

Foundation Certificate

FC2 English Law

Monday 17 October 2022

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 **8 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

- a) Describe mediation and arbitration in alternative dispute resolution, highlighting differences between the two processes.

4 marks

- b) Describe the use of UKIPO opinions in cases of patent matters.

3 marks

Total: 7 marks

Question 2

- a) What is meant by:

i) *obiter dicta*

1 mark

ii) *stare decisis*

1 mark

- b) Describe the nature of appeals to, and the role of, the Appointed Person.

4 marks

- c) Name two of the three principal divisions of the High Court.

1 mark

Total: 7 marks

Question 3

- a) Describe two situations identified by the court in *Ray v Classic FM PLC* in which a contractual term may be implied assigning legal title in a copyright work to a commissioner of the work notwithstanding that no express assignment agreement exists between the commissioner and the author of the work

5 marks

- b) What factors did the court state must be considered in each of these situations?

3 marks

Total: 8 marks

Question 4

Describe the Whitford guidelines for the admission of survey evidence into court proceedings in a case of passing off. You may describe them in summary form as set out by Lord Justice Lewison in *Marks and Spencer PLC v Interflora Inc* [2012] EWCA Civ 1501 (known as *Interflora I*).

7 marks

Question 5

Elijah announces to his patent attorney, Jill, that he is taking his instructions to another firm. Elijah has an imminent deadline approaching on his patent application. Jill tells Elijah that he will not send the papers to another firm as there isn't sufficient time for a new firm to meet the imminent deadline. When Elijah does instruct another firm, Jill delays sending the papers to the new attorney and refuses to speak with the new attorney.

By reference to the *IPREG Code of Conduct* including the Rules and/or Guidance, briefly discuss how Jill may or may not have breached the Code of Conduct.

7 marks

Question 6

a) The *IPReg Guidance to the Code of Conduct*, Rule 4 (*Competence*), states three 'circumstances' which a regulated person should consider in particular when considering whether to act for a client. List two of those circumstances.

1 mark

b) What does the *IPReg Guidance to the Code of Conduct*, Rule 4, say regarding acting for clients in criminal matters?

3 marks

Total: 4 marks

SECTION A Total: 40 marks

SECTION B

Question 7

Anthony has developed a new mobile phone stand. He owns a patent for the stand.

Anthony is at the wedding of his friend, the groom. Elizabeth is one of the bridesmaids. She tells Anthony that her work is selling mobile phone contracts. Anthony is drinking alcoholic drinks. Elizabeth doesn't drink alcohol.

Before the ceremony, Anthony tells Elizabeth of the patent and asks, "Would you like to sell my mobile phone stand to your phone contracts customers?" Elizabeth says, "Yes, that'd be great. If I get 3,000 units from you at £7 each, then I can sell them on at £10." Anthony replies, "Well, what about 5,000 units, then I can get those to you for only £5 each?" Elizabeth says "Fantastic!"

Whilst dancing to loud music, Elizabeth says, "I suppose they're quite cheap to make." Anthony says, "Yes, I get them from China." Then Elizabeth says, "Great, I'll get that organised. 5,000 of them over six months?" Anthony says, "Brilliant! Send me over an order and we'll get that arranged."

Neither speaks to each other again. Six months later Anthony finds out that Elizabeth has been selling the phone stands to her customers which she has been getting manufactured in China.

Anthony sues Elizabeth for patent infringement but Elizabeth says in response there was a contract between them allowing Elizabeth to manufacture and sell the phone stand.

- a) Advise Anthony whether a contract is formed between him and Elizabeth. Ignore any other potential claims.**

14 marks

Anthony successfully sues Elizabeth for patent infringement of his mobile phone stand.

Anthony sells his stands for £20 each and each unit costs him £10 in total to sell (including manufacturing and marketing).

Elizabeth has sold 2,000 infringing stands. Elizabeth sells her stands at £10 each, which cost her £8 to buy.

The evidence shows that both Anthony and Elizabeth sell only from bricks and mortar shops, both based in Norfolk but 20 miles apart. Despite the price difference, both Anthony and Elizabeth use what are perceived to be 'exclusive' high street retail brands.

- b) Advise Anthony how a court might approach the assessment of damages for Elizabeth's infringement. You should use the relevant figures to illustrate your approach; however, marks will not be awarded for calculations.**

6 marks

Total: 20 marks

Question 8

Tracy is a patent attorney. Her client, Percy has invented a novel spout for a teapot. Percy believes that the spout could be applied to wine bottles but not to large wine bottles such as magnums.

Percy tells Tracy of this variant by a quick email describing how the invention can be applied to wine bottles generally but with a diagram in a separately attached document which makes clear that that the variant would not work for large wine bottles such as magnums. Tracy fails to open and review the diagram and files the application claiming that the invention applies to all wine bottles generally. Tracy did not exclude the use of the invention on large wine bottles such as magnums.

A court later failed to make a finding of infringement on an article using the spout on normal sized wine bottles because Percy's claim was invalidated on grounds of insufficiency.

