

Examination Report

Exam Session:	December 2023
Exam Paper:	Unit 3

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 December 2023 examination.

This report is intended to be a useful document that comments on overall performance by candidates in the December 2023 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 very good/excellent (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 sixth sitting of the Unit 3 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 25 candidates that sat this paper.

Overall, performance was something of a mixture of fortunes, with some exceptionally good marks of 80+ and some very poor submissions of 30 and below. There was a whole range of marks in between the extremes. It was very pleasing to see the very good scores, but overall disappointing to see so many students returning poor submissions.

The vast majority of students were able to demonstrate high levels of knowledge on the core subjects involved in costs processes and assessment, including those in more specialist areas. Most students were able, at least, to identify the correct law that applied to the question and explain the correct legal principles that lay behind those areas of the law. Only the better candidates were able to support their knowledge by reference to appropriate legislative, CPR or case law authorities, with many correctly asserting the relevant principle, but being unable to link this to an appropriate authority. Where candidates scored low marks, this was often due to lack of content, or lack of detail in that content, and appeared, for the most part, to be due to poor time management in

answering the questions, rather than a lack of knowledge. In some instances, however, it was apparent that the candidate had pinned all his/her hopes of passing the exam on writing at length on one (or sometimes two) areas of the law that had been the focus of his/her preparation and providing only very brief (if any) answer on other areas. This, generally, did not work well. Candidates who adopted this approach tended to reproduce pre-prepared answers covering different aspects of the topic in a 'blanket' approach, which often meant that the answer was not addressing the question asked. It was also clear that some candidates had mis-read, misunderstood or misinterpreted the question, as the submitted answers appeared to be answering a different question.

Even where candidates were able to demonstrate suitable levels of knowledge in answering the questions, they were often not able to develop this knowledge by applying it to the question. This was particularly noticeable in relation to the Section B questions. The majority of candidates were able to explain the law well, but often the answer stopped at a descriptive outline of the legal principles involved. Only the better candidates were able to gain higher marks by applying their knowledge to the facts of the scenario provided and thereby providing clear 'advice' to the client, which was the requirement of the assessment. This was largely a result of poor examination technique, rather than an indication of lack of ability on the part of the candidates. There was little evidence of most candidates adopting an 'IRAC' or similar systematic approach to answering the type of questions seen in Section B.

68% (17/25) of candidates passed on first marking, with two further submissions being elevated to a 'pass' on moderation, giving an overall pass rate of 76%. 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 72% 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. Three markers marked the scripts which formed the samples used in the moderation process. The sample used reflected the lowest and highest mark allocated by each marker, a 'mid-range' mark from each marker, all submissions that were marked as a 'fail', all those which were 'borderline' pass, and all those which were on the cusp of the next grade boundary i.e. ending in '9'. The sample included at least two submissions from each of the grade boundaries for 'pass', 'merit' and 'distinction'.

The table below sets out the data on the paper and reflects the position post-moderation.

Number of Candidates	25
Total Fails	6

Total Pass	19
% Pass	76
% Fail	24
Classification of Marks Achieved	
% Total in Pass Band	32
% Total in Merit Band	24
% Total in Distinction Band	20 (including 12% in 'Advanced Distinction' (80%+) band)

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 excellent with an overall average (mean) of 6 marks across all Section A questions. A fuller breakdown of the performance in each question is set out below, but very few students failed questions 1-3. Overall, the answers to the first three questions were very good. There was a different picture emerged in relation to question 4. Four candidates did not attempt this question, even though it was a 'mandatory' question, and of the 21 candidates who did attempt the question, only 12 achieved a pass mark. Overall, marks ranged from 0% to 10% for 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 very good. The vast majority of students opted to answer questions 5, 6 and 7 – the Costs Pleadings and Costs in Special Courts questions, with only three candidates choosing to answer questions 8 and 9 – the Advanced Civil Procedure questions. A fuller breakdown of the performance in each question is set out below, but the pass rates for questions 5 and 6 were excellent, although were not so good for question 7. Although the number of attempts at the last two optional questions was small, no candidate who attempted question 8 failed, and only one (of three) failed question 9. Marks ranged from 3% to 18% across the whole range of 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 demonstrate knowledge of the rules surrounding the assessment of conditional fee agreements as contentious business agreements.

Number of Candidates	25
Total Fails	2
Total Pass	23
% Pass	92
% Fail	8

Performance on this question was very good across the board with nearly all candidates being able to achieve at least a pass. The strongest candidates applied themselves to the question well. The weaker candidates tended to provide assertions of principle, but often lacked sufficient reference to authority. Marks ranged from 3 to 10

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 demonstrate knowledge of the statutory provisions in relation to, and potential costs liability of, third party funders.

Number of Candidates	25
Total Fails	5
Total Pass	20
% Pass	80
% Fail	20

Performance on this question was not as good as some of the other questions in Section A, but was still generally good, with most students being able to achieve, at least, a pass. The strongest candidates applied themselves to the question well. The weaker candidates tended to provide assertions of principle without reference to authority, omitted important aspects of the answer, or failed to address the question asked. Marks ranged from 2 to 10.

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 demonstrate knowledge of the exercise of solicitors' liens.

Number of Candidates	25
Total Fails	1
Total Pass	24
% Pass	96
% Fail	4

Performance on this question was excellent. It was far and away the best answered question in Section A, both in terms of pass rate and the individual marks achieved. All candidates were able, at least, to outline the basic explanations of the different types of lien and how they operated. Weaker candidates tended to provide only brief detail, often unsupported by authority. Marks ranged from 4 to 10.

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 demonstrate knowledge of interim statute bills and requests for payments on account

Number of Candidates	25
Total Fails	13
Total Pass	12
% Pass	48
% Fail	52

Performance on this question was generally poor. It was the worst answered question in Section A, both in terms of pass rates and the individual marks achieved. Four candidates did not attempt to answer the question at all. Of the 21 who did attempt the question, four provided answers of such brevity that only a token mark could be awarded. The stronger candidates (only seven achieved a mark of 7+) applied themselves well to the question. Of the others, answers tended to be too brief, lacked detail and/or authority, did not address themselves to the question, or, in some cases, were simply wrong. Marks awarded ranged from 0 to 10.

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 provide advice on departures from Costs Management Orders and reduction of hourly rates

Number of Candidates	22
Total Fails	4
Total Pass	18
% Pass	82
% Fail	18

Performance on this question was generally very good, with the majority of candidates who attempted the question achieving, at least, a pass, and with many achieving much higher grades. The strongest candidates applied themselves well to the question and not only provided evidence of detailed knowledge of the subject, but also applied their knowledge to the facts of the scenario to provide advice to the client. Weaker candidates tended to demonstrate only limited knowledge or omitted important aspects of the question, provided only a descriptive outline of the legal provisions (with/without authority), and did not translate that knowledge into firm advice in answer to the question. Candidates who failed tended to provide only very brief and token attempts at answering the question. Marks ranged from 5 to 19

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 on an application to amend a budget in relation to expert witness costs

Number of Candidates	23
Total Fails	4
Total Pass	19
% Pass	83
% Fail	17

Performance on this question was generally very good. with the majority of candidates who attempted the question achieving, at least, a pass, with many achieving higher grades. This was the most popular of the questions answered in section B, with all bar two candidates choosing to answer it. The individual marks were generally on a par with, or slightly lower than, those achieved for question 5. The strongest candidates applied themselves well to the question and not only provided evidence of detailed knowledge of the subject, but also applied their knowledge to the facts of the scenario to provide advice to the client. Weaker candidates tended to demonstrate only limited knowledge of the topic or omitted/overlooked important aspects of the question, provided only a

descriptive outline of the legal provisions (with/without authority), discussed some points that were irrelevant, and/or did not translate their knowledge to provide firm advice to the client. Candidates who failed tended to provide only very brief and token attempts at answering the question, or produced discussions that were only tangential to the main question. Marks ranged from 4 to 18

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 provide advice on the costs' jurisdiction of lower-level Tribunals

Number of Candidates	21
Total Fails	9
Total Pass	12
% Pass	57
% Fail	43

Performance on this question was generally good, but there was almost parity between those candidates who passed and those candidates who failed the question. Candidates who scored well on this question scored very highly, but overall, the individual marks for this question were slightly lower than those achieved for questions 5 and 6. The strongest candidates applied themselves well to the question and not only provided evidence of detailed knowledge of the topic, but also applied their knowledge to the facts of the scenario to provide firm advice to the client. Weaker candidates tended to demonstrate only limited knowledge of the subject or omitted/overlooked important points that were 'flagged' by the question, provided only a descriptive outline of the legal provisions (with/without authority), discussed some points that were irrelevant, and/or did not translate their knowledge into advice to the client. Candidates who failed tended to provide only brief or token attempts at answering the question – often in a rush at the end of the exam - or appeared to answer a different question to the one posed. Marks ranged from 3 to 17

Candidate Performance For Question 8

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were asked to provide advice on costs capping in applications for judicial review.

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

Performance on this question was very good, with all three candidates who attempted the question passing. The question was attempted by only a small number of candidates, all of whom demonstrating sufficient detailed knowledge of the legal provisions to, at least, pass, with one candidate demonstrating excellent application of that knowledge

to the facts of the scenario to provide firm advice to the client, and achieve a much higher grade. Marks ranged from 10 to 17.

Candidate Performance For Question 9

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were asked to provide advice on the award of costs in injunction applications.

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

Performance on this question was generally good, with two out of three candidates who attempted the question achieving a pass. The question was only attempted by a small number of candidates. Two candidates demonstrated sufficiently detailed knowledge of the legal provisions to achieve a pass, but not sufficient levels of application to go on to a higher grade. The third candidate made only a token attempt at an answer, no doubt as a result of time pressure at the end of the exam. Marks ranged from 3 to 12.

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Moderator