

Examination Report

Exam Session:	June 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 mixed with some poor 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 well with 83% of candidates passing and 17% candidates failing.

There was a total of 18 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 39% 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	18
Total Fails	3
Total Pass	15
% Pass	83
% Fail	17
Classification of Marks Achieved	
% Total in Pass Band	33
% Total in Merit Band	33
% Total in Distinction Band	17

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 3 distinctions 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 questions in the areas of Handling Client Money and termination of a retainer. The question on contingency fee agreements in section A was not answered as well, 6 students failed but 67% 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 3 candidates answering question 9 or 7. 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 questions in section B on Lawyer and Client Costs, Arbitration and litigation funding were the most popular on the paper.

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 is meant by client money and why the CLSB prohibits costs lawyers from handling the same.

The table below sets out the data on this question.

Number of Candidates	18
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Total Fails	1
Total Pass	17
% Pass	94
% Fail	6

This question was well answered with some candidates achieving marks as high as 90%. The average mark on this question was 80% (distinction level) and it is clear that candidates had prepared well for the question. This is very pleasing given the regulatory importance of this question. 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 describe when a solicitor may terminate a retainer and explain the implications should a retainer be wrongfully terminated. In order to achieve a pass for this question candidates were expected to demonstrate knowledge of the nature of a retainer, i.e that it is a contract for legal service between a lawyer and client and can be made orally.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	0
Total Pass	18
% Pass	100
% Fail	0

This question was answered well by 100% 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. The average mark awarded for this question was 65% (merit level) and 44% 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 discuss the statement that contingency fee agreements were unenforceable. They were required to explain what contingency fees were to include an explanation of maintenance and champerty.

The table below sets out the data on this question.

Number of Candidates	18
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Total Fails	6
Total Pass	12
% Pass	67
% Fail	33

The performance on this question was varied with a third of all students failing the question. Some students had clearly left this question until last and ran out of time, therefore this impacted the overall mark for this question. Only 17% of candidates achieved 70%+ of the marks available for the question (distinction level). The candidates that performed well were able to distinguish and make clear references to up to date authority and provided good explanations of contingency fee agreements and included an analysis of maintenance and champerty. 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 50% (pass 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	18
Total Fails	4
Total Pass	14
% Pass	78
% Fail	22

Where candidates performed badly there was a clear lack of knowledge, understanding and preparation for this question. The average mark for this question was 58% however this was impacted upon by the fact that one candidate only gained 1 mark for this question. Other 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 distinction level (73%) and 28% of candidates were awarded this mark.

This question was deemed fair by the assessment team but 22% 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. Candidates were likely to have made reference to definitions and salient points in respect of interim invoices for payment on account, natural break, final bills/interim statute bills and gross sum bills.

The table below sets out the data on this question.

Number of Candidates	16
Total Fails	2
Total Pass	14
% Pass	87
% Fail	13

The range of marks was 25% - 75% and the average mark was reasonable at 60% (merit 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, and attracted up to 20 marks. Candidates were required to prepare the body of an email setting out 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. 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	14
Total Fails	1
Total Pass	13
% Pass	93
% Fail	7

The range of marks was again 45% - 75% and the average mark was 60% a borderline distinction. 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 93% 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 the body of a letter of advice on the particular legal aid circumstances with respect to the substantive certificate, revocation and discharge of a certificate. 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	3
Total Fails	0
Total Pass	3
% Pass	100
% Fail	0

This question was only attempted by 3 candidates and they all passed. Generally only students who have work experience of legal aid tackle the question in the exam and usually pass as a result of the experience. 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 the Claimant may be able to recover the success fee under the CFA dated 2 December 2012 in light of the circumstances of the case.

The table below sets out the data on this question.

Number of Candidates	18
Total Fails	1
Total Pass	17
% Pass	94
% Fail	6

Many 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. Students were able to provide a definition for assignment and novation to include the differences. The question was, however, answered very well with 95% of candidates achieving the required standard. Some candidates achieved high marks of up to 75% for this question and the average mark was a merit. 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 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	3
Total Fails	2
Total Pass	1
% Pass	33
% Fail	67

This was not a popular question with only 3 candidates selecting it. It was evident that the candidates struggled with time when answering this question.

This question was deemed fair by the assessment team, despite the poor pass rate.

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Moderator

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