

Examination Report

Exam Session:	September 2020
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 is intended to be a useful document that comments on overall performance by candidates in the September 2020 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.

1. Summary of Candidate Performance

Overall performance was below that in previous examinations, with mixed performance on some questions on the paper and overall disappointing pass rates. 33% of candidates passed and 66% of candidates failed.

The performance of many candidates was marred by weak general academic skills. A number of candidates did little more than write out revision notes and it was evident that some candidates had taken an approach to their revision which entailed rote learning previous marker guidance. This is inappropriate at Level 6 where candidates are required to demonstrate an ability to think about the law both critically and analytically. Whilst the approach did mean that most candidates demonstrated an ability to recall appropriate authority in response to specific questions it also resulted in knowledge demonstrated appearing superficial and it was clear that sometimes candidates did not understand what they were writing. There were clear examples where authority had been interpreted incorrectly and there a number of candidates demonstrated significant weakness in, or ignorance of, concepts that are of central practical importance to the role of a Costs Lawyer, for example explaining the test of proportionality. If candidates do not understand a subject or topic area they are

encouraged to ask questions or research further. In the digital age, accessibility of information is no longer a barrier to gaining knowledge.

There was a total of 3 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 100% of the total number of candidates which is above ACLT Guidelines. There was a very small number of candidates in this exam sitting and the moderator felt, given the pass rates, that it was appropriate to consider all papers. Only one marker marked the scripts and this ensured consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	33
% Fail	66
Classification of Marks Achieved	
% Total in Pass Band	0
% Total in Merit Band	0
% Total in Distinction Band	1

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. It appeared to the examination team that all candidates had sufficient time to complete the exam. The length and quality of responses did, however, vary significantly. Problem questions, found in section B of the paper, provide an opportunity for candidates to demonstrate that they can use the law to solve problems. This is possibly the lawyer's most important skill. The weaker performing candidates who failed to answer the questions or relate the law to the facts of the scenario tended to perform better in section A of the paper than they did in section B.

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 good. 2 of the 4 questions saw a pass rate below 100% (66%). The marks for these questions pre-moderation were fair and in accordance with the marker guidance although there was a slight adjustment to one of the marks awarded during moderation. Candidates performed best in the section A question on organisational structures and the risks associated with

performance management (i.e questions 1 and 4) where all candidates passed.

For the remaining three questions on the paper, candidates were required to select these from five optional questions. All candidates answered questions 5 and 6 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded.

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 required to explain, using academic theory, ways a costs firm may be structured. 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 well answered with all candidates achieving a pass. The average mark on this question was 70% (distinction level). It is clear that candidates had prepared well for the question however at times candidates did little more than write out revision notes and references back to the question posed was, at times, weak.

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 outline the legislative requirements for SRA regulated firms to have compliance officers and how the SRA rules ensure that a firm complies with the regulatory requirements and reduces risk to the consumer.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

This question was answered by 100% of candidates and the pass rate (at 66%) was reasonable. It was clear that some candidates had not really prepared well for this question despite similar questions appearing on past papers. The question specifically asked candidates to comment on the legislative framework however this was not always done. Candidates need to ensure they read the questions properly. The majority of candidates relied on knowledge in relation to acquiring licenses from the SRA and whilst this was relevant it was not fundamental to answering the question. 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 explain how the SRA Standards and Regulations encourage firms to monitor and manage risk.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	1
Total Pass	2
% Pass	66
% Fail	33

This question was answered by 100% of candidates and the pass rate (at 66%) was reasonable. The candidates that performed well were able to provide good explanations of the SRA requirements (or lack of explicit reference) and how a risk management policy could be implemented. Marks ranged from 40% to 80% (fail to higher distinction). 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 faced by firms when implementing performance management strategies. The table below sets out the data on this question.

Number of Candidates	3
Total Fails	0
Total Pass	3
% Pass	100
% Fail	0

The pass rate on this question (at 100%) was excellent. The candidates that performed better were able to outline the potential claims of unfair dismissal, discrimination and breach of contract. The distinction level answer included a detailed explanation as to what performance management was and address the issue of the risk to firms when implementing performance management strategies. The weaker responses were not as explicit in dealing with the issue of risk.

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 letter advising when a claimant is entitled to the protection of QOCS and in what situation that protection may be lost. The responses should have included consideration of the facts in the question and whether candidates believed QOCs protection may be lost in the case they were presented with. The scenario was a mixed claim with the suggestion the claim may be weak or that the claimant may have been dishonest.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	33
% Fail	66

100% of candidates answered this question. The range of marks was 30% (fail) - 75% (distinction). This is an important concept for candidates and it was pleasing to see that such a high proportion opted to answer it. The candidates that performed well referred to the relevant authority and were also able to offer some logical sound advice based on the information they had been given. Weaker responses did not manage to set out the framework of the CPR and/or were not able to use case authority to explain the likely consequences based on the facts of the scenario.

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

memo advising on the recoverability of the ATE premium in the scenario and advise on the possibility of the premium being reduced on assessment. All candidates opted to answer this question making it one of the two most popular questions in Section B of the paper.

The table below sets out the data on this question.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	66
% Fail	33

Candidates were presented with two statements by way of challenge to the premium, the first required consideration as to whether or not the CPR were engaged on the assessment of a premium (i.e did the test of proportionality apply) and the second required candidates to consider if the premium could be reduced based on evidence that there were cheaper products on the market.

This question was poorly answered with the minority of candidates passing. It was clear that candidates had not prepared well which is disappointing given the number of previous papers with similar questions. This question required knowledge of the pre and post LASPO provisions and the test of proportionality. The importance of this topic to the day to day work undertaken by costs professionals left the examiners with some concern.

This question was deemed fair by the assessment team.

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 prepare the body of an email setting out how costs in family cases are usually dealt with, candidates were then required to advise on the particular facts of the case and how costs will be dealt with in financial remedy proceedings.

The table below sets out the data on this question.

Number of Candidates	2
Total Fails	1
Total Pass	1
% Pass	50
% Fail	50

This question was attempted by 66% of candidates with a disappointing pass rate of 50%. The candidates were expected to identify that the scenario involved financial proceedings and should have explained the FPR definition of conduct and what that meant when applied to the facts of the scenario. 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 memo setting out the rules on costs in contentious probate matters with specific consideration of the general rule under the CPR.

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. The question was, however, deemed fair by the assessment team.

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 a memo detailing how the costs of any injunction proceedings would ordinarily be dealt with and the consequence and reasoning of costs being reserved in this particular instance.

The table below sets out the data on this question.

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

Candidates were required to explore the idea that most interim injunction applications are likely to be dealt with in under a day and therefore the starting point under the CPR would suggest that those

costs should be summarily assessed. This question was answered by 33% of candidates. Despite the question being last on the paper it did not appear that candidates ran out of time on this question. This question was deemed fair by the assessment team, despite the poor pass rate.

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