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ILEC Listening May 2006

Transcript

Part One.

Extract One. Questions 1 to 2.

M: So how do you find working in the Competition team?

F: Well you get to play a number of roles there which involve a high level of exposure internally and with clients. First of all, you have to discuss with the client the likely response of competition authorities to a proposed transaction – that can get tricky at times. Then if the client decides to proceed, we liaise with the Corporate department in order to structure the transaction. We also work closely with the client and economists in preparing submissions to competition authorities throughout the world; so a broad spectrum of people is involved in any one deal, which is the aspect that appeals to me actually.

M: Any tips to share with anyone just starting there?

F: If a partner asks you to do some work or a client calls you with a problem, try and think outside of the box. Lateral thinking, which allows you to develop and convey an innovative legal solution, is really appreciated by clients. You're hardly going to come up with something nobody's ever thought of before, but you might see a familiar problem from a new angle.

Extract Two. Questions 3 to 4.

F: Well, Mr Shaw, in answer to your question about pursuing overdue debts, the first thing to ask yourself is – is it really worth it? You want to be sure you have a reasonable chance of recovering the debt, and that it will justify the expense and effort of pursuing it.

M: That's exactly my dilemma, yes.

F: It may be best simply to write off small debts - say, less than £100, although you should consider whether this would create a situation whereby other small debtors were encouraged not to pay.

M: Yes, that's what I was thinking.

F: For larger debts, if the customer is in cashflow difficulties and simply cannot pay, there is no point in demanding immediate payment in full. You may want to try to negotiate part payment and reschedule the debt – confirmed in writing – this can at least help you recover some of the money you are owed, and improves the chances of maintaining a good relationship if the customer's problems are only temporary. A compromise agreement could allow for interest and can also allow you to avoid the effort and expense of taking further action.

Extract Three. Questions 5 to 6.

- M:** Did you hear – we won our Court of Appeal ruling on behalf of Sergio Durazzo.
- F:** Wasn't he the football club manager who was sacked?
- M:** Right. Durazzo took the club to an employment tribunal and won €645,000. The club appealed, claiming it had suffered losses as a result of Durazzo's actions.
- F:** I remember. We represented Durazzo, didn't we? The High Court found he wasn't in breach of his contract, and awarded €3million in damages against the club.
- M:** The club appealed against that judgement, but today the Court of Appeal handed down a unanimous decision dismissing the club's appeal, upholding the judgement.
- F:** Nice result.

Part Two. Questions 7 to 11.

- Organiser:** Well, thank you Mr Edwards for a most interesting and informative talk. Would anyone like to begin the question-and-answer session? Yes.
- Woman 1:** Thank you. Doesn't environmental law attract a lot of rather idealistic young trainees?
- PE:** Of course, law graduates who are concerned about the environment go down this path, but the fact is, it's not on a par with, say, a career working for a pressure group on saving the earth. Because, at the end of the day, the law is all about being dispassionate and the fact is, people could end up working for the very companies that such groups are campaigning against. So my advice would be, go into it for the interest in the environment *and* the interest in business. Yes?
- Man 1:** But what about smaller law firms?
- PE:** Well certainly there are small specialist firms, who while not radical green 'flag-bearers' by any means, do nevertheless fit more closely with a popular image of environmental lawyers - they often work on claims brought by pressure groups and concerned citizens. But claimant work is a niche area, and it is often difficult to get cases off the ground because legal aid is hard to get for those sort of cases, so such firms risk being very considerably out of pocket. Who's next? Yes?
- Woman 2:** You spoke about big businesses. Does their lack of environmental conscience worry you?
- PE:** Well I was saying that my aim is to work with them to achieve sustainable development, so, I really think there's a bit of a myth at work here. Many companies are in fact acutely conscious of their

public image and therefore aren't necessarily looking to their lawyers to advise on how shall I put it the minimum they can get away with. lady at the back there, your question?

Woman 3: What are the issues involved when dealing with the protection of animals?

