

Paper Ref	Sheet	Percentage Mark Awarded
FC2	1 of 20	65%

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Section A

Question 1

- Direct evidence is evidence that is directly put forward to court i.e. witness statements, oral testimony. ✓¹
- Real evidence is physical evidence such items or documents a that can be exhibited to the court. ✓¹
- Documentary evidence is evidence in the form of documents that can be put forward to the court such as contracts, receipts, written statements. ✓¹

MARKS AWARDED: 4/6

4

Question 2.

- Statutory privaage – privalge that is set out in statue
- Absolute –

MARKS AWARDED: 0/6

0

Page sub-total

Paper Ref	Sheet
FC2	2 of 20

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Question 3

~~Just and proportionate, equal footing (money involved, complexity of case, importance of the issue, financial position of each party)~~

○

(a) The case should be dealt with expediently and fairly – delay to for purposes of going to India means case cant be expediently ✓1

(b) Just and proportionate ✓1

(c) That each party is on a equal footing

(d) Court should enforce compliance of the rule, procedures and other directions of the court – The evidence should be submitted in disclosure, no need for extra rounds of evidence ✓1

(e) Argue that while the court has a duty to allocate the appropriate amount of the courts resources, they have consider other cases – 1 week seems disproportionate. ✓1

MARKS AWARDED: 4/6

4

Question 4

Vicarious liability – is the ability to impose liability of tort one another, usually an employer of an employee.

○ The employer is more likely to have the means to compensate the a claimant ✓1

○ The action that resulted in the tort arise as part of the business activities of the employer. ✓1

Page sub-
total

Paper Ref	Sheet
FC2	3 of 20

Examiner's
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- The employee was performing actions/acts on behalf of the employer.
- The employer created the risk for tort by employing the employee.
- The employee is in control of the employer. ✓¹

MARKS AWARDED: 3/7

Question 5.

The patent attorney register is the register of a registered patent attorney as defined section 275 of the 1988 Copyright, design and patent Act – ABS. ✓^{1/2}

MARKS AWARDED: 1/2

Question 6.

- Instantaneous Electronic communications including email ✓^{1/2}
- personal delivery to the regulated persons ✓^{1/2}
- First classed signed mail to the regulated persons business address ✓^{1/2}

MARKS AWARDED: 1.5/3

Question 7

(a)

- Rule 14 guide 14.1 David shouldn't make an allegation/contention that is not supported by evidence. ✓¹

(b)

- Rule 14 – he must not attempt to deceive or mislead the court. He is indicating to the court that Janice was an employee when she was not.
- Rule 14.2 – David shouldn't have an allegation which doesn't believe is justifiably or arguable
- Rule 6 – integrity – David has a duty impose a good standing and faith in the IP system.

3

1

1½

**Page sub-
total**

Paper Ref	Sheet
FC2	4 of 20

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(c)

- Rule 7 – conflict – a regulated person cannot act for two persons where there is potential of conflict. Although in some circumstances, it's possible to work for two parties or against former client (consent required in writing), the regulated person cannot do so if there is conflict or they have relevant knowledge that isn't public. David appears to have relevant knowledge and therefore cannot act for Janice. ✓1

MARKS AWARDED: 3/5

3

Question 8

(a)

- Equitable – hands must be clean

(b)

- Ratio decidendi – is the reasoning of decision for how the judge came to their decision. It's the binding facts of the case (opposed to obiter dicta – non-binding other matter). ✓1
- Res judicata – Means that parties cannot relitigate a case that has already been heard and decided. ✓1

(c)

- There are two types of terms in a contract
 - Conditionals – that go to the root of the contract. They are important and breach of such term gives way to the claimant potentially repudiating or cancelling the contract. ✓1

Page sub-
total

Paper Ref	Sheet
FC2	5 of 20

Examiner's
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- Warranties are lesser important terms and breach of such is unlikely to merit of the cancellation of the contract.

