

THE JOINT EXAMINATION BOARD

BASIC ENGLISH LAW

22nd APRIL, 1996

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 rooms.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answers no marks will be awarded.
8. Please put your answers in **question number order** before placing in the envelope provided.

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PART A

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

1. A client has taken an assignment of certain copyright and has already paid a substantial sum in consideration of this assignment. This assignment was agreed orally and has never been put in writing.
 - (a) State, with reasons, what legal and equitable rights (if any) your client has in the copyright.
 - (b) If the original owner of the copyright now refuses to sign a formal written assignment of the copyright, can your client apply to the Courts to obtain full title to the copyright?

(10 marks)

2. State briefly what is meant by "legal privilege" in civil litigation and give:
 - (a) An example of a type of communication from **either** a patent agent **or** a trade mark agent to a client that would be entitled to legal privilege.
 - (b) An example of a type of communication from **either** a patent agent **or** a trade mark agent that would not be entitled to legal privilege.

Can a patent or trade mark agent waive the right to privilege in a communication?

(10 marks)

3. Explain what, in a contract, is meant by (a) a condition and (b) a warranty. Outline the remedies available for breach of a condition and a warranty.

(10 marks)

4. Outline the essential differences between European Union legislation enacted as a Directive and as a Regulation. (10 marks)

5. (a) Explain the difference between "an invitation to treat" and "an offer".

(b) When is an advertisement an invitation to treat and when does it become an offer? Illustrate your answer with examples of each.

(10 marks)

PART B

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

6. Explain briefly what is meant by "interlocutory injunction". Explain what a plaintiff must prove in order to obtain an interlocutory injunction. (15 marks)

7. State with reasons whether all three of the following statements would be admissible evidence for the purpose stated in an opposition to the registration of the trade mark WIZ in respect of computer software. The applicant for trade mark registration is Wiz Limited:

(a) "It is well known that the computer trade uses the word WIZ to describe computer software that increases the running speed of other computer software". [Statement by a trade mark agent in a Statutory Declaration to show that the mark WIZ is descriptive of and designates a kind of software.]

(b) "In my experience, the word WIZ is not used in the computer software trade or by the general public except to indicate software produced by Wiz Limited". [Evidence given in a Statutory Declaration by a journalist employed by a computer software trade Journal; the evidence is intended to show that the mark WIZ is exclusively used in the United Kingdom in respect of software by Wiz Limited.]

(c) "Person X told me that Person Y had told him that Person Z had seen computer software produced by GIG Limited and offered for sale in London under the trade mark WIZ". [Evidence given in a Statutory Declaration by a member of the Opponent's staff to demonstrate that software under the trade mark WIZ was offered for sale in the United Kingdom by Gig Limited.] You may assume that all of X, Y, and Z are known, alive and living in the UK. (15 marks)

8. Outline the main steps from the issue of a Writ up to trial in the High Court of a patent or trade mark action and give time limits for the steps up to close of pleadings. (15 marks)

9. (a) Explain the hierarchy of the Civil Courts.

(b) Explain what is meant by the doctrine of precedent. (15 marks)

10. Mr. Maggot started trading two weeks ago, selling fish bait as "On the Hook". Three days ago an advertisement appeared in the Fishermen's Times stating that "On the Hook" sold mouldy fish bait and warning fishermen not to buy their fish bait there. Mr. Maggot suspects that his arch rival Mr. Worm was behind the advertisement.

Explain what remedies are available to Mr. Maggot and make notes of the issues which he will have to deal with in order to obtain any such remedies. (15 marks)