

Examiner's Report 2024

FC2 – English Law

Introduction

The pass rate this year was lower compared with previous years, but not significantly so given the lower numbers taking the paper. The marks attaining a pass mark demonstrated the opportunity to excel, with a number of candidates achieving very high marks.

Section A questions were attempted successfully overall with a mean mark of over 50% for all questions except for question 2.

Section B problem questions were attempted successfully overall again with a mean mark of over 50% across all questions in this section.

Candidates who had done appropriate preparatory work had the opportunity by the paper to pass. There was no candidate feedback specific to this paper through the Candidate Survey.

The approach to Section B developed in previous years enables candidates to demonstrate key legal knowledge and understanding of how to apply that knowledge, and to assess the strengths and weaknesses of evidence in a scenario. Candidates' responses to (for example) Question 11 demonstrated the ability to work with uncertainty typical in a legal situation, by systematic use of the relevant legal test.

As mentioned in previous reports, candidates who obtained highest marks, carried their argument in a particular direction using the relevant legal test, reference to a relevant fact(s) from the scenario and a legal explanation as to how/why that fact applied, thereby demonstrating an understanding of why the relevant legal test exists. It is useful for candidates to state an overall conclusion which can assist with interpreting uncertainties in an answer.

Questions

Part A

Question number	Comments on questions
Question 1	This was well answered, and no problems were evident.
Question 2	A number of candidates struggled with this question. The topic is covered in the syllabus but has not been an area tested frequently. Most candidates had sufficient knowledge to be awarded some marks.
Question 3	This was generally well answered, and problems were not widely evident, although some candidates did not evidence the knowledge.
Question 4	This was generally well answered, and few problems were evident, although some candidates did not evidence the knowledge.
Question 5	This was well answered, and no problems were evident.
Question 6	This was well answered, and no problems were evident.
Question 7	Again, most candidates answered this well, but some failed to attempt this question at all or only poorly. Candidates are advised to familiarise themselves with the IPReg Principles.
Question 8	This was generally well answered. As a key area of scrutiny in practice, the issue of handling client money should be considered closely by candidates.

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Part B

Question number	Comments on question
Question 9	Part a) Most candidates made good attempts at this section including choosing an appropriate way to structure their answer and arrive at a firm view. Full marks could only be awarded if candidates distinguished between a licence to develop the chess pieces and a licence to sell. Part b) This was well answered showing an awareness by most candidates of the BP Refinery (Westernport) tests for implied terms. Candidates were able to produce reasonable arguments using one of those tests in support of Edward's argument. Part c). This was well answered with respect to stolen sales, and more so with regard to reasonable royalty. Candidates generally failed to spot issues regarding convoyed sales. A useful illustration of a court applying these principles can be found in the <i>Alfrank Designs</i>. Part d) This part-question distinguished the better-prepared candidates, of which there were a number.
Question 10	Part a) This was well answered, and no problems were evident. Part b) Again, this section was generally well answered. If the answer to this part of the question on causation was included in the answer to a), it was marked. Part c) This was generally well answered. Some candidates were unable to demonstrate understanding of how the part 36 rule can operate by not illustrating that offers can relate to parts of claims and need not apply to the entirety of a claim.
Question 11	The substantive elements of the test for granting a search and seizure order were generally well answered. The structure for the answer was given if the candidate knew the test. Few candidates considered undertakings and the role of the supervising solicitor which are important parts of the courts' requirement for granting such an intrusive order. Once candidates had structured their answer, most appeared able to identify parts of the facts that they could use to argue for or against granting of an order. Note that the element "<i>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</i>" is not just a "balance of convenience" test but does require the court to consider what the object of the order is, that is to preserve evidence.
Question 12	Part a) The answers from a number candidates were disappointing as they referred to the common law test in <i>Coco v Clark</i>, not the statutory test which was asked for. Candidates who applied the statutory test for a trade secret demonstrated the ability to apply the test.

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	Part b) This was generally well answered but a number of candidates failed to realise that the test for breach is a statutory one, though this did not usually affect the answer. Part c) This was generally well answered, despite this type of partnership not being commonly referred to in practice, demonstrating breadth of learning by candidates. Part d) This part was not as well answered as this topic has been in previous years. Whilst candidates were aware of the need for a reputation, they were not so aware of what is meant by “opportunistic”.
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