Examination Report

Exam Session:	August 2018
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 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 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	7
Total Fails	0
Total Pass	7
% Pass	100
% Fail	0
Classification of Marks Achieved	
% Total in Pass Band	72
% Total in Merit Band	14
% Total in Distinction Band	14

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 only 1 distinction awarded in this exam sitting. 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 a 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 question in the area of Litigation Funding which required candidates to consider the topical issue of CFA assignment.

For the remaining three questions on the paper, students were required to select these from five optional questions. All students answered questions 5, 6 and 8. 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.

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 describe the provisions relating to client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules.

The table below sets out the data on this question.

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

This question was well answered with some candidates achieving marks as high as 80%. The average mark on this question was 64% (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 professional 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 explain the nature of a lien and how a solicitor with unpaid fees may have a lien over a client's property. In order to achieve a pass for this question candidates were expected to demonstrate knowledge of the nature of a lien and what may amount to property. This required students to consider both statutory and common law authority.

The table below sets out the data on this question.

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

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 60% (merit level) and 43% 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 explain, using recent common law developments, the difference between a CFA which has been novated from a CFA which has been assigned. This question required candidates to attempt to define both novation and assignment.

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 varied but the pass rate was excellent with 100% of students achieving a pass or above. 43% of candidates achieved 70%+ of the marks available for the question (distinction level) and one candidate achieved a higher distinction (80% plus). The candidates that performed well were able to distinguish and make clear references to up to date authority and provided good explanations of the policy considerations the courts had faced. Marks were lower where there was a failure of the candidate to show sufficient knowledge of authority and definitions of the key terms. The average mark awarded on this question was 67% (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	7
Total Fails	5
Total Pass	2
% Pass	29
% Fail	71

Where candidates performed badly there was a clear lack of knowledge, understanding and preparation for this question. The average mark for this question was 45% which is a borderline fail and disappointing given the similarity of this question to previous questions set. Candidates 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 merit level (60%) and 14% of candidates were awarded this mark.

This question was deemed fair by the assessment team but 71% 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 an email of advice to a fee earner setting out when a retainer between a solicitor and client may be terminated and the potential costs implications of wrongful termination. Candidates were then required to discuss the meaning of a final bill and how a more detailed breakdown of costs may be obtained by a client. Candidates were required to use appropriate business language and show an ability to apply their knowledge to the facts as presented.

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 36% - 75% and the average mark was reasonable at 56% (pass level). 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 offered 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, attracting up to 20 marks. Candidates were required to prepare the body of a memo setting out the procedure for the assessment of costs in arbitration, in what circumstances an assessment must go to court and how an award may be enforced. Candidates were therefore required to use appropriate business language and show an ability to apply their knowledge to the facts as presented.

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% - 70% 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. 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 an advice on how the costs in a legally aided claim should be assessed, the impact of a notice to show cause and the impact of any delay in dealing with a matter. 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	0
Total Fails	0
Total Pass	0
% Pass	0
% Fail	0

This question was not attempted by any 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. All candidates attempted this question. Candidates were required to prepare an advice on when a litigant might wish to use third party funding, the ethical issues that might arise regarding this type of funding, the type of proceedings for which funding might be available and what that funding might cover.

The table below sets out the data on this question.

Number of Candidates	7
Total Fails	2
Total Pass	5
% Pass	71
% Fail	29

Many candidates clearly had the requisite knowledge of the ethical issues around this type of funding. 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 a bear pass. 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 guidance note on the management of client money and compliance with the SRA Account Rules.

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 candidates. The question was deemed fair by the assessment team.

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