



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

## Unit 2 Examination Paper

3 August 2019

**Time allowed: 3 hours**

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To pass this 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 not earn any 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.

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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 by the invigilator.**

## **Section A**

You must answer **ALL** of the questions in this section.

1. Explain, with reference to relevant authority, why the Costs Lawyer Code of Conduct prohibits costs lawyers from handling client money.

(5 marks)

2. Summarise the relevant authority and explain how a solicitor with unpaid fees may have a potential lien over a client's property.

(10 marks)

3. Describe what is meant by third party litigation funding and discuss whether the availability of this type of funding facilitates access to justice.

(10 marks)

4. Summarise the costs provisions found in the Arbitration Act 1996.

(15 marks)

**Total for Section A: 40 Marks**

## **Section B**

You must answer **THREE** questions in this section out of the following five.

### **Question 5: Lawyer and Client Costs**

You work as a costs lawyer for a costs firm based in Blackpool. You have been approached by Mr Arshad Warsi, the Compliance Officer for Finance and Administration at the firm Harrisons LLP. He has requested that you draft some training materials for circulation to his firm's fee earners.

Mr Warsi has instructed that over recent years it has proved more problematic to get clients to pay their invoices. In his instructions to you, he has explained that for a number of years some long-standing clients paid bills without delay. However, more recently there have been problems even with these clients. He instructed that some of the firm's loyal clients have become slow to pay bills and have raised, what you may consider to be, meritless arguments in order to delay payment.

Mr Warsi has also informed you that different fee earners take different approaches to billing and their level of knowledge varies. Some bills are headed 'on account of costs', some include a breakdown of each individual item billed and others only include a gross sum. He was clear in his instructions that all bills are signed by a partner and are sent via first class post.

He would like the training notes to cover interim bills and invoices on account, an explanation as to what is meant by a statute bill and some information on detailed and gross sum bills. He would also like the notes to set out the right of the firm to seek payment of its bills through the courts.

Prepare the body of the training notes for Mr Warsi setting out the information he has requested.

**(Total: 20 marks)**

### **Question 6: Costs in Special Courts**

You are a costs lawyer working in-house for a firm of solicitors in Hartlepool. One of the fee earner's at the firm, Jonathan Orange, has approached you for

some advice in relation to one of his cases. He is acting for Zoey Diamond on an appeal against a tax assessment.

A directions order has been made under which the parties were required to provide lists of documents to each other on 26 May 2019. HMRC's documents were sent to Mr Orange three days late. On receiving the relevant letter, Mr Orange opened the envelope and appreciated what the documents were but did not read them and instead returned them to HMRC "because they were late".

As the documents were highly relevant to the proceedings and in the absence of any compelling reason to rule otherwise, the Tribunal subsequently directed that the documents should be admitted into evidence. However, as Mr Orange had not read the papers it was necessary to request an adjournment of his presentation of Ms Diamond's case, to allow him time to consider the documents.

In the circumstances, Mr Orange is now concerned that the Tribunal may be persuaded by HMRC that it would be appropriate that Mr Orange should pay HMRC's wasted costs of the adjourned hearing.

Prepare the body of an email to Mr Orange setting out the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made against a legal representative.

**(Total: 20 marks)**

### **Question 7: Funding**

Costings R us is a small costs firm in Bath. They instruct a number of freelance costs professionals. It is the responsibility of Boris Turner, a costs lawyer at the firm, to delegate and send the work to the costs professionals.

You have recently taken up a position with Costings R us as a freelance costs lawyer. You have received three legal aid files from Boris and the instructing solicitor is Hannah Hewitt of Hewitt and Haversham LLP. Boris has written you a short set of notes on the files as follows:

- a) The file of Minesh Patel. On this file the substantive certificate has been revoked because representations have been made to the Legal Aid Agency (LAA) that Mr Patel has concealed income he receives from some investments.
- b) The file of Helen Sharp. Ms Sharp has made an application for judicial review in respect of the lawfulness of her detention in 2017. On this file

a notice to show cause was issued by the LAA on 3 March 2019 in respect of Ms Sharp's funding certificate.

- c) The file of Daniel Sutherland. The funding certificate (Certificate Number KM1223078A-A1) is discharged following completion of an action brought on behalf of Daniel (d.o.b 03.04.2016). The certificate had been live since 19 June 2016 and the notice of discharge is dated 19 February 2019.

Consider the above file notes and prepare an explanation and a brief description of the implications in each of the cases. Provide the body of a letter of advice, to Hannah Hewitt, on the particular circumstances on the files and any action that should be taken.

**(Total: 20 marks)**

### **Question 8: Funding**

You are a costs lawyer working for a costs firm in Peterborough. You have been instructed by a solicitor who works for Brown and Bourne LLP, Mickey Inskip. Brown and Bourne LLP are a firm that conduct a large volume of road traffic accident cases under Conditional Fee Agreements (CFAs).

Your instructing solicitor has taken over conduct of a matter from a fee earner that has now left. The lay client is Heather Scott. Heather was involved in a road traffic accident when she was a younger and, although at the time she appeared to have escaped serious injury, she now suffers with back and joint pain.

On first review of inherited files Mickey always looks at the retainer and noted that another firm of solicitors had previously been instructed in Heather's case. The case, potentially worth seven figures, proceeded under a CFA entered into in October 2012 with Hammer and Hawksmore. That CFA provided for a success fee (of up to 100% of base costs) to be recovered from the losing party if they were successful. On 2 May 2015 the claimant signed a new CFA with Brown and Bourne LLP. On 4 May 2015 notice of change of solicitors was filed with the Court.

Aware that the provisions of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on the 1 April 2013, Mickey has requested that you provide him with an advice as to the transfer of CFAs.

Prepare the body of a letter to Mr Inskip providing him with an advice as to the transfer of CFAs from one firm to another, having particular regard to the specific circumstances referred to.

**(Total: 20 marks)**

### **Question 9: Legal Accounts**

You are a costs lawyer working in-house for a small firm of solicitors, Williams and Ansty. Your role has recently diversified and because of your previous experience you are now supervising the work done by both the costs team and the accounts department.

The accounts team has, historically, had a very high turnover of staff. The firm have asked for you to consider upskilling some of the junior members of the costs team in order to try and ensure a more efficient service and to avoid having to recruit more staff. This means that you are required to train members of your established team.

As part of the training materials that you are preparing you have created a mock client and file. The client is Danny Dwyer and he is on the system under reference DDD00440011. The file involves a claim by Mr Dwyer for personal injuries sustained arising from an accident at work. Mr Dwyer has been set up as a privately paying client.

You now need to create some 'mock' letters to go on the hard copy file and are drafting notes in order to help you and your secretary prepare those. Your notes need to cover:

- a) the categories of money;
- b) why the firm keep and use separate bank accounts for client and office money; and
- c) why the firm cannot accept large sums of cash to pay bills or make payments on account.

Provide the body of the set of notes on the particular issues listed. Your notes should cite any relevant rules.

**(Total: 20 marks)**

**Total for Section B: 60 Marks**

**END OF PAPER**