

**FC2 – English Law
Question Paper – Sample Assessment Material**

SECTION A

Question 1

Briefly describe and give one example of each of the following different forms of evidence:

a) Direct Evidence; **2 marks**

b) Real Evidence; **2 marks**

c) Documentary Evidence. **2 marks**

Total: 6 marks

Question 2

State four sources of law relevant to intellectual property.

4 marks

Question 3

The *Civil Procedure Rules* impose an overriding objective on the court and court user to deal with cases justly. List the obligations imposed by this overriding objective.

10 marks

Question 4

a) What is the principle by which an employer may be held liable for negligent acts of an employee? **1 mark**

b) State the essential test that should be applied. **1 mark**

Total: 2 marks

Question 5

With reference to the *IPREG Code of Conduct* explain who is a regulated person's 'client':

a) for domestic purposes; **1 mark**

b) in the case of foreign originating work. **1 mark**

Total: 2 marks

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Question 6

- a) Name three different types of Alternative Dispute Resolution ('ADR'). **3 marks**
- b) For each type of ADR you have named explain whether the outcome is binding. **3 marks**

Total: 6 marks

Question 7

- a) According to Section 30 ('*Nature of, and transactions in, patents and applications for patents*') *UK Patents Act 1977*, what is the nature of the property right when a patent is held by two people together in the absence of agreement to the contrary? **2 marks**
- b) Explain whether it makes a difference to the nature of this property right if the patent is being held by three or more people. **1 mark**

Total: 3 marks

Question 8

With reference to the *IPREG Code of Conduct* state the four situations in which a regulated person may communicate directly with another party who has retained a registered person. **4 marks**

Question 9

Tracey comes to you asking you to advise her and act for her. She has been convicted of selling counterfeit Nike shoes under the *Copyright Designs and Patents Act 1988*. She must attend a court hearing to decide on what fine to impose.

- a) **When considering whether to advise and act for Tracey what does the *IPREG Code of Conduct* say a regulated professional should consider in this situation?** **2 marks**
- b) **If you do decide to take Tracey on as a client, what must you send to Tracey at the outset of the relationship?** **1 mark**

Total: 3 marks

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SECTION B

Question 10

Akram is currently bringing a claim for patent infringement in the Intellectual Property Enterprise Court ('IPEC') against Flora. Flora and Akram have a meeting to try to settle the claim. They discuss Flora paying Akram £50,000 to settle the claim but nothing is concluded. A week later they meet unexpectedly at a wedding.

Initially they engage in polite general conversation only. Then Flora buys Akram an orange juice, hands it to Akram and offers a settlement saying "OK, I'll give you the £50,000." Akram says nothing but smiles and carries on talking.

The next day Flora tells the court that the parties have settled. Akram disputes this.

Prepare notes for a meeting with Flora in which you:

- a) **analyse whether a settlement agreement might exist including identifying any problems for Flora;**

9 marks
- b) **explain what standard of proof is required to prove that a settlement agreement exists; and**

1 mark
- c) **describe in what form the evidence alleging the existence of the settlement agreement would be put before the court. Include reference to any formalities and what happens if Flora cannot attend court.**

4 marks

Before the court has taken a decision on the alleged settlement Flora sends Akram a letter headed 'this letter is intended to have the consequences set out in CPR Part 36' offering £100,000 in damages ('Part 36 letter'). At trial, Akram succeeds in his claim and the court awards him £50,000 in damages.

Prepare notes for another meeting with Flora in which you:

- d) **explain what information the letter should have contained if it really was going to have the consequences of *CPR* Rule 36; and**

4 marks
- e) **explain the consequences of Akram being awarded £50,000 in damages, assuming Akram did not accept the Part 36 letter.**

2 marks

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Question 11

William owns a patent covering a water pump. Maria wants to manufacture the same pump at her factory. During negotiations for a licence to manufacture, Maria tells William that she only has capacity to manufacture 100,000 pumps. William grants Maria a licence to manufacture 100,000 pumps.

Two hours ago, William discovered that Maria has manufactured 200,000 pumps and is continuing to manufacture them. Maria denies that William's patent covers the water pump. William needs to stop Maria manufacturing the pump urgently and approaches you for advice.

