



Unit 3 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. What will be considered by the Court when deciding if a Conditional Fee Agreement is in fact a contentious business agreement

(10 marks)

2. Describe the legislative process governing third party funding agreements and the potential liability of third party funders for the costs of proceedings

(10 marks)

3. Describe the types of lien a Solicitor may have over a client's property and discuss how this may be exercised

(10 marks)

4. Describe when an interim statute bill could be considered a request for payment on account with reference to interim invoices.

(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 for a Costs Firm Turner and Carter Costs instructed to deal on behalf of the receiving party with the Detailed Assessment of a claim for damages and losses incurred as a result of a fatal Road Traffic Accident which occurred on 15th January 2017. The matter was settled at the end of a three day Trial and a final order made on 10th August 2023. The order made included an authority for costs to be assessed on the standard basis. Mrs Smith is the Solicitor that has conduct of the matter from Arkin and Bowers LLP located in Birmingham.

The Bill of Costs was prepared by an in house Costs Draftsman at Arkin and Bowers LLP and takes into account a Costs Management Order dated 10th June 2022.

Following review of the file you note that you are seeking less than the approved Costs Management Order in four of the phases with an upward departure in the remaining phases. There has been an interim application that had not been included in the budget and extensive disclosure which was not envisioned.

The paying party have indicated that they consider the Band 1 Guideline Hourly rates applied to the Bill of Costs to be excessive and request for the Costs Judge to reduce the rates for incurred costs maintaining that this should be applied to budgeted costs.

Prepare a letter of advice to Mrs Smith setting out the matters arising when seeking a departure from the Costs Management Order for all budget phases and the merits of the paying party's point in relation to Hourly Rates.

(20 Marks)

Question 6: Costs Pleadings

You have received instructions from your client Mr Williams & Co Solicitors who acted on behalf of the Claimant Mr Yoki in a personal injury claim **against** the Ministry of Defence, which proceeded to a case and costs management conference (CCMC) on 1st August 2021 at the High Court of Justice, Queen's Bench Division before Master Johnson. Prior to the hearing, the Claimant duly filed and served his Costs Budget and some negotiations on future costs took place between the parties, however they were largely unfruitful and the parties were unable to agree the approach in respect of expert evidence.

At the Costs and Case Management Conference case management directions were provided in relation to expert evidence and costs budgeting. Your Clients costs budget totalling £800,000 was approved of which £400,000 was for future costs. The Costs Management Order was made on 10th September 2021 and a Trial fixed for 10th May 2023 with a time estimate of four days.

The parties found it hard to follow the timetable provided by the Court in respect of expert evidence and by consent, the date for disclosure of further witness evidence was extended to 4th February 2023. It also became apparent that the Trial would need to be extended to 6 days and a new Trial date was set for 10th January 2024.

Costs in respect of expert evidence as budgeted for in the Costs Management Order has almost been reached and there are still outstanding issues to be resolved. Your client has asked for you to provide a letter of advice setting out the steps that should be taken, in particular if an Application to amend the budget should be made and the procedure to be followed to do so.

(20 Marks)

Question 7: Special Courts

You are a Costs Lawyer working in house for a firm of Solicitors in Liverpool. Miss Neville, a Solicitor at the firm has received instructions from Mrs Joyce in respect of her Daughter Taylor. Taylor is thirteen years old and has been diagnosed with Autism Spectrum Disorder (ASD). She has significant sensory difficulties and also had a profile of suggestive Pathological Demand Avoidance. She had never attended school and had been educated at home. A placement had been proposed by the local authority at a local academy which Mrs Joyce did not think suitable for her Daughter.

Miss Neville is advising Mrs Joyce on her right of appeal to the First Tier Tribunal (Special Educational Needs and Disability). The Tribunal will need to review the relevant statutory provisions and if an additional assessment of Mrs Joyce's Daughter will need to be made,

You have been asked to provide an email advice setting out the requirements for the Tribunal to make a decision, and any adverse costs considerations. Set out in your advice the rules in the lower tribunal in respect of costs specifically where an adverse costs order is made.

(20 Marks)

Question 8: Advanced Civil Procedure

You work as an in house Costs Lawyer for Machells LLP. A Director of the Business has asked you to provide advice on a case where he is acting for the Claimant Mr Owens for Judicial Review.

Leeds Council have reduced the Housing benefit of Mr Owens, who is the main carer for his partner, who has severe disabilities. They live in a two bedroom flat for which he claims Housing Benefit.

In 2018 their local Council reduced their housing benefit by 14% as they deemed Mr Owens to have a spare room. It is Mr Owens' case that the Council have acted unlawfully and the second room is required to accommodate his partners medical equipment and supplies.

The Claimant is now ready to make an application for permission to bring a judicial review challenging the lawfulness of the Council's actions and policy together with a costs capping order. You are asked to provide a written advice on costs capping in judicial review cases setting out the statutory tests to do so.

(Total: 20 Marks)

Question 9: Advanced Civil Procedure

You work in house for an SRA regulated firm in Tunbridge Wells, Slatter and Co. Mr Slatter, a Partner at the firm has been instructed by Mr Penny who had applied on short notice for an interim injunction against the Defendant Mr Smith Managing Partner of Denford and Co for restraining the use of certain confidential information and seeking delivery up of a laptop.

The form of the injunction was largely agreed between the parties in advance. It was granted at the Injunction Hearing with costs reserved.

Mr Smith had given in principle his consent to the continuation of the Injunction; it was continued by the Judge at the return hearing. In doing so, the Judge noted that it had not been "*possible or necessary to resolve the underlying merits of what is clearly a hotly disputed case*", and that he was "*not resolving who is right or wrong*".

Mr Slatter had discussed the matter with Mr Penny, who was of the view that an Order should be made for the Defendant to pay his costs with immediate assessment and payment on account.

Prepare the body of a letter to Mr Penny detailing how the costs of any injunction proceedings would usually be dealt with.

(Total: 20 Marks)

Total for Section B: 60 Marks

END OF PAPER