

Examination Report

Exam Session:	August 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. Candidates are reminded that time management is an important examination skill and one that should not be forgotten when preparing for examinations.

There was a total of 3 candidates that sat this paper. The paper appears to have performed reasonably well in that there was a range of responses. The paper gave rise to candidate performance within normal boundaries and expectations. 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 66% 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. All borderline and fail papers were considered as part of the sample.

The table below sets out the data on the paper.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	34
Classification of Marks Achieved	
% Total in Pass Band	33
% Total in Merit Band	33
% Total in Distinction Band	0

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 1 fail paper. 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 marker 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 Legal Accounts and Funding.

For the remaining three questions on the paper, students were required to select these from five optional questions. All 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 with reference to relevant authority, why the Costs Lawyer Code of Conduct prohibits costs lawyers from handling client money. 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	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

This question was a strong question for the students with some candidates achieving marks as high as 70%. The average mark on this question was 60% (merit level) and it is clear that candidates had prepared for the question which is very pleasing given the importance of the question in relation to how the CLSB Code of Conduct applies in practice. 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 how a solicitor with unpaid fees may have a potential lien over a client's property. In order to achieve a pass in this question candidates were required to explain what a lien is and demonstrate knowledge of the types of lien.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

Candidates performance on this question varied and it is clear some candidates were ill prepared to respond to the demands of the question. The average mark awarded for this question was 46% (Fail) and 33% of candidates were able to achieve distinctions for this question (70% or higher). The better responses considered both statutory and common law authority.

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 describe what is meant by third party litigation funding and discuss whether the availability of this type of funding facilitates access to justice.

The table below sets out the data on this question.

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

One candidate did not attempt this question and this should act as a reminder to all candidates that they should read the exam paper instructions carefully before attempting the examinations. The performance on this question was varied. 0% of candidates achieved 70%+ of the marks available for the question (distinction level) but the average mark for this question was 63% (merit 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 able to set out the framework of developments around this type of funding arrangement.

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 summarise the costs provisions found in the Arbitration Act 1996. In order to pass the question candidates were expected to set out the legislative framework of the costs provisions found in the Arbitration Act 1996 and set out the categories of costs.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

The average mark for this question was 48% which is a fail which was due to one of the three candidates seemingly running out of time when attempting 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 merit level (66%).

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 a set of training notes to cover interim bills and invoices on account, an explanation as to what is meant by a statute bill and some information on detailed and gross sum bills. The notes also needed to cover the right of a firm to seek payment of its bills through the courts.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

The range of marks was 38% - 70% and the average mark was 52% (pass level). The candidates that performed well referred to both the relevant statutory and case authority. 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 question they were presented with which 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 an email of advice. The advice had to explain the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made against a legal representative.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	3
Total Pass	0
% Pass	0
% Fail	100

Performance on this question was the poorest on the questions in section B. No student passed this question. The range of marks was again 35% - 40% and the average mark was 38% (fail level). It is clear candidates had simply not prepared adequately to answer this question which is disappointing given similar questions appear on past papers. Candidates are reminded of the value of using past papers and marker guidance to assist them in their exam preparation.

This question was deemed fair by the assessment team.

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 the body of a letter of advice on three files which they had been provided with some brief notes on. Candidates were required to consider the particular facts on each of the files which included the impact of a notice to show cause, pre and post LASPO funding certificates, and commented 'at risk' work.

Consider the above file notes and prepare an explanation and a brief description of the implications in each of the cases. Provide the body of a letter of advice, to Hannah Hewitt, on the particular circumstances on the files and any action that should be taken.

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 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	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

Many candidates clearly had the requisite knowledge to answer this question and were able to outline the common law developments. Some candidates achieved high marks of up to 65% for this question but the average mark was 52% (pass level). 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 some notes in order to help them create some 'mock letters' for training purposes. The notes needed to cover the categories of money, the use separate bank accounts for client and office money and money laundering.

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.

Mark Armstrong
Moderator