

Foundation Certificate

FC2 English Law

Monday 9 October 2023

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 pre-set 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 **9 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

Briefly describe and give one example of each of the following different forms of evidence:

a) direct evidence;

2 marks

b) real evidence;

2 marks

c) documentary evidence.

2 marks

Total: 6 marks

Question 2

Describe the nature of the statutory privilege that can be claimed over communications with UK patent attorneys.

6 marks

Question 3

In her patent infringement claim against Kai, Felicity writes to the court making the demands a) to f), set out below, on how the case should be managed going forward. **Using only the list of obligations placed on the courts by the ‘overriding objective’ found in the *Civil Procedure Rules*, state how Kai can argue against each demand. You should use a different obligation for each demand.**

- a) The Case Management hearing next month should be delayed because Felicity wants to go on a six-week tour of India.
- b) Felicity demands that Kai is ordered to file multiple separate sworn affidavits for each of the 50 exhibits he wishes to include in his evidence.
- c) Felicity seeks permission to use different sets of specialist barristers to argue the cases on each of the three different patents she is relying on against Kai, even though the damages in the case are likely to not exceed £1,000.
- d) Felicity asks the court that she is allowed one extra turn at filing evidence in the case.
- e) Felicity asks that an entire week of the court’s time is reserved for hearing the Case Management hearing even if it is possible that Kai will agree to Felicity’s case management demands.
- f) That despite only one issue remaining in contention between the parties common to each patent alleged to have been infringed, Felicity asks the court to split the claim into separate actions for each of the patents.

6 marks

Question 4

Explain two key limbs of the test for vicarious liability, including reasons the court gave to impose vicarious liability upon an employer for the torts committed by an employee in the course of his employment.

7 marks

Question 5

With reference to the *IPREG Code of Conduct*, how is the term 'patent attorney register' defined?

2 marks

Question 6

With reference to the *IPREG Code of Conduct Rule 3 Service of Documents*, state the way in which any notice or other document required by the Code of Conduct must be notified to the regulated person. Marks awarded will take into account the accuracy with which your answer matches the language of Rule 3.

3 marks

Question 7

David is acting as a patent attorney for his client Janice. Janice owns a patent with three claims, 1, 2 and 3. Issues arise with respect to each of these claims as set out below.

Referring to the *IPREG Code of Conduct* only, explain any breaches of the Code by David. You must identify the relevant Rule in order to obtain full marks.

- a) Regarding claim 1, David assists in drafting documents to initiate court proceedings alleging patent infringement proceedings in respect of claims 2 and 3. David includes a claim to infringement of claim 1 even though he has not discussed this allegation with Janice.

1 mark

- b) Regarding claim 2, Janice asks for David's advice on whether she owns this invention, as she worked for a company when devising the technology underlying claim 2, though she never had a contract of employment. David sets out detailed advice on whether Janice could be classed as an employee under UK law.

2 marks

- c) Regarding claim 3, David had previously acted for Sirinda knowing that she has trade secrets relating to the invention covered by Janice's claim 3. Janice doesn't know about Sirinda's trade secrets. David is asked by Janice to advise on a licence of technology covered by claim 3 to Sirinda.

2 marks

Total: 5 marks

Question 8

- a) In the context of an assignment of a UK intellectual property right, briefly explain the difference between legal and equitable title. **2 marks**
- b) Briefly explain the meaning of:
i) *ratio decidendi*;
ii) *res judicata*. **2 marks**
- c) In the law of contract, what is meant by the term 'condition'. **1 mark**

Total: 5 marks

SECTION A Total: 40 marks

SECTION B

Question 9

Edward owns a patent covering a new multi-coloured LED diode. Olivia has a licence to manufacture and sell products under it. A term of the contract states that Olivia should pay to Ahmed the royalties on sales due to Edward.

The contract includes the following terms also:

...6. When payments fall due under this agreement, an invoice must be sent to Olivia and be paid within 4 weeks.

...8. This agreement is entered into for the purposes of Olivia assisting Edward to set up in business.

Olivia says that the contract also includes the 'normal boilerplate clauses'. Royalties fall due and Edward sends a letter to Olivia asking Olivia to pay the royalties to Ahmed, but Olivia fails to pay Ahmed. Edward is not bothering to take action to get Olivia to pay Ahmed.

- a) Prepare notes for a meeting with Olivia in which you discuss whether Ahmed is entitled to enforce the contract against Olivia, including identifying what other information from the contract you require to advise more fully.**

10 marks

Edward is very protective about his invention. Edward's local amateur drama society holds a village show using lots of different lights. Whilst setting up the stage lighting with Dipti, Edward describes his new LED diode. Dipti says, "That sounds great, I could supply these to 5,000 theatres around the country!"

Whilst continuing to set up and at the same time trying to learn his lines for that evening's show, Edward says, "Sure, well, I'd like to go and meet with these theatres – perhaps I can perform there? To make any money, I suppose I would probably have to have a 10% profit margin."

Dipti puts down what she is holding and offers Edward two tickets to a big London show for the next day, telling Edward, "I could get you 15%!" Edward says, "That would be good – I am finding it difficult to find someone to manufacture these for that sort of margin."

Edward takes Dipti's show tickets back home. They never speak again. Edward later finds out that Dipti is using a manufacturer in China to make his LED diodes and Dipti has also started offering them for sale to theatres around the country. When contacted by Edward, Dipti insists that Edward gave her a licence to do this.

- b) Prepare notes for a meeting with Edward in which you advise Edward whether a contract to manufacture and sell the LED diode exists between Edward and Dipti.**

10 marks

Total: 20 marks

Question 10

William has created a new design of electrical plug. He needs investment for a patent application, to manufacture stocks of the plug and to develop specialist tooling. Also, he needs committed specialist advisers to develop strategic partnerships with domestic appliance manufacturers. William is currently a sole trader. Mia is interested in investing, but is concerned about getting security for her money.

- a) i) **Advise William on the advantage of forming a limited company to take the business forward.**

5 marks

- ii) **In your advice, you should distinguish between fixed and floating charges. Your advice should include a discussion of which type of charge is most appropriate for William's different expected types of assets.**

5 marks

Mia has set a deadline for William to set up a limited company in order to give William the investment monies. To earn a bit of extra money, patent attorney Georgia does the occasional small piece of work without telling her firm. She agreed to help William set up his limited company by the deadline set by Mia. William waits until a few hours before the filing deadline to email Georgia with key information to apply for the new limited company. Georgia, a busy practitioner, misses William's email and fails to file the relevant papers to set up the company in time. Mia withdraws the offer of investment because the limited company was not set up in time. William suffers damage including:

- 1) loss of income over the next 10 years from being unable to scale up his manufacturing;
- 2) loss of the large house that William bought on the basis of expected future income that he could have received in the next two years from the scaling up of the manufacture.

- b) **Advise Georgia if she is liable to William and, if she were to be, for which of these types of damage.**

10 marks

Total: 20 marks

Question 11

Heavy Ltd has a small studio for its employees in the same communal art building as Irena. Irena has a far larger studio space.

Heavy has been given funding of £100,000 to develop a magnificent unique cast iron artistic light fitting for the anniversary celebrations of the Fastnet city town hall in May. A large stand is required for displaying the light. So, the stand must be strong, must incorporate power fittings and must have the artistic merit consistent with Heavy's artistic light fitting.

Heavy's studio is too small for the task, so in a casual conversation in the foyer at the communal art building, Heavy's director asks Irena to create such a stand. Heavy will pay £10,000 to Irena for this work. Irena creates the stand, speaking frequently with Heavy's employees. The highly artistic light on the stand forms the centrepiece of the city's successful celebrations.

In June, Heavy believes that Irena is offering to supply copies of her design documents to others who want to mass produce copies of this stand to sell online. Heavy Ltd demands that Irena stops making these copies, claiming that Heavy owns the copyright in the documents.

Irena responds by saying that she owns the copyright in her design documents and is entitled to sell them to anyone she chooses.

- a) Assuming that the only issue is ownership of the copyright in the design documents, advise Heavy whether it can claim ownership of the copyright in the design documents.**

8 marks

The online sales Irena is targeting are during the upcoming winter months.

Later in June, Heavy is told by its Fastnet city funders that Irena has made copies of these design documents for a major music festival, which has created stands to the design to support lights across the grounds.

The funders are concerned that the music festival using the documents to make mass-produced boring lighting designs is a threat to the artistic uniqueness of the stand. Heavy is concerned that it may not be able to obtain more commissions if it lets the festival go ahead.

The festival cannot go ahead without the stands being used. The festival is due to start the next day.

- b) Heavy apply for an interim injunction the evening before the music festival. Advise Heavy Ltd whether it is likely to obtain an injunction to:**
- i) prevent Irena selling the documents to support the online sales during the upcoming winter months;**
 - ii) prevent the music festival organiser from using the artistic stands at the festival.**

12 marks

Total: 20 marks

Question 12

Nicholas makes a call at Alexandra's sweet factory, telling Alexandra about Nicholas' own biscuit manufacturing technology and how it would be good for the businesses to merge. They carry on discussions as Alexandra shows Nicholas around the factory.

Alexandra has a new machinery process that increases production efficiency and thus gives a competitive advantage to Alexandra. All the machines are well known and Nicholas thinks it's an obvious use of the combination of machines; nonetheless, Nicholas makes a mental note of the new configuration.

Nicholas and Alexandra drive home together in Alexandra's brightly coloured mobile sweet shop van. In the van, Alexandra describes how she can increase her margin on her sweets because of the route she takes around the town. Alexandra follows the sales route in the van.

Later the following week, Nicholas meets Alexandra at the village fete. Nicholas notices a spare gear cog that Alexandra is using to weigh down the table cloth on her fudge stall. Nicholas realises that it is a new design that Alexandra has developed and is using in her factory, and takes it home under his coat, though he could easily have memorised the design.

The merger talks stall for many months, during which time Nicholas:

- i) is using the new configuration of the manufacturing process in his own factory making biscuits and thereby increasing the value of his business;
- ii) is using the same sales route as Alexandra to sell his biscuits, which he talks about with a local newspaper to advertise the biscuit business.

However, Nicholas holds on to the gear cog without using it.

Alexandra discovers that Nicholas's business will attract a higher value in six months' time if she wants a merger because of the use Nicholas is making of the new configuration of machines and the sales route. She also discovers that it was Nicholas who took her gear cog from the fete, though Nicholas insists he has no intention of using it or giving it away.

- a) **Prepare notes for a meeting in which you advise Alexandra whether she can take action under the *Trade Secrets (Enforcement etc.) Regulations 2018* against Nicholas, including a brief description of the remedies available. Consider the position only under these rules.**

13 marks

Despite this, Alexandra speaks to Nicholas again about the potential merger.

Nicholas says to Alexandra that he has carried out market research showing that the combination of Alexandra's most popular sweet with Nicholas' most popular biscuit was 20% more popular. Nicholas says to Alexandra that this research shows that such a combination would increase the combined market share of the business by 30%. Alexandra is sceptical about Nicholas' claim.

Cont...

Later, Alexandra reports this to her directors meeting. The Board of Directors agree to the merger with Nicholas' business. Minutes from the meeting show that most of the discussion at the meeting is about the advantage of reducing the size of the factory floor space after the merger.

The businesses merge. The combined biscuit/sweet is made.

In fact, Nicholas' market research was only asking consumers whether they had a preference for biscuits or sweets. Nicholas is not a market research expert and only read the results briefly. Combined market share of the businesses reduces by 10%.

- b) Advise Alexandra whether Nicholas can be made liable in misrepresentation. Assume the only issue concerns misrepresentation and do not consider any issues of company law.**

7 marks

Total: 20 marks