

## Examination Report

<b>Exam Session:</b>	September 2021
<b>Exam Paper:</b>	Unit 3
<p>The purpose of the report is to provide feedback to tutors and candidates on the candidates' performance in the examination. This report contains recommendations and guidance as to the key points candidates should have included in their answers in the September 2021 Unit 3 examination.</p> <p>This report is intended to be a useful document that comments on overall performance by candidates in the September 2021 Unit 3 examination, advises on how performance might be improved and indicates what should be contained in successful answers to the questions in the examination paper.</p> <p>This report should be read in conjunction with the relevant examination paper and marker guidance which can be found on the ACL website. The suggested points for responses contained in the marker guidance are points that a response from a good (Merit/Distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marker guidance.</p>	
<b>Summary of Candidate Performance</b>	
<p>This was the second sitting of the Unit 3 examination in this format. For all candidates that sat this exam this was the second opportunity they had to sit the postponed exam sitting that was due to have taken place in December 2020 because of their own personal circumstance. The December 2020 exam sitting was postponed as a result of government restrictions linked with COVID19.</p> <p>Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. Performance on this exam sitting was excellent. There were mixed performances on some questions on the paper but the pass rates were really pleasing with 100% of candidates passing.</p> <p>Candidates were able to demonstrate an ability to think about the law both critically and analytically. They focussed not just on demonstrating they could meet the knowledge outcomes but that they were also capable of gaining marks available for analytical ability. All of the candidates that sat this paper had previous experience of studying law at level 6 and on post graduate professional qualifications before they commenced studying towards the Costs Lawyer qualification. Candidates clearly understood what was required at Level 6 and the pleasing pass rates were as a result of candidates' good academic skills.</p>	

In general, candidates seemed to have a reasonable knowledge of the core areas of Costs Litigation. As a result, candidates were able to correctly identify the subject matter of each question and refer to at least some of the relevant points. Where there were weaknesses in performance this appeared to be where students did not maximise the opportunities to demonstrate they had the required knowledge to meet all of the knowledge outcomes with breadth and depth. This had the consequential effect of those students being unable to demonstrate they could apply that knowledge and meant some of the advice was not as full as it could have been.

Students knowing how to manage their time during the exam is important. The examiners were satisfied that the instructions on the paper were clear and had been made known to candidates prior to the examination during their preparation for the exam. With respect to examination technique, whilst there were some flaws in the approach some candidates took when answering some of the questions on the paper, candidates seemed to manage their time well. All candidates were able to provide coherent answers to all of the questions.

There was room for improvement, on occasion some candidates didn't appear to have fully read the question or at least didn't pick out elements of the facts they could have used to strengthen the advice they were giving. This meant they didn't demonstrate they could properly analyse the facts which would have limited the marks that could be awarded. On occasion, some candidates simply wrote down all they knew or had prepared on a topic and so included material that wasn't relevant or helpful. Even where candidates dealt with the relevant points, they didn't always make the best of the knowledge that they had. Candidates needed to be more systematic in their approach and practically apply their knowledge to the facts.

There was a total of 3 candidates that sat this paper and all 3 passed the examination with high marks. 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 66% of the total number of submissions which is in excess of the sample required by ACLT Guidelines.

The table below sets out the data on the paper.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0
<b>Classification of Marks Achieved</b>	

<b>% Total in Pass Band</b>	0
<b>% Total in Merit Band</b>	67
<b>% Total in Distinction Band</b>	33

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question (10 marks). On the whole, the performance on these questions was excellent. All four questions saw pass rates of 100% and on questions 2, 3 and 4 all candidates were able to achieve distinction level marks (70%+). Only 1 of the 4 questions saw a mark lower than distinction and that mark was at merit level (60%+) (question 1). Candidates performed best in the section A questions on third part funding where 100% of candidates achieved a distinction and the average mark was 80% (a high distinction).

For the remaining three questions on the paper, in section B, candidates were required to select these from four optional questions. All candidates chose to answer questions 5, 6 and 7 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded in section B. Candidates performed best on the questions in relation to Detailed Assessment and Arbitration (questions 5 and 7) where the average mark awarded was 70% (Distinction).

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

#### **Candidate Performance For Question 1 – Lawyer and Client**

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to distinguish, with reference to the form and content, between an interim invoice on account and an interim statute bill.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates were required to explain what a bill is and demonstrate knowledge of the types of bill. They would then have been credited for any other relevant point to describe those types of bills. Performance on this question was excellent with a 100% pass rate. Marks ranged from 60% (Merit) to 90% (High Distinction). The average mark awarded for this question was 80% (Distinction).

