

# Examination Report

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Exam Session:	August 2019
Exam Paper:	Unit 3

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

Performance of candidates was good with all students passing the paper. The difference in performance levels was largely due to knowledge and application of relevant authority to the questions. On the whole, the paper was completed very well with 100% of candidates passing.

There was a total of 4 candidates that sat this paper. The paper appears to have performed reasonably well in that there was a wide range of responses. The paper gave rise to candidate performance within normal boundaries and expectations. 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 50% of the total number of submissions in accordance with ACLT Guidelines. Although this sample was in excess of the normal guideline sample, it was felt that, for the sake of fairness and consistency, a comparable sample should be selected. The selected papers were chosen to reflect a range of marks, from the lowest to the highest. All borderline papers were considered.

The table below sets out the data on the paper.

Number of Candidates	4
Total Fails	4
Total Pass	0
% Pass	100
% Fail	0
Classification of Marks Achieved	
% Total in Pass Band	75
% Total in Merit Band	25
% Total in Distinction Band	0

It was evident that candidates were largely prepared for the examination. Candidates are reminded to take note of the number of marks allocated to questions in deciding how much to write. Where a question requires an explanation, then more detail is required. Where appropriate, case names or statutory authority should be cited. The strength in candidate's performance was their ability 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 no candidates achieving distinctions in this exam sitting. It also needs to be appreciated that some of these students failed the original exam so may have been more unlikely that many students would obtain a distinction mark. Some candidates failed to fully answer some of the questions as required which had a significant impact on the overall mark awarded.

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, the performance on these questions was strong. All 4 of the questions saw in excess of 50% passing each question. 3 of the questions were passed by 75% of the students. The marks for these questions pre-moderation were fair and in accordance with the marker guidance. Candidates performed best in the section A question on business models (question 1) where 75% of candidates achieved a pass or more (50% plus). One student did not attempt this question at all. Notably in section A, candidates need to be reminded that purely descriptive answers were unlikely to attract marks above 50%, as a result even basic analysis would provide substantially increased marks.

For the remaining three questions on the paper, candidates were required to select these from five optional questions. The vast majority of candidates were able to answer three questions from this section to at least some extent, demonstrating breadth of knowledge and adequate time management skills under examination conditions. However, there were still a number of papers where candidates were let down by a weak final answer which attracted lower marks. The vast majority of candidates answered questions 5, 6 and 7. Only 1 student answered question 9. This assisted with both marking and moderation in terms of ensuring consistency in marks awarded. The questions in section B on Costs Management, Civil Procedure and Protocols to Professional Negligence and Clinical Negligence Claims and Land/Family Law were the most popular on the paper. Questions 5, 6 and 7 were where candidates performed best on section B.

Structure is an issue for a sizeable number of candidates on section B, candidates should practice mock papers and questions before taking the examination to maximise the marks that may be awarded for their ability to apply the law to the facts. Additionally, taking time to plan answers in the examination before commencing writing may assist candidates with this particular element.

## 2. Candidate Performance for Each Question

### Q1 – Business Models

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were provided with a statement about people who work in costs firms and how they tend to have defined roles and follow strict rules and procedures. The question went on to make reference to Handy and how he would describe this type of organisation as having a role culture. Candidates were then required to explain, using academic theory, alternative ways a costs firm may be structured.

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 reasonably well answered with some candidates achieving marks as high as 90%. However, there were some candidates that had clearly not prepared for this question and they either did not attempt the question or their attempts were weak. The average mark on this question was 47.5% (fail). This was due to 1 student not answering the question and therefore receiving a mark of 0. It is clear that whilst candidates may have prepared for the question that they may have been unable to demonstrate much more than superficial knowledge of the subject matter. The candidates that performed well were able to outline the four arms of Handy's model and compare and contrast his model to others. Candidates who struggled simply listed what they knew. This question was deemed fair by the assessment team.

## Q2 – Functional Areas of Business Management

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to summarise the legislative requirements for firms to have compliance officers and how the rules ensure that a firm complies with its regulatory and legal requirements when managing functional areas of a firm.

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 answered by 100% of candidates and the pass rate (at 75%) was good. Marks ranged from 40% to 70% (distinction). It was clear that some candidates had simply not prepared at all for this question despite the topic having appeared on previous papers and material being included within the revision packs. The average mark awarded for this question was 55% (a pass), a pleasing 50% of candidates were able to achieve merit level or above for this question (60% or higher).

The question was deemed fair by the assessment team.

## Q3 – Impact of External Elements of the Business Environment on the Business

This was also a compulsory question in section A of the paper and the question attracted up to 10 marks. Candidates were required to discuss how the SRA requirements to manage and supervise the business may be met by implementing a risk management policy.

The table below sets out the data on this question.

