

**1. Which one of the following statements is NOT CORRECT?**

- (a) Copyright protection for computer programs endures until 70 years after the end of the year in which the author of the program dies.
- (b) A computer program can never be part of a patentable invention.
- (c) If they are new and have individual character, computer icons and symbols displayed on computer screen can be protected by registration as a design.
- (d) To be registrable as a trade mark, a sign must be capable of being represented graphically and capable of distinguishing the goods and services of one undertaking from those of other undertakings.

**2. Which one of the following statements is CORRECT in relation to databases?**

- (a) Databases are protected by copyright as literary works, being compilations.
- (b) To be protected by copyright of passing off protects a trader's goodwill.

**3. Which one of the following statements is CORRECT?**

- (a) The topography of a semiconductor product is protected by a modified version of the UK's unregistered design right.
- (b) The topography of a semiconductor product is protected by registration as a UK registered design.
- (c) The topography of a semiconductor product is protected by copyright as a form of literary work.
- (d) The topography of a semiconductor product is not protected by any intellectual property rights.
- (e) , a database must be novel and the result of a substantial investment.
- (f) To be protected by copyright, a database must be the author's own intellectual creation.
- (g) A database can never be protected by both copyright and the database right.

**4. Which one of the following statements is NOT CORRECT?**

- (a) The fundamental purpose of a trade mark is to indicate the origin of goods or services.
- (b) A trade mark cannot be registered for software development services as such services do not fall within the classification of goods and services for which trade marks may be registered.
- (c) It is possible for a graphic symbol to be protected by both the Community design and by registration as a trade mark.

**5. Which one of the following statements is CORRECT?**

- (a) A computer program is a *sui generis* work and is protected by copyright only if it is the result of a substantial investment.
- (b) Preparatory material for a computer program is protected as an artistic work, especially if it includes diagrams.
- (c) Computer programs can only be protected by copyright as computer-generated literary works.
- (d) A computer program is a literary work and is required to be original, meaning it is the result of the author's own intellectual creation.

**6. Who is the AUTHOR of a computer-generated work?**

- (a) The person who owns the computer used to generate the work.
- (b) The person who made the arrangements necessary for its creation.
- (c) The person who is entitled to use the software used to generate the work.
- (d) No one as a computer-generated work cannot, by definition, have a human author.

7. Abdul is a self-employed computer programmer. He was engaged to write a computer program for Excel Logistics Ltd ('Excel') and was paid a large fee for this work. The contract between Abdul and Excel made no mention of who would own the copyright in the program. In relation to the copyright subsisting in the computer program, which one of the following statements is **CORRECT**?
- (a) Abdul and Excel are joint owners of the copyright.
  - (b) Excel is the sole owner of the copyright at law as Excel paid Abdul to write the program.
  - (c) Abdul is the owner of the copyright at law but the courts may be prepared to grant beneficial ownership or an implied licence to allow Excel to use the program.
  - (d) Excel will not be able to use the program until after it has a written assignment of copyright from Abdul for which Excel will have to pay the market value of the program.
8. How **LONG** does copyright in a computer program, not being computer-generated last, for?
- (a) For 50 years after the end of the calendar year during which the author dies.
  - (b) For 50 years after the end of the calendar year during which it was first made available to the public.
  - (c) For 70 years after the end of the calendar year during which it was first made available to the public.
  - (d) For 70 years after the end of the calendar year during which the author dies.
9. In relation to the Directive on the legal protection for computer programs, which one of the following statements is **NOT CORRECT**?
- (a) Ideas and principles underlying any element of a computer program are not protected by copyright.
  - (b) The term 'computer programs' does not include their preparatory design material.
  - (c) Computer programs are protected as literary works.
  - (d) A computer program is protected if it is original in the sense that it is the author's own intellectual creation.
10. Copying is an act restricted by copyright. In relation to copying a computer program, which one of the following statements is **NOT CORRECT**?
- (a) For infringement of copyright by copying, the part copied by the defendant must be a substantial part of the claimant's computer program but need not be a substantial part of the defendant's computer program.
  - (b) Copying includes making copies that are transient or incidental to some other use of the computer program.
  - (c) Copying may be direct or indirect.
  - (d) Non-executable parts of computer programs, such as the data division in a COBOL program, and remark lines in programs are ignored when addressing the question of copying.
11. The Directive on the legal protection of computer programs denies protection to ideas and principles underlying any element of a computer program, including its interfaces. In which one of the following ways does the Copyright, Designs and Patents Act 1988 make underlying ideas and principles **ACCESSIBLE** to others.
- (a) By providing a permitted act allowing a lawful user to decompile a computer program in order to determine the ideas and principles underlying any element of the computer program providing this is necessary in order to determine those ideas or principles.
  - (b) By providing that an exclusive licensee of a computer program in object code may call upon the copyright owner to release a copy of the program's source code, subject to an implied obligation of confidence in respect of the source code.

- (c) By providing a permitted act allowing a lawful user to observe, study and test the functioning of a program to determine the ideas and principles underlying any element of the program if he does so by performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.
- (d) By providing a permitted act allowing a lawful user to copy or adapt the computer program if necessary for his lawful use, including error correction subject to this not being prohibited by a term or condition of an agreement regulating the use of the program.

**12. Which one of the following statements is CORRECT in relation to a computer program created by an employee?**

- (a) In the absence of any valid assignment of the copyright in the computer program, the employee will be the first owner of the copyright.
- (b) If the computer program was created in the course of the employee's employment, the employer will be the first owner of the copyright, subject to any agreement to the contrary.
- (c) Technically, the employee will be the first owner of the copyright at law but the employer will be the beneficial owner of the copyright.
- (d) The employee and the employer will be joint first owners of the copyright unless there is a term in the contract of employment stating that the employer will automatically own all the intellectual property rights in anything created by the employee in the course of his employment.

**13. Which one of the following statements is NOT CORRECT in relation to a database protected by copyright?**

- (a) A database is protected by copyright as a database providing it is original in the sense that it is the result of a substantial investment.
- (b) Making an adaptation of a database is an act restricted by the copyright.
- (c) Databases may be protected by copyright if, *inter alia*, the independent works, data or other materials contained in the database are individually accessible by electronic or other means.
- (d) Copyright protection for a database extends to the structure of the database.

**14. Artemus lives in Wales and is a keen amateur photographer. He decided to make a database of photographs of Welsh civic buildings for his own amusement. He went all over Wales taking photographs for this purpose and then converted the photographs into digital form and put them in a database he had created. It is possible to search the database by location and building type to retrieve particular photographs. Artemus has not made the database available to the public and has no intention of so doing. Which one of the following statements is CORRECT?**

- (a) The database is not protected by copyright or the database right for the sole reason that the contents, the photographs, each have their own copyright.
- (b) Although Artemus went to considerable lengths and spent much time travelling Wales, taking his photographs and assembling them in a database, the database can have no protection independent of the photographs simply because he has not made a substantial investment as, being an amateur photographer, he made his database as a hobby.
- (c) The database will be protected by copyright as a compilation independent to the copyright subsisting in the individual photographs.
- (d) The database will not be protected by the database right on the basis of a substantial investment in obtaining the contents.

**15. Isambard was an academic who put together a database of details of the families and lineage of Saxon kings. It took a considerable amount of research to assemble this information from libraries and archives. It is searchable by name and date. This database was useful to historians interested in the subject matter and Isambard grants licences to historians to use his database which he delivers on CD-ROM. Isambard then wrote an article for a journal which included**

substantial extracts from the database. Kane, an academic historian saw the journal article and, without asking permission, he entered the extracts from the article into a computer database which he has now made available free of charge from his own website. In respect of Kane's activities, which of the following statements is most likely to be CORRECT?

- (a) Isambard's database is not subject to copyright or the database right as Isambard created it as an academic and not in the course of a business.
- (b) Isambard's database is subject to the database right as it involved a substantial investment in obtaining the materials (at least in human resources) and Kane has infringed the right by indirectly extracting a substantial part of the contents and also by reutilisation.
- (c) Isambard's database is subject to the database right as it involved a substantial investment in obtaining the materials (at least in human resources) but Kane has not infringed the right as he obtained the extracts indirectly from the journal article.
- (d) Isambard's database is subject to the database right as it involved a substantial investment in obtaining the materials (at least in human resources) but as he published extracts in the journal article he will be taken to have waived his rights in respect of those extracts.

**16. In respect of infringement of the database right by the repeated and systematic extraction or reutilisation of insubstantial parts of the contents of the database, which one of the following statements is CORRECT?**

- (a) Such acts will infringe if cumulatively a substantial part of the database, determined qualitatively or quantitatively (or by a combination of both) is extracted or reutilised.
- (b) As each individual act does not infringe the right, an accumulation of such acts cannot infringe otherwise, how can one infringe by carrying on not infringing for long enough?
- (c) Such acts can never infringe a database subject to continual modification as each day it is a different database.
- (d) Simply extracting or reutilising an insubstantial part can infringe if that part is important qualitatively in terms of the investment in the making of the database as a whole.

