

Examination Report

Exam Session:	June 2017
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

The performance on the question paper was mixed with some poor performances, some good performances and some excellent 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 93% of candidates passing.

There was a total of 97 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. These statistics are confirmed.

For the purposes of moderation, a sample of papers were selected, representing just over 29% 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.

The table below sets out the data on the paper.

Number of Candidates	97
Total Fails	7
Total Pass	90
% Pass	93
% Fail	7
Classification of Marks Achieved	
% Total in Pass Band	40
% Total in Merit Band	41

% Total in Distinction Band	11
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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 did not demonstrate they could identify the appropriate procedure, identify 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 set despite demonstrating they may have some knowledge of the law. 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 on the relevant modules within assignments in accordance with the ACLT Module Descriptors. Section A tested learning outcomes from the Business Management module and section B tested learning outcomes from the Advanced Civil Litigation module.

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question. Overall, these were answered very well by most candidates and presented very few challenges for the markers. The marks awarded prior to moderation were generally fair and in accordance with the marker guidance. Candidates performed particularly well in the section A questions in the areas of business models and performance management. The question on risk management in section A was answered least well however 79% of candidates achieved over half marks for that question.

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 24 candidates answering question 9 and 37 attempting question 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 question in section B on case and costs management was the most popular optional question on the paper with 84% of candidates answering the question and 89% of those candidates passing the question by achieving over half marks.

2. Candidate Performance for Each Question

Q1 – Business Models

The question attracted up to 10 marks. Candidates were required to discuss Mintzberg's ways of structuring an organisation.

The table below sets out the data on this question.

Number of Candidates	97
Total Fails	3
Total Pass	94
% Pass	97
% Fail	3

This question was well answered with some candidates achieving marks as high as 90%. This question was deemed fair by the assessment team. Students were

able to meet the requirements and list all the different types of business structure. This therefore guaranteed at least a pass mark.

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 describe the statutory requirement for, and the duties of, a HOFA in solicitors' firms. To pass a response had to include an explanation of the statutory requirements for a HOFA and the framework that SRA regulated firms have in place. Students were expected to be able to distinguish between the two sets of rules and therefore should have commented on the differences.

The table below sets out the data on this question.

Number of Candidates	97
Total Fails	14
Total Pass	83
% Pass	86
% Fail	14

It was clear that most candidates had prepared well for this question and they were able to demonstrate their knowledge and apply it to the question set. It was however noted at the standardisation meeting that the pass rate for this question, i.e those achieving 50% or more of the available marks, was slightly lower than for other questions (86%) and therefore particular attention was paid to this question during moderation. The range of marks was good and 24% of candidates were able to achieve distinctions for this question (70% or over). The question was deemed fair by the assessment team. The moderation team were happy with the marking across all markers for this question.

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

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to describe what is meant by a risk management policy with reference to existing regulatory requirements. In order to achieve a pass in this question candidates were required to demonstrate knowledge of the content of a risk management policy, better responses were also able to make the link between the policy and the process of managing risk which showed the candidates ability to apply their knowledge.

The table below sets out the data on this question.

Number of Candidates	97
Total Fails	19
Total Pass	78
% Pass	80
% Fail	20

The performance on this question was good with some candidates achieving 90% of the marks available for the question. The candidates that performed well made clear references to up to date authority and the roles of individuals in respect of risk. There was a degree of overlap in the approach that may have

been taken to answering this question with question 3 and some candidates did not appear to make the link between the roles of HOLPs and HOFAs in managing risk and their role in the risk management process. Candidates are reminded that each response is marked in isolation of the other response on the paper so, where relevant, if there is an overlap in subject matter some information may need to be repeated in order to maximise the credit that may be given to the candidate. It cannot be assumed by markers that the candidate is aware of the link between topics unless the candidate explicitly demonstrates this.

It was noted at the standardisation meeting that the pass rate for this question, i.e those achieving 50% or more of the available marks, was slightly lower than for other questions (78%) and therefore particular attention was paid to this question during moderation. Some candidates simply appeared ill prepared for the question achieving only 20% of the marks available. The question was deemed fair by the assessment team. During moderation we considered whether there appeared to be any concerns resulting from a potential overlap with Question 2 and we found no issues requiring further action. The moderation team were happy with the marking and consistency in respect of this question.

Q4 – Legal Expectations of an Employee.

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to explain the legal considerations for a firm when implementing performance management strategies. To achieve a pass in this question candidates were expected to explore what the aims of performance management are and identify any risks associated with performance management strategies, either operationally or in terms of a firm's policy.

The table below sets out the data on this question.

Number of Candidates	97
Total Fails	9
Total Pass	88
% Pass	91
% Fail	9

91% of candidates achieved a pass for the question. On the whole this question was answered very well and it is clear most candidates had prepared well for this question. Candidates achieved between 10% and 90% of the marks available which does indicate that some candidates were ill prepared. This question was deemed fair by the assessment team. During moderation it was clear that there was a consistency in the marking of this question.

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 to their solicitor colleague advising when a claimant is entitled to the protection of QOCS and setting out in what situation that protection may be lost.

The table below sets out the data on this question.

