

## **Introduction**

This year's examination covered the syllabus more fully than previously. The pass rate this year was similar to previous years.

The examiner was pleased to note an increased in the pass rate this year.

The candidate feedback arguing that the question paper was 'hard' or 'harder' than in previous years is not borne out in these marks. The paper was fair in that it rewarded candidates who have studied across the board and who were able to excel.

IPEC procedure (Q2). This was a question that included basic questions on IPEC procedure and was avoided by many candidates. Those candidates that did attempt the questions clearly showed that they had revised this area.

Application of law in problem questions

Candidates demonstrated an increasing awareness that they must use a legal approach to applying facts to the correct legal test and that mere repetition of the law is insufficient to gain the marks awarded for the question. Some candidates still lose considerable marks for not following such an approach. Candidates who structured their answer in accordance with the appropriate legal test were far more successful at this than those who dived in mid-way into a scenario. Application does not include, for example: 'Theresa made an offer to Angela' – in the absence of an explanation of why the offer rule applies marks cannot be awarded for this statement.

IPReg code of conduct

Candidates should learn the wording of the rules. The rules are already drafted economically and any further economy or deviation with reciting the rule risks the candidate failing to demonstrate an understanding of the rule.

Increasing competence

The examiner notes increasing competence from candidates in their legal skill of applying facts to law. Candidates are more confident in arguing a position. Where a candidate's conclusion was at odds to that of the examiner, marks were still awarded for a submission reasonably based on legal principles. Candidates should be careful that questions will still require all relevant legal principles to be discussed, unless the question is otherwise limited.

Part A

Question number	Comments on questions
Question 1	<p>This question was answered well. It consisted of some factual questions.</p> <p>Candidates should remind themselves that it is the Administrative Court part of the High Court that has exclusive jurisdiction. In relation to the IPREG code of conduct candidates should attempt to learn the wording of the rules. In this case it is <i>registered</i> attorneys and their firms that are regulated. Solicitors are not registered by IPReg.</p>
Question 2	<p>This question concerned aspects of IPEC procedure.</p> <p>10 candidates attempted this question. 6 obtained 5 marks or more on it. Those who did not pass it also scored significantly low marks overall.</p>
Question 3	<p>This question was answered well.</p> <p>With respect to the balance of convenience, the question made clear that not all aspects of the test for grant of an interim injunction need be recited. Many candidates spent valuable time writing on aspects of the test that was not examined by this question</p> <p>With respect to remedies, the candidate should have distinguished the injunction granted as a Final Injunction as the test applied is different from that for an interim injunction, namely that once infringement is demonstrated a Final Injunction is granted almost as of right to the claimant.</p>
Question 4	<p>This question was answered well, with some exceptions. It consisted of some factual questions.</p> <p>On the assignment/novation on contracts, candidates generally either knew this (and often achieved full marks) or knew nothing and did not score any marks.</p> <p>On application of the assignment rule to copyright licences (1 mark), candidates did not know the rule against assigning a personal benefit except where the contrary intention is indicated. This issue has been highlighted in the syllabus from 2018.</p>

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<b>Question 5</b>	<p>This question comprised factual questions on company law that had appeared in previous examinations. The attempts at this question were, on the whole, disappointing.</p> <p>Many candidates did not explain why the particular charge was appropriate to the asset. A <u>portfolio</u> of IP should not be dealt with under a fixed charge as it is impractical to manage a portfolio in detail with constant referrals to the holder of the debenture..</p> <p>There was some confusion as to the basic nature of a company limited by guarantee and by some even of a company limited by shares.</p> <p>In relation to the IPReg code of conduct candidates should attempt to learn the wording of the rules. Very few candidates have read the IPReg update allowing monies received for unpaid professional disbursements for work completed to be paid into office account. This has been highlighted explicitly in the new syllabus.</p>
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**Part B**

Question number	Comments on question
<b>Question 6</b>	<p>Advantages/disadvantages of IPEC v High Court</p> <p>Many candidates did not apply the law to the facts and failed to gain marks solely for this reason.</p> <p>Malicious falsehood Most candidates were aware of the overall nature of the test for malicious falsehood, but candidates failed to gain marks where details were not learned. For example better candidates discussed whether Jackie's 'opinion' could amount to a 'false statement of fact not opinion'.</p>
<b>Question 7</b>	<p>This question was answered well, with some exceptions. Again, candidates failed to gain marks where there was a failure to apply the law to the facts, especially with respect to negligence. Some candidates decided the matter differently to the examiner and provided the answer was reasonably based on the correct legal test being applied the candidates were awarded marks.</p> <p>Candidates should have distinguished between Sanjay's loss and his wife's business loss when applying rules of causation to achieve full marks.</p>

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<b>Question 8</b>	<p>The marks achieved on this question were on the whole disappointing.</p> <p>Manufacturing contract: most candidates correctly concluded there was no contract as Theresa did not accept Angela's counteroffer. Candidates failed to gain marks as many focussed on setting out the law, rather than applying it. Marks were awarded for the correct legal test and it was useful to see the legal test listed in the event that the application to the facts was unclear, however full marks could not be awarded just for setting out the legal test.</p> <p>Ex parte Injunction: The legal test was known to most candidates. Even the better candidates did not say why the test could apply to those facts. For example stating that 'Angela has a serious case' is not sufficient to demonstrate that a candidate understands how the rule operates.</p>
<b>Question 9</b>	<p>Only three people answered this question. Trusts have always featured in the syllabus and the wider aspects have never been examined. During question paper preparation, the inclusion of a questions on trusts was discussed at length. A part question on trusts worth 5 marks was included in question 10. Most candidates avoided question 10 possibly because of this topic. This area of the law is no longer in the syllabus from 2018.</p>
<b>Question 10</b>	<p>The attempts at this question were on the whole disappointing.</p> <p>Assignment made in writing.</p> <p>It was rather concerning to see the number of candidates who did not spot (or who did not state and follow up) on the lack of the assignment being in writing.</p> <p>Few candidates appreciated that in Edward's absence only a court order could be used to perfect his title. The full answer separated the better candidates. A person making a request for an equitable remedy would have to come to the court with 'clean hands'.</p> <p>Most candidates appreciated that Samantha might possess 'relevant knowledge' about Edward's patent.</p>