

LAW – Basic English Law
Mark Scheme 2014

Part A
Question 1

According to the Civil Procedure Rules Part 1, what is the overriding objective in Court procedure and what obligations are imposed by the overriding objective both on the Court and on the Court User?

10 marks

Answer

- a) Deal with cases justly including: **1 mark**
- b) ensuring the parties are on an equal footing. **1 mark**
- c) saving expense. **1 mark**
- d) dealing with the case proportionately **1 mark**
 - i. to the amount of money involved **0.5 marks**
 - ii. to the importance of the case **0.5 marks**
 - iii. to the complexity of the issues **0.5 marks**
 - iv. to the financial position of each party **0.5 marks**
- e) ensuring that the case is dealt with expeditiously and fairly **1 mark**
- f) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. **1 mark**
- g) The court must seek to give effect to the overriding objective when it
 - i. exercises any power given to it by the rules, or **0.5 marks**
 - ii. interprets any rule. **0.5 marks**
- h) the parties are required to help the court to further the overriding objective. **0.5 marks**
- i) the court must further the overriding objective by actively managing cases. **0.5 marks**

Total: 10 marks

Question 2

Define each element necessary to establish malicious falsehood.

10 marks

Answer

- a) A false statement of fact and not of opinion. **1 mark**
- published in writing or any other permanent form. **0.5 marks**
 - to some person other than the claimant. **0.5 marks**
 - or to a relevant category of third parties. **0.5 marks**
 - generally concerned with (a) claimant's economic interests **0.5 marks**
(b) claimant's commercial interests **0.5 marks**
 - as opposed to defamation which relates to claimant's reputation. **0.5 marks**
- b) The false statement is made with malice. **1 mark**
- with the intention of causing loss. **0.5 marks**
 - indirect, dishonest or improper motive on part of defendant. **0.5 marks**
 - defendant is reckless as to the truth of the statement. **0.5 marks**
 - where the defendant honestly believes the false statement is true, there is no malice. **0.5 marks**
 - statement beyond 'advertising puff' and an actionable misrepresentation. **0.5 marks**
 - the burden of proof is on the claimant to establish malice. **0.5 marks**
- c) Damage **1 mark**
- claimant must prove that they suffered damage. **0.5 marks**
 - no requirement to prove special damage. **0.5 marks**

Total: 10 marks

Question 3

Identify and briefly describe the different forms of evidence, giving examples.

10 marks

Answer

- a) Direct Evidence: **1 mark**
- First hand evidence of relevant facts. **0.5 marks**
 - Given by way of witness statement or oral testimony given on oath **0.5 marks**
- b) Opinion Evidence: **1 mark**
- Expert evidence by written report or oral testimony given on oath. **0.5 marks**
 - Specialised evidence requires specialist interpretation for its significance to be appreciated. **0.5 marks**
- c) Hearsay Evidence: **1 mark**
- A statement originally made by a person not in the Court which is repeated in court. **0.5 marks**
 - for the purpose of proving that the statement is true. **0.5 marks**
- d) Real Evidence. **1 mark**
- physical objects. i.e. stolen goods. **0.5 marks**
 - Frequently requires additional evidence (witness testimony) to place it in its proper context. **0.5 marks**
- e) Documentary Evidence: **1 mark**
- Documents used to provide evidence - A document means anything in which information of any description is recorded including recordings **0.5 marks**
 - Consider survey evidence. **0.5 marks**

Total: 10 marks

Question 4

Explain the four essential requirements for formation of a valid contract.

10 marks

Answer

a) Offer. **1 mark**

- An unambiguous offer which must be communicated. **0.5 marks**
- An unequivocal offer of a promise, capable of acceptance. **0.5 marks**
- Is it an invitation to treat - invites another party to make an offer. **0.5 marks**

b) Acceptance **1 mark**

- Unqualified and unconditional acceptance of the full terms of the offer. **0.5 marks**
- Counteroffer by which conditions or qualifications are added. **0.5 marks**
- Must be communicated/transmitted to the offeror. **0.5 marks**

c) Consideration **1 mark**

- payment, promise or other form of consideration that moves from one party to the other. 'A detriment in exchange for the promise'. **0.5 marks**
- Must be sufficient but need not be adequate. **0.5 marks**
- Must not be past and must not be an existing duty. **0.5 marks**

d) Intention to create legal relations. **1 mark**

- Contract not binding if made without intention to create legal relations **0.5 marks**
- Domestic arrangements - lack force because parties do not intend them to have legal consequence. **0.5 marks**
- Commercial transactions - presumption that parties intend to create legal relations. **0.5 marks**

Total: 10 marks

Question 5

Summarise the rights for a third party to object to a new company name at Companies House and the Company Names Tribunal.

