



Candidate Number _____

Unit 3 Examination Paper

4 December 2021

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 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.

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 whether all Conditional Fee Agreements are contentious business agreements and, if so, how that might affect a client's right to an Assessment of Costs under the Solicitors Act 1974.

(10 Marks)

2. Explain the relationship between a client and their solicitor and set out when that relationship may be terminated before an action has concluded.

(10 Marks)

3. Describe the growth of third party funding in England and Wales and discuss whether there may be a need for better oversight of these type of funding arrangements.

(10 Marks)

4. Explain what a Conditional Fee Agreement is and identify the legal provisions which set out the requirements for these agreements to be enforceable.

(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 are instructed by Miss Theeba Ranjani, a Solicitor with a large SRA regulated firm. Miss Ranjani acted on behalf of the Defendant, Hailsham & Brownbridge University Hospitals NHS Trust in a clinical negligence claim brought by Jonathan Thomas.

The claim arose in early 2015 from the treatment of a Cerebral Arteriovenous Malformation. The Defendant admitted liability and liability costs were settled. Quantum was settled on 4 June 2021 and the settlement was approved by the court on 7 August 2021.

The Claimant commenced Detailed Assessment Proceedings in respect of quantum costs on 28 October 2021. The Bill of Costs comprises an old format paper bill for work undertaken until 6 April 2018 and a new format electronic bill covering costs thereafter. The Notice of Commencement of assessment of the bill of costs is dated 28 October 2021.

You have been instructed to draft points of dispute and on review of the papers you have observed the following issues:

1. the bill is not properly certified because the signatory is not identifiable;
2. the paper bill fails to properly give the name and status for each fee earner and to identify the work done by each fee earner;
and
3. the electronic bill does not provide the name and the grade of each fee earner.

Miss Theeba Ranjani has asked that when you provide the points of dispute you also write a letter to her client providing advice on next steps in the Detailed Assessment Proceedings. Her experience is that her client has delayed in providing instructions so, she has asked that

you include timescales within your advice and also highlight the potential consequences of not complying with those timescales.

Prepare the body of a letter to the NHS Trust advising on the next steps in the Detailed Assessment Proceedings.

(Total: 20 Marks)

Question 6: Costs Pleadings

You are a Costs Lawyer at an SRA regulated firm, Faversham Law. Mr Faversham, the senior partner at the firm, is acting for Home Developers Ltd ("HD Ltd"), one of the UK's most successful housebuilders. Mr Faversham has asked you to advise the client on an application to vary a costs budget.

Brown & Smith LLP ("B&S"), a legal practice, had acted for HD Ltd in relation to the development of some land in Diss, Norfolk. HD Ltd claim that B&S were professionally negligent in relation to the drafting of an Option Agreement and other advice relating to the development of that land. Additionally, B&S have issued a claim for unpaid fees against HD Ltd. The two claims will be heard together and are now being case managed together with combined costs budgets. HD Ltd value their claim in the region of £5m and B&S' fee claim is for a sum in excess of £200K.

The parties were unable to agree the approach to disclosure. The claim came before Deputy Master Chucker on 15 August 2020 for a Costs and Case Management Conference. He gave case management directions, which included directions in respect of disclosure and cost budgeting. Your client's costs budget of £1.115m was approved, of which just over £800,000 was in respect of future costs. The CCMC Order was sealed on 23 September 2020. The trial was fixed for July 2021 with a time estimate of 6 days.

The timetable has slipped. Disclosure has proved challenging, particularly for your client. On 30 March 2021, by consent, the date for disclosure was extended to 19 May 2021. It also became apparent that

a trial date in July 2021 was not realistic and the trial was relisted in May 2022 with the same 6 day time estimate.

There are still three outstanding disclosure issues remaining and it is now apparent that your client's costs budget may need amending. HD Ltd's costs budget, as agreed by the Deputy Master, was based on different disclosure assumptions to B&S' budget. Mr Faversham believes the budget will need to be increased to £1.5m because the case has turned out to be more complex than previously anticipated.

Provide the body of a letter of advice setting out the steps that should be taken in the matter, particularly whether an application should be made to amend the budget and how any such application should be made.

(Total: 20 Marks)

Question 7: Special Courts

You are a Costs Lawyer working in-house for a firm of solicitors in Birmingham. Miss Turner, a solicitor at the firm, has received instructions from Mrs Tabitha Hargreaves in respect of her daughter Eloise.

