

THE JOINT EXAMINATION BOARD

PAPER – BASIC ENGLISH LAW

Monday 1st November 2010

3.00 p.m. – 5.00 p.m.

*Please read the following instructions carefully. Time Allowed – **2 HOURS***

1. You should attempt **four of questions 1 to 5** in Part A and **four of questions 6 to 10** in Part B.
2. The marks awarded to each question are shown at the foot of the question. If more than the required 4 questions are answered in either Part A or Part B, only the first 4 presented will be marked.
3. Please note the following:
 - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
 - b. Enter the Paper Name (LAW), the question number and your Examination Number in the appropriate boxes at the top of each sheet of paper;
 - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly; examiners cannot award marks to scripts that cannot be read;
 - f. Reasoning should always be given where appropriate.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
 - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
 - b. your mobile phone is found to be switched on;
 - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
 - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

This paper consists of four sheets, including this one.

BASIC ENGLISH LAW

Part A (10 Marks per question)

1. Explain what is meant by each of the following terms:
 - a. ratio decidendi;
 - b. res judicata; and
 - c. obiter dicta.

(10 Marks)

2. Identify the main sources of English law and for three of those sources explain how they are created, including who or what is responsible for their creation.

(10 Marks)

3. Explain the difference between:
 - (i) the burden of proof; and
 - (ii) the standard of proof

required in civil litigation as against criminal prosecution.

(10 Marks)

4. Explain the structure and hierarchy of the English civil court structure, including an explanation of all routes of appeal.

(10 Marks)

5. Identify each of the different varieties of evidence with examples.

(10 Marks)

BASIC ENGLISH LAW**Part B** (15 Marks per question)

6. Describe and compare the advantages and disadvantages of operating a business as:

- a. a limited liability company;
(5 marks)
- b. a partnership formed under the Partnership Act 1895; and
(5 marks)
- c. a sole trader.
(5 marks)

(15 Marks)

7. Summarise the rights to object to a new company name at Companies House and the Company Names Tribunal.

(15 Marks)

8. Describe what is meant by privilege and provide an explanation of:

- a. the different types of privilege, together with relevant examples;
(7 marks)
- b. how each is created; and
(4 marks)
- c. how each can be lost.
(4 marks)

(15 Marks)

9. Chris and Fred are neighbours. They have agreed to jointly repair the fence between their respective properties. Chris agreed the day before to hire and pay for the hire of a mini digger from his local hire shop, Hire R Us, to dig foundations for the fence posts, on the basis "you don't sue me if I damage your property". Fred laughed and said he agreed.

As Chris digs the first hole, despite Fred's warning Chris manages to dig straight through Fred's sewage pipe. Fred is furious and demands Chris pay for the repairs. Chris refuses and, angry, walks away. Fred then uses the mini-digger himself but on turning it on he receives a severe electric shock. It transpires that the digger was poorly repaired after its last hire.

Discuss what, if any, causes of action that Fred may have arising out of the circumstances described above. Explain your reasoning in relation to each defendant. Indicate possible defences in relation to each cause of action. For each cause of action explain what Fred would need to demonstrate in order to establish his claim.

(15 Marks)

BASIC ENGLISH LAW

10. Your client, Keith, has come to see you regarding an infringement of his registered design. Copycat Limited, a new company, has been importing and selling a similar design to that for which Keith has a three-year old design registration. The product at issue is the only product Copycat Limited currently markets.

Keith first became aware of the infringing copies approximately 3 months ago. However, he has only just gotten around to speaking to you. Keith is easily distracted and so failed to call you. He has also been on holiday for the last 3 weeks. Keith now demands that you obtain an interim injunction for him.

Explain to Keith, by reference to the various criteria required, what must be established to successfully obtain an interim injunction. Your explanation should make reference to the facts above and also explain the potential risks to, and likely success of Keith in seeking an interim injunction.

(15 Marks)