February 2024: Marker Guidance: Unit 3

The marking rubric and guidance is published as an aid to markers, to indicate the requirements of the examination. It shows the basis on which marks are to be awarded by examiners. However, candidates may provide alternative correct answers and there may be unexpected approaches in candidates' scripts. These must be given marks that fairly reflect the relevant knowledge and skills demonstrated. Where a candidate has advanced a point that is not included within the marking rubric please do make a note of the same so that it can be raised at the standardisation meeting.

Mark schemes should be read in conjunction with the published question paper and any other information provided in this guidance about the question.

Before you commence marking each question you must ensure that you are familiar with the following:

- ☑ the requirements of the specification
- ☑ these instructions
- ☑ the exam questions (found in the exam paper which will have been emailed to you along with this document)
- ☑ the marking rubric

The marking rubric for each question identifies indicative content, but it is not exhaustive or prescriptive and it is for the marker to decide within which band a particular answer falls having regard to all of the circumstances including the guidance given to you. It may be possible for candidates to achieve top level marks without citing all the points suggested in the scheme, although the marking rubric will identify any requirements.

It is imperative that you remember at all times that a response which:

- ☑ differs from examples within the practice scripts; or,
- ☑ includes valid points not listed within the indicative content; or,
- ☑ does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this.

Where you consider this to be the case you should make a note on the script and be prepared to discuss the candidate's response with the moderators to ensure consistent application of the mark scheme.

SECTION A (all compulsory – 40%)

Question 1:	*Describe what constitutes a valid Conditional Fee Agreement explaining how the agreement operates in practice*
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates must explain what a conditional fee agreement is, e.g: ***Conditional Fee Agreements:*** Introduced by the Courts and Legal Services Act 1990. They are contingency agreements or 'no win no fee agreements' for advocacy and litigation services. Providing they satisfy all of the conditions applicable to it by virtue of the legislation shall not be unenforceable by reason only of its being a conditional fee agreement but any other conditional fee agreement shall be unenforceable. ***Credit reference to any applicable authority explaining what a CFA is, e.g:*** Section 58(1) of the Courts and Legal Services Act 1990 and section 58(2) of the Courts and Legal Services Act 1990.	Up to 2 mark A pass must include the demonstration that the candidate understands what a CFA is.
Credit a discussion on the form and operation of a conditional fee agreement, e.g: ***Form of CFAs:*** Must comply with formalities, e.g they must be in writing. If a CFA includes the provision for a success fee they must be stated and must not exceed the amount set by the Lord Chancellor. CFAs cannot relate to prohibited proceedings, which includes family and criminal proceedings. CFAs must comply with regulations made by the Lord Chancellor and even a technical breach may render an agreement unenforceable.	Up to 6 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their

Credit reference to any applicable authority explaining the form and content of a CFA, e.g: Section 58(3)(a) of the Courts and Legal Services Act 1990, Section 58(3)(b) of the Courts and Legal Services Act 1990, Section 58(3)(c) of the Courts and Legal Services Act 1990, Section 58A of the Courts and Legal Services Act 1990, section 58(4) of the Courts and Legal Services Act 1990 and Wood v Chaleff [2002]. ***Success Fees and ATE:*** When introduced success fees and ATE premiums were not recoverable between the parties. Subsequent legislation amended the Courts and Legal Services Act 1990 and allowed for the recoverability and the uptake of these funding arrangements increased. However, that position was reversed by legislation in 2013 and they are no longer recoverable. If the CFA is dated after 1 April 2013 then the success fee will not be recoverable from the losing party unless it relates to a matter that falls under the following exceptions: insolvency related proceedings, publication and privacy proceedings and mesothelioma cases. If the CFA is pre 1 April 2013 then the success fee can be recovered from the client if the 'win' under the terms of the CFA is triggered. ***Credit reference to any applicable authority on success fees and ATE, e.g:*** section 27 of the Access to Justice Act 1999, section 29 of the Access to Justice Act 1999, section 44 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012, section 46 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012 and CPR 48.2(1)(a).	knowledge base.
Credit reference to any other circumstances that may impact the enforceability of a CFA, e.g: ***Retrospectivity:*** CFAs can be retrospective but not backdated. This principle also applies to success fees although where proceedings have been issued, a success fee will not be recoverable for the period until Notice of Funding has been given. The distinction between retrospectivity and an agreement being backdated is key, i.e it must contain a clause that details the agreement will have retrospective effect and should not just be dated with the date of entry but state that it relates to an earlier date. ***Credit reference to any applicable authority on retrospectivity, e.g:*** King v Telegraph Group Ltd [2005], Holmes v Alfred McAlpine Homes (Yorkshire) Ltd (2006), Forde v Birmingham City Council [2008] and JN Dairies Ltd v Johal Dairies Ltd & Anor [2011].	Up to 4 marks To achieve a distinction, candidates will provide some commentary on other issues concerning enforceability.

Assignment, novation and transferring: There are a number of situations when a CFA may need to be transferred. A firm may go into administration, close or close a department. A solicitor may move firms and client wants to retain the same agreement. A firm may be bought by another firm or merge. A firm may change its name. There was a degree of uncertainty as to whether a CFA may be transferred. The latest authority sets out that it is possible to transfer a CFA. Even in cases where the judiciary may be divided on whether a novation or assignment has taken place it may still be possible for the first solicitor to be paid and additional liabilities to be recovered. This is because it has been held that the intention of parliament, when they legislated and LASPO was passed, would not have been that the first solicitor could not be paid or that the additional liabilities would not be recovered where a CFA was transferred. It will be a question of evidence and each individual case must be considered based on the individual circumstances surrounding the purported transfer. Where there has been a termination the first solicitor will not be entitled to payment and the pre LASPO benefits, i.e recoverability of additional liabilities, will not be transferable. ***Credit reference to any applicable authority on assignment, novation and transferring, e.g:*** Jones v Spire Healthcare 2015, Budana v Leeds Teaching Hospitals [2016], Webb v Bromley [2016], Jones v Spire Healthcare [2016], Budana v Leeds Teaching Hospitals NHS Trust [2017] and Roman v Axa Insurance [2019].	

Question 2:	*Discuss the formation of agreement between the Solicitor and his Client when instructed to provide legal services.*
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates should identify the formalities that must be complied with when a solicitor provides legal services, e.g:	Up to 3 marks A pass must refer to the formalities that

The formalities: The relationship between a solicitor and their client is subject to general contract law, as well as various regulatory requirements. Solicitors should ensure at the outset that the scope and limits of the retainer are clear. This will help parties to the agreement understand what services are being requested and delivered, and the limitations of what has been agreed. ***SRA Standards and Regulations:*** Contain a number of codes and rules with provisions relevant to your relationship with the client.	must be complied with in order to have a retainer
Candidates should be credited for a discussion on the formalities in relation to retainers, e.g: ***A retainer is:*** The business agreement between solicitor and client, it serves as the right to payment & is fundamental to the recovery of costs. Where there is no retainer there is no entitlement to charge. The law implies that the contract of the solicitor upon a retainer in the action is an entire contract to conduct the action till the end. With entire contracts an interim statute bill cannot be rendered before the end of the contract, other than in contentious work where it can be rendered by agreement or at a natural break. ***Form of retainer:*** A contract requires agreement, the intention to create legal relations, and consideration. Can be in writing, made orally, or implied by conduct For a valid contract or retainer the courts will look objectively to see if there is an agreement. ***Credit the use of any authority cited in relation to the form and content of a retainer e.g:*** J H Milner & Son v Percy Bilton Ltd [1966], Underwood, Son v Piper Lewis [1894], Adams v London Improved Motor Coach Builders [1921], Groom v Crocker [1939], Abedi v Penningtons (a firm) [2000] and Parrott v Etchells [1839]. ***Specific Formalities:*** Some agreements must follow specific formalities, such as a CFA which must satisfy all of the conditions applicable to it to be enforceable. A CFA needs to be in writing, it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement. It must comply with such requirements (if any) as may be prescribed by the Lord Chancellor. The wording of such an agreement is also important.	Up to 6 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

