

Foundation Certificate

English Law FC2

Monday 9 October 2017 15:00 to 18:00

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 **blackink**.
 - 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. Any candidate script removed from the examination room will not be marked.
11. This question paper consists of nine sheets, including this sheet.

Part A

Question 1

a) Which of these courts have civil and/or criminal jurisdiction?

- i) Magistrates Court;
- ii) County Court;
- iii) High Court.

4 marks

b) Which court has the exclusive jurisdiction to hear applications for judicial review?

1 mark

c) Considering the application of laws of the European Union such as Directives and Regulations, what is meant by the terms:

- i) vertical effect?
- ii) horizontal effect?

2 marks

d) Name the three types of person who are described as a 'registered person' in the IPReg Code of Conduct.

3 marks

Total: 10 marks

Question 2

a) Briefly explain the route of appeal from decisions of the Intellectual Property Enterprise Court on:

- i) an interim decision;

1 mark

- ii) a final decision.

1 mark

b) In civil proceedings before the Intellectual Property Enterprise Court:

- i) what is normally the next step in the litigation after the exchange of statements of case between the parties has been completed?

1 mark

Cont...

ii) who is responsible, principally, for pursuing this next step?

1 mark

iii) if this next step is not followed, what is the court's most severe sanction?

1 mark

c) In accordance with the Civil Procedure Rules, state two methods by which a claim can be served properly on a defendant in the UK.

2 marks

d) State the overriding objective embodied in the Civil Procedure Rules.

1 mark

e) The IPReg Code of Conduct, Rule 4 (*Competence*) identifies factors that a regulated person should take into account when considering whether the interests of the client would be served by the regulated person or some other person providing professional services in fulfilment of the client's instructions. State two of these factors.

2 marks

Total: 10 marks

Question 3

a) With reference to the obtaining of an interim remedy from the court explain:

i) what is meant by the 'balance of convenience';

2 marks

ii) whether the interim remedy you discussed in part i) can be obtained in the small claims track of the Intellectual Property Enterprise Court.

1 mark

b) With reference to the obtaining of an interim remedy from the court and the term 'supervising solicitor':

i) explain when a 'supervising solicitor' is required;

1 mark

ii) describe the characteristics of a 'supervising solicitor';

1 mark

Cont...

- c) State three remedies available to a successful claimant in a claim of patent infringement in the Intellectual Property Enterprise Court (additional marks will not be awarded for answers including remedies in the alternative).

3 marks

- d) With respect to rules relating to dealings with a witness set out in the IPReg Code of Conduct, state two actions that a regulated person must not do.

2 marks

Total: 10 marks

Question 4

- a) In the law of contract what is meant by the following terms:

i) 'condition';

1 mark

ii) 'misrepresentation';

1 mark

iii) 'privity'.

1 mark

- b) Distinguish between assignment and novation of a contract.

4 marks

- c) Explain why a copyright licence cannot normally be assigned.

1 mark

- d) In the context of the IPReg Code of Conduct, Rule 13 (*Liens*), explain:

i) what is a lien?

1 mark

ii) when is a lien available to a regulated person?

1 mark

Total: 10 marks

Question 5

a) State and explain the most appropriate type of charge for the following types of assets:

i) a factory building;

1 mark

ii) a portfolio of intellectual property rights.

1 mark

b) Briefly explain the nature of a limited partnership.

2 marks

c) State the document or documents essential for the existence of a limited company.

1 mark

d) Distinguish between a company limited by guarantee and a company limited by shares.

3 marks

e) With reference to the IPReg Code of Conduct, Rule 11 (*Financial Matters*), what principles apply to the handling of monies received from clients with respect to unpaid professional disbursements?

2 marks

Total: 10 marks

Part B

Question 6

Simon runs a small business writing books for children. He alleges that Jackie copied one of his novels. He believes he has lost about £50,000. He has lots of witnesses, so the trial might last more than one week. He accepts that the evidence of some of the witnesses will probably overlap. He hopes that a detailed review of his book will get wide publicity in newspapers reporting on the case.

- a) Advise Simon on any advantages or disadvantages in bringing his case in the Intellectual Property Enterprise Court (IPEC) compared with the High Court.**
5 marks
- b) What problems might Simon have if he wanted to bring his case in the IPEC?**
1 mark

Simon wants to use one of his writers to compare the style of writing in the books.

- c) Advise Simon whether he is permitted to use one of his writers to give such evidence including discussing any limits on the role of such a witness in proceedings.**
2 marks

At a recent book launch Jackie told an influential distributor that in her opinion Simon based his story on a newspaper cartoon shown six months before the book's release. Simon denies this, saying the book was based on a real event from early in his childhood. Simon says the resulting rumour hurt him and harmed his sales as it has taken the surprise out of the book and wants to sue Jackie for all damage.

