

Foundation Certificate

FC2 English Law

Monday 14 October 2019 15:00 to 18:00

INSTRUCTIONS TO CANDIDATES

1. You should attempt **all** questions in Part A and any **three** questions in Part B.
2. The marks for each question in Part A are shown next to the question. Each question in Part B carries **20** marks.
3. If more than the required three questions are answered in Part 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 **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.
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 **10 sheets**, including this sheet.

SECTION A

Question 1

Briefly describe the difference in roles in the Intellectual Property Enterprise Court between a District Judge and a Judge.

2 marks

Question 2

Briefly answer each of the following.

a) What is meant by *stare decisis*?

1 mark

b) State whether appeals to the Court of Appeal are by way of either a review only or full rehearing of the case.

1 mark

c) What is the time limit for applying for judicial review?

1 mark

Total: 3 marks

Question 3

State three grounds on which a decision may be challenged by judicial review.

3 marks

Question 4

With respect to *Rule 3 of the IPREG Litigator's Code*, what are the regulated person's obligations in respect of undertakings given to the court or the other party?

2 marks

Question 5

Rule 11 of the IPREG Code of Conduct states: 'In the event that a regulated person receives money from a client, other than by way of payment of fees or disbursements incurred but including money on account (for fees or disbursements) paid up front, they should ensure that such money is held on trust for the client in an account which is entirely separate from the regulated person's or the firm's professional business accounts.'

What does the updated Guidance to Rule 11, introduced on 1 October 2015, state is the primary aim of this Rule?

1 mark

Question 6

With reference to *Rule 4 of the IPREG Code of Conduct*, state the four matters that the regulated person should have regard to when considering whether the interest of the client would be served by the regulated person acting for that client.

4 marks

Question 7

List the five principles for implying terms into a contract as set out in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 52 ALR 20*.

5 marks

Question 8

When bringing an action for infringement of an intellectual property right, explain the difference in the position of a claimant who has legal title from that of a claimant that has equitable title only following an attempted assignment of that right to the claimant.

2 marks

Question 9

a) Explain the difference between a deed and a contract with respect to any consideration required.

3 marks

b) State three essential formalities for an individual to create a deed instrument.

3 marks

c) State the limitation period for bringing a claim for breach of a deed.

1 mark

d) State a type of transaction where execution of a deed is required by law.

1 mark

Total: 8 marks

Question 10

How does the *Trade Secrets (Enforcement, etc.) Regulations 2018* implementing the *EU Directive on Trade Secrets (Dir 2016/943)* define a trade secret?

7 marks

Question 11

With reference to *Rule 4* of the *IPREG Code of Conduct*:

- a) when might it be acceptable to delay a transfer of responsibility for a client's matter to a new representative when asked to do so by the client?
- b) how is it best to warn the client of this?
- c) why is it best to use this method to warn the client of this?

3 marks

PART A Total: 40 marks

SECTION B

Question 12

William owns a patent covering a particular self-watering plant pot. William is very protective about his invention.

William's local allotment society holds a fund day digging on the allotment. Whilst digging alongside Tulip, he describes his plant pot. Tulip says, "That sounds great, I could make and sell 10,000 of those!"

Whilst continuing to dig, William says, 'Sure, well, you'd have to make them the way I wanted you to and give me 10% of all your profits.'

Tulip lays down her spade and offers William her prizewinning big flowering plant, telling William, "I'll give you 15% so long as I can adapt it for big plants."

Williams says nothing and takes Tulip's prizewinning flower back home. They never speak again.

- a) Prepare notes for a meeting with William in which you advise William whether a contract to manufacture the plant pot exists between William and Tulip.**

10 marks

Some time later, William finds out that the chairman of the allotment society has sent out pamphlets to all allotment holders. In the pamphlet, the chairman states that he has designed a plant pot that keeps the plant watered 'better than any other pots on the market today'. People don't appear to take any notice of this pamphlet except as compost.

The chairman created a document to show that his was the best product on the market. He showed this document to Tulip in a private meeting. He succeeded in persuading Tulip to manufacture and sell his pots. The document fails, however, to assess William's product. Tulip refuses to sell William's plant pot any longer because of this meeting.

- b) Prepare notes for a meeting with William in which you advise William whether he can bring claims for malicious falsehood against the chairman, including any further evidence required by William to establish a claim.**

10 marks

Total: 20 marks

Question 13

(Do not consider any action under the *Trade Secrets (Enforcement, etc.) Regulations 2018* implementing the *EU Directive on Trade Secrets (Dir 2016/943)*.)

BoardIt Ltd specialises in developing techniques to coat parts of printed circuit boards.

A particular technique was held in a series of directions in a database that Tina, a freelance technologist consultant, helped create. Each direction in the database is information separately known to the public. Those directions have been brought together as a collection of data by BoardIt. Tina has said to BoardIt that she is wanting to stay with BoardIt for the long term, become a director and share in their success. There is a term in Tina's consultancy agreement preventing her from 'disclosing BoardIt's trade secrets to the public' only after she has left BoardIt.

Tina left BoardIt and immediately setup CoolIt Ltd. At CoolIt, Tina developed further techniques to coat printed circuit boards, techniques that were more speedily developed because of the database developed at BoardIt. Tina keeps all information at CoolIt secret.

- a) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Tina for developing CoolIt's new techniques.**

7 marks

Pargit is employed by BoardIt as a regional sales manager. Pargit knew of the advantages such techniques could bring to circuit boards but didn't know about the database. During his time at BoardIt, Pargit developed a list of all possible purchasers of circuit boards. He has also developed a knowledge of all technologists capable of manufacturing using these techniques. Pargit's employment contract didn't contain a term relating to BoardIt's trade secrets.