MARKS AWARDED: 3/5

3

Section B

Question 9

(a)

- Privity of contract means that the only persons named in the contract are entitled to enforce the a terms of the contract i.e. they generally cant be enforced by 3rd parties. ✓1
- However, third parties can enforce terms of a contract in circumstances where the third part is to purport a benefit from the contract or where the contract explicitly states that a third party can enforce the terms. ✓1
- In this situation the contract exists between Edward and Oliva. Ahmed appears to third party. ✓1
- The contract states that 'royalties on sale' should be paid to Ahmed that are due to Edward.
- Hence, prime facie, Ahmed appears to be able to enforce the rights of the contract even if Edward doesn't wish to do so. ✓1

Page sub-
total

Paper Ref	Sheet
FC2	6 of 20

Examiner's
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- Need to determine the full terms of the contract, i.e. the other terms to see if there is any explicit term that prevents Ahmed from initiating proceedings. ✓1
- Determine the type of licence, exclusive licence or whether it's a non-exclusive licence.
- The nature of the why Ahmed is to receive the royalty needs to be further understood. Is he a business partner of Edward, and why is he to receive the royalty. Does he have pre-existing licence with Edward. ✓1
- Understanding express terms of a contract
 - The aim is to determine the intended meaning of the terms
 - Should be found from the document/contract itself
 - Words given ordinary meaning or read in context of the contract. Technical terms are given their technical meaning
 - The express terms shouldn't give rise to absurdity or irregularity
 - Documents read as whole - Where the interpretation of a term in one portion of the document makes another portion non-sensical, that meaning should be disregarded.
 - Use meaning that are custom
 - If a term is from a group or list then it should be read in that context of being in such group or list.

(b)

- The four aspects required for a contract to exist are 1. Offer 2. Acceptance 3. Consideration 4. Intention to create legal relations.

8

Page sub-
total

Paper Ref	Sheet
FC2	7 of 20

Examiner's
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Intension to create legal relations

- Edward and Dipti are at amateur drama society function, where some lights (but not Edwards) LED lights are being used.
- Despite being an amature event, the circumstances are arguably a work setting, particularly if money is to involved, i.e. charging locals to watch the show. ^{✓1/2}
- We don't know the relationship between Edward and Dipti. If they are pre-existing friends, Edawrd could argue that he was only be socialable and didn't ever intend to enter into a contract, particularly considering he is ^{✓1} protective over his invention and is not likely to discuss it with someone in the industry.
- However, it feels likely that the two are some form of colleagues in the sense they are setting up the lights together. In absence of other knowledge, its reasonable to assume that Dipti has similar experience in lighting as they appear to be doing the same task.
- Its work explicitly stating that this does not appear to be a social event in their capacity. While the production arguably is social to attendees, both Edward and Dipti appear to be there in a working capacity (by putting up lights), regardless to whether either of them are being paid. Neither are a drinking or seem to exhibiting behaviours that would otherwise indicate that there wasn't an intension to create legal relations. ^{✓1}
- Lines – Edward appears to be learning lines – further evidencing that he is there a more formal capacity

Page sub-
total

Paper Ref	Sheet
FC2	8 of 20

Examiner's
use only

- Overall it appears that both are there in a formal capacity of some degree, in circumstances where contract might arise, therefore it appears there are convincing grounds to argue there is an intention to create a legal contact. ^{✓½}

Offer/Acceptance

- Dipti – first states that they could supply these to 5000 theatres around the country, simply because there is no consideration tied to it, i.e. no the benefit to Edward or cost to Dipti
- Edward says sure – and appears to state two terms 1. The possibility of performing at the shows and 2. That he would have to make at least 10% profit margin. The first term is speculative, and would unlikely to be considered a condition of the contract (i.e. more a warranty if at all anything). Dipti is unlikely to be in a position to offer Edward performing parts in the all/any of the other 5000 theatres so it doesn't seem like a real term of any contract. ^{✓½} The second term is more explicit and definitive. ^{✓½} Hence there seems to be a valid offer i.e. Dipti will manufacture and supply ^{✓1} these lights
- However, Dipti appears to make a more favourable counter-offer to Edward, saying he can do it for 15% and also offers two tickets for the London event the next day. ^{✓½} This overrides the terms of the previous offer. ^{✓½} Edward would be clearly happy with the 15% rather than 10%. Because the tickets are for a 'big show' it is reasonable to assume that given their amateur status, this wouldn't be something that the Dipti intends to sell/market the light to, but rather as part of the deal. It is not clear if

Page sub-
total

Paper Ref	Sheet
FC2	9 of 20

Examiner's
use only

Edward believed that to be the case. Didn't take the tickets, and didn't arrange to meet Dipti or anyone to go to the show.

- Acceptance must be clearly indicated, either orally or written or by conduct. In response to Dipti's counter-offer, Edward replies 'that would ^{✓1} be good'. It appears that Edward accepts the offer, i.e. orally. The circumstances seem clear, i.e. no noise or indications that Dipti didn't hear the acceptance.
- Hence, there appears to be an offer and acceptance.
- Dipti takes the tickets laying down AFTER a contract was formed. If he believed that the these were an explicit contract, this could indicate that Edward didn't accept the offer. However, Dipti should contact Edward before commencing manufacturing either way.

Consideration

- Consideration doesn't have to be adequate but it must be sufficient. ^{✓1}
- The consideration appears to be straightforward. Dipti in exchange for licencing the rights to manufacture the lights of the patent, the Dipti is going to pay Edward a 15% margin on profit. Edward is giving the rights to manufacture his lights. ^{✓1}

17½

MARKS AWARDED: 17.5/20

9½

Page sub-
total

Paper Ref	Sheet
FC2	10 of 20

Examiner's
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Question 10

(a)

(i)

- As a sole trader William has unlimited liability for the debts of the business. Him and his business are not separate legal entities and so if there if the business will the go bankrupt or be sued, he would be personally liable for any remedies owed, i.e. damages, costs, etc. This extends to Willaims personal assets which are not part of the business, i.e. personal property such as houses and possessions. Hence if Mia invested, and the business didn't work, She could potentially recover from Willaim personally.
- As a limited company, the company would be deemed a separate legal entity from William. The company still has unlimited liability and can go bankrupt, but Williams liability is limited, and assets which are not part of the business (i.e. personal assets) are protected.

Page sub-
total

Paper Ref	Sheet
FC2	11 of 20

Examiner's
use only

- In this situation, it is beneficial as he isolates his personal assets from the business, and he is more likely to attract investors.
- Mia can be named as shareholder in return for investing the startup capital, this offers some security to Mia as the shares are property which themselves can be assigned and transferred if needed. ^{✓1}
- Requirement to start limited company, 1 memorandum of association (stating the i. subscribers (i.e. William and potentially Mia) want to start a company ii. The subscribers will be shareholders/members and iii. That they each will have at least one share) 2. Articles of association – outlines the internal relations of the company and 3. A filled in IN01 form indicating director (likely William) and shareholders (likely Mia and William).

(a-ii)

- A fixed charge is a charge/security that is held against particular assets/property. The person owning the charge can only claim for said ^{✓1} property mentioned in the fixed charge (i.e. not other assets of the company). The company/trader must get permission of the owner of the charge when transacting the said asset (i.e. assigning, licensing etc).
- Floating charge is a charge that is held against the company rather than ^{✓½} individual assets/property. Hence, the owner of the charge can recover from any ^{✓½} assets of the company.
- In this situation, William is seeking an investment for 1. A patent for the plug, 2. Manufacture stock and specialist tooling 3. To get specialist partners for furthering partnerships in industry

Page sub-
total

Paper Ref	Sheet
FC2	12 of 20

Examiner's
use only

1. Patent application – A fixed charge seems appropriate. The this is
✓₁ particular assesst/form of property that is likely to have value
regardless whether the ultimate success of the business.
2. Stock and tooling – The type of charge will be dependant on
desirability of the a stock and tooling. Stock is liable to change,
✓_½ company will hold different levels of stock over time, so an investor
might not want so much uncertainty on a fixed charge – floating
charge seems appropriate. For the tooling – If there is no intrstic
value of the tooling if the company is bust, a floating charge seems
appropriate. However, the tooling is likely to fixed and permanent
assets and so an investor could merit value and in such case, a
fixed charge is appropriate.
3. Specialists – not transferable assets, if the company goes bust,
unlikely to recover these costs, Hence floating charge is
appropriate.

7

(b)

Negligence

- To demonstrate negligence, there are four requirements.
 - A duty of care owed to the claimant
 - A breach of that duty
 - Special damages occurred to the claimant as a result of the breach.
 - Demonstrating remoteness of damage.

