

Paper Ref	Sheet	Percentage Mark Awarded
FC2	1 of 19	64%

Examiner's
use only

Question 1

a)

Mediation ✓1

Arbitration ✓1

UKIPO Opinion ✓1

b)

Mediation – The decision is not binding unless it has been decided in a contract
to be a binding decision. ✓1

Arbitration – The decision is binding. ✓1

UKIPO Opinion – The decision is binding.

MARKS AWARDED: 5/6

5

Page sub-
total

Paper Ref	Sheet
FC2	2 of 19

Examiner's
use only

Question 2

a)

A partnership is a written or oral agreement between two or more people to enter into business together. The partnership does not require a binding contract between the persons but may have a contract to lay out the terms of the partnership and the responsibilities of the partners.

b)

An example of a relationship which is not a partnership within the meaning of the Act is a trust between with a trustee and trustor.

c)

When a patent is held by two or more people, the default nature of the property right is for the two or more people to be joint tenants for the patent. This means they both equally own the patent and it remains undivided.

MARKS AWARDED: 4/8

4

Page sub-
total

Paper Ref	Sheet
FC2	3 of 19

Examiner's
use only

Question 3

a)

The deed must clearly indicate on itself that it is a deed. ✓¹

✓¹
The deed must be signed and witnessed. This is often done by a director and a witness, a director and a secretary, two directors or a director and a company seal affixed.

b)

The limitation period for obligations arising under a deed is 12 years from the date the deed is signed. ✓¹

MARKS AWARDED: 3/3

3

Page sub-
total

Paper Ref	Sheet
FC2	4 of 19

Examiner's
use only

Question 4

a)

The administrative division of the high court has the exclusive jurisdiction to hear applications for judicial review.

b)

The time limit for applying for a judicial review is 3 months from the date of the decision which a judicial review is being applied for.

c)

A decision may be challenged by judicial review for being illegal or procedurally unfair.

MARKS AWARDED: 4/4

4

Page sub-
total

Paper Ref	Sheet
FC2	5 of 19

Examiner's
use only

Question 5

a)

The applicant for the injunction has a duty of full disclosure to the court.

The applicant must also prove that the matter for which a without interim injunction is for is imminent and there would be no time for a with notice interim injunction to be granted.

b)

A District Judge sits on the small claims track and cannot grant an interim injunction. A Judge sits on the multi-claims track and may grant an interim injunction.

c)

The appointment of expert witnesses and the setting of the date for trial are dealt with at the Case Management Conference.

MARKS AWARDED: 3.5/6

3½

Page sub-
total

Paper Ref	Sheet
FC2	6 of 19

Examiner's
use only

Question 6

An assignment of a contract is when the benefit of a contract is transferred from one party of the contract to a third party. The novation of a contract is when the burden and benefit of the contract are transferred from one party of the contract to a third party.

For an assignment, only the permission of the assignor (the party of the contract assigning their benefit) is required. For a novation of contract the permission of both parties of the contract is required. When a novation of contract is permitted by both parties, the old contract is extinguished and a new contract is formed with the inclusion of terms to enforce the burden and benefit on the third party.

MARKS AWARDED: 3/3

3

Page sub-
total

Paper Ref	Sheet
FC2	7 of 19

Examiner's
use only

Question 7

a)

The regulated person must:

- Act with independence. ✓1
- Act with honesty. ✓1
- Act with integrity. ✓1
- Uphold the constitutional principles of the rule of law and the administration of justice. ✓1

b)

If the principles come into to conflict with each other, the principle which is in greater interest of the public will take priority over the other principles. This will be dealt with on a case by case basis. ✓1

MARKS AWARDED: 5/7

5

Page sub-
total

Paper Ref	Sheet
FC2	8 of 19

Examiner's
use only

Question 8

a)

Any advance payments received by the firm from the client are the client's money. This money must be kept in a separate bank account (in the UK) which is separate to the firm's bank account. The client money may only be transferred into the firm's bank account when the work has been carried out or it is agreed between the firm and the client that the money may be paid into the firm account before completion of the work.

b)

Advance payments must be refunded when the estimated cost, and therefore the amount of money paid in advance, is higher than the actual cost of the work.