Credit the use of any authority cited in relation to specific formalities of a retainer, e.g: Section 58(3) of the Courts and Legal Services Act 1990, Section 58(3)(b) of the Courts and Legal Services Act 1990, Section 58(3)(c) of the Courts and Legal Services Act 1990, Section 58(4) of the Courts and Legal Services Act 1990, Hailey v Assurance Mutuelle Des Motards (unreported) March 2015 and Woods v Chaleff [2002]. ***Termination:*** For a solicitor to terminate a retainer there must be good cause and reasonable notice must be provided. Good cause may include the client's failure to make a payment on account of costs although this will only amount to good cause if the amount sought is reasonable. It is not reasonable that a solicitor should engage to act for an indefinite number of years, winding up estates, without receiving any payment on which he can maintain himself. Conflict of interest/Professional embarrassment may also amount to good cause. Where there is suspected duress or undue influence and a Solicitor is not confident the client is giving instructions freely they can cease to act. If a solicitor wrongfully terminates the retainer, he is not entitled to be paid. Where a solicitor terminates a retainer unreasonably he may not be entitled to payment even on a quantum meruit basis. Reasonable notice will be case sensitive. Where reasonable notice has not been given there will be no entitlement to payment. ***Credit the use of any authority cited in relation to the right to terminate a retainer e.g:*** Section 65 (1)&(2) of the Solicitors Act 1974, Re Romer & Haslam [1893] 2 QB 286, Re Jones [1896], Wild v Simpson [1919] 2 KB 544, Warmingtons v McMurray [1936], Wong v Vizards (a firm) [1997], Hilton v Barker Booth & Eastwood [2005], Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Owens & Law Society (intervener) (Second Appeal)[2010] and Gill v Heer Manak Solicitors [2018].	
Candidates should be credited for any discussion on the SRA standards and regulations, e.g: ***SRA Code of Conduct for Solicitors, RELs and RFLs:*** Solicitors should only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. The service provided should be competent and delivered in a timely manner. Solicitors should not act where there is a conflict of interest and must keep client's	Up to 6 marks To achieve more than a pass, candidates must not simply cite law but should show a

information confidential. Solicitors should also have a complaints procedure and notify client's as to how they may complain and how the complaint will be managed. Solicitors should ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost and any additional costs that may be incurred. ***Credit the use of any authority cited in relation to the SRA Code of Conduct for Solicitors, RELs and RFLs, e.g:*** Rule 3.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Rule 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Rule 6.1 and 6.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Rule 6.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Rule 8 of the SRA Code of Conduct for Solicitors, RELs and RFLs and Rule 8.7 of the SRA Code of Conduct for Solicitors, RELs and RFLs. ***SRA Code of Conduct for Firms:*** Firms must have effective governance structures, arrangements, systems and controls in place to ensure that the firm and its managers and employees comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements. Firms must keep and maintain records to demonstrate compliance with your obligations under the SRA's regulatory arrangements. Firms should only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. The service provided should be competent and delivered in a timely manner. Firms should not act where there is a conflict of interest and must keep client's information confidential. ***Credit the use of any authority cited in relation to the SRA Code of Conduct for Firms, e.g:*** Rule 2.1 of the SRA Code of Conduct for Firms, Rule 2.2 of the SRA Code of Conduct for Firms, Rule 4.1 of the SRA Code of Conduct for Firms, Rule 4.2 of the SRA Code of Conduct for Firms, Rule 6.1 and 6.2 of the SRA Code of Conduct for Firms, Rule 6.3 of the SRA Code of Conduct for Firms and Rule 8 of the SRA Code of Conduct for Firms. ***SRA Transparency Rules:*** These rules require firms authorised by the SRA to provide certain information about the cost of various legal services offered by a firm, details of the firm's	greater depth to their knowledge base and apply the authority to the question posed

complaints handling procedure, and key regulatory information. ***SRA Accounts Rules:*** Set out the SRA requirements for when firms and sole practitioners authorised by the SRA receive or deal with money belonging to clients, including trust money or money held on behalf of third parties. The rules apply to authorised bodies, their managers and employees. They only apply to licensed bodies in respect of activities regulated by the SRA in accordance with the terms of their licences.	

Question 3:	Identify how the relationship between a Solicitor and Client is formed. Discuss how this may be terminated prior to conclusion of the action.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: A description of a retainer and principle of an entire contract, e.g: ***A retainer:*** Is the business agreement between solicitor and client, it serves as the right to payment & is fundamental to the recovery of costs. Where there is no retainer there is no entitlement to charge. ***Entire contract:*** The law must imply that the contract of the solicitor upon a retainer in the action is an entire contract to conduct the action till the end. ***Credit reference to any appropriate authority on retainers and entire contracts, e.g:*** J H Milner & Son v Percy Bilton Ltd [1966] and Underwood, Son v Piper Lewis [1894].	Up to 2 marks
Candidate should refer to when a solicitor may terminate a retainer, e.g:	Up to 5 marks To achieve more than a pass

Good reason and reasonable notice: There is an implied term in a retainer that where a solicitor ceases to act for a client they must have good reason and provide reasonable notice. ***Good reason:*** Client's failure to make a payment on account of costs may amount to good reason. Although the amount sought must be reasonable otherwise it will be deemed to be wrongful termination. It is not reasonable that a solicitor should engage to act for an indefinite number of years, winding up estates, without receiving any payment on which he can maintain himself. A conflict of interest or professional embarrassment may amount to good reason. There may also be good reason if the clients instructions require the lawyer to act improperly. If the Solicitor is not confident the client is giving instructions freely they can cease to act. ***Credit reference to any appropriate authority on good reason, e.g:*** Indicative Behaviour 1.26 of the SRA Handbook (now superseded), Solicitors Act 1974 Section 65 (1)&(2), Wong v Vizards (a firm) [1997], Warmingtons v McMurray [1936], Hilton v Barker Booth & Eastwood [2005], Para 6.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Re Jones [1896], Section 1 of the Legal Services Act 07 and Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Owens & Law Society (intervener) (Second Appeal)[2010]. ***Reasonable notice:*** Will be case sensitive but should be judged objectively. ***Credit reference to any appropriate authority on reasonable notice, e.g:*** Gill v Heer Manak Solicitors [2018].	candidates must not simply cite the examples but should show a holistic understanding of how the law operates in relation to the termination of a retainer.

