

Introduction

The pass rate this year was lower compared with previous years. Candidates who attained high pass marks demonstrated the opportunity to excel. However, a significant number of candidates achieved less than 40%.

Section A questions were attempted with mixed success with a mean rate of less than 50% overall.

Section B problem questions were attempted with some success with a mean of more than 55% overall.

The results demonstrated that those candidates who did the preparatory work were given the opportunity by the paper to pass and do well. It appears a number of candidates did not do sufficient preparatory work, including reviewing past papers and mark schemes. There was no candidate feedback specific to this paper.

The mean marks for all questions can be found below the feedback on individual questions.

Questions

Part A

Question number	Comments on questions
Question 1	This was generally well answered, but some candidates appeared not to have prepared this topic well.
Question 2	Candidates struggled with this question though some did make considered approaches to a part of the syllabus that has not often been tested. Many candidates did not realise the difference between a partnership under the Partnership Act and one created as a Limited Liability Partnership.
Question 3	There were disappointing answers to this question. Evidence issues have been examined regularly. However, many candidates appeared not to have prepared this topic.
Question 4	Again, there were disappointing gaps in knowledge in this area. Different parts of this question offered opportunities for candidates at all levels to access marks. Confusion between LLP and without prejudice rules was evident.
Question 5	There were disappointing answers on this topic that had been well answered in previous years.
Question 6	This was well answered with no problems evident.

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Question 7	Generally, this was well answered with most candidates demonstrating some knowledge of these parts of the IPReg Code of Conduct. A number of candidates demonstrated detailed knowledge.
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Part B

Question number	Comments on question
Question 8	Part (a) The low marks in this question on contract law appeared to be attributable to candidates having focussed their preparation on formation of contract issues. Candidates who had prepared misrepresentation were able to answer this question well. A number of candidates did not discuss the factual scenario fully and so could not be awarded available marks. Part (b) This was generally well answered though candidates showed weakness with regard to S3(1) Defamation Act.
Question 9	Part (a) Generally, this was well answered. Candidates should note that the issue of whether there is a “serious issue to be tried” is more involved with whether or not there is a claim for infringement. It is not a replacement for a merits test. Rather in IP cases, there is likely to have been correspondence between the parties and a court will look to see who has had the “better of the argument”. Note that the effect on Maria’s friend’s businesses is a complication that can be answered by a court as to whether William’s undertaking in damages would extend to them (it would not), as strictly speaking the balance of convenience will be between the parties. Part (b) This section was generally well answered, especially on stolen sales. Again, some candidates appeared not to prepared well, as previous question papers have noted that convoyed sales can be awarded.
Question 10	Part (a) Generally, this was answered well. Candidates should note that whether an event is reasonably foreseeable will be from the point of view of the defendant (in an objective sense) so, for example, the answer to scenario (ii) will be whether poor performance is objectively foreseeable by Parvati or a defendant in her position. Part (b) A number of candidates answered this from the point of view of Edward and therefore discussed issues such as Edward’s tax benefits. However, the question is whether Rosemary wants a

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	limited company formed. Issues such as security (which was well spotted) and control over Edward (not so well spotted) would likely be uppermost.
Question 11	Part (a) This was poorly answered. A large number of candidates referred to the Faccenda Chicken case but failed to use this test and used Coco v Clark or the statutory test. The question states that Alexander is an employee, so the issue is whether he is able to take information with him and the pertinent case is Faccenda Chicken. The added twist for Passive is that they have directed Alexander to use their own information. The two likely approaches to answering this latter point are set out in the mark scheme. Part (b) This topic has often been tested in different guises in previous question papers. However, it was not well answered. A number of candidates did not reference the Ray v Classic FM case and relied on the general rules for implying a term into a contract in BP Refinery. Whilst not incorrect (and marks were awarded), this provided a useful illustration of why BP Refinery doesn't quite pick up the nuances in often met scenarios involving copyright as described in Ray. Whereas candidates' conclusion relying on BP Refinery was that a licence would be sufficient, under Ray an assignment is more likely to be implied, such is the nature of IP (copyright in this case) being an exclusory right and in commercial situations likely to be created for that purpose. Candidates needed to indicate the point arising from the law of property that a chain of title needs to exist in order for Floral to sell on to another.

Mean Marks by Question

FC2	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Total
Marks available	4	3	4	7	6	6	10	20	20	20	20	100
Mean mark	2.1	1.0	1.4	3.0	2.4	4.5	5.0	11.0	12.1	13.3	8.6	54.1