**17. Which one of the following CORRECTLY describes the classes of copyright work that fall within the provisions on computer-generated works?**

- (a) Literary works.
- (b) Any work in which copyright may subsist.
- (c) Literary, dramatic, musical or artistic works.
- (d) Broadcasts, films and sound recordings

**18. According to the judge in *Nova Productions v Mazooma Games*, which one of the following CORRECTLY describes the author of the frames displayed on screen during the playing of a video game?**

- (a) The person who devised the various elements displayed on screen, the rules, logic and computer program used to create the frames.
- (b) The person playing the game.
- (c) The person who devised the various elements displayed on screen, the rules, logic and computer program used to create the frames and the person playing the game, as joint authors.
- (d) The person who owned the games machine.

**19. In *Metro-Goldwyn-Meyer v Grokster*, the US Supreme Court held that Grokster was guilty of contributory infringement by distributing its peer-to-peer file sharing software. ON WHAT BASIS did the Supreme Court distinguish its earlier decision in *Sony v Universal City Studios* in which it held that the sale of video recorders did not infringe copyright?**

- (a) Grokster's software could only be used for infringing purposes.

- (b) There was no real difference between the cases from a copyright perspective but there had been a change in policy at the Supreme Court since *Sony v Universal*.
- (c) **Grokster actively encouraged infringement.**
- (d) The Sony Betamax video recorder was quickly being overtaken by the VHS system and, consequently, the threat to copyright owners was diminishing quickly contrary to the position with Grokster.

**20. Making a temporary copy of a work of copyright which is transient or incidental, which is an integral and essential part of a technological process, is permitted under certain circumstances. Which one of the following statements is NOT CORRECT in respect of the permitted act?**

- (a) **The permitted act applies to all works of copyright except films and broadcasts.**
- (b) There must be no independent economic significance.
- (c) The purpose must be to enable the transmission of the work in a network between third parties by an intermediary.
- (d) The purpose must be to enable a lawful use of the work.

**21. Injunctions are available against service providers in respect of infringing material under s97A of the copyright, Designs and Patents Act 1988. Which of the following statements is CORRECT?**

- (a) **The service provider must have actual knowledge of another person using his service to infringe copyright.**
- (b) The service provider must be implicated in the infringement, for example, by being a joint infringer.
- (c) The service provider must know or have reason to believe that his service is being used to infringe copyright.
- (d) If a person informs a service provider that another person is using his service to infringe copyright, the courts must grant an injunction requiring the service provider to take appropriate action to prevent further infringement.

**22. Of the provisions relating to the circumvention of technical devices applied to computer programs, which of the following statements is NOT CORRECT?**

- (a) The technical device can be contained in the computer program or the hardware that reads the computer program or contained in both, analogous to a lock and key.
- (b) The technical device must prevent or restrict acts not authorised by the copyright owner and not restricted by the copyright.
- (c) The provisions extend to persons publishing information intended to enable or assist persons to remove or disable the technical device.
- (d) **The technical device must be part of the computer program itself.**

**23. In respect of making a copy of a previous employer's software without permission and using it to verify that software written for a competitor operates properly (that is, for the purpose of debugging the new software), which one of the following statements is NOT CORRECT?**

- (a) There will be an infringement of copyright in the previous employer's software by making a copy of it.
- (b) There will be a breach of confidence providing the previous employer's software had the necessary quality of confidence.
- (c) If the copy was taken by a person whilst still employed by the previous employer, he will be in breach of his fiduciary duty to that employer.
- (d) **The new software will inevitably infringe the copyright in the previous employer's software.**

**24. If a company which makes and sells articles which include information stored in encrypted form and subject to the database right, a third party which lawfully acquires an article and reverse**

engineers it to gain access to the information is liable to which ONE of the following legal remedies, assuming there is no contractual obligation not to decrypt the information?

- (a) An action for breach of confidence.
- (b) An action for breach of contract.
- (c) An action for breach of a licence agreement.
- (d) **An action under copyright law for circumventing effective technological measures.**

**25. Prince Ferdinand is the heir to the throne of Bradavia. He attends numerous public and official functions at which photographs are taken and published. However, recently, he was photographed by one of the paparazzi whilst he was in a restaurant in London, enjoying a meal with Peter and Erik. Peter is a psychoanalyst and it has been rumoured that the Prince has experienced some bouts of depression (which he has denied). The photograph found its way onto the website of a UK newspaper, *The Daily Rag*, together with a sensational story about the Prince's state of mind. The story included details of the conversation between the Prince and Peter which had been given to the newspaper by Erik. The Prince was furious when he found out and sued *The Daily Rag* for breach of confidence. Which one of the following statements is CORRECT?**

- (a) *The Daily Rag* is in breach of confidence simply by questioning the Prince's state of mind.
- (b) ***The Daily Rag* is in breach of confidence by publishing the photograph and the details given to it by Erik.**
- (c) *The Daily Rag* was not acting in breach of confidence as the Prince is a public figure and must expect photographs of him in places where the public have access to be published.
- (d) *The Daily Rag* has a defence to a breach of confidence action based on the right of freedom of expression which takes precedence over the right of privacy.

**26. Whilst carrying out a check on its computer systems, Pinacle SA, a large French construction company, discovered spyware on its main computer server. It transpired that an English company, Peak plc, was responsible for the spyware and had accessed information relating to Pinacle's bids for major construction projects throughout Europe. Which one of the following statements is CORRECT?**

- (a) **By placing the spyware on Pinacle's main server and accessing the information, Peak is in breach of confidence, notwithstanding there may also be other breaches of civil and criminal law by Peak.**
- (b) Peak is not in breach of confidence as owners of computer systems are responsible for ensuring they are secure from spyware.
- (c) Peak is not in breach of confidence as information as to placing bids for major construction contracts does not have the necessary quality of confidence.
- (d) Technically, Peak is in breach of confidence but may have a defence based on public interest as it is in the public interest that information as to bids for construction projects is in the public domain.

**27. Certain matter is excluded from patentability if the patent or the application for a patent relates to that thing as such. Which one of the following statements is CORRECT regarding that exclusion?**

- (a) **The matter is not an invention.**
- (b) The matter is deemed not to involve an inventive step.
- (c) The matter is not patentable on the basis that it is contrary to public policy.
- (d) The matter is not capable of industrial application.

**28. The state of the art for testing the novelty of an invention subject to a patent application includes which ONE of the following?**

- (a) Patent applications which were withdrawn before publication but which have an earlier priority date than that of the application in question.

- (b) New inventions that would, at the priority date of the patent in question, be considered obvious to a person skilled in the art.
- (c) Non-obvious combinations of inventions which were in the public domain before the priority date of the patent in question.
- (d) Patent applications published on or after the priority date of the application but which have an earlier priority date.

**29. Enrico is employed as a project manager by Sagacious Software plc. He is not a director of the company nor does he hold any shares in it. His normal duties are to manage new software projects through to final testing and acceptance by clients. He assigns duties to analysts and programmers and oversees their work, ensuring that projects are completed to specification and on time. He does not have any programming or software design duties himself: his job is as a team leader and manager. Enrico came up with the idea of a new software based system of data transformation which appears to be patentable. Which of the following statements is CORRECT in relation to any patent that might be granted for the data transformation system?**

- (a) Enrico is entitled to the patent providing he had not been assigned any special duties to make the invention.
- (b) As an employee, Enrico's employer, Sagacious Software plc is automatically entitled to the patent.
- (c) Sagacious Software plc is entitled to the patent but will be required to pay Enrico compensation, equivalent to a reasonable royalty, in respect of any income it derives from the patent.
- (d) Enrico and Sagacious Software plc are jointly entitled to the patent as, although Enrico did not make the invention in the course of his normal duties, he was under a special obligation to further his employer's interests.

**30. Which of the following statements concerning the decision of the Board of Appeal in *Hitachi/Auction method* is NOT CORRECT?**

- (a) A method involving technical means is an invention for the purposes of Article 52(1) EPC.
- (b) Using a known business method to solve a technical problem does not contribute to the technical character of the claimed subject matter.
- (c) Claims must be directed at concrete apparatus rather than activities when assessing whether something is an invention.
- (d) The comparatively wide definition of 'invention' accepted by the Board of Appeal will include activities so familiar that their technical character tends to be overlooked such as the act of writing using a pen and paper.

**31. Smita lives in England and designed a set of new icons for mobile phone screens which had individual character. She immediately showed her new design to Eric, a friend who normally lives in France. She told him the design was secret. Six months later Smita licensed the icons to VIP Telecomms Ltd which applied them to its mobile phones and put them on sale in the UK within the next month. It is now 14 months since Smita developed her new design but she has just discovered that FranceTel SA has been selling mobile phones in France which bear her icons for the last 10 months. FranceTel SA obtained the designs of the icons from Eric. Which one of the following statements is CORRECT in relation to Community design? Smita had not applied to register the designs anywhere previously.**

- (a) Smita's designs can be registered as Community designs as they are still new because the abuse in relation to her by Eric and the commercialisation by VIP Telecomms Ltd both happened within the last 12 months and the period of grace applies.
- (b) Smita's designs cannot be registered as Community designs because, being graphic symbols, they do not fall within the meaning of 'product' for the purposes of the Community Design Regulation.
- (c) Smita's designs are no longer novel as the 12-month period of grace only applies if Smita herself put the mobile phones bearing the designs on the market.

