

Examination Report

Exam Session:	December 2021
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 is intended to be a useful document that comments on overall performance by candidates in the December 2021 Unit 2 examination, advises on how performance might be improved and indicates what should be contained in successful answers to the questions in the examination paper.

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

Summary of Candidate Performance

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 all candidates achieving the required standard over the paper (50%). There were some poorer performances on specific questions but the pass rate is very pleasing.

Good and comprehensive answers included evidence of good knowledge of the substantive law/case authority. Candidates should not simply rote learn and state relevant information, they should apply the law to the question asked. Too often candidates recited case authority without applying them to the facts of the question (or scenario) or how they would support a key point within the question. Candidates will not be credited each time they recite a case but only when it is applied correctly to the question. Credit will be given if additional cases can be recited which support/approve the ratio of an earlier case or show a development in the law but candidates should set out why they have included that authority within their responses.

There were examples where candidates did not recall the date of the case. Authorities should, where possible, provide the year of the decision to put it into context. However, ACLT do not negatively mark so candidates will not be penalised if they simply name the case without a date and it is applied accurately to the facts. That being said, it may undermine the knowledge demonstrated where dates are not included and candidates may lose the opportunity to analyse the developments in the law by reference to when the decision was made/a statute was enacted.

There were instances where candidates performed excellently on some questions, achieving distinction level marks, but they did not perform consistently throughout the paper. Those candidates should consider how they can ensure consistency in future examinations because they are clearly capable of performing to a very high standard.

There was a total of 3 candidates that sat this paper. On the whole, the paper was completed very well with 100% of candidates passing. 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 67% of the total number of submissions which is in excess of the number required by ACLT Guidelines. The selected papers were chosen to reflect a range of marks, the papers with the lowest and the highest marks were selected. Only one marker marked the scripts and this ensured consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	3
Total Fails	0
Total Pass	3
% Pass	100
% Fail	0
Classification of Marks Achieved	
% Total in Pass Band	67
% Total in Merit Band	33
% Total in Distinction Band	0

It appeared to the examination team that all candidates had sufficient time to complete the exam. The length and quality of responses did, however, vary significantly and it was identified some candidates may benefit from working on their time management skills. Within the revision materials provided to candidates there was a suggested allotment of time per question but candidates may benefit from spending more time preparing and considering what it feels like to write for three hours. From time to time candidates often discussed irrelevant issues where no credit could be given because they simply wrote everything they knew on a subject rather than the law that applied to the actual question posed. Even though it is an exam and time may be an issue of concern to candidates it is still worth planning the response to the question by noting down key points before beginning the answer. This will improve time management overall even though it may feel counter intuitive.

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question. On the whole, the performance on these questions was good but 2 questions saw a pass rate below 100%. The marks for the section A questions pre-moderation were fair and in accordance with the marker guidance but one adjustment was recommended on moderation. Candidates performed best in the section A question on civil litigation (question 1).

For the remaining three questions on the paper, candidates were required to select these from five optional questions. All candidates answered questions 5, 6 and 8 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded. Question 5 was where candidates performed best in section B in terms of pass rates (100% achieved the required standard) but Question 6 saw the highest marks awarded with 67% of candidates achieving distinctions (70%+).

This was the second sitting in a row where the ethics questions presented problems for candidates. In the September 2021 exam both the examination team and external examiner identified the section A ethics question had a low pass rate, on this paper it was a section B question. This may be that the ethics questions in section B appear towards the end of the paper. However, candidates need to devote sufficient time to this topic and the academic team should be asked to ensure they provide enhanced support during revisions session on this area. The examination team did not feel that this was a huge concern but did feel that students were simply underprepared and were unable to produce cohesive, comprehensive responses.

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

Candidate Performance For Question 1 – Civil Litigation

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 procedure and the usual costs consequences set out in the Civil Procedure Rules where a Claimant chooses to discontinue all or part of their claim.

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

Candidates were required to provide a discussion on when a claim may be discontinued and the impact of discontinuance. Candidates should have included a discussion on the costs consequence of discontinuance. Candidates would also have been credited for including a discussion on the procedure for discontinuing. The pass rates were pleasing and consistent with the rest of the paper. The average mark achieved for this question was at pass level (55%+ of marks available) with marks ranging from 55% (pass) to 65% (merit).

