



Unit 2 Examination Paper

4 December 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 what is meant by a 'default judgment' and the circumstances in which a default judgment may be obtained and/or set aside. What factors will a court consider when deciding whether to set judgment aside?

(10 Marks)

2. Outline the changes that were made to the rules on recoverability of ATE insurance premiums with effect from 1st April 2013. What has been the impact of these changes on the ability of a successful party to recover ATE premiums for policies taken out after this date?

(10 Marks)

3. Explain the main differences between contentious and non-contentious business in legal work and the significance of these differences in relation to rules about charging fees to clients and/or recoverability of costs from other parties. Does the distinction between contentious and non-contentious business serve any useful purpose?

(10 Marks)

4. Explain what is meant by 'Money Laundering' and outline the statutory and non-statutory provisions which regulate this activity. What impact do these provisions have on the activities of individual lawyers and law firms when dealing with clients' money?

(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, BisLaw LLP. You have been asked to help one of the Associate Solicitors in the firm with advice to the firm's client, Tony's Quality Builders Ltd.

Tony's Quality Builders Ltd are a long-standing client of the firm and have used its services for general commercial and business advice.

Tony's Quality Builders Ltd undertook some building, maintenance, and repair work for Ms Susan Shuttleworth at her business premises, a small shop from which Ms Shuttleworth trades as 'Sue's Second-Hand Emporium'. The total cost of the building work came to £7,500. The whole of this sum remains unpaid despite numerous reminders being sent and promises to pay being received but not fulfilled.

Tony' Quality Builders Ltd initially instructed your firm to send letters seeking payment of the outstanding invoice and, when no response was received, to send a formal 'Letter of Claim' under the Pre-Action Protocol.

On reviewing the file, you see that no written responses have been received to the firm's correspondence, but there is a file note of a telephone call received from Ms Shuttleworth in which she says that your client is 'a bunch of cowboys' who have 'destroyed her shop' and she is seeking her own 'legal advice'.

You also see on the file that one clause in your client's 'standard terms and conditions of business' states "All work must be paid for in full within seven days of completion and invoice. No reduced payments, discounts, set offs or counterclaims will be accepted, unless notified to the company in writing within that period".

Tony's Quality Builders Ltd have now lost patience with Ms Shuttleworth and instruct your firm to commence court proceedings. Your client has heard that Ms Shuttleworth's business is experiencing financial difficulties, and she is 'playing for time' with other creditors too. Your client has asked whether there is any way to 'short-circuit' the normal court procedures and is also concerned about the likely

costs of pursuing proceedings. The Associate Solicitor handling the case has suggested the possibility of seeking summary judgment against Ms Shuttleworth. You have been asked to draft the body of an email to your client giving advice on what summary judgment is, the procedure involved, the chances of success, and the likely costs implications of pursuing such an application.

(Total: 20 Marks)

Question 6: Personal Injury and Clinical Negligence Claims

You work in the Costs department of Morgan and Brighthouse Law, an SRA regulated firm that specialises in personal injury and clinical negligence claims. One of the partners in the firm has requested your help on an issue that has arisen on the file of Mr Matthew Cooper.

Mr Cooper suffered serious head and spinal injuries as a result of a road traffic accident. After an initial denial, breach of duty of care was admitted by the driver of the other vehicle involved, and the claim proceeded on causation and quantum issues. The main issue on causation was whether, and to what extent, the treatment Mr Cooper received at the Royal Norfolk Hospital was the cause of his ongoing symptoms. The NHS Trust responsible for the hospital was joined as a second defendant in the proceedings. There was also a dispute about the 'quantum' of gratuitous nursing care provided by Mr Cooper's partner, Jo. Both defendants allege that the time and rates charged for this head of damage are 'grossly excessive'.

The expert evidence obtained during the course of the proceedings largely agreed that the medical treatment received by Mr Cooper was of an acceptable standard and did not cause or contribute to Mr Cooper's ongoing symptoms. On receipt of the expert evidence, the claim against the hospital was discontinued on Mr Cooper's instructions.

On the claim for gratuitous nursing care, Mr Cooper's instructions are that the rates claimed are discounted from the rates charged by professional carers, based on an internet search, but Mr Cooper accepts that Jo may have 'exaggerated' some of the time spent providing care for him.

The claim against the other driver is proceeding to trial, but the NHS Trust has indicated that it intends to seek an order for its costs of defending the discontinued claim against Mr Cooper.

The partner in your firm has explained the protection offered to Mr Cooper by QOCS, but feels that the client is anxious about the prospect of losing a large portion of any damages he recovers from the other driver to pay the NHS Trust's costs.

You have been asked to write the body of an email to Mr Cooper advising him on the protection provided by the rules on QOCS and the prospects of being asked to pay the NHS Trust's costs.

(Total: 20 Marks)

Question 7: Professional Ethics

You are a qualified Costs Lawyer working for a firm of specialist Costs Lawyers, White and Lyndhurst Legal Costs Services.

You have been consulted by Mr Paul Adeboyo, who has sought your advice regarding the outcome of a claim for damages for personal injury, which was handled by a local firm of solicitors, Scott & Wayne LLP.

Mr Adeboyo's claim for damages arose out of an accident when he was knocked off his bicycle by a motor car and received hospital treatment for minor leg, arm and head injuries. Mr Adeboyo instructed Mr Kevin Duneen of Scott & Wayne LLP to pursue a claim against the driver of the car. Mr Adeboyo tells you that when he first instructed the solicitors, he was told that his claim was worth 'around £6,000' and the cost of pursuing the claim would be 'around £5,000'. Mr Adeboyo says that he was assured the claim would be pursued on a 'no win, no fee' basis and 'all the costs' would be paid by the other party when the claim settled.

