



Unit 2 Examination Paper

FEBRUARY 2024

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 is given and you are advised to take this into account in planning your work. Write in black ink or ballpoint pen.

Please put your candidate identification number at the top right corner of each sheet of answer 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 why it is important to respond to Claim Forms or other civil legal proceedings promptly, and what can be done if a default judgment is entered?

(10 Marks)

2. Outline the approaches that the courts take when the recoverability of ATE premiums is challenged by the paying party

(10 Marks)

3. Explain the circumstances in which 'non-authorized persons' can legitimately carry out reserved legal activities

(10 Marks)

4. Describe the steps that lawyers and their firms need to take to avoid being caught by the legislation and regulations designed to prevent 'Money Laundering'.

(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, JCB Law LLP. You have been asked to help one of the Partners in the firm with advice to the firm's client, Quality Civil Engineering and Construction Ltd. (QCEC)

In 2015, QCEC Ltd undertook major work to design and install new drainage systems at the factory premises of Sidebottom's plc on Merseyside.

QCEC Ltd have consulted your firm as it has now received a Claim Form issued on behalf of Sidebottom's seeking damages for breach of contract and/or negligence arising out of the alleged failure of one of the drainage pipes installed by QCEC, which said to have caused severe flood water damage to Sidebottom's premises. Your firm has been instructed to defend the claim on its merits and/or on the basis that the primary limitation period for bringing action in contract and/or tort has now expired, and the claim is 'statute barred'.

You notice on the file that one clause in QCEC's 'standard terms and conditions of business' states "All work is to be inspected and approved by the client upon completion. No claims relating to the work will be accepted after such inspection and approval, unless notified to the company in writing within 30 days thereof". QCEC have provided your firm with a 'certificate of inspection and approval' dated 15th September 2015 signed by Sidebottom's, and instructions that no complaints were made at the time.

QCEC is concerned about expending large sums in legal costs that might not be recoverable and has asked the partner whether there is any way of having the claim dismissed because it is so weak. The partner has been instructed to consider a summary judgment application.

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 Beales and Bindless LLP, 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 Barry Johnson.

Mr Johnson has instructed the firm to pursue a claim for damages for personal injury and loss arising out of his exposure to harmful chemicals whilst working for ChemCo plc. Mr Johnson claims that, as a result of this exposure, he now suffers from a debilitating neurological condition, is unable to work, and requires 24 hours per day nursing care, which is provided by his wife, Karen.

Liability is in issue and proceedings have now been commenced. Although ChemCo plc's solicitors have yet to serve a defence, the partner in your firm has now received an email from them. In this email, ChemCo's solicitors state that it has now emerged that Mr Johnson's employment with ChemCo was in a location far removed from where any exposure to the chemicals could have taken place. The email goes on to say that Mr Johnson is exaggerating the severity of his symptoms and sums claimed for gratuitous nursing care are excessive.

ChemCo's solicitors have invited Mr Johnson to withdraw his claim before the defence is served, otherwise they will seek to have the claim struck out as disclosing no reasonable cause of action and will seek an order for Mr Johnson to pay ChemCo's costs.

The partner in your firm has explained the protection offered to Mr Johnson by QOCS. Mr Johnson disputes the contents of the email but is concerned at the prospect of being ordered to pay ChemCo's costs.

You have been asked to write the body of an email to Mr Johnson advising him on the protection provided by the rules on QOCS and the prospects of being ordered to pay ChemCo's costs if he proceeds with the action.

(Total: 20 Marks)

Question 7: Professional Ethics

You are a qualified Costs Lawyer working for a firm of specialist Costs Lawyers, Holden & Challis Legal Costs Ltd.

You have been consulted by Ms Jackie McKenzie, who has sought your advice regarding a bill she has received for legal work carried out by her solicitors, EmployLaw UK Ltd.

Ms McKenzie tells you that she instructed EmployLaw to negotiate a settlement agreement with a former employee of hers, who was threatening to issue Employment Tribunal proceedings. Ms McKenzie tells you that she initially instructed Mr Ajaz Patel, one of the partners in EmployLaw, but thereafter dealt with a Mr Anthony Payne.

