

THE JOINT EXAMINATION BOARD

LAW PAPER

BASIC ENGLISH LAW

18th April, 1994

3.00 p.m. - 5.00 p.m.

Please read the following instructions carefully. This is a TWO HOUR Paper.

1. You should attempt no more than 4 questions from Part A and no more than 4 questions from Part B.
2. The number of marks allotted to each question is placed in brackets at the end of the question.
3. Where a question permits of reasons being given for the conclusions reached, such reasons should be given.
4. Start each question (but not necessarily each part of each question) on a fresh sheet of paper. In the appropriate boxes at the top of each sheet please enter the designation of the paper, the question number, and your Examination number. Write on one side of the paper only using BLACK ink. You must NOT staple pages together. You must NOT state your name anywhere in the answers.
5. Unless specifically requested answers are NOT required in letter form.
6. NO printed matter or other written material may be taken into the examination room.
7. Answers MUST be legible. If the examiners cannot read a candidate's answers no marks will be awarded.

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PART A

You should attempt 4 (but no more than 4) questions from this section.

1. Give a brief explanation of (i) ratio decidendi, (ii) obiter dicta, and (iii) res judicata. (10 marks)
2. What is the hierarchy of English courts as regards judicial precedent in relation to an intellectual property action? (Include reference to the European Court of Justice). (10 marks)
3. What is a chose in action? Give an example and explain what is meant by "an equitable assignment" of a chose in action. (10 marks)
4. What is a trade libel? List the elements to be proved in a claim for trade libel. (10 marks)
5. Describe the differences between litigation and arbitration and the advantages and disadvantages of each. (10 marks)

PART B

You should attempt 4 (but no more than 4) questions from this section.

6. Distinguish between (i) a company limited by guarantee, (ii) a company limited by shares and (iii) an unlimited company. (15 marks)
7. What is (i) a condition and (ii) a warranty in a contract? Explain the differences between them. (15 marks)
8. Outline the routine procedures up to trial in bringing an action in either (i) the High Court or (ii) the Patents County Court (do NOT include reference to ex parte applications and applications for summary judgement). (15 marks)
9. List the remedies available to a successful plaintiff in an intellectual property matter heard in the High Court (include reference to interlocutory and ex parte proceedings). (15 marks)
10. You have written a letter before action in an intellectual property matter on behalf of one of your clients, which is a matter of some urgency. You enter into "without prejudice" negotiations with the solicitors acting for the other side. Subsequent correspondence which contained admissions was not marked "without prejudice". Six months later the negotiations break down. Advise whether you can now institute proceedings and, if so, whether you may rely upon the admissions made in the correspondence which was not marked "without prejudice". In what circumstances would the "without prejudice" correspondence be admissible in evidence? (15 marks)

