PCLL Conversion Examination
January 2017
Examiner's Comments
Civil Procedure

General Comments

Overall, the general performance of the candidates improved at this examination. In particular, there were some candidates who did very well and managed to score very high marks. Such candidates' answers read well and showed understanding of the procedures, why such procedures should be recommended given the fact scenarios and how they could be applied.

The main reasons for the failures were, as usual, in relation to (i) unfamiliarity and/or misunderstanding of the procedures discussed, (ii) the failure to apply the relevant facts to the legal principles and (iii) copying of large chunks of materials from textbooks instead of answering directly the questions posed.

When revising for this topic, candidates are encouraged to try to understand the purpose of each of the procedures examined under the syllabus; what the procedures are intended to be used for and how the procedures could be applied. Candidates are also encouraged to read the cases so as to understand how the procedures could be used in real life scenarios.

Below are some specific comments on each question.

Question 1(a)

This question was relatively straightforward. Most candidates discussed Order 15 rule 4(1) and how the intended plaintiffs – the Incorporated Owners of the Tour Eiffel (the "IO") and Madam Leong – could be joined as there were some common questions of law or fact and the reliefs claimed arise out of the same "transaction".

As for the intended defendants, the consideration was whether the plaintiffs should sue the partnership – Move-A-Go and whether Strong and Mighty, as partners of the firm, should be joined as defendants. The main factor to consider was of course enforcement – whether the plaintiffs would want to enforce on partnership property and the personal property of the partners.

Once the parties were identified, candidates were only required to talk about the rules of service under Order 81 rule 3 and Order 10 rule 1. This was generally quite well done.

However, some candidates incorrectly discussed the rules in relation to service on a company. Such discussions were not really expected as paragraph 2 of the Background facts already stated that Move-A-Go was a partnership. Candidates are reminded to read the question paper carefully.

Question 1(b)

This question type was not new. There had been many similar questions in the past. Candidates are again reminded not regurgitate the usual list of pre-action considerations. For example, a large number of candidates talked about costs-only proceedings when it was quite obvious that costs-only proceedings would not apply in this case. For this question, the main issues to be discussed included the merits of the case, whether the intended defendants could be located and whether the intended defendants were worth suing.

Question 2(a)

This was another very straightforward question which a majority of the candidates answered well. Since the question posed required candidates to advise on the documents (as opposed the document) which Strong had to file to defend the proceedings, candidates should have talked about the filing of the acknowledgement of service and the defence and the deadlines for doing so.

Question 2(b)

This was a question which required candidates to discuss discovery applications. Some candidates correctly commented that the CCTV recording and the visitors' register should be disclosed by the IO during the discovery process. Candidates were given credit for such answers. Candidates should go further to discuss the specific discovery application that could be made in case such disclosure was not made during mutual discovery. Some candidates discussed seeking discovery against a non-party, Maison (the building management company). In fact, the proper procedure to be discussed was seeking specific discovery against the IO, who should have power to obtain the documents from Maison since they had engaged Masion to manage the building. Unfortunately, not many candidates spotted this point.

Surprisingly, instead of discovery, some candidates discussed the making of a request for further and better particulars. Candidates should understand that the CCTV recording and the visitors' register are documents rather than "particulars of pleadings". Again, candidates are encouraged to understand the procedures better.

Question 2(c)

This was another straightforward question on commencement of third party proceedings under Order 16. This question was general well answered. Candidates who talked about joinder of defendants under Order 15 were also credited for their answers.

Question 3(a)

For this question, candidates were requested to comment on the letter in Document B. In relation to point (i) in the letter, it was correct that since pleadings had been closed, discovery was the next step. However, Strong was not required "to send all the documents which he has relating to the incident as soon as possible". Candidates were

then required to discuss the correct discovery obligations and to talk about the definition of a "document" under the rules.

In relation to point (ii), it was correct that Dr. Tam was subject to the Code of Conduct for Expert Witnesses and that the appointment of a single joint expert was possible. However, since the plaintiff's solicitors did not seek Strong's prior agreement before instructing the expert, Strong can object to such request. Good candidates then went on to discuss whether it was desirable to recommend Strong to instruct a single joint expert with the plaintiffs.

In relation to point (iii), credit was awarded to candidates who were able to identify that the matter was not ready to be set down for trial. Further credit was awarded to candidates who were able to specify the extra steps that were required in this case, e.g. the filing/exchange of witness statements.

Question 3(b)

The "Timetabling Questionnaire" part of the question was answered quite well. Most candidates understood the purpose of this document. However, many candidates confused the Mediation Certificate with the Mediation Notice. A Mediation Certificate is a party's solicitors' confirmation that they had advised their client of mediation and of Practice Direction 31. As Strong was no longer legally represented, there was actually no need for him to file a Mediation Certificate. Most candidates were not aware of this. Candidates are reminded yet again to read the question carefully.

Question 4(a)

Many candidates just set out some of the rules concerning sanctioned payments. In fact, candidates were required to explain to the lay client how sanctioned payments work, whether the lay client should make a sanctioned payment and if so, how should he work out the amount of the payment. Candidates who did well were able to discuss how the procedure worked in their own words and recommended the client to make a sanctioned payment after making a realistic assessment of the damages entitled by the plaintiffs, including interest.

Question 4(b)

The candidates who did very well for this question talked about each asset that was listed and whether it could be enforced against and if so, how (i.e. using which method of enforcement). E.g. for the first listed asset of the electric car – good candidates stated that the cars could be enforced by using a writ of fi fa and discussed the general procedure for doing so. Candidates who did not do well for this question only talked about the methods of enforcement generally without applying their answers to the facts of the case.
Apart from enforcement, many candidates also correctly discussed oral examination under Order 49B and whether a prohibition order could be issued against Strong.