

## Introduction

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

Section A there were again areas of the syllabus where answers were less successful, such as the principles arising from *Ray v Classic FM*.

In Section B many candidates got to grips with discussing evidential issues. Again, there were certain areas where answers were less successful, such as the requirements for a search and seizure order.

## Questions

### Part A

Question number	Comments on questions
Question 1	This question was well answered by most candidates and no particular problems were evident.
Question 2	Again, this was well answered by most candidates and no particular problems were evident.
Question 3	This was poorly answered. It seemed that many candidates were not prepared for this topic. The mark scheme answers come from the headnote for the reported decision, which is one the few specifically referred to in the syllabus.
Question 4	This question was generally well answered. Most candidates had learnt the Whitford guidelines and picked up many marks.
Question 5	This was a tricky short problem question reflecting a situation that might arise in practice, requiring detailed knowledge of the Code of Conduct. Most candidates were able to discuss the situation coherently using the Code. Some flexibility was applied on the use of the precise language of the Code.
Question 6	This was reasonably well answered, although most candidates did not have detailed knowledge of the Code regarding acting for clients in criminal matters.

Part B

Question number	Comments on question
<b>Question 7</b>	<p>Part (a): Most candidates gained marks on the discussion of offer and acceptance.</p> <p>A majority of candidates recognised that the contract being talked about by Anthony and Elizabeth concerned both selling and manufacturing of the patented products and discussed this.</p> <p>Many candidates gave insightful discussions concerning whether there was an intention to create legal relations.</p> <p>Part (b): Most candidates made attempts to answer the damages aspects and use the evidence of fact to assist with the assessment. A full answer should have demonstrated that it is likely some proportion of damages will be apportioned for “stolen sales” – especially if the circumstances point to this – but that a court is unlikely to allow 100% recovery under this head and will likely consider a reasonable royalty for some proportion of sales. A court has wide discretion to decide on the relative proportions, so an answer by a candidate reflecting this apportioning demonstrated their understanding of this point.</p>
<b>Question 8</b>	<p>Part (a): Most candidates achieved a large proportion of the marks in their discussion of the duty of care and breach. Many candidates referred to Percy's failure to market under (ii) as “contributory negligence”. However, strictly, contributory negligence concerns a claimant's part in the act of negligence itself (in this case Percy's email that is unclear). The issue of marketing is more likely to go to causation for damage and whether a reduced marketing effort is the cause in fact of lower sales. Most candidates demonstrated the ability to argue a point of view based on principles of causation even if their choice of language was not always good.</p> <p>Part (b): Most candidates identified the potential for Fred to be an expert witness. Many candidates did not demonstrate an appreciation that an expert can only be an expert in their own field – Fred is not a patent attorney but can assist with the assessment of damages.</p> <p>Part (c): A disappointing proportion of candidates did not appreciate that the without prejudice rule cannot be used to hide an agreement made to settle the dispute.</p>

<b>Question 9</b>	<p>Part (a): Candidates demonstrated the ability to “unpack” the evidence. Unfortunately many fell down on the full legal test against which to apply the facts and some applied the test for interim injunctions (<i>American Cyanamid</i>). In particular, the court still requires that the harm likely in executing such an order is not out of proportion to the purpose of the order. Some candidates did not appreciate that a failure to make full disclosure in such an application is a serious breach.</p> <p>Part (b): This was generally well answered. Candidates are expected to be able to discuss whether a statement is actually a statement of fact objectively, even if the maker of the statement dresses it up as an opinion.</p>
<b>Question 10</b>	<p>Part (a): Some answers were disappointing as they either were from the perspective of an employee (Nathan was a consultant), or referred to a statutory test, not the common law test (<i>Coco v Clark</i>). Some elements coincide and marks could be awarded.</p> <p>Part (b): This was generally well answered. Reliance is a key part of the test for misrepresentation and does need to be demonstrated.</p> <p>Part (c): This was poorly answered. Yet common design is often used in IP disputes to attempt to “pierce the corporate veil”, so attorneys should be familiar with this issue.</p>