PE: Well, for example, my firm recently advised a housing association on a protected species, in this case slow-worms, found on land they wanted to develop. Before this could happen, the slow-worms had to be relocated. It is a legal offence to intentionally kill or injure a slow-worm in this country. If you don't know of the slow-worm's presence until after you have killed it, then no offence is committed. But if you became aware of the presence of a protected species part way through the development, you would be required to stop until measures were taken to protect them. Of course we've had lots of cases just as unusual and each one has been a real learning curve for me. One last question?

Woman 4: What aspect of your job provides you with greatest satisfaction?

PE: It's great fun. You deal with everything from highly intellectual matters to the practical aspects of an oil spill – so you need to be on top of the technical details. I'm very grateful for my scientific background in this respect. Then there's the international nature of the practice. There's a constant stream of proposals for legislation from the European Commission. But above all, it's just the fact that it's a lot more 'real' and relevant than many other areas. You're dealing with land, water and air – so it's simply more tangible.

Part Three. Questions 12 to 20.

Just before we begin the meeting, I want to mention the International Law Conference in Stockholm. I've had the final confirmation of the programme, so I'll run through it briefly, picking out the sessions that I think will be of most interest to our firm. The conference opens on Wednesday the 29th of September, and the Law Firm Committee has, as usual, organised a breakfast meeting. This is intended for Managing Partners of firms who are attending the conference, and will be a good opportunity for informal discussions.

All the morning sessions begin at 9.30, and one seminar which is of particular relevance to us focuses on trust litigation from the beneficiaries' perspective and discusses issues of taxation and the implications of recent damages claims.

The proposed growth of the European Union is of vital interest, and there is a discussion group on the topical issues of environment and health and safety law in member states. The name of the session is The Implementation and Enforcement of EU Environmental Law, and I hope there will be a representative from our office to put forward our views on this important subject.

Still on the subject of the environment, the last session before the break is about good governance in this context, and on the particularly conflictual area of water rights. I'm keen for our firm to involve itself in this sensitive topic.

We have the opportunity to join the Legal Practice Division for lunch, then the afternoon programme begins at 2pm. There is a presentation about alternatives to bank borrowing – always interesting – but what is of great relevance to us is the area of international sales, and there is a useful-looking seminar on the termination of agency agreements and franchise distribution.

We are taking on an increasing number of cases connected to copyright and entertainment law, and one of our partners will be reading a paper at a session on the subject of privacy rights and image rights. That's one not to be missed.

Some members of the firm are interested in patent law and keen to take on more work in this area, and there is a presentation on patent cases that make use of an expert witness. I agree that this is an increasingly important sector, and our firm should keep up to date with all new developments.

Finally, back to the mainstream business law sector, which of course brings in the bulk of our revenue. A forum has been organised with the name Corporate Law. As many of us as possible should attend that for at least part of the afternoon.

So, as you see, there's a full programme. I suggest

Part Four. Questions 21 to 30.

Speaker One

Eighty-eight percent of respondents to the survey said they're upbeat about their firm's prospects for next year, while 12 percent said they're uncertain. So the mood seems largely positive, and in line with this, seventy-three percent predicted that profits per partner would increase by over 5 percent. And, like last year, litigation was the practice area that most respondents thought would grow fastest: Forty-nine percent said that litigation would bring in their largest expansion in turnover, and 56 percent predicted their biggest growth in client head count would be there. Corporate work placed second, both in profit – 33 percent – and head count – 27 percent.

Speaker Two

Times have been tough, but it's clear to me that law firms currently feel confident to assert an aggressive pricing policy with their clients. Hourly rates will certainly increase: 44 percent of firms have planned hikes of more than 5 percent; 45 percent have planned hikes of 5 percent or less. Indeed the vast majority say they intend to raise rates this year – most at a pace that again exceeds inflation. And why not? For years firms have found it necessary to hire expensive non-legal employees, but have successfully passed along these and other increased costs to clients. And in my opinion that fact, more than any other, explains their remarkable success during a period when the economy has been struggling.

Speaker Three

Recently there's been increased discussion of client discontent, but there's little evidence of real revolt. For instance, 43 percent of our respondents reported no change in conduct regarding collections last year – that is, bills

were paid. However, I found that a greater number – roughly two-thirds of respondents – said there was greater demand for discounts this year. Clearly there's bad feeling – but people are talking more than walking, a fact which surprised me when it turned out that 52 percent of CEOs in the survey reported that over the last year they'd met with representatives of five or fewer of their firm's top 20 accounts to discuss the firm's performance.

Speaker Four

According to the survey there's some evidence of client dissatisfaction, but unfortunately, given the culture in some firms, it's not necessarily the CEO who would be the first to know about this. It's still the case in many law firms that partners jealously keep information regarding clients to themselves; and compensation systems do nothing to reward the sharing of data. Both those outdated customs fly in the face of all the elaborate and expensive efforts that firms have made to become more corporate, more businesslike. For me, firms can't have it both ways. A CEO who needs permission from a partner to visit a major client may be many things, but a business leader isn't one of them.

Speaker Five

After revenue issues, most of our respondents talked about corporate expansion. About two-thirds of them said they plan to open a new office or greatly expand an existing one. Twenty-six percent – about the same proportion as last year – reported that they're seeking a merger partner. But there are numerous traps, as evidenced by the number of firms that have failed or lost their independence. We asked the leaders to state their biggest challenge. The list was familiar but no less overwhelming: manage growth, integrate suppliers, expand key practice areas, anticipate client needs, find new business that can pay their rates and go for aggressive growth while vigorously maintaining corporate culture.

Answer Keys

Reading

Part 1

- 1 D
- 2 C
- 3 C
- 4 D
- 5 A
- 6 B
- 7 B
- 8 D
- 9 C
- 10 B
- 11 D
- 12 A

Part 2

- 13 TO
- 14 AS
- 15 IN
- 16 WHEN/WHERE
- 17 ON
- 18 WHAT
- 19 LET
- 20 OUT
- 21 NOT
- 22 RATHER
- 23 BEING
- 24 EVERY/EACH

Part 3

- 25 EXCLUSIONS
- 26 REGARDLESS
- 27 OBLIGATION(S)
- 28 FAILURE
- 29 CATEGORISED/CATEGORIZED
- 30 RESPONSE
- 31 PREFERENCE
- 32 HAZARDOUS
- 33 SPECIFICATIONS
- 34 RESTRICTIVE
- 35 REQUIREMENT
- 36 EXCEPTIONS

Part 4

- 37 C
- 38 B
- 39 D
- 40 A
- 41 B
- 42 C

Part 5

- 43 B
- 44 G
- 45 D
- 46 F
- 47 A
- 48 E

Part 6

- 49 D
- 50 C
- 51 B
- 52 C
- 53 A
- 54 D

In Parts 1, 2 and 3 one mark is given for each item answered correctly. In Parts 4, 5 and 6 two marks are given for each item answered correctly. The total score is then adjusted to give a score out of 50.

Listening

Part 1

- 1 A
- 2 B
- 3 B
- 4 A
- 5 A
- 6 C

Part 2

- 7 C
- 8 B
- 9 A
- 10 C
- 11 A

Part 3

- 12 MANAGING PARTNER(S)
- 13 TAX(ATION)
- 14 ENFORCEMENT
- 15 WATER (RIGHT)/WATER (RIGHTS)
- 16 LUNCH
- 17 AGENCY
- 18 PRIVACY (RIGHTS)
- 19 EXPERT WITNESS(ES)
- 20 CORPORATE

Part 4

- 21 C
- 22 E
- 23 D
- 24 A
- 25 F
- 26 D
- 27 C
- 28 F
- 29 B
- 30 A

One mark is given for each item answered correctly. The total score is then adjusted to give a score out of 50.

ASSESSMENT OF WRITING

Trained examiners award a mark to each piece of writing using two mark schemes – the General Mark Scheme and the Task-specific Mark Scheme. The General Mark Scheme summarises performance with reference to **content, organisation and cohesion, range and accuracy of vocabulary, range and accuracy of grammatical structures** and **effect on the target reader** across six bands. The Task-specific Mark Scheme focuses on criteria specific to each task.

The band scores awarded are translated to a mark out of 20 for Part 1 and a mark out of 30 for Part 2. A total of 50 marks is available for Writing.

The General Mark Scheme is interpreted at Council of Europe Levels B2 and C1.

A summary of the General Mark Scheme is reproduced below. Examiners work with a more detailed version, which is subject to regular updating.

Band 5 and 6 represent adequate and good performance at C1 while bands 3 and 4 represent adequate and good performance at B2. Band 2 and below represent an inadequate performance on the ILEC Test of Writing.

Band	ILEC General Mark Scheme
6	The task set is fully realised and the ideas are relevant and well developed. Ideas are logically organised and a wide range of vocabulary and complex structures is used effectively. Register is consistently appropriate. There would be a very positive effect on the target reader.
5	There is good realisation of the task set and the main ideas are relevant and developed. Ideas are logically organised and a good range of vocabulary and structures is used accurately. Register is, on the whole, appropriate. There would be a positive effect on target reader.
4	There is reasonable realisation of the task set and the main ideas are relevant with some development. Ideas are generally logically organised and a reasonable range of vocabulary is used. There may, however, be some non-impeding errors in spelling and/or word formation. Register is reasonably appropriate. Simple and complex structures are used but flexibility may be limited. It would achieve the desired effect on target reader.
3	There is an adequate realisation of the task set and the main ideas are relevant but some may lack clarity. Ideas are generally logically organised and an adequate range of vocabulary is used but word choice may lack precision in places. There is an adequate range of structures used although errors in grammar occur and may cause difficulty for the reader. Register may be inconsistent / inappropriate. It would, on the whole, achieve the desired effect on the target reader.
2	The task is not adequately addressed and, while there is evidence of organisation, it is not wholly logical. The range of vocabulary is limited but minimally adequate for task. The range of structures is limited and at times repetitive. Register is often inconsistent / inappropriate. There would be a negative effect on the target reader.
1	The attempt at the task is poor and ideas are not organised coherently. The range of vocabulary is inadequate for or unrelated to the task and the range of structures is very limited. Register is inappropriate for task. There would be a very negative effect on the target reader.
0	The attempt achieves nothing and there is too little language for assessment or it is totally irrelevant or totally illegible.

Writing Sample Scripts

Part 1

Script A

Dear Mr Anderson,

I am writing further to your letter dated April 20, 2006. in order to clarify several points.

When you requested my legal opinion regarding your legal position at our meeting, I put the emphasis on the need to get facts clear, which I think, remains undone.

As a matter of fact, it would be necessary to launch an investigation so as to know whether your counterpart could seriously put the blame on 'ground defects on site' or not.

As opposed to your statement, I am not sure that you would have a strong chance of winning the case, if you file a suit against Wells Construction.

If you want to sue for damages based on an alleged misconduct or breach of contract, it implies being able to prove the allegation.

I will be hard, and almost impossible, to give any evidence related to lost time and delay.

For all these reasons I would recommend you to try to reach an out-of-court settlement, in order to avoid prohibitive costs. that legal proceedings incur.

Do not hesitate to ask me any other question.

I look forward to hearing from you.

Yours sincerely

Script A

This is a full realisation of the task. All the content points are included and developed appropriately. The letter is well organised and the register is consistently formal. There is a wide range of expression including some legal expressions and good control of collocation. There are a few inaccuracies but these do not impede on communication.

Band 6

Script B

Dear Mr Anderson

Thank you for your letter.

Concerning the conflict between Wells Construction and Wootton Manufacturing I need to inform you that in my opinion we did not yet reach any conclusions as some facts are still unclear.

In order to decide whether we have a strong case or not said ground defects on site would need further investigation. However, a chance that you will be able to recover damages exists.

Concerning your proposal to claim for lost time and delay I regret to inform you that in my experience it is very difficult to find the required evidence.

My recommendation is a settlement instead of court action against Wells Construction as in fact we do not have a strong case and some investigation still would have to be done.

Yours sincerely

Script B

This is a good realisation of the task. All the content points are covered in a concise way and the information is logically organised using a good range of cohesive devices. There is a good range of complex sentence structures and generally good control of language.

Band 5

Script C

Dear M. Anderson

I was astonished, when I read your last letter. We clearly had a problem of communication, I apologise if my speech was confused but we did not reach conclusions yet, facts were unclear.

