

Examination Report

Exam Session:	September 2021
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 2021 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 third 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 with an overall pass rate of 89%. Candidates should be commended for their efforts, the year group clearly worked hard at a time where there was still a degree of uncertainty because of the impact of COVID 19.</p> <p>Overall, candidates were generally able to cite sufficient relevant authority although there remains a tendency to focus on simply citing authority without explaining its relevance. This is often the difference between a bare pass and higher marked answers and candidates are encouraged to really engage with the primary sources of law.</p> <p>The performance of the candidates that did not pass was fairly consistent across the paper. This is suggestive that their approach to revision could be improved upon, these candidates should reflect on the time they devoted to preparation and ask themselves if they devoted sufficient time to each of the examinable topics or learning outcomes. It would also be worth those candidates considering how confident they felt with the topics on the exam and how much of the relevant authority they were able to recall. This kind of reflection will allow them to focus their revision.</p> <p>Those candidates that failed the exam or achieved a pass on the exam (between 50% to 60%) should consider requesting copies of their examination scripts from the ACL operations team in order that they can see where they did not perform as well.</p>	

There were at least two instances where candidates performed excellently on some questions achieving merit and distinction level marks but they did not do this consistently throughout the paper. These candidates should focus on ensuring consistency, they are clearly capable of achieving high standards but perhaps did not spend sufficient time preparing for some topics or were simply not as comfortable with some of the subject matter. If it is the latter, these students should be encouraged to ask questions of their tutors.

There was a total of 19 candidates that sat this paper, the largest sitting so far of the exam in this format. As above, on the whole the paper was completed very well with 89% of candidates passing and 11% of candidates failing. A good number of candidates achieved merit marks (42%) and 32% achieved distinction level (70+). The nature of the examinations is challenging and students reaching these levels are to be commended. It is clear that these students, on the whole, understood what would be expected of them in the exam. 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 26% 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	19
Total Fails	2
Total Pass	17
% Pass	89
% Fail	11
Classification of Marks Achieved	
% Total in Pass Band	16
% Total in Merit Band	42
% Total in Distinction Band	31

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. Only one of these questions saw a pass rate of 100% (question 2) and two of the questions saw pass rates of 68% or lower (questions 3 and 4). This was disappointing and indicates that

candidates had simply not prepared well enough for these questions. The marks for the section A questions pre-moderation were fair and in accordance with the marker guidance. 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 63%+ 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 (93% achieved the required standard) and number of distinctions (60% 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 explain how a failure to file an Acknowledgment of Service or a Defence, within the time limits laid down in the Civil Procedure Rules, may result in the Claimant entering Judgment in Default.

Number of Candidates	19
Total Fails	1
Total Pass	18
% Pass	95
% Fail	5

Marks were available for identifying that an application should be made for Default Judgment under Part 12 Civil Procedure Rules (CPR) with credit being given for explanations of the procedure. 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 slightly above the general pass rate of the entire 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 describe what is meant by Qualified One-way Costs Shifting and outline the circumstances where a Defendant may recover their costs from a losing Claimant.

Number of Candidates	19
Total Fails	0
Total Pass	19
% Pass	100

% Fail	0
---------------	---

Candidates were required to explore what QOCS is, i.e that the Court retains discretion as to costs and QOCS does not impact this nor prevent the court from making an order for costs on the standard or indemnity basis. Candidates were then expected to describe where QOCS does/doesn't apply 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. The pass rate on this question was the highest on the paper with 100% of candidate achieving a merit (60%) or above. Marks ranged from 60% to 100% on this question with the average mark being obtained at high distinction level (80%).

Candidate Performance For Question 3 – Professional Ethics

This was also compulsory question on the paper found within section A and the question attracted up to 10 marks. Candidates were required to outline what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers must act at all times to ensure the client's interest is paramount.

Number of Candidates	19
Total Fails	9
Total Pass	10
% Pass	53
% Fail	47

This question required candidates to discuss the costs lawyer's duty to the client and court. Candidates should have included an explanation of the legislative framework governing the regulation of authorised persons / reserved legal activities and would have been credited for discussing the CLSB practising rules. This question had the poorest pass rate on the paper. This is very disappointing given the subject matter. Some students had clearly prepared well because 32% of students achieved distinctions for this question. Marks ranged from 0% (fail) to 85% (higher distinction).

