

# Examination Report

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<b>Exam Session:</b>	June 2017
<b>Exam Paper:</b>	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 87% of candidates passing.

There was a total of **76** 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 **37%** 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 between the markers, a comparable sample should be selected from each marker 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 for each marker. There was also a large number of borderline fail papers which all needed moderation.

The table below sets out the data on the paper.

<b>Number of Candidates</b>	<b>76</b>
<b>Total Fails</b>	<b>10</b>
<b>Total Pass</b>	<b>66</b>
<b>% Pass</b>	<b>87</b>
<b>% Fail</b>	<b>13</b>
<b>Classification of Marks Achieved</b>	
<b>% Total in Pass Band</b>	<b>34</b>
<b>% Total in Merit Band</b>	<b>37</b>
<b>% Total in Distinction Band</b>	<b>16</b>

It was evident that the candidates that passed the examination paper 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. 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 lawyer and client. The question on tribunals in section A was not answered as well as the others but 79% 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 seven candidates answering question 7 and six candidates answering question 9. 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 question in section B on lawyer and client was the most popular on the paper with 97% of candidates answering the question of which 78% of those candidates passed the question by achieving over half marks. Although question 7 was answered by just 9% of candidates it had the highest pass rate in section B with 86% of candidates achieving half marks or more.

## 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 why the Costs Lawyer Code of Conduct prohibits costs lawyers handling client money.

The table below sets out the data on this question.

<b>Number of Candidates</b>	76
<b>Total Fails</b>	13
<b>Total Pass</b>	63
<b>% Pass</b>	83
<b>% Fail</b>	17

This question was well answered with some candidates achieving marks as high as 100%. 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 write a summary on the nature of a lien, considering any relevant law, and outline how a solicitor with unpaid fees may have a potential lien over a client's property. To pass a response had to include an explanation of what a lien is, better responses explored the definition of property and dealt well with how the law on liens operates.

The table below sets out the data on this question.

<b>Number of Candidates</b>	76
<b>Total Fails</b>	7
<b>Total Pass</b>	69
<b>% Pass</b>	91
<b>% Fail</b>	9

This question was answered well by 91% 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. 36% 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 explain why third party funding is a relatively new concept in litigation funding within England and Wales.

The table below sets out the data on this question.

<b>Number of Candidates</b>	76
<b>Total Fails</b>	15
<b>Total Pass</b>	61
<b>% Pass</b>	80
<b>% Fail</b>	20

The performance on this question was reasonable with some candidates achieving 100% of the marks available for the question. 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 concepts. Marks were lower where there was a failure of the candidate to show sufficient knowledge of maintenance, champerty and the public policy considerations. Higher marks were awarded where candidates were able to refer to several factors that have resulted/supported the change.

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 describe the jurisdiction of the first tier tribunals to award costs.

The table below sets out the data on this question.

Number of Candidates	75
Total Fails	16
Total Pass	59
% Pass	79
% Fail	21

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 tribunals and others did not deal adequately with the jurisdiction of first tier tribunals. 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 Tribunals, Courts and Enforcement Act 2007 and showed a wider understanding of the jurisdiction by making reference to specific rules governing individual tribunals.

This question was deemed fair by the assessment team but 21% 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.

The table below sets out the data on this question.

Number of Candidates	74
Total Fails	16
Total Pass	58
% Pass	79
% Fail	21

The range of marks was 35% - 95% and the average mark was quite high at 58% and a borderline merit. 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 a memo explaining how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter must be referred to the court and the rules on enforcement in an arbitration matter.

The table below sets out the data on this question.

<b>Number of Candidates</b>	70
<b>Total Fails</b>	15
<b>Total Pass</b>	55
<b>% Pass</b>	79
<b>% Fail</b>	21

The range of marks was 35% - 100% and the average mark was again 58% and a borderline merit. 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 79% 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 draft the body of a memo, in appropriate business language, on the circumstances surrounding the public funding certificate in the scenario and advice on Very High Costs Case Plans.

The table below sets out the data on this question.

<b>Number of Candidates</b>	7
<b>Total Fails</b>	1
<b>Total Pass</b>	6
<b>% Pass</b>	86
<b>% Fail</b>	14

This question was one of the questions on the paper that was attempted by the least number of students which may reflect the fact that this is a highly specialised area of costs practice. The pass rate was the highest on the paper and marks ranged from 35%-70%. 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 a note upon the circumstances in which a CFA might be ruled invalid and unenforceable.

The table below sets out the data on this question.

<b>Number of Candidates</b>	71
<b>Total Fails</b>	20
<b>Total Pass</b>	51
<b>% Pass</b>	72
<b>% Fail</b>	28

Some 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 quite well with 72% of candidates achieving the required standard. Some candidates achieved high marks of up to 85% for this question but the average mark was a mid-range pass. 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 body of training notes covering the roles of Compliance Officers for Legal Practice (COLPs) and for Finance and Administration (COFAs) and money laundering regulations.

The table below sets out the data on this question.

<b>Number of Candidates</b>	6
<b>Total Fails</b>	1
<b>Total Pass</b>	5
<b>% Pass</b>	83
<b>% Fail</b>	17

This was not a popular question with only 8% of candidates selecting it. Marks awarded ranged from 35% – 70% and all but one candidate achieved a pass. It was evident that candidates struggled with time when answering this question.

This question was deemed fair by the assessment team, with 83% of the papers passing.

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