- (d) Smita cannot register the design as Community designs as they are no longer novel but she can sue FranceTel SA in France on the basis of the UK unregistered design right which will subsist in her original designs.

**32. Which one of the following CORRECTLY describes the test for individual character for the Community design and the UK registered design?**

- (a) Individual character is assessed from the perspective of the consumer who is taken to be reasonably well-informed and circumspect but has an imperfect recollection of designs already on the market.
- (b) To have individual character, a design must be original and not commonplace in the design field in question at the time of its creation.
- (c) Individual character requires that a design must be novel, involve an inventive step and be capable of industrial application and not be excluded from the grant of a registered design.
- (d) A design has individual character if the overall impression it produces on the informed user differs to the overall impression produced on such a user by any design which has been made available to the public.

**33. Which one of the following features or designs is NOT expressly excluded from protection by Community design?**

- (a) Designs which are contrary to public policy or morality.
- (b) Features which are methods or principles of construction.
- (c) Features of the appearance of a product dictated by technical function.
- (d) Features of the appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

**34. Which one of the following statements in relation to the protection of topographies of semiconductor products by the modified version of the design right in line with the Directive is NOT CORRECT?**

- (a) It is permissible to make a reproduction of a semiconductor topography for the purpose of analysing or evaluating that topography or the concepts, processes, systems or techniques embodied in it.
- (b) The Directive on the legal protection of topographies on semiconductor products requires that the topography must be the result of the creator's own intellectual effort and is not commonplace in the semiconductor industry.
- (c) The topography of a semiconductor product that consists only of elements that are commonplace in the semiconductor industry can be subject to the semiconductor design right if the combination of those elements is itself an intellectual creation and not commonplace.
- (d) Licences of right are available during the last five years of the subsistence of protection

**1 Which one of the following trade marks CANNOT be registered as a trade mark in the UK?**

- (a) A new and distinctive computer icon for computer software.
- (b) 'MEDCORPS' (a made up word) for a website carrying health information.



- (c) The domain name 'tesco.com' for a variety of foodstuffs and goods found in a typical super-market.
- (d) The smell of mountain dew applied to a laptop computer.
2. Harvey retails computer software from his online store which is called VIZSOFT which is a registered trade mark for applications software, games software, operating system software and other software products. The trade mark is very well-known. Tony, a market trader has just started selling pornographic magazines from his market stall under the name VIZSOFT TRADERS. Which one of the following statements is most likely to be CORRECT?
- (a) Tony has not infringed the trade mark as he is using it for goods which are different to those for which the mark is registered.
- (b) Tony has infringed Harvey's trade mark as the use of his sign is not in accordance with honest practices and takes unfair advantage of, or is detrimental to, the repute of the trade mark.
- (c) Tony has infringed the trade mark because he is using a sign identical to the trade mark for non-similar goods, providing it can be shown that there is a likelihood of confusion which includes a likelihood of association.
- (d) Tony has not infringed the trade mark because the addition of the word 'TRADERS' means that Tony's sign is not identical which is required for infringement by taking unfair advantage of, or being detrimental to, the repute of a trade mark.
35. Lindridge Telecommunications Ltd has a website where it advertises its telecommunications services. On the website there is a table comparing its services with those of TeleSouth plc, another telecommunications company. The table comprises three columns. The first lists the features being compared, for example, 'bandwidth' and 'cost per minute'. The second column contains data relating to Lindridge's services and the third column, those of TeleSouth. This last column is headed 'TeleSouth' which is a registered trade mark for telecommunications services belonging to TeleSouth plc. The features chosen tend to be those which show Lindridge's services to be better and cheaper. Underneath the table is the following text 'Switch to Lindridge and you can save up to £15 each month'. A survey carried out by TeleSouth indicates that the average saving would only be around £11 per month. Which one of the following statements is CORRECT?
- (a) There is no infringement of the TeleSouth trade mark as the advertising falls within section 10(6) of the Trade Marks Act 1994.
- (b) The TeleSouth trade mark has been infringed because it is not in accordance with honest practices to selectively choose features to show the advertiser's services are better or cheaper.
- (c) The TeleSouth trade mark has been infringed because it is not in accordance with honest practices to make a statement about a likely saving which must differ for different customers and no amount of hyperbole is allowed under section 10(6) of the Trade Marks Act 1994.
- (d) There is no infringement of the TeleSouth trade mark because there is no likelihood of confusion among persons who might visit the Lindridge website.
36. Martino is a solicitor. One day he read in the newspaper that two English companies in the weapons industry, Gilbert and Smith Ltd and Kandela Ltd, were going to merge. He immediately applied successfully to register 'gilbertsmithkandela.co.uk', 'gilbertsmithkandela.com', 'gsk.co.uk' and 'gsk.com' as domain names. A few days later, there was a press announcement that the name of the newly merged company was to be GilbertSmithKandela Ltd. When the new company attempted to register its name and the abbreviation 'GSK' as domain names for its new business, it discovered Martino's domain name registrations. The company brought a passing-off action against Martino who claims he had no intention of

using the domain names. However, some e-mails had been sent to employees at the company by persons who thought the e-mail address might be at one of Martino's domains. These were read by Martino before he forwarded them on to the company. Martino, who is opposed to armed conflict, said that this was his way of checking the company was not selling arms to unstable governments contrary to the new Foreign Office ethical policy. He explained that being able to monitor the company's business was the sole reason he registered the domain names. Which one of the following statements is CORRECT?

- (a) As domain names are issued on a first-come, first-served basis and Martino is not cybersquatting, he will successfully defend a passing-off action.
- (b) The court will not intervene because issues as to entitlement to domain names should be resolved amicably by using an appropriate domain name dispute resolution process.
- (c) The court will not grant an order requiring Martino to transfer the domain names to the company as he is using them for the purpose of monitoring compliance with Foreign Office policy and, by doing so, is providing a service for the public good.
- (d) The court will order Martino to transfer the domain names to the company, as they are instruments of fraud, even though he did not register them for the purpose of selling them to the company at an inflated price.

**37. Which one of the following is NOT an offence under section 107 of the Copyright, Designs and Patents Act 1988?**

- (a) Making an article for sale or hire knowing or having reason to believe that it is an infringing copy of a copyright work.
- (b) Possessing an article, knowing or having reason to believe that it is an infringing copy of a copyright work, otherwise than in the course of a business, with a view to committing any act infringing the copyright.
- (c) Distributing an article, knowing or having reason to believe that it is an infringing copy of a copyright work, otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright.
- (d) Infringing copyright by communicating a work of copyright to the public in the course of a business, knowing or having reason to believe that, by doing so, he is infringing copyright in that work.

**38. Which one of the following statements CORRECTLY describes the state of mind required for the offence of selling in the course of a business a device, product or component primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures applied to a copyright work other than a computer program?**

- (a) The prosecution has to prove that the defendant knew or had reason to believe that the device, product or component was designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (b) The prosecution does not have to prove anything about the defendant's state of mind but he has a defence if he can prove that he did not know and had no reasonable ground for believing that the device, product or component enabled or facilitated the circumvention of effective technological measures.
- (c) The prosecution has to prove that the defendant knew or had no reasonable ground for believing that the device, product or component was designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (d) The offence is one of strict liability subject only to a defence of lack of technical knowledge concerning the circumvention of effective technological measures.

**39. Directors, managers and other similar officers of corporate bodies convicted of an offence under section 107 of the Copyright, Designs and Patents Act 1988 are also treated as committing the offence in question in**

certain circumstances under section 110. Which one of the following statements DESCRIBES those circumstances?

- (a) Where they have consented or connived in the offence.
- (b) Where they have consented or connived in the offence or if it is attributable to their neglect.
- (c) Where they have turned a blind eye to the commission of the offence by the corporate body.
- (d) Where they knew or had reason to believe that the article in question was an infringing copy of a copyright work.

**40. Which one of the following statements is NOT CORRECT in relation to the offence of selling goods bearing a sign identical to or likely to be mistaken for a registered trade mark?**

- (a) The goods must be those for which the trade mark is registered or the trade mark has a reputation in the UK and the use of the sign takes or would take unfair advantage of, or would be detrimental to, the distinctive character or the repute of the trade mark.
- (b) Section 92(5) provides a defence where the defendant believes on reasonable grounds that his use of the sign does not infringe a registered trade mark of whose existence he is aware.
- (c) Section 92(5) provides a defence where the reason the defendant believes his use of the sign does not infringe a registered trade mark is that he reasonably believes no relevant trade mark is registered.
- (d) For the offence to be made out, it is not necessary to show that the defendant's use of the sign is as an indication of origin. Simply using a trade mark to identify the nature of the goods, such as in the case of placing the name of a pop group on a counterfeit music CD will suffice if the name is a trade mark.