Candidate Performance For Question 4 – Legal Accounts

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to explain the exceptions to the principle that a Costs Lawyer cannot handle client money.

Number of Candidates	19
Total Fails	6
Total Pass	13
% Pass	68
% Fail	32

Candidates were required to explore what was meant by client money. Candidates should also have included a discussion on the protection of the public and minimising risks. Candidates should have also discussed the definition of "proper professional fees" and disbursements. Finally, candidates will have been credited if they had included a discussion on

Costs Lawyers requesting payment in advance for their services or the difference where a Costs Lawyer works for an SRA regulated firm. Performance on this question was, again, disappointing. Whilst the average mark was 50% and the pass rate was 68%, 21% of candidates got 20% of the marks available or less. 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

Question 5 is the first of the optional questions in section B of the paper. This question attracted up to 20 marks. Candidates were required to write the body of a letter providing advice on Summary Judgments.

Number of Candidates	19
Total Fails	3
Total Pass	16
% Pass	84
% Fail	16

This was the most popular optional question on the paper with all candidates choosing to answer this question. To achieve a pass, candidates should have set out the grounds for a summary judgment and the proceedings in which a summary judgment is available. Candidates should also have explained the procedure in making such an application. Candidates may also have included a discussion on the evidence required for the purpose of a hearing and the power of the court. Finally, candidates will have been credited if they had discussed the costs consequences. There were some excellent responses to this question with 37% of candidates being awarded a distinction (70%+). Marks ranged from 40% (fail) to 80% (higher distinction). The weakest responses did not cover how to make the application, the evidence to support such an application and the powers of the court in any real detail.

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 how to respond to a point in a set of Points of Dispute. The point raised a number of challenges to an insurance premium.

Number of Candidates	15
Total Fails	1
Total Pass	14
% Pass	93
% Fail	7

Candidates were provided with three specific challenges to the premium and were therefore expected to address these. Candidates therefore had to set out when a premium would comply with section 58(C) of the Courts and Legal Services Act 1990 and when a premium would comply with the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013. Finally, candidates were asked to provide

arguments on whether or not the premium was reasonable and proportionate. This was a popular optional question on the paper with 79% of candidates choosing to answer this question. The pass rates were pleasing but what was really good to see was the number of candidates achieving a distinction for this question. 53% of candidates achieving a distinction. This standard of response is really encouraging given the question raised the issue of proportionality which is such an important concept to costs professionals.

Candidate Performance For Question 7 – Professional Ethics

This was an optional question in section B of the paper which attracted up to 20 marks. Candidates were required to write the body of an advice setting out what a Wasted Costs Order is and when the Court can make a Wasted Costs Order against a legal representative.

Number of Candidates	15
Total Fails	2
Total Pass	13
% Pass	87
% Fail	13

This was another popular optional question on the paper with 79% of candidates choosing to answer this question. The pass rate on this question was excellent at 87%. Marks ranged from 20% (fail) to 100%. To achieve a pass, candidates should have included in their responses an outline of the court's discretion as to costs, the factors the court may consider when making a costs order and an explanation of what a wasted costs order is. Candidates should also have gone on to consider when a wasted costs order would be made and the court's approach to making a wasted costs order. Candidates were expected to identify the relevant issues in the case and deal with the circumstances in their advice.

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 a setting out what an authorised person is, what a reserved legal activity is and whether, in their view, the costs of the work undertaken by unregulated costs professionals were recoverable.

Number of Candidates	8
Total Fails	2
Total Pass	6
% Pass	75
% Fail	25

This was one of the least popular optional questions on the paper with only 42% of candidates choosing to answer this question. an outline of what it means to be an authorised person, an explanation of the costs lawyers duty to the court, an explanation of what a reserved legal activity is and whether this work can be undertaken by non-qualified costs professionals.

Candidates should also have identified the relevant issues in the case and dealt with the circumstances in their advice.

Performance on this question was lower than average on the paper with 75% 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 time management. 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. That being said, the average mark awarded was a mid merit (65%) and marks ranged from 40% (fail) to 85% (higher 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 risks associated with the use of client accounts. The guidance needed to cover the requirement of the firm to undertake proper due diligence before accepting any funds into a client account and why the firm should decline to act if they do not fully understand the transaction on which they are being asked to advise.

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

No candidates chose to answer this question.

Mark Armstrong
Moderator

Kirsty Allison
Head of Education