Candidate should also raise some of the following points on the implications of wrongful termination by a solicitor: ***No entitlement to payment:*** If a solicitor wrongfully terminates the retainer he is not entitled to be paid. Where a solicitor terminates a retainer unreasonably he may not be entitled to payment even on a quantum meruit basis. Where reasonable notice has not been given there will be no entitlement to payment. Reasonable notice will be case sensitive. Where there is wrongful termination and no entitlement to payment it follows there will be no entitlement to costs. ***Credit reference to any appropriate authority on payment or consequence of wrongful termination, e.g:*** Re Romer & Haslam [1893], Wild v Simpson [1919], Gill v Heer Manak Solicitors [2018], Murray & Anor v Richard Slade and Company Ltd [2021].	Up to 3 marks To achieve a distinction candidates must show that they understand the link between payment and termination with good cause and reasonable notice
Candidate may further refer to the form and content of a retainer e.g: ***A retainer is:*** A contract for legal service between a lawyer and client and there is an implied term that the service will be carried out with satisfactory care and skill. Can be in writing, made orally, or implied by conduct. Leaving files at a solicitor's office may be sufficient to establish a retainer. Some agreements must follow specific formalities, such as a CFA which needs to be in writing or a contentious business agreement. ***Credit reference to any appropriate authority on payment or consequence of wrongful termination, e.g:*** Groom v Crocker [1939], Parrott v Etchells [1839], section 13 of the Supply of Goods and Services Act 1982, section 58(3) of the Courts and Legal Services Act 1990 and section 59 of the Solicitors Act 1974.	Up to 2 marks To pass a response must demonstrate an understanding of the nature and form of a retainer.

Question 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.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+	10

Distinction = 7+	
Indicative Content	**Marks**
Required Content: **Circumstances when a CFA may need to be transferred:** There are a number of situations when a CFA may need to be transferred. A firm may go into administration, close or close a department. A solicitor may move firms and client wants to retain the same agreement. A firm may be bought by another firm or merges. A firm may changes its name. **Definition of assignment:** The agreement between one of the original parties and a new party. It does not create new rights, but transfers existing rights under a contract from one party to another. There are two parties to the agreement. In writing, by deed, same agreement, client not involved but can accept/reject, benefit and burden must pass. **Novation:** Where parties to the original contract agree with a new party that the original agreement comes to an end and a new agreement comes into being between one of the original parties and the new party, in relation to the same subject matter and on the same terms.	Up to 3 marks In order to achieve a pass, candidates must provide an explanation of assignment and novation.
Credit any discussion regarding success fee recoverability: **Key priority for transferring a CFA:** Assignment should be distinguished from novation. It was thought that there must be assignment to maintain the ability to collect a success fee from a losing party in relation to work done after 31 March 2013 when the client moves firms after that date. This is now not the case, there must be assignment or novation and not a termination to recover additional liabilities and first solicitors' costs. **If the CFA is dated after 1 April 2013:** then the success fee will not be recoverable from the losing party unless it relates to a matter that falls under the following exceptions (CPR 48.2(1)(a)): • publication and privacy proceedings; and • mesothelioma cases.	Up to 3 marks

If the CFA is pre 1 April 2013: then the success fee can be recovered from the Defendant if the 'win' under the terms of the CFA is triggered.	
Credit any other points relevant to the scenario in relation to CFAs e.g **Conditional Fee Agreements:** introduced by Courts and Legal Services Act 1990: are contingency agreements or 'no win no fee agreements' for advocacy and litigation services. **Section 58(1) of the Courts and Legal Services Act 1990:** A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable. **Section 58(3) of the Courts and Legal Services Act 1990:** Requires that CFAs must comply with formalities, e.g they must be in writing. **Section 58(4) of the Courts and Legal Services Act 1990:** Requires that if a CFA includes the provision for a success fee they must be stated and must not exceed the amount set by the Lord Chancellor. **Access to Justice Act 1999:** amended section 58 CLSA 1990 to allow for recovery of success fee (section 27), ATE insurance premiums (section 29). **Legal Aid, Sentencing & Punishment of Offenders Act 2012:** abolished recovery of success fees (section 44) and ATE premiums (section 46). **If the CFA is dated after 1 April 2013:** then the success fee will not be recoverable from the losing party unless it relates to a matter that falls under the following exceptions (CPR 48.2(1)(a)): • Insolvency related proceedings • publication and privacy proceedings; and • mesothelioma cases. **If the CFA is pre 1 April 2013:** then the success fee can be recovered from the client if the 'win' under the terms of the CFA is triggered.	Up to 3 marks

Credit any other relevant points cited in relation to the problems the courts have faced and the arguments raised by the paying party e.g: **Halsall v Brizell [1957]:** The party could not take the benefit under a contract without the corresponding burden. **Jenkins v Young Brothers Transport [2006]:** Where the client was loyally following the solicitor as they changed firms a few times, there was an exception to the rule that prevented personal contracts from being assigned as the benefit and burden of the contract was allowed. **Davies v Jones [2009]:** It was held that the exception in Jenkins could not be relied upon. This case re-iterated that the burden of a contract cannot be assigned. **Jones v Spire Healthcare 2015:** At first instance the first CFA was deemed to be at an end and the subsequent CFA was deemed to be a new retainer, so a novation had taken place. Therefore the existing rights under the CFA were not transferrable. **Budana v Leeds Teaching Hospitals [2016]:** Telling the client the personal injury department was closing and seeking no further instructions amounted to termination of the first retainer. Had the CFA not been terminated an assignment may have been permitted as the higher court decision in Jenkins showed it was possible for a burden to be assigned. In light of the first CFA being terminated, a novation had taken place. **Webb v Bromley [2016]:** The CFA did not comply with section 58 of the Courts and Legal Services Act 1990 and the Conditional Fee Agreements Order 2013, having more than a 25% success fee, and was therefore unenforceable. **Jones v Spire Healthcare [2016]:** On appeal, the case of Jenkins was determined to be authority that allowed the burden under a CFA to be assigned to a new firm and the CFA in this case was validly assigned. It was also suggested at the time that the decision was likely to be appealed further however it was not. **Budana v Leeds Teaching Hospitals NHS Trust [2017]:** It is possible to transfer a CFA. The judiciary were divided on whether a novation or assignment had taken place but it was	Up to 4 marks

decided it did not matter which had taken place and that the intention of parliament, when they legislated and LASPO was passed, would not have been that the first solicitor could not be paid or that the additional liabilities would not be recovered where a CFA was transferred. This case was thought to have settled the arguments on the transfer of a CFA. **Roman v Axa Insurance [2019]:** This case held that the CFA had not been assigned or novated but that it had in fact been terminated. This has created potential uncertainty in relation to the transfer of CFAs. It will be a question of evidence and each individual case must be considered based on the individual circumstances surrounding the purported transfer. Where there has been a termination the first solicitor will not be entitled to payment and the pre LASPO benefits, i.e recoverability of additional liabilities, will not be transferable.	

