

Chief Examiner's comments

The performance of the candidates in the IPLC1 and IPLC2 was encouraging. There were no failures. In the oral examination, all candidates passed although there were a couple of candidates on the pass/fail border. The percentage increase in the mark scheme for persuasive advocacy appears to have succeeded in preventing candidates from reading from their notes although one candidate chose to try and do the whole speech without any notes.

The performance in the written examinations of the candidates was also encouraging. The questions were a mix of easy, medium and difficult, with a good mix of knowledge and scenario-based questions across the curriculum. Results showed a double bell curve with a cluster of high performing candidates and another cluster of candidates performing satisfactorily.

Overall, it is clear from the marks that the LSC course is working well with enthused students who are learning litigation skills.

IPLC1 Written examination

The written examination aims to test knowledge gained by candidates during the Litigation Skills Course having regard to the Learning Outcomes set out for this Course. The questions for this paper were designed with a range of difficulty levels and, overall, the candidates performed well. All the candidates appearing for the examination attained the required pass mark with several candidates achieving over 70% 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. Any questions or parts thereof that had not been answered appeared more due to lack of knowledge of specific issues than a lack of time.

Candidates are reminded to read the facts and, in particular, any bold or highlighted text in the questions carefully. Some questions in the paper clearly indicated what was not required as part of the answer but many candidates appeared to ignore this information thereby missing marks or answering a question incorrectly.

The questions that appeared to pose most difficulty related to costs and ethics and this is elaborated further below.

Questions

Question number	Comments on question
Question 1	This was a simple one mark question testing the candidates' awareness of case analysis and preparation. A majority of candidates were able to obtain the available mark.
Question 2	This four mark question expected the candidate to mention four out of the various options available for financing litigation. Some candidates lost marks because they mentioned Conditional Fee Agreements and 'no win, no fee' agreements as separate options. Mentioning that a patent attorney firm could act ' <i>pro bono</i> ' also did not score a mark since this was not considered to be an option for 'financing' the litigation.
Question 3	This was considered by the examiners to be an easy four mark question but some candidates did not score all the available marks because they included contents of the trial bundle as part of the answer. The question states, in bold, that the documents to be identified were those 'in addition to the trial bundle (which will include statement of cases, witness statements and disclosure).'
Question 4	This three mark question required the candidates to identify the three essential conditions that needed to be satisfied for a previous decided case to constitute binding precedent for the Patents Court and was answered well by most candidates.
Question 5	This three mark question required the candidates to identify the destination of appeals from decisions of the Comptroller General or the multi-track in IPEC. Again, a relatively straightforward question which was answered well by most candidates although the mention of Section 97 in the question appeared to cause issues for one or two candidates.
Question 6	This five mark question relating to costs was one of the least well answered questions in the paper. The examiners appreciate that the level of difficulty for this question may be higher than some of the more straightforward recall questions. However, many candidates also lost marks because they ignored the specific instructions in the question, in bold, that they did not have to explain how costs are assessed. Two marks could be gained by a simple identification of two of the legal principles considered when making a costs order and the remaining three marks could be gained by submissions based on the relevant legal principles and the facts provided in the question. Candidates were required to appreciate that the costs can be ordered off-scale where there has been an abuse of process and that the IPEC cap does apply when costs are ordered off-scale to

