

Examination Report

Exam Session:	June 2019
Exam Paper:	Unit 2

The purpose of the report is to provide feedback to tutors and candidates on the candidates' performance in the examination with recommendations about how any issues identified may be addressed.

This report should be read in conjunction with the relevant examination paper.

1. Summary of Candidate Performance

The performance on the question paper was reasonable with some adequate performances and some very good performances. The difference in performance levels was due to knowledge and application of the authority to the questions. It appears some students found time management difficult and were unable to answer all the questions as required with sufficient detail for a pass mark.

There was a total of 18 candidates that sat this paper. The breakdown of the numbers of fails, passes, merits and distinctions is provided in the statistics below, along with a question by question breakdown of the whole paper.

For the purposes of moderation, a sample of papers were selected, representing just over 57% of the total number of submissions in accordance with ACLT Guidelines. Although this sample is significantly in excess of the normal guideline sample, it was felt that, for the sake of fairness and consistency, a comparable sample should be selected as a reasonable representative sample for moderation purposes. The selected papers were chosen to reflect a range of marks, from the lowest to the highest, from a cross-section of markers. All borderline papers were considered.

The table below sets out the data on the paper.

Number of Candidates	18
Total Fails	4
Total Pass	14
% Pass	78
% Fail	22
Classification of Marks Achieved	
% Total in Pass Band	17
% Total in Merit Band	39
% Total in Distinction Band	22

It was evident that most candidates were prepared for the examination which is a credit to both the course tutors and to the candidates themselves. The strengths in performance were candidates being able to identify the appropriate procedure, identify the relevant authority and apply knowledge to the questions set. The weaknesses were where candidates demonstrated somewhat superficial knowledge and as a result were unable to consistently identify the appropriate procedure, the relevant governing authority and demonstrate an ability to apply that knowledge, all of which are required at level 6. The weaker performing candidates failed to answer the questions or relate the law to the facts of the scenario, this impacted upon marks significantly and was the main reason identified by the moderation team for there being 4 fail papers. Some students failed to answer fully some of the questions as required which had a significant impact on the overall mark awarded. All students attempted the 3 questions required in Section B with the higher allocation of marks. This shows the positive impact of revision seminars.

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules.

The first four questions on the paper were compulsory for all candidates, and carried the lowest marks per question. On the whole, these were answered reasonably well by most candidates and presented very few challenges for the markers and the marks pre-moderation were generally fair and in accordance with the marker guidance. Candidates performed particularly well in the section A questions in the area of Client Money and Third Party Funding.

For the remaining three questions on the paper, students were required to select these from five optional questions. Most students completed questions 5 (Lawyer and Client), 6 (Special Courts) and 8 (Litigation Funding).

2. Candidate Performance for Each Question

Q1 – Legal Accounts

This was the shortest compulsory question on the paper, found within section A, the question only attracted up to 5 marks. Candidates were required to explain what the CLSB Costs Lawyer Code of Conduct means when it states that costs lawyers must not accept client money save for disbursements and payment of their professional fees. This meant all responses must include a discussion as to what is meant by client money. Candidates were also expected to show knowledge of where in the CLSB Costs Lawyer Code of Conduct this provision could be found.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	4
Total Pass	14
% Pass	78
% Fail	22

This question was well answered with some candidates achieving marks as high as 90%. The average mark on this question was 62% (merit level) and it is clear that candidates had prepared well for the question which is very pleasing given

the importance of the question in relation to the CLSB Code of Conduct. This question was deemed fair by the assessment team.

Q2 – Lawyer and Client

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to summarise the relevant authority and explain the circumstances when a solicitor may terminate a retainer and pursue the client for their fees. This question required candidates to set out what a retainer is and candidates should have referred to when a solicitor can terminate a retainer.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	6
Total Pass	12
% Pass	67
% Fail	33

The better responses considered both statutory and common law authority. Weaker responses failed to identify the requirement for good cause and reasonable notice. It was clear that on the whole candidates had prepared well for this question and they were able to demonstrate their knowledge. The average mark awarded for this question was 55% (Pass level) and 28% of candidates were able to achieve distinctions for this question (70% or higher).

The question was deemed fair by the assessment team.

Q3 – Litigation Funding

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to critically discuss whether regulations should be introduced to ensure that third party litigation funders are subject to statutory duties and obligations. Candidates were required to explain what third party funding is.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	2
Total Pass	16
% Pass	89
% Fail	11

The performance on this question was varied. The pass rate was excellent with 89% of students achieving a pass or above. 56% of candidates achieved 70%+ of the marks available for the question (distinction level). Stronger responses were able to identify that there were some obligations placed on third party funders with reference to the power of the court to review the validity and enforceability of such agreements. Weaker responses failed to adequately address the question although those responses were often able to set out the framework of developments around this type of funding arrangement. The average mark awarded on this question was 65% (high merit level).

The question was deemed fair by the assessment team.

Q4 – Costs in Special Courts

This was the largest compulsory question in section A of the paper, the question attracted up to 15 marks. Candidates were required to explain the jurisdiction of the first tier tribunals to make a costs order.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	2
Total Pass	16
% Pass	89
% Fail	11

The average mark for this question was 62% which is a merit. Where candidates performed badly there was a clear lack of knowledge, understanding and preparation for this question. Candidates that did not perform well did not deal adequately with confirming which tribunals could make a costs order and provided a very superficial answer with limited authority. The candidates that performed better were able to set out fully the mechanics of the legislative provisions and showed a wider understanding of the tribunals powers. The highest mark awarded on this question was higher distinction level (80%).

This question was deemed fair by the assessment team.

Q5 – Lawyer and Client

This was an optional question in section B of the paper, like all other questions in this section, the question attracted up to 20 marks. Candidates were required to prepare the body of an email of advice to a fee earner setting out what a lien is and whether it is possible to have a lien over a file of papers. Candidates were required to consider the three categories of lien, the difference between a retaining and preserving lien, the definition of property over which a lien can be exercised, the role of undertakings and the limits of the lien.

The table below sets out the data on this question.

Number of Candidates	17
Total Fails	3
Total Pass	14
% Pass	82
% Fail	18

The range of marks was 10% - 90% and the average mark was reasonable at 59% (pass level). The candidates that performed well not only referred to the relevant authority but were also able to identify that in the case presented to them an undertaking had been given and it did not appear to have been breached. Those better performing candidates may also have discussed and critically analysed why there is an argument that the firm may retain the file of papers and exercise the lien until their bill is paid. The candidates that did not perform as well simply appeared to not have enough to say or be able to apply the knowledge they had to the problem they were presented with. This meant that they often failed to demonstrate the level of depth to their knowledge that

a response at level 6 would require. The question was deemed fair by the assessment team.

Q6 – Special Courts

This was an optional question, in section B of the paper, attracting up to 20 marks. Candidates were required to prepare the body of a letter of advice. The advice had to explain what an award is and set out how the provisions of the Arbitration Act 1996 govern the assessment of costs. In addition, the advice needed to explain when a matter must be referred to the court and the rules on enforcement in an arbitration matter.

The table below sets out the data on this question.

Number of Candidates	16
Total Fails	3
Total Pass	13
% Pass	81
% Fail	19

The range of marks was again 20% - 85% and the average mark was 60% (merit level). This question was reasonably well answered with the majority of candidates passing and it was clear that students had prepared well. The better responses set out advice in relation to the three main points that needed addressing (assessment, court and enforcement) and better performing candidates demonstrated that they had knowledge of how the particular sections of the Arbitration Act related to those points. This question was deemed fair by the assessment team and 81% of the papers showed a good performance by the candidates.

Q7 – Litigation Funding

This was an optional question in section B of the paper, again, this question attracted up to 20 marks. Candidates were required to prepare an advice on how the costs in a legally aided claim should be assessed and the impact of a notice to show cause. Candidates should have identified that in the scenario presented that the certificate is a post LASPO funding certificate and commented on the position with 'at risk' work. Candidates were required to use appropriate business language and show an ability to apply their knowledge.

The table below sets out the data on this question.

Number of Candidates	1
Total Fails	0
Total Pass	1
% Pass	100
% Fail	0

This question was attempted by one candidate. The question was deemed fair by the assessment team.

Q8 – Litigation Funding

This was an optional question in section B of the paper, like all other questions in this section, the question attracted up to 20 marks. All candidates attempted this question. Candidates were required to prepare the body of a letter of advice advising on the transfer of CFAs from one firm to another, having particular regard to the specific circumstances referred to. Candidates were required to provide an explanation of assignment and novation; circumstances when a transfer may be required and the key priorities for a transfer. Candidates may also have outlined most of the regulatory framework of a CFA and the requirements as to form.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	3
Total Pass	15
% Pass	83
% Fail	17

Many candidates clearly had the requisite knowledge to answer this question, identifying that the reason for the transfer is because the firm was ceasing to undertake the particular type of work. Many candidates were also able to conclude that there is a degree of uncertainty as to the advice they can offer in relation to the payment of the first solicitors' costs and/or additional liabilities. Many candidates were able to outline the common law developments. Some candidates achieved high marks of up to 75% for this question but the average mark was 61% which was a merit. The weaker responses failed to apply the knowledge demonstrated to the specifics of the question posed. It was also noted that time may have been an issue for some candidates and that the responses seemed rushed in parts as a result of this being one of the later questions on the paper, time management may have been an issue for some candidates.

The question was deemed fair by the assessment team.

Q9 – Solicitors' Accounts

This was an optional question in section B of the paper and attracted up to 20 marks. Candidates were required to prepare a summary that would be included in a business proposal, that summary needed to contain a definition of client money, an explanation of money laundering and identification of the relevant legislation/regulations.

The table below sets out the data on this question.

Number of Candidates	2
Total Fails	2
Total Pass	0
% Pass	0
% Fail	100

This question was attempted by two candidates and both of them failed to include required depth of knowledge and both candidates failed. The question was deemed fair by the assessment team.

Mark Armstrong
Moderator