Examination Report

Exam Session:	October 2022
Exam Paper:	Unit 2

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 October 2022 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.

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

Summary of Candidate Performance

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. Performance on the paper was disappointing with only 65% of students passing when compared to the pass rates over the past three exam sittings.

Good and comprehensive answers included evidence of good knowledge of the substantive law/case authority. Candidates should not simply rote learn and state relevant information, they should apply the law to the question asked. Too often candidates recited case authority without applying them to the facts of the question (or scenario) or how they would support a key point within the question. Candidates will not be credited each time they recite a case but only when it is applied correctly to the question. Credit will be given if additional cases can be recited which support/approve the ratio of an earlier case or show a development in the law but candidates should set out why they have included that authority within their responses.

There were examples where candidates did not recall the date of the case. Authorities should, where possible, provide the year of the decision to put it into context. However, ACLT do not negatively mark so candidates will not be penalised if they simply name the case without a date and it is applied accurately to the facts. That being said, it may undermine the knowledge demonstrated where dates are not included and candidates may lose the opportunity to analyse the developments in the law by reference to when the decision was made/a statute was enacted.

There were instances where candidates performed excellently on some questions, achieving distinction level marks, but they did not perform consistently throughout the paper. Those candidates should consider how they can ensure consistency in future examinations because they are clearly capable of performing to a very high standard.

There was a total of 17 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 59% 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, all fails were moderated. Only two markers marked the scripts and checks were made with respect to consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	17
Total Fails	6
Total Pass	11
% Pass	65
% Fail	35
Classification of Marks Achieved	
% Total in Pass Band	18
% Total in Merit Band	24
% Total in Distinction Band	24

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. From time to time candidates often discussed irrelevant issues where no credit could be given because they simply wrote everything they knew on a subject rather than the law that applied to the actual question posed. Even though it is an exam and time may be an issue of concern to candidates it is still worth planning the response to the question by noting down key points before beginning the answer. This will improve time management overall even though it may feel counter intuitive.

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 1 question saw a pass rate at only 23%. A second question only had a pass rate of 58%. All others were 70% or higher. 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 questions on Summary Judgment (question 1) and ATE (question 2).

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 5 was where candidates performed best in section B in terms or pass rates (81% achieved the required standard) but Question 5 saw the highest marks awarded with 36% of candidates achieving distinctions (70%+).

This was the third sitting in a row where the ethics questions presented problems for

candidates. In the September 2021 exam both the examination team and external examiner identified the section A ethics question had a low pass rate, on this paper it was a section B question. This may be that the ethics questions in section B appear towards the end of the paper. However, candidates need to devote sufficient time to this topic and the academic team should be asked to ensure they provide enhanced support during revisions session on this area. The examination team did not feel that this was a huge concern but did feel that students were simply underprepared and were unable to produce cohesive, comprehensive responses.

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

Candidate Performance For Question 1 – Summary Judgment

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain a Summary Judgment application and outline the relevant procedure. Student could also have included the evidence required for the hearing to succeed. Costs consequences were also a consideration.

Number of Candidates	17
Total Fails	5
Total Pass	12
% Pass	71
% Fail	29

Candidates were required to explain a Summary Judgment Application and the relevant procedure. Candidates should have included the grounds for an application and the proceedings it is available within, The pass rates were pleasing and consistent with the rest of the paper. The average mark achieved for this question was at pass level (70%+ of marks available) with marks ranging from 20% (fail) to 100% (distinction).

Candidate Performance For Question 2 – ATE

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe when a costs order made in favour of a party to proceedings who has taken out an ATE costs insurance policy may include provision requiring the payment of an amount in respect of all or part of the premium of the policy.

Number of Candidates	17
Total Fails	5
Total Pass	12
% Pass	71
% Fail	29

Candidates were required to demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums. Candidates would have been credited for any discussion on the court's discretion as to costs. Candidates should also have included some discussion on what challenges may be made to such a premium. The pass rates were good and it was clear that the candidates that had prepared for a question on the subject had a real depth of understanding. Marks ranged from 0% (fail) to 100% (Distinction) with the average mark being 60% (merit).

