

Examination Report

Exam Session:	September 2020
Exam Paper:	Unit 2
<p>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.</p> <p>This is intended to be a useful document that comments on overall performance by candidates in the September 2020 Unit 2 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.</p>	
Summary of Candidate Performance	
<p>This was the first sitting of the Unit 2 examination in this format. 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 excellent. There were some poorer performances but the pass rate is very pleasing. Candidates should be commended for their efforts, especially given the impact of COVID 19 which will have impacted on both their work and personal lives.</p> <p>All candidates that did not pass performed consistently across the paper and this is suggestive that their approach to revision could be improved upon. Those candidates should try to focus on ensuring they learn the relevant authority, candidates often complain about the requirement to memorise authority however, authority can be used to assist candidates. Being able to recall the relevant legal provisions ensures that candidates are able to include sufficient detail within their responses in order to demonstrate knowledge and upon which they can construct an answer and demonstrate an understanding/ability to apply the law. Using SMART targets during revision to assist with learning authority will help candidates with revision because they will be able to self-asses and will have a measure upon which to judge their progress. Candidates should not simply rote learn and state relevant information, they should apply the law to the question asked. 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. However, if the candidates do not know the authority they will be unable to apply it and answer the problem questions to the required standard.</p> <p>There were a few instances where candidates performed excellently on some questions achieving distinction level marks but they did not perform</p>	

consistently throughout the paper. Those candidates should consider how they can ensure consistency across future examination papers because they are clearly capable of performing to a high standard. Those candidates should be encouraged by this and in future ensure they are equally prepared for all learning outcomes that may be assessed.

There was a total of 11 candidates that sat this paper. On the whole, the paper was completed very well with 82% of candidates passing and 18% of candidates failing. 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 36% of the total number of submissions which is in excess of the number 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 and this ensured consistency in marking. All fail papers were considered and there were no borderline papers.

The table below sets out the data on the paper.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18
Classification of Marks Achieved	
% Total in Pass Band	0
% Total in Merit Band	44
% Total in Distinction Band	56

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 and it was identified some candidates may benefit from working on their time management skills. Within the revision materials provided to candidates there was a suggested allotment of time per question but candidates may benefit from spending more time preparing and considering what it feels like to write for three hours.

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 but all 4 questions saw a pass rate below 100% (82%). The fails were from those that failed to achieve the required standard overall on the paper indicating that those candidates had simply not prepared for the examination well enough. The marks for the section A questions pre-moderation were fair and in accordance with the marker guidance and no adjustments were recommended on moderation. Candidates performed best in the section A question on civil litigation (question 1) and personal injury and clinical negligence (question 2) and in

those questions an impressive 73% of candidates achieved distinctions (70%+).

For the remaining three questions on the paper, candidates were required to select these from five optional questions. Most candidates answered questions 5, 6 and 7 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded. Question 6 was where candidates performed best in section B in terms of pass rates (90% achieved the required standard) and number of distinctions (70% achieved 70%+).

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

Candidate Performance For Question 1 – Civil Litigation

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to outline the relevant procedure to apply for and obtain a default judgment.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

Marks were available for identifying the relevant application that should be made and the rules governing such an application. Candidates were also have been credited for a discussion on when permission may need to be obtained to make such an application, when a default judgment may be set aside and the costs consequence of such an application. The pass rates were pleasing and consistent with the rest of the paper. The average mark achieved for this question was at distinction level (70%+ of marks available) and it was clear from performance levels that candidates had prepared well for this question.

Candidate Performance For Question 2 – Personal Injury and Clinical Negligence

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain the application of qualified one-way costs shifting in a personal injury matter and how the principle represents a departure from the general rule that the loser pays the winner's costs.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

Candidates were required to identify that QOCs is relevant to enforcement and does not impact the court's discretion as to costs and the making of a costs order. Candidates should have included an explanation of when QOCs applies and then explored when orders can be enforced in those cases with or without the court's permission. Candidates should also have

set out to what extent an order can be enforced. Again, the pass rates were pleasing and consistent with the rest of the paper and it was clear candidates had prepared well for this question, Marks ranged from 10% to 90% on this question with the average mark being obtained at distinction level (70%+). There were a number of higher distinction marks awarded for this question (80%+) which was very pleasing given the importance of the subject matter to the costs professional's role.

Candidate Performance For Question 3 – Professional Ethics

Again, this was a compulsory question on the paper found within section A and the question attracted up to 10 marks. Candidates were required to describe the authority that should be considered where the court is considering making an order that a Costs Lawyer is personally liable for costs.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

This question required candidates to set out the court's discretion as to costs and the authority on wasted costs. Candidates were credited for setting out the legislative provisions, the provisions in the CPR and relevant case authority. The pass rates for this question were consistent with the other questions in section A with 82% of candidates achieving the required standard. Whilst there was a high number of distinctions for this question (55%) there was less distinctions awarded than in other questions. Marks ranged from 10% (fail) to 80% (higher distinction).