#### **Candidate Performance For Question 2 – Lawyer and Client**

This question was also compulsory, found within section A, the question also attracted up to 10 marks. Candidates were required to Explain what is meant by an entire contract and when a retainer may be terminated before an action has concluded.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0

<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates were required to provide a description of a retainer and explained the principle of an entire contract. Candidates would then have been credited for a discussion on when a solicitor may terminate a retainer (good reason and reasonable notice) and the consequence of wrongful termination. The pass rate on this question was excellent, with 100% of candidates achieving a pass. Marks were all in the distinction category and ranged from 70% to 80% with the average mark being 80% (Higher Distinction). Candidates should be commended for their performance on this question, it was clear from the papers that candidates had prepared well.

### **Candidate Performance For Question 3 – Litigation Funding**

Question 3 was also compulsory and found in section A of the paper. The question attracted up to 10 marks. The question required candidates to explain the distinction between assignment and novation and outline the relevance of these principles to the transfer of conditional fee agreements that were entered before 1 April 2013.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates were expected to set out the circumstances of when a CFA may be transferred and the definition of Novation and Assignment. Candidates should then have discussed success fee recoverability. Candidates would have been credited for any other relevant points cited in relation to the problems the courts have faced and the arguments raised by the paying party. Again, candidates performed excellently on this question with a 100% pass rate. Marks ranged from 70% (Distinction) to 80% (High Distinction). The average mark was 80% (High Distinction) with an impressive 100% of candidates achieving distinctions (70%+). This was really pleasing given the high volume of cases funded by CFAs.

### **Candidate Performance For Question 4 – Litigation Funding**

This was also a compulsory question on the paper, found within section A, attracting up to 10 marks. The question required candidates to discuss whether Third Party Funding should be recognised as an acceptable option for mainstream litigation.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates needed to set out what is third party funding is, i.e an alternative method of litigation funding where a commercial funder with no connection to the proceedings will pay some or all of the costs of the case in return for a share of any sum of money awarded in damages if the case is won. Candidates would have been credited for a discussion on the chronological developments (and the change in stance to such funding arrangements). Candidates would have been credited for a discussion on whether the availability of this type of funding facilitates access to justice. Performance on this question was the strongest in section A of the paper with all candidates achieving distinction level marks and one candidate achieving all the marks available. Marks ranged from 70% (Distinction) to 100% (Higher Distinction) with the average mark being 80% (Higher Distinction).

### Candidate Performance For Question 5 – Costs Pleadings

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 advising on the consequence of an order that a Claimant should pay the Defendant's costs of the proceedings on the indemnity basis, to be the subject of detailed assessment if not agreed.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates should have discussed the commencement of assessment proceedings and assessment on the indemnity basis. All candidates chose to answer this question and all candidates achieved the required standard to pass with marks ranging from 60% (merit) to 70% (distinction). The average mark for this question was excellent being at distinction level (70%).

### Candidate Performance For Question 6 – Costs Pleadings

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 an email setting out what the Court will consider when determining whether there is a good reason to depart from a budget and whether early settlement means there should be a reduction of the figures set out in the budget.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Again, all candidates chose to answer this question which is not surprising since budgeting is an integral part of most costs professionals workload. Candidates were expected to explain when a CMO will be made, in what circumstances a budget can be amended and the impact of a CMO on

assessment. Candidates should then have gone on to set out what amounts to a good reason to depart which provided plenty of scope for analysis. The average mark on this question was lower than that on the other Section B questions although was still of a pleasing standard at 60% (merit). Marks ranged from 55% (Pass) to 70% (Distinction).

#### **Candidate Performance For Question 7 – Costs in Special Courts**

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 an advice setting out how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter may be referred to the Court and the rules on enforcement in an arbitration matter.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

Candidates would have been credited for any points advanced on agreements, on the arbitrator's assessment of costs, when the matter may go to court and any relevant points cited on the enforcement of an Award. 80% of candidates attempted this question. The pass rate was excellent at 100% and marks ranged from 65% (Merit) to 70% (Distinction).

#### **Candidate Performance For Question 8 – Advanced Civil Procedure**

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 setting out how costs in family cases are usually dealt with, how the costs in this type of case should be dealt with and what rules the Court should consider when making a Costs Order.

<b>Number of Candidates</b>	0
<b>Total Fails</b>	0
<b>Total Pass</b>	0
<b>% Pass</b>	0
<b>% Fail</b>	0

No candidates attempted this question.

#### **Candidate Performance For Question 9 – Advanced Civil Procedure**

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 an email setting out the statutory tests for Costs Capping Orders in judicial review cases. Within their responses, candidates should have included the definition of public interest proceedings and the factors the court will consider when determining if proceedings are public interest proceedings. Candidates should also have discussed how an application for a costs capping order will be made.

<b>Number of Candidates</b>	0
<b>Total Fails</b>	0

	<b>Total Pass</b>	0
	<b>% Pass</b>	0
	<b>% Fail</b>	0

No candidates attempted this question.

**Mark Armstrong**  
**Moderator**

**Kirsty Allison**  
**Head of Education**