PCLL Conversion Examination
January 2019
Examiner's Comments
Civil Procedure

Overall, this was not very well done and there were very few marks in the 70s and above. There was a large number of Fails and it was obvious that numerous students had not prepared at all or had made only very scanty preparation.

The exam traced a piece of civil litigation from the application for O11 leave to execution of the judgment and asked 20 questions at various points in the process, each worth varying marks. It was not a particularly difficult paper for those students who had prepared adequately.

We will now comment on the answers.

Q1 Which Court? (2 marks)
Most students knew that there was a limit on the District Court jurisdiction but very few knew that that increased to HKS3 million on 3 December 2018 and therefore they placed the action, wrongly, in the CFI.

Q2 Leave to serve out of the jurisdiction (8 marks)
Most students were aware of the need for a good arguable case for an O11 ground, a serious issue and a proper case, so they scored quite well here.

Q3 Substituted Service (2 marks)
Most students got this right and a good number correctly identified O64 r4.

Q4 How to serve in France? (4 marks)
Answers to this were generally poor, with a minority of students suggesting an advertisement in a French newspaper and only a very few going beyond that to suggest service by social media or on friends or relatives.

Q5 Mareva Injunction (10 marks)
Most students correctly stated what was required but they generally assumed a real risk of dissipation simply because the Defendant was in France and had not paid. Quite a few missed balance of convenience/adequacy of damages and the undertaking in damages.

Q6 Security for Costs against a foreign Defendant (2 marks)
Most students answered correctly that this was not possible.

Q7 Defective Defence (10 marks)
This was generally poorly answered. A large number of students criticized the title of the action but the question told them to assume the title was correct, so these were wasted words and scored no marks. A minority of students picked up the bare denial, the words not figures and the absence of a Statement of Truth. Very few indeed picked up the inconsistent pleading and the need to particularise the allegation of fraud. Some picked up the need for a Statement of Truth.

Q8 Without Prejudice (4 marks)
Most students got that the email would be treated as Without Prejudice, despite the absence of those words. Most said the email was inadmissible. So generally this question was quite well done.

Q9 Letter Refusing to Mediate (4 marks)
Most students wrongly treated this as also being Without Prejudice and therefore neither discoverable nor admissible.

Q10 Cost Consequences of Refusal to Mediate (3 marks)
This was poorly answered with many students saying there would be no costs consequence. Very few got this right, and fewer still referred to the Practice Direction.

Q11 Mistaken Disclosure of Counsel's Advice (4 marks)
Most students realized the document was privileged but comparatively few wrote that it was an obvious mistake and that the solicitor should read no further and alert his/her opposite number. Some said the disclosure amounted to a waiver of privilege.

Q12 Adjournment of PTR (3 marks)
Although the majority of students realized the PTR was a Milestone Date, a surprising number thought the commitment in another court was an exceptional circumstance and that the adjournment would be granted.

Q13 Trial Bundles (6 marks)
Most students were aware of the bundle needed to set the action down for trial. Very few, however, were aware of the need for bundles of relevant documents disclosed on discovery, despite the question alerting them to the facts that over 1,000 documents had been disclosed in that process.

Q14 Presentation of Trial Bundles (3 marks)
This was poorly answered with the vast majority of students seemingly unaware of Practice Direction 5.6.

Q15 Adjournment of Trial due to Illness (3 marks)
This was overall reasonably well done with most students saying that although the trial was a Milestone Date, the situation of a crucial witness being hospitalized would amount to an exceptional circumstance.

Q16 Judgment Fails to beat Defendant's Sanctioned Offer (10 marks)
If students were aware of the revised O22 then they scored high marks here, in some cases full marks. Many students, however, wrote that the Plaintiff would be deprived of interest on his damages; this was nonsense as the Plaintiff had lost altogether and had been awarded no damages. We did not deduct marks for this but it does demonstrate a simple lack of common sense.

Q17 Plaintiff beats the Sanctioned Offer (3 marks)
Given how many students did well in the previous question, it was surprising that so few scored well on this one. There would be no penal consequences one way or the other and

the Plaintiff would be awarded party and party costs. Yet many students appeared to think that there would be sanctions against the Defendant simply because he had not offered enough.

Q18 Appeal as a Bar to Execution (2 marks)
This was shared about 50/50 with half the students saying an appeal did operate as a bar to execution of the judgment and the other half saying it did not.

Q19 Execution of the Judgment (12 marks)
This was easy pickings for those who knew and understood the various methods of execution. Most students mentioned Writ of Fi Fa, Garnishee and Charging Order although many failed to apply them properly. Very few mentioned Oral Examination or Prohibition Order.

Q20 How does the Defendant recover his losses arising from the Mareva Injunction (4 marks)
It was surprising that despite so many students referring to the undertaking in damages in their answer to Q5, only one or two linked that undertaking to this question. Consequently, these marks were missed completely by most students.