Examination Report

Exam Session:	August 2017
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 mixed with some poor performances, some good performances. The difference in performance levels was due to knowledge and application of the authority to the questions. The paper was completed very well with 100% of candidates passing.

There was a total of **7** 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 **43%** 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. It should be noted that 3 papers were moderated and as a result it was felt that to obtain consistency across all the papers a blanket reduction of 3 marks should be applied. This was as a result of all moderated papers requiring a reduction of 3 marks. None of these reductions resulted in failed papers as all papers remained passes.

The table below sets out the data on the paper.

Number of Candidates	7
Total Fails	0
Total Pass	100
% Pass	100
% Fail	0
Classification of Marks Achieved	
% Total in Pass Band	57
% Total in Merit Band	43

% Total in Distinction Band	0

It was evident that the candidates were prepared for the examination. The strengths in performance were being able to identify the appropriate procedure, identify the relevant authority and apply knowledge. 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 no distinctions awarded in this exam sitting. Whilst those candidates may have cited the correct law they failed to address the question posed.

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 areas of legal accounts and litigation funding. The question on arbitration in section A was not answered as well as the others because one candidate failed to achieve any marks for this question but 86% of candidates were still able to achieve a pass for this question (more than half marks).

For the remaining three questions on the paper, students were required to select these from five optional questions. The vast majority of students answered questions 5, 6 and 8, with only one candidate answering question 9 and no candidates answering question 7. This made the task of marking and moderating the work easier, as it was possible to compare the work with other submissions to achieve consistency. The questions in section B on tribunals and litigation funding were the most popular on the paper with 100% of candidates answering the question of which 86% of those candidates passed the questions by achieving over half marks.

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 is meant by client money and why the CLSB prohibits costs lawyers from handling the same.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	0
Total Pass	7
% Pass	100
% Fail	0

This question was well answered with some candidates achieving marks as high as 90%. The average mark on this question was 78% (distinction level) and it is clear that candidates had prepared well for the question. 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 describe when a solicitor may terminate a retainer and explain the implications should a retainer be wrongfully terminated. In order to achieve a pass for this question candidates were expected to demonstrate knowledge of the nature of a retainer, i.e that it is a contract for legal service between a lawyer and client and can be made orally.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	0
Total Pass	7
% Pass	100
% Fail	0

This question was answered well by 100% of candidates. It was clear that candidates had prepared well for this question and they were able to demonstrate their knowledge and apply it to the question set. The average mark awarded for this question was 64% (merit level) and 14% of candidates were able to achieve as high as 70% for this question.

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 distinguish between novation and assignment and explain why these concepts are important when determining how a pre-LASPO CFA has been transferred. This is a topical subject, candidates were required to define both concepts before exploring the pre and post LASPO position.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	0
Total Pass	7
% Pass	100
% Fail	0

The performance on this question was very good with 42% of candidates achieving 70%+ of the marks available for the question (distinction level). The candidates that performed well were able to distinguish and make clear references to up to date authority. This is a topical area of the law and it was pleasing to see that so many of the candidates were familiar with the complex contractual principles. Marks were lower where there was a failure of the candidate to show sufficient knowledge of authority and the piecemeal

development of the common law. The average mark awarded on this question was 68%.

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 provisions contained within sections 59-65 of the Arbitration Act 1996.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	1
Total Pass	6
% Pass	86
% Fail	14

Where candidates performed badly there was a clear lack of knowledge, understanding and preparation for this question. The average mark for this question was disappointing at 44% however this was impacted upon by the fact that one candidate failed to gain any marks for this question. Other candidates did not deal adequately with the provisions of the Arbitration Act 1996. There were some papers where candidate's knowledge of some of the authority appeared somewhat superficial. The candidates that performed better were able to set out fully the mechanics of the legislative provisions and showed a wider understanding of the jurisdiction of an Arbitrator when making an award for costs. The highest mark awarded on this question was merit level (60%) and 29% of candidates were awarded this mark.

This question was deemed fair by the assessment team but 14% of the papers showed poor performance by the candidates.

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 a letter of advice to a fee earner setting out the right of the firm to seek payment of the bills through the courts and of any potential action that may be taken based on the facts of the scenario. Candidates were therefore required to use appropriate business language and show an ability to apply their knowledge. Candidates were likely to have made reference to definitions and salient points in respect of interim bills, natural break, final bills/interim statute bills and gross sum bills.

The table below sets out the data on this question.

Number of Candidates	6
Total Fails	1
Total Pass	5
% Pass	83
% Fail	17

The range of marks was 40% - 65% and the average mark was reasonable at 54%. The candidates that performed well not only referred to the relevant authority but were also able to set out some of the relevant procedure and therefore showed better application and proffer better advice. The candidates that did not perform as well simply appeared to not have enough to say and 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, and attracted up to 20 marks. Candidates were required to prepare the body of an email setting out the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made against a claimant. Candidates were expected to identify that the in the question was before a first tier tribunal (Health, Education and Social Care Chamber), that it is not one of the first tier tribunals that cannot make orders for costs. Candidates were then expected to consider the framework of provisions in the Tribunals, Courts and Enforcement Act 2007 and the relevant rules specific to this tribunal Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. Candidates were also likely to have explored wasted costs orders.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	1
Total Pass	6
% Pass	86
% Fail	14

The range of marks was again 40% - 65% and the average mark was 55% and a mid-range pass. This question was reasonably well answered with the majority of candidates passing and it was clear that students had prepared well.

This question was deemed fair by the assessment team and 86% 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 a summary of the next steps in the case presented, how the costs in the claim should be assessed and the impact of the notice to show cause.

The table below sets out the data on this question.

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

This question was not attempted by any of the candidates. 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. Candidates were required to prepare the body of a letter to a fee earner providing her with an advice as to 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 key priorities for a transfer.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	1
Total Pass	6
% Pass	86
% Fail	14

Many candidates clearly had the requisite knowledge of the applicable law outlining most of the regulatory framework of a CFA and the requirements as to form. Most candidates referred to the Courts and Legal Services Act 1990 and the Legal Aid Sentencing and Punishment of Offenders Act 2012 as the governing law. Few candidates distinguished between a CFA that allows for a success fee and one that does not. The question was, however, answered very well with 86% of candidates achieving the required standard. Some candidates achieved high marks of up to 80% for this question and the average mark was a merit. The weaker responses missed some of the detail of the question and failed to adequately demonstrate the ability to apply the authority to 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 the summary that could be included in a business proposal on money laundering regulations that must be complied with and the role of compliance officers.

The table below sets out the data on this question.

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

This was not a popular question with only 1 candidate selecting it. It was evident that the candidate struggled with time when answering this question.

This question was deemed fair by the assessment team, despite the poor pass rate.

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Moderator

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