Write notes for a meeting with William to explain:

- a) **what kind of court order William can seek to make Maria stop production, pending trial;** **2 marks**

- b) **whether he is likely to be successful in obtaining such an order with reference to the principles that the court will consider; and** **9 marks**

- c) **what undertakings William is likely to have to give to the court.** **3 marks**

Before the contract was signed, Maria told William that the factory had all the necessary skilled staff to manufacture that pump. The pumps that are produced contain a faulty widget. It turns out that there was no skilled widget worker working at the factory. William claims that Maria lied about there being the necessary skilled staff working at the factory. Maria responds saying that her factory manager told Maria the factory had all of the necessary staff. William brings a claim to court against Maria for misrepresentation.

- d) **For each of the following, explain in a memo to William the difference between William's allegation and Maria's response for misrepresentation:**
 - i) **the nature of the misrepresentation;**
 - ii) **remedies available for the misrepresentation; and**
 - iii) **the standard of proof required to prove the claim for misrepresentation.** **6 marks**

Total: 20 marks

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Question 12

Frank has designed a new kind of low-powered fan for laptops. He needs investment for a patent application, to manufacture the fan and to employ people to sell the fan. He is currently a sole trader. Rosemary is interested in lending Frank money, but is concerned about getting security for her money.

Make notes to advise Frank:

- a) **about the advantages and disadvantages between trading as a sole trader or a limited company; and**

3 marks

- b) **how Rosemary can obtain security over Frank's stock and his expected patent. In doing so, describe the nature of the securities and discuss which is most appropriate for which type of asset.**

6 marks

Frank has decided to register a limited company using the name FanTop Ltd. A successful sole trader, Ayesha, making desktop fans and trading for many years as FanTap, has filed an objection at the Company Names Tribunal against the use of Frank's choice of name. Frank was not aware of Ayesha's business before registering his company.

In your notes to Frank:

- c) **advise Frank what Ayesha has to show and any problems Frank will face to succeed in his case.**

6 marks

Ayesha sues Frank for passing off. In the agreement settling the dispute, the parties agree that Ayesha will not bring any passing off proceedings against Rosemary. As soon as the agreement is signed, Ayesha sues Rosemary for passing off.

Make notes to Frank to explain:

- d) **whether Rosemary can rely on the contract between Ayesha and Frank to defend the claim.**

5 marks

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Question 13

Flavian, a patent attorney, works for a patent agency firm called Pargitt Patents, which describes itself as ‘a limited partnership’. Flavian is described as a ‘limited partner’ after he put in £10,000 to launch the firm. The firm only acts for small businesses and individual clients. Client care letters must be sent before work commences.

To earn a bit of extra money, Flavian does the occasional small piece of work without telling the firm. Last year he agreed to help a large pharmaceutical company, Patrick Intelligence Library Ltd (‘Pill’), to validate a European patent on a new drug (hoping to get them as a client to take to another firm). He didn’t set Pill up on the firm’s internal records system or send them a client care letter, and he communicated with them via his personal email address.

He put details of the patent into his home computer (he did do some work from home) but put the deadlines in incorrectly. All deadlines including any appeal deadlines have now passed and Pill’s drug is now not protected. Pill has lost £20 million in profits as a direct result. Further losses include:

- £10 million lost because a licencing arrangement with another company fell through, though that could have been because Pill’s Managing Director was so angry that he punched the MD of the other company;
- £5 million lost because a senior researcher got fed up due to not being funded to continue research on the drug, left and joined a rival so that another project foundered.

a) Explain Flavian’s role in the ‘limited partnership’.

4 marks

b) Setting out the requirements to establish actionable negligence, explain whether Flavian is liable for these losses.

10 marks

c) Discuss briefly whether the firm Pargitt Patents may or may not be liable for Flavian’s negligence.

3 marks

Later that year, during a documentary about insolvent patent attorneys, Flavian mentions in passing that Pill’s drug didn’t work anyway. It turned out that the drug did work but Flavian hadn’t tried to look at all the evidence. Pill suffers damage. In an action for malicious falsehood, Flavian claims that he honestly believed that the drug didn’t work.

d) Assess whether Flavian’s statement was made with malice for the purposes of an actionable malicious falsehood.

3 marks

Total: 20 marks