

The Joint Examination Board
Basic English Law Paper : November 2005

Examiner's Comments

General Comments

The purpose of this paper is to test a Candidate's understanding and application of English law. It is not sufficient for Candidates to regurgitate lecture notes of an entire legal subject when the question is directed to a specific element of that subject. Candidates that scored higher marks were able to demonstrate an understanding of English law by applying their knowledge to the questions.

Part A

1. **Identify the documentation and minimum requirements necessary for the formation of a limited liability company under English law and for each describe their function or purpose.**

(10 Marks)

Answer

- Candidates needed to identify and discuss the purpose of Form 10, Form 12, Articles and Memorandum of Association and documentation relevant to the shares of the company.
- Minimum requirements of a company include the presence of directors, a secretary, share capital and shareholders, registered offices and auditors and the applicable fees.

Comments

Most candidates attempting this question were able to achieve at least half marks by providing a list of forms and documentation. A number of candidates however, failed to identify the personnel essential to the incorporation and operation of a company or were unable to describe the function or purpose of the various document requirements.

2. **Describe the hierarchy and structure of the English civil court system together with an explanation of the routes and rights of appeal**

(10 Marks)

Answer

- The various civil courts include Magistrates Court, County Court, High Court and its divisions, Court of Appeal (Civil Division) and the House of Lords.
- Appeal routes are generally in order of court list above but with certain exceptions including the unusual direct appeal from the High Court to the House of Lords.
- All appeals require permission of either the lower or appeal Court.

Comments

This question was popular with candidates. Most candidates knew the basic hierarchy and structure of the English Civil Court system and the routes of appeal. Candidates continue to include the Patent Office in their discussion but it is not part of the English Civil Court system.

Certain candidates showed confusion over the routes and only a few candidates were able to provide concise or clear answers on the rules which govern when and how appeals may be made.

3. Write a file note for your client identifying the relevant advantages and disadvantages respectively of running a business as:

- a. **A sole trader;**
- b. **A partnership formed under the Partnership Act 1895; and**
- c. **A company formed under the Companies Act 1985.**

(10 Marks)

Answer

- Sole Traders – the greatest disadvantage for the sole trader is the risk of unlimited liability. However advantages include the ability to run the business privately, personally and with limited formalities.
- Partnerships – disadvantages of a partnership include the risk of unlimited liability and joint and several liability for each partner. Advantages include the ability to share risk and assets.
- Limited Company – disadvantages include the publication of the company's activities and financial accounts and the more onerous formalities. Advantages include limited liability and easier contract formation.
- Candidates are also expected to identify a number of other advantages and disadvantages in respect of each entity.

Comments

This was a popular question attempted by most candidates and generally answered well. Most candidates were able to identify the principal advantages and disadvantages of each entity, namely related to liability and privacy, as identified in the answer above. This question served to separate those candidates who have read around the subject in more detail than others. Those who had read around in more detail were able to identify more discrete advantages and disadvantages including the different implications for contractual formation between companies, partnerships and sole traders.

Candidates are frequently reminded to read the question but this basic rule was not followed by a number of candidates who made reference to a Limited Liability Partnership which was irrelevant to part b of this question.

4. Explain, with examples, what is meant by “Privity of Contract” and what exceptions, if any, exist under the Contracts (Rights of Third Parties) Act 1999 and their effect.

(10 Marks)

Answer

- Fundamentally, no one may be entitled to or bound by the terms of a contract if that person is not a party to the contract.
- A person not a party to a contract may derive benefit from the contract but it cannot enforce that obligation giving rise to the benefit.
- The Contracts (Rights of Third Parties) Act enables a non-party with a benefit under certain contracts to enforce certain provisions of the contract in certain circumstances. In order to apply the contract must provide for the third party having the right to enforce it or it be confirmed that the right exists if not express. Exempt contracts include a bill of exchange or promissory note.

Comments

This was an unpopular question and was generally poorly answered. It is evident that candidates are placing too much reliance on regurgitating basic contract law provisions rather than reading around the subject in more detail in order to better understand the subject.

The question required candidates to explain what is meant by privity. This required more than a single sentence and those candidates who scored well did so by using examples to demonstrate and reinforce their explanation. Most candidates were able to provide the fundamental principle as identified above but did not go on to explain the more intricate principles behind the doctrine.

Most candidates were able to identify the basic effect of the Contracts (Rights of Third Parties) Act but few candidates were able to expand upon the exemption and how it applies to only certain contracts and circumstances.