A settlement agreement was successfully negotiated, and Ms McKenzie has no concerns about that work. However, the bill Ms McKenzie has now received is substantially more than the sum of £750 + VAT agreed with Mr Patel. The reason for the increase is that the bill includes work carried out by Mr Payne in issuing and serving a County Court claim for an order requiring the former employee to return certain equipment and confidential documents. Ms McKenzie recalls mentioning these items to Mr Payne, but provision for their safe return was included in the settlement agreement. Ms McKenzie did not feel it was necessary, and certainly did not instruct Mr Payne, to issue court proceedings.

Ms McKenzie has now discovered that, although Mr Patel is a qualified solicitor, Mr Payne is not, and Mr Payne titles himself as a 'freelance employment adviser', who provides his services to EmployLaw, and other 'clients', on an *ad hoc* basis. Ms McKenzie is very concerned that Mr Payne was neither instructed, nor qualified, to carry out this work.

Write an advisory email to Ms McKenzie explaining the legal position on solicitor's fees, the types of work that lawyers are authorised to carry out and receive payment for, and any course of action that may be open to her to resolve her complaint.

(Total: 20 Marks)

Question 8: Professional Ethics

You are a trainee Costs Lawyer working for Smith, Jones and Atkinson LLP, Legal Costs Consultants. One of the senior partners in the firm has asked you to review a file for a new client, Mr Harold Gregson.

Mr Gregson was the Defendant in a lengthy and complex civil claim involving his former accountants. The proceedings were resolved mostly in Mr Gregson's favour, with Mr Gregson being awarded most of the costs of both defending the claim and pursuing his counterclaim. However, because of the amount of costs in question and the complexity of some of the costs issues, the court directed a detailed assessment in the absence of agreement.

Mr Gregson attended the detailed assessment hearing last week with his solicitor. The claimants have now instructed a firm of costs lawyers. Mr Gregson's instructions are that the claimant's costs lawyer appeared to be unfamiliar with the case and underprepared for the hearing. The claimant's costs lawyer spent the whole of the hearing presenting arguments on points that were not, or no longer, in dispute, and going through authorities which had been overruled by higher courts. He persisted with these arguments despite interventions by the judge and Mr Gregson's solicitor.

There was insufficient court time to address the real issues on the assessment, and the hearing has now been adjourned to another day. When Mr Gregson and his solicitor tried to discuss settlement with the costs lawyer outside the hearing room, the costs lawyer called them a 'pair of wankers'.

On the advice of his solicitor, Mr Gregson has approached your firm for advice and representation on the resumed assessment hearing. Mr Gregson is particularly concerned about the claimant's costs lawyer's 'unprofessional' behaviour and the additional fees Mr Gregson has incurred for his own solicitor's services.

You have been asked to review Mr Gregson's file of papers and draft a memo of advice on the position overall and the options open to him to remedy the position

(Total: 20 Marks)

Question 9: Legal Accounts

You have just taken over as Head of Costs at Mills & Webb LLP, a small high street firm of solicitors. One of the Senior Partners in the firm, who is also the firm's COFA, has asked for your advice about the activities of one of the firm's associate solicitors, Mark Howard, who left the firm suddenly and without warning last week.

Following Mr Howard's departure, the Senior Partner has reviewed all his files. The Senior Partner is particularly concerned about a number of files in which Mr Howard acted for a Ms Veronica Sweet. All the files appear to relate to property transactions involving Ms Sweet in her personal capacity or companies (some of them registered outside the UK) of which Ms Sweet appears to be the sole or major shareholder.

The transactions all involve the buying and selling of properties, often outright without the assistance of a mortgage. Where mortgage lenders have been involved, the mortgage advances have often been repaid within a few months of completion.

The files show most of the payments on these transactions being made to Ms Sweet or one of her companies, but there are some regular payments made to overseas bank accounts held in the name of a 'Mr Gee'. These payments all involve conversion of the sums from Pounds Sterling to local currency – mostly US Dollars or Euros.

Write a memo to the Senior Partner/COFA setting out the position of the firm under the rules on money laundering and handling of clients' funds in relation to these transactions. 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