

FC2 English Law: Course Description

Course summary

This intensive two-day revision course is designed to help prepare trainee patent attorneys for the Foundation Certificate (FC) Patent Examination Board (PEB) paper on English Law: for which candidates are expected to:

- “demonstrate a general knowledge of the English Legal System, the law of contract and company law”;
- “demonstrate a detailed knowledge of court procedures governing conduct of intellectual property (IP) law cases”;
- “demonstrate a detailed knowledge of the Rules of Conduct for Patent Attorneys and Trade Mark Attorneys”; and
- “be able to recall the relevant principles, laws and rules, and/or apply them to one or more given scenario(s)”.

The underpinning knowledge will be presented via lectures linked to handout notes on the main topics of the syllabus. You will also be expected to build on and reinforce this through directed reading pre- and post-course. During the course, parts of sessions will be set aside for small group and individual practise of questions from recent exams so that participants can learn, with feedback from the tutors, on how to apply their knowledge to exam questions. The tutors will also provide advice on exam technique and the examiner’s expectations.

Content

The course comprises nine units focusing on the sections of the FC2 syllabus (**see Annexe A**), along with a unit on exam technique and a short closing session of advice on post-course final preparations for the exam. Below we set out a summary of the content of each unit and expected learning outcomes.

Pre-course preparation

Summary

Annexe B sets out guidance on pre-course preparation. Through reading the FC2 syllabus and instructions to past papers, participants will understand what the syllabus covers, the expected depth of knowledge and the format of the exam. Through reading IPREg's Rules of Conduct for Patent Attorneys and discussing with their training supervisor/line manager their firm's approach professional responsibilities, participants will gain an understanding of professional ethics and duties to the client. If time permits, it would helpful for participants to also read syllabus-related sections of the recommended books on the English legal system (and civil process), contract law and tort law. The course lectures and notes will cover these area, but reading of these textbooks before (and after) the course can help solidify participants knowledge of these areas.

Expected learning outcomes

At the completion of your pre-course preparation, participants will be able to:

- describe the scope of the FC2 syllabus, its content, the level of knowledge expected on each subject and what they will have to demonstrate in the examination to show that they have the required knowledge ("learning outcomes");
- recall the format of the exam, including numbers of questions they are required to answer from each part of the paper, and the exam instructions and regulations;
- recount ethical standards and duties to the client expected of patent attorneys;
- identify situations where a conflict of interest arises and assess whether or not the practitioner can continue to act; and
- if time has permitted, outline key features of the English Legal System and civil process, contract law and tort law.

Unit 1: Characteristics of the English Legal System

Syllabus link	Part 1
Weighting¹	17%

Session summary

In this session participants will gain a general overview of the English Legal System, including the differences between civil and criminal jurisdictions and different types of dispute resolution. Participants will also be taught about the structure of the courts England, the sources of law relevant to IP, basic concepts of judicial precedent, how EU law applies to the UK, the routes to challenge decisions of courts and the key personnel in the IP legal system. Teaching will be through lectures by the tutors linked to handout material on the topics which participants will be able to annotate and take away.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

¹ This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

- the main sources of law relevant to intellectual property in England – statutes, secondary legislation, case law (and the doctrine of precedent), statutory instruments, and European law, including Directives and Regulations;
- the structure of the courts in England - differences between civil and criminal jurisdictions and remedies, the County Courts, Appeal Courts and the Divisions of the High Court;
- the basic concepts of judicial precedent: *stare decisis*, *ratio decidendi*, *obiter dicta*, *res judicata*;
- the routes by which decisions of courts and tribunals can be challenged – the grounds for appealing cases and judicial reviews, and the circumstances in which references to the Court of Justice of the European Union (CJEU) and the General Court can be made;
- the role and function of key personnel of the law - judges, barristers, solicitors, patent attorneys, trade mark attorneys and patent attorney litigators; and
- different types of dispute resolution: including differences between litigation, arbitration and mediation, and the advantages and disadvantages of each.

