

Appendix 1 – General information and rules concerning Order 14 Assessment

OBJECTIVES

The purpose of this advocacy coursework assessment is to assess whether you:

1. Understand the circumstances in which RDC O14 can be used.
2. Are familiar with the steps to initiate and carry through a summary judgment application.
3. Can apply the skills required to make an interlocutory application before a Judge in Chambers in the District Court.

INSTRUCTIONS

You are instructed as counsel to appear before His/Her Honour Judge Denning in Chambers at the District Court of Hong Kong on a date, time and venue to be advised by the SLW.

You will be receiving the hearing bundle for the assessment in due course. You will note that the plaintiff is seeking summary judgment in a summons issued against the defendant. You can assume that all documents have been correctly served and the defendant has returned an acknowledgment of service indicating an intention to contest the proceedings. The defendant opposes the plaintiff's application.

The time at which you will appear for the hearing has been randomly allocated in a schedule which you will receive shortly. You will appear in pairs and should aim to arrive in plenty of time for your allocated time slot. Similarly, you have been randomly allocated a role as either counsel for the plaintiff or counsel for the defendant accordingly. **No switching of the allocated roles is permitted.**

You should go to the General Office 10 minutes before your scheduled hearing where you will be advised which venue your assessment will take place in.

Time limits

The time limits to make your submissions are as follows:

Plaintiff's submissions: 9 minutes

Defendant's submissions: 11 minutes

Plaintiff's reply: 2 minutes

Please structure your submissions accordingly to comply with these time limits. Both counsel may be cut off by the Judge in their submissions if you do not stick to the time limits.

During the hearing, apart from the Judge, there will also be an assessor present. During the **main hearing**, the Judge will ask up **to 2 questions of each counsel**. The **assessor will not ask** any questions.

Your Judge has been instructed to deliver an immediate judgment on the merits of the application. You will be expected to deal with the **question of costs** including certificate for counsel and whether any consequential directions are necessary. For this ancillary part, the judge **may ask** further questions on costs and directions. Prepare accordingly. **This will not form part of the above time limits. Please note that the Judge's ruling will not be based on your performance but will be varied at random.**

You do **not** need to prepare a skeleton argument and **no** extra credit will be given for doing so. However, you may wish to do so to clarify your thoughts and aid the presentation of your submissions. **You are required to hand up any skeleton argument and any other notes upon which you rely to the assessor at the conclusion of this hearing.** Similarly, **no** extra credit is given for the preparation of a chronology of events or dramatis personae although you are advised to prepare a chronology of events in your preparation. **Again you must hand up these and other documents upon which you rely to your assessor at the conclusion of this hearing.**

You may assume that your Judge has read the papers. However as part of court etiquette, you may inquire from your Judge if s/he has had an opportunity of reading your skeleton submissions (even though none are to be handed up).

You can also assume that your Judge is familiar with the relevant authorities on the test to be applied on a summary judgment application. There is no need to hand up to the Judge copies of the well known authorities on Order 14. If, however, you wish to rely on a recent authority not referred to in the White Book or in relation to the subject matter of the assessment, please ensure that you **have clean, unmarked copies** of the authority for the Judge and your opponent. You should pass these up to the bench before beginning your submissions. You should provide your opponent with any such copies as soon as possible before the hearing in order to allow them to adequately prepare.

In order to provide you with the maximum time possible to argue your case, you may also use short citations (e.g. Ng v Hung) rather than the long or full citations during your address. However, you must have the full citation at your disposal in case you are asked to provide it to the bench. It would be advisable as well to refer to any paragraph numbers in that case that bear directly on your submissions here. To assist your preparation, you should compile a list of authorities setting out the citations of cases you will rely upon (both familiar and obscure ones, if relevant). There is no need to hand up the list of authorities for the Judge and/or assessor. There will be no summary assessment of costs.

N.B. You should assume that for the purposes of this assessment all the relevant documents have been properly affirmed/sworn and served.

