

# Foundation Certificate

## FC2 English Law

**Monday 18 October 2021**

**10:00 to 13:20 UK British Summer Time (GMT + 1 hour)**

**Examination time: 3 hours 20 minutes plus 10 minutes upload time**

The 3 hours 20 minutes is allocated as follows:

**10 minutes** – Downloading and printing the question paper;

**3 hours** – Answering the questions;

**10 minutes** – Two screen breaks of 5 minutes each.

**At 13.20 you MUST immediately stop answering the questions.** You then have **10 minutes** in which to upload your Answer document to the PEBX system.

**You MUST upload your Answer document to the PEBX system by 13.30. After 13.30 you will not be able to upload it and your examination will be void.**

### 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 preset 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.

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

### AT THE END OF THE EXAMINATION

10. Upload your Answer document to the PEBX system. You should upload it as a Word document. PEBX will automatically convert it to PDF.

## SECTION A

### Question 1

The *Civil Procedure Rules* Part 1.1 impose an overriding objective on the courts to deal with a 'case justly and at proportionate cost'. State four separate aspects of this overriding objective NOT including factors the court takes into account when considering proportionality.

**4 marks**

### Question 2

a) What is meant by:

i) ratio decidendi;

**1 mark**

ii) res judicata?

**1 mark**

b) Which court has the exclusive jurisdiction to hear applications for judicial review? You should indicate which part of this court has the responsibility for these cases to obtain the full mark.

**1 mark**

**Total: 3 marks**

### Question 3

With reference to *Civil Procedure Rules* Rule 6.3, briefly describe three ways in which a company may be served with proceedings.

**3 marks**

### Question 4

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

**3 marks**

### Question 5

State how Rule 2 of the *IPREG Code of Conduct* limits the applicability of Rules 12 (*Complaints Handling*) and 17 (*Professional Indemnity*).

**4 marks**

### Question 6

With reference to Rule 6 of the *IPREG Code of Conduct*, describe what the Guidance to that Rule prescribes when a regulated person is unwilling or unable to provide services to an existing client.

**3 marks**

### Question 7

With respect to an application for an ex parte interim search and seizure order, state at least three grounds that the applicant for the order must demonstrate to the court.

**3 marks**

### Question 8

a) In the law of contract, briefly explain what is meant by the following terms:

i) 'condition';

**1 mark**

ii) 'privity'.

**1 mark**

b) Distinguish between assignment and novation of a contract.

**4 marks**

c) i) Describe what a misrepresentation is in the law of contract.

**1 mark**

ii) Distinguish between fraudulent misrepresentation and negligent misrepresentation.

**2 marks**

iii) Briefly state the remedies for fraudulent and negligent misrepresentation.

**1 mark**

**Total: 10 marks**

### Question 9

Briefly contrast three differences between the small claims track and multi-track of the Intellectual Property Enterprise Court.

**3 marks**

### Question 10

Explain the information that must be contained in a Part 36 (CPR Part 36 (*Offers to Settle*)) offer.

**4 marks**

**SECTION A Total: 40 marks**

## SECTION B

### Question 11

Belinda has developed a new generation of domestic kettles that boils the water more quickly due to a unique arrangement of heating elements within the kettle and she claims design rights over the unique arrangement.

Belinda has a stand at a home lifestyle exhibition to launch the new kettle, displaying her design manufacturing drawings. As people arrive at the stand, she gives each person a glass of wine.

Her cousin Sebastian is having a fun day out. Sebastian comes by the stand. Sebastian hasn't seen Belinda for many years and tells her about his home appliances manufacturing facility and how it is currently idle.

Sebastian has several glasses of wine and goes away again. At the end of the day Sebastian comes back to the stand to help Belinda tidy up and go out on the town to catch up.

In the cinema, Sebastian says to Belinda, "I can make 10,000 of your kettles for you by the end of next month." Belinda, who is tired, says "Fine, whatever." Sebastian then says "I can make each for you at £20 apiece." Belinda says, "Well, I'm getting them much cheaper than that already, at £15 apiece." Sebastian says, "Great, they'll be based on your design manufacturing drawings." Belinda again says, "Fine, whatever." The film begins and nothing more is said.

At the end of the following month Sebastian delivers 10,000 of Belinda's kettles. Belinda refuses to accept them, saying she already has a supplier. Sebastian sells 5,000 of the kettles to a third-party retailer at £10 per unit, believing he has the right to do so.

Sebastian sues Belinda for breach of contract, but Belinda says to Sebastian there was never a contract between them.

- a) Advise Belinda whether there is a contract between her and Sebastian. Ignore any other potential claims.**

**11 marks**

Belinda's in-house team creates the first sketches of the unique arrangement of heating elements. Later she arranges for a freelance draughtsman, Sajit, to create the design manufacturing drawings. The freelance agreement between Belinda and Sajit makes no mention of intellectual property rights. The commercial terms clearly envisage that Belinda has a growing business. Now Belinda wants to:

- i) use her new in-house draughtsman to adapt the manufacturing drawings to improve the kettles; and
- ii) sell rights in the drawings onto another company.

**Cont...**

Sajit, however, claims that he still owns copyright in the drawings and that he is refusing to give permissions to Belinda to do either of these acts. Belinda claims that she clearly intended to be free to do these acts.

- b) Advise Belinda on whether she can claim to own copyright in Sajit's drawings to carry out her wishes. You should assume that copyright resides in the drawings and that adapting the drawings would infringe the copyright.**

**9 marks**

**Total: 20 marks**

## Question 12

Zara is a patent attorney. Her client, Bao, has invented a novel container for screen wipes permitting easy extraction of one wipe at a time from the top of the cylinder whilst keeping the remaining wipes damp. Bao's invention also had an added benefit, being the ability to extract wipes from the side of the cylinder. Bao described this added benefit in a meeting to Zara. Zara asked Bao for his drawings describing the added benefit but Bao failed to send them.