Unit 2: Exam Technique

Session summary

In this session, participants will receive advice from the tutors on how to:

- respond to exam questions to meet examiner expectations - how to structure answers and the importance of applying their knowledge and understanding of the law to the facts of the question (rather than writing down all they know on the subject);
- manage the time pressures of the exam – allocating time appropriately to questions and each Part and not answering more than the required number of questions.

Throughout the course, participants will practice past questions and receive feedback from the tutors and the group. In the closing session of the course, there will be a recap on exam technique.

Expected learning outcomes

At the end of this session participants will be able to:

- recognise what the examiner expects in a question answers and how to structure answers;
- recount how many questions need to answered in each Part of the paper and how marks are distributed across the paper; and
- recall strategies for managing time pressures during the exam.

Unit 3: Court procedure and remedies and evidence in IP-related legal proceedings

Syllabus link	Parts 2-4
Weighting²	30%

Session summary

In this session participants will gain outline knowledge of the law of civil court procedure as it affects IP law cases, including the Civil Procedure Rules and Intellectual Property Enterprise Court (IPEC), formerly the Patents County Court (PCC), rules. Participants will also be taught about remedies and varieties and types of evidence. Teaching will be through lectures by the tutors linked to handout

² This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

material on the topics. There will also be practice of past exam questions. This unit covers a significant proportion of the FC2 syllabus and so will be longer than others.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the law of court procedure as it affects IP law cases – differences between procedures in civil litigation and criminal proceedings, the standard of proof and the burden of proof;
- the Civil Procedure Rules (CPR) – pre-action to start of trial, the over-riding objective and obligations, allocation to one of the 3 ‘Woolf tracks’ (Small Claims, Fast Track, Multi-track) and benefits of each, where and how to issue and serve proceedings, timetable for an action and counter-claim, disclosure obligations and procedure, privilege to communications, obligations of an expert witness, Part 36 Offers to Settle, and the term ‘without prejudice’;
- IPEC and High Court procedures – advantages of IPEC route (quicker, less complex, less expensive), possibility of transferring cases from High Court to IPEC (and vice versa) based on complexity and value, further evidence arguments, maximum 2 day hearings, and £50,000 cap on recoverable costs;
- remedies available in IP-related proceedings – legal and equitable remedies, when it might be appropriate to seek interim remedies, principles the Court applies when assessing whether to grant an interim injunction, search and seizure orders, freezing orders, injunction, specific performance, rescission, account of profits, and destruction;
- differences between the varieties of types of evidence - fact, opinion, hearsay (and admissibility rules), expert evidence, surveys (and related rules), and documentary; and
- the different methods of giving evidence in IP cases – affidavit, statutory declaration, witness statement, physical exhibits, oral testimony, recorded testimony, live video, telephone, and depositions.

Unit 4: The law of contract

Syllabus link	Part 5
Weighting³	14%

Session summary

In this session participants will gain outline knowledge of the law of contract, including the elements necessary for formation of a valid contract and rules of acceptance. Participants will also be taught the meaning of key terms in relation to contract law, knowledge of the remedies available for enforcement of a contract and the difference between assignment and novation of a contract. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the elements necessary for the formation of a valid contract – offer, acceptance, consideration, and intention;
- the differences between an invitation to treat, an offer and a counter-offer;

³ This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

- key contractual terms and discuss the consequences and remedies available for breach/enforcement in each case – privity, condition, warranty, innominate term, misrepresentation, and mistake; and
- the distinction between assignment and novation of a contract.

Unit 5: The law of the tort of negligence

Syllabus link	Part 6
Weighting⁴	15%

Session summary

In this session participants will gain outline knowledge of the law of the tort of negligence and the tort of malicious falsehood. Participants will also be taught about what is needed to establish a claim for negligence. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the four elements needed to establish the tort of negligence (duty of care, breach, causation and remoteness) and defences;
- negligent misstatement and economic loss (including the leading case of Caparo); and
- what needs to be dealt with by the Claimant or Defendant in a claim of malicious falsehood.

Unit 6: The law of personal property and trusts

Syllabus link	Part 7
Weighting⁵	4%

Session summary

In this session participants will gain outline knowledge of the law of personal property and trusts as it applies to the ownership of IP rights. Teaching will be through lectures by the tutors linked to handout material on the topics.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the difference between legal and equitable title;
- the ways in which property can be owned by multiple persons at the same time - being familiar with what the terms tenancy in common and joint tenancy mean;
- the differences between oral and written agreements to transfer IP rights; and
- how defects in legal title can be perfected.

⁴ This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

⁵ This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

Unit 7: Company law

Syllabus link	Part 8
Weighting⁶	13%

Session summary

In this session participants will gain outline knowledge of company law, including different forms of business ownership, company borrowing and company names. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the different forms of doing business - differences between limited liability companies and limited partnerships, limited liability partnerships and unlimited businesses (partnerships and sole traders), how this affects liability for the proprietors and the advantages and disadvantages of these different types of business;
- the obligations and liabilities of directors of incorporated businesses;
- how investment can be made in businesses – debentures and fixed and floating charges; and
- the law relating to company names – the right to object to a new company names and rights to use a company name once it has been registered.

Unit 8: Professional Matters

Syllabus link	Part 9
Weighting⁷	10%

Session summary

This unit will test participants' knowledge of the rules of professional conduct, ethical, legal and other responsibilities to the client, and conflicts of interest gained from their pre-course reading and discussions with their training supervisor/line manager.

Expected learning outcomes

At the end of this unit, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the IPReg Rules of Conduct;
- Patent and Trade Mark practitioners' responsibilities in relation to their own professional conduct - ethical, legal, financial responsibilities, and rules of professional conduct (including relating to advertising);
- the nature of the practitioners' duties to clients – contractual, tortious and fiduciary; and
- in what situations a conflicts of interest arises and assess whether or not the practitioner can continue to act.

⁶ This weighting has been calculated by the average proportion of marks awarded in the 2009-14 past papers for questions on this area of the syllabus.

⁷ This weighting has been calculated by the average proportion of marks awarded in the 2012-14 past papers, as this topic has becoming increasingly popular in recent years.

Unit 9: Final preparations for the exam

Session summary

In this closing session the tutors will advise on how participants can best prepare for the FC2 English Law paper in the intervening weeks before the exam. They will provide guidance on further practice of past exam papers and on materials to read, and recap key points on exam technique.

Expected learning outcomes

At the end of this session, participants will be able to:

- plan their final stages of revision and practice for the FC2 exam; and
- identify areas where they need to do further reading and practice.

ANNEXE A
THE FC2 SYLLABUS

Part & Content	Learning outcomes
<p>1. The characteristics of the English legal system</p>	<p>a) Outline the structure of the courts in England, including County Courts, the Divisions of the High Court and Appeal Courts</p> <p>b) Define which courts have civil or criminal jurisdiction</p> <p>c) Define the basic concepts of judicial precedent: <i>stare decisis, ratio decidendi, obiter dicta, res judicata</i></p> <p>d) Describe the manner in which decisions of courts and tribunals may be challenged, including the routes and main grounds for appealing through the English Courts</p> <p>e) Define the availability, procedure and main grounds for seeking judicial review</p> <p>f) Outline the circumstances in which references to the Court of Justice of the European Union and the General Court may be made</p> <p>g) Describe and compare the main sources of law relevant to intellectual property:</p> <ol style="list-style-type: none"> a. Statute b. Secondary legislation c. International Convention d. Custom & precedent <p>h) Describe how EU law applies to the UK, particularly Directives and Regulations</p> <p>i) Define how legislation is made by the UK Parliament in Westminster and by the Institutions of the European Union</p> <p>j) Describe the roles played by registered patent attorneys, registered trade mark attorneys, solicitors, barristers and judges</p> <p>k) Describe and compare the different types of dispute resolution: litigation and Alternative Dispute Resolution such as mediation and arbitration</p>
<p>2. Law of court procedure</p>	<p>a) Explain the law of court procedure in so far as it affects the conduct of intellectual property law cases</p> <p>b) Define the standard of proof and the burden of proof in civil and criminal proceedings</p> <p>c) Outline the Civil Procedure Rules (CPR) from pre-action procedure to the start of trial</p> <p>d) With reference to the CPR, define:</p> <ul style="list-style-type: none"> • the over-riding objective and the obligations it imposes • the 3 Woolf tracks and the allocation of IP disputes to those tracks • the applicability of pre-action protocols to IP disputes • where and how to issue proceedings • how proceedings can be served