10 marks

Answer

a) Objection can be raised based on Section 69 of Companies Act 2006.

0.5 marks

Companies House objection: a requirement to change a company name after incorporation if:

i. the name is 'too like' an existing name on the Register.

1 mark

A name is 'too like' if:

- the differences are so trivial the public are likely to be confused by the simultaneous appearance of both names on the Register. (e.g. differ by one or two letters or characters; differ because of punctuation or spacing of letters or words or the order of the words.) **0.5 marks**
- The names look and sound the same and could suggest a connection between company and objector. **0.5 marks**

ii. misleading information was provided at the time of registration.

1 mark

iii. the company's activities are misleading.

1 mark

iv. All 'too like' objections should be addressed to the Secretary of State at Companies Registry in time for any direction to be issued within 12 months of a company's incorporation.

0.5 marks

Company Names Tribunal objection: Relevant to Registered companies and Limited Liability Partnerships.

0.5 marks

Provides a remedy for parties who:

0.5 marks

- 1) are aggrieved by the opportunistic registration of a company name for a similar name. **0.5 marks**
- 2) in which they have a goodwill/reputation. **0.5 marks**

1) suspect the name has been registered in order to extract money. **0.5 marks**

2) or to prevent the aggrieved party from registering the name. (e.g. Someone registers one or more variations of the name of a well-known company in order to get the latter company to buy the registration.) **0.5 marks**

3) Someone knows that a merger is to occur and registers likely variations of the merged company name. **0.5 marks**

Person making the application to the Company Names Tribunal:

(1) Does not have to own a company name registration. **0.5 marks**

(2) Will have to demonstrate goodwill/reputation in the company name, at the time that it was adopted by the company registration holder. **0.5 marks**

Total: 10 marks

PART B
Question 6

Give a brief definition of each of the following and compare the advantages and disadvantages of operating a business under each.

- a) A Limited Company.
- b) A partnership formed under the Partnership Act 1895.
- c) A limited liability partnership under the Limited Liability Partnerships Act 2000.
- d) A sole trader.

15 marks

Answer

a) Limited Company

- Created by process of incorporation by promoters. **0.5 marks**
- Memorandum and articles - unique structure and direction. **0.5 marks**
- Owned by shareholders who fund company **0.5 marks**
- Shareholders vote according to shares owned. **0.5 marks**
- Controlled by Directors. **0.5 marks**

Advantages:

- Limited liability of shareholders **0.5 marks**
- Easier contract formation. **0.5 marks**

Disadvantages:

- Onerous formalities. **0.5 marks**
- Publication of company activities **0.5 marks**
- Publication of financial accounts. **0.5 marks**

b) Partnership

- Two or more people agree to go into business together. **0.5 marks**
- May be regulated by agreement - optional. **0.5 marks**

Advantages:

- Partners share the risks and the assets. **0.5 marks**
- Little accountability or regulation. **0.5 marks**
- No requirement to file reports and accounts. **0.5 marks**

Disadvantages:

- Unlimited liability. **0.5 marks**
- Joint and several liability for each partner. **0.5 marks**

c) Limited Liability Partnership

- Incorporated by Registrar of companies. **0.5 marks**
- Formed of members who may execute a members agreement. **0.5 marks**

Advantages:

- Limited liability for members in relevant circumstances. **0.5 marks**
- No restriction on number of members. **0.5 marks**
- Can own some assets. **0.5 marks**

Disadvantages:

- Must file annual accounts. **0.5 marks**
- Administrative burden **0.5 marks**
- Legislative burden. **0.5 marks**

d) Sole Trader

- A business owned by one person. **0.5 marks**

Advantages:

- Full control of the business and how it is run. **0.5 marks**
- Ownership of all the assets and any profit. **0.5 marks**
- Limited formalities. **0.5 marks**

Disadvantages:

- Unlimited liability - responsible for all the debts and liabilities accrued by the business. **0.5 marks**

Total: 15 marks

Question 7

Identify and explain the various criteria necessary in order to establish grounds for an interim injunction.

