

Examination Report

Exam Session:	September 2023
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Exam Paper:	Unit 2
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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 September 2023 Unit 2 examination.

This report is intended to be a useful document that comments on overall performance by candidates in the September 2023 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. 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.

Summary of Candidate Performance

This was the September 2023 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.

There was a total of 21 candidates that sat this paper.

Overall, performance was very good.

81% 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.

For the purposes of moderation, a sample of papers were selected, representing 38% of the total number of submissions which is in excess of the sample required by ACLT Guidelines.

The selected papers were chosen to reflect a range of marks, from the lowest to the highest. 2 markers marked the scripts which made the moderation process easier.

The table below sets out the data on the paper.

Number of Candidates	21
Total Fails	4

Total Pass	17
% Pass	81
% Fail	19
Classification of Marks Achieved	
% Total in Pass Band	19
% Total in Merit Band	19
% Total in Distinction Band	43

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

For the remaining 3 questions on the paper, in section B, candidates were required to select these from 5 optional questions. On the whole, the performance on these questions was good. Marks ranged from 15% to 100% 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 when the Court may give Summary Judgment and the procedure which should be followed if an application was to be made.

Number of Candidates	21
Total Fails	1
Total Pass	20
% Pass	95
% Fail	5

Performance on this question was excellent with only 1 candidate failing. Marks ranged from 4 to 10. The candidates were required to set out the grounds for a summary judgment and the proceedings in which such a judgment is available. Further detail included the procedure with respect to making an application, evidential requirements and the court's powers in determining the application. Most candidates provided the required knowledge and therefore were able to obtain a mark in excess of a pass.

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 explain what QOCS is and the impact the rules have on the court's discretion as to costs and when costs protection may be lost.

Number of Candidates	21
Total Fails	3
Total Pass	18
% Pass	86
% Fail	14

Performance on this question was very good with only 3 candidates failing with one of the candidates failing to answer the question which may have been due to poor time management. The candidates were required to explore what QOCS is, when and how QOCS is applied to include the enforcement of costs orders where QOCS applies. Marks ranged from 15% to 100%.

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 outline the legislative provisions that govern when the Court can make a Wasted Costs Order against a legal representative and explain how an application for a wasted costs order should be made.

Number of Candidates	21
Total Fails	6
Total Pass	15
% Pass	71
% Fail	29

Performance on this question was good overall although 6 candidates failed this question which was the highest failure rate of all questions within Section A. Candidates were required to discuss the court's general discretion as to costs, procedure of an application and principles on wasted costs orders. Marks ranged from 15% to 100%.

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 outline the provisions in the Costs Lawyer Code of Conduct on client money and how these provisions help ensure the protection of the public.

Number of Candidates	21
Total Fails	4
Total Pass	17
% Pass	81
% Fail	19

Again, performance on this question was very good with only 4 candidates failing. Candidates were required to discuss the CLSB rules, define client money, professional fees, disbursements and may have included a discussion on the relevance of the same if a costs lawyer works for an SRA regulated firm. Marks awarded ranged from 10% to 100%.

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 write the body of a letter to Mr Robinson providing advice on Default Judgments.

Number of Candidates	21
Total Fails	2
Total Pass	19
% Pass	90
% Fail	10

Marks ranged from 25% to 100%. Candidates were required to explain what a default judgment is, how they are obtained and on what basis the Court may set aside a Default Judgment. Credit was also given for a discussion on the costs consequences of such an application. Performance on this question was excellent with a very high pass rate. Only 2 candidates failed the question with a pass rate of 90%.

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 write an email advising on the recoverability of an ATE premium and, in particular, whether the premium may be reduced based on proportionality.

Number of Candidates	18
Total Fails	4
Total Pass	14
% Pass	78
% Fail	22

Performance on this question was good with only 4 candidates failing the question. Candidates were required to demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums, general challenges to ATE premiums, the court's discretion as to costs and the application of the principle of proportionality. Marks ranged from 20% to 100%

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 prepare a memo which sets out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit Costs Lawyers arguing unarguable points and any implications upon acting on the client's instructions in the scenario.

Number of Candidates	14
Total Fails	4
Total Pass	10
% Pass	71
% Fail	29

Performance on this question was good with only 4 candidates failing. The candidates were required to explain the legislative framework governing the regulation of lawyers, reserved legal activities, duty to the court and consequences of breaching applicable professional conduct. Marks ranged from 30% to 90%.

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 providing detail for a presentation on ethics and professional standards which outline the reserved legal activities a Costs Lawyer can undertake and the principles of the CLSB Code of Conduct.

Number of Candidates	7
Total Fails	4
Total Pass	3

% Pass	43
% Fail	57

Performance on this question was not great given the fact only 7 candidates opted to answer the question and then 4 failed. This failure rate was 57% which is high. Candidates were required to explain the legislative framework governing the lawyers, reserved legal activities, duty to the Court and CLSB practising rules. Marks ranged from 15% to 75%.

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 writing a guidance note to include the definition of money laundering, the risks the firm faces and the associated offences.

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

Performance on this question was acceptable although only 3 candidates attempted to answer the question with 66% passing. Candidates were required to explain what money laundering was with reference to the legislative framework, customer due diligence and money laundering offences. Marks ranged from 15% to 55%.

Overall Comments

The moderator was happy with the standard of marking and the consistency between both markers. Overall students struggled with obtaining marks in the questions either because of lack of time management, lack of detail within the answer, not fully answering the question and not applying the knowledge to the facts of the scenario. Better performing candidates were able to provide sufficient detail and apply the knowledge to the facts of the scenario.

Mark Armstrong
Moderator