Candidate Performance For Question 4 – Legal Accounts

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe the provisions relating to client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules.

Number of Candidates	11
Total Fails	2
Total Pass	9
% Pass	82
% Fail	18

Candidates were required to explore what was meant by client money, the risk presented to clients when client money is handled and what the rules permit Costs Lawyers to do in terms of client money. The CLSB guidance on rule 3.6 of the Costs Lawyers Practising Rules is very clear on this and all future candidates are advised to read the document. Performance on this question was, again, excellent with the average mark being 70%. One candidate managed to achieve 100% for this question but at the other end of the scale one candidate did not achieve any marks at all for this question which is a concern.

Candidate Performance For Question 5 – Civil Litigation

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 advising when a claimant may discontinue a claim, when discontinuance would take effect and the costs consequence of discontinuance.

Number of Candidates	9
Total Fails	2
Total Pass	7
% Pass	78
% Fail	22

This was one of the most popular optional questions on the paper with 82% of candidates choosing to answer this question. To achieve a pass, candidates were expected to address the fact a claimant may discontinue all or part of a claim at any time and that they would do this by filing a notice of discontinuance. Candidates should have described the process and the requirements under the CPR. Candidates should then have explained that a claimant who discontinues is liable for the costs of a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant. Performance on this question was variable, there were some excellent responses and 33% of candidates were awarded a distinction for their responses (70%+). Marks ranged from 25% (fail) to 80% (higher distinction). The weakest responses did not include sufficient references to applicable authority and failed to address the question. Candidates should remember that referencing authority may help them add detail to their responses which will in turn help with both the demonstration of knowledge and their ability to apply the law. It appears those that did not achieve a pass for this question had simply not prepared well enough for it.

Candidate Performance For Question 6 – Personal Injury and Clinical Negligence

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 memo advising on the recoverability of the ATE premium in the scenario and also to advise on the possibility of the premium being reduced on assessment.

Number of Candidates	10
Total Fails	1
Total Pass	9
% Pass	90
% Fail	10

This was the most popular optional question on the paper with 91% of candidates choosing to answer this question. The pass rates were also the highest on the paper with 90% of candidates achieving the required standard which was extremely pleasing given the question raised the issue of proportionality and this is such an important concept to costs professionals. Candidates were provided with two specific challenges to the

premium and were therefore expected to address these. This meant candidates had to consider whether the CPR were engaged when assessing ATE premiums and the impact on the assessment of market comparisons of alternative products available on the market.

Candidate Performance For Question 7 – Professional Ethics

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 it means to be regulated and outlining the Costs Lawyers' duty to the court. The question also required candidates to consider the potential liability of a Costs Lawyer.

Number of Candidates	11
Total Fails	3
Total Pass	8
% Pass	73
% Fail	27

82% of candidates attempted this question and the pass rate was reasonable at 78%. Marks ranged from 40% (fail) to 70% (distinction). Answers should have addressed what it means to be an authorised person, the Costs Lawyers' duty to the court, the potential ramifications in terms of the CLSB and the risk of wasted costs orders. This question did not require candidates to explore the indemnity principle but candidates would have been credited if they had included some discussion of the same. There was at least one script that suggested time management may have been an issue, this would have been the last question on the paper for some and candidates are reminded of the importance of good time management. Candidates may wish to consider their strategies when preparing for exams and consider adding in more time dedicated to experiencing what it feels like to write for three hours.

Candidate Performance For Question 8 – Professional Ethics

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 any potential benefits an SRA firm may gain from instructing an external regulated costs professional over a costs professional that is not regulated.

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

This was one of the least popular optional questions on the paper with 45% of candidates choosing to answer this question. Candidates should have provided an explanation of what it means to be an authorised person, the right to undertake reserved legal activities, the requirement to comply with the CLSB code of conduct and the guarantee by the CLSB practicing rules as to behaviour with the consequence for non-compliance. Candidates will have been credited for any discussion on the ability to claim higher hourly

rates for some work but this was not a requirement of the question to achieve a pass. Performance on this question was the lowest on the paper with only 60% of candidates achieving the required standard. This may have been, in part, because this will have been the last question some candidates attempted and the impact of poor time management skills. Again, candidates are encouraged to consider their strategies when preparing for exams and consider adding in more time dedicated to experiencing what it feels like to write for three hours. Marks ranged from 40% (fail) to 75% (distinction).

Candidate Performance For Question 9 – Legal Accounts

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to draft the body of a guidance note that covered the definition of money laundering, the risks a firm faces in relation to money laundering and the associated offences.

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

No candidates chose to answer this question.

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Moderator

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