

FC2 UK English Law  
FINAL Mark Scheme 2024

SECTION A

Question 1

- a) Name three different types of formal Alternative Dispute Resolution ('ADR').  
**3 marks**
- b) For each type of ADR you have named explain whether the outcome is binding.  
**3 marks**

**Total: 6 marks**

**Answer**

- a) *Arbitration, Mediation, opinions of the UKIPO (other reasonable examples of formal processes are acceptable).*  
**3 marks**
- b) *Arbitration – binding decision of the arbitrator.  
Mediation – non-binding, parties merely partake in without prejudice discussions.  
UKIPO opinion – non-binding, the opinion without full representations being made does not bind the UKIPO or the court from reaching a conclusion of full proceedings.*  
**3 marks**

**Total: 6 marks**

Question 2

- a) Regarding section 1 Partnership Act 1890 ("the Act"), give the statutory definition of a partnership.  
**4 marks**
- b) Regarding section 1 Partnership Act 1890 ("the Act"), give one example of a relationship between individuals that is not a partnership within the meaning of the Act.  
**2 marks**
- c) According to Section 36 ("Co-ownership of patents and applications for patents") UK Patents Act 1977 what is the nature of the property right when a patent is held by two people together in the absence of agreement to the contrary?  
**2 marks**

**Total: 8 marks**

**Answer**

- a) *Partnership is the relation which subsists between persons (1 mark) carrying on a business (1 mark) in common (1 mark) with a view of profit (1 mark).*  
**4 marks**
- b) *relation between members of any company or association (1 mark) which is registered under the Companies Act 2006 (1 mark). This is the usual example but the marks may be allocated to the other example under section 1 namely "Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter".*  
**2 marks**

c) *Held jointly in an equal (1 mark) undivided (1 mark) share.*

**2 marks**

**Total: 8 marks**

### **Question 3**

a) State the two key formal requirements to be met in signing a deed.

**2 marks**

b) State the limitation period generally applied to obligations arising under a deed.

**1 mark**

**Total: 3 marks**

### **Answer**

a) *The document must state that it is signed as a deed and a signature on the deed must be witnessed.*

**2 marks**

b) *Twelve years.*

**1 mark**

**Total: 3 marks**

### **Question 4**

a) Which court has the exclusive jurisdiction to hear applications for judicial review?

*You should indicate which part of this court has the responsibility for these cases to obtain the full mark.*

**1 mark**

b) What is the time limit for applying for judicial review?

**1 mark**

c) State two grounds on which a decision may be challenged by judicial review.

**2 marks**

**Total: 4 marks**

### **Answer**

a) *CPR 54.1A: High Court (0.5 mark) Administrative Court or King's Bench Division (0.5 mark)*

**1 mark total**

b) *The time limit is 3 months from when the grounds for making the claim arose.*

**1 mark**

c) *Any two of Illegality, unfairness or irrationality or lack of proportionality.*

**2 marks**

**Total: 4 marks**

### Question 5

- a) When applying for an urgent without notice interim injunction, state two types of undertakings that the applicant may have to give to the court. **3 marks**
- b) Briefly describe the difference in roles in the Intellectual Property Enterprise Court between a District Judge and a Judge. **2 marks**
- c) Give two examples of matters that will be dealt with at a Case Management Conference held at the Intellectual Property Enterprise Court. **2 marks**

**Total: 6 marks**

### Answer

- a) *Any two of the following may include to commence proceedings (issue and pay for) as soon as possible where the application is made prior to proceedings commenced, to pay damages to the defendant should the injunction not have been granted, to inform the defendant of the application as soon as possible.* **2 marks**
- b) *A District Judge sits on the small claims track and can't grant an interim injunction, whereas a Judge sits on multi-track cases and can grant an interim injunction.* **2 marks**
- c) *Examples can include:*
- *set the timetable for the action up to trial*
  - *applications concerning witnesses of fact evidence, including / or survey evidence*
  - *orders concerning disclosure of documents*
  - *appointment of expert witnesses*
  - *decisions on papers/summary judgment*
- 2 marks**

**Total: 6 marks**

### Question 6

Distinguish between assignment and novation of a contract.