**41. In relation to terms implied into contract by the courts, which one of the following statements is CORRECT?**

- (a) Terms will be implied by the courts only if reasonable in the circumstances.
- (b) Terms will be implied by the courts only if necessary to give the contract business efficacy.
- (c) Terms will be implied by the courts only when the contract is void for uncertainty.
- (d) Terms will never be implied by the courts because of the doctrine of freedom of contract.

**42. Express terms in contract may be made void under certain circumstances. Which one of the following is NOT one of those circumstances?**

- (a) Where the term is an unreasonable exclusion clause.
- (b) Where the term is an unreasonable restraint of trade.
- (c) Where the term provides for liquidated damages.
- (d) Where the term attempts to prohibit the making of back-up copies of computer programs which are necessary to the lawful use of the computer program.

**43. A contract between a computer dealer and a company provides that the company is to purchase 20 new computers to be delivered during the last week of March but certainly no later than the end of Friday of that week. Two weeks later, despite a number of phone calls urging delivery, the dealer failed to deliver the computers. In the last phone call, the construction company said it would only accept delivery of the computers if they arrived within the following week. When they failed to arrive by the end of that week, the construction company sent a letter to the dealer cancelling the contract. The dealer responded by saying he would sue the construction company for breach of contract. Which one of the following statements is CORRECT?**

- (a) The construction company was entitled to cancel the contract and failure to deliver on time would be seen as a breach of condition, without prejudice to any claim for damages it might have for the breach of contract.
- (b) The computer dealer will be entitled to damages for unlawful repudiation of the contract as it is reasonable to expect delivery to be late by a few weeks.

- (c) By making phone calls urging delivery, the construction company waived its right to repudiate the contract and such a waiver cannot subsequently be withdrawn. Therefore, the computer dealer is entitled to damages.
- (d) Both the construction company and the computer dealer are in breach of contract and the court would refuse to make any award to either party as both are at fault.

**44. In a contract for the writing of new computer software, there is an implied term to the effect that the work must be carried out using reasonable care and skill. In respect of that implied term, which one of the following statements is NOT CORRECT?**

- (a) The standard is an objective one and is satisfied if the software is written to the standard that a reasonably competent software developer would reach.
- (b) It is accepted that software may contain errors and still reach the required standard.
- (c) The standard requires that the software developer assigns suitable qualified staff to write the software.
- (d) Software which contains errors is not written using reasonable care and skill even if the software developer had tried his hardest.

**45. Distinguish between the following forms of contract for the purposes of determining the nature of the contract (note: this is not a multiple choice question).**

- (a) A contract to develop, install and test new software for a client.
- (b) A contract to supply a computer system including a server with modem link to the internet, computers linked to the server, printers, scanners and copiers and all necessary operating systems software.
- (c) A contract to supply a computer together with operating system software and applications software, such as MS Office.

**46. e-harbour plc is an English company operating an e-commerce website. It is listed on the London Stock Exchange. Percy is an accountant who prepared e-harbour's annual accounts for submission to Companies House as required under company legislation. The accounts were placed on e-harbour's website. Anna saw the accounts on the website and was so impressed by them that she bought 50,000 shares in e-harbour. Unfortunately, due to some serious (though not deliberate) errors in Percy's calculations, the annual accounts gave a grossly misleading picture of the financial position of e-harbour. A few weeks later, e-harbour went into voluntary liquidation as it was no longer able to pay its debts. The shares are likely to be little more than worthless. Anna has decided to sue Percy on the grounds that he was negligent. Which one of the following statements is CORRECT in relation to Percy's liability to Anna?**

- (a) Percy will not be liable for negligent misstatement.
- (b) Percy will be liable for negligent misstatement.
- (c) Percy will not be liable under the law of tort as the loss is an economic loss only.
- (d) Percy will be liable under the rule in *Donoghue v Stevenson* but any damages awarded to Anna will be reduced because of her contributory negligence.

**47. Which one of the following statements in relation to Part I of the Consumer Protection Act 1987 is NOT CORRECT?**

- (a) Computer software, *per se*, falls within the meaning of 'product'.
- (b) There is a 'state of the art' defence which the European Court of Justice has held is compatible with the product liability Directive.
- (c) The definition of 'product' includes electricity.
- (d) As regards damage to or destruction of property (other than the product itself), there is a lower threshold of £275 for a claim to be successful.

**48. Section 2 of the Unfair Contract Terms Act 1977 controls clauses excluding or limited liability**

**for negligence. Which one of the following statements is NOT CORRECT?**

- (a) Section 2 only applies to business liability.
- (b) **Section 2 only applies to contractual terms.**
- (c) Section 2 applies to terms in contract and to notices excluding or limiting liability for negligence.
- (d) Under section 2, liability for death or personal injury arising from negligence cannot be excluded or limited.

**49. Which one of the following statements is CORRECT?**

- (a) Repetitive strain injury allegedly caused by long periods entering data using a computer key-board is not actionable at law.
- (b) Contractual terms excluding liability for negligent performance of a contract for writing software are never valid under any circumstances.
- (c) Contractual terms excluding liability for negligent performance of a contract for writing software are valid but only where the contract is between business organisations.
- (d) **A party to a contract, who has been negligent in performing his obligations under the contract, may have concurrent liability both under the contract and the law of tort.**

**50. Reckless Software Ltd sent Hasty Consumables plc a proposal for writing software for Hasty's new online selling venture. The proposal was headed 'subject to contract'. A few days later, Mr Flash, the managing director of Hasty phoned Reckless to inform Reckless that it 'had got the job' and asking Reckless to start work forthwith, which Reckless did. A day later Mr Flash wrote to Reckless confirming his phone call. Two months later, Mr Flash told Reckless to stop work as he decided to terminate the contract because Reckless was not getting on with the work fast enough. The proposal originally sent by Reckless envisaged that it would be paid on a time and materials basis but it failed to specify the work to be carried out with any precision and much would have remained to be finalised and agreed. Which one of the following statements is most likely to be CORRECT?**

- (a) There is a binding contract, implied by the conduct of the parties and Hasty will be liable for wrongful repudiation of the contract.
- (b) There is a binding contract, implied by the conduct of the parties but Reckless is in breach of condition by performing the contract too slowly and this means that Hasty's repudiation is lawful.
- (c) **There is no contract but Reckless will be entitled to payment on the basis of a *quantum meruit* for the work it carried out at Hasty's request.**
- (d) There is no contract but Mr Flash will be personally liable for misrepresentation.

**51. In terms of the assignment of an agreement to write software, which one of the following statements is NOT CORRECT?**

- (a) It is not possible to assign the burden of an agreement, for example, where a software developer purports to assign his obligation to write the software to a third party.
- (b) **As the benefits of an agreement are personal to the parties and part of their mutual obligations, they can only be assigned if one of the parties goes into liquidation.**
- (c) It is possible to assign the benefit of an agreement providing the agreement does not prohibit this or, where the consent of the other party is required, it is forthcoming.
- (d) Where consent of the other party is required to the assignment of the benefit of an agreement and that party knows about an assignment made without his consent but takes no action, he may later be estopped from relying on his lack of consent.

**52. Which one of the following is CORRECT in relation to liquidated damages?**

- (a) They are a performance bond to pay for completion of a contract should the contractor go out of business.
- (b) They are a genuine pre-estimate of the damages likely to arise from a breach of the contract.
- (c) They are damages to be assessed by the court for a breach of warranty.
- (d) They are a penalty to encourage the other party to perform his obligations under the contract.

**53. Which one of the following statements CORRECTLY describes source code escrow?**

- (a) It is an arrangement whereby the software company deposits a copy of the source code with an independent party who will release this to the client only in the case of certain events occurring such as the developer going out of business or refusing to maintain the software.
- (b) It is an arrangement whereby the software developer deposits the source code with a trusted third party, such as a bank, so that if the developer goes out of business before a software development contract is completed, the bank will sell the source code and release the money obtained for it (less the bank's fee) to the client to enable the client to appoint another software developer to complete the software.
- (c) It is an arrangement whereby the software developer undertakes to maintain the software by correcting errors in the source code on an annual basis to include the delivery of the source code of enhancements as and when they are available.
- (d) It is an agreement between the parties, in a dispute as to delivery of the source code to the client, to submit to alternative dispute resolution and, failing resolution under alternative dispute resolution, to submit to arbitration.

**54. In *Beta v Adobe*, Lord Penrose made a number of findings in relation to a rip-seal licence.**

**Which one of the following statements was NOT one of his findings?**

- (a) It is a *sui generis* contract which must be accompanied by an appropriate licence.
- (b) The contract is suspensory and is not made until the act signifying acceptance of the terms is carried out.
- (c) The software may be returned and the price reimbursed providing the act signifying acceptance of the terms has not been carried out.
- (d) There are two contracts, one for the tangible items and another which is a licence agreement, permitting use of the software.

