

Examination Report

Exam Session:	June 2021
Exam Paper:	Unit 3

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 June 2021 Unit 3 examination.

This report is intended to be a useful document that comments on overall performance by candidates in the June 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.

This report should be read in conjunction with the relevant examination paper and marker guidance. 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.

Summary of Candidate Performance

This was the first sitting of the Unit 3 examination in this format. This is the postponed exam sitting that was due to be taken in December 2020 but was postponed as a result of government restrictions linked with COVID19.

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. Overall, performance was good. There were mixed performances on some questions on the paper but the pass rates were very good.

All candidates that sat this paper had experience of studying law at level 6 and on post graduate professional qualifications before commencing 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. Candidates, on the whole, demonstrated 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.

The weakness in performance on this exam sitting was students not maximising the opportunities to demonstrate they had the required knowledge to meet all of the knowledge outcomes with breadth and depth. This was surprising, students had had ample time to prepare for the exam but some didn't appear to have spent time ensuring they could recall

sufficient points of law to maximise the marks awarded to them. Without students identifying and citing the appropriate legal principles they were unable to demonstrate they understood how the law applied and to analyse the likely outcome based on identified points of law.

One candidate failed to answer one of the optional questions in section B. This meant 20% of candidates did not attempt to answer the required number of questions on the paper which placed them at a significant disadvantage. It would be wrong to speculate why this was the case but for future sittings candidates must ensure they read the instructions properly and attempt all 4 questions in section A and 3 optional questions in section B. Students learning how to manage their time during the exam is also 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.

There were instances where candidates performed very well on some questions achieving distinction level marks but they did not perform consistently throughout the paper. Candidates should consider how they can ensure consistency across all questions because those candidates are clearly capable of performing to a higher standard than their overall examination mark suggests. This appeared to be a sign that students were selecting specific topics as a focus of revision rather than being prepared across a wide range of areas.

There was a total of 5 candidates that sat this paper. On the whole, the paper was completed well with 100% of candidates passing. 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 60% of the total number of submissions which is in excess of the sample required by ACLT Guidelines. The selected papers were chosen to reflect a range of marks, from the lowest to the highest. Only one marker marked the scripts which made the moderation process easier and ensured consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0
Classification of Marks Achieved	
% Total in Pass Band	60
% Total in Merit Band	40
% Total in Distinction Band	0

The length and quality of responses varied significantly but the examination team felt that there was sufficient time to complete the exam.

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 very good. Questions 1 to 3 saw pass rates of 100%. The marks for these questions pre-moderation were in accordance with the marker guidance and no recommendation was made for an adjustment. Only 1 of the 4 questions saw a pass rate below the 100% with 20% of candidates failing to achieve the required standard (question 4). Candidates performed best in the section A questions on liens and conditional fee agreements (i.e questions 2 and 3) where 100% of candidates passed and the average mark was 70% (a distinction).

For the remaining three questions on the paper, in section B, candidates were required to select these from four optional questions. 100% of candidates chose to answer questions 5 and 6 and 80% of candidates chose to answer question 7. This assisted with both marking and moderation in terms of ensuring consistency in marks awarded in section B. Question 5 was where candidates performed best on section B in terms of pass rates (100%). On question 6 60% of candidates achieved a pass. On question 7 50% of candidates achieved the required standard with 40% of students achieving a merit or above (60%+).

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 identify and discuss the formalities that must be complied with when an individual or organisation engages with a solicitor to provide legal services.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

Candidates were expected to identify the formalities that must be complied with when a solicitor provides legal services. Candidates would be credited for a discussion on the formalities in relation to retainers and any discussion on the SRA standards and regulations. Performance on this question was pleasing with a 100% pass rate. Marks ranged from 50% (Pass) to 80% (High Distinction). The average mark awarded for this question was 60% (Merit).

Candidate Performance For Question 2 – 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 discuss how

the law in relation to Solicitors' liens has evolved, if not changed considerably, over the past decade.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

Candidates were required to explain what a lien is and the distinction between the types of lien. Candidates also needed to explain what has changed in relation to liens. The pass rate on this question was excellent, with 100% of candidates achieving a pass. Marks ranged from 50% to 100% 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

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain why, since the abolition of the recovery of success fees, there has been debate regarding conditional fee agreements entered before 1 April 2013.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

Candidates were expected to set out what a CFA is, what led to the abolition of the recoverability of success fees and why the 1 April 2013 is important. Candidates should have set out one or more areas of debate regarding conditional fee agreements entered before 1 April 2013, these may have included transferring CFAs, changing from legal aid to a CFA and the uplift to damages. Candidates performed excellently on this question with a 100% pass rate. Marks ranged from 60% (Merit) to 90% (High Distinction). The average mark was 80% (High Distinction) with an impressive 80% 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 a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain how the relaxation of common law rules has led to the growth of the litigation funding market in England and Wales.

Number of Candidates	5
Total Fails	1
Total Pass	4
% Pass	80
% Fail	20

Candidates needed to set out what is meant by litigation funding, they would have been credited for a discussion on how arrangements where a lawyer or third party may have a direct financial interest in the outcome of proceedings were prohibited. Candidates would also have been credited for a discussion on the change of attitude towards funding and how new types of funding have been introduced or emerge. Performance on this question was the poorest in section A of the paper with one candidate not performing to the level required to achieve a pass. Marks ranged from 30% (Fail) to 65% (Merit) with the average mark being 50% (Pass).

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 to a lay client enclosing a bill of costs and setting out the next steps in proceedings. The bill of costs totalled £147,000.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

Candidates should have discussed the commencement of assessment proceedings. Candidates would have been credited for a discussion on the contents and format of a bill of costs and the right to recover costs. Candidates would have been credited for a discussion on next procedural steps and the assessment hearing. This was one of the most popular optional questions on the paper with 100% of candidates choosing to answer this question. This question also had some of the best pass rates on section B and candidates had obviously prepared very well for this question with the average mark being 60% (Merit). Marks ranged from 55% (Pass) to 75% (Distinction).

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 the steps that should be taken in the scenario, particularly whether an application should be made to amend a budget, or if it is a matter best left to assessment.

Number of Candidates	5
Total Fails	2
Total Pass	3
% Pass	60
% Fail	40

This was one of the most popular optional question on the paper with 100% of candidates choosing to answer this question. This was not surprising since budgeting is an integral part of most costs professionals workload. Candidates needed to provide an explanation as to applicability of costs budgets, how to make an application to amend a budget and the test for

departing from a CMO on detailed assessment. Candidates would have been credited for a discussion on what is meant by a Costs Management Order and what is meant by significant development. Candidates would also have been credited for a discussion on good reason to depart. The pass rates were disappointing with only 60% reaching the required standard. The average mark on this question was a pass standard at 55% and marks ranged from 40% (Fail) to 75% (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.

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

Candidates were required to explain what is meant by costs under the legislation. 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 poor at 50%. Marks ranged from 40% (Fail) to 70% (Distinction). The range of marks satisfied the examination team that the question was fair.

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 prepare the body of an email 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.

Number of Candidates	0
Total Fails	0
Total Pass	0
% Pass	0
% Fail	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 prepare the body of a memo setting out the rules on costs in contentious probate matters, with specific consideration of the general rule under the CPR.

Number of Candidates	0
Total Fails	0

Total Pass	0
% Pass	0
% Fail	0

No candidates attempted this question.

Mark Armstrong
Moderator

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