

# October 2018: Candidate Cover Sheet

**Exam Paper:** FC2 English Law

**Candidate No:**

**Venue:**

**At the end of the examination:**

- Count up the number of sheets you have used which you wish to be marked.
- Use the boxes on each sheet of the answer script to number the sheets: '1 of 25', '2 of 25' etc.
- If you have used extra sheets, please add your candidate number and the examination reference to these sheets too.
- Do not staple the sheets, or use adhesive tape or treasury tags.
- Write the number of sheets of paper you have put in this envelope here (do NOT include this cover sheet in your calculations).

<b>No. of Sheets</b>	
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- Place the answer sheets that you wish to be marked in order in the white envelope provided with this sheet uppermost and the examination paper detail and your candidate details **showing through the envelope window**.
- Seal the envelope and leave it on your desk face up.
- Leave any spare answer script paper on your desk.
- You may take the examination paper with you.

**For examiner's use only:**

	Section A									Section B				Total
	Qu 1	Qu 2	Qu 3	Qu 4	Qu 5	Qu 6	Qu 7	Qu 8	Qu 9	Qu 10	Qu 11	Qu 12	Qu 13	
<b>Marks available</b>	6	2	4	4	2	6	6	5	5	20	20	20	20	
<b>Marks awarded</b>														



# Foundation Certificate

## FC2 English Law

Monday 01 October 2018 15:00 to 18:00

### INSTRUCTIONS TO CANDIDATES

1. You should attempt **ALL** questions in Section A and any **three** questions in Section B.
2. The marks for each question in Section A are shown next to the question. Each question in Section B carries **20** marks.
3. If more than the required three questions are answered in Section B only the first three presented will be marked.
4. The total number of marks available for this paper is 100.
5. Start each question (but not each part of each question) on a new sheet of paper.
6. Enter the question number in the appropriate box at the top of each sheet of paper.
7. Do not state your name anywhere in the answers.
8. Write clearly, as examiners cannot award marks to answer scripts that cannot be read.
9. The scripts will 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.
10. Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.
11. Any candidate script removed from the examination room will not be marked.
12. This question paper consists of eight sheets, including this sheet.

## SECTION A

### Question 1

- a) Explain the meaning of *res judicata*. 1 mark
- b) i) Give one type of decision that can be heard by the Appointed Person. 1 mark
- ii) What further appeals are available from the Appointed Person? 1 mark
- c) i) Explain who may make a reference to the Court of Justice of the European Union. 1 mark
- ii) Explain the circumstances in which a reference to the Court of Justice of the European Union may be made. 1 mark
- iii) Explain the effect of a decision made by the Court of Justice in response to such a reference being made. 1 mark

**Total: 6 marks**

### Question 2

The *Civil Procedure Rules* impose an overriding objective on the court and court user to deal with cases justly and proportionately. State the four factors that the court must consider when considering proportionality.

**2 marks**

### Question 3

Describe four characteristics of mediation in the resolution of conflicts.

**4 marks**

### Question 4

Describe four characteristics of a Case Management Conference held at the Intellectual Property Enterprise Court.

**4 marks**

### Question 5

State:

- a) the normal maximum length of a trial in the Intellectual Property Enterprise Court;  
1 mark
- b) the normal total cap on recoverable costs during an action on liability in the Intellectual Property Enterprise Court.  
1 mark

**Total: 2 marks**

### Question 6

- a) State what a misrepresentation is in contract law.  
2 marks
- b) Briefly explain the three different types of misrepresentation.  
4 marks

**Total: 6 marks**

### Question 7

With respect to European Union Directives, explain in what situations Horizontal and Vertical Effect apply.

**6 marks**

### Question 8

With reference to the *IPREG Code of Conduct*:

- a) State who the client is in the case of foreign originating work.  
2 marks
- b) State how a regulated person may discharge the obligation to provide information to such a client as in (a).  
1 mark
- c) Explain the meaning of 'professional work'.  
2 marks

**Total: 5 marks**

### Question 9

Philip goes to a firm of patent attorneys, Cups LLP, to draft and file his patent application. His patent concerns the juice from a flower he was picking a few days earlier, which he drank and it had a soporific effect on him.

During their initial chat with Philip the attorneys at Cups say they are great at filing all types of patent applications. They say they will file the application the following week. In fact they only file software patents but think Philip is crazy, so they draft and file the application anyway.

The first letter they ever send to Philip is when they file the application two months later. They accidentally send Philip the draft reporting letter in which they have made statements about how they think Philip is crazy.

Philip calls and leaves a message with Cups to ask how to complain about the service he is being given but Cups never contact him. Philip doesn't know where else to turn to with his complaint.

**Explain how Cups has breached the *IPREG Code of Conduct*. Candidates should identify the name of the relevant Rule(s) in their answer (the Rule number is not required).**

**5 marks**

## SECTION B

### Question 10

Last month, William worked as a freelance consultant, not an employee, for Racing Mania, a Formula 1 team. He works on the design of fuel leads in the team's latest racing cars. He was never given a contract to sign nor discussed any details of his terms with Racing Mania except his pay. During his time at Racing Mania, William noticed the pattern on Racing Mania's latest tyre treads being tested in Racing Mania's factory. Racing Mania intend to unveil the new tyre tread pattern during the next race in two days' time, during which they hope to win the race because of the new tyre tread pattern and their surprise advantage over other teams' tyre tread patterns.

William left Racing Mania at the end of last month. He is now planning to set up a tyre manufacturing business next month with some friends of his, basing new designs on the new tyre tread pattern he saw. William is not doing any publicity yet about his new venture.