Zara drafted a patent application that included claims to the cylinder allowing extraction from the top of the cylinder but failed to include claims to the added benefit being the extraction of wipes from the side of the cylinder.

A court later failed to make a finding of infringement on an article using the added benefit on the basis that the resulting patent failed to cover the variant.

Bao suffers damage. In particular, the following:

- i) The article that was found not to infringe reduces Bao's market for his primary invention, extracting wipes from the top of the cylinder, by 20%.
- ii) He fails to expand his market to include cylinders with the added benefit. Bao argues that this was because a venture capitalist withdrew extra funding for a marketing assistant because of the finding of non-infringement by the variant and also because Bao is not good at marketing. Zara argues that she shouldn't be responsible for Bao not being good at marketing.
- iii) Bao can no longer afford to pay his rent.

**a) Advise Bao whether Zara is liable to Bao for ALL this damage.**

**10 marks**

Bao was operating as a sole trader. His fortunes have changed and now he wants to expand the business to include an office stationery supply business requiring him to buy a premises from which to store, organise and ship stock, develop a portfolio of registered intellectual property, borrow money and employ staff. His accountant advises that he now trades as a limited company.

**b) Explain to Bao why his accountant has advised that he operates as a limited company rather than being a sole trader.**

**6 marks**

Bao wants members of his family to benefit from the business but does not want them to run the business. Also, he is not sure about the essential paperwork to create the company.

**c) Explain to Bao the basic structure and paperwork required to establish his limited company to enable him to meet these aims.**

**4 marks**

**Total: 20 marks**

### Question 13

Patrick is employed by Spineless Ltd ('Spineless'). He has no written employment contract. He has worked for Spineless for many years and is skilled at rebinding old physical books and manuscripts.

Only Spineless's small number of book binding employees use a method of rebinding that Spineless revealed to them was used in the industry over 100 years ago, but because of the effects of time and the reduction in use of physical books, this method is a lost art to other bookbinders (the 'Spineless method').

Using this method results in bindings with greater longevity, for which Spineless has developed a reputation as part of its trading for over 10 years. Also, Patrick has developed with his colleagues his own particular skilled way of binding books as a result of using this method ('Patrick's method'). His way works best when using the Spineless method but does not rely on the Spineless method.

Patrick is planning to leave the employment of Spineless to start a new company in the business of bookbinding. He sets up the company before leaving his employment and starts using Sheena in the new company as a bookbinder to get his new business going.

Whilst still an employee, he trains Sheena using the Patrick method but does not teach the Spineless method to Sheena. From Patrick's method, Sheena develops a number of different book services competing with Spineless.

Two months later, Patrick then leaves Spineless to work for his new company using a mix of:

- i) the Spineless method; and
- ii) Patrick's own method.

Spineless discovers what Patrick is doing and writes to him demanding that Patrick and his freelancer stop providing bookbinding services using these methods.

- a) Advise Patrick whether Spineless can demand that he stops bookbinding using these methods in his new business after leaving his job at Spineless (do not discuss any issues relating to enforcement).**

**10 marks**

- b) Outline the potential significance on enforcement of the training Patrick gave to Sheena prior to his leaving his employment?**

**5 marks**

Patrick names his new company Spinebind UK Ltd. Spineless is worried by this use of this new company name because they were about to register the name 'Spinebind Ltd' for a subsidiary company. All the employees were aware that Spineless was about to set up this new subsidiary. Spineless has threatened to apply to the Company Names Tribunal to prevent Patrick using this name.

- c) Advise Patrick on the threat by Spineless to apply to the Company Names Tribunal to prevent Patrick using 'Spinebind UK Ltd' as his company name. Ignore any other potential claims.**

**5 marks**

**Total: 20 marks**

#### Question 14

Aksana holds a valid patent for a new laser pointer with a special lens allowing the pointer to transmit a beam over 50 metres (because of the special lenses used), thereby allowing it to be used in very large conference rooms. This is her first business and she hasn't started manufacturing products yet. Aksana is nervous about marketing her new product because she is uncertain of the market for a long-range laser pointer and hence the best sale price.

Aksana reads in the newspaper that Gregory is going to launch a new laser pointer at an exhibition centre in two days' time with plenty of stock to sell. The description of the laser pointer matches that of Aksana's, and the claim made by Gregory in the newspaper is that he will be able to point a beam across the exhibition centre in a dramatic public demonstration to prove how good it is.

Gregory has many different products on the market. Aksana reads in another newspaper that Gregory has been associated with some poor-quality products in the past. Aksana wants to obtain an urgent injunction against Gregory to stop him launching his pen, without warning him.

- a) **Advise Aksana whether she is likely to be able to obtain such an injunction.**  
10 marks
- b) **Advise Aksana on at least two undertakings she will have to give to the court should the court consider granting such an order to Aksana.**  
2 marks
- c) **Explain one type of evidence that Gregory's lawyers are likely to advise him to show to the court when defending the injunction application explaining the issue(s) the evidence goes to. You should include the nature of the evidence and the likely type and form of the information in order for it to be admitted to the court.**  
4 marks

Aksana believes she is likely to achieve 500 sales this year. She believes Gregory can sell 1000 of his pens this year at £10 per pen. Gregory has been known to refuse accepting technology licences for less than 20%, but this does appear high when many companies in this industry accept 10%.

- d) **Advise Aksana of the basis of the court's approach to calculating damages in this case were the court to find infringement of her patent. You should use the relevant figures to illustrate your approach; however, marks will not be awarded for calculations.**  
4 marks

**Total: 20 marks**