Part & Content	Learning outcomes
	<ul style="list-style-type: none"> • a timetable for an action and a counterclaim • disclosure obligations and procedure • the reasons for and applicability of privilege to communications, with particular reference as to how this • applies to registered patent attorneys the obligations of an expert witness • Part 36 CPR 'Offers to Settle' and the phrase 'without prejudice', including the reasons for and rules relating to its use <p>e) Define how cases may be transferred between the Patents Court and the Intellectual Property Enterprise Court (IPEC) based on complexity on applicable principles</p> <p>f) Describe the purpose of the IPEC and identify the main differences in the procedure at the IPEC with the Patents Court:</p> <ul style="list-style-type: none"> • quicker, less complex and less expensive • pleadings are to set out the parties' case fully, i.e. they contain evidence • any further evidence, arguments or discovery are only permitted at the judge's discretion and are discussed • at the case management conference hearings last a maximum of 2 days • recoverable costs are capped at £50,000
<p>3. Remedies available in IP-related legal proceedings</p>	<p>a) Define and differentiate between the available interim remedies:</p> <ul style="list-style-type: none"> • interim orders restraining infringement of IP rights until trial • search and seizure orders • freezing orders <p>b) Identify the circumstances when it might be appropriate to seek interim remedies</p> <p>c) Define the principles used by the Court in assessing whether to grant interim remedies</p> <p>d) Describe the remedies available to a successful claimant in IP-related legal proceedings</p> <p>e) Distinguish between legal and equitable remedies</p> <p>f) Distinguish between civil and criminal remedies</p> <p>g) Define the general principles governing the award of costs made by the court at the end of trial and at interim hearings, including those governing the court's power to assess costs for immediate payment.</p>
<p>4. Evidence in IP-related legal proceedings</p>	<p>a) Define and differentiate between the different types of evidence:</p> <ul style="list-style-type: none"> • evidence of fact • evidence of opinion • hearsay evidence • expert evidence • evidence obtained in market surveys

Part & Content	Learning outcomes
	b) Describe the rules on conduct and presentation of survey evidence c) Define the rules of admissibility of written evidence and hearsay evidence in civil proceedings d) Describe the different methods of giving evidence in IP cases: <ul style="list-style-type: none"> • affidavit • statutory declaration • witness statement • physical exhibits • oral testimony • live video • recorded testimony • telephone • depositions
5. The law of contract	a) Define the basic elements necessary for the formation of a valid contract: <ul style="list-style-type: none"> • Offer • Acceptance • Consideration • Intention b) Differentiate between an invitation to treat, an offer and a counter offer. c) Define the rules for acceptance d) Define the following terms: <ul style="list-style-type: none"> • privity • condition • warranty • innominate term • misrepresentation • mistake e) Describe the remedies available for enforcement of a contract f) Differentiate between assignment and novation of a contract
6. The law of tort	a) Define the tort of negligence: <ul style="list-style-type: none"> • the duty of care • breach • causation • remoteness • negligent mis-statement • economic loss b) Define the tort of malicious falsehood, in particular the elements which need

Part & Content	Learning outcomes
	to be dealt with by the Claimant (or by the Defendant) in such a claim
7. The Law of Property	a) Outline the law of personal property and trusts as it applies to ownership of intellectual property rights b) Differentiate between legal and equitable title c) Define the terms joint tenants and tenants in common. d) Differentiate between oral and written agreements to transfer IP e) Describe how defects in legal title can be perfected
8. Company law	a) Define the different types of businesses: <ul style="list-style-type: none"> a. Limited companies b. Limited partnerships c. Limited liability partnerships d. Partnerships e. Sole traders b) Define the obligations and liabilities for the owners of these different types of business c) Compare the advantages and disadvantages of these different types of business d) Describe how investment can be made in businesses and define the terms: debenture, fixed charge, floating charge e) Outline the right to object to a new company name f) Describe the rights that may or may not exist to use a company name once it has been registered
9. Professional Conduct for a Registered Patent Attorney	a) Explain a Registered Patent Attorney's ethical, legal and financial responsibilities as set out in the <u>Code of Conduct</u> b) Define a Registered Patent Attorney's contractual, tortious and fiduciary duties to clients c) Apply the <u>Rules of Conduct for Patent Attorneys</u> to a scenario d) Identify situations where a conflict of interest arises and assess whether or not the patent attorney can continue to act

The Examination

This syllabus is assessed via a two hour unseen examination. The pass mark is 50%.

The question paper is divided into Part A and Part B. There are 100 marks available in total: 40 marks in Part A and 60 marks in Part B. Candidates are instructed to attempt eight questions from ten questions. Part A – attempt four questions from five 10 mark questions. Part B – attempt four questions from five 15 mark questions.

ANNEXE B

HOW TO PREPARE FOR FC2 AND THE COURSE

A. Essential pre-course work

1. Read and familiarise yourself with the FC2 syllabus, to understand its scope and the levels of knowledge expected.

- The syllabus (which is reproduced in **Annex A**) is available online from the Patent Examination Board website.

2. Read and familiarise yourself with recent past Law (Basic English Law) exam papers, Examiner's Reports, Mark Scheme (for 2014 onwards) and Sample Pass Scripts to understand the requirements of the exam.

- Exam papers, Examiner's Reports, the Mark Scheme (for 2014) and Sample Pass Scripts are available online from the Patent Examination Board website.

3. Read and familiarise yourself with IPREG's Rules of Conduct for Patent Attorneys, to understand the professional standards expected of a patent attorney and the duty to a client.

- These are available at <http://ipreg.org.uk/pro/rules-and-regulations/code-of-conduct/>

4. Discuss with your training supervisor/line manager in your office.

- How your firm identifies and deals with conflicts of interest.
- A practitioner's ethical, legal, financial responsibilities in professional conduct.
- A practitioner's contractual, tortious and fiduciary duties to clients.

B. Recommended additional pre-course work if time permits

5. To gain an understanding of the English Legal System and civil process, you can read.

- CIPA Informals lecture on Law (BEL) available from the Informals section of the CIPA website.
- ***Smith and Keenan's English Law*** (Pearson: latest edition), by Charles Wild and Stuart Weinstein provides good coverage of many parts of the syllabus.
- ***The English Legal System*** (latest edn.), by Gary Slapper & David Kelly, chapters 3-7 (sources of law, the civil court, the civil process), ch. 13 (judicial reasoning), ch. 15 (alternative dispute resolution) and ch. 16 (legal services): available from <http://www.routledge.com/cw/slapper-9780415639989/> as well as a Q&A resource <http://www.routledge.com/cw/slapper-9780415639989/s1/questions/> and online multiple choice questions <http://www.routledge.com/cw/slapper-9780415639989/s1/quizzes/>