Page sub-
total

Paper Ref	Sheet
FC2	13 of 20

Examiner's
use only

Duty of care

- In determining whether a duty of care existed^{✓1}, the who is your neighbour test? Was reformulated in Caparo v Dickson to 1. Proximity between the claimant and defendant- a close connection between the two would indicate duty of care, 2. Foreseeability – likelihood that the breach of duty would be detrimental to claimant and 3. That it is just and fair to impose a duty of care on the defendant.
- Georgia is a patent attorney and so her skill set is limited to patent law and is unlikely to a considered the most appropriate person to set up a company. However, its apparent that she is doing this work for Willaim in exchange for money, and therefore William likely to consider a Gorgia a competent person for the job. There is a direct relationship between the two and hence the proximity criteria is met. It is foreseeable that negligent acts by Georgia will be detrimental to Willaim and hence this criteria appears meet. 3. Arguably, this type of legal work is not within Georgia's normal remit of patent work; however, she does voluntarily in exchange for money, and doesn't tell her company. Hence she professing to have the skills to be able to start a company, if she cannot then she shouldn't do such work. Hence its seems just and fair it impose a duty of care on Georgia to Willaim.

Breach of duty

- Likelihood a damages
- Importance of the object being attained
- Costs/practicality of preventing the breach

Page sub-
total

Paper Ref	Sheet
FC2	14 of 20

Examiner's
use only

- Seriousness of the damages.
- Its clear there was a breach of Duty on part of Georgia. Firstly, doing the work outside her normal practise is clearly a risk. She would have been better off referring the work in exchange for some commission. If she
✓1 knew the importance of the deadline, she should have actively been monitoring her deadlines and communicating with Willaim. Its generally expected that professional will make the client aware of the deadlines and the amount of time needed. She should have made Willaim aware that she is likely or could be busy at work and so, send the documents over in good time so that she can meet the deadline. She could have mitigated the circumstances by indicating to Willaim that she wouldn't be able to
✓1 complete the work in time, referred to work to someone else, or given Willaim a means to contact her directly and promptly.

Hence its seems, prime facie, that there was breach of the duty. However this is pending to whether,

- Willaim instructed Georgia about the terms of the investment and when. Did Georgia know about the importance of the deadline? Its possible she thought that there was no such deadline because it atypical for an investor to impose such a condition on person.

Hence if she didn't know, or Willaim didn't mention it until the email sent in the last few hours, Willima's action contributory to her negligence (i.e. contributory negligence) because he should have made Georgia aware earlier. This will could reduce damages owed to Willaim.

Page sub-
total

Paper Ref	Sheet
FC2	15 of 20

Examiner's
use only

Heads of damages

- Loss of income 10 years –Georgia negligence is likely to have resulted in Willaim losing income, i.e. there is direct casual link^{✓1} between the loss of income and her negligence (i.e. failure to register company → withdrawal of investment → loss of income) i.e. if it wanted 'but for'^{✓1} her negligence, the damages wouldn't have occurred. Hence it appears that damages would be an suitable remedy. However, 10 years loss of income is speculative a because we don't know the how well the plug would have faired, and choice of 10 years seems arbitrary. Seems reasonable to apply damages from the point of view what would be reasonable royalty. Other considerations can be relevant for damages, if the patent isn't filed or granted yet, Willaim is speculating to scope of the patent protection. It's the case the patent isn't paricullay good because of the relvance of the prior art, meaning compitotors could made the same/similar plug, then a its likey that this would deminess the a damages.
- Loss of large house – the 'but for'^{✓½} consideration appears to indicate the Georgia isn't liable for these cost. i.e. there not a direct causal link between the house purchase and start of the company.^{✓½} Willaim appears to have a jumped the gun and bought the house well in advance of operating the expanded business.^{✓½} He has willingly put himself in position to be liable for the new house. Such damages can not be recovered.

Page sub-
total

Paper Ref	Sheet
FC2	16 of 20

Examiner's
use only

In all cases, Willaim appears to have contributed to the negligence so damages will likely be reduced. He should have mitigated potential losses, and not bought a large house.