In the Wells Construction case, it seems clear that we have to order further investigation on the site - to be able to have a chance to recover damage which is still unsure.

About the possible claim for lost of time and delay, I have to warn you that it is hard to prove.

You hope to move ahead with the court action but I still recommend a settlement.

It will be clearly cheaper and it reduce the risk of failure. Moreover it will be a huge gain of time for you to settle. But the decision is up to you and your team.

Yours sincerely

Script C

This is an adequate realisation of the task. All the content points are included, though not always developed, and the letter is well organised. The language is generally accurate although the writer relies quite heavily on language from the input text.

Band 3

Part 2

Script D

Legal Memorandum

Our client, a major watch manufacturer in Geneva, believes that his company's trademark and design right are infringed by a Honkong company which produces similar watches and sells them under a similar logo. However, the question whether such infringements could be proved in a court action seems to me to be quite unclear. In fact, there are several precedents which lead in an other direction (... references). It is not sure at all that the products of the Honkong firm are similar enough to infringe our clients intellectual property rights.

In this situation, a settlement could be an appropriate solution. It would allow to avoid a court action with an uncertain outcome. Furthermore, a settlement would be a much less costly way to solve the problem.

However, a settlement with the Honkong company could encourage other companies to produce watches which are likely to infringe our clients intellectual property rights. It should, therefore, be our strategy to avoid any negotiation with producers of replica watches.

I suggest to invite the Honkong company to stop the production of the replica watches similar to our clients products immediately in order to avoid the proceedings we otherwise will be forced to commence.

Script D

This is a very confident answer which develops the content points well. A wide range of expression is used, including legal terms, and a consistently formal style is employed. The answer is well organised and uses appropriate cohesive devices. There are occasional errors in grammar but these do not impede communication.

Band 6

Script E

Internal correspondence Best lawyer Co.

From: Ralph Schmitt

To: Tom Smith

Dear Mr Smith, here is some suggestions concerning the Real Computer case.

According to the information you sent me, the logos of our clients Real Computer Co has been obviously used by the Best Computer company. This kind of practices aims at bringing confusion to consumers, so we have to take quick measures.

Firstly, I would suggest to try to find a settlement with Best Computer Co. It would prevent unnecessary procedures costs and can be very fast if we threat to bring a claim. A claim would have a bad impact on the eyes of Best Computer's clients so they will accept to change their logo easily.

Nevertheless, I would insist on the necessity to act as soon as possible in finding a settlement. If the agreement take too long, our client will lose a lot of his clients because of the confusions in the logos. It would be I think not so easy to get damages with a settlement procedure, we have to speak about it with our client.

Regarding to these facts, I will personally recommend to take a legal action as soon as possible. An agreement will take much longer time than an injunction procedure. An injunction would prevent Best Computer to use

the logo within two days. Moreover, it is possible to obtain damages and to have a publication in an official newspaper. My opinion is that a legal action would be much more convenient for our client, he will get damages for his losses and his concurrent will have a disfavorable advertisement.

Thank you for taking my opinion into account.

Best regards
Ralph

Script E

This is a reasonable answer to the task set. The content points are covered with some development. The answer is well organised with a range of cohesive expressions, not always used successfully, however. There is a reasonable attempt to use legal expressions though some lack precision. Complex sentences are used; there are some errors but these are non-impeding.

Band 4

Script F

Dear partner,

I wrote this memorandum in order to give you some advices about the problem of our client Apple. You have to know that there are several ways for infringing intelluctual property rights especially in the area of technology. For example, it is possible that the other party (M) succeeded to enter in the computer system of Apple. It is also possible that a person working for our client gives M some important informations.

As you see, there are different possibilities to infringe intellectual property rights.

Now, I want to talk to you about the settlement proposition made by M.

As regards the financial side, this is a good idea because you avoid to loose a lot of monney in a trial. Besides, if it is the other party which wants a settlement, it means that M knows it is in a bad position.

However, a settlement has its own disadvantages. For example, M is not obliged to respect what was decided during the settlement. Besides, it is difficult to impose what we wont to the other party.