15 marks

Answer

- a) Governed by the principles in American Cyanamid **1 mark**
- b) Is there a serious issue to be tried? **1 mark**
- Court satisfied that claim not frivolous/vexatious. **1 mark**
- c) Balance of convenience: **1 mark**
- Would damages be an adequate remedy for the claimant if he succeeds at trial? **1 mark**
 - If damages adequate - no interim injunction granted. **1 mark**
 - Would damages be an adequate remedy if defendant succeeds at trial? **1 mark**
 - if damages adequate injunction can be granted. **1 mark**
 - The extent to which damages would be an inadequate remedy for either party. **1 mark**
- d) Status Quo **1 mark**
- if disadvantages to both parties equally balanced, the status quo should be preserved, **0.5 marks**
 - to that immediately before issuance of proceedings. **0.5 marks**
- e) The merits of the case **1 mark**
- if different factors do not differ widely, Court considers merits. **0.5 marks**
- f) Delay in applying for interim injunction weighs against grant of injunction **1 mark**
- g) Cross Undertaking in damages **1 mark**
- If injunction granted Claimant undertakes to pay damages to defendant if defendant successful at trial. **0.5 marks**

Total: 15 marks

Question 8

Briefly discuss European sources of law, both Primary and Secondary, and explain their application to the United Kingdom.

15 marks

Answer

a) Primary Sources of law –

- i. Treaties **1 mark**
 - Lay out how the EU operates. **0.5 marks**
 - Treaty on the European Union **0.5 marks**
 - Treaty on the functioning of the European Union (TFEU) **0.5 marks**
 - All treaties signed by UK Government automatically become law **0.5 marks**
 - European Treaty law now interpreted and applied directly by the UK courts. **0.5 marks**
 - Have direct effect (both vertically and horizontally) if give individuals rights and are clear. **0.5 marks**

b) Secondary Sources of law –

- i) Regulations **1 mark**
 - Ensure uniformity across all member states. **0.5 marks**
 - Article 288 (TFEU) – ‘binding in every respect and directly applicable in each member state. **0.5 marks**
 - Do not have to be adopted into UK law. **0.5 marks**
 - Have direct effect (both vertically and horizontally) if give individuals rights and are clear. **0.5 marks**
- ii) Directives **1 mark**
 - facilitate harmonisation of laws within Member states **0.5 marks**
 - Article 288 (TFEU) – ‘bind any member state to which they are addressed as to the result to be achieved, while leaving to domestic agencies a competence as to form and means’ **0.5 marks**
 - Not directly applicable. Implementation in UK normally by Statutory Instrument. **0.5 marks**
 - Must be implemented within time limit set by EC. **0.5 marks**
 - Where no implementation within time limit, Directive has Vertical direct effect if give individual rights and are clear. **0.5 marks**
 - Individual can claim against the State for loss caused by failure to implement. **0.5 marks**
 - Where no implementation within time limit. No horizontal direct effect **0.5 marks**
 - UK Courts have a duty to interpret National law in the light of wording and purpose of any relevant Directive. **0.5 marks**
- iii) Decisions **1 mark**
 - Issued under power of Article 288 (TFEU) **0.5 marks**
 - ‘Binding in every respect of the addressees named therein’. **0.5 marks**
 - Generally administrative by nature. **0.5 marks**
 - Addressed to member state or an individual **0.5 marks**

Total 15 marks

Question 9

Susie is driving very slowly as she is towing a horse box containing her two horses. Simon is driving very close behind Susie. He has just stolen the car he is driving and he is making his getaway with his accomplice Terry. Getting impatient, Simon overtakes Susie on a blind bend and collides with Karen who is travelling in the opposite direction. Karen is not wearing a seat belt because she did not want to crease her dress. Her car has just failed its MOT for faulty brakes so she cannot stop and her car careens down a bank into a ditch. Karen and her passenger, Ben, who had accompanied her to the MOT testing station, both suffer serious head injuries. Simon's car spins off the road and hits a tree and he and Terry both sustain serious lacerations.

Outline the relevant legal principles, and applying legal reasoning, identify the potential defendants, consider their liability and advise as to what defences they could use to avoid or limit their liability.

15 marks

Answer

a) Define negligence

i. Duty of care **1 mark**

- 'Neighbour principle' - take reasonable care to avoid acts or omission which can be reasonably foreseen as likely to injure your neighbour **0.5 marks**
- A relationship of sufficient proximity to impose a duty of care. **0.5 marks**

ii. Breach of duty **1 mark**

- Has the defendant come up to the standard of care required by law. **0.5 marks**
- Reasonable man test - what would a reasonable person have foreseen in the situation. **0.5 marks**

iii. Causation **1 mark**

Claimant must show

- a) on balance of probabilities **0.5 marks**
 - i. the defendant's breach of duty caused the loss which they suffered – **0.5 marks**
 - ii. 'but for' test.
- b) the extent of the damage attributable to the defendant. (remoteness) **0.5 marks**

Apply facts to law:

Simon overtakes on a bend and crashes into Karen.