Number of Candidates	81
Total Fails	9
Total Pass	72
% Pass	89
% Fail	11

This question was the most popular of the optional questions with 84% of candidates selecting this question to answer. However, it was noted that one candidate failed to provide a response to this question although they had indicated on their examination paper that this question had been selected by them. That paper was therefore awarded a mark of 0 for this question.

The range of marks, ignoring the candidate that was awarded 0 marks for not attempting the question, was 35% - 80% and the average mark was good at 60% (a borderline merit). This was particularly pleasing given the topical nature of the subject matter and the importance of this subject to the lay client at the outset of proceedings. The candidates that performed well not only referred to the relevant authority but were able to apply that authority to the question set with many of those candidates attempting to discuss what was meant by the claim having been dismissed.

It was noted at the standardisation meeting that some candidates had been able to refer to very recent authority and a potential lacuna in the relevant provisions of the CPR. It was also noted that it was clear some students may have limited knowledge of how the provisions of the CPR apply in practice which meant at times some responses appeared somewhat superficial. The question was deemed fair by the assessment team.

Q6 – Civil Procedures and Protocols to Professional Negligence and Clinical Negligence Claims

Again, 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 advising on the recoverability of an ATE premium in a clinical negligence matter and to advise on the possibility that the premium may be reduced on assessment.

The table below sets out the data on this question.

Number of Candidates	78
Total Fails	6
Total Pass	72
% Pass	92
% Fail	8

This question was a popular choice from the optional questions with 80% of candidates selecting this question to answer. The pass rate on this question, i.e. those achieving over 50% of the marks available, was the highest on the paper within section B with 90% of responses achieving a pass or above.

The range of marks was 25% - 90% and the average mark was good at 60% (a borderline merit). It was clear that students had prepared well for this question which is unsurprising given a number are likely to have had some exposure to these particular provisions within their day to day role. There was scope within this question for students to consider the issue of proportionality and it was pleasing to see that the higher performing candidates used this to demonstrate

their ability to analyse the law and the uncertainty faced by practitioners. It was noted at the standardisation meeting that some candidates had been able to refer to a wide range of recent authority, some of which was not contained within the marker guidance, so moderators were alert to this to ensure a consistent approach had been taken by markers and credit had been given to candidates where due. This question was deemed fair by the assessment team.

Q7 – Civil Procedure Rules in Relation to Land and Family Law Matters Heard in the Civil Courts

This was an optional question in section B of the paper, and attracted up to 20 marks. Candidates were required to draft the body of a memo to a professional client setting out how costs in family cases are usually dealt with and how the costs in a TOLATA case are likely to be dealt with. The question required candidates to provide an explanation of what family proceedings are, the three costs regimes in family proceedings and the rules on assessment under the CPR.

The table below sets out the data on this question.

Number of Candidates	37
Total Fails	5
Total Pass	32
% Pass	86
% Fail	14

The question was deemed fair by the assessment team, marks ranged from 5% to 75% and the average mark for this question was 55%, a mid range pass. This was one of the lowest averages achieved on the paper. Most candidates clearly had the requisite knowledge of the applicable law and were able to outline the relevant authority however it was clear that some candidates had failed to prepare for this question. It was also clear that although some candidates could demonstrate the required knowledge they were less confident in the application of the law to the scenario they were presented with. This may be attributable to the fact candidates do not practice this type of law or have limited experience in this area of practice. It may also be an indication that for many this was the last question they may have attempted on the paper and therefore time management may have been an issue.

Q8 – Civil Procedure Rules in Relation to a 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 prepare the body of a set of training materials setting out the position in contentious probate matters regarding the normal rule under the CPR that 'costs follow the event'. The notes also needed to set out the exceptions to this rule. To pass it was expected that candidates would discuss the general rule on costs and the discretion afforded under the CPR for the court to make a different order where it sees fit. Candidates were also expected to have demonstrated that they had a good understanding of the exceptions to the general rule in contentious probate matters.

The table below sets out the data on this question.

Number of Candidates	71
Total Fails	8
Total Pass	63
% Pass	11
% Fail	89

The question was deemed fair by the assessment team and was answered very well with 89% of candidates achieving the required standard. Some candidates achieved high marks of up to 85% for this question and the average mark was a borderline merit. The weaker responses missed some of the detail of the question and failed to adequately demonstrate the required knowledge. It was also noted that time may have been an issue for some candidates and that the responses seemed rushed in parts.

Q9 – Explain the Law and Procedure Relating to Injunctions in Litigation Claims

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 advising their professional client what it means for an injunction to be granted on the balance of convenience and the way costs will be determined in such a case. The advice was also to detail how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in the particular scenario.

The table below sets out the data on this question.

Number of Candidates	24
Total Fails	2
Total Pass	22
% Pass	92
% Fail	8

This was the least popular of the optional questions with only 22% of candidates selecting it. Marks awarded ranged from 35% – 90% and the pass rate for this question was one of the highest on the paper. The average mark was a borderline merit but 46% of candidates achieved a distinction. It was pleasing to see that such a high proportion of candidates were able to apply the law and consider the uncertainty that lay clients may face given that most cases will be judged on their own merits. It was also pleasing to see that time management did not appear to be a problem for most candidates attempting this question despite it being the last question on the paper.

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