Finally, I think we have to accept the settlement proposition and, if it is not sufficient, we could take a legal action against M if we have sufficient proves. But, we have to be carefull to not be outside the legal delay for taking this legal action.

I hope I have helped you with these advices and I will tell you if there are any evolutions in this case.

Yours sincerely

Script F

This is an adequate realisation of the task although the first paragraph is awkwardly expressed and there is generally limited use of legal expressions. The remaining content points are dealt with satisfactorily and a range of cohesive devices is used. There are a number of quite basic errors which do not, however, impede communication.

Band 3

ASSESSMENT OF SPEAKING

Throughout the test candidates are assessed on their own individual performance and not in relation to each other. The assessor awards marks according to four analytical criteria:

- Grammar and Vocabulary
- Discourse Management
- Pronunciation
- Interactive Communication.

The interlocutor awards a Global Achievement mark, which is based on the analytical scales.

These criteria are interpreted within the overall context of the Cambridge Common Scale for Speaking, where ILEC spans Levels B2 and C1.

■ Grammar and Vocabulary

This refers to the accurate and appropriate use of grammatical forms and vocabulary. It also includes the range of both grammatical forms and vocabulary. Performance is viewed in terms of the overall effectiveness of the language used.

RANGE: the active use of a range of grammatical forms and vocabulary.

ACCURACY: the accurate use of grammatical forms and syntax.

APPROPRIACY: the appropriate use of vocabulary to deal with the tasks.

■ Discourse Management

This refers to the candidate's ability to link utterances together to form coherent monologue and contributions to dialogue. The utterances should be relevant to the tasks and to preceding utterances in the discourse. The discourse produced should be at a level of complexity appropriate to B2/C1 level and the utterances should be arranged logically to develop the themes or arguments required by the tasks. The extent of the contributions should be appropriate, i.e. long or short as required at a particular point in the dynamic development of the discourse in order to achieve the task.

COHERENCE: the logical arrangement of utterances to form spoken discourse and to develop arguments or themes.

EXTENT: the appropriate length of individual contributions (long or short) to develop the discourse and deal with the tasks.

RELEVANCE: the relevance of contributions to the tasks and to preceding contributions in the discourse.

■ Pronunciation

This refers to the candidate's ability to produce comprehensible utterances to fulfil the task requirements. This includes stress, rhythm and intonation, as well as individual sounds. Examiners put themselves in the position of the person who is not a language teaching specialist and assess the overall impact of the pronunciation and the degree of effort required to understand the candidate.

STRESS AND RHYTHM: the appropriate use of strong and weak syllables in words and connected speech, the linking of words, and the effective highlighting of information-bearing words in utterances.

INTONATION: the use of a sufficiently wide pitch range and the appropriate use of intonation to convey intended meanings.

INDIVIDUAL SOUNDS: the effective articulation of individual sounds to facilitate understanding.

Different varieties of English, e.g. British, North American, Australian, etc., are acceptable, provided they are used consistently throughout the test.

■ Interactive Communication

This refers to the candidate's ability to take an active part in the development of the discourse, showing sensitivity to turn-taking and without undue hesitation. It requires the ability to participate in the range of interactive situations in the test and to develop discussions on a range of topics by initiating and responding appropriately. It also refers to the deployment of strategies to maintain and repair interaction at an appropriate level throughout the test so that the tasks can be fulfilled.

INITIATING AND RESPONDING: the ability to participate in a range of situations and to develop the interaction by initiating and responding appropriately.

HESITATION: the ability to participate in the development of the interaction without undue hesitation.

TURN-TAKING: the sensitivity to listen, speak, and allow others to speak, as appropriate.

■ **Global Achievement Scale**

This scale refers to the candidate's overall effectiveness in dealing with the tasks in the four separate parts of the ILEC Test of Speaking. The global mark is an independent, impression mark which reflects the assessment of the candidate's performance from the interlocutor's perspective.

Typical minimum adequate performance

Develops the interaction with contributions which are mostly coherent and extended when dealing with the tasks. Grammar is mostly accurate and vocabulary appropriate. Utterances are understood with little strain on the listener.

Assessment is based on performance in the whole test, and is not related to performance in particular parts of the test.