

Examination Report

Exam Session:	June 2016
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

A total of 108 candidates sat the examination. 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. These statistics are confirmed following the assessment board which took place on Monday 18 July 2016.

For the purposes of internal moderation, a total of 22 sample papers were selected, representing just over 20% of the total number of submissions in accordance with ACL guidelines. The samples selected were divided between the two co-moderators and some papers were considered by both members of the team. For the purposes of sampling by the external examiner, a total of 11 sample papers were selected, representing just over 10% of the total number of submissions in accordance with ACL guidelines. Both samples of papers were selected to reflect a range of marks, from the very poor to the highest, and from each of the six markers.

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, but a number of candidates struggled with question 4 for the reasons set out below. However, the internal moderators concluded that these questions presented very few challenges for the markers and the marks were generally fair and in accordance with the marking rubrics and marker guidance. For the remaining three questions on the paper, candidates were required to select these from five optional questions. The vast majority of candidates answered questions 5, 6 and 8 with very few candidates attempting questions 7 and 9. The internal moderators concluded that 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. It was amongst the optional questions that, unsurprisingly, the greatest variety in quality of work and marks was to be found.

Overall, the internal moderation team were impressed by the ability of the markers to mark such a large number of papers, some of which were difficult to decipher, in such a short period of time and to achieve such a high standard of fairness and consistency in doing so. The markers are to be congratulated on producing a set of examination results which fairly reflect the effort and work of the candidates.

The performance on the question paper was mixed with some poor performances, some good performances, and some very good performances with 9% of candidates achieving a distinction. The difference in performance levels was due to knowledge and application of the authority to the questions. The paper was completed very well with 88% of candidates passing.

The table below sets out the data on the paper.

Number of Candidates	108
Total Fails	13
Total Pass	95
% Pass	88
% Fail	12

It was evident that the candidates that passed 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 did not demonstrate they could identify the appropriate procedure, identify the relevant governing authority and/or demonstrate an ability to apply that knowledge, all of which are required at level 6. The weak performing candidates failed to answer the questions and cite relevant authority. Whilst some candidates may have cited the correct law, they failed to apply this to the question posed.

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed through the assignments.

Candidates performed particularly well in the areas of Lawyer and Client and Funding. Only a very small number of candidates answered the legal aid and legal accounts questions. The optional question on Lawyer and Client costs was the most popular section B question on the paper with nearly 100% of candidates answering the question and 90% of those candidates passing. The special courts and legal aid questions were not answered as well.

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 client money is and what the Costs Lawyer Code of Conduct and Practising Rules provide in relation to client money.

The table below sets out the data on this question.

Number of Candidates	108
Total Fails	20
Total Pass	88
% Pass	81
% Fail	19

This question was well answered with some candidates achieving marks as high as 90%. 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 attracting up to 10 marks. Candidates were required to write a summary, considering the relevant law on liens, and briefly discussing how the lien may be exercised. Candidates needed to explain the nature of a lien and how a solicitor with unpaid fees may have a potential lien over a client's property.

The table below sets out the data on this question.

Number of Candidates	108
Total Fails	13
Total Pass	95
% Pass	88
% Fail	12

This question was answered well by 88% of candidates. It was clear that candidates had prepared well for this question and they were able to demonstrate their knowledge and answer the question set. Some candidates were able to achieve as high as 100% for this question. Candidates who did well provided a clear explanation of the definition of property and the common law developments in that regards.

The question was deemed fair by the assessment team.

Q3 – Funding

This was a compulsory question in section A of the paper, the question attracting up to 10 marks. Candidates were required to explain the advantages and disadvantages of third party funding with specific reference to champerty and maintenance.

The table below sets out the data on this question.

Number of Candidates	108
Total Fails	10
Total Pass	98
% Pass	91
% Fail	9

The performance on this question was excellent. The candidates that performed well were able to outline the legal developments in this particular type of funding and showed good depth of knowledge. Marks were lower where there was a failure of the candidate to show sufficient knowledge of the advantages and disadvantages of either the statutory framework on funding or the common law developments. Sadly, these candidates simply just didn't answer the question set.

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 attracting up to 15 marks. Candidates were required to identify which of the first tier tribunals have the power to award costs. They then needed to go on to explain in what circumstance(s) a tribunal may make an order for costs.

The table below sets out the data on this question.

Number of Candidates	107
Total Fails	28
Total Pass	79
% Pass	74
% Fail	26

Where candidates performed badly there was a clear lack of knowledge, understanding and preparation for this question. Some candidates failed to identify the relevant first tier chambers or tribunals and others did not deal adequately with the jurisdiction of first tier tribunals. The candidates that performed better were able to show that not only did they understand the jurisdiction of first tier tribunals, but that they also understood how the jurisdiction differed to the upper tribunals.

