



Candidate Number _____

Unit 3 Examination Paper

3 August 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. People who work in costs firms tend to have defined roles and follow strict rules and procedures. Handy described this type of organisation as having a role culture. Explain, using academic theory, alternative ways a costs firm may be structured.

(10 Marks)

2. Summarise the legislative requirements for firms to have compliance officers and how the rules ensure that a firm complies with its regulatory and legal requirements when managing functional areas of a firm.

(10 Marks)

3. Discuss how the SRA requirements to manage and supervise the business may be met by implementing a risk management policy.

(10 Marks)

4. Explain the risks associated with costs firms putting in place processes to maintain and improve the performance of their workforce.

(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 in-house at a firm of solicitors that deals predominantly with defendant work. You have been approached by Scott Harrison, a solicitor at the firm, regarding his client Sunny Sightseeing Tours Ltd (SST Ltd).

SST Ltd have been defending a claim brought by two claimants that went on a package holiday SST Ltd had provided. The holiday was to Magaluf for 14 nights in January 2017. Both claimants have alleged that they suffered gastroenteritis caused by inadequate hygiene practices at their hotel. The claimants brought the proceedings for breach of contract under the Package Travel Regulations 1992.

In September 2018 the claimants' solicitor made an application to come off the record. Since then the claimants have failed to comply with the order made upon allocation which required them to provide a standard disclosure list and an updated schedule of loss.

In December 2018 Scott Harrison, on behalf of SST Ltd, applied to have the claim struck out for failure to comply with the court order. The claimants were correctly served with the application notice and accompanying documents, as well as the notice of hearing.

The claim was struck out without a hearing prior to the defendant's strike-out application being heard because the claimants also failed to pay the trial fee. The matter now remains listed in respect of costs before Deputy District Judge Henry, who had struck out the matter.

Write the body of a memo to your solicitor colleague advising when a claimant is entitled to the protection of QOCS and whether, in this situation, that protection may be lost.

(Total: 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 Brighton. You have been approached by a solicitor, Jessica Talbot, for your advice on the recoverability of an ATE premium. Ms Talbot has been acting on behalf of Mrs Everette, who brought a clinical negligence claim against the Brighton and Hove Hospitals NHS Trust in relation to the treatment she received following a miscarriage in July 2016. After entering into a CFA with her solicitors Ms Talbot requested her medical records from the NHS Trust.

Before any medical records were received, or before expert evidence was obtained in relation to her claim, Mrs Everette took out an ATE insurance policy with PROT. The total premium, including IPT, came to £5,002 of which £4,008 (including IPT) was recoverable. Mrs Everette's claim settled for £2,900 before expert evidence was obtained.

At provisional assessment the premium was allowed in full. At an oral hearing, requested by the Trust, the Deputy District Judge considered that it was unreasonable to have taken out the policy before Mrs Everette's medical records had been seen to confirm the facts and before there could be any assessment of risk.

Permission to appeal has been granted on the basis that the Deputy District Judge had been wrong to hold that she should have waited to ascertain the level of risk before taking out an ATE policy. The appeal is listed to take place in two weeks before HHJ Magpie.

Your instructing solicitor has written to you asking for your advice and specifically if you could answer the following three questions:

- a) Does the recovery of ATE premiums in post-LASPO clinical negligence cases engage the CPR?
- b) Following the April 2013 reforms, is it still good law that it is reasonable to take out an ATE policy at the outset of a claim when a claimant instructs solicitors?
- c) Does the new test of proportionality apply to the recovery of an ATE premium in a post-LASPO clinical negligence case?

You are required to write the body of a letter of advice to Ms Talbot setting out whether or not you think the premium is recoverable and addressing her questions.

(Total: 20 Marks)

**Question 7: Civil Procedure Rules to Land and Family Law Matters
Heard in the Civil Courts**

You are a costs lawyer working in house at a firm of solicitors, Harbutt and Bassett LLP. Martha Stevens is a partner in the family department of the firm. She has approached you for advice in relation to her client, Ms Diane Foster, who is the applicant in proceedings brought under the Trusts of Land and Appointment of Trustees Act 1996, pursuant to which she claims a beneficial interest in her former home. The defendant to the proceedings is Deryk Bannister.

The parties met and began a relationship in 1990. At that time, Diane was aged 19 and Deryk 32. They began to live together in 1991. They lived together for over 20 years although in the last few years of their relationship there were many difficulties between them. They separated in September 2017.

The parties' former home has been valued, for the purposes of the proceedings, at around £2,300,000. There is an outstanding mortgage secured upon the property and once costs of sales are deducted it will leave about £1,900,000 of equity.

The financial litigation has engaged leading counsel as well as junior counsel and has generated a phenomenal amount of documentation. Diane has incurred (including her estimated costs to the end of a fully contested current hearing) costs of about £800,000 inclusive of VAT. Deryk has incurred costs of about £506,000, inclusive of VAT. So, between them, these two parties have now incurred, or anticipate incurring, expenditure of about £1,300,000 on legal costs.

Diane has requested advice from Martha on whether or not she will be able to recover her costs from Deryk.

You are required to write the body of an email to Ms Stevens 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.

(Total: 20 Marks)

**Question 8: Civil Procedure Rules in Relation to a Contentious Probate
and Judicial Review**

You are a costs lawyer working in house at a firm of solicitors, Harris and Turner. Mr Harris, a partner in the firm's litigation department, has contacted you about a judicial review matter. He represents the group of claimants in the matter, a group of nurses that work independently in private practice. The claimants have brought their claim for Judicial Review against the Nursing and Midwifery Council's (NMC) decision that the nurses' professional indemnity arrangements were inappropriate, with the level set at a tenth of the costs estimated by the membership organisation of which they were all members.

The membership organisation, which had about 90 members, had arranged professional indemnity insurance through the second interested party in proceedings, Harvester Ltd. The NMC found that the indemnity offered was inappropriate given the nature and risks associated with the work the nurses undertook.

The claimants wish to make an application for order that, should they lose, their liability to pay the NMC's costs would be limited to £20,000, with a reciprocal cap limiting their recovery to £50,000. The NMC are arguing that the issue affects only about 90 nurses and only a small number of clients.

The claimants have indicated that they will have to withdraw their application for judicial review if they do not obtain the order they are seeking. The NMC's estimated costs are £250,000, a sum that would bankrupt the claimants if they lost, and those costs would be in addition to their own legal costs.

Write the body of an email of advice to Mr Harris 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 his clients are seeking.

(Total: 20 Marks)

Question 9: Explain the Law and Procedure Relating to Injunctions in Litigation Claims

You are a costs lawyer working in-house at a firm of solicitors, Woolathorns LLP. Mr Woolathorn, a partner in the firm's litigation department, has contacted you about a matter.

Woolathorns represent a well-known high street bank, Harpers, who obtained a judgment against Mr Sanderson in 2010 for £525,000 arising from his default on a mortgage. Some six years later, in 2016, Harpers had agreed to accept £20,500 in full and final settlement of its claim in reliance upon an

allegedly fraudulent misrepresentation made by Mr Sanderson that he was penniless.

Now, Harpers have instructed Mr Woolathorns to issue proceedings against Mr Sanderson on the basis that they have evidence he had significant assets. They wish to make an application for a worldwide freezing injunction against him, restraining him from disposing of his assets up to a value of £552,000, with the exception of £3,000 to cover the costs of legal advice and representation. Harpers will be seeking an interim injunction until the final determination is made.

Write the body of an email advising Mr Woolathorn on the way costs will be determined in relation to the interim injunction. Your advice should detail how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of why costs may be reserved.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER