

**PCLL Conversion Examination
January 2018
Examiner's Comments
Civil Procedure**

General Comments

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) simply listing out or copying of large chunks of materials from textbooks instead of answering directly the questions posed (often requiring some discussion or evaluation and analysis of the facts and/ or circumstances of the case, weighing up the pros and cons/making a recommendation).

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 about the methods of settlement pre-action. Many candidates discussed the procedure under Order 22 and hence lost a lot of marks. Candidates should realise that Order 22 applies only to actions where proceedings have commenced. The relevant procedures to talk about under this question were those which were applicable before proceedings have been commenced, e.g. WP settlement negotiations and ADR. Instead of just listing out the options, candidates were specifically asked to comment on what is/are the most appropriate way(s) and marks were awarded accordingly.

Question 1(b)

This question concerned costs-only proceedings under section 52B of the High Court Ordinance/section 53B of the District Court Ordinance and Order 62 rule 11A of the High Court and District Court Rules. Candidates who correctly identified this procedure would have scored very well for this question.

Question 1(c)

As with question 1(b), candidates who managed to identify that this question mainly concerned Order 18 rule 7A of the High Court and District Court Rules would have done well for this question. Unfortunately, many candidates did not appear to be familiar with this rule.

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 Kensington 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 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 2(c)

Candidates were required to list out the pre-action considerations which Kensington should take into account if it were to commence proceedings against the third party. I understand that candidates are very familiar with this sort of question. They should only be discussing the relevant ones (e.g. including the fact that Jason Chow appeared to have absconded and CAL closed down) and discuss whether Kensington should pursue an action. They should not just stop at listing out the considerations.

Question 3(a)

For this question, candidates were requested to consider the options available to Kensington if it were amenable to disposing of the legal proceedings with the payment of a sum of money. Candidates were also asked to advise Kensington on the procedure to adopt – i.e. give their recommendation to the client. Again this involved more than just listing out the options. Candidates should have considered the pros and cons of each method listed and give an advice to the client. Many candidates talked about settlement negotiations and were credited for such answers. However, the gist of this question required candidates to discuss the procedure under Order 13A and sanctioned payments under Order 22 and discuss the pros and cons of each. Whilst a majority of the students managed to identify Order 22, a substantial number of students missed out Order 13A and therefore lost some marks accordingly.

Question 3(b)

The question concerning case management after pleadings have closed up to the setting down of the trial was generally well answered.

Question 4(a)

This was a relatively straightforward question requiring candidates to discuss the likelihood of success for a summary judgement application. Candidates should be familiar with this type of problem but the focus is on the application of the rules to the facts. Given the factual matrix – the fact that the defendant had been convicted and the

fact that expert evidence is likely to be required – candidates should evaluate whether a summary judgement application would likely be successful.

Question 4(b)

This question was very straightforward – if a plaintiff succeeded in a summary judgment application, it would be entitled to enter judgment in favour of the defendant together with costs of the action, to be taxed if not agreed.

Question 4(c)

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 2 bank accounts– good candidates stated that they could be enforced via a garnishee order and discussed the general procedure for doing so. Candidates should also answer the client’s question – whether Mr. Tai and his wife’s properties would be affected. The answer is “No” because these properties do not belong to the defendant company.