SECTION B (choice of 3 out of 5 – 60%)

Question 5:	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 contact. 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.
Total Marks Attainable	**20**

Fail	Up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10 11.9	An answer which addresses MOST of the following points: commencement of assessment proceedings, basis of assessment, next procedural steps and the assessment process. Candidates will demonstrate a good depth of knowledge of the subject (i.e. A good understanding of the framework for assessment of costs) with good application and some analysis having regard to the facts, although candidate may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the framework for assessment) with very good application and some analysis having regard to the facts.
Distincti on	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates are likely to observe that in this scenario there may be discussion as to what precisely constitutes the costs 'of the proceedings'. Candidates will

		provide an excellent advice setting out the procedural steps and application of key concepts as part of the process (e.g. proportionality). All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Indicative Content	**Marks**
Required: a discussion on the commencement of assessment proceedings, e.g: ***Detailed/Provisional Assessment:*** Takes place at conclusion of proceedings. Detailed assessment proceedings are commenced by the receiving party serving on the paying party notice of commencement in the relevant practice form; and a copy of the bill of costs. The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in CPR Practice Direction 47. The period for commencing detailed assessment proceedings is within 3 months of the event that gives rise to entitlement. No penalty for late service apart from disallowance of interest. Paying party able to make an application under CPR 47.8 ***Credit reference to the citation of any authority cited on commencement of assessment proceedings, e.g:*** CPR 44.6, CPR 47.1, CPR 47.6 (1), CPR 47.6 (2) and CPR 47.7.	Up to 2 Marks
Credit a discussion on an order for costs, e.g: ***Order:*** The court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid. If the court decides to make an order about costs then the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court may make a different order.	Up to 3 Marks

Credit reference to the citation of any authority on making of an order for costs, e.g: CPR 44.2(1)(a), CPR 44.2(1)(b), CPR 44.2(1)(c), CPR 44.2(2)(a), CPR 44.2(2)(b), ***Basis of assessment:*** The CPR sets out the basis of assessment, standard or indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, proportionality is not a factor and the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. ***Credit reference to the citation of any authority on the basis of assessment, e.g:*** CPR 44.3(1), CPR 44.3(2) and CPR 44.3(3).	
Credit a discussion regarding the bill of costs and the right to recover costs e.g: ***The electronic bill:*** In October and November 2017 CPR 47 and the Part 47 Practice Direction were amended to provide that in all CPR Part 7 multitrack claims (except where the proceedings are subject to fixed costs or scale costs, the receiving party is a litigant in person or the court has otherwise ordered) bills of costs for costs recoverable between the parties must, for all work undertaken after 6 April 2018, be presented in electronic spreadsheet format, capable of producing essential summaries and performing	Up to 6 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

essential functions compatible with Precedent S, annexed to the Part 47 Practice Direction. ***Essential Information:*** A bill should start with the full title of the proceedings, the name of the party whose bill it is and a description of the order for costs or other document giving the right to detailed assessment. The title page should include prescribed information as to VAT. The bill should then give some background information about the case. Then the bill should incorporate a statement of the status of the fee earners in respect of whom profit costs are claimed, the rates claimed for each such person and a brief explanation of any agreement or arrangement between the receiving party and his legal representatives which affects the costs claimed in the bill. It is then convenient to divide the paper into several columns headed as follows: item number, date and description of work done, VAT, disbursements, profit costs. Sometimes it is necessary or convenient to divide the bill containing the actual items of costs into separate parts, numbered consecutively. In each part of a bill all the items claimed must be consecutively numbered and must be divided under such of the heads of costs as may be appropriate. The final part of the bill of costs should contain such of the prescribed certificates as are appropriate to the case and then the signature of the receiving party or his legal representative. **Credit reference to the citation of any authority cited on the form and content of a bill of costs, e.g:** CPR 47 PD para 13.3, CPR 47 PD para 5.7, CPR 47 PD para 5.8, CPR 47 PD para 5.9, CPR 47 PD para 5.10, CPR 47 PD para 5.11, CPR 47 PD para 5.12-22 ***The indemnity principle and retainer:*** The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors. The retainer is fundamental to the right to	

recover costs. Where there is no retainer there is no entitlement to charge, there is no business relationship. A retainer must be enforceable in order to charge the client and recover costs inter partes. The indemnity principle does not apply in certain circumstances e.g. legal aid. This does not appear to be a situation where the indemnity principle will not apply. Signature on the bill is sufficient to show that the indemnity principle has not been breached. However, if a genuine issue is raised by the paying party then the court is likely to consider this. A bill of costs is not properly certified if the signatory's name is not identifiable. ***Credit reference to the citation of any authority cited on the retainers and the indemnity principle, e.g:*** JH Milner v Percy Bilton [1966], Scott v Hull and East Yorkshire Hospitals NHS Trust [2014], Bailey v IBC [1998] and Barking, Havering and Redbridge University Hospitals NHS Trust v AKC [2021].	
Discussion on next procedural steps e.g: ***Points of dispute:*** The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute. The period for serving points of dispute is 21 days after the date of service of the notice of commencement. Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission. The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. ***Credit reference to any authority cited on points of dispute, e.g:*** CPR 47.9 (1), CPR 47.9 (2), CPR 47.14 (6), CPR 47.9 (4), Edinburgh v Fieldfisher LLP [2020] and Ainsworth v Stewarts Law LLP [2020]. ***Default Costs Certificates:*** The RP may file a request for	Up to 8 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. Application for requesting a DCC is on Form N254. Will include an order to pay costs to which the DCC relates. Sum payable is set out in PD (£80 fixed costs plus court fee). ***Credit reference to any authority cited on default costs certificates, e.g:*** CPR 47.9 (4), CPR 47.11(1), CPR 47.11(2), CPR 47.11(3), CPR PD 47 para 10.7, Masten v London Britannia Hotel Ltd [2020], National Bank of Kazakhstan & Another v The Bank of New York Mellon & Ors [2021], Gregor Fisken Ltd v Carl [2021], Serbian Orthodox Church – Serbian Patriarchy v Kesar & Co [2021] ***Replies:*** Where any party to the detailed assessment proceedings serves POD, the RP may serve a reply on the other parties to the assessment proceedings. RP may do so within 21 days after being served with the POD to which the reply relates. Replies must be limited to points of principle and concessions only, must not contain general denials, specific denials or standard form responses. When practicable replies must be set in the form of Precedent G. ***Credit reference to any authority cited on replies, e.g:*** CPR 47.13 (1), CPR 47.13(2), CPR PD 44, 12.1 and CPR PD 47, 12.2. ***Request for a Hearing:*** RP must file request for DA Hearing within 3 months of expiry of period for commencing DA proceedings. N258 needs to be filed plus NOC, Bill, Order/Judgment/Doc giving right to DA, Precedent G PODS and Replies, Any other orders, Fee notes and written evidence of disbursements (over £500). Statement signed by legal representative and estimate of the length of time the DA hearing will take. Court fee will also need to be paid.	

Credit reference to any authority cited on requesting a hearing, e.g: CPR 47.14, CPR PD 47 para 13.1, CPR PD 47 para 13.2 and CPR PD 47 para 5.2	
Discussion on the assessment e.g: ***Basis of Assessment and reasonableness:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment (CPR 44.3(2) and the overriding objective). Whatever basis: Reasonableness would always be considered. ***Credit reference to any authority cited on basis of assessment and reasonableness, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2) and CPR 44.3(3) ***Application of Proportionality:*** There has been uncertainty as to how the new test or proportionality should apply. However the Court of Appeal has now provided a degree of certainty. It Is a two stage test and once reasonableness has been considered the Court should remove all unavoidable costs before making any deduction to reach a proportionate figure. ***Credit reference to any authority cited on the application of proportionality, e.g:*** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017], West and Demouilpied v Stockport NHS Foundation Trust [2020]. ***Assessment and good reason:*** Whether or not there is a CMO in place if the costs exceed the budget by 20% or more the receiving party must serve a statement of reasons with the bill. CPR 3.18 is not ambiguous. Estimated costs agreed and subject to a	Up to 5 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

Cost Management Order have already, in theory, been through a detailed assessment. It would be going against the intent of the rule to require another detailed assessment of estimated costs to be performed without 'good reason'. ***Credit reference to any authority cited on assessment and good reason, e.g:*** CPR 3.18, CPR PD 44, 3.2, Vertannes v United Lincolnshire Hospitals NHS Trust [2018] and Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017].	

