

## English Law FC2 (Law)

Monday 12 October 15:00 to 17:00

### INSTRUCTIONS TO CANDIDATES

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-questions. If more than the required four questions are answered in Part A, or more than the required four questions are answered in Part B, only the first four presented in each respective part will be marked.
3. The total number of marks available for this paper is 100.
4. Start each question (but not each part of each question) on a new sheet of paper.
5. Enter the question number in the appropriate box at the top of each sheet of paper.
6. Do not state your name anywhere in the answers.
7. Write clearly as examiners cannot award marks to answer scripts that cannot be read.
8. The scripts may be photocopied for marking purposes.
  - (a) Use only **black ink**.
  - (b) Write on one side of the paper only.
  - (c) Write within the printed margins.
  - (d) Do not use highlighter pens on your answer script.
9. Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.
10. This question paper consists of 7 sheets, including this sheet.

**In this paper the following annotations will be used throughout:**

**CPR:** Civil Procedure Rules

**PART A**

**Question 1**

a) Explain what is meant by:

- i) direct evidence;
- ii) hearsay evidence.

Explain what weight should be given to hearsay evidence in:

- iii) civil cases;
- iv) criminal cases.

**4 marks**

b) What principal type of opinion evidence can be given in court and why is opinion evidence generally not permitted?

**2 marks**

c) Distinguish between an affidavit and a witness statement.

**2 marks**

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

**2 marks**

**Total: 10 marks**

**Question 2**

a) Describe the essential characteristics of 'consideration' in the formation of a contract.  
**3 marks**

b) i) Explain what 'privity of contract' means.

ii) How does the *Contracts (Rights of Third Parties) Act 1999* alter this?

**4 marks**

c) What is the remedy for breach of:

- i) warranty?
- ii) an innominate term?

**3 marks**

**Total: 10 marks**

### Question 3

- a) What is a 'bona fide purchaser of property for value without notice'? **2 marks**
- b) State the elements required to establish malicious falsehood. **4 marks**
- c) Explain the term 'without prejudice'. Give one example of a situation in which it cannot be relied upon. **4 marks**

**Total: 10 marks**

### Question 4

- a) Distinguish between a limited company and a sole trader. **5 marks**
- b) With reference to the IPREG *Code of Conduct* how must a regulated person deal with client monies? What is the normal limit (in aggregate) of client monies that may be held and, if exceeded, what needs to be done? **2 marks**
- c) What is the nature of ownership of a patent granted to two proprietors and explain briefly what is meant by this. **3 marks**

**Total: 10 marks**

### Question 5

- a) Briefly distinguish between the terms 'tenants in common' and 'joint tenants'. **2 marks**
- b) Distinguish between fixed and floating charges. **6 marks**
- c) i) With reference to the IPREG *Code of Conduct*, in relation to the rule on conflicts of interest, what is meant by 'relevant knowledge'? **2 marks**
- ii) How does 'relevant knowledge' affect the operation of the rule or exceptions to it? **2 marks**

**Total: 10 marks**

**PART B**  
**Question 6**

Steven was convicted in the Magistrates Court of selling counterfeit CDs. He represented himself despite having little legal knowledge. The defence he claimed at trial was that he had the copyright owner's consent because he had informed the copyright owner of the sales but they had not responded. Discussions during the trial were about whether the nature of the consent alleged was insufficient to amount to a defence. The prosecution barrister said to Steven afterwards that the matter of law was *stare decisis* and that the *ratio decidendi* covered Steven's case entirely, though the *obiter dicta* suggested there was some leeway.

- a) **Explain the burden and standard of proof applicable to the prosecution's case and Steven's defence.**  
**2 marks**
- b) **Explain what the terms *stare decisis*, *ratio decidendi* and *obiter dicta* mean.**  
**4 marks**
- c) **Steven wants to appeal directly to the European Court of Justice and the Supreme Court. Advise Steven on the routes and basis of appeals from the Magistrates Court.**  
**6 marks**
- d) **With reference to the IPREG *Code of Conduct* what requirements does a regulated person have in respect of taking Steven on as a client?**  
**3 marks**

**Total: 15 marks**

**Question 7**

Jonathan has issued High Court proceedings for patent infringement. He hopes to get £100,000 in damages from the infringer James. James is representing himself and gets the case transferred to the Intellectual Property Enterprise Court (IPEC).