5. Identify each of the sources of English law and provide a concise explanation of three of the sources.

(10 Marks)

Answer

- Statute : Parliamentary process, sovereignty, courts may only interpret, repeal only by parliament.
- Delegated Legislation : Approved by minister/elected person in accordance with statute. Limited in scope as derogated by statute, interpreted by Courts who may declare it ultra vires.
- EC Directives : European commission, approved by EU parliament and require implementation in UK legislation. Direct effect if not implemented.
- EC Regulation : European council, Direct effect
- Case Law/Precedent : Ratio/Obiter, Hierarchy of court systems, rules of precedent.
- Custom : Time immemorial

Comments

This question was answered by almost every candidate. Most candidates were able to identify the sources of English law. The question required a description of only three of the sources. Those candidates who provided descriptions of more than 3 sources wasted valuable time since marks were only available for three descriptions. Most candidates were able to provide basic information about each source but to achieve higher marks a more detailed explanation of each was required as to its formation, effect and ranking.

Part B

1. a) In general terms, what is a Part 36 Offer according to the Civil Procedure Rules and what is its purpose?

(2 Marks)

b) Explain the effect of a Part 36 Offer on both the Defendant and Claimant where the Part 36 Offer made by a Defendant is rejected and (i) beaten or (ii) not beaten at trial.

(8 Marks)

c) What formal requirements are necessary to make a Part 36 Offer?

(5 Marks)

Answer

- It is an offer to settle a dispute. It is designed to promote settlement with potentially adverse cost consequences.
- Where the offer is beaten then generally normal recovery of costs for the claimant. Defendant is normally in no worse position than had an offer not been made. Where the offer is not beaten the Claimant may not be entitled to costs since the last date for acceptance of the offer. Defendant may recover his costs from that point onwards. Damages/Remedy is unaffected.
- It must be in writing, precisely identify with which aspects of claim/counterclaim/issues the offer deals, provide details of interest if not expressed to be inclusive of interest and make a reference to costs and a reference to Part 36. The timing of a Part 36 is also to be considered to determine whether the Court's permission is required.

Comments

Many candidates attempted this question. All answers identified the use of Part 36 offers as settlement tools but a number of candidates were unable to identify the implications of having a Part 36 offer beaten or not beaten.

Most candidates considered a Part 36 Offer to be exclusively concerned with a payment in to court. Payments in to court are part of the provisions of Part 36 of the CPR and do constitute Part 36 Offers but, Part 36 Offers do not necessarily require a payment to be made into court.

Those candidates who went on to answer part c of this question demonstrated limited knowledge of the provisions of Part 36 in relation to the form of the offer. Candidates are recommended to read the provisions and supporting practice notes concerning Part 36 of the Civil Procedure Rules.

2. **Tessa sees a rare vintage dress in Sarah's boutique shop window and wants to buy it to replace the identical one she damaged. The swing tag attached to the dress states "Reduced for quick sale. Only £250. First to buy will love it forever!". The dress is Tessa's size and excitedly she runs over to Sarah behind the cash counter and says "I will take that dress now, here's my card!"**

- (a) Identify and explain each of the essential requirements necessary to establish a binding contract.**

(8 Marks)

- (b) Advise Tessa as to her contractual rights (if any), ignoring the Trade Descriptions Act and similar legislation, in the following circumstances explaining the reasons for your answer:**

- (i) Sarah refuses to sell Tessa the dress because Sarah believes that Tessa is far too fat to wear it;**
- (ii) Sarah agrees to sell the dress to Tessa but on scanning the bar code the price displayed, which Sarah insists on charging, is £350;**
- (iii) after Tessa has paid, Sarah decides on reflection that she wants the dress herself. She refuses to hand it over and proceeds to refund the payment.**

(7 Marks)

Answer

- Explanation of key requirements of a contract being offer, acceptance, consideration and intention.

- The question requires an analysis of the concepts of (i) invitation to treat versus an offer and (ii) an offer versus acceptance, both in the circumstances of a retail shop and assessing when an offer is made and when acceptance takes place. Cases providing guidance include *Harvey v. Facey* and *Boots v. Pharmaceutical Society of Great Britain*.
- In scenario (iii) the contract was formed, there had been an offer accepted for good consideration and the sale was intended to be legally binding. The issue was concerned with remedies and Tessa's rights. Tessa owned the dress and was entitled to possession of it. Tessa had complied with her obligation under the contract to pay the consideration. Sarah had not complied and was obliged to hand the dress over.

Comments

Virtually all candidates answered this question and on the whole it was well answered with candidates scoring high marks. Most candidates recognised the need to assess whether there was a valid contract and discussed the issues surrounding invitation to treat and offers and the timing of acceptance.