PREPARATION

In order to assist you in preparing for this exercise, you should:

- (1) Consult the provisions of Order 14 RDC and the applicable passages in the White Book.
- (2) Re-read your Desk Book/materials on civil interlocutory applications and the White Book on summary judgment and review any relevant authorities.
- (3) Once you receive the assessment hearing bundle, review the documentation thoroughly.
- (4) Research the relevant law bearing on the assessment case materials.
- (5) Prepare a chronology of events. This will help you to have the key dates and sequence of events in your mind.
- (6) **Refer closely to the attached Advocacy coursework assessment criteria on Order 14 application** when preparing your submissions.
- (7) **Consider the structure and content of your arguments** in light of the comments made in large groups and small groups over the previous weeks.
- (8) The following questions will assist you with your arguments:
 - (a) **What is/are the key issue(s)** which the Judge has to decide?
 - (b) What is the **applicable test to obtain summary judgment**? Upon which party does the burden of proof lie?
 - (c) **How can I marshal the facts to make my arguments** on the issues and the law more persuasive? Where can I find those facts in the hearing bundle?
 - (d) **What are the weaknesses in my case**? What arguments do I anticipate that my opponent will raise? What questions may the Judge have? How will I respond to those points?
 - (e) **What are the possible outcomes of the application**? What impact do those possible outcomes have on the question of costs? May any consequential directions be required?

DRESS CODE

The acting Judges will be outside practitioners visiting for the morning. It is appropriate that you dress accordingly and wear a suit.

ASSESSMENT CRITERIA

A copy of the assessment criteria and other relevant information on which you will be marked is attached at Appendix 2. Please study and become familiar with the criteria. You will be **graded by a staff assessor who will be present in the room with the Judge.** However, you should **address your submissions to the Judge** and not to the staff assessor.

Your performances will be videotaped and subject to second marking where appropriate. You **do not** need to bring your video tapes with you, tapes will be provided to all Staff Assessors.

Please note that it may be necessary to make minor changes to these rules prior to the assessment.

Appendix 2 – Advocacy coursework assessment criteria – Order 14 application

Marking Sheet

PCLL Examination, Semester A, 2014/2015

Student Name : __

PLE5050 Interlocutory Advocacy and Interviewing

Marker : _____

Date: As PCLL Program Timetable

Courtroom : _____

Criteria	Comments	1 st Marker	2 nd Marker	External Assessor
<p>1. PREPARATION AND SUBSTANTIVE KNOWLEDGE</p> <ul style="list-style-type: none"> • familiarity with, correct treatment/interpretation of relevant facts • correct analysis of issues • correct application/interpretation of procedural and substantive law • conforms with ethical responsibilities • appropriate submissions on costs and consequential directions 				
<p>2. ORGANIZATION</p> <ul style="list-style-type: none"> • logical organization and sequence • organizes and prioritizes facts and arguments/uses block approach • pre-empts and undermines opponent's arguments • uses affidavits and evidence to support arguments • not repetitious/efficient use of time 				
<p>3. USE OF VOICE AND LANGUAGE/DELIVERY</p> <ul style="list-style-type: none"> • volume, clarity and emphasis • appropriate pace • persuasive word choices • appropriate language and degree of formality • sufficient animation 				

<p>4. COURTROOM Demeanour AND ETIQUETTE</p> <ul style="list-style-type: none"> • courtesy / correct mode of address • confidence in pursuing points • made concessions where appropriate/did not make damaging concessions • maintains eye contact/not unduly relying on notes • gestures and mannerisms 				
<p>5. OVERALL EFFECTIVENESS OF ADVOCACY</p> <ul style="list-style-type: none"> • fluent • interesting • persuasive • response to questions • sensitivity to court's positive or negative reception of the developing argument 				
<p>EACH OF THESE FIVE CATEGORIES WILL BE AWARDED A SCORE AS FOLLOWS (although half –marks e.g. 2.5, may also be awarded):</p> <p>0 = Very Poor</p> <p>1 = Not Yet Competent</p> <p>2 = Competent</p> <p>3 = Very Competent</p> <p>4 = Outstanding</p>		<p>TOTAL (Out of 20 marks)</p>		
		<p>FINAL AGREED MARK</p>		