

THE JOINT EXAMINATION BOARD

Basic English Law

Monday 5th November 2012

3.00 p.m. – 5.00 p.m.

*Please read the following instructions carefully. **Time Allowed – 2 HOURS***

1. You should attempt **four of questions 1 to 5** in Part A and **four of questions 6 to 10** in Part B.
2. The marks awarded to each question are shown at the foot of the question and sub-question where applicable. If more than the required number of questions are answered only the first 4 presented in either Part A or Part B will be marked.
3. Please note the following:
 - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
 - b. Enter the Paper Name (LAW), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
 - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly; examiners cannot award marks to scripts that cannot be read;
 - f. Reasoning should always be given where appropriate.
 - g. You must number all the pages of your answer script. Once the exam finishes, an additional 5 minutes will be allowed for you to do this.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
 - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
 - b. your mobile phone is found to be switched on;
 - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
 - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order, number all the pages and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

THIS PAPER CONSISTS OF FOUR SHEETS INCLUDING THIS PAGE.

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PART A

1. Explain what is meant by the terms:

- (a) stare decisis.
- (b) ratio decidendi;
- (c) obiter dicta; and
- (d) res judicata;

10 marks

2. Describe a debenture, a fixed charge and a floating charge and indicate the main differences between them.

10 marks

3. Summarise and briefly describe the nature of five equitable remedies.

10 marks

4. List the minimum requirements necessary for the formation and registration of a limited liability company under English law. Describe the function or purpose of each of the required documents.

10 marks

5. Tom and Paula were married for 15 years. When Paula decided to leave the marital home, she promised to pay Tom £300 per month, as a contribution towards payment of the outstanding mortgage on their house. Paula, at the insistence of Tom, signed a note agreeing to transfer the house into Tom's sole name when the mortgage was paid off. After Tom had paid off the mortgage, Paula refused to transfer the house into his name.

Summarise the legal basis of any contractual claim that Tom may have against Paula.

(Candidates need not make any reference to or mention remedies.)

10 marks

THE JOINT EXAMINATION BOARD

Basic English Law

PART B

6. Briefly discuss European sources of law, both Primary and Secondary, and explain their application to the United Kingdom.

15 marks

7. Explain the differences between litigation, arbitration and mediation and the advantages and disadvantages of each.

15 marks

8.

(a) Briefly describe judicial review and each of the principal grounds.
(5 marks)

(b) With reference to the IPReg Rules of Conduct, briefly discuss a situation whereby a potential client requests a UK Registered Patent Attorney ("a regulated person") in private practice to undertake work on the client's behalf, but the Patent Attorney is aware that an existing client is active in the same general field of technology as the potential new client.
(5 marks)

(c) Acting on the instructions of an existing client for whom he has filed a UK priority patent application and requested various foreign patent applications, including one in the USA, a UK Registered Patent Attorney in private practice deliberately fails to disclose a relevant piece of prior art to the US Attorney responsible for the filing of the US application (despite the US Attorney having specifically requested details of any prior art). Is this deliberate withholding of the prior art by the UK Patent Attorney, who is a regulated person, consistent with the IPReg Rules of Conduct? Explain your reasoning.
(5 marks)

15 marks

9. Explain what is meant by:

(a) Legal professional privilege

(b) Litigation privilege;

(c) Without prejudice communications.

15 marks

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Basic English Law

10. Mary, who knew that her brother John was an experienced driver, asked him to teach her to drive. After some persuasion John agreed to help. Mary said that their mother wanted to come along on the driving lessons and she asked John if he would mind sitting in the back seat. John agreed but said that, because he would be leaning forward from the back seat to instruct Mary, he was unwilling to wear a seatbelt as it would restrict his movement. For the driving lessons with John, Mary practised her car handling skills on a privately-owned disused airfield. On the fourth lesson, Mary swerved and hit a post. On impact, John was thrown forward between the two front seats of the car and injured his head on the dashboard.

Applying legal reasoning, advise John what cause of action may be open to him. Advise whether you think that he may be successful in such action and what remedies may be available.

15 marks