This question required an application of legal principle to a factual situation and those candidates achieving the highest marks performed that exercise in their answers. Those candidates who recited passages from notes regarding what is an invitation to treat or an offer achieved reasonable marks but could have scored higher had they applied the law to the facts of the question.

3. Explain and discuss conditions, warranties and representations as terms of a contract.

(15 Marks)

Answer

- Warranties – expressly set out in contract, promises as to the accuracy of statements and circumstances, ancillary to primary obligations under the contract, breach entitled to damages.
- Representations – made before or included within the contract, breach can entitle termination of contract and/or damages.
- Condition – runs to the heart of contract, defines the fundamental and primary obligations under contract, breach likely to result in termination and damages.

Comments

This question was attempted by a good proportion of candidates. Most candidates were able to identify the key differences between each category and the main implications of breach although a large proportion of answers were limited to single sentence definitions of each term.

Candidates who achieved higher marks under this question did so by providing examples to demonstrate with greater clarity the differences between the three terms.

4. Christian decides to celebrate his 16th birthday paint balling in a local public forest with a group of friends. A local company, Paint-u-up, described as “The professional paint ball operators”, operates out of a building on the edge of the forest renting equipment for paint balling sessions. The boys hire the top of the range “Safety Package”. Under the “Safety Package”, Paint-u-up provides each person with an airgun, paint ball ammunition and a jump suit labelled “The Paint Baller’s First Choice”. Paint-u-up does not

provide any goggles or instructions. Before being provided with the above equipment the boys are each asked to sign a document that states “No liability howsoever arising is accepted by Paint-u-up”.

The boys break-up into two teams and disperse through the forest playing their game. Ignoring any contractual claims, discuss what liability, if any, is owed and by whom to Christian in respect of the following circumstances:

- (a) Christian is blinded in one eye as a result of one of his friends shooting him with a paintball;
- (b) Christian suffers multiple shots during the competition and his clothing is irreparably stained;

Explain your reasoning.

(15 Marks)

Answer

- Define negligence including the key elements, duty of care and the “Neighbour principle”, Breach of the Duty and the applicable standards including identifying any factors taken into consideration in determining standard, Damage and causation, foreseeability and remoteness.
- Apply the elements necessary for negligence to the facts of the question and assess whether in principle there is negligence and if so who’s negligence?
- Consider and explain what defences including contributory negligence and volenti non fit injuria may be applicable to the facts.
- Discussion regarding the contractual disclaimer and it being ineffective in respect of personal injury or death under Unfair Contract Terms Act.
- Liability of Paint-u-up for failing to supply goggles and proper protective clothing? Paint-u-up holds itself out as professional organisers therefore higher a duty of care is expected. Was it reasonable to expect the provision of eye protection and protective clothing? Consider potential liability against Christian’s friend if he was reckless in aiming towards the eyes.
- The jump suit failed to protect clothing. Potential action against manufacturer of the suit as well as against Paint-u-Up.

Comments

This question required application of legal principles to the facts and an explanation as to why candidates reached certain conclusions.

Virtually all candidates answered this question and most were able to explain the essential requirements for establishing negligence and then applying it to the facts of the question. Several candidates failed to explain their legal reasoning in sufficient detail to demonstrate a thorough understanding of the individual criteria that must be met for establishing the tort of negligence or an applicable defence but rather provided an answer which consisted of the basic elements of negligence without application to the facts.

5. **Your client has been served with proceedings for design right infringement. Write a file note for your client explaining its obligations with respect to its own compliance with the disclosure requirements and the procedure for disclosure and inspection of documents.**

(15 Marks)

Answer

- Disclosure prescribed under Part 31 CPR.
- Obligations to preserve documents once aware of proceedings or contemplated proceedings.

- Obligation to disclose documents relevant to pleaded issues in custody or control and documents to assist client's case, assist another's case or detrimental to client's case.
- Disclosure list to be served according to case management/directions timetable. List to identify all relevant documents and identify copies and originals. Disclosure list in 3 parts, documents in power and disclosable, documents in power but privileged and documents relevant but no longer in power. Inspection normally 7 days after lists exchanged.
- Specific disclosure orders

Comments

This question required knowledge of CPR Part 31, the main provision dealing with disclosure. Candidates were generally able to identify the principal obligation being the need to identify and disclose documents that supported or were detrimental to each party's case.

As with the question concerning the Part 36 Offers, this question demonstrated candidates having not read around the subject matter identified in the syllabus. Whilst candidates had a basic understanding of the concept they did not understand the detail of the provision.