Pargit then left BoardIt and joined CoolIt. The day before leaving, Pargit sent Tina the list of all possible purchasers developed whilst at BoardIt.

- b) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for sending the list of possible customers to Tina.**

4 marks

Whilst working at CoolIt, Pargit uses his knowledge of possible manufacturers to assist with CoolIt's business.

- c) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for using his knowledge of manufacturers gained whilst at BoardIt.**

2 marks

Pargit believes that Tina has developed CoolIt's technology independently of BoardIt's database, using only the information that is in the public domain. Pargit continues to sell CoolIt's technology, highlighting the benefits of these coating techniques.

- d) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for his selling activities, selling Tina's new techniques developed whilst at CoolIt.**

4 marks

Cont...

BoardIt has just learnt of Tina and Pargit's activities at CoolIt and is fearful that they will 'steal a march' on BoardIt's marketing, but accepts that competitors will reverse engineer their products because of Tina and Pargit's activities at CoolIt.

- e) **Assuming an injunction will be granted by the court against CoolIt, Tina and/or Pargit, prepare notes for a meeting in which you advise BoardIt of how long the injunction will last, including evidence that BoardIt could present to the court in its favour on this point against CoolIt, Tina and/or Pargit.**

3 marks

Total: 20 marks

Question 14

Sangita, Ernest and Priti are in a pub late one Saturday night. They are old school friends meeting at a reunion. Priti makes it known to the others that she is now a patent attorney and soon to be promoted to partner. Neither Sangita nor Ernest are lawyers.

Ernest owns a patent and is chatting to Sangita about licensing it. For some of the conversation, Priti was at the bar buying drinks when Sangita and Ernest discussed an option for Ernest to get out of any deal they made. Sangita leaves and, afterwards, Ernest says to Priti that he is worried that he has given away all rights to his patent. Priti doesn't ask about any details and simply tells Ernest not to worry as it was a conversation in a pub between friends. Ernest goes home and takes no further action.

A court later finds that there was a contract between Sangita and Ernest to sell part of Ernest's patent and that Ernest had a two-week option to get out of the contract. Ernest has lost out financially. It turns out at trial that Ernest and Sangita had done business before.

- a) **Prepare notes for a meeting in which you advise Ernest whether he can take action against Priti for his financial loss directly related to losing his patent rights?**

10 marks

Ernest has a separate exclusive sales contract with Mendip. When they were negotiating the contract on the top deck of a noisy bus, Ernest asked Mendip how many sales outlets Mendip owned. Mendip couldn't hear Ernest properly and so he just used the opportunity to boast about how he had more than one hundred places he could sell products at. Ernest then countersigns the contract with Mendip.

In fact, Mendip could only sell a specialist product like Ernest's at 20 of his outlets. Assume that each outlet could sell 100 units of Ernest's product. Ernest could have sold his product exclusively at another retailer that had 50 outlets for selling the product and at twice the price Mendip achieves.

- b) **Prepare notes for a meeting in which you:**

- i) **advise Ernest what kind of action he can take against Mendip over the contract;**

8 marks

- ii) **advise Ernest how damages might be assessed in this matter (no detailed figures need be discussed but showing the relevance or otherwise of the figures is important).**

2 marks

Total: 20 marks

Question 15

Veejay is Alexander's next-door neighbour. Alexander is a well-known artist. One day, Alexander asks Veejay if he could put together a quick sculpture to help finish off Alexander's new collection being launched the next day.

Veejay creates the sculpture to fit with the Alexander's new collection. Alexander pays Veejay a handful of cash for the work but, otherwise, there are no terms discussed and no written contract.

Alexander writes a letter to Veejay claiming that ownership of the copyright in the sculpture was assigned to Alexander under the oral contract with Veejay.

- a) Prepare notes for a meeting in which you advise Veejay whether Alexander's claim is correct (assume that copyright does reside in the sculpture and that a contract was agreed by the parties).**

6 marks

Later that year, Alexander found Veejay selling copies of the sculpture on the Internet. Alexander gave no permission to Veejay to copy or sell the sculpture. Alexander brings proceedings in the Intellectual Property Enterprise Court (IPEC) for copyright infringement.

- b) Prepare notes for a meeting in which you advise Veejay of the form in which evidence of Alexander and Veejay's conversation would be sent to the IPEC in the lead-up to trial.**

3 marks

Alexander's wife overheard what Alexander and Veejay said during their conversation. Alexander's wife reported the conversation to Alexander's friend Percival. Alexander's wife has now disappeared without trace.

Percival wants to give evidence (i) of what he says was discussed during the conversation between Alexander and Veejay, and (ii) to give his opinion of the artistic merit of the sculpture. Veejay wants to prevent this evidence being admitted into the proceedings by the IPEC as he knows that Percival is Alexander's friend.

- c) Prepare notes in which you advise Veejay of:**

- i) the likely grounds on which to object to Percival's evidence; and**
- ii) the most appropriate stage of the IPEC procedure to raise such an objection.**

3 marks

Cont...

Alexander's letter claims damages for copyright infringement. Veejay sold each copy for £50, he sold 650 copies and has 100 left. It costs anybody £10 to make each copy.

d) Prepare notes for a meeting in which you advise Veejay:

- i) what principles will the court be likely to use when determining the quantum of damages in an intellectual property case (calculations are not required but explaining the significance of relevant figures is important);**
6 marks

- ii) at what stage of the proceedings would the IPEC normally consider the issue of damages if quantum is in dispute;**
1 mark

- iii) on the maximum costs order the IPEC might make should Alexander win on the question of quantum.**
1 mark

Total: 20 marks