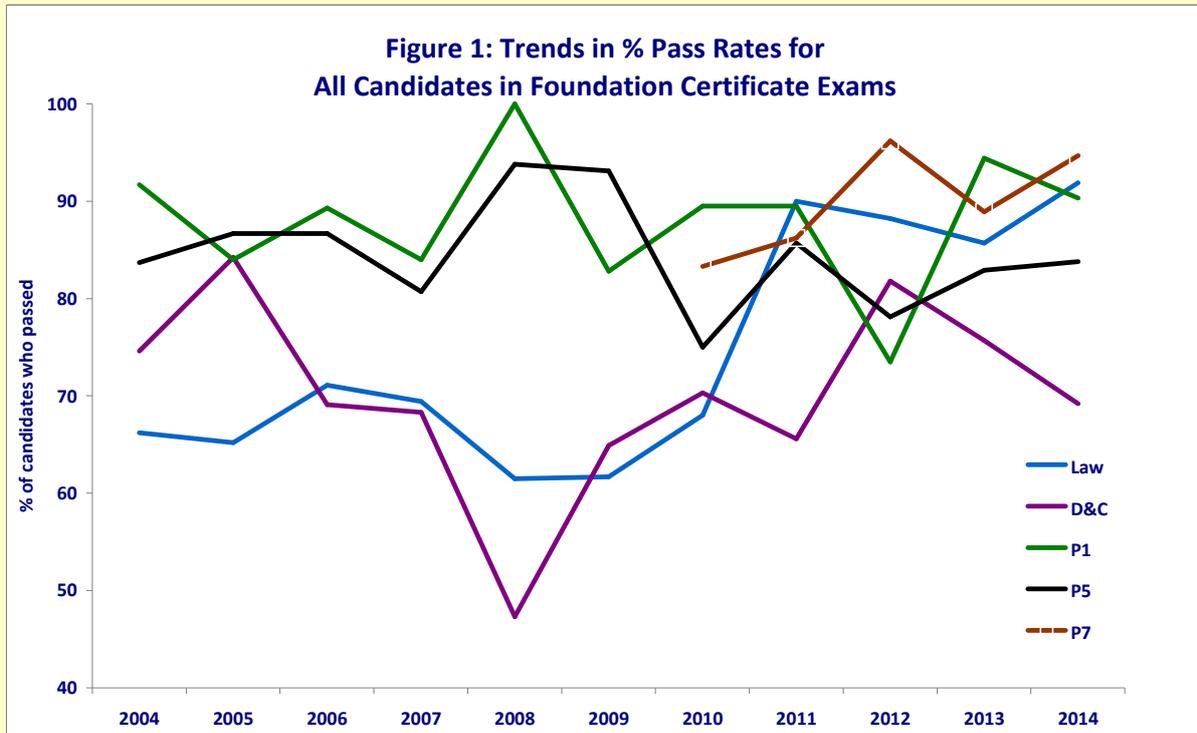
6. To gain an understanding of contract law and tort law, you can read.

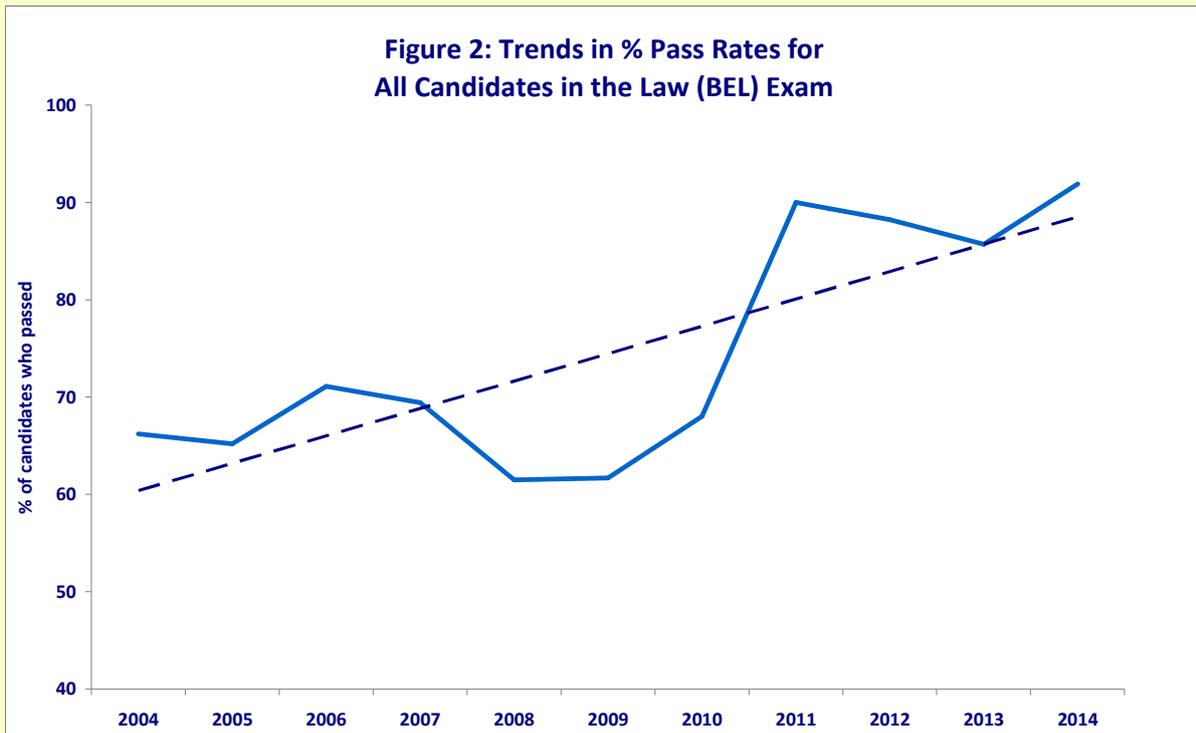
- ***Contract Law: Texts, Cases and Materials*** (Oxford University Press: latest edn.), by Ewan McKendrick or McKendrick's shorter Palgrave Law Masters on ***Contract Law*** (latest edn.).
- ***Torts*** (Palgrave Macmillan Law Masters: latest edn.), by Alastair Mullis and Ken Oliphant or the more detailed ***Textbook on Torts*** (Oxford University Press: latest edn), by Michael A. Jones
- ***Business Law 2014-2015*** (Oxford University Press, Legal Practice Course Guide: latest edn.), by J Scott Slorach et al

N.B. The law textbooks in 5 and 6 go into greater depth than is required for the FC2 exam and, for example, cover some torts that lie outside the syllabus. So use the syllabus to guide your reading of them.

ANNEXE C: TRENDS IN OVERALL PASS RATES FOR ENGLISH LAW (BEL)

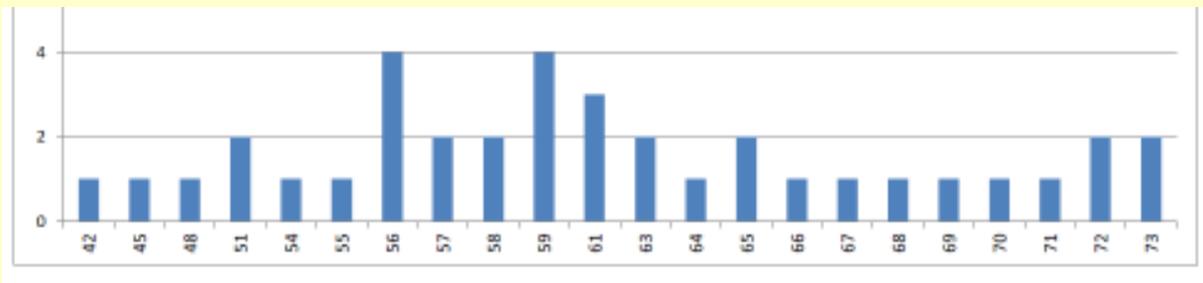
Figure 1, drawing on PEB data for all candidates, indicates that, since 2004, the pass rate for the Law exam has fluctuated year to year: from a low of 61% in 2008 to a high of 92% in 2014. **Figure 2** indicates that the linear trend for passing has been steadily upwards.





In 2014, the PEB published (**Figure 3**) the distribution of marks for all the candidates who took the Law (BEL) exam.

Figure 3: The mark distribution of Law (BEL) exam candidates in 2014



This is the first year PEB has published this information, so we do not know whether mark distribution in 2014 was typical. But analysis of the marks indicates a wide spread in marks.