Question 6:	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
Total Marks Attainable	20

Fail	Up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: commencement of assessment proceedings, assessment on an indemnity basis, next procedural steps and the assessment process. Candidates will demonstrate a good depth of knowledge of the subject (i.e. A good understanding of the framework for assessment of costs) with good application and some analysis having regard to the facts, although candidate may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. A very good understanding of the framework for assessment) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO we are told that costs will be assessed on the indemnity basis and they are likely to have explained the difference to an assessment on the standard basis. Candidates may discuss and critically analyse the process for assessment and the possibility for a negotiated settlement. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates are likely to observe that in this scenario there may be discussion as to what precisely constitutes the costs 'of the proceedings'. Candidates will provide an excellent advice setting out the procedural steps and application of key concepts as part of the process (e.g. proportionality). All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+

Distinction = 14+	
Indicative Content:	Marks
Required: a discussion on the commencement of assessment proceedings, e.g: **Detailed/Provisional Assessment:** Takes place at conclusion of proceedings. Detailed assessment proceedings are commenced by the receiving party serving on the paying party notice of commencement in the relevant practice form; and a copy of the bill of costs. The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in Practice Direction 47. The period for commencing detailed assessment proceedings is within 3 months of the event that gives rise to entitlement. **Credit reference to the citation of any authority cited on commencement of assessment proceedings, e.g:** 44.6, CPR 47.1, CPR 47.6 (1), CPR 47.6 (2) and CPR 47.7.	Up to 2 Marks
Credit a discussion on the making of an order for costs, e.g: **CPR 44.2(1)** : The court has discretion as to (a) whether costs are payable by one party to another; (b) the amount of those costs; and (c) when they are to be paid. **CPR 44.2(2)** : If the court decides to make an order about costs (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but (b) the court may make a different order. **CPR 44.3(1)** : Sets out the basis of assessment, standard or indemity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. **CPR 44.3(2)** : Where the amount of costs is to be assessed on the standard basis, the court will… (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and	Up to 4 Marks

(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. **CPR 44.3(3)** : Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. **CPR 44.4** : Lists the factors to be taken into account in deciding the amount of costs (including the 'pillars' – conduct, efforts made to resolve the dispute etc)	
Credit a discussion regarding the bill of costs and the right to recover costs e.g: **The electronic bill:** In October and November 2017 CPR 47 and the Part 47 Practice Direction were amended to provide that in all CPR Part 7 multitrack claims (except where the proceedings are subject to fixed costs or scale costs, the receiving party is a litigant in person or the court has otherwise ordered) bills of costs for costs recoverable between the parties must, for all work undertaken after 6 April 2018, be presented in electronic spreadsheet format, capable of producing essential summaries and performing essential functions compatible with Precedent S, annexed to the Part 47 Practice Direction. **Essential Information:** A bill should start with the full title of the proceedings, the name of the party whose bill it is and a description of the order for costs or other document giving the right to detailed assessment. The title page should include prescribed information as to VAT. The bill should then give some background information about the case. Then the bill should incorporate a statement of the status of the fee earners in respect of whom profit costs are claimed, the rates claimed for each such person and a brief explanation of any agreement or arrangement between the receiving party and his legal representatives which affects the costs claimed in the bill. It is then convenient to divide the paper into several columns	Up to 7 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

headed as follows: item number, date and description of work done, VAT, disbursements, profit costs. Sometimes it is necessary or convenient to divide the bill containing the actual items of costs into separate parts, numbered consecutively. In each part of a bill all the items claimed must be consecutively numbered and must be divided under such of the heads of costs as may be appropriate. The final part of the bill of costs should contain such of the prescribed certificates as are appropriate to the case and then the signature of the receiving party or his legal representative. **Credit reference to the citation of any authority cited on the form and content of a bill of costs, e.g:** CPR 47 PD para 13.3, CPR 47 PD para 5.7, CPR 47 PD para 5.8, CPR 47 PD para 5.9, CPR 47 PD para 5.10, CPR 47 PD para 5.11, CPR 47 PD para 5.12-22 **The indemnity principle and retainer:** The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors. The retainer is fundamental to the right to recover costs. Where there is no retainer there is no entitlement to charge, there is no business relationship. A retainer must be enforceable in order to charge the client and recover costs inter partes. The indemnity principle does not apply in certain circumstances e.g. legal aid. This does not appear to be a situation where the indemnity principle will not apply. Signature on the bill is sufficient to show that the indemnity principle has not been breached. However, if a genuine issue is raised by the paying party then the court is likely to consider this. ***Credit reference to the citation of any authority cited on the retainers and the indemnity principle, e.g:*** JH Milner v Percy Bilton [1966], Scott v Hull and East Yorkshire Hospitals NHS Trust [2014] and Bailey v IBC (1998).	
Discussion on next procedural steps e.g: **Points of dispute:** The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute. The period for	Up to 9 Marks To achieve more than a pass,

serving points of dispute is 21 days after the date of service of the notice of commencement. Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission. The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. **Credit reference to any authority cited on points of dispute, e.g:** CPR 47.9 (1), CPR 47.9 (2), CPR 47.14 (6), CPR 47.9 (4), Edinburgh v Fieldfisher LLP [2020] and Ainsworth v Stewarts Law LLP [2020]. **Default Costs Certificates:** The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. Application for requesting a DCC is on Form N254. Will include an order to pay costs to which the DCC relates. Sum payable is set out in PD (£80 fixed costs plus court fee). **Credit reference to any authority cited on default costs certificates, e.g:** CPR 47.9 (4), CPR 47.11(1), CPR 47.11(2), CPR 47.11(3), CPR PD 47 para 10.7, Masten v London Britannia Hotel Ltd [2020], National Bank of Kazakhstan & Another v The Bank of New York Mellon & Ors [2021], Gregor Fisken Ltd v Carl [2021], Serbian Orthodox Church – Serbian Patriarchy v Kesar & Co [2021] **Replies:** Where any party to the detailed assessment proceedings serves POD, the RP may serve a reply on the other parties to the assessment proceedings. RP may do so within 21 days after being served with the POD to which the reply relates. Can be served late, possible penalties on interest recoverable. Able to agree extension. Replies must be limited to points of principle and concessions only, must not contain general denials, specific denials or standard form responses. When practicable replies must be set in the form of Precedent G. **Credit reference to any authority cited on replies, e.g:** CPR 47.13 (1), CPR 47.13(2), CPR PD 44, 12.1 and CPR PD 47, 12.2. **Request for a Hearing:** RP must file request for DA Hearing within 3 months of expiry of period for commencing DA	candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

