

# Foundation Certificate

## FC2 English Law

**Monday 21 October 2024**

**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 **10 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) 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**

### 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**

### 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**

#### 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**

#### 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.  
**2 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**

#### Question 6

Distinguish between assignment and novation of a contract.  
**3 marks**

#### 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**

### Question 8

With reference to the IPREG *Client money guidance* (the Guidance):

- 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**

**Total for SECTION A: 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, and each unit costs her £5 in total to sell (including £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 (including £40 manufacturing and £10 marketing).

**Cont...**

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 outlets are perceived to be 'exclusive' high street retail brands.

- c) **Advise Edward how a court might approach the assessment of damages if Alishia 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 was poor and they were sold from cheap retail outlets?**

**1 mark**

**Total: 20 marks**

### 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 structured.**

**4 marks**

**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**

## 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 used by many people, particularly by libraries, by adapting to their existing tools. Alexander tweaks it in his own particular way.

Alexander tells others that generally 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's 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's 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**

**Cont...**

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**