

Introduction

There was a good pass rate on this paper in line with previous years. The marks demonstrated broad knowledge across the syllabus. However Code of Conduct questions in Part A were answered poorly, generally.

Most candidates answered questions 11, 12 and 14 in Part B. Few candidates answered question 13 though those candidates who did attempt this question often did well.

It is encouraging to see the broad knowledge of law and the confidence to apply that law to the facts. This demonstrated understanding of the law and the legal skill. As in previous years if there was no application of the law to the facts then a maximum of 50% of marks only could be achieved.

Unfortunately in a few instances some candidates failed to set out the law at all. Mere use of legal terms when discussing the facts could not attract the full marks available to statements of law as it was usually unclear if the candidate knew the law. Candidates who split out the law and discussion of the facts generally could be awarded higher marks because of clarity.

Candidates should continue to set out a conclusion to the fact scenarios based on the legal reasoning demanded by the question. Even if the conclusion could be said to be 'wrong', the way in which a candidate is able to show a legal justification is useful in resolving ambiguities elsewhere in their answer.

Questions

Part A

Question number	Comments on questions
Question 1	This was well answered though full marks were rare.
Question 2	This was well answered. There were, however, a worrying number of candidates who did not understand what was meant by "privity" of contract.
Question 3	This was well answered very well.
Question 4	Most candidates understood the general distinction but an affidavit and a witness statement are clearly different ways of making statements so lack of understanding is worrying, given the role that patent attorneys have as professionals in administering such statements.

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Question 5	This was answered poorly given that the syllabus clearly sets out the four points sought, though “legal duty” was accepted as an additional point.
Question 6	This was generally well answered though candidates should be aware that “without prejudice” is a rule distinct from and in addition to confidentiality.
Question 7	This was generally well answered though candidates frequently made sweeping statements such as a sole trader “works entirely on his own” or “there are no formalities” to commencing trade. Such comments reflect a lack of understanding: clearly sole traders can take whatever risks they wish such as employing people and must for example register as self-employed for tax purposes.
Question 8	This was generally well answered though more candidates than expected mixed up the two types of joint ownership even when describing the contrast in great detail, frustratingly.
Question 9	This definition comes from the IPReg Code of Conduct. The question was poorly answered, showing that guidance from previous years indicating that a good knowledge of the Code would be expected, had not been followed by candidates.
Question 10	This definition comes from the IPReg Litigator’s Code and was also poorly answered showing candidates had not followed previous guidance from previous years indicating that a good knowledge of the Code was expected.

Part B

Question number	Comments on question
<p>Question 11</p>	<p>These answers were pleasing in that candidates demonstrated knowledge of the law as well as understanding of how to untangle facts and hence apply the law.</p> <p>Part (a) was well answered generally. Candidates should be spotting the value in one party agreeing to give up rights by the grant of a licence and the consideration in the mutual promises, i.e. that consideration is what supports the existence of the promise itself not the later performance in say the payment of a royalty. This contrasts with Sales of Goods Act statutory consideration.</p> <p>Few candidates recognised a distinction between an agreement to manufacture and the right to sell. Whilst this exam is not meant as a test of patent law, this lack of understanding remains worrying given the areas of law that patent attorneys will be asked to deal with.</p> <p>Part (b) was well answered. Most conclusions on issues such as balance of convenience were accepted provided they were reasonable.</p> <p>Part (c): Many candidate saw the obvious example that quality issues needed to be answered and this flowed from understanding of the issues in Priti's case. Evidence of delay was not accepted on its own for the award of the whole mark.</p>
<p>Question 12</p>	<p>Part (a) was generally answered well. There was clear factual causation in i) and clear remoteness in iii). Reasonable answers for ii) were seen, including raising issue of Sindy's poor marketing. Some candidates left out Sindy's probable contributory negligence or characterised it as "a defence" or "break in chain of causation" – clearly incorrect if Christopher's breach of duty as a failure to follow up has been identified.</p> <p>Part (b) was generally answered well.</p> <p>Part (c): Some candidates struggled to distinguish use by the court of such letters on costs with damages, even though the letter was headed "without prejudice save as to costs".</p>

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	<p>Part (d): There was generally good awareness of the Part 36 rule. Few candidates though understood how and why to apply it in practice as it is designed to pressure a party to settle.</p>
Question 13	<p>Part (a) was well answered generally. A number of candidates tried to apply the Coco v Clark test which did not attract the marks.</p> <p>Part (b) was generally moderately well answered but candidates often did not distinguish between trade secrets and general skill and knowledge of an employee.</p> <p>Part (c): The better candidates demonstrated detailed knowledge of floating charges.</p>
Question 14	<p>Part (a) was generally moderately well answered but candidates often did not distinguish special damages and the exception under s3(1) Defamation Act.</p> <p>Part (b): Most candidates identified the issue of impartiality though surprisingly many decided that Amy could not use her expert. As marks were not awarded for the conclusion, this did not detract from the marks awarded per se.</p> <p>Part (c): Most candidates identified the issue of vicarious liability and recognised a distinction between activities carried out in pursuing Ernest's work and his personal interaction. It would have been encouraging to see some greater detail on the test applied such as the requirement for a 'close connection'.</p> <p>Part (d): The better candidates spotted that Amy would benefit as a limited company from being able to seek floating as opposed to fixed charges. A significant number of candidates failed to apply their knowledge to the facts and failed to achieve marks in the process.</p>