proceedings. N258 needs to be filed plus NOC, Bill, Order/Judgment/Doc giving right to DA, Precedent G PODS and Replies, Any other orders, Fee notes and written evidence of disbursements (over £500). Statement signed by legal representative and estimate of the length of time the DA hearing will take. Court fee will also need to be paid. **Credit reference to any authority cited on requesting a hearing, e.g:** CPR 47.14, CPR PD 47 para 13.1, CPR PD 47 para 13.2 and CPR PD 47 para 5.2	
Discussion on the assessment e.g: **Basis of Assessment and reasonableness:** Court has discretion as to costs. In this scenario considering the indemnity basis consideration to be given to proportionality. Credit given to comparison of costs assessed on the Standard basis where emphasis would be on (CPR 44.3(2) and the overriding objective). Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. Whatever basis: Reasonableness would always be considered. **Credit reference to any authority cited on basis of assessment and reasonableness, e.g:** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2) and CPR 44.3(3) **Application of Proportionality:** There has been uncertainty as to how the new test or proportionality should apply. However the Court of Appeal has now provided a degree of certainty. It Is a two stage test and once reasonableness has been considered the Court should remove all	Up to 7 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

unavoidable costs before making any deduction to reach a proportionate figure. **Credit reference to any authority cited on the application of proportionality, e.g:** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017], West and Demouilpied v Stockport NHS Foundation Trust [2020]. **Assessment and good reason:** Whether or not there is a CMO in place if the costs exceed the budget by 20% or more the receiving party must serve a statement of reasons with the bill. CPR 3.18 is not ambiguous. Estimated costs agreed and subject to a Cost Management Order good reason to be established to require a further assessment.. **Credit reference to any authority cited on assessment and good reason, e.g:** CPR 3.18, CPR PD 44, 3.2, Vertannes v United Lincolnshire Hospitals NHS Trust [2018] and Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017]	

Question 7:	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.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: Costs should be determined by agreement or by the arbitrator, assessment as arbitrator 'sees fit', 3 categories of costs, matter may be referred to the court where costs of the arbitrator cannot be agreed, enforcement would be through the usual methods under the CPR. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the framework for assessment of costs and the relationship between arbitration proceedings and the courts) with good application and some analysis having regard to the facts, although candidate may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the framework for assessment) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO we are told there are three main points that need addressing (assessment, court and enforcement) and candidates will demonstrate a sound knowledge base as to how the particular sections of the Arbitration Act relate to those points. Candidates may discuss and critically analyse why, for example, the assessment of costs by the court is very unlikely i.e that the starting point will be the parties agreement followed by the potential assessment by the arbitrator. Most views expressed by candidates should be supported by relevant authority and/or case law.

Distinction	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates will provide an excellent advice setting out the right to refer the matter to the court and the difficulties faced with enforcing an order. All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content:	**Marks**
Required: A discussion on what is meant by costs under the legislation, e.g: ***Costs in arbitration proceedings:*** Costs in arbitration proceedings fall into three categories - the arbitrator's fees and expenses, the fees and expenses of any arbitral institution concerned and the legal or other costs of the parties. Costs will also include the costs of or incidental to any proceedings when determining the amount of the recoverable costs of the arbitration which may include premiums charged by third party funders. ***Credit reference to any authority cited on costs in arbitration proceedings, e.g:*** Section 59(1) of the Arbitration Act 1996, Section 59(2) of the Arbitration Act 1996 and Essar Oilfields Services Limited v Norscot Rig Management PVT Limited [2016].	Up to 2 marks
Credit any points advanced on agreements, e.g: ***Agreement:*** Parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest. The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties. An agreement can only extends to such costs as are	Up to 3 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply

recoverable, unless the parties decide otherwise. Credit reference to the fact that the process for determining costs in often written into the arbitration agreement. An agreement to pay costs in any event, for a party to pay the whole or part of the arbitration, can only be valid in the arbitration if made after the dispute arose. Prohibiting such agreements may be aimed at protecting a weaker party from having such an onerous obligation imposed upon them where there is some inequality of bargaining power. ***Credit reference to any authority cited on costs in arbitration proceedings, e.g:*** Section 1 of the Arbitration Act 1996, Section 60 of the Arbitration Act 1996, Section 61 of the Arbitration Act 1996 and Section 62 of the Arbitration Act 1996.	the authority to the question posed
Credit any points advanced on the arbitrator's assessment of costs, e.g: ***Arbitrator's assessment of costs:*** The arbitrator can allocate the costs of the arbitration between the parties. For any award of costs, unless the parties have agreed otherwise, the arbitrator shall award costs on the general principle that costs should follow the event. The arbitrator must assess costs as he 'sees fit'. Where costs are determined by the arbitrator, they are assessed on the standard basis as it was defined before the introduction of the CPR, unless the arbitrator or the court orders otherwise. However, the CPR state that where an arbitrator determines the costs of proceedings that CPR 44-47 should apply. ***Credit reference to any authority cited on the Arbitrator's assessment of costs, e.g:*** Section 61(1) of the Arbitration Act 1996, Section 61(2) of the Arbitration Act 1996, Section 63(3) of the Arbitration Act 1996, Sections 63(4) of the Arbitration Act 1996, Sections 63 (5) of the Arbitration Act 1996, CPR 44.1(2) and CPR 44- 47. ***Recoverable fees and expenses of arbitrators:*** Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in	Up to 8 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances. If there is any question as to what reasonable fees and expenses are appropriate in the circumstances an application may be made to the court by either party for the court to determine the matter, or order that it be determined by such means and upon such terms as the court may specify. ***Credit reference to any authority cited on the recoverable fees and expenses of arbitrators, e.g:*** Section 64(1) of the Arbitration Act 1996 and Section 64(2) of the Arbitration Act 1996. ***Power to limit costs:*** The arbitrator, unless the parties have agreed otherwise, may limit the recoverable costs of the arbitration, or of any part of the arbitral proceedings, to a specified amount. This can be done at any stage, but it must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account. ***Credit reference to any authority cited on the Arbitrator's power to limit costs, e.g:*** Section 65(1) of the Arbitration Act 1996 and Section 65(2) of the Arbitration Act 1996.	
Credit any points advanced on the when the matter may go to court, e.g: ***Applications to the court to determine costs:*** If costs are not determined by agreement or by the arbitrator, the parties can apply to the court (the application should be on-notice) and the court may then determine the recoverable costs. If a party applies to the court to consider the fees, the court may make any adjustments it sees fit. ***Credit reference to any authority cited on applications to the court to determine costs, e.g:*** Section 63(4) of the Arbitration Act 1996, Section 63(1) of the Arbitration Act 1996, Section 64(2) of	Up to 6 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

the Arbitration Act 1996 and Section 28(2) of the Arbitration Act 1996. ***Challenging and award:*** A party to arbitral proceedings may apply to the court challenging any award of the arbitral tribunal as to its substantive jurisdiction; or for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction. A party to arbitral proceedings may apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. Unless otherwise agreed by the parties, a party to arbitral proceedings may appeal to the court on a question of law arising out of an award made in the proceedings. ***Credit reference to any authority cited on challenging an award, e.g:*** Section 67 of the Arbitration Act 1996, Section 68 of the Arbitration Act 1996 and Section 69 of the Arbitration Act 1996. ***Appeal:*** An application or appeal may not be brought if the applicant or appellant has not first exhausted any available arbitral process of appeal or review and any available recourse under the Act. ***Credit reference to any authority cited on challenging an appeal, e.g:*** Section 57 of the Arbitration Act 1996 and Section 70(2) of the Arbitration Act 1996.	
Credit any relevant points cited on the enforcement of an Award, e.g: ***Leave and Enforcement:*** An award is effectively a final order and can therefore be enforced with the leave of the court if a party fails to comply with it. Where the court gives leave, judgment can be entered in the terms of the award except where the person against whom the order is sought can show that the arbitrator lacked jurisdiction to make	Up to 4 marks

the award. If the court finds that the award is not legally valid, it may refuse leave. The CPR sets out the procedure to enforce an award - the application should include the costs to be included in the order giving permission and, if judgment is to be obtained, for the costs of any judgment to be entered. ***Credit reference to any authority cited on enforcement, e.g:*** Section 66(1) of the Arbitration Act 1996, Section 66(2) of the Arbitration Act 1996, Section 66(3) of the Arbitration Act 1996, CPR 62.18, Re Stone and Hastie Arb. [1903] and Middlemiss & Gould v Hartlepool Corp [1972].	

