

Chief Examiner's comments

Overall, the results from the first written examination of the LSC course were encouraging. There was a good spread of scores demonstrating that the examination papers had a good mix of difficult to relatively easy questions. A close study of the scores showed no cluster of very high or very low scores suggesting too easy or too difficult questions. The questions represented a good mix between knowledge of the course materials and application of that knowledge to scenarios and were spread across the various Learning Outcomes. Most examinees completed all questions suggesting, as said by the Principal Examiner, that the time allotted for the examination was sufficient although in certain cases, a number of questions (but not the last ones) were not attempted at all.

Any results close to the pass mark was scrutinised very carefully against the mark scheme by the Chief Examiner along with the Principal Examiner and marking examiners to see whether any adjustment should be made.

The oral examination was 10 minutes and was focussed on an issue of joint tortfeasance in a patent infringement case study which the candidates had considered at a weekend course. The purpose of the oral examination was to test the candidates' ability to address a court in a persuasive, coherent and structured manner on an issue which was outside their core competency as patent attorneys (in this case, the issue was joint tortfeasance).

All candidates were marked independently by two examiners with the Chief Examiner present for all presentations.

Overall, the submissions were good. Candidates demonstrated a good knowledge of the relevant law and those facts which supported their case.

Principal Examiner's comments on the IPLC1 Written Examination

This paper was aimed at testing the knowledge gained by candidates during the Litigation Skills Course having regard to the Learning Outcomes set out for this course. The questions were designed with a range of difficulty levels with varying distribution of marks. Some of the questions were on topics familiar to patent attorneys from their training such that the initial marks were easily accessible but specific knowledge gained from the Litigation Skills Course, or from experience of litigation, was required for the candidates to achieve all of the available marks.

Overall, the paper appeared to enable good candidates to score well and properly distinguished between those that satisfied the assessment criteria and those that did not. The candidates who did not satisfy the assessment criteria typically failed to gain marks throughout the paper and missed out entire sections thereof. Most candidates obtained between 60-75% of the allocated marks.

The examiners noticed that most candidates managed to attempt all the questions in the given time which indicates that the time available for the exam is sufficient.

Candidates are reminded to read the facts and scenarios in the questions, and in particular any bold or highlighted text, carefully to avoid missing marks or answering a question incorrectly. Candidates should also note that questions asking for advice or for reasons expect some explanation as part of the answer in order to attain all the allocated marks.

Principal Examiner's comments on the questions and answers

Question number	Comments on question
Question 1	This was a simple 2 mark question testing the candidates' awareness of the difference between a witness statement and an affidavit. Most candidates answered well and were able to obtain both the available marks.
Question 2	This 4 mark question about judicial review was clearly outside the day to day practice of most candidates. However, judicial review is covered by the learning material and candidates should pay sufficient attention to this topic. Good answers were expected to identify whether the Comptroller's decision was one which could be subject to judicial review, comment on the scope of and grounds for the judicial review, specify the deadline for judicial review, and set out what action was needed in view of the fact that the deadline had passed. Many candidates did not appreciate that not all decisions of the Comptroller can be judicially reviewed and, hence, could not gain the relevant mark.
Question 3	This was a relatively straightforward question regarding the forum for appealing a final decision from IPEC in a situation where permission to appeal has been refused by IPEC. Most candidates identified that permission to appeal could be sought from the Court of Appeal and were able to gain some marks. However, many candidates did not note that the question specified that the IPEC decision was a <u>final</u> decision and, as a result, wasted time in specifying other possibilities for appeal that may apply to non-final IPEC decisions. Examiner's expected the relevant deadlines to be identified as part of the answer to part b) of the question in order for the candidates to gain all the available marks.
Question 4	This question was aimed at testing the candidates' knowledge of case preparation. 1 mark was available for identifying the three potential defendants and many candidates could not attain this mark as they omitted to identify Gary Grant as a potential defendant. The remaining 3 marks were to be gained by identifying the action that could be taken to identify the means of each of the three defendants, including Companies House accounts and credit rating for the two companies and a credit check for Gary Grant. One or two candidates who suggested filing a pre-action application for disclosure for ascertaining the means of potential defendants did not gain marks for this answer.
Question 5	This question required the candidates to identify the recurring nature of patent infringement and its impact on the limitation period. Most candidates identified the main issues in the question. However, candidates who did not identify the issue of restriction on recovery of damages, or did not note that damages could not be recovered for the earliest known infringing act which was over 6 years ago, did not gain all of the available marks.
Question 6	This question was about the interaction between the requirements of the Pre action PD and the threats provision of the UK Patents Act. Parts a) and b) were generally well answered as expected since the threats

