



Candidate Number _____

Unit 2 Examination Paper

3 December 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. Describe the procedure, including the factors the court will consider, where a claimant has obtained a default judgment and the defendant wishes to have that set aside.

(10 Marks)

2. Discuss 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. Explain what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers must ensure the client's interest is always paramount. Your explanation should include details of any exceptions to this requirement.

(10 Marks)

4. Describe the provisions relating to 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, Fletcher and Inskip LLP, in Doncaster. You are contacted by a fee earner, Nichola Harper, who has requested help on the file of Jeffery Morgan.

Mr Morgan is a builder who entered into an oral contract with Mr and Mrs Travers to build a conservatory at their home address. The price was agreed as £18,500 + VAT, and Mr and Mrs Travers paid an £8,000 deposit on 14 December 2021.

Mr Morgan commenced the building works on 12 January 2022 and completed the main body of work by 18 February 2022. However, by this stage the relationship between the parties had deteriorated. By an invoice dated 18 February 2022 Mr Morgan requested the balance of £14,500 be paid within seven days, thus by 25 February 2025. Mr and Mrs Travers have refused to pay, alleging that the materials used, and the work undertaken was substandard.

Mr Morgan instructed your firm to issue proceedings on his behalf and subsequently Mr and Mrs Travers have filed their defence. Nichola is of the view that Mr and Mrs Travers have no real prospect of successfully defending the claim or issue and she has advised Mr Morgan that he should make an application for summary judgment. She has asked you to write a letter of advice to Mr Morgan setting out the following:

- a) The test for summary judgment.
- b) What stage in the proceedings an application for summary judgment can be made.
- c) The deadlines for exchange of evidence on an application for summary judgment.
- d) The orders the court can make on a summary judgment application.

Write the body of a letter Mr Morgan providing advice on summary judgments.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

You work in the Costs department of Boswell and Cooper Law, an SRA regulated firm that specialises in clinical negligence claims. Your colleague, Amanda Boswell, has requested your help on the file of Jakub Nowak.

In 2020 Jakub Nowak commenced proceedings in the Queen's Bench Division against Dr Harry Marshall and Blackburn Health Services NHS Trust for damages for clinical negligence. Following a split trial on liability in May 2021, the claim against the Dr Harry Marshall was dismissed. As against Blackburn Health Services NHS Trust, Jakub Nowak obtained judgment for damages to be assessed. Jakub Nowak had been advised with the benefit of a conditional fee agreement throughout the proceedings.

In a ruling on consequential matters, following the split trial on liability in May 2021, the court felt there was no alternative other than to order Jakub Nowak to pay Dr Harry Marshall's costs limited to the issue of breach of duty. These were to be paid on the standard basis. The order made provided, at paragraph 3, that: the Claimant do pay the First Defendant's costs in respect of breach of duty, such costs to be subject to a detailed assessment if not agreed. These costs are to be payable from any damages awarded to the Claimant at the conclusion of his action against the Second Defendant but are not to be enforced without permission of the Court. The First Defendant is not entitled to his costs arising out of the causation argument.

Amanda Boswell has asked you to prepare some advice for Jakub Nowak on when a claimant is entitled to the protection of QOCS and whether he will have to pay Dr Harry Marshall's costs.

Write the body of a letter to Jakub Nowak 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 work as a Costs Lawyer for Legal Costing Experts Ltd, a costs firm in Bolton. You have recently been instructed by an SRA regulated firm, Basil and Rosemary LLP, to undertake some work for them on the file of Kamala Zhang.

Your contact at Basil and Rosemary LLP is Bob Brush, a paralegal at the firm. Bob sent you Kamala Zhang's file. The file is a personal injury matter, a Noise Induced Hearing Loss claim, that settled for £2,750 damages. The defendant has been ordered to pay Ms Zhang's costs, to be assessed if not agreed.

You have been instructed to deal with the detailed assessment proceedings, but Bob Brush is insistent that you must include all costs, including those that you do not believe to be recoverable between the parties, in the bill of costs. Bob Brush has also asked you to justify non recoverable funding costs claimed in the bill within the narrative of the bill.

You have discussed your concerns with your colleague, Jenny Tupper, and she has suggested you write an email to Bob explaining the implications to you as a Costs Lawyer if you carry out the instructions you have received.

Prepare the body of the email to Bob.

(Total: 20 Marks)

Question 8: Professional Ethics

You work in the Costs department for an SRA regulated firm, Marshall and Chaton LLP based in Liverpool. The firm predominately undertake work for claimant parties. The Costs department also receive external instructions predominantly from receiving parties.

You have just qualified as a Costs Lawyer. One of the supervising Costs Lawyers has approached you to draft some marketing materials. She wishes to attract more instructions from external clients. She has asked that you write a note summarising the benefits of instructing a costs professional and specifically the benefits of instructing a regulated costs professional.

The marketing materials are to be aimed at all fee earning staff at various SRA regulated firms and need to outline the reserved legal activities a regulated costs professional can undertake and the principles of the CLSB Code of Conduct. You have been asked to have particular regard to the principles which apply when preparing bills of costs and during negotiations.

Prepare the body of the marketing materials as requested by the supervising Costs Lawyer.

(Total: 20 Marks)

Question 9: Legal Accounts

You are a Costs Lawyer and head the Costs and Accounts department at Roger and Skinner LLP, a large high street firm in Tewksbury. You work alongside Tim Green, who is the firm's Compliance Officer for Finance and Administration.

Tim has asked you to assist with the drafting of some training materials on VAT. The materials should explain the rules regarding when VAT is generally charged on the provision of services. Whilst Tim is keen for you to explain the distinction between input and output tax, he has asked that your materials specifically focus on output tax. He has also asked for you to include an explanation of exempt supplies.

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

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER