

Examination Report

Exam Session:	September 2021
Exam Paper:	Unit 1
<p>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.</p> <p>This is intended to be a useful document that comments on overall performance by candidates in the September 2021 Unit 1 examination, advises on how performance might be improved and indicates what should be contained in successful answers to the questions in the examination paper.</p> <p>This report should be read in conjunction with the relevant examination paper and marker guidance.</p>	
Summary of Candidate Performance	
<p>This was the third sitting of the Unit 1 examination in this format. Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. Overall, performance was excellent with an 82% pass rate. There were mixed performances on some questions on the paper but the pass rates were extremely pleasing and the cohort should be commended for their hard work.</p> <p>Overall, candidates were generally able to cite sufficient relevant authority although there remains a tendency to focus on simply citing authority without explaining its relevance. The performance of some candidates was marred by weak general academic skills, those that demonstrated weaker performance did little more than write out revision notes without addressing the question posed in sufficient detail. Where these candidates were able to demonstrate sufficient understanding they often only achieved a bare pass. Candidates must ensure that they move away from simply citing knowledge and focus on demonstrating understanding and the ability to apply their knowledge.</p> <p>Pleasingly, all candidates answered all of the required questions on the paper which demonstrates that the instructions on the paper were clear and had been made known to candidates prior to the examination during their preparation for the exam. It is clear candidates were aware of what the paper required them to do and had sufficient time and time management skills to ensure they were able to meet the demands of the paper.</p>	

There were a number of instances where candidates performed excellently on some questions achieving distinction level marks but they did not perform consistently throughout the paper. It is also the case that some Candidates performed much better on Section A than they did on Section B of the paper. Candidates should consider how they can ensure consistency across all questions and where candidates performed better on the short questions in Section A they should consider what it was about the Section B questions that they found harder to respond to. Problem questions, found in section B of the paper, provide an opportunity for candidates to demonstrate that they can use the law to solve problems. This is possibly the lawyer's most important skill. These candidates are clearly capable of performing to a high standard and it is a shame for them that their performance showed some areas of weakness therefore limiting the marks awarded.

Candidates are strongly advised to develop the skills of analysis and test their understanding of the subject matter before attempting the examinations on the course. Candidates need to develop the skills of diagnosis of legal problems because this is their role in the work place. They need to go beyond just identifying the rules, they should learn the skill of stating the rules of law succinctly whilst demonstrating an understanding of how that rule works or applies. If candidates do not understand a subject or topic area they need to ask questions during the course/revision sessions or undertake their own independent research. In the digital age, accessibility of information is no longer a barrier to gaining knowledge and much of the content of the examination can be found in various forms from different sources beyond the materials supplied as part of the course.

There was a total of 11 candidates that sat this paper. On the whole, the paper was completed well with 82% of candidates passing and 18% of candidates failing. 50% of those candidates that failed the exam failed to reach the required standard on all questions that they attempted. 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 36% of the total number of submissions which is in excess of the sample required by ACLT Guidelines. The selected papers were chosen to reflect a range of marks, from the lowest to the highest. Only one marker marked the scripts and this ensured consistency in marking. All borderline and fail papers were considered. There were no recommendations to adjust any of the marks during the moderation process.

The table below sets out the data on the paper.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82

% Fail	18
Classification of Marks Achieved	
% Total in Pass Band	45
% Total in Merit Band	9
% Total in Distinction Band	27

The examination team felt that the performance on the questions demonstrated all candidates had sufficient time to complete the exam but commented that the length and quality of responses varied significantly.

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question (10 marks). On the whole, the performance on these questions was good. The marks for these questions pre-moderation were in accordance with the marker guidance and only one recommendation was made for an adjustment. Two of the 4 questions saw a pass rate below the paper pass rate with 36% of candidates failing to achieve the required standard (questions 3 and 4). Candidates performed best in the section A question on contract where 82% of candidates passed and the average mark on those questions was 60% (a merit).

For the remaining three questions on the paper, candidates were required to select these from four optional questions. 91% of candidates chose to answer questions 5 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded in section B. Question 8 was where candidates performed best on section B in terms of pass rates with all candidates attempting that question achieving a pass and an impressive 50% of candidates achieving a distinction for that question.

All questions on the paper were deemed fair by the assessment team.

Candidate Performance For Question 1 – Contract Law

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to distinguish between an offer and an invitation to treat.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

Candidates were expected to explore what is meant by an invitation to treat and what might amount to an offer. Candidates may have set out that for a valid contract the courts would look objectively to see if there is an agreement. Candidates will have been credited for any relevant points made on acceptance and counter offers. Performance on this question was pleasing with a pass rate of 82%. Marks ranged from 40% (fail) to 90% (High Distinction). Where candidates failed to perform to the required standard it was clear that they had simply not prepared well enough.

Candidate Performance For Question 2 – Contract Law

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain what is meant by the statement 'past consideration is no consideration.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

Candidates should have explained the relevance of consideration to the establishment of a binding contract and the relevance of past consideration and exceptions. The pass rate on this question was consistent with the pass rate across the paper. Marks ranged from 10% to 100% with the average mark being 60% (merit).

Candidate Performance For Question 3 – Tort Law

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain when a new intervening act may break the chain of causation between the Defendant's breach and the Claimant's loss or damage.

Number of Candidates	11
Total Fails	4
Total Pass	7
% Pass	64
% Fail	36

Candidates were required to explain the relevance of causation. Candidates were credited for a discussion on intervening acts, a discussion on causation in fact and on causation in law and foreseeability. Performance of candidates on this question was lower than on the contract law questions in this section with 64% achieving a pass mark (50%+). Marks ranged from 30% (fail) to 100% (High Distinction). The average mark was 60% (Merit) but an impressive 36% achieved distinctions (70%+).

Candidate Performance For Question 4 – Tort Law

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe the test that will be applied in new and novel situations to establish a duty of care.

Number of Candidates	11
Total Fails	4
Total Pass	7
% Pass	64
% Fail	36

Candidates needed to explain what must be established in order to mount a successful claim in negligence and the concepts of 'reasonable foreseeability of harm' and 'proximity'. Candidates should also have

explained what it means to be fair, just and reasonable to impose a duty of care. Again, performance of candidates on this question was lower than on the contract law questions in this section with 64% achieving a pass mark (50%+). Marks ranged from 20% (fail) to 100% (distinction). The average mark was 60% (merit). Those candidates that did not achieve the required standard had clearly not prepared well enough or did not understand the question which is surprising given the question should have been quite straightforward to answer.

Candidate Performance For Question 5 – Contract Law

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to write the body of a letter advising what misrepresentation is, whether they believed a statement may amount to misrepresentation and the potential remedies available should a successful claim for misrepresentation be brought.

Number of Candidates	10
Total Fails	3
Total Pass	7
% Pass	70
% Fail	30

Candidates should have identified that there must be a statement of fact, that silence will not usually amount to misrepresentation, the statement must have been relied upon and induced a party into the agreement. Candidates should then have gone on to explain that there are three types of misrepresentation and the type of misrepresentation will determine the remedies available.

This was the most popular optional question on the paper with 91% of candidates choosing to answer this question. The pass rate on this question was 70% and candidates had obviously prepared reasonably well for this question with the average mark being 60% (merit). Marks ranged from 30% to 80%.

Candidate Performance For Question 6 – Contract Law

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to write the body of a letter advising what terms of a contract are, how they may be incorporated into a contract and the consequence of a breach of terms.

Number of Candidates	8
Total Fails	3
Total Pass	5
% Pass	62
% Fail	38

Candidates should have explained the contract would include both express and implied terms. They may have explained that during negotiations many representations may be made but they may not be terms i.e they may not be incorporated into the contract. Candidates should have identified whether the statements form part of the agreement (are terms) or whether

they are representations. Candidates should have distinguished between express and implied terms and included a discussion on how express terms are incorporated into an agreement through actual or constructive notice. Candidates are also likely to have discussed how implied terms may be imputed into an agreement. Finally, candidates are likely to have distinguished between conditions and warranties and set out the consequence of breach.

This was one of the least popular optional question on the paper, however 73% of candidates attempted it. The pass rates were disappointing with only 62% reaching the required standard which is somewhat surprising given how well candidates had performed on the contract questions in Section A (questions 1 and 2). The average mark on this question was a merit standard at 60% with marks ranging from 20% to 85%. Whilst 100% of the candidates that did not pass the paper overall opted to answer this question the range of marks suggested that the question was fair.

Candidate Performance For Question 7 – Tort Law

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to prepare a summary of advice on what must be demonstrated for a Claimant to be owed a duty of care as a primary or secondary victim in the context of psychiatric injury.

Number of Candidates	9
Total Fails	6
Total Pass	3
% Pass	33
% Fail	67

Candidates were expected to provide an explanation of what must be established for a claim in negligence. They were then likely to have gone on to identify the relevant law on reasonable foresight, identify the relevant law on reasonable proximity and explain the difficulties with the third strand of the Caparo test. They should have distinguish between primary and secondary victims.

82% of candidates attempted this question. The pass rate was very disappointing at 33%. Performance on this question was significantly lower than on any other question on the paper. However, marks ranged from 20% (fail) to 75% (distinction) which suggests that those candidates that did not pass had either not prepared well enough, were not sufficiently knowledgeable of the law of tort with their strength being contract law or they had not managed their time effectively. The examination team were not concerned about the fairness of the question.

Candidate Performance For Question 8 – Tort Law

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to prepare the body of a letter setting out what causation was and why it may be an issue in this case.

Number of Candidates	6
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Total Fails	0
Total Pass	6
% Pass	100
% Fail	0

Candidates were expected to provide an outline of causation in fact and an outline of legal causation. Candidates were then expected to include a discussion of problems the courts have faced with causation, a discussion of when the act of a third party may break the chain of causation and a discussion of when the act of the claimant may break the chain of causation. Candidates should have been able to identify the relevant issues in the case and deal with the circumstances in their advice. Better responses will have demonstrated a very good understanding of when medical negligence may break the chain of causation and the impact on liability.

This was one of the least popular optional question on the paper with only 55% of candidates choosing to answer this question. However, performance on this question was excellent with 100% of candidates attempting the question achieving a pass. That being said, the examination team observed that it is clear this was the last question attempted by some candidates and time management may have been an issue. Despite this, marks ranged from 50% (pass) to 90% (high distinction) and an impressive 50% of candidates were able to achieve a distinction (70%+) indicating that candidates had sufficient time to complete the question.

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