Reassured by this, Mr Adeboyo instructed the solicitors to proceed with his claim and signed a 'client care letter' and a 'conditional fee agreement' (CFA). Mr Adeboyo noticed one clause in the client care letter that said the solicitors expected to recover 'some of our charges and expenses from your opponent'. When Mr Adeboyo queried this, he says he was told 'not to worry' and 'all costs would be paid by the other side, apart from the success fee, which is capped anyway'. The CFA stated that the 'success fee' was 100% of basis costs, but was capped at 25% of general damages and pecuniary loss.

Mr Adeboyo tells you that after about one year his claim was settled in the sum of £3,000 in total damages. Although Mr Adeboyo felt that his claim was worth more, he had accepted Mr Duneen's advice that some of the losses he wanted to claim for were 'not recoverable in law' and the offer was a 'very good offer' for the injuries Mr Adeboyo had suffered.

Mr Adeboyo was generally satisfied with the outcome but is concerned about the costs position. He received a letter from the solicitors confirming that the claim had settled at 'stage 2 of the RTA Portal', costs of £500 +VAT + disbursements (£750) had

been recovered from the insurers, Scott & Wayne's 'success fee' of 100% base costs was £4,000, but this was 'capped' at 25% of damages (£750). The letter enclosed payment to Mr Adeboyo of £2,250.

Mr Adeboyo informs you that he does not understand what the 'RTA Portal' is and, more importantly to him, does not understand why all the costs were not recovered from the opponent when he had been assured that they would be. Mr Adeboyo feels that he has been 'scammed' by Scott & Wayne and wants you to challenge the whole of the £750 fee on the basis that it was obtained by 'fraud and deception'.

You see from the documents that Mr Adeboyo has supplied you with that the CFA agreement is in the Law Society's standard form **[NOTE: Candidates are not expected to discuss the rules around the validity of CFAs when answering this question]**. The documents also contain an email from the solicitors explaining that the original estimated value of the claim was based on information supplied by Mr Adeboyo that was not supported by the available evidence, as a result of which the RTA Portal is now the appropriate forum for pursuing the claim. The email explains what the RTA Portal is, but does not explain the costs consequences of this for the client.

Write an advisory email to Mr Adeboyo explaining the legal position on solicitor's fees, the recoverability of costs, and any potential remedies that may be open to him

(Total: 20 Marks)

Question 8: Professional Ethics

You are a trainee Costs Lawyer working for Derek and Clyde, Legal Costs Consultants. Your supervisor has asked you to review a file for a new client, Ms Raquel Duvall.

Ms Duvall was involved in a complex and protracted civil claim, which was eventually partly resolved in her favour at trial. The difficult procedural history of the claim meant that various costs orders had been made at different stages of the litigation, some in Ms Duvall's favour and others against her. A detailed assessment hearing was listed before a Costs Judge to determine the amounts to be allowed under these various orders.

The solicitors who had acted for Ms Duvall in the proceedings indicated that their expertise in costs matters was insufficient to deal with the detailed assessment hearing, and they suggested instructing a 'Specialist Costs Advocate', Mr Tom Trotter, to represent Ms Duvall at the hearing. The solicitors said that they had used Mr Trotter in the past and he would 'do a good job' for the client.

Ms Duvall says that the assessment hearing was 'a disaster'. Large portions of her claimed costs were disallowed, whilst the costs orders against her were mostly allowed as drawn in the bills. The Costs Judge indicated that the pleadings had shown arguable points in Ms Duvall's favour, but these points had not been pursued before her. Instead, Mr Trotter had pursued arguments not pleaded and which relied on authorities which had been overruled by a decision of the Supreme Court 6 months earlier.

Due to lack of court time, the hearing was adjourned to another day to determine who should pay the costs of the assessment proceedings.

Ms Duvall has lost all confidence in Mr Trotter. She has found out since the hearing that he is not a qualified lawyer of any description and does not have rights of audience in his own name. Ms Duvall has come to your firm to seek advice about her position. She feels very strongly that Mr Trotter should compensate her for the costs that were disallowed and pay the costs of the assessment hearing.

You have been asked to review Ms Duvall's file of papers and draft a memo of advice on her position and the options open to her

(Total: 20 Marks)

Question 9: Legal Accounts

You work in the Costs Department of Morgan, Freeman, and Murphy LLP, a small-medium sized high street firm. You have been approached by one of the Senior Partners in the firm, who has recently been appointed as the firm's new COFA, for your advice about the activities of a particular client, Mr Pedro Escobar.

Mr Escobar is a new client who has been recommended to the firm by one of its longstanding existing clients, for whom the firm carries out a lot of commercial and conveyancing work. Mr Escobar has instructed the firm to act on his behalf in relation to a property transaction. The COFA is new to the role and has sought your advice on the legal and regulatory position in relation Mr Escobar's instructions.

Mr Escobar has provided the firm with funds to commence work on his transaction. These funds comprise a cheque for £12,000 and £25,000 in cash in a mixture of

notes and coins of various denominations. Mr Escobar's instructions are that these funds are to cover the deposit on the purchase of the property and the firm's fees. Mr Escobar's instructions are that in order to free up the rest of the money for the transaction, it is crucial that the firm transfers the equivalent in US Dollars of £10,000 to his mother's account in a bank in the British Virgin Islands.

The COFA is unsure whether the firm has the correct financial systems in place to handle such unorthodox instructions and seeks your advice on what the firm should do in response to Mr Escobar's requests.

Write a memo to the COFA setting out the management systems the firm should have in place to comply with the regulatory requirements on handling clients' money, and how to deal with financial transactions of this nature. Your memo should include advice on what steps the firm needs to take to ensure compliance with the legal and regulatory requirements.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER