

## Introduction

The pass rate this year was comparable with previous years. The marks demonstrated broad knowledge across the syllabus and showed that some candidates could excel.

However, the IPReg Code of Conduct questions numbers 5 and 6 in section A were answered very poorly. The detail required to answer the questions was contained wholly within the relatively short Code. This year these questions were not contained in problem style questions and so merely tested knowledge that should be apparent to an individual intending to sign up to the Code during their professional life.

Most candidates answered questions 11, 12 and 14 in section B. Few candidates answered question 13 (employee trade secrets obligations) and those candidates who did attempt this question did not do as well as those who answered the other Section B questions.

In Section B candidates demonstrated an ability to apply the law to the facts. However, there were a number of candidates who failed to clearly set out the law. 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 awarded. As in previous years, candidates who split out the law and discussion of the facts generally could be awarded higher marks because of clarity.

## Questions

### Part A

| Question number | Comments on questions  |
|-----------------|--|
| Question 1      | This was well answered by those who made an attempt. This should have been 'money for old rope' and it was concerning that a number of candidates achieved zero marks on this.   |
| Question 2      | This question was well answered.   |
| Question 3      | This question was well answered as there was general awareness of use of the post or personal service. However, candidates at this level should identify on whom personal service/ post should be effected as it is not always clear in practice but would undermine a claim served near the end of a limitation period. |
| Question 4      | This was a Code of Conduct question which was answered well, but candidates did drop marks needlessly by not referring to "registered" persons, which is a significant requirement.  |

**Examiner's Report 2021**  
**FC2 – English Law**

|                    |   |
|--------------------|---|
| <b>Question 5</b>  | This was answered poorly given that the syllabus clearly sets out the points sought and mere recitation would have obtained the marks. It is an important rule to understand as even in-house attorneys will require insurance if they provide a service to even a single piece of advice outside their corporate employer. |
| <b>Question 6</b>  | Again, this was answered poorly given that the syllabus clearly sets out the points sought and mere recitation would have obtained the marks. It is an important rule to understand as the duty to look after the client exists, but is not absolute as some candidates believed.   |
| <b>Question 7</b>  | This was generally well answered with most candidates picking up some marks. It is important that candidates understand the basic requirements as, if faced by a client facing such an order, the adviser will realise that significant evidence will have been provided to a court to obtain such an order.                |
| <b>Question 8</b>  | This question was answered well. Issues of novation and assignment do arise in licensing situations, including questions of who has the right to file a patent application.   |
| <b>Question 9</b>  | This was well answered with candidates aware of the major differences.  |
| <b>Question 10</b> | This question was answered to a reasonable level. The heavy sanctions associated with a Part 36 offer are partly balanced by the prescriptive formal requirements to make such an offer.  |

Part B

| Question number           | Comments on question   |
|---------------------------|--|
| <p><b>Question 11</b></p> | <p>Part a) Most candidates picked up marks on the discussion of offer and acceptance.</p> <p>Few candidates recognised that the terms of a contract will directly relate to what offer and what acceptance occurs and therefore did not make a distinction between an agreement to manufacture and the right to sell.</p> <p>Consideration <b>for the promises made</b> will not usually be the agreed price of the products (the price will be one of the promises) but will more likely be the mutual promises including the promise not to sue for patent infringement.</p> <p>Part b) This part was poorly answered. Most candidates did not pick up on the scenarios clearly set out in the decision <i>Ray v Classic FM</i> (and summarised in the headnote of the report). This resulted in a lack of structure to most answers which in turn often resulted in confused answers.</p> |
| <p><b>Question 12</b></p> | <p>Part a) This was generally answered well with clear discussions of factual causation in and remoteness.</p> <p>Part b) This was generally answered well. It would be good to see more candidates realise that floating charges, a powerful tool for stock heavy businesses, are only open to limited companies. A number of candidates realised that there are tax advantages – there is no intention to expand into detail on tax. However in practice attorneys will already be familiar with the tax advantages of Patent Box at a general level, so recognising such advantages should not be too difficult to expect.</p> <p>Part c) Most candidates recognised that directors are left to manage the business and family members can benefit as shareholders.</p>   |
| <p><b>Question 13</b></p> | <p>Part a) Relatively few candidates answered this question. Many of those who did answered poorly. A number of candidates applied rules that assumed Patrick was self-employed, even though the third word of the question said he was “employed” and therefore <i>Faccenda Chicken</i> applied.</p> <p>Part b) This was moderately well answered.</p>  |

**Examiner's Report 2021**  
**FC2 – English Law**

|                    |  |
|--------------------|--|
|                    | <p>Part c) Again this was moderately well answered.</p>  |
| <b>Question 14</b> | <p>Part a) This was generally well answered with candidates knowing the structure of the American Cyanamid rule well. However few candidates picked up on the fact that a court was being asked to grant an injunction on the strength of a newspaper report only. Also few candidates balanced an alleged reputation for poor product quality with what the quality of this particular product might be.</p> <p>Part b) This was generally well answered.</p> <p>Part c) Most candidates realised the quality issue of the pen was important and that it should be put in evidence. A number of candidates said it was important to put in evidence to the allegation of infringement and credit was given. However, in an interim injunction application a court is most likely interested in the threats to the businesses of the respective parties so quality is probably more of an issue.</p> |