Advance payments must also be refunded when the client stops doing business with the firm and the client requests the money back.

MARKS AWARDED: 2/3

2

Page sub-
total

Paper Ref	Sheet
FC2	9 of 19

Examiner's
use only

Question 9

a)

Intention to enter into legal relations: ✓½

Edward is a patent owner and Alishia is a toy manufacturer. This makes them plausible business partners. Edward and Alishia meet at the finals of a chess tournament and are playing against each other. As they are playing against each other in a relatively stressful environment, as it is a big occasion for Edward, there may be hostility between Alishia and Edward. Therefore they may not be in

✓1 the correct mind set to enter into legal relations. However, they do have polite conversation at the interval which implies no hostilities between them. Their conversation may also seem jokey, because Edward says "*I could enjoy winning more like that if I got more than £5 for each piece*", however, this seems to be the only jokey comment made and Alishia did not take it to be jokey. They also
 ✓1 discuss detailed terms of the contract and Alishia makes a rough sketch on a napkin showing how she would improve the design. Therefore it may be said that Alishia and Edward have an intention to enter into legal relations.

Offer:

An offer has to be certain as to its terms ✓½ and certain as to its subject-matter.

With regard to development: Edward says "*Well, I would pay you £100,000 to develop improved chess pieces*". This is certain ✓1 to terms, £100,000 for development of improved chess pieces, and certain to subject-matter, the

Page sub-
total

Paper Ref	Sheet
FC2	10 of 19

Examiner's
use only

improved chess pieces. Therefore, it may be said that there has been an offer for development.

With regard to selling: Edward says "*I could enjoy winning more like that if I got more than £5 for each piece*". This offer is certain to terms, £5 for each chess piece, and certain to subject-matter, the chess piece. Therefore, it may be said that there has been an offer for selling.

Acceptance:

Acceptance has to be an unqualified acceptance of all the terms of the offer.

Acceptance has to be communicated but may be implied by conduct.

With regard to developing: Alishia says "*Great!*". This is clear acceptance of the offer to develop. They also shake hands which implies acceptance by conduct but this may have been a hand shake to imply the starting of the next round of chess.

With regard to selling: Alishia does say "*Sure, I'll get you that*" which would imply acceptance however, as it was not communicated to Edward as he had left at that point, it is not acceptance. Therefore, there was no acceptance of the offer to sell.

Consideration:

Consideration needs to be sufficient but need not be adequate. Consideration may be a mutual exchange of promises.

With regard to developing: Alishia makes the rough sketch on the napkin showing how she would adapt the moulding process. This is consideration as it is a discussion of the terms of the contract. Additionally, Edward is implied to be

Page sub-
total

Paper Ref	Sheet
FC2	11 of 19

Examiner's
use only

making a mutual exchange for the right for Alishia to use his patented invention
✓1
for the forbearance to sue. Therefore, it may be said that there is consideration.

With regard to selling: There is no discussion of the selling beyond the initial offer. Therefore it may be said that there is insufficient consideration for selling.

To summarise, there is a contract formed between Edward and Alisha for the development of the improved chess pieces but there is no contract between Edward and Alisha for the selling of the improved chess pieces.

9½

b)

According to the precedent set out in BP Refineries, to imply a term into a contract the implied term must not contradict any written terms of the contract. If
✓1
there was an implied term for Alishia to sell the chess pieces, then this would contradict the written term to for Edward to pay Alisha £100,000 for the development as there would be money transferred both ways which contradicts itself.

1

c)

To assess the damages owed to Edward, they would determine the amount of profit Edward lost as a result of the conflicting business and infringement from
✓1
Alisha. The manufacturing and marketing costs from Alishia are not considered by the court. The sales of chess boards will also not be considered as there is only infringement by the chess pieces. As the quality of the chess pieces is equivalent and they both sell from brick and mortar shops which are 20 miles

Page sub-
total

Paper Ref	Sheet
FC2	12 of 19

Examiner's
use only

apart, the court will assess the damage as the perceived lost profits due to the selling by Alishia. Alishia sold 6000 infringing chess pieces, Edward could have sold them for £20 profit each, therefore he would be owed approximately
✓1
£120,000 in damages. This amount may be reduced unless he can prove that the first two months of the six month period in which he struggled to get his sales
✓1
moving did not lower the amount of chess pieces he would have been able to sell in total.

Additionally, Edward may need to prove that the marketing done by Alishia to the local chess clubs did not affect the amount of sales made as he did not do this and therefore the predicted sales he made may be reduced if the marketing was proved effective.

The fact that they are perceived to be exclusive high street retail brands would not play into the court's decision.

d)

If the quality was poor and the chess pieces were sold from cheap retail outlets, Edward may be able to obtain damages related to the harm inflicted on his reputation by Alishia.

3

0

MARKS AWARDED: 13.5/20

13½

Page sub-
total

Paper Ref	Sheet
FC2	13 of 19

Examiner's
use only

Question 10

Does Flavian owe a duty of care to Cecily's friends?

There has been a negligent misstatement. As set out in Hedley Byrne for a negligent misstatement there must be a person who makes themselves out to have a special skill or an expertise, there must a statement which is reasonably relied on by the other parties, and there must be no disclaimer. Flavian makes himself out to be a patent attorney. He makes a statement in the letter that the patent is watertight. He also makes no disclaimer. It may therefore be said that Flavian does owe a duty of care to Cecily's friends.

On the other hand, it may be argued that there is no duty of care to Cecily's friends. This is because there is not sufficient proximity between the Cecily's friends and Flavian, as the letter was never intended for the friends, and therefore Flavian would not have reasonably foreseen damage on Cecily's friends from his action. Thus, it is not reasonable to impose the duty of care on Flavian.

Overall, there is a duty of care from Flavian to Cecily's friends because, as a patent attorney, he must expect his words to be taken as truth, no matter who the recipient is of the letter or the reasoning for the letter. Thus, there is sufficient neighbourhood/proximity between them to imply a duty of care..

Has Flavian breached his duty of care to Cecily's friends?

The reasonable man test is used. What would a reasonable man of ordinary prudence have done in the defendant's situation? A reasonable patent attorney

Page sub-
total

Paper Ref	Sheet
FC2	14 of 19

Examiner's
use only

of ordinary prudence would have checked whether or not the patent had been renewed instead of blindly making a statement unrelated to the question ask of them. Therefore, it may be said that there has been a breach in the duty of care owed by Flavian. ✓1

Has there been damage as a result of the breach in duty of care?

But for test: but for the defendants act or omission, would the damage have still occurred? If Flavian checked the patent he would have seen if it was renewed or not, as this is what was asked by Cecily, he would have not have been checking for the validity of the patent. However, in the letter, he makes the statement that the patent is water tight. It is thus foreseeable that as a result of his misstatement, that the patent is water tight (and thus no risk of invalidity), for the patent to be found invalidated and for Digory to lose his business. It is also not too remote.

5½

b)

i)

It is reasonably foreseeable that because Digory's business failed because of the breach in duty of care by Flavian, that they lost all the money they invested in the business. Therefore there is a direct factual link between the damage and the breach in the duty of care. It is also not too remote, as the loss of the money they invested is closely related risk to investing in a business. Thus Flavian is fully liable for this head of loss. ✓1 ✓1

Page sub-
total

Paper Ref	Sheet
FC2	15 of 19

Examiner's
use only

ii)

It is reasonably foreseeable for the loss of future profits as a result of the breach
✓1
in the duty of care. However, it is too remote, as the loss of the patent is too far
removed from the prediction of future profits. This makes the head of loss too
✓1
remote. Therefore, Flavian would not be liable for this head of loss.

iii)

This damage is too remote and too unforeseeable. The loss of profits potentially
gained from another business is not directly linked to the breach in the duty of
care. It is also too remote as the success of the other business could not have
✓1
been predicted at the time of Flavian breaching the duty of care. As a result
Flavian would not be liable for this head of loss.

c)

An offer to settle is used to pressure an opposing party to settle a disagreement.

The offer to settle may include:

- That it is an offer to settle in accordance with Part 36 CPR. ✓½
- The claims for which the person is offering to settle.
- The amount they are willing to settle for.
- The fact that the recipient has 21 days to accept the offer or they will be
✓1
further liable for the costs of the defendant.

6

1½

MARKS AWARDED: 13/20

13

Page sub-
total

Paper Ref	Sheet
FC2	16 of 19

Examiner's
use only

Question 12

a)

To consider whether an enforceable trade secret exists, the precedent set out in *Coco v Clark* is used.

Does the information has the necessary quality of confidence?

With regard to the first algorithm (Paprika's own algorithm for warehouse management):

The algorithm has the necessary quality of confidence because it is not generally known to the general public, it is non-trivial and discrete. It is also novel. It therefore has the necessary quality of confidence. ✓¹

With regard to the second algorithm (the open source algorithm):

All though it has been modified from an open source algorithm, it has been modified and thus is new. It is also non trivial as he has adapted the algorithm to his use. It therefore has the necessary quality of confidence. However, as it may be reverse engineered it may be argued to not have the necessary quality of confidence but as it is hard to discover, it is thus being kept secret and thus has the necessary quality of confidence.

Is there an obligation of confidence?

With regard to the first algorithm: Alexander has a legal obligation rather than a moral obligation to keep the information a secret. Although he is not under a

Page sub-
total

Paper Ref	Sheet
FC2	17 of 19

Examiner's
use only

contract to not disclose the information, he has a fiduciary obligation to keep it secret as he is working as a consultant for Paprika. Therefore he has an obligation of confidence for the first algorithm.

With regard to the second algorithm: The information is being kept secret by Alexander as the information is difficult to discover. Additionally, Alexander has a ^{✓1} fiduciary obligation to Paprika to keep the information a secret even through the obligation of confidence was not implied in the verbal agreement.

Thus for both algorithms, Alexander has the necessary obligation of confidence. Additionally, he is also not acting vexatiously or frivolously.

Has there been a breach by misuse or disclosure of the algorithms?

With regard to the first algorithm: Alexander is not using the information the information for his benefit, thus, there is no breach by misuse.

There is no breach by disclosure for the first algorithm as he does not disclose this to anyone.

There is a breach by disclosure of the second algorithm as he tells others about it. However, a detriment to Paprika would need to be proved as a result of the disclosure.

Overall the algorithms are not enforceable trade secrets unless a detriment to Paprika can be proved for either algorithm.

2

Page sub-
total

Paper Ref	Sheet
FC2	18 of 19

Examiner's
use only

b)

Nicholas does not breach Paprika's rights because the algorithm would be easily
✓1 derivable by developers. It is also not being breached by Nicholas because he
did not give Alexander the job and thus is acting in and therefore is acting in
✓1 good faith by not employing Alexander and thus potentially breaching the
obligation of an employee under Facenda Chicken v Fowler.

2

c)

As a limited partner, you are not obligated to have the responsibility of the day to
day running of the partnership. Additionally, as a limited partner he would only be
✓1 personally liable for the costs and expenses of the partnership up to the amount
✓1 he gave to the partnership as his buy in.

2

d)

She would have to show:

That she has contributed a lot of money into the starting of business and has
made sufficient preparations for doing so.

She must show there is sufficient likeness between the two names in order to
prove a likelihood of confusion. The names may be identical or differ only in
inconsequential ways. Which they do (words the other way round and only differ
by 1 letter).

Page sub-
total

Paper Ref	Sheet
FC2	19 of 19

Examiner's
use only

She must show that the Alexander only registered the name in order to extort
money out of her. ✓1

She will have to prove that has has accrued sufficient good faith and reputation
in her name over the last 20 years. ✓1

2

MARKS AWARDED: 8/20

8

Page sub-
total