**Total: 3 marks**

### Answer

*Assignment is transfer of the benefit of a contract to another party (0.5 mark) whereas novation is the transfer of the benefit and burden of a contract to another party (0.5 mark).* **1 mark total**

*Novation requires consent of all parties to the original contract and the new party(ies) (0.5 mark), whereas assignment requires the consent only of the party having the benefit and the new party taking the benefit of the contract (0.5 mark).* **1 mark total**

*In a novation the original contract is extinguished and a new contract created.* **1 mark**

### Question 7

With reference to the *IPREG Core Regulatory Framework, Chapter 1 Overarching Principles*:

- a) Give four examples of the Overarching Principles. **4 marks**
- b) Describe how the Framework applies where any of the Principles come into conflict with one another. **3 marks**

**Total: 7 marks**

#### Answer

- a) Award 1 mark for each separate Principle given. **4 marks**
- b) The Framework states that those which safeguard (**1 mark**) the wider public interest (**1 mark**) (such as upholding the rule of law and upholding public confidence (**1 mark**)) will take precedence. **3 marks**

**Total: 7 marks**

### Question 8

With reference to the *IPREG Guidance relating to Client Money*:

- a) The term 'client money' means money 'held or received by you or your firm in connection with work undertaken for a client'. State how this definition applies to advance payments received. **1 mark**
- b) Give two examples from the Guidance of when advance payments must be refunded. **2 marks**

**Total: 3 marks**

#### Answer

- a) It excludes any advance payments for costs received where the terms have been agreed. **1 mark**
- b) Any two of the following:  
the anticipated work not being carried out by you or the third party, (e.g. if the client withdraws their instructions);  
your over-estimating your fees;  
the disbursement being paid to a third party agency (such as the European Patent office) by you on behalf of your client exceeds the actual cost charged by that agency, resulting in a refund to the firm. **2 marks**

**Total: 3 marks**

**Section A Total: 40 marks**

## SECTION B

### Question 9

Edward is the owner of a patent on an improved moulding process for metals at low temperatures for creating the intricate parts of switches. He is also an enthusiastic amateur chess player.

He reaches the final of his local city's chess tournament, a big occasion. In the final he plays Alishia. Alishia is a toy manufacturer. During an interval in play, the two players are left alone in a side room. In order to have polite conversation, Alishia asks Edward about his work making parts for switches and finds out about Edward's patent. Alishia says that the shape of the chess pieces they are playing with could be improved to be more intricate and to hold them better. Alishia makes a rough sketch on a napkin showing how she would adapt the moulding process to make better chess pieces.

Edward says "Well I would pay you £100,000 to develop improved chess pieces!" Alishia says "Great!" They shake hands as the last session of play starts again immediately. After Edward wins convincingly, he says "I could enjoy winning more like that if I got more than £5 for each piece!". Alishia turns around and says "Sure, I'll get you that" but Edward is gone.

Two months later Alishia starts selling better chess pieces made using Edward's moulding process. She sends Edward a letter demanding payment of £100,000 for developing the better chess pieces. Edward refuses to pay and claims infringement.

- a) Advise Edward whether and if so, what, contract is formed between him and Alishia. Ignore any other potential issues or claims.**

**10 marks**

Alishia argues that the agreement she believes she had with Edward included an implied right to sell the chess pieces.

- b) By referring to case law and to the scenario give one basis Edward could give for refuting Alishia's argument.**

**2 marks**

Edward has been selling his own new chess pieces now for six months using a different supplier but for the first two months struggled to get sales moving. Edward gets a profit of £20 on his chess pieces.

Alishia is selling each chess piece for £10 each and each unit costs her £5 in total to sell (inc £4 manufacturing and £1 marketing). Alishia is also selling chess boards that have added in-built slots configured to her new chess pieces.

Alishia has sold 6,000 infringing chess pieces and 60 chess boards across the past six months. She sells her chess boards at £100 each, which cost her £50 each to sell (inc £40 manufacturing and £10 marketing).

The evidence shows that:

- the quality of the chess pieces is equivalent;
- both Edward and Alishia sell only from bricks and mortar shops both based in Somerset but 20 miles apart;
- Alishia marketed to local Somerset chess clubs up to four months ago;

- despite the price difference both Edward's and Alishia's goods, both their outlets are perceived to be 'exclusive' high street retail brands.

c) Advise Edward how a court might approach the assessment of damages if Alishia's was found to be infringing Edward's patent. You should use the relevant figures to illustrate your approach however marks will not be awarded for calculations.

**7 marks**

d) How might your answer to b) differ if the evidence had shown that the quality of Alishia's chess pieces were poor and from cheap retail outlets?

