i>Rondel v Worsley</i> [1967] 3 WLR 1666: A claimant's civil action for negligence could not be sustained: a barrister's immunity was justified by public policy.</p> <p><i>Saif Ali v Sydney Mitchell</i> [1978] 3 All ER 1033: The immunity conferred by <i>Rondel v Worsley</i> extends to pre-trial work if and only if it is so intimately connected with the conduct of the case in court as to amount to a preliminary decision about it.</p> <p><i>Moy v Pettmann Smith (A Firm) & Anor</i> [2005] 1 WLR 581: The barrister was not negligent. The principle that an advocate is liable to his client for professional negligence in <i>Arthur JS Hall v Simons</i> [2002] should not stifle the manner in which they conduct litigation and advise their clients. This might lead to defensive advocacy, where barristers would hedge their opinions with qualifications and be reluctant to give clients the advice which they require in their best interests. Lady Hale said that the courts "have not yet developed a clear set of principles governing the terms in which an advocate's advice should be given".</p> <p><i>Copeland v Smith</i> [2002] 1 WLR 1371: It is the duty of an advocate to draw the judge's attention to authorities that are in point, even if they are adverse to that advocate's case.</p>	
<p>Any other relevant points e.g a discussion on wasted costs orders and personal liability for costs:</p> <p>S 51 of the Senior Courts Act 1981 and CPR 44.2: costs payable by one party to another are at the discretion of the court.</p> <p>CPR 46.8: The court can order a party or legal representative to pay a specified sum (or can disallow a specific sum) where costs have been wasted</p> <p>Wasted costs applications should be left until the end of the trial.</p> <p>Applications are usually raised by the aggrieved party but can be made by the Court of its own initiative.</p> <p>CPR 46 PD 5.4 A party may apply for a wasted costs order – (a) by filing an application notice in accordance with Part 23; or (b) by making an application orally in the course of any hearing.</p> <p><i>Ridehalgh v Horsefield</i> (1994) CA: The Court should only make a Wasted Costs Order where the legal representative has acted improperly, negligently or unreasonably - a mistake is not enough</p> <p><i>Harley v McDonald</i> [2001] AC: Wasted Costs Orders are discretionary and should be reserved for unjustifiable conduct (this is a New Zealand decision and persuasive only)</p> <p><i>Orchard v S E Electricity Board</i> [1987] QB: Wasted Costs Orders should not be used as a threat to intimidate the other party -</p>	Up to 2 Marks

Symphony v Hodgson [1994] QB: Wasted Costs Orders should not be motivated by a resentment or inability to obtain an effective costs order against an impecunious litigant

Harrison v Harrison [2009] wasted costs were neither a punitive nor a regulatory jurisdiction, but rather a compensatory one.

Persaud v Persaud [2003] Court of Appeal held that it was not right to interfere with the judge's discretion to overturn a wasted cost order. [so basically once its' made you're unlikely to get it appealed]