

**PCLL Conversion Examination
June 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 straightforward and required candidates to explain what are (i) a Writ of Summons and (ii) a General Indorsement of Claim. This was generally well done.

Question 1(b)

A default judgment was entered because Anna did not file an acknowledgement of service of the Writ of Summons before the stipulated deadline. In order to set aside the judgment, she needs to take out an application. Only around 50% of the candidates correctly observed that the default judgment was irregular because Anna was not in Hong Kong when the Writ was served. Those who correctly identified this were able to set out the appropriate test and requirements for setting aside an irregular judgment and were able to comment on the merits of the application. Marks were deducted from those candidates who wrote about the setting aside of a regular judgment.

Question 1(c)

Those candidates who spotted that Anna's account was frozen because of a garnishee order generally did well for this question, which required candidates to explain how such order works and the procedures. Such candidates also correctly recommended Anna to attend the hearing on 6 July 2018 to explain her situation so that the court would not grant an order absolute. Some candidates misunderstood this question, saw the word "frozen" and thought that the account was "frozen" because of a Mareva Injunction. Candidates are recommended to learn about all the procedures covered in the syllabus before they attempt the exam.

Question 2(a)

This was another very straightforward question. The writ was served on Anna again because the default judgment, which had been irregular, was set aside. Since service of the writ was not proper, it had to be served again.

Question 2(b)

Most candidates correctly identified that Anna needs to serve an Acknowledgement of Service. However, almost all candidates miscalculated the deadline for filing the Acknowledgement of Service. Since the Writ was served on 1st August and the Writ is endorsed with a General Indorsement of Claim, no days included in the summer vacation should be reckoned in the computation of time (see section 31 of the High Court Ordinance). Almost all candidates missed this and lost some marks here.

Question 2(c)

This question was straightforward and does not require further elaboration. Candidates are required to explain what are pleadings and their purposes. This question was generally answered very well.

Question 2(d)

The deadlines for the Statement of Claim and the Defence were generally well answered. Candidates were not really familiar with the contents of the Defence. This should contain admissions and traverses and in relation to denials, the reasons for the denials and/or the defendant's version of the events should be pleaded. (See Order 18 rule 13 of the Rules of the High Court).

Question 3(a)

This question is about the procedures for case management. Candidates should have spotted the following errors in the letter (Document A):

- The obligation to file a Timetabling Questionnaire could not be dispensed with. Since pleadings have closed parties should file a Timetabling Questionnaire within 28 days (Order 25 rule 1 of the Rules of the High Court).
- Automatic discovery will take place 14 days after close of pleadings so it is not necessary for Anna to agree to the direction concerning discovery, although generally, parties are free to agree their own time frame for this (Order 14 rule 2 of the Rules of the High Court).
- Although it is correct that the case is straightforward, more steps are required before the case may be set down for trial. After the directions (e.g. discovery and exchange of witness statements) are complied with, the plaintiff would need to apply to set the case down for trial and it is likely that a case management conference and/or a pre-trial review would be held before the case is set down.

As to whether Anna should agree with Hans' solicitors suggestions, it should be noted that parties should try and agree directions and procure an order on the agreed directions by a consent summons. Anna is therefore recommended to discuss the proposed directions with Hans' solicitors and try to agree the directions with them instead of being uncooperative.

Question 3(b)

The question concerns default and application for relief against sanctions under Order 2 rule 5 of the Rules of the High Court. The answers to this question were quite weak overall. Some candidates saw the word "sanction" and wrote about sanctioned offers/payments! In fact, this question was about Order 32 rule 11B and Order 2 rule 5 of the Rules of the High Court.

Question 4(a)

Candidates should have discussed Hans' discovery obligations, focusing on the note – i.e. is it relevant?; is it in Hans' possession, custody or power?; is it privileged?; and does it matter if the note is labelled "confidential"?

Question 4(b)

This question is about the appeal of a final judgment of a High Court judge – this should be under section 14 of the High Court Ordinance. Many candidates were confused about the appeal procedure – on the one hand they state that the appeal is as of right and yet on the other hand, they talk about the procedure to obtain leave to appeal! After discussing the procedure, candidates should talk about the merits of the appeal. First of all, is Anna likely to be successful to appeal against the judge's finding that she is not a credible witness? Many candidates overlooked this part of the question. Secondly, candidates should talk about whether Anna could adduce Document C (the handwritten note by Hans) at the appeal – this is a straightforward application of the principles in Ladd v Marshall and candidates who spotted this generally did well for this part of the question.