

Unit 2 Examination Paper

19 September 2022

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 the application that a claimant may make, outlining the relevant procedure, where they feel there is no compelling reason for their claim to proceed to a trial and the defendant has no real prospect of successfully defending the claim or issue.

(10 Marks)

2. Explain whether a Costs Order may include provision requiring the payment of an amount in respect of all or part of an after the event Insurance premium.

(10 Marks)

3. Outline what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers must comply with their duty to the court in the administration of justice.

(10 Marks)

4. Explain the provisions relating to Costs Lawyers handling client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules.

(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: Civil Procedure

You work in the Litigation department of an SRA regulated firm, Bramble and Heckard LLP, in Manchester. You are contacted by a fee earner, Sarah Tyrell, who has requested help on the file of Charter Logistics Ltd.

Charter Logistics Ltd are the defendants in proceedings. On 12 September 2022 you correctly filed an acknowledgment of service in their matter. You have since finished re-drafting the defence and counterclaim more quickly than you expected and today it is ready to be signed and served.

Just before 5pm you received a call from Amanda Leyton at Leyton and Tannard LLP. Amanda is representing the claimant in the case. Amanda informs you that she has today obtained judgment in default against your client on the basis that your client had failed to file a defence within 14 days of deemed service of the claim form.

Having discussed the situation with Sarah Tyrell you must now write to your client and, with reference to the relevant Civil Procedure Rules, explain whether Amanda Leyton correctly obtained judgment in default and what type of application you advise the defendant should now make. Your letter of advice should set out the grounds upon which any application should be made.

Write the body of a letter to Charter Logistics Ltd providing advice on Default Judgments.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

You work in the Costs department of Barnetts an SRA regulated firm that specialises in clinical negligence and catastrophic injury claims. Your colleague, Helen Elmshaw, has requested your help on the file of Bohdan Shevchenko.

Bohdan Shevchenko had an accident at work in December last year. Mr Shevchenko was a general labourer at Bicester Building Centre. His accident happened when he was lifting some heavy steel castings and, as a result, suffered an injury to his back. The injury was quite serious and has prevented him from returning to work because he is unable to cope with the heavy manual work which was the majority of his role.

Mr Shevchenko has been examined by Bicester Building Centre's doctor and his employment has been terminated because he is unable to return to his former duties. The defendant accepts that it is liable for the accident but has disputed the extent of the injuries that were caused by it. Their doctor has indicated that Mr Shevchenko had pre-existing degenerative problems with his back. In contrast, Mr Shevchenko's doctor believes that all the current symptoms are attributable to the accident and that he will be left with some permanent ongoing symptoms.

Your firm have valued Mr Shevchenko's general damages at around £30,000. He is suffering a continuing loss of earnings of approximately £300 a week and this has been the case since the beginning of March.

Mr Shevchenko is nervous of the financial consequences of bringing this claim. His wife has been on maternity leave, so they don't have a lot of money. However, the firm are proposing to act for him on a conditional fee agreement and Helen Elmshaw has asked you to prepare some advice for him on when a claimant is entitled to the protection of QOCS.

Write the body of a letter to Mr Shevchenko advising when a claimant is entitled to the protection of QOCS and in what situation that protection may be lost.

(Total: 20 Marks)

Question 7: Professional Ethics

You are a Costs Lawyer working in-house for a firm of solicitors in Blackpool, Lavigne Legal LLP. You are instructed by the defendant in proceedings, Walker Hampsons.

The claimant, Mr Mark Craven, brought a claim against Walker Hampsons for noise induced hearing loss. Part 18 requests were made on behalf of your client. Two issues on which clarification were sought were whether Mr Craven had been a

director of Walker Hampsons and whether he had been provided with hearing protection.

In his part 18 response Mr Craven had falsely stated that he had not been a director of Walker Hampsons at the material time. Mr Craven has since said he did not sign the response but his legal representatives, Turner and Morgan, said he did. Mr Craven also put forward a confused and contradictory position over whether he had been provided with ear protection. When the case came on for trial Mr Craven discontinued his claim in entirety.

Your firm have now been instructed to make an application for a wasted costs order. Your client believes that the court should be asked to make a wasted costs order against the Solicitor that represented Mr Craven.

Prepare the body of an advice to Walker Hampsons setting out what a wasted costs order is, how an application for a wasted costs order should be made and when the court can make a wasted costs order against a legal representative.

(Total: 20 Marks)

Question 8: Professional Ethics

You are a Costs Lawyer and work in the Costs department for an SRA regulated firm, Timpson and Tweddle LLP based in Doncaster. The Costs department are instructed internally by fee earners throughout the firm but also receive external instructions predominantly from receiving parties.

You have been approached by Jonathan Grey who is the firms Compliance Officer for Legal Practice. It is Jonathan's responsibility to ensure that all risks at the firm are identified, managed and monitored. Jonathan is currently updating the firm's risk register and is asking for your input. He wishes for you to prepare some notes on the potential risks the firm faces as a result of the external instructions your department receive.

You have agreed to draft a paper setting out the work you do, the status of that work and the potential risks that the firm face as a result of your department undertaking that work.

Prepare the body of an advice as requested by the firms Compliance Officer for Legal Practice.

(Total: 20 Marks)

Question 9: Legal Accounts

You are a Costs Lawyer and head the Costs and Accounts department at Turner and Battersby LLP, a large high street firm in Durham. You work alongside Martha Haslet, who is the firm's Compliance Officer for Finance and Administration.

Martha has asked you to assist with the drafting of some training materials on money laundering. She has explained that the purpose of the materials is to highlight the importance of the firm ensuring that they make fully informed and risk-based decisions on new clients and new types of business from both new and existing clients. Martha wishes for you to include an explanation of why the practice needs customer due diligence procedures in place to identify clients and the potential steps that should be taken if a client refuses to answer questions or give information about themselves.

Martha has also asked you to ensure that the materials explain why the firm must be able to show a reasonable connection between the underlying legal transaction for which they have been instructed to advise on with any funds the firm are asked to hold, or payments the firm are asked to make. The guidance must emphasise that a client account should not be used as a banking facility for funds unrelated to any underlying transaction that the fee earner is carrying out.

Prepare a summary that you will form the basis of the training materials on the aspects detailed above.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER