

THE JOINT EXAMINATION BOARD
COMMON FOUNDATION LEVEL

BASIC ENGLISH LAW

10 November 1999

03.00p.m. - 05.00 p.m.

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

1. You should attempt no more than four questions from Part A and no more than four 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 designations 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 any other written material may be taken into the examination room.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer, no marks will be awarded.

This paper consists of **four** pages including this page.

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Part A

You should attempt 4 (**but not more than 4**) questions from this section.

1. a. What are the four main elements which must be present for a valid contract? Briefly explain each.

 b. Discuss two other factors which could have a bearing on whether or not the contract is valid.

(10 marks)
2. Explain what is meant by the doctrine of precedent and how it affects the English courts.

(10 marks)
3. When would you use the phrase "without prejudice"? Explain what effect this phrase is supposed to have and when it does and does not take effect. When can "without prejudice" correspondence be relied upon?

(10 marks)
4. Your client has just been served with legal proceedings for either a patent action or a trade mark action in the High Court. Make notes from which to explain to your client whether the following legal advisors are necessary and, if so, what roles they would play:

 a. Patent attorney or trade mark attorney, respectively (indicate which)
 b. Solicitor
 c. Barrister

(10 marks)
5. In civil matters, what type of issues may form the basis of an appeal from:

 a. a Court of first instance; and
 b. the Court of Appeal.

In all cases, indicate the appropriate appellate Court.

- c. When may a question be referred to the European Court of Justice or the European Court of First Instance?

(10 marks)

Part B

You should attempt 4 (**but not more than 4**) questions from this section.

6. Alice is a motor racing driver and agrees to take her friend, Ben, for a ride around the circuit at Silverstone. There is an accident and Ben suffers a broken arm.
- a. What would Ben need to prove in order to obtain compensation from Alice?
 - b. Would it make any difference to his claim or his damages if Ben had refused to wear a seat belt?
 - c. Ben also complains to you of pain due to a dislocation of his shoulder. He first dislocated his shoulder playing rugby last year. What effect does this have on his claim?

Give reasons for all answers.

(15 marks)

7. Answer both a. and b.

- a.
 - i) What is direct evidence?
 - ii) What is hearsay evidence?
 - iii) What is opinion evidence?
- b. What steps must be taken to maximise the chances that a Court will find survey evidence acceptable and reliable?

(15 marks)

8. Your client is having trouble with a counterfeiter. In outline, describe and explain the types of remedies available to your client:-

- a. in civil law
- b. in criminal law

(This question relates to the system in general. You are not expected to have a detailed working knowledge of the relevant legal provisions.)

(15 marks)

9. a. Briefly outline what your client would need to prove in order to obtain an injunction prohibiting the defendant from infringing an IP right before trial.
- b. Briefly outline what your client would need to prove in order to obtain a search order (previously Anton Piller order)
- (15 marks)
10. Write a file note of your advice to a client on whether to set up in business as a sole trader or limited company. You must deal with the advantages and disadvantages of each, liabilities, and outline the procedure for setting up a company.
- (15 marks)