- Simon owed a duty of care to Karen. **0.5 marks**
- Breached duty, caused the collision **0.5 marks**
- Simon negligent **0.5 marks**
- Simon has no claim on Karen **0.5 marks**

- Simon negligent **0.5 marks**

Ex turpi causa. - no action arises from a disgraceful claim. Simon knowingly engaged in unlawful enterprise **1 mark**

Terry

- Simon owed Terry a duty of care. **0.5 marks**
- Ex turpi causa – Terry has no claim due to illegality. **0.5 marks**

Karen -

- Simon owes Karen a duty of care. Simon negligent. **0.5 marks**
- Karen wearing no seat belt and driving faulty car. Her carelessness contributed to her own injuries - Contributory negligence. **0.5 marks**
- Partial defence - Damages reduced. **0.5 marks**

Ben

- Simon owed Ben a duty of care. Negligent. **0.5 marks**
- Ben knew Karen's car faulty and agreed to be a passenger. Consider contributory negligence on the part of Ben? **0.5 marks**

Ben

- Karen owed Ben a duty of care. **0.5 marks**
- Ben knew car was not road worthy and he agreed to be passenger. Volenti non fit injuria - 'there can be no injury to one who consents' 'voluntary assumption of risk' **0.5 marks**
- Complete defence to negligence. **0.5 marks**

Marks will be awarded for sound reasoning and argument in support of any position/decision taken.

Total: 15 marks

Question 10

Bill Jagger, a UK regulated person, acts in IP matters for Merrist Pipes Limited, who own a UK registered trade mark. Bill receives a written request from John Jones, a regulated person asking for a letter of consent from Merrist Pipes Limited, to register and use a trade mark application in the name of his Clients, Acme Traders Limited. John advises Bill that Acme Traders Limited are facing a short deadline for filing the signed letter of consent with the trade mark authorities. A week after receiving the request from John, Bill writes to John Jones requiring an undertaking from him to meet Bill's fees for forwarding John's request for consent to Merrist Pipes Limited. Pending a response from John, Bill takes no action to report the request for consent to his clients.

With reference to the relevant portions of the IPReg Rules of Conduct and the Guidance Notes thereto, discuss the above situation.

15 marks

Answer

Frame for Answer: IPReg Rules of Conduct and Guidance.

Knowledge of the Rule/Guidance number is not required.

Half marks may be awarded where candidates have not been precise when reciting the content

Rule 5

Regulated persons shall at all times act with integrity **(1 mark)** putting their clients' interest foremost subject to the law and any overriding duty to any Court of Tribunal **(1 mark)**

Guidance - 5.1

A regulated person should in all professional activities: a) practice competently, promptly, conscientiously, courteously, honestly and objectively **(1 mark)**, avoiding unnecessary expense to the client **(1 mark)**

Rule 6

Regulated persons shall carry out their professional work in a timely manner **(1 mark)** and with proper regard for standards of professional service and client care. **(1 mark)**

Guidance - 6.7

Unless otherwise agreed with the client **(0.5 marks)** a regulated person should not require as a condition, from a sender of correspondence relevant to his client, an undertaking **(0.5 marks)** to meet the regulated person's fees for forwarding the sender's correspondence or communication to the client **(0.5 marks)** or for giving the client advice on the matter. **(0.5 marks)**

Guidance – 6.9

1. The sender is not liable for any costs until agreement is reached **(1 mark)**, but any agreement will impose liability **(0.5 marks)** regardless of whether the sender receives the benefit or cooperation sought. **(0.5 marks)**

Apply to facts of question:

Bill's action is in breach of, inter alia, Rule 5 and Rule 6 and relevant Guidance **1 mark**

- Since the regulated person is putting his own interest in fees before the interests of the client **0.5 marks**
- Who should be informed promptly. **0.5 marks**

Dependent on an arrangement with his Client:

- Bill could request John for reasonable costs, **0.5 marks**
- But the forwarding of the correspondence should not be dependent on it. **0.5 marks**

If Bill is unwilling to forward the communication to his client without payment from the requester: **0.5 marks**

- a) The correspondence should be returned to John (provided Merrist Pipes is not prejudiced by the resulting delay). **0.5 marks**
- b) The correspondence should be forwarded to Merrist Pipes **0.5 marks**
- c) Without comment or offering assistance on appropriate terms. **0.5 marks**

Marks will be awarded for stating the content of the Rules and Guidance as well as for any sound justification or sound reasoning for any suggested action provided it remains within the framework of the IPReg Rules.

Total: 15 marks