



Candidate Number \_\_\_\_\_

## Unit 3 Examination Paper

11 February 2023

**Time allowed: 3 hours**

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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.

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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 circumstances when Conditional Fee Agreements will not amount to contentious business agreements.  
(10 Marks)
2. Describe the rules governing the form and content of a retainer that must be complied with when a solicitor enters a contract with a client.  
(10 Marks)
3. Explain why Third Party Funding should not be an accepted method of funding mainstream litigation.  
(10 Marks)
4. Describe what a Conditional Fee Agreement is and explain the form, content and way that such an agreement works.  
(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 work at Anjani and Moore LLP, an SRA regulated firm in Maidstone. An Assistant Solicitor at the firm, Miss Grey, has approached you for your help on one of her cases. Her client is Mr Donald Spare and he is the Claimant in proceedings. The Defendant is Bradbury NHS Trust.

Mr Spare suffered complications with his heart whilst undergoing treatment for a bowel disorder. The heart complications were a result of negligent treatment in one of the hospitals for which Bradbury NHS Trust is responsible. The matter was settled on 16 September 2022. The parties agreed the terms of a consent order which was approved by the court on 7 November 2022. The order provided that the Defendant would pay Mr Spare £20,000 together with his costs on the standard basis, to be assessed if not agreed.

Miss Grey has asked you to commence detailed assessment proceedings. She has also asked you to draft a letter to her client providing advice on detailed assessment proceedings.

Prepare the body of a letter to Mr Donald Spare advising on detailed assessment proceedings and setting out the steps you will take.

(Total: 20 Marks)

### **Question 6: Costs Pleadings**

You work for a firm of solicitors, Carhop and Cunningham LLP, located in Wrexham. You are dealing with the detailed assessment of a claim for damages and losses incurred as a result of a fatal accident which occurred on the 26 December 2018. The claim was ultimately compromised at a Joint Settlement Meeting and a final

order was made on 3 July 2022 which included authority for costs to be assessed. Mr Johal is the solicitor that has conduct of the matter.

The bill of costs was drafted by a former colleague of yours and it takes into account a costs management order dated 19 May 2021.

You have perused the file and have noted that you are seeking an upward departure from the budget in two phases and in the remaining phases you are seeking less in the bill of costs than was approved by the court in the costs management order.

The paying party has indicated that at detailed assessment they will be seeking that if the Costs Judge reduces the hourly rates in relation to the incurred costs that those same reduced rates should also apply to the budgeted costs. The paying party contends that this should be done by the Costs Judge reviewing the estimated hours in the agreed budget and applying the assessed hourly rates to retrospectively arrive at a revised (reduced) figure for each phase.

Write the body of a memo of advice to Mr Johal. 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 hourly rates.

(Total: 20 Marks)

### **Question 7: Special Courts**

You are a Costs Lawyer working in-house for a firm of solicitors in Birmingham. Mary Tenant, an Associate Solicitor at the firm, has been instructed by Mendway Ltd. Mendway LTD had contracted with a Malaysian company, Awang Construction, in respect of a project in Iraq. A dispute arose and, as per the agreement between the parties, the matter is proceeding to arbitration.

A sole arbitrator was appointed in November 2022 in accordance with the Arbitration Agreement. The Arbitrator is an American lawyer who is a partner of an American law firm.

Mary has approached you to assist her with drafting her initial letter of advice to Mendway Ltd. She has asked that you provide her with information in relation to the assessment of costs in arbitration proceedings. The agreement between the parties provides that the provisions of Arbitration Act 1996 will apply to the costs of proceedings.

Prepare the body of a memo to your solicitor colleague. Describe the procedure for the assessment of costs in arbitration, in what circumstances an assessment must go to court and how an award may be enforced.

(Total: 20 Marks)

### **Question 8: Advanced Civil Procedure**

You work for an SRA regulated firm, Parsons and Pattenden LLP, located in Buckingham. Mr Parsons, a Senior Partner, has approached you for your help with one of his matters. The client matter he is seeking assistance with is Buckingham Commercial Metalcraft Ltd.

Buckingham Commercial Metalcraft Ltd is the defendant in proceedings which the claimant brought for passing off. The claimant has supplied the hospitality industry with metal furniture and other items for a considerable number of years under the name Commercial Metalcrafters. The total sales of Commercial Metalcrafters are approximately £12 million.

In November 2022, the claimant sent a letter of claim alleging passing off and seeking to prevent the use of the company name. Subsequently, a claim form has been issued and the claimant has also applied for interim relief.

Buckingham Commercial Metalcraft Ltd have agreed to change the name of the company. They have instructed Mr Parsons not to put in evidence on the application for interim relief or to serve a Defence but they have instructed him to indicate, in correspondence, that they will say that the words "Commercial Metalcraft" are merely descriptive. Buckingham Commercial Metalcraft Ltd have instructed that they will agree to give undertakings at the hearing so the only issue outstanding is the costs of the application.

Write the body of an email advising Mr Parsons whether costs are likely to be ordered in favour of the claimant in any event or if the costs should be reserved.

(Total: 20 Marks)

### **Question 9: Advanced Civil Procedure**

You work for a city law firm, Parmenter Law. Royce Parmenter, a Partner in the firm, has approached you for advice in relation to a case he has conducted in which he is acting for the claimants in a claim for judicial review. The claimants include a high-profile Professor, Mr Henry Grimshaw, four senior Academics and a team of Doctors.

The Department for State for Health and Social Care has decided it will be introducing Corporate Care Organisations. It is this decision that the claimants are seeking a judicial review of. Corporate Care Organisations are commercial non-NHS bodies designed to run health and social services. It is proposed that the Corporate Care Organisations be governed by company and contract law and can therefore be given full responsibility for NHS and adult social services.

The claimants' case is that introducing these organisations could lead to most of a local area's NHS services being provided for under a single budget run by one organisation. It is their case that this may then allow for greater privatisation of the NHS. The claimants argue that legislation is required allowing scrutiny of the proposals before the policy is implemented and any changes to Regulations are made.

The claimants are, rather unusually, funding the matter through crowdfunding. This type of donation-based funding enables litigants to raise funds and gain community support for their case. The claimants have established an online presence and are receiving donations from supporters of their case. The claimants are using an established crowdfunding website, FundingJusticeForAll.com and once they hit their fundraising target funds are transferred directly to Parmenter Law's client account.

The claimants have now hit their funding target and are ready to make their application for permission to bring a judicial review challenging the lawfulness of the government's policy to create Corporate Care Organisations. They also wish to

apply for a costs capping order and it is this aspect in relation to which Mr Parmenter is calling upon your expertise.

Write the body of a memo to Mr Parmenter setting out the statutory tests for costs capping orders in judicial review cases.

(Total: 20 Marks)

**Total for Section B: 60 Marks**

**END OF PAPER**