**1 mark**

### **Answer**

*In part a) full marks can only be obtained if the candidate identifies the distinct agreement regarding both designing and selling; marks for offer and acceptance can be allocated flexibly, provided no double marking.*

a) *there must be an intention to create legal relations*

**0.5 marks**

*A reasonable discussion of the existence of an intention to create legal relations including the following points:*

*Though Edward is meeting socially but Alishia is arguably in a semi-work environment, where the purported agreement was reached*

*The conversation appears forced and did not relate to the reason they were in the room together*

*They did not have an existing commercial relationship*

*But Edward did later appear to make a further reference to the chess pieces albeit not regarding manufacture*

**2 marks maximum**

*Offer needs to be certain as to its terms*

**0.5 marks**

*Edward's offer of £100,000 is certain for development of new chess pieces*

*But there is no discussion regarding sales (candidates may conclude otherwise but must deal with issue of sales as distinct from development to get this mark) -*

*Edward's exclamation regarding a per piece royalty appears to be an invitation to treat as it is uncertain as to its terms.*

**2.5 marks maximum**

*Acceptance must be communicated or other characteristic of acceptance relevant to candidate's discussion.*

**0.5 marks**

*Alishia says "Great!" which does seem to be acceptance and is communicated - of the right to develop the new chess pieces.*

**1 mark**

*Even if it was an offer of a licence to sell, Alishia's purported acceptance was not communicated to Edward.*

**1 mark**

*Consideration must be sufficient but needs not be adequate.*

**1 mark**

*Mutual promises is sufficient but the £100,000 is not correct consideration.*

**1 mark**

b) *BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 52 ALR 20; any reasonable mismatch between the criteria in this case law and the scenario such as*

1. *it must be reasonable and equitable – there was no discussion of royalty and the court would have to impose a royalty on Edward which does not appear equitable or reasonable;*
2. *it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; - the contract to develop was already workable without the need to a right to sell;*
3. *it must be so obvious that "it goes without saying" – there appears no basis for this ground as the conversation between Alishia and Edward was limited to development even on Alishia's case;*
4. *it must be capable of clear expression – there is no expression of royalty rates or quantities.*

**2 marks**

c) *Damages for IP Infringement eg see Alfrank Designs Ltd v Exclusive (UK) Ltd [2015] EWHC 1372 (IPEC)*

*The proportion of sales of infringing pieces by Alishia which are to be treated as having caused equivalent loss of sales by Anthony, ie stolen sales, £1 for £1 damages  
Evidence suggests that Alishia's sales when she was marketing to local chess clubs were taken directly from Edward.*

*a fair % of Alishia's 6000 chess pieces could be classed as stolen sales, damages as if Edward had sold them ie £20 x 6,000 x % award,  
evidence supporting this % includes:  
customers could not have purchased online so their choice of outlets was the bricks and mortar shops which were located reasonably closely, but were not next door, the products were equivalent, Edwards sales increased after Alishia stopped marketing to the local chess clubs.*

**3 marks**

*The royalty to which Edward is entitled in relation to Alishia's sales of infringing chess pieces which caused Edward no loss of sales – reasonable royalty:  
reasonable royalty based on willing licensor – licensee % of £5 per piece that are not lost sales, ie 4,000 x £5 x %.*

**2 marks**

*Convoyed sales of the chess boards – causative link must be shown – chess boards fitted the unique chess sets but inserts are added and chess board may sell by itself so % of 60 sales only,  
Reasonable royalty of Alishia's £50 profit for those convoyed sales.*

**2 marks**

d) *the chess pieces would likely not have been interchangeable so the % of 'stolen sales' would have been reduced or removed completely.*

**1 mark**

### Question 10

Flavian, is a patent attorney, who has been appointed by Digory to advise on his patent on a coating on the inside of water piping. The patent was obtained by other attorneys. Digory is asking Cecily to buy his patent. Cecily asks Flavian whether Digory's patent has been renewed. Without checking Flavian states in a letter to Cecily only that "Yes, of course it's watertight." Cecily decides in the end not to buy Digory's patent. Later on, Cecily's friends decide to invest in Digory's business after they are shown Flavian's letter. Digory's patent is later found invalid for lack of novelty. The patent is a key part of Digory's business and Digory's business fails.

**a) Advise Flavian if he is potentially liable to Cecily's friends for loss arising from the statement made in his letter.**

**10 marks**

Cecily's friends lose:

- i) All the money they put into Digory's business.
- ii) Their share of all future profits of the business.
- iii) Profits from another business that they were thinking of investing in at the same time but which they couldn't because they put the money into Digory's business.

For tactical reasons during negotiations to settle the ensuing litigation, Flavian decides to admit to liability and fight on these heads of loss.