Question 8:	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.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which

		makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which includes MOST of the requirements, namely: An explanation of the normal rule in costs and the three situations that need to be considered when offering advice on costs in relation to injunctions. These are: Interim injunction application granted on (or agreed by consent on the basis of) the balance of convenience. A defendant that successfully resists an injunction application. An injunction on a quia timet basis. The primary focus of the question may have been missed with candidates simply providing a general framework, although there will be evidence that the candidate has the knowledge that is fit for purpose. The answers will be written to a reasonable standard, but may contain some grammatical errors or spelling mistakes etc. Appropriate authority will be used throughout although some points advanced may not be supported.
Merit	12+	This band will deal with ALL the requirements and the focus of the response will be injunctions granted on the balance of convenience. Candidates will have produced responses that have more depth and with more application to the facts provided. There will also be a demonstration that the candidate is able to analyse, as appropriate. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it is written under exam conditions.
Distinction	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS demonstrates an excellent depth of knowledge. Excellent application of the law to the arguments made and critical analysis of the same. All views expressed by candidates should be supported by relevant authority and/or case law. Work which is written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required (consideration as to the court's jurisdiction, e.g): ***Jurisdiction in relation to making injunctions:*** The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so. Guidelines to establish whether an applicant's	Up to 6 marks

case merited the granting of an interlocutory injunction are: whether there is a serious question to be tried, what would be the balance of convenience of each party should the order be granted (in other words, where does that balance lie?) and whether there are any special factors. ***Credit reference to any authority cited on the principles behind granting an injunction, e.g:*** Section 37(1) of the Senior Courts Act 1981 and American Cyanamid Co v Ethicom Ltd [1975] ***Jurisdiction in relation to costs:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The 'normal' rule that 'costs follow the event' applies therefore a claimant granted an interim injunction may understandably expect the court to order the defendant to pay the costs of the application. The court may however make any other order. Orders the court may/can make include reserving the costs of the application. ***Credit reference to any authority cited on the principles behind making a costs order in injunction proceedings, e.g:*** Section 51(3) of the Senior Courts Act 1981, CPR 44.2(1), CPR 44.2(2)(a), CPR 44.2(2)(b), CPR 44.2(6) and CPR PD 44, 4.2.	
Credit a discussion on how costs or interim applications will usually be dealt with e.g: ***Summary Assessment:*** Where the court orders costs at the end of an interim injunction hearing which has lasted one day or less, it can summarily assess the costs of the application at the end of that hearing. It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs. Each party who intends to claim costs must prepare and file either a statement of costs (N260) or a schedule: not less than 2 days for fast track trial or not less than 24 hours before other hearings. Disproportionate and unreasonable costs will be disallowed. ***Credit reference to any authority cited on summary assessment in injunction proceedings, e.g:*** CPR PD 44, 9.2, CPR PD 44, 9.5, N260A, CPR PD 44, 9.10 and CPR 44.3(1)–CPR 44.3(3) ***Impact of an Order:*** A final order might award a party costs which, upon fuller consideration at trial, he would not have been given. A failure to make a final order might have the practical effect of depriving a party of some or all of the costs, which in fairness he ought to have recovered. The possibility that there might be no further trial should be kept in mind. It might be unfair to order payment by a party whom might, as a result of trial, become entitled	Up to 8 marks To achieve more than a pass the candidate must not simply cite the law but demonstrate an understanding of how the rules operate

to set off an award for costs in his favour, such as where an order for immediate payment might hamper the party's conduct of the action or destroy his business or because the opposing party might not have the means to repay if there should be a subsequent order against it. ***Credit reference to any authority cited on the impact of an order, e.g:*** Kickers International SA v Paul Kettle Agencies Ltd [1990], Picnic at Ascot v Derigs (unreported) [2001] and Hospital Metalcraft Ltd v Optimus British Hospital Metalcraft Ltd [2015]. ***Three situations that should be considered:*** Interim injunction application granted on (or agreed by consent on the basis of) the balance of convenience. A defendant that successfully resists an injunction application. An injunction on a quia timet basis.	
Credit discussion on Interim injunction applications granted on (or agreed by consent on the basis of) the balance of convenience, e.g: ***Balance of Convenience:*** When granting an injunction on the balance of convenience the court will weight up the inconvenience/loss to each party. The Court of Appeal has held that the costs of an interim injunction application granted on (or agreed by consent on the basis of) the balance of convenience should usually be reserved until trial of the substantive issue because, in such a situation, there is no successful or unsuccessful party at that stage for the purposes of CPR 44.2(2). However it will depend on whether the application can be classed as free standing – in which case the usual rule should apply unless there is another reason for the court to depart from that rule. Additionally, where the balance of convenience was significantly against the claimant it may be possible to deal with costs at the time of the application. ***Credit reference to any authority cited on the courts approach in balance of convenience cases, e.g:*** Desquenne et Giral UK Ltd v Richardson [1999], Interflora v Marks & Spencer PLC [2014] and Koza Ltd v Koza Altin Isletmeleri AS [2020].	Up to 3 marks
Credit should be given to a discussion on when a defendant successfully resists an injunction application e.g: ***A defendant that has successfully resisted an injunction:*** May expect the court to order that his costs of the application be paid by the claimant. For costs not to follow the event, the applicant would need to justify coming to court and it can do that by showing that there was a 'sufficiently strong probability that an injunction would be required to prevent the harm to the claimant to justify bringing the proceedings'. Were an interim injunction is not granted because	Up to 3 marks

damages would be a sufficient remedy then costs should be decided at the time and should not be reserved. ***Credit reference to any authority cited on the courts approach where a defendant successfully resists an injunction application, e.g:*** Merck Sharp Dohme Corp v Teva Pharma BV [2013] and Neurim Pharmaceuticals (1991) Ltd and another v Generics UK Ltd and another [2020].	
Credit should be given to a discussion on an injunction on a *quia timet* basis, e.g: ***Quia timet ("because he fears"):*** Is an injunction to restrain wrongful acts which are threatened or imminent but have not yet commenced. The position needs to be considered in light of the fact that by the time of trial it may be clear that there was no threat by the respondent to violate the applicant's legal right, but the applicant says there was a threat when it started proceedings.	Up to 2 marks

Question 9:	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.

Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which includes MOST of the requirements, namely: An explanation of what family proceedings are, explanations of the three costs regimes in family proceedings and an explanation as to the rules on assessment under the FPR or CPR. The answers will be written to a reasonable standard, but may contain some grammatical errors or spelling mistakes etc. Appropriate authority will be used throughout although some points advanced may not be supported.
Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. Candidates will have identified that in relation to the first case the clean sheet regime would apply, in the second case the no order regime would apply and in the third case the costs follow the event regime would apply. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc.
Distincti on	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS demonstrates an excellent depth of knowledge. Excellent application of the law to the arguments made and critical analysis of the same. All views expressed by candidates should be supported by relevant authority and/or case law. Work which is written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	Marks
Required (consideration as to what is meant by a family case and a discussion on how costs in family cases are usually dealt with, e.g): ***No single source provides an all-encompassing definition of family proceedings:*** Family cases may include (for example): Marriage and civil partnership; Matrimonial and partnership finance; The care of children either by their parents or by the state; Domestic abuse; The way in which a family home is occupied; Child abduction; Egg and sperm donors; and Gender recognition. **Private and Public Family Law – latter being care/adoption/abduction etc.** ***Credit reference to any authority on the diverse nature of family proceedings, e.g:*** Section 58A of the Courts and Legal Services Act 1990 and the Courts Act 2003. ***FPR or CPR:*** In some family cases the CPR will apply rather than the FPR 2010. The FPR apply to family proceedings in the High Court and the Family Court. Family proceedings are defined with reference to section 75(3) of the Courts Act 2003, i.e as those in the Family Court and proceedings in the Family Division of the High Court where they cannot be heard by another division. CPR applies where costs follows the event. ***Credit reference to any authority cited on how costs in family cases are usually dealt with, e.g:*** Rule 2.1 of the Family Procedure Rules 2010, Rule 2.3 of the Family Procedure Rules 2010, Section 75(3) of the Courts Act 2003, and Rule 28 and the Practice Direction 28A of the Family Procedure Rules 2010	Up to 6 marks To achieve more than a pass the candidate must not simply cite the law but demonstrate an understanding of how the rules operate
Credit discussion on the clean sheet regime in relation to the first matter, e.g: ***Clean sheet regime:*** This follows the FPR costs rules. This regime applies in all cases heard in the Family Court other than financial remedy proceedings. It also applies to those proceedings heard in the Family Division of the High Court which can only be allocated to the Family Division. This regime provides that the starting point is that there will be no costs shifting, parties bear their own costs, examples include Children Act 1989 proceedings (both public and private). The court may make such order as it considers just. The Costs provisions in the CPR will apply with some modification, for example; this rule disapplies the general rule and basis of assessment. The court's discretion, the factors to take into account when making an order and the definition of conduct are not excluded and therefore	Up to 6 marks

do apply. If the court decide to make an order where there is costs shifting then the starting point should be costs follow the event. ***Credit reference to any relevant authority on the clean sheet regime, e.g.:*** Rule 28.1 of the Family Procedure Rules 2010, Rule 28.2 of the Family Procedure Rules 2010, CPR 44.2(2), CPR 44.2(1), CPR 44.2(4), CPR 44.2(5) and Solomon v Solomon (2013).	
Credit discussion on how the costs in the second matter should be dealt with, i.e the No Order regime, e.g: ***The 'no order regime':*** Prevails in all financial remedy proceedings. This regime means there is unlikely to be any costs shifting. Financial remedy proceedings and proceedings in connection with a financial remedy, requiring a financial order. The general rule is that there shall be no order as to costs in financial remedy proceedings. This regime applies to the substantive final hearing of an application for an order in financial remedy proceedings and to interim variation orders. The CPR apply with some modifications. The court does not have discretion as to costs, the factors that the court should consider when making an order do not apply and nor does the definition of conduct within the CPR. ***Proceedings in connection with a financial remedy:*** Such proceedings include: Interim orders; Interim hearings; Final orders to set aside an application; Determination of a beneficial share in property; and Disposing of the application other than by final financial order. ***Credit reference to any authority on the No Order regime, e.g:*** Rule 28.3(1) of the Family Procedure Rules 2010, Rule 28.3(2) of the Family Procedure Rules 2010, Rule 28.3(4)(b) of the Family Procedure Rules 2010, Rule 28.3(5) of the Family Procedure Rules 2010, CPR 44.2 (1), CPR 44.2 (4) and CPR 44.2 (5). ***When the court may make an order in financial remedy proceedings:*** The court may make an order if it is considered appropriate on the grounds of conduct. Conduct is defined so as to include any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant. Conduct is defined so as to include any open offer to settle made by a party, whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue, any other aspect of a party's conduct in relation to proceedings which the court considers relevant and the financial effect on the parties of any costs order.	Up to 7 marks

Credit reference to any authority on when the court may make an order in financial remedy proceedings, e.g: Rule 28.3(6) of the Family Procedure Rules 2010, Rule 28.3(7)(a) of the Family Procedure Rules 2010, Rule 28.3(7)(b) of the Family Procedure Rules 2010, Rule 28.3(7)(c) of the Family Procedure Rules 2010, Rule 28.3(7)(d) of the Family Procedure Rules 2010, Rule 28.3(7)(e) of the Family Procedure Rules 2010, Rule 28.3(7)(f) of the Family Procedure Rules 2010 and AB v CD [2016].	
Credit discussion on the costs follow the event regime in relation to the third matter, e.g: ***Costs follow the event regime:*** From the CPR, generally requires the unsuccessful party to pay the costs of the successful party. This is the costs regime applicable to the Family Division of the High Court when dealing with proceedings under statutes which can be allocated to other divisions of the High Court, for example in TOLATA 1996 claims. ***Credit reference to any relevant authority on costs assessment, e.g.:*** CPR 44-48.	Up to 3 marks
Any relevant point to describe costs orders and assessment in family proceedings, e.g: ***Indemnity costs:*** Are unusual in family proceedings unless the conduct of a litigant is considered in some material respect(s) to be unreasonable or a disproportionate use of the court's time and resources. However they may be made and stand as a stark warning in relation to conduct in financial remedy proceedings. ***Credit reference to any authority on indemnity costs, e.g.:*** H v Dent (Re an Application for Committal (No. 2: Costs)) [2015] and MB v EB [2019]. ***Costs assessment in family proceedings:*** Where they are costs that do not involve legal aid they are assessed in accordance with the CPR. The CPR apply to all between the parties costs assessments. On an assessment on the standard basis the court will only allow costs that are proportionate to the matters in issue and resolve any doubt as to whether they were reasonably incurred or reasonable and proportionate in amount in favour of the paying party. Where costs are assessed on an indemnity basis the amount recoverable under an indemnity costs order may be significantly higher as the court will consider any doubt as to whether costs are reasonably incurred or reasonable in amount in favour of the receiving party. The Court	Up to 3 marks

may reduce a claim for costs in a family case because the sum spent is disproportionate to the legal issue raised. ***Credit reference to any relevant authority on costs assessment, e.g.:*** CPR 44.3(1)(a), CPR 44.3(2), CPR 44.3(1)(b), CPR 44.3(3), J v J [2014], Seagrove v Sullivan [2014], Joy v Joy-Morancho & Ors (No 3) [2015] and K v K [2016].	