**55. Julia has bought a new laptop computer from LAPWORLD plc. It came with Microsoft Windows XP preloaded.**

**Which one of the following statements CORRECTLY identifies the contractual nature of Julia's purchase?**

- (a) It is a *sui generis* contract with LAPWORLD plc for the computer and a contract governed by the Supply of Goods and Services Act 1982 in respect of the copy of Windows XP.
- (b) It is a sale of goods contract with LAPWORLD plc in respect of the computer and a licence agreement with Microsoft for the copy of Windows XP.
- (c) It is simply a sale of goods contract as pre-loaded software is considered to be goods as defined in the Sale of Goods Act 1979.
- (d) It is a sale of goods contract with LAPWORLD plc in respect of the computer and a contract of hire with Microsoft for the copy of Windows XP.

**56. Jeremy bought a copy of software which included a computer program and a database online. He downloaded it onto the hard disk of his computer. There was a licence agreement available to read on the website from which the software was downloaded and Jeremy had to click a box to confirm his acceptance of the terms of the licence. Jeremy did not bother to read the licence but simply clicked the box enabling him to proceed to download the software after giving his payment details. There is a term in the licence which states that the licensee may not make back-up copies of the software. Which one of the following statements is CORRECT?**

- (a) The term is void and unenforceable to the extent that it purports to take away the right to make a back-up copy of the computer program and database if necessary to the licensee's lawful use of them.

- (b) The term is void and unenforceable to the extent that it purports to take away the right to make a back-up copy of the computer program if necessary to the licensee's lawful use of it.
- (c) The term is void and unenforceable in this particular case as Jeremy did not read the terms of the licence agreement.
- (d) The term is enforceable as it was clearly stated in the licence agreement and Jeremy will be bound by it even though he did not read it as he signified his acceptance of the licence agreement by clicking on the box in question.

**57. Petra bought computer software which she ordered online from a trader, zambesi.com. Zambesi.com's website stated that the software in question was compatible with Petra's make and model of computer and its operating system. When the software arrived by post, she found that the licence agreement contained a term stating that the licence represented the entire agreement between the parties and no liability could be accepted for any other statements or representations by whomsoever made. Petra discovered that the software would not work on her computer. It turned out to be incompatible. Which one of the following statements is CORRECT?**

- (a) The 'entire agreement' term is an acceptable business term and this is an example of the principle *caveat emptor* (let the buyer beware). It was up to Petra to ensure that the software was compatible.
- (b) 'Entire agreement' terms are void and unenforceable, *per se*.
- (c) The 'entire agreement' term is subject to the reasonableness test in the Unfair Contract Terms Act 1977 as a result of section 3 of the Misrepresentation Act 1967.
- (d) Zambesi.com is guilty of making a fraudulent misrepresentation.

**58. Which one of the following statements CORRECTLY describes open source software?**

- (a) Software which is made freely available and which may be modified and/or further distributed on the same or similar terms and which includes a copy of the object code only.
- (b) Software which is made freely available and which may be modified and/or further distributed on the same or similar terms and which includes a copy of the source code.
- (c) Proprietary licensed software subject to royalty payments which includes the delivery of source code.
- (d) Free software which may be used, modified and further distributed which includes an arrangement for source code escrow.

**59. Which one of the following statements in respect of open source software is INCORRECT?**

- (a) Open source software is subject to copyright and may be subject to other intellectual property rights such as the database right.
- (b) Open source software requires a licence which covers its use, modification and further distribution.
- (c) Open source software is likely to have electronic rights management information included or associated with it.
- (d) Open source software may be distributed freely to any person or organisation but may only be used for non-commercial purposes.

**60. Which one of the following statements in respect of open source software is CORRECT?**

- (a) As open source software is made freely available it is acceptable to exclude all warranties (for example, fitness for purpose) and liabilities for negligence.
- (b) As the contractual nature of open source software is doubtful, the Unfair Contract Terms Act 1977 does not apply to it.
- (c) A person who originates open source software is not negligent if he or she objectively meets the standard to

be expected of reasonably competent software writers.

- (d) The law of negligence does not apply to open source software as the persons writing or modifying it have no control over how it will be used by others.

**61. Which one of the following statements is CORRECT in relation to a contract to outsource a client's information technology function and activities?**

- (a) It is a contract for services subject to the implied terms under the Supply of Goods and Services Act 1982.
- (b) It is a contract of service governed by the Employment Rights Act 1996.
- (c) It is a contract *sui generis* without any statutory implied terms.
- (d) It is a sub-contract under which the client becomes the main contractor.

**62. Which one of the following statements is CORRECT in relation to a service provision change involving a transfer of employees to the company now taking responsibility for the service provision (the transferee)?**

- (a) The previous contracts of employment are terminated and new contracts of employment are made as between the employees and the transferee, such that there is an effective break in service by the employees.
- (b) The TUPE Regulations 2006 apply also to sub-contracts.
- (c) The transferee may dismiss any of the employees transferred for any reason whatever.
- (d) The TUPE Regulations 2006 only apply to private undertakings engaged in an economic activity for gain.

**63. In relation to copyright in software written by the contractor (CO) under an outsourcing contract for the purposes of providing the relevant service to the client (CL), which one of the following statements is CORRECT?**

- (a) CL is the first owner of the copyright simply because it was written for the purposes of providing the relevant service.
- (b) The ownership of the copyright is 'at large' and automatically transfers to subsequent outsourcing companies until such time as the function reverts to CL, when it becomes the owner of the copyright.
- (c) CO is the first owner of the copyright unless there is a term in the contract assigning copyright to CL (the contract being signed by or on behalf of CO) or there is some other written assignment of the copyright to CL signed by or on behalf of CO which pre-dates the writing of the software.
- (d) It is an implied term that the copyright will be jointly owned by CO and CL unless the contract makes provision to the contrary.

**64. In a case where an outsourcing company is deemed to be a data processor and the client is the data controller for the purposes of the Data Protection Act 1998, which one of the following statements is NOT CORRECT?**

- (a) The processing must be carried out under a contract made or evidenced in writing.
- (b) The contract must require the outsourcing company to comply with the obligations imposed by the seventh data protection principle.
- (c) The outsourcing contractor must take reasonable steps to ensure the reliability of employees of his who have access to the data.
- (d) The outsourcing company must notify the processing activity unless exempt.



- 65. Which one of the following statements is CORRECT in relation to a contract for the sale of goods to a buyer who deals as a consumer (or, in Scotland, a consumer sale in which the buyer is a consumer)?**
- (a) The risk passes to the buyer as soon as the contract is made.
  - (b) The risk is with the buyer unless an extended guarantee has been paid for.
  - (c) The risk does not pass to the buyer until they are delivered to him.
  - (d) **The risk remains with the seller until the payment has cleared when the risk passes to the buyer.**
- 66. According to the Court of Appeal, for a misrepresentation to have legal effect in the light of an entire agreement clause, the statement must have three qualities or effects. Which one of the following is NOT one of those qualities or effects?**
- (a) It must be clear and unambiguous.
  - (b) **It must be backed by a warranty as to its truth.**
  - (c) It must be such that a reasonable person would expect the other to understand that he was meant to act on the basis of the representation.
  - (d) The other party must have entered into the agreement on the basis that the representation was true.
- 67. EeeZee Manufacturing Ltd bought computer equipment to control its widget manufacturing production line from Process Controls plc during January. Later that year, during September, EeeZee received a letter from Trolls Inc claiming that the equipment infringed its UK patent which was granted in March. Which one of the following statements is CORRECT (the contract under which EeeZee obtained the equipment from Process Controls had no provisions covering such eventualities although it appears that the equipment does indeed fall within the claims of the patent and infringes it)?**
- (a) EeeZee can continue to use the equipment as it started using the equipment before the patent was granted.
  - (b) EeeZee can repudiate the contract with Process Controls and claim damages for a breach of the condition that the latter had the right to sell the equipment in January.
  - (c) EeeZee must cease using the equipment if it does not want to be sued by Trolls for infringement of the patent but has no remedy against Process Controls.
  - (d) **EeeZee can bring a claim for damages against Process Controls for a breach of the implied term of quiet possession.**
- 68. In relation to the preparation of a tender by a computer company hoping to win a massive contract to supply and install complex computer equipment for a major petro-chemical company, which one of the following statements is CORRECT?**
- (a) The computer company must bear all the costs associated with the submission of its tender unless the petro-chemical company has agreed otherwise.
  - (b) It is a rule of tendering that the lowest bid must be accepted even if the company calling for tenders has stated the contrary.
  - (c) It is a rule of tendering that the highest bid must be accepted even if the company calling for tenders has stated the contrary.
  - (d) **The computer company must provide a performance bond as a condition of submitting a tender, whether or not expressly called for by the petro-chemical company.**
- 69. Gracie is the major shareholder of Bits & Pieces Ltd, a company which runs a number of retail shops selling small items of furniture and items such as lamps and framed prints. She bought large quantities of goods to sell in the shops from George who imports goods from the Far East. Bits & Pieces Ltd still owes George £12,500 for goods delivered in the past. When he said he would not supply any more goods until the debt was paid, Gracie sent him an e-mail stating 'I will personally guarantee the amount of £12,500 owed to you by Bits & Pieces Ltd if you continue to supply goods to Bits & Pieces Ltd'. Below this statement, Gracie typed her name. George supplied further goods but still has not been paid and he now seeks to call in Gracie's guarantee. Which one of the following statements is CORRECT?**

- (a) Only a handwritten signature will suffice to make the guarantee enforceable under section 4 of the Statute of Frauds 1677.
- (b) Gracie's typed name will not be considered to be a signature for the purposes of section 4 of the Statute of Frauds 1677.
- (c) Gracie's typed name will be considered to be a signature for the purposes of section 4 of the Statute of Frauds 1677.
- (d) Gracie's e-mail is not legally enforceable as section 4 of the Statute of Frauds requires that a guarantee must be in writing and an e-mail is not considered to be in writing.

