

PCLL Conversion Examination
5th January 2010
Examiner's Comments
Civil Procedure

1. The Paper

This was very fair, not too difficult, and very appropriate in that 5 of the 6 questions involved some discussion of different aspects of the CJR. Many students, however, appeared to be unaware of parts or all of the CJR, referring to pre-CJR time limits for pleadings and acceptance of sanctioned payments. One student even referred to the UK's CPR! Numerous students referred to *Norwich Pharmacal* in support of discovery against a non-party.

There were easy marks to be obtained with 2 questions in particular, Q4 on Execution and Q6(a) on Discovery, yet both of these were for the most part poorly answered.

2. The First Marker

The First Marker's marks were throughout fair and consistent. My marking was in some cases marginally more generous, but only in 6 cases did we disagree about a Pass/Fail.

3. The Questions and Answers

Question 1

This was generally quite well answered, with nearly all students referring to Order 13A. A large number also referred to Legal Aid, and about half to Sanctioned Payment/Offer. Disappointingly few dealt with the defence and counterclaim on the 2nd Contract.

Question 2

This was poorly answered with only a handful of students referring to the need for court approval. Very few dealt with the position of the 1st Defendant. None dealt with the Court's discretion in relation to costs in the context of proceedings brought on behalf of an infant.

Question 3

Far too many students recommended that Grace apply for Legal Aid, despite the fact that she would surely fail the merits test. Many referred to O13A. However, when it came to bare denials and shedding the loan agreement, whilst most students advised against, very few indeed put their advice in the context of the Statement of Truth.

Question 4

This was very poorly answered by a surprisingly large number of students. Many thought both the rented property and Mary's flat could be charged. Many thought everything could be accomplished with a Writ of Fi Fa. Many wrote about Sequestration with little understanding. There was wholesale confusion between O48 and O49B.

Question 5

This was also poorly answered. Most students simply set out verbatim the Underlying Objectives of the CJR then failed to apply them to the facts. Very few referred to Wasted Costs orders, and only about half to Unless Orders. Very few students indeed referred to Security for Costs, despite the Plaintiff being a Japanese company.

Question 6(a)

There was widespread ignorance of the principles of discovery. The "Without Prejudice" correspondence was frequently said to be protected by "Without Prejudice Privilege"; only one or two students referred to this as an admissibility

issue rather than a discovery/privilege issue. An alarming number of students thought the accident report should be disclosed, and failed altogether to deal with litigation privilege. Most got right that the solicitors' letter was protected by legal advice privilege, but most then concluded that it need not be disclosed, rather than including it in Schedule 2 Part 1. Very few students dealt with the implied undertaking not to use documents beyond the litigation.

Question 6(b)

Very few students referred to 3rd Party proceedings or to the new rules relating to pre-action discovery and discovery against a non-party. Instead students wrote of subpoenas and *Norwich Pharmacal* as if they were unaware of the CJR. Many students failed to deal with the position of the US company and of those who did many failed to refer to O11 leave and its requirements.

Students who are to progress to the vocational training of the PCLL civil litigation practice course must achieve a reasonable threshold of civil procedure awareness. Far too many of the students who took this exam failed, often miserably, to achieve that threshold.