✓1

15½

MARKS AWARDED: 15.5/20

8½

Question 11

Notes

- H given funding in May to make - magnificent unique cast iron artistic light
- Needs a stand with power that must be artistic
- H approach I to make the stand (not the lights)
- The highly artistic light on the stand forms the centrepiece of the city's
- successful celebrations

(a)

Ray v Classic FM seems like the relevant case law. This case dealt with a Ray

✓½ making a music play list for classic FM which they went onto use. Ray deemed argued he copyright protection for the list. Generally, the copyright author will retain the rights to the work, unless the commission of the work implies rights to

✓1 there to be a need to give the commissioner rights to the copyright i.e. power to assign or licence. There needs to implied terms need to be

- reasonable and equitable
- necessary to give business efficacy to the contact.

Page sub-
total

Paper Ref	Sheet
FC2	17 of 20

Examiner's
use only

- so obvious it goes without saying
- capable of closed expression ✓½
- not contradict any express term of the contract

Because the stand must have artistic merit in its own right, and copyright does subsist in a authentic artistic works, copyright does appear to subsist in the stand.

in this situation, Heavy is commissioning Irena to make a stand. All things being equal, Irena is the copyright owner of the work. ✓½

The agreement between Heavy and Ireana does facilitate the need for Heavy to be commicate, show the work to the public, so a lience for doing so is implied. 2½
However Ireana appears to be the entitled copyright owner

(b)

For determining whether an application for an interim injunction should be considered, the court will consider: ✓½

- That there is important/serious case to be heard, that it is not frivolous or vexatious.
- That damages are not an adequate remedy
- Consider the damage done to the claimant if the interim injunction is granted v the damages to the claimant if the injunction is not granted and
- Weigh both outcomes against the status quo, and only then
- Consider the merits of the injunction.

Page sub-
total

Paper Ref	Sheet
FC2	18 of 20

Examiner's
use only

(i)

- The case is serious, i.e. there is potential for substantial damages to both Heavy (i.e. loss of future sales) and Irena will be prevented from making **✓1** sales, i.e. loss of income in the winter months.
- Its difficult to assess whether damages would be appropriate remedy. If rejected, the case could take a will to litigate
- If the injunction is granted, the damage to the defendant (Irena) is loss **✓½** sales during the winter months
- If the injunction is granted, the damages to the claimant is the potential to future commissions and the artistic quality of the lights being comprised. **✓½** However, the a stand is already in the public domain, or will be once the light fixture is set up in the City town hall at Christmas. Once it is, others will be able to reverse engineer the design if it is that direseable.
- On balance, damages seem **✓½** like an adequate remedy and the potential for **✓1** damages on either side of decision to grant an injuction or not seem similar. So likely deny granting injuction.

(ii)

- The case is serious, i.e. there is potential for substantial damages to both **✓1** Heavy (i.e. loss of future sales) and the music festival organiser (MFO) I,e, unable to continue with the festival.

Page sub-
total

Paper Ref	Sheet
FC2	19 of 20

Examiner's
use only

- Arguably, damages would be an adequate remedy to Heavy because, and a reasonable royalty could be imposed on the festival organiser. However, Heavy is concerned that the inferior lights might lead to future loss of sales. Again however, this feels like damages would be adequate.
- The damage to the defendant seems is substantial considering it wont be able to proceed tomorrow without the stand. Potentially having to refund the tickets and take substantial losses on costs already incurred and having the reschedule.
- The damage to Heavy seems less damaging. The potential of lost sales is speculative. Also Heavys stand and lights are to be creative/aesthetic whereas the stands at the music festival appear to be more functional, i.e. to support lights. Its likely there will be considered just part of the background and no one at the festival will place any particular intension on them.
- Hence on balance it seems that more damage would be done to the MFO if the injunction were to be granted, when compared to the claimant if not granted.
- The status quo is that the music festival will go ahead and so is generally in favour of the defendant MFO.
- On balance, an interim injunction to prevent MFO using the stands appears unreasonable and therefore the application for interim injunctions will likely be refused on these grounds.

12

MARKS AWARDED: 12/20

9½

Page sub-
total

Paper Ref	Sheet
FC2	20 of 20

**Examiner's
use only**

**Page sub-
total**