This question was deemed fair by the assessment team, but it was the question that saw the poorest performance by candidates across the entire paper. 26% of the papers showed poor performance by the candidates and one candidate did not even attempt to answer this question therefore automatically losing out on all marks available.

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 to prepare the body of a letter of advice to a fee earner and were therefore required to use appropriate business language. As only a body of a letter was required, markers were lenient as to the required format. However, where appropriate business language had not been used, candidates were unable to achieve a distinction. Candidates needed to set out the circumstances when a contract of retainer between a solicitor and client may be terminated and provide an explanation on what the costs implications are where a solicitor wrongfully terminates a retainer.

The table below sets out the data on this question.

Number of Candidates	107
Total Fails	17
Total Pass	90
% Pass	84
% Fail	16

The range of marks was 40% - 85% and the average mark was 60% - quite high at merit level. The candidates that performed well not only referred to the relevant authority but were also able to demonstrate knowledge of the reasons that may lead to termination of the retainer.

The question was deemed fair by the assessment team.

Q6 – Special Courts

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 memo incorporating the response to a number of queries in relation to arbitration proceedings. The queries included a request for information on the procedures for the assessment of costs, an explanation as to when an assessment must go to court, details about the enforcement of an arbitral award and how such an award may be challenged.

The table below sets out the data on this question.

Number of Candidates	95
Total Fails	20
Total Pass	75
% Pass	79
% Fail	21

The range of marks was 25% - 75% and the average mark was average, i.e. a mid-pass at 55%. This question was well answered and it was clear that candidates had prepared well.

This question was deemed fair by the assessment team and 79% of the papers showed a good performance by the candidates.

Q7 – 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. The question asked candidates to consider a number of issues on matters funded by civil legal aid with specific reference to a situation where a certificate had been discharged, revoked and where there was a notice to show cause.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	7
Total Pass	11
% Pass	61
% Fail	39

To achieve the required standard candidates needed to demonstrate knowledge and understanding as to the nature of a funding certificate that has been discharged/revoked or where there is a notice to show cause in place. To achieve a higher award candidates needed to demonstrate a sound ability to apply the law to the facts of the scenarios presented together with knowledge of how funding certificates operate generally. The question was answered poorly in comparison to the other optional questions. It was also answered by a very small number of candidates with only 16% of candidates attempting the question and only 61% of those achieving the required standard. Despite this, the marks awarded reflected the same pattern as other questions attempted - ranging from 40-75%.

The question was deemed fair by the assessment team.

Q8 – 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 draft the body of a memo of advice on a particular scenario advising on whether a retainer may have been validly assigned. Candidates were also asked to consider whether it is possible to transfer insurance from one firm to another.

The table below sets out the data on this question.

Number of Candidates	99
Total Fails	15
Total Pass	84
% Pass	84
% Fail	15

One of the moderators raised an issue during the course of the moderation process with what appeared to be some misleading guidance in relation to this question. The marker guidance referred to addressing a memo to costs lawyers and trainee costs lawyers concerning issues of professional ethics and standards, when the question required a memo to the fee earner regarding assignment and novation in the context of a transferred CFA. The guidance appeared to have been erroneously left over from a previous draft of the guidance. It was apparent, however, from moderating the marked work that markers had marked question 8 on its merits, and there was no evidence of a failure to achieve marks for failing to address ethical issues.

Some candidates clearly had the requisite knowledge of the very topical and current issue of novation and assignment. Despite the relatively complex area of the law the question was answered quite well with 84% of candidates

achieving the required standard and an average mark of 60% (merit) being awarded. Some candidates achieved high marks of up to 85% for this question. The weaker responses missed some of the detail of the question and failed to adequately demonstrate the required knowledge. The lowest mark awarded for the question was 25%.

In the question, the date of the CFA pre-dated the accident. Candidates could have dealt with this in any appropriate manner and would have been credited accordingly. This was, however, only noted in an answer by one candidate and it did not affect the marks for this question. The question was deemed to be fair.

Q9 – Legal Accounts

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 draft the body of a memo of advice citing any relevant rules. The particular scenario presented to candidates required them to demonstrate knowledge of the relevant rules regarding the handling of client money, mixed payments and VAT.

The table below sets out the data on this question.

Number of Candidates	4
Total Fails	1
Total Pass	3
% Pass	75
% Fail	25

This question was the least popular on the paper with only 3% of candidates having attempted it. Marks ranged from 40-53% with the average mark being a bare pass at just over 50%.

This question was deemed fair by the assessment team, but 25% of the papers showed poor performance by the candidates.

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Moderators