Eloise was born on 2 November 2009. She joined her primary school, Little Hampton Primary, in 2014. In 2017 the school placed her on its Special Needs Register. In July 2020, Mrs Hargreaves asked the Local Authority to make an assessment of Eloise's special educational needs. The Authority refused.

Miss Turner is advising Mrs Hargreaves on her right of appeal to the First-tier Tribunal (Special Educational Needs and Disability). She has advised that the issue the Tribunal will have to decide is whether the Local Authority should arrange for an assessment to be made and that there are two requirements that must be met when the Local Authority or tribunal makes its decision. The requirements are that Eloise must have a learning difficulty and, secondly, that her learning difficulty must call for special educational provision.

Miss Turner has also advised Mrs Hargreaves that the applicable procedural rules are the Health, Education and Social Care Chamber tribunal rules. However, Miss Turner wishes to provide some further advice to her client on the risk of an Adverse Costs Order being made in the case. It is upon this point that she has approached you for your input.

Prepare the body of an email to Miss Turner setting out the rules in the lower tier tribunals in respect of costs and specifically when a Costs Order may be made.

(Total: 20 Marks)

Question 8: Advanced Civil Procedure

You work in the Costs Department for an SRA regulated firm in Worcester, Tupper and Hart LLP. Mr Tupper, a partner at the firm, has recently been instructed by Mr Dorridge. Mr Dorridge resides at 124 Alcester Road, Worcester WR7 4LR. Mr Tupper has approached you to write a letter to Mr Dorridge.

On 29 September 2021, Mr Dorridge received a telephone call from his wife. She told him that she heard banging and looked out of the kitchen window to discover building works were being carried out next door at number 122 Alcester Road, a neighbouring property owned by Mr Tremor.

Later that day, Mr Dorridge spoke with Mr Tupper. A site meeting was arranged for the following day and during the meeting it became apparent that substantial excavation works had been undertaken in the dining room of the property. The parties discussed the nature of the foundation of the shared wall between the properties. The foundation of that wall was sitting a common floor slab to both properties.

A week later, on 6 October 2021, Mr Dorridge received a letter from the company providing architectural services to Mr Tremor. That letter explained that the work being undertaken would involve excavation within three metres of 124 Alcester Road.

Mr Dorridge immediately made an application, without notice, for an Interim Injunction. An Order was made in Mr Dorridge's favour, and it was directed that a return date be listed for fourteen days after that hearing.

The Order made on the return dates provided that the Injunction was to continue in force until 5 o'clock on 10 November 2021 and that any application by the Defendants to vary or discharge the Injunction was to be made by application notice to be served and filed by 4pm on 29 October 2021. The matter was to be listed for further consideration on 10 November 2021 at 10.30am and the costs of the hearing were reserved until 10 November 2021.

Mr Tupper has discussed the matter with Mr Dorridge, who is of the view an Order should be made that the Defendant pay his costs upon the indemnity basis.

Write the body of a letter to Mr Dorridge detailing how the costs of any injunction proceedings would ordinarily be dealt with and in what circumstances the Court may be persuaded to make an Order upon the indemnity basis.

(Total: 20 Marks)

Question 9: Advanced Civil Procedure

You work as a Costs Lawyer for Brown and Taylor Solicitors, who are based in the West Midlands. One of the solicitors at the firm, Mr Avery, has contacted you about a query he has in relation to a contentious probate matter.

Mr Avery's client, Brian Simpson, is the executer and a beneficiary of Miss Hillary Minter's Will. Miss Hillary Minter was Mr Simpson's neighbour. Miss Minter had a Will which left her entire estate to be divided equally between her two nephews, Tom and Joey. However, she decided she wanted to change her Will and requested Mr Simpson help her arrange it. So, Mr Simpson made the appointment for her and also drove her to the solicitor's office for the appointment. The new Will was not

executed at the solicitor's office but was executed elsewhere. The new Will left her house, the main asset in the estate, in its entirety to Mr Simpson.

Miss Minter died on the 19 April 2021. Her nephews are challenging the validity of the Will. Tom thinks that Mr Simpson pressurised and coerced Miss Minter. He believes Mr Simpson's officious manner and his aunt's vulnerability meant that the later Will is not valid. Joey's position is slightly different, he 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 Simpson, Mr Avery would like to include some information on the way costs may be dealt with in contentious probate matters. Mr Avery has therefore approached you for your help.

Write the body of a memo to Mr Avery 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