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	provision is very familiar to most patent attorneys. Parts c) and d) were more focussed on the litigation practice aspects and many candidates were not able to answer these parts fully.
Question 7	This question was generally well answered. Marks were available for identifying the issue of possible money laundering, for identifying action that should be taken by the attorney, and for identifying action that should be taken by the firm.
Question 8	This question was well answered by a majority of candidates with many obtaining both the available marks. The 2 marks were available for identifying that Benedict should decline to act as the Commissioner for Oaths because - (i) the deponent is his work colleague, and (ii) the evidence relates to his firm.
Question 9	This question was also well answered with most candidates identifying that Lucy could not administer the Declaration in the absence of exhibits and will also need to carefully check that the Declarant understands the contents of the Declaration in view of his apparent lack of understanding of English.
Question 10	This question was based on a detailed scenario and was aimed at testing the candidates' knowledge of the procedural aspects of preparing litigation related documents as well as their substantive knowledge regarding causes of action. Part a) required the candidates to identify three elements that need to be included in a Particulars of Claim. Part b) required the identification of an additional cause of action and a brief comment on the elements that make out that cause of action. Finally, part c) required the candidates to provide practical advice to the client exhibiting the understanding that filing a claim still leaves open the possibility of the other party filing a counter claim for infringement. Although the question was answered satisfactorily by most candidates, some candidates lost marks in parts b) and c) as they did not provide reasoning or explanation.
Question 11	This question was concerned with considerations during the selection of experts. Therefore, comments regarding the duty of experts once they had been selected did not gain marks.
Question 12	This question regarding ethical duties of a litigator was generally well answered with most candidates identifying the duty to bring <i>Moody v. Davis</i> to the Court's attention. However, some candidates lost marks by not noting that the other side was represented and, therefore, there is no duty to inform the other side in this situation. Candidates who merely dismissed the issue of negligence raised by the client without failing to mention that the issue needed to be considered also did not gain all the available marks.
Question 13	This question was testing an important area of litigation practice and required specific answers for the facts set out in the question. A careful reading of the question would have highlighted that the question is regarding submission and communication with a witness at trial. Some candidates who missed this point and gave more general

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	answers did not gain marks for part a) of the question.
Question 14	1 mark each was allocated to stating legally privileged documents and “without prejudice” documents are two categories of documents which should not be put before the Court in the given situation. Many candidates failed to identify “without prejudice” documents and, therefore, only gained 1 of the available 2 marks.
Question 15	This question was not well answered. It appears that many candidates confused the issue of assessment of costs with cost caps at IPEC. In order to gain the available marks, candidates were expected to identify that both standard and indemnity basis costs assessment allow costs that are reasonably incurred, reasonable in amount and proportionate to the claim. However, in case of costs assessed on standard basis the questionable claims are resolved in favour of the paying party whereas in case of costs assessed indemnity basis the questionable claims are resolved in favour of the receiving party. Therefore, indemnity costs more closely reflect the actual cost of the receiving party.
Question 16	The question was looking for two main points – (i) the fact that there is no property in a witness and, therefore, the risk of the witness being interviewed by the opposing side and divulging sensitive information to them, and (ii) the fact that giving details of strategy or tactics to a witness might lead that witness. The latter point was identified by most candidates but only a few candidates identified the former point (no property in witness). Therefore, many candidates could not attain all the available marks for this question.

Principal Examiner's comments on the IPLC 2 Oral Examination

Although the substance of the submissions was good to very good, there was a tendency of many of the candidates to read too much from their scripts which detracted from a persuasive delivery. Some candidates showed their ability to talk, in parts of their performance, without reference to their notes which resulted in higher marks as it produced a more persuasive performance.

In some cases, there could be have been better use of known advocacy techniques e.g. way marking i.e. ‘I now turn to the relevant legal principles’ and greater modulation of pace, delivery, intonation and volume. Finally, some candidates had a tendency to throw in every point without sufficient weight as to what were their client's best points.

In some cases, the candidates' attire was too casual for a mock court appearance. Whilst no candidate was marked down for their attire, it was felt that adopting formal attire, as would be appropriate for a court, would make it easier for candidates to adopt a formal approach to the delivery of their submission.