

# Foundation Certificate

## FC2 English Law

**Monday 12 October 2020**

**15:00 to 18:00 UK British Summer Time (GMT + 1 hour)**

**Total time allowed: 3 hours 30 minutes**

Starting from the time when you download the question paper, you have 3 hours 30 minutes in which to:

- Print this question paper (if wished)
- Answer the questions
- Take two screen rest breaks of 5 minutes each
- Save your Answer document to your hard drive as a pdf
- Upload your answer document to the PEBX system.

### 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. You must use the Answer document for your answers.
6. Do not attempt to change the font style, font size, font colour, line spacing or any other pre-set formatting in the Answer document.
7. Start each question on a new page. To begin a new page, press the control key and the enter key simultaneously.
8. When you begin a new question, type in the question number at the top of the page.
9. Do not state your name anywhere in your answers.
10. **Candidates who have been granted approval to handwrite their answers:** Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.

This question paper consists of **7 sheets** in total, including this sheet.

### AT THE END OF THE EXAMINATION

11. Save your Answer document to your hard drive and follow the instructions for uploading your document onto the PEBX system.

## SECTION A

### Question 1

Briefly describe three reasons why a court may refuse to grant an equitable remedy.

**3 marks**

### Question 2

Explain how the *Contracts (Rights of Third Parties) Act 1999* alters the principle of 'privity of contract'.

**7 marks**

### Question 3

The *Civil Procedure Rules* impose an obligation on the parties to deal with cases proportionately. What factors should be taken into account when deciding whether an action is proportionate?

**4 marks**

### Question 4

Describe the differences between an affidavit and a witness statement.

**2 marks**

### Question 5

With respect to an allegation of breach of confidence, state four defences that a defendant could consider.

**4 marks**

### Question 6

Give two characteristics of mediation when used in Alternative Dispute Resolution.

**2 marks**

### Question 7

Give two characteristics of trading as a 'sole trader'.

**2 marks**

### Question 8

Briefly distinguish between 'tenants in common' and 'joint tenants', including, but not limited to, the effect of the death of one 'tenant'.

**5 marks**

### **Question 9**

With reference to *Rule 1* of the *IPREG Code of Conduct*, describe what is meant by 'corporate work'.

**7 marks**

### **Question 10**

With respect to *Rule 3* of the *IPREG Litigator's Code*:

a) How does the Rule describe a litigation practitioner's statutory duties?

**3 marks**

b) Explain the extent of those duties with respect to any other obligations the litigation practitioner has.

**1 mark**

**Total: 4 marks**

**SECTION A Total: 40 marks**

## SECTION B

### Question 11

Priti has developed a new generation micro walkie-talkie to fit inside shirt collars to assist with spying on people, to which she has a valid patent. She meets James at a book launch party for a book entitled *What I learned about my family by eavesdropping on them*. Both James and Priti are drinking alcoholic drinks.

James, a banker, said to Priti, "I'll make those for you at £20 apiece." Priti replied over the noise of the party, "I'll need you to make me 75,000 if I'm going to give you my patent rights to make those and charge me that much!" James says "I'll be tying up my factory for six months so I'll need to make 100,000 of them." They carry on talking to each other but don't speak any more about the walkie-talkies, except, on the way out, James shouts to Priti, "Because you're giving me such a good deal, I'll make you £2 million on those", to which Priti replies, "Hooray".

One month later, Priti is told by James that, following the party, he continues to make the walkie-talkies and he is now selling the walkie-talkies for £40 each, and will send her the £20/unit royalty as soon as this month's accounts are made up.

Priti disputes that a contract exists between her and James.

- a) **Advise Priti whether there is a contract between her and James**

**10 marks**

Priti waits a further two months to take action but is now worried about the quality of the products being made and wants to stop James from making and selling the walkie-talkies pending a full court action for patent infringement. James said he will make and sell only the 100,000 units he claims was agreed.

- b) **Advise Priti on the likelihood of her obtaining an interim injunction against James.**

**9 marks**

- c) **Give an example of a piece of evidence that James could bring to the court to persuade them not to grant an interim injunction.**

**1 mark**

**Total: 20 marks**

## Question 12

Christopher is a patent attorney. His client, Sindy, has invented a novel fastener made of interlocking teeth but without the need for a slider to draw the teeth together. Sindy, a skilled technician in her field, gives Christopher a piece of prior art but left out the last page of the document. Before the last date for amending the patent application, Sindy discovers the last page of the document but decides it is not worth worrying Christopher about. Christopher does not investigate the missing page of the prior art document.

A court later invalidated the patent because the sole claim in the patent was considered to lack novelty as a result of what was said on the last page of the prior art document.

Sindy suffers damage. In particular:

- i) a competitor uses her fastener and reduces her market by 60%;
- ii) she fails to get to her best expected price for her products incorporating the zip (though Sindy admits she did not market the product properly);
- iii) Sindy loses her house as she can no longer afford to pay the mortgage on her property.