**70. Which one of the following statements CORRECTLY describes the purpose of an electronic signature under the Electronic Communications Act 2000?**

- (a) To signify that the person to whom it belongs intends to be legally bound by the contents of the document to which it is associated.
- (b) To establish the authenticity or integrity of a communication or electronic data.
- (c) To establish that the document into which it is incorporated or to logically associated is not intended to have legal consequences.
- (d) To verify that the contents of the document are true.

**71. According to the general working rule in Brinkibon, WHEN is a contract made when the form of communication used by the parties is virtually instantaneous (assuming the offer and acceptance are otherwise legally binding and the other requirements for a valid contract are present)?**

- (a) When the acceptance has been received and the recipient has responded by acknowledging it and his agreement to it.
- (b) When the offer has been received.
- (c) When the acceptance is transmitted.
- (d) When the acceptance is received.

**72. Which one of the following statements is NOT CORRECT in relation to the Rome Convention on applicable law?**

- (a) The parties are free to choose which country's law applies to the contract.
- (b) Where one of the parties to a contract is based in Europe, the applicable law must be that of a Member State of the European Community.
- (c) In Europe, consumers cannot be deprived of their own country's consumer protection laws by the choice of applicable law.
- (d) In the absence of a choice of law by the parties, the law will be that of the country most closely connected with the contract.

**73. Describe the extent to which consumers are protected in relation to distance selling. Look at a typical e-commerce website and note how well it conforms to the requirement to provide information before a contract is concluded under Regulation 7 of the Consumer Protection (Distance Selling) Regulations 2000, the relevant parts of which are set out below.**

**7 – Information required prior to the conclusion of the contract**

- (1) ... in good time prior to the conclusion of the contract the supplier shall –
  - (a) provide to the consumer the following information –
    - (i) the identity of the supplier and, where the contract requires payment in advance, the supplier's address;
    - (ii) a description of the main characteristics of the goods or services;
    - (iii) the price of the goods or services including all taxes;
    - (iv) delivery costs where appropriate;
    - (v) the arrangements for payment, delivery or performance;

- (vi) the existence of a right of cancellation except in the cases referred to in Regulation 13;
  - (vii) the cost of using the means of distance communication where it is calculated other than at the basic rate;
  - (viii) the period for which the offer or the price remains valid; and
  - (ix) where appropriate, the minimum duration of the contract, in the case of contracts for the supply of goods or services to be performed permanently or recurrently;
- (b) inform the consumer if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case may be) of equivalent quality and price; and
- (c) inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier.
- (2) The supplier shall ensure that the information required by paragraph (1) is provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.
- (3) . . . the supplier shall ensure that his commercial purpose is made clear when providing the information required by paragraph (1).

**74. Fred is a self-employed accountant. He was engaged by Triple Brewing plc to prepare this year's annual company accounts. When they were completed, the company placed the accounts on its website. There was a mistake in the accounts which made the company look in better financial shape than was actually the case. A number of individuals, who accessed the accounts online, bought shares in the company (they had no previous dealings with the company or with Fred). The shares are now worth significantly less. The individuals, who claim that they would have not have bought the shares had they known the true position, are threatening to sue Fred. Which one of the following statements is most likely to be COR- RECT?**

- (a) Fred will be liable for negligence under the rule in *Donoghue v Stevenson*.
- (b) Fred will not be liable for negligent misstatement as *Caparo v Dickman* makes it clear that purely economic loss is not recoverable under this area of law.
- (c) Fred will be liable for negligent misstatement as he was clearly negligent in preparing the accounts.
- (d) Fred will not be liable for negligent misstatement for lack of proximity on the basis of *Caparo v Dickman*.

**75. Edna contributed to a blog about Gordon who is a local councillor. The material she included in the blog ('weblog') was to the effect that Gordon had taken bribes to allow developers to obtain planning permission. There is no evidence to suggest that this is the case and it is clear that Edna would have no defence to an action for defamation. Which one of the following statements is CORRECT?**

- (a) Edna's statement is slander rather than libel as material in a blog is not considered to be in writing.
- (b) Edna has libelled Gordon who will have a cause of action irrespective of proof of damage.
- (c) It is implied that material and statements in blogs are not intended to be taken seriously and, therefore, Gordon will have no cause of action against Edna.
- (d) Edna is not guilty of defaming Gordon as it is fair comment to criticise a politician.

**76. Pierre, who is domiciled in France, co-wrote an article with Hans, domiciled in Germany. The article was placed on a website by Pierre and Hans and it contained a statement libelling Tommy, a famous actor domiciled in England. The offending statement was written jointly by Pierre and Hans. Tommy has proof that the article has been accessed on a number of occasions in England. Which one of the following is CORRECT?**

- (a) Tommy can commence proceedings in France, Germany or England.

- (b) Tommy can commence proceedings in France or Germany only.
- (c) Tommy can only commence proceedings in England as 'claimants play at home'.
- (d) Tommy must commence proceedings before the European Court of Justice.

**77. Which one of the following statements CORRECTLY describes a *Norwich Pharmacal* order?**

- (a) An order that the defendant pays the claimant's legal costs.
- (b) A court order requiring that an internet service provider remove unlawful material.
- (c) An order of the court requiring the delivery up of infringing materials.
- (d) **An order of the court requiring a person to disclose the identity of a wrongdoer.**

**78. With respect to caching, to be immune from damages or any other pecuniary remedy or any criminal sanction, of the following things an information society service provider must do which one is NOT CORRECT?**

- (a) Comply with conditions on access to the information.
- (b) Act expeditiously to remove or disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network or access to it has been disabled or that a court or administrative authority has ordered such removal or disablement.
- (c) Comply with any rules regarding the updating of the information, specified in a manner widely used and recognised in industry.
- (d) **Act expeditiously to remove or disable access to information upon obtaining actual knowledge of unlawful activity or information.**

**79. In relation to the sale of counterfeit watches on an internet auction site hosted by an internet service provider in Case IZR 304/01 *Rolex Internet Auction* [2005] ETMR 255, the Federal High Court of Germany made a number of findings. Which one of the following was NOT one of those findings?**

- (a) **Internet service providers, in order to comply with the Directive on electronic commerce, have a duty to take reasonable steps to check the information made available through their service is lawful, such as by carrying out random spot checks from time to time.**
- (b) The service provider is not required to act as a 'gatekeeper'. He is not to be expected to check every offer made using his service.
- (c) If the service provider becomes aware of a trade mark infringement, he must not only block the actual offer without delay and also take all measures technically possible and reasonable as a precaution to prevent any further corresponding trade mark infringements.
- (d) Providing a platform on the internet on which suppliers can auction goods is not itself a sufficient ground to make the service provider an infringer of a trade mark. Participation in infringement with the supplier requires at least some element of intention.

**80. Tony wrote an e-mail which purported to be from a bank. He sent it to everyone working for a number of companies. The e-mail looked very plausible and informed recipients that there was a suspected fraud on their accounts, asking them to submit details of their accounts so that this could be verified. He intended to steal money from the accounts of any persons who were taken in and sent their details back. Which one of the following offences has NOT been committed by Tony?**

- (a) **Common law conspiracy to defraud.**
- (b) Fraud by false representation.
- (c) Making an article for use in fraud.
- (d) Being in possession of an article for use in fraud.

**81. Gordon wrote some software at the request of his friend Hannah to be used by Hannah to install surreptitiously on celebrities' computers as spyware to obtain personal details so that Hannah could sell the details to a newspaper journalist. Which one of the following statements is CORRECT?**

- (a) Hannah has committed fraud by false representation.

- (b) Gordon has committed the offence of making an article for use in fraud.
- (c) Gordon and Hannah are guilty of common law conspiracy to defraud.
- (d) Hannah has committed fraud by abuse of position.

**82. Which one of the following statements is NOT CORRECT in relation to the offence of obtaining services dishonestly?**

- (a) It is not sufficient to prove that the accused knew that the services *might be* made available on the basis that payment has been made, is being made or will be made for them.
- (b) The offence still applies if the accused intends that payment will be paid though not in full.
- (c) The services must be made available on the basis that payment has been made, is being made or will be made for them.
- (d) The offence requires that the services are obtained by a dishonest act.

**83. David has been charged with one count of being in possession of an article for use in fraud and one count of fraud by failing to disclose information. He is to be prosecuted in the Crown Court. What potential MAXIMUM periods of imprisonment could David be sentenced to?**

- (a) Ten years for possession of an article for use in fraud and 10 years for fraud by failing to disclose information.
- (b) Twelve months for possession of an article for use in fraud and five years for fraud by failing to disclose information.
- (c) Five years for possession of an article for use in fraud and five years for fraud by failing to disclose information.
- (d) Five years for possession of an article for use in fraud and 10 years for fraud by failing to disclose information.