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	gain all three marks available for core submissions.
Question 7	This two mark question was testing the candidates' awareness of the Norwich Pharmacal orders and was well answered by a majority of the candidates.
Question 8	This five mark question was considered to be a medium difficulty question by the Examiners requiring the candidates to a) assess suitability of an expert witness based on the information provided in the question, b) appreciate that the expert's duty is to the court and c) know the extent to which instructions to experts can be disclosed during court proceedings. Some candidates did not appear to have noticed the clear indication in the question that, for the given case, an influenza vaccine expert is not likely to be an expert in meningitis vaccines thereby failing to score the mark for part a). Many candidates also lost the available marks for part c) since they did not appreciate the requirements of CPR 35.10 (3) that an expert's report to the court must state the substance of all material instructions.
Question 9	This question was testing the candidates' knowledge as to whether breach of contract can be a cause of action in IPEC and the elements of such cause of action. This question was generally well answered.
Question 10	This three mark question required the candidates to identify and briefly explain three forms of ADRs involving appointment of a third party. Again, most candidates answered well although some did not gain all the available marks because they considered mediation and conciliation as two separate options, or did not appreciate that mediation is not binding unless agreement is reached between parties to the mediation.
Question 11	This five mark question regarding the consequences of a less favourable judgement that a Part 36 offer was not answered well by most candidates. Although many candidates appreciated that there could be unfavourable cost consequences, specific consequences such as details regarding interest that could be awarded and explanation of recovery of costs on indemnity basis was required to achieve a good mark.
Question 12	This five marks question related to the issue of ethics, specifically conflict of interest and the examiners were of the opinion that many candidates had not appreciated the significance of the potential problem faced by the attorney in this question A good answer to this question was required to identify the conflict that arises in terms of the duty not to disclose confidential information (litigation strategy) of a former client while acting in the best interest of the potential new client. Candidates that did

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	not appreciate this specific conflict failed to gain a significant portion of the available marks.
Question 13	This question regarding swearing of oaths was generally well answered. Some of the available marks were lost by candidates not mentioning that they would ensure that Mr. Dhani understands that he is swearing to the truth of what is written in the affidavit, or not specifying the option of swearing the oath in accordance with the Hindu faith.
Question 14	The Examiners were concerned by some of the answers to this question on an issue that is fundamental to the ability to act as an independent practitioner. Most candidates identified an attorney's duty to the court, particularly the duty not to mislead, and that the client should be advised to drop the allegation of fraud and withdraw the affidavit. Many candidates also realised that if the client will not do so then, in view of their duty not to mislead, they will have to withdraw from the case. However, candidates who considered that they are required to disclose the fact that the affidavit was concocted to the court (and some went so far as saying that this should be disclosed to the other side) are treading on dangerous ground. It is not for the attorney to make such disclosures without the authority of the client. The most that the attorney can do is to withdraw from the case if the client does not follow the advice to drop the fraud allegation and withdraw the affidavit.
Question 15	This five mark question relating to judicial review was well answered with a majority of candidates identifying that filing a new PCT application in the given facts was a more sensible option than pursuing judicial review.

IPLC 2 Oral examination – Responses to the oral task

The task sets out to test LO 3 and 7 and candidates need to show they can present a well prepared and persuasive address to IPEC which addresses the facts of the case and the applicable law and uses these two elements in support of the order sought. This requires a preparation of the task and persuasive advocacy.

All candidates passed with a spread of marks from 55% to 90% so that in general terms all candidates successfully addressed the requirements of the task.

A good response was characterised by thorough preparation and a succinct persuasive delivery which addressed the facts of the case, explained the applicable law, deployed the evidence available and then clearly explained how the evidence supported the application by reference to the law. The oral presentation of a good candidate was engaging with

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good variation in pitch and tone. Delivery was well paced and good eye contact maintained and did not rely too much on reference to notes.

Poorer responses fell into two camps, those where preparation was inadequate but the delivery was adequate and well prepared cases with poor delivery.

In the first instance this was characterised by a poor structure, failure to deploy all the relevant evidence and to properly relate that evidence to the law.

In the second case, whilst the structure was present and all the above deficiencies were remedied, the delivery was not engaging, lacked any persuasive element and in places was a simple reading of a prepared script.

The use of notes appears to still be problematic for some candidates. Notes should be used as an aide memoir and can be referred to during the presentation. Bullet points are better than a full script simply because the reading of a script will rob the presentation of those essential elements of engagement and persuasiveness. Candidates should be discouraged however from attempting the task without notes as this is a high risk strategy that can lead to essential elements of the case being missed and a hesitant and unconvincing delivery.

Some candidates were extremely nervous and whilst some nerves are understandable candidates should try and relax more if possible.