- a) **Describe the differences in the jurisdiction of the IPEC and the High Court.**  
**5 marks**
- b) **What principles must the Court follow to achieve the overriding objective set out in CPR Rule 1?**  
**8 marks**
- c) **State and explain the standard of proof required for Jonathan to prove his case.**  
**2 marks**

**Total: 15 marks**

### Question 8

Sacha has discovered Warren is about to launch some new motorbike components at a trade show. She believes the components are covered by her UK design registration.

- a) **Explain what Order can be applied for to stop the launch without Warren present, and what issues the court must be persuaded of.** **8 marks**
- b) **What undertakings must Sacha give?** **3 marks**
- c) **What form must the supporting evidence for the Order take and what essential formality must be observed?** **1 mark**

Sacha alleges that Warren told her he believes the components infringe her design registrations.

- d) **What type of evidence is this?** **1 mark**

George, Sacha's representative, is aware that Sacha discussed her design registration with Warren two months ago. Sacha may thus have known Warren intended to infringe the design registration. George fails to ensure this is brought to the court's attention.

- e) **With reference to the IPREG Code of Conduct what obligation has George breached and what effect might there be on the grant of the Order by the court?** **2 marks**

**Total: 15 marks**

### Question 9

Miranda and Donald informally discussed Donald manufacturing toys to Miranda's registered designs. Nothing was recorded in writing. They could not agree on the cost per toy but Donald started manufacturing anyway.

- a) **Explain the requirements for formation of a valid contract under English law. With reference to the above scenario, does a valid contract exist between Miranda and Donald?** **8 marks**

Miranda commences an infringement action against Donald.

- b) **Explain the nature of, and issue with, the following types of evidence:**
- i) **Miranda's witness statement is presented at trial without her being present;**

Cont...

- ii) **Miranda's in-house designer says her registrations are valid, but a local expert disagrees. Miranda thinks the court should hear her designer's opinion.**

**3 marks**

Several toys are present at trial without being referred to in any witness statement. Miranda's representative Xavier tells the judge they are the infringing toys manufactured by Donald.

- c) **With reference to the IPREG Code of Conduct discuss Xavier's breach of his obligation.**

**1 mark**

Miranda agrees to assign the registered designs to Donald and he gives her £1. Nothing is recorded in writing and no further action taken. Later, Donald commences proceedings against another manufacturer, Sebastian, for infringement of the same registrations.

- d) **Discuss whether Donald owns the registered designs. Will the court allow him to pursue the infringement action?**

**3 marks**

**Total: 15 marks**

### **Question 10**

Jonathan is a patent attorney working for a limited partnership patent firm. Jonathan put in £10,000 to create the firm and is called 'a limited partner'.

The firm only allows attorneys to work for small businesses and individuals that have been sent a client care letter. Nevertheless, three years ago, Jonathan agreed to help a large pharmaceutical company renew a patent. He didn't send a client care letter but did put the renewal deadline on his firm's case management system. Last year, Jonathan also confirmed the validity of the patent when the pharmaceutical company obtained a bank loan.

Unfortunately, Jonathan incorrectly entered the date and the system did not check dates for large companies. Failure to renew was discovered after the patent lapsed irretrievably and the pharmaceutical company lost large profits. Due to its losses the pharmaceutical company couldn't repay the bank, which lost £100,000.

- a) **Explain what 'a limited partnership' is and how it is established.**

**4 marks**

- b) **Set out the requirements for actionable negligence.**

**5 marks**

- c) **Under what principle can an employer be liable for an employee's negligence? From the above scenario give one fact which indicates whether the firm is liable for Jonathan's negligence?**

**2 marks**

- d) **Explain the legal issue arising from the bank's losses.**

**2 marks**

**Cont...**

- e) **With reference to the IPREG *Code of Conduct* discuss Jonathan's breaches of his professional obligations.**

**2 marks**

**Total: 15 marks**