**Prepare notes for a meeting with Racing Mania in which you:**

- a) **discuss the law that Racing Mania can use to prevent William from setting up his new business including identifying any problems for Racing Mania. Ignore any possible discussion of patents, copyright or trade marks;**

**10 marks**

- b) **advise on the appropriate court application to be used against William and apply the relevant legal test. You should ignore any undertakings Racing Mania will have to give should the order be granted.**

**7 marks**

William's friend Suzanne is a sports journalist. Suzanne found out about the new tyre tread pattern that was going to be used by Racing Mania from William after he left his work with Racing Mania. Suzanne intends to write an article in her newspaper about the new tyre tread pattern to be published tomorrow, the eve of the next race.

**Prepare notes for an urgent advice call with Racing Mania in which you:**

- c) **advise whether the same law allows Racing Mania to take action against Suzanne.**

**3 marks**

**Total: 20 marks**

### Question 11

Edward owns a patent covering a roller blind. Sasha has a licence to manufacture and sell products under it.

A term of the contract states that Sasha should pay to Felicity the royalties on sales due to Edward. Sasha fails to pay the royalties due. Edward is not bothering to enforce the contract.

- a) **Prepare notes for a meeting with Sasha in which you discuss whether Felicity is entitled to enforce the contract against Sasha including identifying what other information from the contract you require to advise more fully.**

**9 marks**

Edward and Sasha have a meeting to discuss the poor sales but don't mention developing the patented roller blind. Nothing is concluded. That evening they meet unexpectedly at a dinner party. Edward says to Sasha over dessert and drinks, "Well I will pay you and your design team £100,000 to develop an improved roller blind." Sasha says "Great!" Edward makes a rough sketch on a napkin showing how he would improve the roller blind. This is the only conversation they have that evening.

Two months later, Sasha starts selling an improved roller blind based on Edward's drawing. She sends Edward a letter saying that she will be paying the royalties due on sales to Felicity as per the licence to manufacture and sell, and demanding payment of £100,000 for developing the improved roller blind. Edward refuses to pay.

- b) **Prepare notes for your meeting with Sasha to advise Sasha whether a contract exists between her and Edward to develop and sell the roller blind.**

**11 marks**

**Total: 20 marks**

## Question 12

Nicholas owns a patent in a screw top lid for jam jars. He met Ayesha at a late night party for young people, where Ayesha told Nicholas that she was a patent attorney working for Bottles & Co. Nicholas showed Ayesha a copy of his patent and mentioned that it needed renewing. Ayesha said, "Sure I can do that", and took the copy of the patent. After this very brief conversation Nicholas and Ayesha didn't speak again.

Eight months later, Nicholas is trying to licence his patent when his potential licensee points out that the patent is no longer in force because it wasn't renewed on time.

- a) **Prepare notes for a meeting with Nicholas in which you discuss whether Ayesha is liable in negligence for damage suffered by him for failing to renew the patent.**

**9 marks**

Now Nicholas claims that he:

1. won't be able to make the £50,000 profit promised on a licence for his patent;
2. has had to pay interest on a bank loan for his business, which Nicholas says he has had to take out due to not getting the licencing deal;
3. has failed to get a £150,000 investment because he no longer has a patent and as a result his business has failed;
4. has lost his house because his business failed.

- b) **Prepare notes for a meeting with Nicholas in which you discuss whether Ayesha is liable in negligence for the different types of damage set out above.**

**6 marks**

It turns out Ayesha was in fact a receptionist at Bottles & Co. Ayesha has disappeared, but Nicholas knows that she worked for the firm called Bottles & Co.

- c) **Discuss whether Bottles & Co are liable for Ayesha's actions instead?**

**5 marks**

**Total: 20 marks**



### Question 13

Alexander has applied to register a new company to be named NewsShelvers Ltd. Alexander has overseen the use of substantial start-up costs in preparation for trading under the name NewsShelvers. He has just been notified of an objection at the Company Names Tribunal from a sole trader, Robert, who has been putting up shelves in office reception rooms to display newspapers for the past 10 years, using the name NewsStackers & Shelvers. Robert has no intention of registering his business as a company and Alexander has never been in contact with Robert.

- a) **Prepare notes for a meeting with Alexander discussing the likely nature of Robert's case at the Company Names Tribunal.**

**7 marks**

Alexander owns a registered trade mark, BOOKSHELVERS, covering 'shelving'. Another manufacturer of shelving, James, has just started in business using the name BOOKS&SHELVES. Alexander wants to conduct a survey to use in court as evidence of confusion between the marks. The people he wants to survey are not people who regularly purchase shelving. The survey will be expensive.

- b) **Prepare notes as to the basic rule for permission to carry out a survey as evidence in court of confusion between the marks including the likelihood of Alexander getting such permission.**

**6 marks**

In settlement discussions, Alexander proposes selling the trademark registration for BOOKSHELVERS to James. Alexander has loans from the bank that include a fixed charge over his IP assets. During the settlement discussions, Alexander stands up and says to James, "OK, well that's settled then. You give me £1,000 and I'll give you the trademark registration." James replied, "Great, that's a deal", and they shake hands and part ways. Later, Alexander continues to sue for trademark infringement saying their discussions didn't lead to a conclusion.

**Advise Alexander:**

- c) **Whether James can use evidence of what happened in the discussions to tell the court that a settlement had been reached.**

**3 marks**

- d) **Since there is a fixed charge over the IP assets, explain what Alexander should have done before offering to transfer the trademark registration and why?**

**4 marks**

**Total: 20 marks**