**b) Advise Flavian on his potential liability for each head of loss.**

**6 marks**

During the negotiations Flavian wants to make a settlement offer in accordance with Part 36 of the Civil Procedure Rules. Flavian has a total pot of £50,000 to include in the offer.

**c) Prepare notes for a meeting with Flavian in which you explain how such an offer should be made using your answer to part b) to illustrate how it might be made.**

**4 marks**

### Answer

*Candidates may answer aspects of causation in part a) that applies to the question in part b) and these marks can be carried over.*

*a) Eg. generally Caparo v Dickman [1990] 2 AC 605: Any reasonable clear discussion covering, marks awarded flexibly for detailed discussion on particular points:*

*Flavian must owe duty of care to Cecily's friends for a statement of fact made by him to be liable in negligent misstatement (1 mark) on an objective standard for pure economic loss (1 mark).*

*It is dependent on a special relationship/assumption of responsibility (1 mark) in which it was reasonable for Cecily's friends to rely on Flavian's skill and judgement (1 mark).*

*of sufficient proximity (1 mark), the person affected must be in a limited and identifiable class of persons (1 mark).*

*Flavian must have reasonably expected the persons to whom the information was communicated to rely on it (1 mark).*

*initially he made statement to Cecily but the loss relates to Cecily's friends, Flavian's statement was broader than just confirming renewal (1 mark).*

*discussion whether the purpose of Flavian's letter was confirming that the patent registration was renewed and even if wider was for purposes of buying the patent, whereas the eventual use was for an investment – Cecily's should have/would likely be expected to make their own checks on validity / adding a clear disclaimer on the purpose of the advice*

**2 marks**

b) Heads of Damage (some flexibility of marks between these heads of damage)

i) *discuss application of the 'but for' test and that there appears to be a direct factual link between losing their investment and the broad statement in Flavian's letter;*

*the damage is of a reasonably foreseeable type as the negligent statement relates directly to the nature of the damage.*

**2 marks**

ii) *discuss application of the 'but for' test and that there appears to be a direct factual link between the initial damage and losing profits from the business;*

*the initial damage is of a reasonably foreseeable type however as time goes by the making of profit becomes more uncertain so a court will find a break in the chain of causation – candidate should characterise this as a legal break as it relates to future profits.*

**2 marks**

iii) *candidate should discuss that even if there is causation in fact (consider whether there are other factors to their decision to make this specific investment);*

*it is likely that there is no causation in law as the loss of income is too remote – it relates to an unforeseeable type of damage.*

**2 marks**

c)

*It must be in writing (0.5 marks)*

*state that it is a Part 36 offer (0.5 marks)*

*specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs if the offer is accepted (1 mark)*

*contain the offer, including the claim or part of the claim to which the offer is being made, (1 mark)*

*candidates should make a reasonable suggestion allotting the monies to each of the three heads of damage and likely applying more to head i) than ii) and likely £0 to head iii) (1 mark).*

**Total: 20 marks**

### Question 11

William owns a patent covering a metal carabiner that incorporates a novel clip enabling mountain climbers to double lock safety ropes passing through it. William markets his carabiner widely to advanced climbing clubs and specialist climbing shops.

The carabiner costs twice as much as a normal carabiner but adds further safety on more extreme mountain climbs.

After a newspaper reports inexperienced mountaineers on easy mountain climbs falling because a carabiner lock is opening allowing ropes to come undone under strain, William visits a general walking equipment outlet and finds cheap imitation carabiner locks on sale to inexperienced climbers. The newspaper identifies these carabiners as originating from William.

Separately there are newspaper reports that two months ago the police raided a small industrial garage premises on a remote island off the English coast and caught drug dealers there as they were destroying their paper records in an incinerator. This is not the first time the premises have been raided by the police. There is only one such industrial premises on the island though there are other isolated farms.

Records suggest that there is a high turnover of businesses at the garage premises, changing every four months.

The date of the last consignment received by the store William visited, was four months ago. The only address identified on the consignment notice is the pub at the small port located closest to the island. Local enquiries reveal that boats are sometimes seen heading in from and out to the island from the mooring outside the pub. There have been reports of boats coming from the island pausing before arriving in the port and throwing packages into the water.

On a visit to the port William is told by a local in the pub that a boat arrives at the port at the same mooring outside the pub every six weeks, carrying legitimate climbing equipment. William doesn't want the lawyers to mention this conversation to the court.

William wants to make an application for an ex parte interim search and seizure order against the premises on the island.

**Advise William on the grounds and requirements that need to be satisfied for the court to make such an order in this case. Your answer should include an assessment of the strengths and weaknesses of the evidential issues described above. Assume the island is within the court's jurisdiction.**

**Total: 20 marks**

### **Answer**

*Any reasonable discussion, (flexibility of marks especially between points 3 and 4 below regarding discussion of evidence issues only), a structure using the grounds set out in *Indicii Salus Ltd (in receivership) v Chandrasekaran* [2006] EWHC 521 (Ch), at para [85], which need to be satisfied before a search order is made is usually the clearest:*

*(1) “extremely strong prima facie case”*

*William has examples of the imitation carabiner lock which must be shown to be likely to fall within the claims. A discussion of the threshold that William has to meet in the application itself is also acceptable provided there is no double marking.*

**2 marks**

*(2) “damage potential or actual must be very serious for the applicant”*

*No apparent damage to William’s primary market but there is potential for very bad reputational damage.*

**2 marks**

*(3) “there must be clear evidence that the defendants had in their possession incriminating documents or things”*

*there does not appear to be ‘clear evidence’ in this case, but rather there is some circumstantial evidence;*

*the consignment labels only originate from the port closest to the island*

*but the types of goods are of the same nature;*

*it is not certain that they originate from the island premises;*

*though the premises appear to be used for unlawful activities – we should try to find out what the previous raids were for.*

**3 marks**

*(4) “there is a real possibility that the defendants may destroy such material before an on-notice application is made”*

*evidence that the premises is knowingly used by criminals who destroy paper records;*

*question whether an incinerator can be used to destroy metal carabiners;*

*evidence that packages are thrown into the sea is relevant.*

**3 marks**

*(5) “the harm likely to be caused by the execution of the search order on the respondent in his business affairs must not be out of proportion to the legitimate object of the order”;*

*objection that a legitimate climbing equipment business will be disrupted;*

*Balanced with (there must be some balancing exercise shown by the candidate to achieve full marks),*

*Object of the order to preserve evidence of infringement – but William has evidence that the carabiner lock is infringing and is causing safety concerns.*

**3 marks**

*(6) the applicant’s obligation to make full disclosure.*

*Information showing that the infringing consignment might have been made at a time when the current business was not present at the premises;*

*also, that the business on the island sells legitimate equipment;*

*would put doubt into the courts mind as to whether to grant the order;*

*also,*

*which is why there is an obligation of full disclosure;*

*So William could be in contempt of court by not making full disclosure.*

**3 marks**

*(7) William must provide undertakings to the court (candidate can make reasonable points regarding the requirement to have and the role/nature of the undertakings required under CPRr25)), including*

*Compensatory damages to the respondent should i) the order not have been made ii) William’s solicitors fail to comply with their duties;*

*William must commence proceedings as soon as possible;*

*Materials seized can only be used for the purposes of these proceedings;*

*To swear an affidavit confirming substance of statements of his lawyers to the court.*

**2 marks maximum**

*(8) William must appoint and pay for a Supervising solicitor (candidate can make reasonable points regarding the requirement to have and the role/nature of the supervising solicitor (cf CPRr25)), including*

*Must be independent attending at search,*

*Named in the order,*

*Must serve the order personally,*

*Must be a woman if it is likely that the respondent is an unaccompanied woman,*

*Must make a list of all material removed from the premises,*

**2 marks maximum**

**Total: 20 marks**

## **Question 12**

Alexander works as a consultant for Paprika designing phone apps for use in any field where large amounts of data analysis is required such as in AI. Other than a verbal agreement that Alexander is a consultant and payment rates there are no other terms agreed between him and Paprika.

Alexander is developing an app that allows a user to order their personalised favourite curry dish enabling the food delivery service to select ingredients in the warehouse, deliver them to the production line and send out the prepared dish the same day.

Paprika is skilled at warehouse management and distribution and has her own algorithm that she uses in the apps that her business produces to increase the efficiency of the warehouse management. Paprika says to Alexander not to spread information about the algorithm around but does not make him sign any document.

Whilst developing the app Alexander researches how to use the data to suggest recipes based on user preferences. He finds an efficient open source data management algorithm and many people use it by adapting to their tools, particularly by libraries. Alexander tweaks it in his own particular way.

Alexander tells others generally that he tweaks the open source algorithm to improve the app and just assumes that buyers of the app won't go trying to reverse engineer the app as it would be quite difficult to discover.

**a) Advise Alexander whether enforceable trade secrets exist in the two algorithms under the Trade Secrets (Enforcement etc.) Regulations 2018. Consider the position only under these rules.**

**9 marks**

Alexander stops working for Paprika. Alexander chats with a friend of his, Nicholas, about Paprika's warehouse algorithm in her app and asks Nicholas for a job developing Nicholas' new app. Nicholas refuses to give Alexander a job on the new app development and instead employs another person to carry out the work conscious that Alexander was working on Paprika's app, a competitor product.

Paprika reviews Nicholas' new app and believes the warehouse algorithm in the new app works in the same way as hers and breaches her trade secret. Nicholas believes that Paprika's warehouse algorithm would have been easy for other developers in this area to arrive at.

**b) Assuming that Paprika has a trade secret in the warehouse algorithm prepare a short note assessing the evidence above in order to advise Nicholas whether his app breaches Paprika's rights.**

**3 marks**

Alexander is thinking about setting up his business with another friend of his, Mia, as a limited partnership. Alexander will be putting in all the money to start the business and will describe himself as a 'limited partner' in the business.

**c) Explain Alexander's interest as a 'limited partner'.**

**4 marks**

As an alternative Alexander is thinking he could register a limited company and to use the name AppFood Ltd. He knows that Paprika is about to incorporate her business, FoodyApp. FoodyApp has been running for 20 years now and Paprika really likes the name and wants to keep it. You are concerned Paprika may make a complaint to the Company Names Tribunal against the use of Alexander's choice of name.

**d) Advise Alexander what Paprika would have to show in a complaint to the Company Names Tribunal. Ignore any other potential claims.**

**4 marks**

**Total: 20 marks**

### **Answer**

*a) No marks are awarded for discussion concerning liability for breach of trade secrets under the common law.*

*Analysis of definition of "trade secret" in Trade Secrets (Enforcement etc.) Regulations 2018 section 2 (marks may be awarded if a fact is used reasonably under a different part of the test):*

*is a secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question,*

*algorithm increases production efficiency - not generally accessible, also potential issue as to which "circles" are relevant here – app development or warehouse distribution;*

*Alexander's algorithm – though the algorithm is available publicly the precise configuration is not generally known – considering what circles are relevant as libraries are not in the same sector.*

**3 marks**

*has commercial value because it is secret,*

*new distribution algorithm that increases factory efficiency – gives Paprika a competitive advantage to her app from others not using this process;*

*Alexander's algorithm – it is arguable whether as people commonly tweak a publicly available algorithm there is no value in Alexander's versions being secret.*

**3 marks**

*has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;*

*algorithm increases production efficiency – though Paprika tells Alexander not to spread it around, arguably a 'reasonable' step would be to make Alexander sign an NDA;*

*Alexander's algorithm – candidates must realise that this is an issue, is a technical barrier alone sufficient, arguably not and Alexander has given a 'road sign' to others to look for the tweak.*

**3 marks**

*b) Breach – No marks are awarded for discussion concerning liability for breach of trade secrets under the common law, section 3 Regulation:*

*Breach can be by "acquisition, use or disclosure",*

**1 mark**

*Third parties obtaining such information can be liable (see generally, Salt Ship Design AS v Prysmian Powerlink SRL [2021] EWHC 3583),*

**1 mark**

*Evidence of breach by use, discussion of relevance of app working in same way and whether easy for other developers to arrive at.*

**1 mark**

*c) A limited partnership is one in which only one partner is required to be a general partner with unlimited liability but in which other partners may have limited liability.*

**1 mark**

*Alexander's liability as a limited partner accords to the amount that he has invested into the business.*

**1 mark**

*The general partner manages the business, so Alexander would not be responsible for general management of the firm,*

**1 mark**

*unless there is an agreement with Mia making him responsible, or similar indication that responsibility/liability can be altered by agreement provided it remains a 'limited partnership'*

**1 mark**

*d) Provides a remedy for a person aggrieved by opportunistic registration of company name for a similar name.*

*The name is similar, in which that person has goodwill or a reputation; Paprika has been trading for 20years and is likely to have a reputation in the name FoodyApp which is a similar name.*

**2 marks**

*opportunistic includes suspicion:*

*i) that name has been registered to extract money*

*ii) or that it is being chosen to prevent registration of variation of a name;*

*in this case, Alexander knows of Paprika's use and how much she wants to keep it, so there are grounds for suspicion that he might make Paprika pay for him to change the name or force her to choose a different name.*

**2 marks**

**Total: 20 marks**