



Examiners' Comments on Candidates' Performances in QE 2008 Paper D

Overall Performance

1. The overall performance for Paper D is not good. The main problems are (1) the misreading of questions (2) not reading the question carefully (3) failure to spot key issues (4) not providing sufficiently complete answers e.g. making references to the Patents Act, but not the PCT.
2. In terms of the weaker candidates it is quite obvious that they were not familiar with these areas of the law, and some came with prepared answers from last year's questions. That was not useful preparations unless the same questions from the previous years appeared again.
3. These candidates should practice more on writing opinion and advice during their internships.
4. Generally, all the candidates attempted all the questions which is the correct approach- with varying degrees of success.
5. The majority of the candidates did not identify the main issues correctly and when issues appear to be identified, did not answer the questions to the point taking into consideration the facts given. A number of candidates did not answer the questions in complete sentences and only answered in point form which is not to be encouraged.
6. There was a pattern of candidates performing poorly on one to two questions, and achieving only a borderline pass on the other questions, thereby resulting in a fail.
7. The candidates were generally not able to answer adequately to secure enough marks to pass.
8. Candidates appear to have spent too much time on some questions (especially Q1) in comparison to the rest. Most had short answers for Q5 probably because they ran out of time by the time they reached it.
9. A reasonable few repeated facts from the Questions in the answers almost as if they were writing a summary. This must have used up valuable time which could have been otherwise applied for gaining points. As it is, no points can be awarded for such summaries. Some summaries were so long that it was an effort sometimes to know when the answers began, especially when combined with the next point.
10. Some candidates answered in point form (almost like bullet points in a slide show) to the extent that it is not possible to determine the actual content of the answers without a live presentation. Candidates have to realize that the answer script is all the examiner has to award points for.

11. Generally candidates do not have the depth of knowledge required to pass the examination.
12. Candidates did not fully appreciate the issues that presented in the questions and should have been raised in their answers. While most were able to state correctly the relevant sections in the Acts and Rules, they fail to answer the question and advise the client accordingly of the most preferred or best course of action to adopt.
13. Most either did not appear to have time to complete the paper, or did not know how to answer the questions.
14. The passing rate for this cohort of candidates was generally poor. Although some of the questions raised quite a number of issues which needed to be discussed in order to score well, for eg Question 1, this was balanced by some other questions which were fairly procedural in nature and ought to have been easy to score, for eg Question 5.
15. Some of the scripts started out promisingly for Question 1, which was one of the more challenging questions. For some reason however, these same candidates faltered in answering Question 5 and lost many marks in that way, ending up with borderline passes overall. It did not appear from the scripts that the candidates were rushing through Question 5 due to time constraint. Could it be that the apparent “ease” of the question had lulled them into a false sense of complacency, thereby resulting in them failing to put in enough effort to answer the question to the fullest extent expected? Candidates should be reminded to devote equal time and effort in answering all the questions as after all, each is given the same weightage.

Individual Questions

16. Generally, Q1 was handled best, although there was a lack of order in the approach to the answer e.g. X, Y and Z were not differentiated. Many failed to pick up the points on assignment and license.
17. Most candidates correctly stated that the assignment must be in writing, but failed to go on to say that there is no requirement for the license to be in writing. Most candidates also missed to raise the issue that Helio would request consent from Stasis in order to import / warehouse / sell through a licensee in the case where the patent was jointly owned.
18. Most candidates assumed that Helio was the exclusive licensee even though Stasis was going to exploit the patent. Some marks were given in cases where the candidate’s assumption and reasoning were logical and consistent.
19. Of particular concern is that candidates generally performed poorly in the procedural questions (Q2, Q4 & Q5)
20. (For Q2) Most candidates assumed that the Singapore application was filed out of time even though the question stated that the application was filed but without a priority claim.

21. (For Q2) Most candidates went on the basis that if priority was successfully claimed, then incorporation by reference was invoked in order to include the missing drawings.

22. Q2 & Q4 appear to challenge the candidates more. It seems that their subject matter [(i) missing priority / parts (ii) PCT practice and interplay with Singapore law] are not as familiar to candidates as prosecution procedure in Singapore. Candidates' knowledge on infringement issues vary over a range, perhaps due to their individual background / experience.

23. (For Q5) While most candidates set out the timelines under the Fast Track prosecution, most did not go on to set out explicitly the timelines under Slow Track prosecution can be extended by 18 months (with the exception of the 13-month deadline) with the filing of the "block extension" at 39 months.