



Unit 3 Examination Paper

12 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 and part 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 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. Describe what constitutes a valid Conditional Fee Agreement explaining how the agreement operates in practice

(10 marks)

2. Discuss the formation of agreement between the Solicitor and his Client when instructed to provide legal services.

(10 marks)

3. Identify how the relationship between a Solicitor and Client is formed. Discuss how this may be terminated prior to conclusion of the action.

(10 marks)

4. Explain the principles that apply to the transfer of a Conditional Fee Agreement entered into prior to 1st April 2013 outlining the difference between assignment and novation.

(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 have been instructed by Mrs Adele Wilson, a Solicitor employed at a large SRA regulated firm. Mrs Wilson acted on behalf of the Defendant, Shortfield Council, in a claim for breach of contract.

Jones Contractors agreed to build 78 houses for Shortfield Council within 8 months for an agreed price of £85,000 per house. Due to a shortage in skilled labour and material the contract took 22 months to complete and was much more expensive than anticipated. Jones Contractors were paid the contractually agreed price but commenced proceedings for payment of additional sums based on the fact that the contract had become frustrated.

The proceedings were defended. The trial took place between 18th April 2023 before HHJ Davis, who gave judgment for the Claimant. The Defendant was ordered to pay the Claimant's costs up to 15th May 2022 on the Standard Basis with indemnity costs awarded from 15th May onwards, to be assessed if not agreed.

The Bill of Costs was served on your client by email together with Notice of Commencement on 10th September 2023 with costs totalling £325,000. The Notice of Commencement and covering letter identify the date for service of the Points of Dispute as 3rd October 2023. Mrs Wilson instructed you on 21st September to prepare Points of Dispute and prepare detailed advice to her client setting out the next procedural steps in the Detailed Assessment Proceedings. Mrs Wilson advised that she has tried to contact the client over the past week and received no response therefore you are instructed to advise on the timescales and consequences of failing to comply. Prepare a letter of advice to Shortfield Council setting out the next steps in the Detailed Assessment process.

(20 marks)

Question 6: Costs Pleadings

You are a Costs Lawyer at an SRA regulated firm Bodmins Law. You have been instructed following a Detailed Assessment Hearing to prepare an advice for your Client Mr Cole.

Mr Cole was the Defendant in an action who was found to have fraudulently misrepresented the basis on which his company, TBC Holdings, would be contributing to a joint venture and the Claimant Mr Terry (acting via his company, SMT Productions) was induced by that misrepresentation to indirectly invest in the joint venture.

In the main action, prior to your instructions in the costs proceedings, the Defendant had responded to the Letter Before Action to threaten negative publicity and suggested that those representing the Claimant would be reported to the SRA and Bar Council and that a wasted costs order would be sought against the Claimant's Solicitors.

A hearing for the consequential matters in the main action took place on 15th October 2023. The Claimant at the hearing had sought their costs on the indemnity basis on two grounds – fraudulent misrepresentation and Defendant's unreasonable conduct.

At that hearing, Counsel representing the Defendant did not oppose the oral application for indemnity costs due to unreasonable conduct, to be the subject of detailed assessment if not agreed. It is this hearing which you are required to advise upon.

Prepare the body of a letter to Mr Cole advising on the consequence of the order made and the next steps.

(20 Marks)

Question 7: Special Courts

You are an in-house Costs Lawyer for a firm of Solicitors in Manchester. Steven Bainbridge, an Associate at the firm has been instructed by Lebanese company SWC. It had entered into a franchise development agreement (FDA) governed by English law with Kuwaiti company Hopetide Company. Later, due to corporate restructuring, a new holding company TKF was established, of which Hopetide Company became a subsidiary.

A dispute arose under the FDA which SWC referred to the arbitration in England, Hopetide Company participated in the proceedings under protest, maintaining that it was neither a party to the FDA nor the arbitration agreements contained in them. The arbitral tribunal will apply English law to decide if TKF was bound by the arbitration agreement and if it had acquired substantive rights and obligations under the FDA. The agreement between the parties provides that the provisions of the Arbitration Act 1996 will apply to the costs of the proceedings.

Steven has asked you to assist him with drafting his initial advice to SWC. He has asked you to provide information regarding the assessment of costs in arbitration proceedings. Prepare an email advice to Steven describing the assessment costs of arbitration, in what circumstances an assessment must go to Court and how an award may be enforced including any rights to appeal.

(20 Marks)

Question 8: Advanced Civil Procedure

You work as an In-House Costs Lawyer for an SRA regulated firm, Peter and Peterson LLP, located in Liverpool. Mr Peterson, a Director of the firm has asked you to provide advice on one of their client matters Mr Rogers against Bailey Vehicles LTD.

Mr Rogers was the Defendant in the matter. He joined a competitor 11 days after leaving his employment with Bailey Vehicles Ltd. Bailey Vehicles sent a Letter of Claim and the subsequent Claim Form was issued against Mr Rogers seeking to prevent his employment with the new business. They also applied for an interim injunction to enforce a 12 month non-compete covenant 7 weeks later.

Mr Rogers did not contest the application but rather failed to provide appropriate undertakings until the evening prior to the interim injunction hearing. Accordingly, Bailey Vehicles sought the costs it had wasted.

Prepare an email advice to Mr Rogers setting out whether costs are likely to be ordered against him in any event or if the costs should be reserved with reference to the jurisdiction in relation to injunctions.

(20 Marks)

Question 9: Advanced Civil Procedure

You work in house as a Costs Lawyer at Tunbridge and Senior LLP, an SRA regulated firm located in Birmingham. The firm has a family law department who specialises in financial relief and Childrens Act Proceedings. The firm does not have a legal aid franchise.

You have been asked by a Senior Partner of the firm Mrs Denby to provide costs advice on the below cases;

- a. On the file of Mrs Sayers who has a child with Mr Sayers. Mrs Sayers made an application for a child arrangement order, prohibited steps order and specific issue orders in respect of the child, Alan Sayers. In a fact-finding hearing a finding was made that the father was responsible for the fatal poisoning of the maternal grandmother.
- b. On the file of Mr Murphy in a claim for financial remedies following divorce. There are no children to the marriage and the matrimonial home was in the sole name of Mr Murphy and worth £500,000. Proceedings have been issued by Mrs Murphy for financial remedy proceedings. The judge found that Mr Murphy had gone to great lengths to "protect" his other assets.
- c. On the file of Mr Ahmed, who is the applicant in proceedings brought under the Trusts of Land and Appointment of Trustees Act 1996, pursuant to which he claims a beneficial interest in his former home. The defendant to the proceedings is Mrs Sandra Owens. Mr Ahmed and Mrs Owens had been in a relationship for 14 years. The claim is for a 50% beneficial interest or share in a property called Manor House.

Write the body of a memo to Mrs Denby setting out how costs in these three family cases would usually be dealt with.

(20 Marks)

Total for Section B: 60 Marks

END OF PAPER