**a) Advise Sindy whether Christopher is liable to Sindy for *all* this damage.**

**11 marks**

Sindy threatens Christopher with court proceedings for his negligence. A week later Christopher and Sindy have a 'without prejudice' meeting. During the meeting, Sindy tells Christopher that she will not pursue her case against him for her house. Christopher says, "Thanks", they shake hands and they move on to negotiate on the other issues.

A month later, Sindy commences court proceedings, including a claim for losses due to loss of her house.

Christopher wants to put his notes of the meeting to the court to demonstrate that he and Sindy have agreed that the claim to the house has been settled.

**b) By explaining what the term 'without prejudice' means, including its limitations, advise Christopher whether he can include his meeting notes as part of his defence. (Do not refer to any issues concerning formation of a contract.)**

**4 marks**

After the meeting, Sindy sends to Christopher a first letter headed 'without prejudice save as to costs', setting out a reasonable settlement proposal on head of damage i), and a second letter regarding head of damage ii), with the words 'this letter is intended to have the consequences set out in CPR Rule Part 36'.

**c) Explain what effect the term 'without prejudice save as to costs' has for Christopher.**

**2 marks**

**d) Referring to the scenario, explain the key information to be found in the letter and, briefly, the consequence for Christopher of the statement 'this letter is intended to have the consequences set out in CPR Rule Part 36' in the letter.**

**3 marks**

**Total: 20 marks**

### Question 13

Patrick is employed by MegaMix Concrete Ltd ('MegaMix'). He has worked for MegaMix for many years and is skilled at mixing concrete in the best proportions of ingredients so that it sets firmly and is less prone to cracking in the frost. This advantage is helped by an ingredient called Dentist's Mix that MegaMix adds to its concrete. Dentist's Mix is well known to help with teeth filling. It is generally not known to help with the concreting industry, although some academics have suggested it might be worth a try, the problem being obtaining the product in sufficient quantities.

MegaMix openly stores its bags of Dentist's Mix by the side of the road at its concrete mixing plant.

Patrick moves employment to become an employee of a competitor, SlowSet Concrete Ltd ('SlowSet').

MegaMix writes to Patrick telling him not to take a position with SlowSet mixing concrete and not to tell SlowSet about the use of the Dentist's Mix ingredient. MegaMix alleges that these are both trade secrets and that Patrick is not allowed to use them at SlowSet.

**a) Advise Patrick whether the following can constitute trade secrets under *The Trade Secrets (Enforcement, etc.) Regulations 2018*, implementing the *EU Directive on Trade Secrets (Dir 2016/943)*:**

- i) The best proportions of concrete ingredients so that the concrete sets firmly and is less prone to cracking in the frost.**
- ii) The use of Dentist's Mix in adding to the concrete mix.**

**10 marks**

**b) Advise Patrick on his obligations to MegaMix whilst working at SlowSet.**

**4 marks**

SlowSet is enthused by Patrick coming on board and now wants to raise finance to expand the business. SlowSet has one concrete mixing factory. It regularly buys and sells concrete delivery lorries as they need the mixers on the lorries to be renewed regularly. SlowSet has patents on its mixing machinery at its factories, which it regularly licenses to bring in extra income.

SlowSet approaches Other Bank plc ('Other Bank') for the finance.

**c) Discuss what SlowSet can offer Other Bank by way of security for the money it is going to borrow.**

**6 marks**

**Total: 20 marks**

#### Question 14

Ernest works for Strong Bottles Ltd ('Strong'). Strong makes wine bottles with toughened glass so that the bottles can be dropped and not shatter. Amy is a competitor who makes wine bottles out of plastic.

Both Strong and Amy are present at a recent trade show promoting their products.

It turns out Ernest went to school with Amy and doesn't like her. At the show, Ernest goes around telling potential customers he thinks that, because Amy's plastic bottles are made of faulty plastic, they will break "as soon as they are picked up". No one seriously believes the bottles will break, however, because they know Ernest is a rival who doesn't like Amy.

Amy's bottles don't in fact break as soon as they are picked up. She employs a plastics expert, who makes excellent plastic material.

- a) **Advise Amy whether Ernest could be liable for malicious falsehood.** **10 marks**
- b) **Advise Amy whether, if it comes to court, she can use her plastics expert to give an opinion on how good the plastic actually is.** **2 marks**

During a lunchbreak, Ernest is chatting to Katie, who is an old school friend of both Ernest and Amy. When chatting generally about old times at school, Ernest says in an offhand manner, "Oh, I saw Amy earlier; her business is losing money and will soon collapse." Unknown to Ernest, Katie is Amy's largest customer. Katie withdraws her business from Amy and Amy's business fails.

- c) **Assuming both statements are actionable malicious falsehoods, advise Amy whether she can take action directly against Ernest's employer, Strong, including whether there is a distinction to be drawn between the two statements made by Ernest.** **5 marks**

Amy was operating as a sole trader. She wants to start her business again. She had found it difficult to raise finance, even though she had offered the bank her vast stock of bottles as security. In light of this and her recent experience, her accountant advises that she trades as a limited company this time.

- d) **Explain to Amy the advantages of operating as a limited company over that of being a sole trader.** **3 marks**

**Total: 20 marks**