Candidate Performance For Question 3 – Code of Conduct

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 outline what the Costs Lawyer Standards Board Code of Conduct means when it says costs lawyers must comply with their duty to the court in the administration of justice.

Number of Candidates	17
Total Fails	13
Total Pass	4
% Pass	24
% Fail	76

This question required candidates to set out what is meant by the code of conduct with respect to costs lawyers duty to the court in the administration of justice. Candidates were credited for setting out the meaning of the code and relevant authority. The pass rate for this question was poor with only 24% of candidates achieving the required standard. Marks ranged from 0% (fail) to 100% (distinction).

Candidate Performance For Question 4 – Client Money

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 provisions relating to costs lawyers handling client money found in the Costs Lawyer Code of Conduct and CLSB practicing rules.

Number of Candidates	17
Total Fails	7
Total Pass	10
% Pass	59
% Fail	41

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 Practicing Rules is very clear on this and all future candidates are advised to read the document. Performance on this question was weak. Marks ranged from 30% (fail) to 100% (distinction).

Candidate Performance For Question 5 – Default Judgment

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 providing advice on Default Judgments. The letter needed to explain what a Default Judgment is, how a Judgment may be obtained and whether they believed that it will be possible to apply for the Judgment in the scenario to be set aside.

Number of Candidates	16
Total Fails	3
Total Pass	13
% Pass	81
% Fail	19

This was one of the most popular optional questions on the paper with all candidates choosing to answer this question. To achieve a pass, candidates were expected to set out definitions and salient points in respect of default judgments, consideration of what a

default judgment is, how it can be obtained and the consequence of a default judgment. Performance on this question was excellent, with 81% achieving a pass.

Candidate Performance For Question 6 – QOCS

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 is entitled to the protection of QOCS, in what situation that protection may be lost and the consequence of the decision made in the scenario.

Number of Candidates	16
Total Fails	6
Total Pass	10
% Pass	63
% Fail	37

This was a popular optional question on the paper with all candidates choosing to answer this question. The pass rate was reasonable at 63 percent and 4 candidates achieved distinctions (70%+). Candidates were required to provide an explanation as to how QOCs operates, which cases the rules apply to, when an order can be enforced without the courts permission, to what extent an order can be enforced and when an order can be enforced only with the court's permission. To pass, candidates should have demonstrated a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework) with good application and some analysis having regard to the facts.

Candidate Performance For Question 7 – Wasted Costs Order

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to advice on what a wasted costs order is and how an application for an order should be made. It should also identify when an application can be made.

Number of Candidates	13
Total Fails	3
Total Pass	10
% Pass	77
% Fail	23

13 candidates chose to answer this question. The question had a good pass mark with 77% of candidates passing. The average mark was 60% (merit).

Candidate Performance For Question 8 – Compliance

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to write an advice on potential risks a firm face by accepting external costs work to include all compliance requirements.

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

This was not a popular optional question on the paper with only 3 candidates choosing to answer this question. Candidates should have provided an outline of the risks the firm

may encounter and how they could be managed with reference to the compliance requirements. It is also a real concern that candidates appear to struggle with the section B questions on ethics or compliance. For the candidates who did attempt the question they all passed. Maybe due to the question being at the end of the paper less candidates attempted it. The pass rate was poor but there were no concerns about the fairness of the question.

Candidate Performance For Question 9 – Money Laundering

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 file note that covers money laundering and the risks to the firm and how they could be managed.

Number of Candidates	3
Total Fails	2
Total Pass	1
% Pass	33
% Fail	67

Only 3 candidates answered this question and only 33% passed. Again, maybe due to this question being at the end of the paper that less candidates attempted it. The marks were fairly weak across all candidates attempting this question. Highest mark was only 55% (pass) and the lowest was 20%.

Mark Armstrong
Moderator