**84. In respect of a 'whistle-blower' which one of the following statements is CORRECT?**

- (a) The whistle-blowing legislation is designed to protect an employer from the activities of the whistle-blowing employee.
- (b) The whistle-blowing legislation protects employees who have been dismissed for unauthorised access to their employer's computer material.
- (c) The whistle-blowing legislation is designed to encourage employees to divulge their employer's trade secrets.
- (d) The 'whistle-blowing' legislation does not provide a defence to criminal activity aimed at demonstrating to an employer that he may be in breach of data protection law.

**85. Which one of the following statements in relation to section 1 of the Computer Misuse Act 1990 is NOT CORRECT?**

- (a) There is no need for the intended access to actually have been secured.
- (b) More than one computer is required, being that used by the person seeking unauthorised access and the computer on which the material to which access is sought is stored.
- (c) An employee authorised by his employer to access data of a particular kind can still commit the offence.
- (d) The offence requires the offender to know that the access he intends to secure is unauthorised.

**86. The ulterior intent offence under section 2 of the Computer Misuse Act 1990 requires WHAT of the further offence?**

- (a) It must be an offence for which the sentence is fixed at law or, in the case of a person 21 years old or over, carrying a maximum penalty of five or more years' imprisonment.
- (b) It must be an offence governed by the Theft Acts of 1968 or 1978.
- (c) It must be an offence of dishonesty.
- (d) It must be an offence for which the law of attempts does not apply as the penultimate act prior to the commission of the offence has not been carried out.

**87. Mae-Ling maliciously bombarded her ex-employer with unsolicited e-mails which result in the employer's computer system being brought to a virtual standstill. Which ONE of the following offences has she committed?**

- (a) Under section 1 of the Regulation of Investigatory Powers Act 2000.
- (b) Under section 1 of the Computer Misuse Act 1990.
- (c) Under section 127 of the Communications Act 2003.
- (d) Under section 4(4) of the Data Protection Act 1998.

**88. In respect of an offence under section 3 of the Computer Misuse Act 1990 which one of the following statements is NOT CORRECT?**

- (a) The requisite intent must be directed at a particular computer, program or data.
- (b) The modification need not be permanent.
- (c) The modification is unauthorised if the person causing it is not himself entitled to determine whether the modification should be made and he does not have the consent of any person so entitled.
- (d) A modification includes adding a program or data to the contents of any computer.

**89. In *Zezev and Yarimaka v Governor of HM Prison Brixton* [2002] 2 Cr App R 515 which one of the following did the court NOT decide in relation to the unauthorised modification offence under section 3 of the Computer Misuse Act 1990?**

- (a) It is not required that the computer is damaged so that it no longer accurately records information fed into it.
- (b) If accurately fed in information was true that does not impair the accuracy of the data held in the computer.
- (c) The section 3 offence may be committed if an e-mail contains incorrect information or is bogus.
- (d) There must be some tangible damage to the computer or its components, such as a hard disk, for the offence to have been committed.

**90. In *R v Lindsay* [2002] 1 Cr App R (S) 370, the accused pleaded guilty to three offences under section 3 of the Computer Misuse Act 1990. He was a respected freelance software developer. He had undertaken a short contract to write software but was dismissed when his client became dissatisfied with his work and there was a dispute about money he claimed was owed to him. Later, after having had a few drinks and acting under an impulse, he used his own internet account to gain unauthorised access to three clients of the computer firm he was in dispute with, using passwords he had used when working for the computer firm, and he deleted and modified some of the contents of the websites. He also sent e-mails to customers of a client of the computer company claiming the client was going to increase its prices. The total cost of putting things right was estimated at £9,000. He was sentenced to nine months' imprisonment. Which one of the following did the Court of Appeal DECIDE about that sentence?**

- (a) An immediate custodial sentence was proper and the length of imprisonment was not unduly excessive.
- (b) The sentence was manifestly excessive because of Lindsay's previous good character and guilty pleas and a sentence of 120 hours of Community Service was substituted for the custodial sentence.
- (c) A fine and order for compensation would be the most appropriate penalty for a first offence and a fine of £3,000 plus £9,000 was substituted.
- (d) On the basis of the sentencing principle of general deterrence a custodial sentence of three years' imprisonment would be appropriate in such a case and the sentence imposed of nine months was unduly lenient.

**91. Which one of the following is NOT an offence under section 3A of the Computer Misuse Act 1990?**

- (a) Making, adapting, supplying or offering to supply any article intending it to be used to commit, or to assist in the commission of, an offence under section 1 or section 3.
- (b) Supplying or offering to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under section 1 or section 3.
- (c) Obtaining any article with a view to its being supplied for use to commit, or assist on the commission of, an offence under section 1 or section 3.
- (d) Making, adapting, supplying or offering to supply any article knowing that it is designed or adapted for use in the course of, or in connection with, an offence under section 1 or section 3.

**92. In respect of obscene publications under the Obscene Publications Acts, which one of the following statements is CORRECT?**

- (a) It is not an offence where the only persons proved to have seen the material are not likely themselves to be depraved and corrupted because they are used to seeing such material.
- (b) Publishing an article includes transmitting data stored electronically.
- (c) The right of freedom of expression means that the offences do not apply where the material in question is placed on a website.
- (d) The offences apply only in respect of pornographic images of children.

**93. Under the Protection of Children Act 1978, as amended, which one of the following is the definition of a PSEUDO-PHOTOGRAPH?**

- (a) It is an image, stored on a photographic negative or plate, from which a black and white or colour print may be produced by electronic or other means.
- (b) It is an image contained in a file format used by and accessible by computer, such as a JPEG, TIFF, WMF or GIF file.
- (c) It is an image stored on digital camera media which can be uploaded to a computer for viewing or replicating at such future date.
- (d) It is an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph and includes copies of pseudo-photographs and data stored on a computer disk or by other electronic means which is capable of conversion into a pseudo-photograph.

**94. Kalifa opened an attachment to an e-mail which contained an image which was an indecent photograph of a child. As soon as he realised what it was, he deleted the attachment and the e-mail. The e-mail was from a source unknown to Kalifa and he had no knowledge about the nature of the image. The subject of the e-mail which was displayed before opening it was 'Artistic image' and there was no text in the e-mail apart from the words: 'Have a look at this'. Which of the following statements is most likely to be TRUE in respect of Kalifa?**

- (a) Kalifa has committed the offence of making an indecent photograph of a child under section 1 of the Protection of Children Act 1978 and he is likely to be found guilty as there is no defence to this offence as confirmed on the basis of the case of *R v Smith & Jayson* [2003] 1 Cr App Rep 212.
- (b) Kalifa has committed the offence of making an indecent photograph of a child under section 1 of the Protection of Children Act 1978 and he is likely to be found guilty on the basis that he was reckless to open an attachment to an e-mail when he did not know from whom it had been sent on the basis of the case of *R v Smith & Jayson* [2003] 1 Cr App Rep 212.
- (c) Kalifa has not committed the offence of making an indecent photograph of a child under section 1 of the Protection of Children Act 1978 as he would not have known that the image was or was likely to be an indecent

photograph of a child and he deleted the image soon after opening it on the basis of the case of *R v Porter* [2006] EWCA Crim 560.

- (d) Kalifa is guilty of being in possession of an indecent photograph of a child under section 160 of the Criminal Justice Act 1988. However, as the duration of his possession was very short, he is unlikely to receive a custodial sentence.

**95. Section 2 of the Protection from Harassment Act 1997 makes it an offence to pursue a course of conduct which amounts to harassment of another where the person responsible knows or ought to know that the course of conduct will amount to harassment. Which one of the following statements is INCORRECT in relation to the offence?**

- (a) Where there is only one victim, a course of conduct requires conduct on at least two occasions which need not be the same type of conduct. Conduct includes speech.
- (b) Whether a person 'ought to know' is a subjective test based on the perceptions of the accused and his or her knowledge of the sensitivity, if any, of the intended victim to the nature of the conduct.
- (c) A court sentencing a person for the offence of harassment may make a restraining order to protect the victim from further harassment. The victim may also bring civil proceedings in respect of the harassment under section 3 of the Act.
- (d) Threatening e-mails may amount to harassment.

**96. Which one of the following is NOT a valid reason for admitting hearsay evidence under the Criminal Justice Act 2003?**

- (a) The court is satisfied that it is in the interests of justice that the evidence should be admitted.
- (b) Chapter 2 of Part 11 of the Criminal Justice Act 2003 or any other statutory provision allows it to be admitted.
- (c) The defendant alone has given his consent to it being admitted.
- (d) Certain rules of law preserved by section 118 of the Criminal Justice Act 2003, such as the rule relating to public information, allow it to be admitted.

**97. Which one of the following descriptions CORRECTLY describes the evidential status of computer data where the computer is set up to record automatically details, such as credit card details, entered in an online form?**

- (a) It is evidence admissible because the witness is unavailable.
- (b) It is hearsay evidence.
- (c) It is inadmissible as it is a business document.
- (d) It is real evidence.

