



Candidate Number _____

Unit 2 Examination Paper

18 September 2023

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 when the Court may give summary judgment and the procedure that should be followed should a Defendant wish to make an application for summary judgment.

(10 Marks)

2. Explain what qualified one-way costs shifting is, the impact the rules have on the court's discretion as to costs and when costs protection may be lost.

(10 Marks)

3. Outline the legislative provisions that govern when the Court can make a Wasted Costs Order against a legal representative and explain how an application for a Wasted Costs Order should be made.

(10 Marks)

4. Outline the provisions in the Costs Lawyer Code of Conduct on client money and how those provisions help ensure the protection of the public.

(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 Dispute Resolution Department for an SRA regulated firm, Harvest and Bunkers LLP. An Associate Solicitor at the firm, Barry Thomas, has requested your help on the file of Mr Trevor Robinson.

Mr Robinson has been a client of Harvest and Bunkers LLP for over ten years. He owns a number of corner shops and has used the firm for conveyancing and some commercial advice.

Mr Robinson had closed one of his shops for refurbishment but the work was delayed and as a result nobody had been into that shop for a month. Last week Mr Robinson went into the shop and discovered that judgment had been entered against him by Lecky Lectricians Ltd. Mr Robinson had not replied to the Claim Form and it was therefore ordered that he pay Lecky Lectricians Ltd £2,225, being the amount claimed, plus interest to the date of Judgment, and £240 for costs. Mr Robinson disputes the money is owed. Lecky Lectricians Ltd were due to undertake some work at two of the shops but never completed it.

Your firm have been instructed to make an application to the Court to set aside the Default Judgment. Barry Thomas has asked that you write a letter of advice to Mr Robinson explaining what a Default Judgment is, how the Judgment has been obtained and upon what basis the Court may set aside a Default Judgment.

Write the body of a letter to Mr Robinson providing advice on Default Judgments.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

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

Miss Kowalska sought damages against Norwich NHS Trust for clinical negligence. Her claim was settled for £3,750. You drafted the bill of costs on the file, which totalled £21,370.22. This included the recoverable element of the ATE insurance premium of £4,500. The policy was a block-rated policy.

The Respondent has produced a set of Points of Dispute. One of the points is a challenge to the ATE insurance premium. The point states that the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums. The point also asserts that at the outset Miss Kowalska's prospects of losing the case were very low and suggested a reasonable and proportionate premium in this case is £370.

Amanda Cooper has asked you to draft Replies to the Points of Dispute but initially has asked for your provisional advice on the recoverability of the ATE premium.

Write the body of an email to Ms Cooper advising on the recoverability of ATE premium and in particular whether the premium may be reduced based on proportionality.

(Total: 20 Marks)

Question 7: Professional Ethics

You are working for a firm of Costs Lawyers in Derby, Edwards and Sullivans Legal Costs Services. You are a qualified Costs Lawyer. As part of your role, you are responsible for allocating new clients to members of the team who will then undertake the work on behalf of the client.

You have recently been instructed by Mr Pascal Lopez who had acted in person during the substantive proceedings. Mr Lopez is now seeking professional advice in relation to the costs proceedings, he feels that instructing your firm will ease his stress and save him some time and money. You have a telephone conference with Mr Lopez to ascertain his instructions. During the discussion it became clear that Mr Lopez has very strong views, therefore from the view that managing his expectations is going to require you to allocate his matter to a senior member of your team.

Mr Lopez's opponent has a Final Costs Order against Mr Lopez and your firm is now instructed to conduct the Detailed Assessment on his behalf. It became apparent

from your phone call with Mr Lopez that the substantive proceedings were protracted and that Mr Lopez feels that the court have conspired against him. At one point during the conversation, Mr Lopez even suggested the Judge at the final hearing was racist. Your view is that it is likely Mr Lopez is upset with the outcome of the hearing, that the decision was within the bounds of fairness and that Mr Lopez has provided little evidence to support his claim that the Judge was racist.

Additionally, Mr Lopez's instructions on the bill of costs is that the costs are all completely unreasonable, he has told you that he wants your firm to raise an issue with every item in the bill and make lengthy disputes. You believe that progressing the case in the way Mr Lopez is suggesting may be an abuse of the Court process. You therefore wish to provide the team member who will be undertaking the work with a memo explaining the implications for a Costs Lawyer if they were to conduct the case in the way Mr Lopez is instructing.

Write the body of a memo setting out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit you from arguing unarguable points and the potential implications if you act on Mr Lopez's current instructions.

(Total: 20 Marks)

Question 8: Professional Ethics

You work for Derek and Dobson Costs Consultants, a reputable firm of costs professionals based in Cardiff. The firm receive instructions from all over England and Wales.

Derek and Dobson Costs Consultants are very proactive in training and development and support all staff members in completing their Cost Lawyer qualification. Therefore, all members of staff are either currently regulated by the Costs Lawyers Standards Board or are undertaking the qualification.

You are a qualified Costs Lawyer and as part of your role you liaise with new clients. Next week you have a meeting with a prospective new client, a large firm that is regulated by the Solicitors Regulatory Authority. At that meeting you will need to present to them on the benefits of using your firm to complete their budget, billing and assessment work. You know that the firm are particularly interested in finding a company that is prepared to attend costs and directions hearings on their behalf.

Having discussed the presentation with your colleague you have agreed to put together some materials on ethics and professional standards which outline the reserved legal activities a Costs Lawyer can undertake and the principles of the CLSB Code of Conduct. You have decided to pay particular regard to the principles which apply when preparing budgets, bills of costs and attending hearings. The purpose of your presentation is to persuade the prospective client how it may benefit from using a firm of regulated costs professionals.

Prepare the body of the presentation materials.

(Total: 20 Marks)

Question 9: Legal Accounts

You are a Costs Lawyer and head the Costs and Accounts department at a high street firm in Chelmsford, Munslow and Harper LLP. You work alongside Morgan Thomas, who is the firm's Compliance Officer for Finance and Administration.

Munslow and Harper LLP specialise in residential property and due to the location of the firm attract quite a lot of instructions from people in London who are trying to avoid the more expensive legal fees of city lawyers. The firm now wish to expand their target market and are due to run a marketing campaign in Birmingham, Liverpool, Manchester and Nottingham in the hope that they can have a nationwide presence.

As a result of the plan for growth, Munslow and Harper LLP are scheduled to run a recruitment drive over the next three months with the expectation that fee earning staff in the residential property department will increase by 15%. Morgan wishes for all new staff to undertake mandatory training on due diligence including identity checks and checks of source(s) of any funds the firm receives. Therefore, he has approached you to write an outline for the training that covers the definition of money laundering, the risks the firm faces and the associated offences.

Provide the body of the guidance note for Morgan on the particular aspects he wishes to cover.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER