

Examination Report

Exam Session:	February 2023
Exam Paper:	Unit 3
<p>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 February 2023 Unit 3 examination.</p> <p>This report is intended to be a useful document that comments on overall performance by candidates in the February 2023 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.</p> <p>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.</p>	
Summary of Candidate Performance	
<p>This was the February 2023 sitting of the Unit 3 examination in this format.</p> <p>Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules.</p> <p>There was a total of 4 candidates that sat this paper.</p> <p>Overall, performance was very good given the fact that nearly all students were re-sitting the exam and therefore borderline passes would have been expected. In fact, all students passed the paper and 3 of those students obtained a merit mark which is very pleasing. This shows that students prepared well and they were able to develop their knowledge further from the first exam to perform better and achieve a pass in this subsequent sitting.</p> <p>100% of candidates passed. 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.</p> <p>For the purposes of moderation, a sample of papers were selected, representing 75% of the total number of submissions which is in excess of the sample required by ACLT Guidelines.</p> <p>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.</p>	

The table below sets out the data on the paper.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100%
% Fail	0%
Classification of Marks Achieved	
% Total in Pass Band	25%
% Total in Merit Band	75%
% Total in Distinction Band	0%

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 strong with an overall average of close to 7 marks which was very good across all Section A questions.

For the remaining three questions on the paper, in section B, candidates were required to select these from five optional questions. On the whole, the performance on these questions was reasonably good. The students all failed Q7 but all other questions answered within the section were passed and some good scores were obtained on these questions. Marks ranged from 30% to 75% for these Section B questions.

Candidate Performance For Question 1

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 circumstances when Conditional Fee Agreements will not amount to contentious business agreements.

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

Performance on this question was mixed as only 50% of students passed the question. Students failed to provide the basic requirements with respect to contentious business agreements. Students focused solely on CFA's and with limited information on business agreements it was not sufficient for a pass mark. Marks ranged from 10% to 80%.

Candidate Performance For Question 2

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 rules governing the form and content of a retainer that must be complied with when a solicitor enters a contract with a client.

Number of Candidates	4
Total Fails	0
Total Pass	4

% Pass	100%
% Fail	0%

Performance on this question was very good and all students met the required standard to be awarded a pass. The marks across all examination scripts were strong with all students achieving at least 70% of the marks available. All students included a discussion on the basic principles of contract law with supporting authority and most were able to include a discussion on both statutory authority in respect of specific retainers and the regulatory requirements found within the SRA code of conduct. Marks ranged from 70% to 90%.

Candidate Performance For Question 3

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 Third Party Funding should not be an accepted method of funding mainstream litigation.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100%
% Fail	0%

Performance on this question was very good and all students met the required standard to be awarded a pass. The marks across all examination scripts were excellent with all students achieving at least 70% of the marks available. Students were able to explain what third party funding is and why such funding was historically unlawful. Most students were able to include a discussion on whether there was a need for better oversight and some included a detailed discussion on non party costs orders. Marks ranged from 70% to 90%.

Candidate Performance For Question 4

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 a Conditional Fee Agreement is and explain the form, content and way that such an agreement works.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100%
% Fail	0%

Again, performance on this question was very good and all students met the required standard to be awarded at least a merit grade (60%). The results for this question are pleasing especially in light of the volume of cases students are likely to encounter that are funded by these agreements. All students provided a very good explanation of the form and operation of a conditional fee agreement and better responses were able to explore other factors that may impact the enforceability of these agreements. Marks awarded ranged from 60% to 90%.

Candidate Performance For Question 5

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to advise on detailed assessment proceedings and the steps required.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100%
% Fail	0%

All candidates elected to answer this question. Marks ranged from 50% (bare pass) to 75% (mid distinction). Performance on this question was excellent, all students passed and 50% achieve distinction level marks. The question required a detailed explanation of the detailed assessment procedure, including supporting authority. Those students that performed better on this question included a discussion regarding the bill of costs and the right to recover costs. All students provided a sufficient level of detail on the detailed assessment procedure and the next steps required.

Candidate Performance For Question 6

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to provide advice setting out the hurdles which must be overcome to achieve a departure from the costs management order in respect of all phases of the budget and merits of the challenges that the paying part was advancing.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100%
% Fail	0%

All candidates elected to answer this question. Performance on this question was very good and all students met the required standard to be awarded a pass. Marks ranged from 50% (bare pass) to 65% (mid merit) and 50% of students achieved a merit for this question. All students were able to provide a basic explanation of the of the impact of a costs management order on assessment and were able to use appropriate supporting authority with respect to the question. Better responses included a discussion of the importance of assumptions in demonstrating whether there has been a significant development and that some developments will not be regarded as significant developments.

Candidate Performance For Question 7

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to describe the procedure for the assessment of costs in arbitration.

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

3 out of 4 candidates elected to answer this question. Performance on this question was poor, all students failed the question. Marks ranged from 30% to 45%. Although it is difficult to speculate, performance on this question may have been weaker because of poor time management with most students answering this question last. It does appear that most candidates were not as well prepared in terms of learnt authority with 2 out of 3 responses using a very limited range of authority to support their response. Whilst use of authority is not always indicative of the level of marks that would be awarded for a response it does act as a trigger for ensuring students include sufficient detail in their responses.

Candidate Performance For Question 8

This was an optional question in section B of the paper and this question attracted up to 20 marks. The question concerned an application for an interim injunction and candidates were required to advise whether costs are likely to be ordered in favour of the Claimant in any event or if the costs should be reserved.

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

Only one student opted to answer this question and performance was very good. The only student completing the question achieved a merit mark for this question (60% plus). The student was able to provide a very good response to the question and included appropriate supporting authority.

Candidate Performance For Question 9

This was an optional question in section B of the paper and this question attracted up to 20 marks. The question concerned costs capping orders in judicial review proceedings. No students answered this question.

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

Mark Armstrong
Moderator