Percy suffers damage. In particular:

- i) the article that was found not to infringe reduces Percy's licensing revenue for use of his spout on normal sized wine bottles by 20% because of increased market competition;
- ii) Percy also manufactures wine bottles in which the spout can be replaced either with his (more expensive) new spout or with another cheaper non-infringing version. Percy loses 50% of this market for these wine bottles. Percy argues that this is because the purchaser can now buy the wine bottle with the new spout more cheaply. Tracy argues that Percy stopped marketing this part of the business after losing the court case and there is no connection between the markets as the cost of alternative wine bottles is the same;
- iii) Convinced as a result of the court case that the claim to his novel teapot spout will be found invalid Percy decides to sell the teapot business at a 75% reduction in value.

a) Advise Tracy if she is liable to Percy and, if he were to be, for which of these types of damage.

13 marks

Percy threatens Tracy with court proceedings for her negligence. Tracy speaks to her neighbour, Fred, an expert in teapot manufacturing. Fred says that i) Percy's teapot is 'of course' novel and inventive and ii) because it was an inventive teapot it was stupid for Percy to sell his entire business at such a large reduction.

b) Advise Tracy whether she is likely to be able to admit evidence of Fred's opinions to the court.

4 marks

Tracy and Percy have a “without prejudice” meeting to try settle the dispute. During the meeting Percy tells Tracy that he will not pursue his case against her for damages relating to the sale of the teapot business. A month later Percy commences court proceedings including a claim to losses due to sale of the teapot business. Tracy wants to put her notes of the meeting to the Court to demonstrate that she and Percy have agreed that the claim relating to the sale of the teapot business has been settled.

- c) **By explaining what the term “without prejudice” means including its limitations, advise Tracy whether she can include his meeting notes as part of his defence. (Do not discuss any issues relating to formation of contract.)**

3 marks

Total: 20 marks

Question 9

Sylvia holds a patent over a child's drinking cup that has an inventive top lid with a double threaded screw. The lid can be opened by adults but not by children.

Timothy Fish has an import/export business with a warehouse in a trading estate in North London called "Fairview Trading Estate". The business handles many different products some of which are highly commercially sensitive.

The phone directory indicates that most of the other businesses on the estate are furniture makers or car parts warehouses. The business is listed in the magazine titled "*Clandestine Business Today!*"

Sylvia has discovered poor quality imitation cups being sold where the second screw thread fails to prevent the lid falling off. The imitation falls within her patent claims. The lids have been reported in the press to fall open and hot water pour over the children holding them. Separately there are press reports of a "Mr Fish" working on the Fairview trading estate who has recently been released from prison having been convicted of destroying false accounting documents.

Sylvia has found some of the imitation cups being sold at car boot sales with a label saying, "originating from Fairview, London". The person selling the cups at the car boot sale says he gets his supplies from "Tim" in North London.

Sylvia conducts a phone directory search which indicates two people by the name Timothy at the Fairview trading estate, but doesn't tell this to her lawyers.

Sylvia wants to make an application for an ex parte interim search and seizure order against Timothy Fish's warehouse on the "Fairview Trading Estate" in North London.

- a) Advise Sylvia on the grounds that need to be satisfied for the court to make such an order in this case. Your answer should include an assessment of the evidential issues described above.**

12 marks

Rather than spend the money on making court applications, Sylvia decides to post on social media that "In my opinion, the cups that Timothy Fish is importing are causing children to have hot water poured over them".

It turns out that Timothy Fish does import children's cups which he says have double threaded screw lids and so the lids don't fall off.

- b) Advise Sylvia whether he could be liable for malicious falsehood.**

8 marks

Total: 20 marks

Question 10

Nathan worked for over 15 years at Quickbeam Ltd as a consultant. He has no written terms as to confidentiality. Quickbeam develops laser distance measuring devices for measuring cracks in semiconductors using different combinations of lenses and lasers of different wavelengths.

Quickbeam holds i) the results of tests which are contained in a series of 20 laboratory notebooks recording the combinations of lasers and lenses used and ii) holds a schedule of different lasers publicly available on the market, including the technical information and recommended uses connected with each.

Nathan leaves Quickbeam and joins Seek Ltd, which specialises in detecting intercontinental ballistic missiles in flight. Seek employed Nathan because of his experience at Quickbeam. When Nathan begins to tell them of the information he has from Quickbeam Seek tell Nathan "We don't want to know about it". Nathan creates a new detector at Seek.

Nathan started his work at Seek using only green lasers because he knew from his work at Quickbeam that green lasers work better at longer distances which reduced the development time by six months. He had also taken copies of the first 3 laboratory notebooks from Quickbeam which reduced the development time by a further six months. Nathan also used the database of different lasers that he took from Quickbeam in his research.

- a) Prepare notes for a meeting in which you advise Quickbeam whether they can take action for common law breach of confidential information against Seek, including a brief description of the remedies available.**

10 marks

Separately Quickbeam sold one of its lasers to Crack-It! Ltd for detecting cracks in semiconductors. Quickbeam's director Frances knew of Crack-It's marketing literature which offered detection rates of cracks "no larger than 600 nm". Frances said to Crack-It's managing director that the detector's best results were "about 450 nm but usually it showed cracks that were a bit larger and should be fine for your needs". Crack-It purchased Quickbeam's detector as it was the only detector currently available.

The detector is only picking up large cracks of 900 nm. Frances was aware that this was a risk with this detector. Crack-It is now suing Quickbeam alleging misrepresentation.

- b) Advise Frances whether Quickbeam is likely to be liable to Crack-It in misrepresentation.**

7 marks

Crack-It accuses Frances of being liable for the same misrepresentation as Quickbeam.

- c) Briefly advise Frances whether she is likely to be liable.**

3 marks

Total: 20 marks