Number of Candidates	4
Total Fails	2
Total Pass	2
% Pass	50
% Fail	50

This question was answered by 100% of candidates and the pass rate (at 50%) was reasonable. The candidates that performed well were able to provide good explanations of the SRA requirements (or lack of) and how a risk management policy could be implemented. Many candidates did not offer much by way of discussion as to the requirements and therefore some of their knowledge appeared superficial. Marks ranged from 40% to 65% (mid-range merit). The candidates that achieved a pass were able to demonstrate their knowledge and

apply it to the question set. The average mark awarded for this question was 48% (a fail), only 25% of candidates were able to achieve merit level or above for this question (60% or higher).

The question was deemed fair by the assessment team.

#### Q4 – Performance Management

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to explain the risks associated with costs firms putting in place processes to maintain and improve the performance of their workforce.

The table below sets out the data on this question.

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

Again, the pass rate on this question (at 75%) was good. The candidates that performed well were able to outline the potential claims of unfair dismissal, discrimination and breach of contract depending on the effectiveness of performance managing individuals. Those that performed less well failed to acknowledge that these were just some of the potential risks faced by firms and that the risk was the potential claims that may be brought by individuals where there was not a fair and adequate procedure for managing performance of employees. Marks ranged from 30% to 80% (a higher distinction) with the average mark being 58%. Whilst the lower marks may indicate students had simply not prepared for this question it is clear that those that had prepared were able to apply their knowledge well with 75% of candidates achieving a merit or above (60% plus) for this question.

This question was deemed fair by the assessment team.

#### Q5 – Case and Costs Management

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 write the body of a memo of advice to their professional colleague advising when a claimant is entitled to the protection of QOCS and whether, in this situation, that protection may be lost. The advice should have covered what QOCS is and when it would and wouldn't apply. Candidates should then have applied the rules to the specific facts in the scenario.

The table below sets out the data on this question.

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

100% of candidates answered this question. This is a very topical area in practice for many candidates and it was pleasing to see that such a high proportion opted to answer it. The range of marks was 45% - 65% and the average mark was good at 56% (pass level). No candidates achieved a distinction (70% plus) for this question. 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 described the law and failed to demonstrate the ability to apply their knowledge to the facts of the question which a response at level 6 requires.

The question was deemed fair by the assessment team.

## Q6 – Civil Procedures – Clinical and Professional Negligence

This was an optional question in section B of the paper and attracted up to 20 marks. Candidates were required to write the body of a letter to a professional client setting out whether or not an ATE premium is recoverable and addressing three specific questions. The questions include whether the recovery of ATE premiums in post-LASPO clinical negligence cases engage the CPR, whether it is still good law that it is reasonable to take out an ATE policy at the outset of a claim and whether the new test of proportionality apply to the recovery of an ATE premium in a post-LASPO clinical negligence case.

The table below sets out the data on this question.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100
% Fail	0

The range of marks was 50% - 75% and the average mark was 60% (merit level). This question was well answered with the majority of candidates passing and it was clear that candidates had prepared well. This question is highly topical with an important Court of Appeal decision having been handed down a month before the examination took place. Candidates that had cited that authority were credited but those who had not may still have obtained full marks in accordance with the ACLT 6 month rule. It was pleasing to see some candidates had referred to that authority. This is an important topic and relevant to the day to day work undertaken by a large number of costs professionals.

This question was deemed fair by the assessment team and 100% of the papers showed a good performance by the candidates.

## Q7 – Civil Procedure – Land and Family

This was an optional question in section B of the paper, again, this question attracted up to 20 marks. Candidates were required to write the body of an email a professional client setting out how costs in family cases are usually dealt with, how the costs in the type of case in the scenario should be dealt with and what rules the Court should consider when making a costs order. This question involved TOLATA proceedings and the better performing candidates would have identified this and set out that this meant that the costs follow the event regime applies, i.e the CPR were applicable in this matter.

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 attempted by 75% of candidates with an excellent pass rate. Marks ranged from 57% (pass) to 65% (merit) for this question. The average mark for this question was 61% (mid-range merit) which is pleasing given many candidates will have had no practical experience of this niche area of costs.

The question was deemed fair by the assessment team.

## Q8 – Civil Procedure – contentious probate and judicial review

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 write the body of a letter of advice setting out the statutory tests for costs capping orders in judicial review cases and whether or not they believed an application in the scenario would be successful. The better performing candidates will have been expected to discuss whether they believed this matter involved public interest proceedings.

The table below sets out the data on this question.

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

No candidates answered this question. This question was deemed fair and reasonable.

### Q9 – Injunctions

This was an optional question in section B of the paper and attracted up to 20 marks. Candidates were required to write the body of an email advising on the way costs will be determined in relation to the interim injunction. The advice should also have detailed how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of why costs may be reserved.

The table below sets out the data on this question.

Number of Candidates	1
Total Fails	0
Total Pass	1
% Pass	100
% Fail	0

This question was answered by 25% of candidates. Only 1 student answered this question and obtained a pass. Overall most students avoided the question.

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

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Moderator