

**PCLL Conversion Examination
January 2011
Examiner's Comments
Civil Procedure**

Overall Comments

1. The candidates did well overall. It is particularly noteworthy that most candidates appeared to be well familiarized with the major changes brought along by the CJR. The underlying objectives of the CJR are broadly understood, as evidenced by the answers to Question 2.
2. In relation to the operation and function of the sanctioned payment/offer, one of the important features under the CJR, the Candidates generally showed a good understanding thereof in their answers to Question 1.
3. Candidates also showed their awareness of the concept of milestone dates in Question 5(b) and some gave good examples in Question 2(b) in relation to court's power under the CJR to effectuate its underlying objectives.
4. With respect to the pretrial consideration asked in Question 6(a), quite a number of candidates were able to embody in their answers consideration of the changes after the CJR, such as mediation and sanctioned payment/offer.
5. Under Question 6(b), a majority of the candidates was aware of the new features under the CJR, such as case management conferences and timetabling questionnaires between the close of pleadings and trial.

Part A

Question 1

6. Most candidates did well in this question. In respect of part (a), most students were able to point out that Tom may accept the sanctioned payment not later than 28 days after the sanctioned payment was made (Order 22 rule 15).
7. However, most students failed to consider that there were two defendants in this case and Order 22 rule 18 would come into play.
8. As to part (b), most candidates could correctly address the costs issue and that the claim would be stayed under Order 22 rule 20. Quite a number of candidates however failed to consider the issue whether the sanctioned payment was related to the whole claim.
9. In respect of part (c), most candidates did well here and showed a thorough understanding of the costs consequences under Order 22 rule 23(4) and 23(5).

Question 2

10. Almost all candidates scored well in this question. With part (a), Order 1A rule 1 and rule 2(2) appeared to have been well understood.
11. The only other noteworthy point is that in part (b), although candidates in general gave good examples, quite a number of candidates came up with identical answers. Hence candidates who gave unique examples were given slightly higher score.

Question 3

12. Again candidates generally showed adequate understanding of the legal principles relating to enforcement/execution of a judgment in this question.
13. Numerous candidates made the fundamental mistake by concluding that Mary could obtain a charging order on A's flat under the given facts, overlooking the separate identities issue.
14. Here, a writ of fi fa may be obtained against the equipment and accessories, a garnishee order against the trade debtor, and a charging order against the warehouse.
15. Many candidates also rightly pointed out that an application for oral examination under Order 48 was possible against the shareholders.

Question 4

16. Candidates overall had good grasp of the legal principles relating to mareva injunction. However most candidates missed the ex parte/full and frank disclosure issue as well as the undertaking to be given by the applicant as to damages.
17. Under the facts of the case, a Mareva Injunction is appropriate as it would restrain XYZ in disposing/dissipating of its machineries.
18. There were also urgency and the need for secrecy which justify ABC's ex application.
19. Candidates are expected to know the correct test to be applied, i.e. there existed a good arguable case against XYZ, that XYZ has assets within the

jurisdiction, and that there is a real risk of dissipation of such assets and that the balance of convenience lies in favour of granting the injunction.

20. It is clear from the facts that the above requirements were met.

Part B

Question 5

21. In this question, quite a number of candidates failed to address the question in relation to where the documents ought to be listed on the List of Documents.
22. Further, the candidates failed to demonstrate their understanding of the concepts of legal advice privilege and litigation privilege. Hence they encountered difficulties with Documents (2), (4) and (5).
23. Briefly Document (1) is relevant and should be listed in Schedule 1 Part 1.
24. The letter from HDC is likely covered by legal advice privilege and should be listed under Schedule 1 Part 2. John's handwritten note is clearly relevant and should be disclosed unless protected under litigation privilege. Dominant purpose should be considered. Although the original note had been shredded, the copy should be listed under Schedule 1 Part 2 if it is indeed privileged under litigation privilege, and if not, in Schedule 1 Part 1. The original of John's note should be listed in Schedule 2 with an explanation of what had happened to the note.
25. Photographs may be relevant to defective quality and should be listed under Schedule 1 Part 1 of the List of Documents.

26. Document (4) should fall under litigation privilege, and to be listed under Schedule 1 Part 2.
27. Document (5), it is clearly relevant and should be disclosed in Schedule 1 Part 1 even though it may be damaging to HDC's case. It may however be covered by litigation privilege if prepared for the dominant purpose of obtaining assistance in pending or contemplated proceedings. If it is privileged then it should be disclosed in Schedule 1 Part 2.
28. In relation to part (b), the candidates should point out that the court may, either on its own motion or on the application of a party, vary any timetable fixed by it at a case management conference.
29. HDC should be advised to make the application for an extension of time to file and serve John's witness statements and Brown's expert report. The dates to file and serve witness statements and expert evidence are non-milestone dates. Since a trial date had not been fixed, with good reasons it is likely that the court would grant the application.
30. Candidates are expected to raise the point that 15th March 2011, being the date of the PTR, is a milestone date.

Question 6

31. Most candidates performed better in part (a) than part (b).
32. Various matters which Nancy would need to consider are merits of her claim, limitation period (6 years), Legal Aid, jurisdiction (Court of First Instance v. District Court), pre-action letter, service outside jurisdiction, forum non conveniens, enforcement against a defendant residing out of the jurisdiction.

33. Nancy should be advised that since the CJR, the parties are required to explore the opportunity of having their disputes resolved by mediation. Nancy can also consider making a sanctioned offer to TSL.
34. Rather surprisingly, a number of candidates were misconceived about the principles governing security for costs and suggested security for costs be applied against a foreign defendant. Others were concerned about TSL applying security for costs against Nancy (a local resident).
35. In relation to part (b), candidates are expected to know that the matter is not yet ready for trial. To proceed to trial, the parties would need to proceed to discovery. Within one month after close of pleadings, Nancy would need to take out a Summons for Directions, and once all directions are complied with, Nancy can then apply to set the matter down for trial.
36. It should be pointed out in the candidates' answers that under the CJR, there are case management conferences at various stages of the proceedings and timetabling questionnaires are needed to be prepared and filed.
37. Finally, as Nancy wants to recover the amount owed from TSL as soon as possible, she may consider making a part summary judgment application against TSL.