Candidate Performance For Question 2 – Personal Injury and Clinical Negligence

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe when a costs order made in favour of a party to proceedings who has taken out an ATE costs insurance policy may include provision requiring the payment of an amount in respect of all or part of the premium of the policy.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	67
% Fail	33

Candidates were required to demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums. Candidates would have been credited for any discussion on the court's discretion as to costs. Candidates should also have included some discussion on what challenges may be made to such a premium. The pass rates were reasonable and it was clear that the candidates that had prepared for a question on the subject had a real depth of understanding. Marks ranged from 45% (fail) to 65% (merit) with the average mark being 56% (pass).

Candidate Performance For Question 3 – Professional Ethics

Again, this was a compulsory question on the paper found within section A and the question attracted up to 10 marks. Candidates were required to describe the authority that should be considered where the Court is considering making a Wasted Costs Order against a Costs Lawyer.

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

This question required candidates to set out the court's discretion as to costs and the authority on wasted costs. Candidates were credited for setting out the legislative provisions, the provisions in the CPR and relevant case authority. The pass rate for this question was excellent with 100% of candidates achieving the required standard. It was pleasing to see that one candidate achieved a distinction for this question (70%+). Marks ranged from 50% (pass) to 75% (distinction).

Candidate Performance For Question 4 – Legal Accounts

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain the principle that a Costs Lawyer cannot handle client money and whether that principle is relevant where a Costs Lawyer works for an SRA regulated firm.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	33
% Fail	67

Candidates were required to explore what was meant by client money, the risk presented to clients when client money is handled and what the rules permit Costs Lawyers to do in terms of client money. The CLSB guidance on rule 3,6 of the Costs Lawyers Practising Rules is very clear on this and all future candidates are advised to read the document. Performance on this question was poor. Marks ranged from 30% (fail) to 55% (pass).

Candidate Performance For Question 5 – Civil Litigation

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 providing advice on Default Judgments. The letter needed to explain what a Default Judgment is, how a Judgment may be obtained and whether they believed that it will be possible to apply for the Judgment in the scenario to be set aside.

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

This was one of the most popular optional questions on the paper with all candidates choosing to answer this question. To achieve a pass, candidates were expected to set out definitions and salient points in respect of default judgments, consideration of what a default judgment is, how it can be obtained and the consequence of a default judgment. Performance on this question was reasonable, all candidates achieved a pass.

Candidate Performance For Question 6 – Personal Injury and Clinical Negligence

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 when a Claimant is entitled to the protection of QOCS, in what situation that protection may be lost and the consequence of the decision made in the scenario.

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

This was a popular optional question on the paper with all candidates choosing to answer this question. The pass rate was high and the performance on this question was the highest with 67% of candidates achieving distinctions (70%+). Candidates were required to provide an explanation as to how QOCs operates, which cases the rules apply to, when an order can be enforced without the courts permission, to what extent an order can be enforced and when an order can be enforced only with the court's permission. To pass, candidates should have demonstrated a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework) with good application and some analysis having regard to the facts.

Candidate Performance For Question 7 – Professional Ethics

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 to an opponent, in appropriate business language, attempting to persuade them to deal with a costs matter in an appropriate manner. Candidates were required to set out why it will be in the interests of all parties involved that the matter is dealt with in an ethical manner and should have had regard to relevant principles of professional standards.

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

No candidates chose to answer this question.

Candidate Performance For Question 8 – Professional Ethics

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 file note setting out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit Costs Lawyers from arguing unarguable points and the implications if a Costs Lawyer were to follow the instructions from the client in the scenario.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	22
% Fail	67

This was a popular optional question on the paper with 100% of candidates choosing to answer this question. Candidates should have provided an outline of what it means to be an authorised person, an explanation of the costs lawyers duty to the court, an explanation of what a reserved legal activity is and whether the work in the scenario can be undertaken by non-qualified costs professionals. Performance on this question was the lowest on the paper with only 33% of candidates achieving the required standard. This may have been, in part, because this will have been the last question some candidates attempted and the impact of poor time management skills. Candidates are encouraged to consider their strategies when preparing for exams and consider adding in more time dedicated to experiencing what it feels like to write for three hours. It is also a real concern that candidates appear to struggle with the section B questions on ethics. Marks ranged from 45% (fail) to 55% (pass).

Candidate Performance For Question 9 – Legal Accounts

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 file note that covers the risks associated with the use of client accounts, the potential ramifications where firms do not undertake proper due diligence before accepting any funds into a client account and why a firm should decline to act if they did not fully understand the transaction on which they were being asked to advise.

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

No candidates chose to answer this question.

Mark Armstrong
Moderator

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