**98. Which one of the following CORRECTLY describes the first data protection principle?**

- (a) Personal data must not be transferred to a third country without adequate protection.
- (b) Personal data must be accurate, not excessive and up to date.
- (c) Personal data must be processed fairly and lawfully.
- (d) Personal data may not be processed without the consent of the data subject.

**99. Which one of the following terms is NOT mentioned in the definition of processing in section 1(1) of the Data Protection Act 1998?**

- (a) Holding.
- (b) Storage.
- (c) Adaptation.
- (d) Blocking.

**100. Aardvark Ltd is a data controller which engages Brownsea Processing Ltd to process personal**



data on Aardvark's behalf. Clarence is an employee of Brownsea Processing who actually processes the personal data. Aardvark discloses the personal data to Deer Park Marketing plc, another data controller. Which one of the following is NOT CORRECT in respect of the personal data for the purposes of the Data Protection Act 1998?

- (a) Brownsea Processing is a recipient but not a third party.
- (b) Deer Park is a recipient but not a third party.
- (c) Clarence is a recipient but not a third party.
- (d) Brownsea is also a data processor.

**101. Which one of the following statements may NOT be included in an enforcement notice issued by the Information Commissioner?**

- (a) In the case of a matter of urgency, a statement requiring compliance within seven days.
- (b) In the case of, for example, inaccurate personal data in breach of the fourth data protection principle, a statement requiring the data controller to notify third parties to whom the data have been disclosed, if reasonably practicable.
- (c) A statement requiring the data controller to take or refrain from taking specified steps within a specified time and/or refrain from processing after a specified time personal data of a specified description.
- (d) A statement requiring the data controller to submit an application for a preliminary assessment of processing activity.

**102. Sovereign Supplies Ltd has been in the business of supplying stationery supplies to retail shops. It has a notification as required under the Data Protection Act 1998. A few months ago, the company diversified and started a printing service for private individuals. This has involved the creation and use of a database of its individual customers which did not fall within its previous notification under the Act. The new processing activities are not exempt from the notification requirements though do not include the processing of sensitive personal data. Unfortunately, the company overlooked the requirement to notify changes to its processing activities. Which one of the following CORRECTLY describes Sovereign Supplies Ltd's actual or potential liability in relation to this failure to notify changes under section 20 of the Data Protection Act 1998?**

- (a) The company has committed a criminal offence of strict liability.
- (b) As the personal data are not sensitive personal data, there is no requirement to notify the new processing activities.
- (c) The company has committed a criminal offence subject to a due diligence defence.
- (d) The company has not committed an offence providing all the data subjects consented to the processing.

**103. Which one of the following is NOT CORRECT in relation to the obligation of data controllers to inform data subjects (unless falling within one of the specific exemptions under the Data Protection Act 1998)?**

- (a) Where the data are obtained from the data subject, the data controller does not have to provide the information if he has made it readily available to the data subject.
- (b) In cases other than where the data are obtained from the data subject, the data controller does not have to provide the information if it would involve a disproportionate effort.
- (c) The data controller must provide information as to technical and organisational measures to be taken to ensure the security of the personal data against unauthorised or unlawful processing or accidental loss, destruction or damage.
- (d) The data controller must provide information as to his identity, his representative (if he has one), the purposes of processing and any other information to enable processing to be fair.

**104. Which one of the following is NOT a condition for processing personal data under Schedule 2 of the Data Protection Act 1998?**

- (a) The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- (b) The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
- (c) The data subject has given his consent to the processing.
- (d) The processing is necessary in order to protect the vital interests of the data subject.

**105. Under section 32 of the Data Protection Act 1998, processing for the special purposes is exempt from certain provisions of the Act. Which one of the following is NOT one of the requirements for the exemption to apply?**

- (a) The data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest.
- (b) The processing is undertaken with a view to publication by any person of any journalistic, literary or artistic material.
- (c) The data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.
- (d) The Information Commissioner has made a determination under section 45 of the Act that processing is for the special purposes.

**106. Which one of the following is NOT among the information to be provided by the data controller complying with a subject access request under section 7 of the Data Protection Act 1998?**

- (a) A description of the countries or territories outside the European Economic Area to which the data controller is transferring or may transfer the personal data.
- (b) A description of the recipients or categories of recipients to whom the personal data may be disclosed.
- (c) A description of the purposes for which the personal data are being or are to be processed.
- (d) A description of the personal data of which that individual is the data subject.

**107. Mary was a patient in a psychiatric hospital for a number of years. After her discharge from the hospital, she submitted a request for access to reports made about her condition and treatment. The reports identify the individuals who wrote the reports. Which one of the following statements is CORRECT?**

- (a) Mary must be given unconditional access to all the reports.
- (b) Mary may be given access to the reports even if their authors do not consent if it is reasonable in all the circumstances to comply with the request without the consent of the authors of the reports.
- (c) Mary cannot be given access to the reports regardless of whether or not the authors of the reports consent.
- (d) Mary cannot be given access to the reports as the data are health data and there is a blanket exemption on disclosure of health data to the individual who is the subject of such data.

**108. Ahmed applied for a financial loan to Shark plc which assessed his application solely by automated means. His application was turned down. Which one of the following is CORRECT in relation to his rights in relation to automated decision taking under section 12 of the Data Protection Act 1998?**

- (a) Shark plc must have taken steps to safeguard Ahmed's legitimate interests (for example, by allowing him to make representations).
- (b) Ahmed can ask Shark plc to reconsider the decision, if necessary by other means.
- (c) Ahmed can ask Shark plc to provide him with information as to the logic underlying the auto-

dated decision taking.

- (d) Shark plc are under no obligation to Ahmed as the decision was not to grant his request.

**109. Jake applied for employment at Handy Autos Ltd. He was interviewed but failed to secure the position. A previous employer, Dodge Motors Ltd, had sent a handwritten confidential reference in the form of a letter to Handy Autos which said that Jake was dishonest. This was not true but Dodge Motors received the information from a third party in good faith and took reasonable steps to ensure its accuracy. Since then, Jake has been unable to obtain work. Eventually, Jake obtained a copy of the reference following a subject access request made to Handy Autos. Jake was very distressed when he read the reference and is threatening to sue Dodge Motors. Which one of the following statements is CORRECT in relation to any remedy Jake may have under the Data Protection Act?**

- (a) Jake has a claim for compensation under section 13 for the distress he has suffered.
- (b) Jake has a claim for compensation under section 14 as, although Dodge Motors took reasonable steps to ensure the accuracy of the data, the fact is that the data are inaccurate.
- (c) **Jake has no remedy under the Data Protection Act 1998 as the reference does not contain data within the meaning of section 1(1) of the Act.**
- (d) Jake would have had a claim to compensation under section 13 had not the reference been exempt from the subject access provisions under Schedule 7, being a confidential reference.

**110. Of the duty to inform a person making a request for information under section 1 of the Freedom of Information Act 2000 whether it holds information of the description specified in the request (the duty to confirm or deny), which one of the following statements is NOT CORRECT?**

- (a) Where an absolute exemption applies, the duty to confirm or deny does not arise.
- (b) The public authority may reasonably require further information to identify and locate the information requested.
- (c) **If the public authority does not hold the information, the duty to confirm or deny does not arise.**
- (d) Where a 'qualified' exemption applies, the duty does not arise if the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

**111. In relation to the exemptions under the Freedom of Information Act 2000 not declared to be absolute exemptions, which one of the following statements is NOT CORRECT?**

- (a) **If the public authority considers that the public interest in disclosing whether it holds the information outweighs the public interest in maintaining the exclusion of the duty to confirm or deny, it must communicate the information to the applicant.**
- (b) As with the absolute exemptions, where the public authority relies on an exemption, the notice of refusal must specify the exemption in question.
- (c) Information in respect of which the public authority is obliged to make available to the public under the Environmental Information Regulations (or would be so obliged but for an exemption in those Regulations) is exempt information.
- (d) Information is exempt information if it constitutes a trade secret.

**112. Under section 62 of the Freedom of Information Act 2000, which one of the following statements as to the time when a record becomes a historical record is CORRECT?**

- (a) **At the end of the period of 30 years beginning with the year following that in which it was created.**
- (b) At the end of the period of 60 years beginning with the year following that in which it was created.

- (c) At the end of the period of 100 years beginning with the year following that in which it was created.
- (d) Information relating to communications with Her Majesty can never become a historical record.

**113. In respect of the powers of the Information Tribunal under the Freedom of Information Act 2000, which one of the following statements is CORRECT?**

- (a) The tribunal cannot interfere with the exercise of any discretion conferred upon the Information Commissioner under the Act.
- (b) The tribunal must accept the view of a public authority on whether the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.
- (c) The tribunal must accept the view of the Information Commissioner on whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information.
- (d) The tribunal may substitute its own view on whether the public interest in maintaining the exclusion of the duty to confirm or deny (or maintaining an exemption) outweighs the public interest in disclosing whether the public authority holds the information (or in disclosing the information)





































































