

## Patent Attorney Examiner Comments 2014

### Paper A2

Overall candidates showed a knowledge of the basic law (some exceptions), but what tended to let candidates down was applying the law to the facts, and in many cases it was clear that candidates had simply not read the question. Major points where candidates struggled are as follows:

#### Question 1:

On the whole, candidates showed a reasonable understanding of restoration.

In part A, few candidates commented that Company A would have to account for the apparent delay.

Part C was answered particularly poorly. Very few recognised the shift to undue delay from the prescribed time, showing a lack of understanding of the new Act.

Parts D and E generally answered better.

#### Question 2:

Question 2 was generally answered well, with candidates showing an understanding on basic registrability and could justify their answers. A few candidates gave no or little reasoning and therefore losing marks!

#### Question 3:

In part A too many candidates gave a good overview of types of protection, but did not apply this to the facts well. A few concentrated on the device without explaining how the protection is to be applied.

Part B was generally answered ok, however, a number of candidates did not think of using more than one statement.

Part C was poorly answered, especially given the issues raised in the Tunki case. Some answered that it would be fine because IPONZ would accept it, however, candidates need to think of enforcement issues also.

#### Question 4:

This question was generally not well answered. In part A, a surprisingly large number of candidates did not know the test for design infringement! Several candidates did not read the question properly and gave irrelevant answers. This question should have been easy marks on basic law.

Likewise, Part B was not well answered with many students not being able to point to major differences aside from "causal connection".

Part D had some flexibility in the marking as opposite answers could be acceptable because the Statement of Novelty is unusual and doesn't reference colour at all (just tartan design). Therefore, alternative answers were acceptable provided it was well reasoned. This should re-enforce to candidates to always justify your answer.

In part F a large number of candidates didn't read the question and did not consider options such as changing his design, or ensuring any new design is independently created.

Question 5:

The main issues in this question were in parts A, D and E,

Part A should have been easy marks but few considered beyond basic points, such as establishing priority date.

In Part B, few considered that the complete would also be under stricter 2013 Act, or failing that even referred to current fair basis test!

Again only a few factored in 2013 Act in part E, and most did poorly at tying their advice to all of the facts!