Examiner's Report 2016
FC2 – English Law

Patent Examination Board

Introduction

The marks achieved this year were disappointing:

- A larger number of fails this year to last year
- Fewer candidates achieving above 60%.

Common issues that arose (and had an impact of the overall results) included:

- Failure to apply law to the facts in part B. Some flexibility in marking was given here but full marks were not achieved even though candidates may have demonstrated good knowledge of the law. Candidates appear not to have read the questions properly as it was clear that application as well as knowledge was required.

- Some evidence that candidates were not learning litigation areas. One candidate even said it would be negligent for a patent attorney to advise on aspects of litigation as they were not experienced to do that. Also, pre-litigation steps that needed to be taken were often misunderstood or ignored. However the syllabus is clear in the areas that need to be covered.

The student survey produced several comments about the Law Syllabus. These have been addressed. Please see the amended syllabus and a note from the Principal Examiner here.

Part A

Question number	Comments on questions
Question 1	Part a) Most candidates obtained some marks. Full marks were rare. Part b) i) Most candidates were not aware that leave for judicial review was required before a court could consider the application itself. Part c) There was a large amount of apparent guessing as many candidates set out requirements similar to the principles for obtaining an interim injunction. Candidates were not aware of the detail of such orders.
Question 2	Part a) was answered well. Unfortunately it was clear that candidates were question spotting as many set out more detail that would normally be required for 3 marks and did not answer part c) well. Part b) Many candidates knew the initial answer. Part c) was poorly answered. Some candidates clearly had no idea at all and described the principles for negligence.

Question 3	Part a) Surprisingly this question was poorly answered with many not being aware of equitable assignments. Part b) was answered well. I note however that a number of candidates had mis-learnt that an advert in a newspaper can never amount to an offer, forgetting the Carbolic Smokeball case. This did not alter their marks usually as it formed part of their wider discussion which demonstrated the understanding required. Part c) was answered well. Part d) was answered well. Many candidates achieved full or near full marks on this question.
Question 4	Part a) Surprisingly this question was not answered well by a number of candidates (from memory candidates in the previous year had memorised many parts of the court jurisdiction. Some even were not aware of the IPEC jurisdiction in detail. Part b) was answered well on the whole. Part c) was answered well on the whole. Overall candidates did well on this question.
Question 5	Part a) Many candidates were not aware of Part 36 as a separate rule from the general 'without prejudice' rule covering offers. Some candidates learnt parts of rule 36 comprehensively but tended not to learn across the scope of the rule even at a high level. Part b) was poorly answered. I don't recall any candidate knowing a correct answer to the second part of this question.

Part B

Question number	Comments on question
Question 6	Part a) Most candidates were unaware that the only appeal route from the Appointed Person was by judicial review. Part b) was answered well on the whole. Part c) was answered well. Candidates lost marks through failing to apply the principles to the letter agreement.
Question 7	Part a) was poorly answered. The first part of the question part b) was answered well. Part c) Marks were lost by candidates failing to apply or attempting to apply the answer to the problem, which demonstrated that candidates could recite the answer in theory but had little appreciation of the practical effect. Part d) Marks were lost by candidates failing to apply or attempting to apply the answer to the problem, which demonstrated that candidates could recite the answer in theory but had little appreciation of the practical effect. Part e) Many candidates picked up marks here, I was struck by how few candidates could apply the rules of conduct to the scenario in which the question itself says that not sending pre-action correspondence is wrong.
Question 8	Part a) Very few candidates were able to answer this well, though many made brave attempts. Candidates tended to believe that if the statement is not written into the contract then it does not become part of the contract. Part b) parts i & ii were answered well on the whole, part iii - candidates were confused or didn't know the answers, part iv most candidates were simply unaware of using a term of the contract to limit liability or any restriction in excluding liability for fraudulent misrepresentation. Part c) There were a disappointing number of candidates who were unaware that a claim for fraud cannot be made in the absence of prima facie credible evidence. Part d) Most candidates were unable to realise that the tooling was required for the new process even though the question clearly describes the tooling as 'necessary'. Part e) part i Many candidates mis-learnt the test as putting the claimant back in the position at the beginning of the litigation, not

	had the contract not been breached. Due to the basic nature of this question, this makes me disappointed. On the whole candidates did not understand contract misrepresentation.
Question 9	Part a), b) Candidates lost marks for not applying their knowledge to the question even though many candidates demonstrated knowledge across these areas. Part c) On review it was decided to award marks to candidates who decided that the patent attorney might not be sufficiently experienced to advise on a loan agreement. Most candidates opted for this answer despite the 'elephant in the room' of the conflict issue. Part d) Surprisingly this was poorly answered.
Question 10	Part a) was well answered expect for the failure of candidates to apply their answer to the question. Part b) was poorly answered. Many candidates mis-learnt the test as putting the claimant back in the position at the beginning of the litigation, not had the tort not been committed. Part c), d) On the whole these questions were answered without undue difficultly. Part e) Candidates lost marks for not applying their knowledge to the question even though many candidates demonstrated knowledge across this area.