



Candidate Number _____

Unit 3 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 nature of a lien and explain how a solicitor with unpaid fees may have a lien over a client's property.

(10 Marks)

2. Explain when a retainer between a solicitor and client may be terminated and the potential cost implications of wrongful termination.

(10 Marks)

3. Describe what third party funding is and explain to what extent a third party funder may be liable for the costs of proceedings.

(10 Marks)

4. Identify the legislative provisions that govern the form and content of a Conditional Fee Agreement and explain how and why those rules have changed since Conditional Fee Agreements were introduced.

(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 Mr Simon Levison, a Solicitor that works at a small SRA regulated firm. Mr Levison acted on behalf of the defendant, Mr Marcus Thompson, in a breach of contract claim brought by Mr Robert Banks.

On 19 March 2019 the claimant issued proceedings against the defendant for an alleged breach of contract arising from a purchase agreement entered into between the parties on or around 10 November 2017 for the purchase of a 2005 Maserati Birdcage 75th Pininfarina Concept. The car had been delivered without its original engine. The claimant sought an order that the defendant secure delivery up of the engine.

The proceedings were defended. The trial took place between 7 and 13 May 2021 before HHJ Samuels, who gave judgment for the claimant. The defendant was ordered to pay the claimant's costs to 5 October 2020 on the standard basis and from 5 October 2020 onwards on the indemnity basis, to be assessed if not agreed.

On 29 December 2021 Clear Water Costs, the claimant's costs representatives, sent a Notice of Commencement and a Bill of Costs totalling £810,143.61, by email to Mr Levison. Both the covering letter and the Notice of Commencement identified the date for service of points of dispute as 26 January 2022.

Mr Levison emailed you on the 2 February 2022, he has asked for you to progress matters by drafting the points of dispute. He has also asked that you write a letter to his client providing advice on next steps in the Detailed Assessment Proceedings. He has been chasing his client for instructions for the past three weeks and his client has delayed in providing instructions so he has asked that you include timescales within your advice and also highlight the potential consequences of not complying with those timescales. He confirmed that he has an extension until the 20 February 2022 to file points of dispute.

Prepare the body of a letter to Mr Robert Banks 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, Taverham and Fletcher LLP, located in Towcester. You are working on the file of Liam Bradley who had brought a claim for damages and losses incurred as a result of a serious road traffic accident which occurred on the 3 January 2019.

The matter was ultimately compromised at a Joint Settlement Meeting and a final order was made on 3 August 2021 which included authority for costs to be assessed. You are instructed to deal with the detailed assessment. Miss Grey is the solicitor that has conduct of the matter.

The bill of costs in the matter was drafted by a former colleague of yours and it takes into account a costs management order dated 19 May 2020. You have been through the file and can see that you are seeking an upward departure from the budget in two phases (experts and ADR) and in the remaining phases you are seeking less in the bill of costs than was allowed for in the costs management order.

The paying party has indicated that at detailed assessment they will raise the fact that at the CMC the sum claimed by you for the Experts phase was reduced by £20,000. They will also be suggesting that there has been substantial overspending on work done in the Witness Statements phase and that the phase was not completed.

Write the body of a memo of advice to Miss Grey. Set out the hurdles you must overcome in order to achieve a departure from the costs management order in respect of all phases of the budget and the merits of the paying party's position in relation to the Experts and Witness Statements phases.

(Total: 20 Marks)

Question 7: Special Courts

You are a Costs Lawyer working in-house for a firm of solicitors in Birmingham. David Coleman, an Associate Solicitor at the firm, has been instructed by Mr and Mrs Timms with regards to their 10 year old son, Harry Timms.

Harry has complex needs, including a rare degenerative metabolic condition, severe autistic spectrum disorder, significant hearing impairment and epilepsy. In his case these conditions are severe and life-limiting, such that his life expectancy is early to mid-teens. The Local Authority has issued an Education, Health and Care plan for Harry, but Mr and Mrs Timms disagree with parts of that plan. David Coleman has therefore been advising them on their right of appeal to the First-tier Tribunal (Special Educational Needs and Disability).

David Coleman has advised Mr and Mrs Timms that the applicable procedural rules are the Health, Education and Social Care Chamber tribunal rules. David is instructed to send an appeal form to the Tribunal and he has two months within which to do that. David is now writing to the clients to advise them about what happens after their appeal is submitted and what happens at the hearing. He would like to provide some advice to his clients on the risk of an adverse costs order being made in the case. It is upon this point that he has approached you for your input.

Prepare the body of an email to David Coleman 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-house as a Costs Lawyer at Donaldson and Dobbs LLP, an SRA regulated firm in London. The firm has a large family law department and they specialise in financial relief and Children Act Proceedings. The firm does not have a legal aid franchise. Jenny Dobbs, a Senior Partner at the firm, has requested some costs advice in relation to the following matters:

- a) On the file of Mrs Adeji who has a child with Mr Adeji. Mr Adeji made an application for a child arrangement order, prohibited steps order and specific issue orders in respect of the child, Adeoye Adeji. In a fact-finding hearing a finding was made that the father was responsible for the fatal poisoning of the maternal grandfather and the non-fatal poisoning of the mother and maternal grandmother.
- b) On the file of Mr Musk who married in November 2014, after a brief romance during the summer of 2014. There are no children of the family. The matrimonial home is in the sole name of Mr Musk and is worth £1 million. The property is mortgage free. Proceedings have been issued by Mrs Musk for financial relief following the pronouncement of the first decree within divorce proceedings.
- c) On the file of Ms Fen Zhang, 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 Mr Dominic Taylor. Ms Zhang and Mr Taylor had been in a relationship for 14 years. The claim is for a 50% beneficial interest or share in a property called Manod House.

Write the **body** of a memo to Ms Dobbs setting out how costs in these three family cases would usually be dealt with.

(Total: 20 Marks)

Question 9: Advanced Civil Procedure

You work as a Costs Lawyer for Thompson and Timothy LLP, an SRA regulated firm who based in Nottingham. One of the solicitors at the firm, Mr Thompson, has contacted you in connection with a contentious probate matter. He has a query on the file and is seeking your advice.

Mr Thompson's client, Ms Hillary Turner, is the executer and a beneficiary of Mr Brian Court's Will. Mr Brian Court was Hillary Turner's former colleague. Until February this year, Mr Court's Will left his entire estate to be divided equally between his two nieces, Elizabeth and Jennifer. Sometime in February Mr Court had decided he wanted to change his Will and he telephoned Hillary Turner and asked her to help him make arrangements. Ms Turner telephoned Mr Court's solicitors and made him an appointment. She also drove him to their offices for the appointment.

Mr Court instructed the firm to prepare a new Will, which was not executed at the solicitor's office, but was executed elsewhere. In his new Will, Mr Court left his house, the main asset in the estate, in its entirety to Ms Turner.

Mr Court died on the 10 March 2022, 14 days after the new Will was executed. His nieces wish to challenge the validity of the Will. Elizabeth thinks that Ms Turner pressurised and coerced Mr Court, which means his later Will is not valid. Jennifer has adopted a different approach; she 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 Ms Turner, Mr Thompson would like to include some information on the way costs may be dealt with in contentious probate matters.

Write the body of a memo to Ms Turner 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