- d) Referring to the book launch, advise Simon on what action he could bring to sue Jackie and any problems with bringing such a case.**
7 marks

Total: 15 marks

Question 7

Sanjay met Freddy on holiday. Sanjay has a UK patent covering a new soft drinks can. Together, as a UK limited partnership, Sanjay and Freddy set up a factory manufacturing these drinks cans. Sanjay acts as the general partner.

- a) Advise Sanjay on an alternative legal structure for his business, describing the characteristics of his existing structure and the advantages of using the one you choose over his current business structure.**

6 marks

When Sanjay first met Freddy, Sanjay had asked David, a patent attorney he met at a drinks party, about what kind of legal structure to use for his business venture together with Freddy. David suggested the limited partnership that Sanjay eventually chose sounded good.

The business fails and Sanjay is made personally liable for the business's debts. Sanjay says David failed to warn him he would be personally liable for the business debts. As a result he lost his home. His wife, who worked from home, lost her business. David says Sanjay was already falling behind in his mortgage because Sanjay's business wasn't successful.

- b) Describe each element of the tort of negligence and discuss how they apply to the facts surrounding David's advice.**

9 marks

Total: 15 marks

Question 8

Angela and Theresa met on holiday. They chat about the new laser pen Angela has invented and for which Angela has been granted a patent. Angela tells Theresa she is looking for someone to take a licence to manufacture the pen as she wants to retire. Theresa shows Angela a standard manufacturing agreement she has on her computer and mentions a licence fee of 25 pence per pen manufactured.

Back in the UK, Angela emails Theresa saying the deal sounded good. She attaches a similar manufacturing agreement. There is no mention of a licence fee. Theresa doesn't respond. Theresa then commences manufacturing the pen at her factory without telling Angela. A few weeks later Angela finds out and doesn't accept she agreed to Theresa manufacturing the pen.

- a) Based on what is known so far, advise Angela on whether a contract with Theresa could exist.**

6 marks

Cont...

Angela wants to stop Theresa manufacturing before a launch event that Theresa is holding, which takes place tomorrow morning starting at 7am.

- b) Advise Angela on the appropriate court order to seek and what form the evidence will take. In advising Angela, apply the relevant legal test and any undertakings she will have to give should the order be granted.**

9 marks

Total: 15 marks

Question 9

Alexander is Nicholas's overseas sales agent. Alexander tells Nicholas that due to local laws in some of the countries in which he sells, local trade mark registrations must be held in Alexander's name due to trading regulations. Nicholas agrees and continues to spend money on promoting the trade marks in those countries. Alexander continues to trade under Nicholas's trademarks and also sells his own products under the mark without telling Nicholas. Nicholas finds out and demands Alexander assign the trade mark registrations to him. Alexander fails to do so. Nicholas accuses Alexander of failing in his duty as trustee.

- a) With reference to the scenario, explain why Alexander might be considered a trustee and the requirements for establishing such a trust.**

5 marks

Meanwhile Nicholas is suing a rival in the Intellectual Property Enterprise Court for trade mark infringement. Because of the nature of his case, Nicholas needs to establish that his mark has an enhanced reputation and the mark used by his rival is causing customer confusion. At trial, Nicholas wants to use survey evidence to support his case. He will first conduct a pilot survey and then a full survey.

- b) Advise Nicholas:**

- i) whether, with respect to such evidence of customer confusion, he needs any permissions of the court, and, if so, explain the test to be applied together with the likely decision; and**

7 marks

- ii) whether there is a distinction for survey evidence gathered to show enhanced distinctiveness. Explain your answer.**

3 marks

Total: 15 marks

Question 10

Edward owns a patent for an energy efficient light bulb fitting. In a meeting with William, Edward gives William his prototype light bulb fitting. He promises to assign the patent to William. William knows Edward hasn't valued the patent and agrees to pay £50 for the patent even though William knows the patent is worth £10 million. Edward agrees to £50. The assignment is not recorded in writing and no transfer is recorded at the UKIPO. Edward then disappears and cannot be contacted. Later, William needs to take action to sue Pargit, who he says is infringing the patent.

- a) Assuming infringement would be established and Pargit has no other defences, explain what problem William has in bringing a claim against Pargit.**
4 marks
- b) How can William overcome this problem and what other problems might he face?**
4 marks

William brings the action anyway. During trial it turns out that after the meeting with William, Edward assigned the patent to Pargit for £1. Pargit was not told about the agreement with William.

- c) What does the law of equity tell us about the purported assignment to Pargit?**
3 marks

Edward's prototype is presented at trial as evidence.

- d) Explain the nature and purpose of this evidence.**
2 marks

William wanted his patent attorney, Samantha, to act at trial. Samantha had previously discussed the patent application for the fitting with Edward. Edward decided to use a different patent attorney to file the application and immediately wrote to Samantha saying she shouldn't feel restricted from acting for anyone else because of the conversation they had.

- e) Can Samantha act for William? Explain your answer.**
2 marks

Total: 15 marks