

Question 1

a) Supremacy of European Law

- Regulations are binding on all member states and in all respects have both vertical and horizontal direct effect provided that the regulations give individual rights and are clear.
- Directives are binding on the member states to whom they are address and in respect of the result to be achieved but leave the form and means for achieving said result to domestic agencies. The EC will set a time limit for implementing the directives in the member state. If the directive is not implemented within said time limit then result is vertical direct effect (e.g. individual can claim against the state for losses suffered as a result of the state's failure to implement). No horizontal direct effect.

b)

- i. Must show that secondary legislation has been made ultra vires (outside of the delegated authority) – grounds are illegality, procedural impropriety and irrationality.
- ii. A judge.

c)

- There must be a serious claim against the defendant.
- The defendant must have property within the jurisdiction.
- The court must be satisfied that there is a real risk that the defendant will dispose of or otherwise deal with said property in a manner that will hinder the enforcement of any judgement the claimant may subsequently obtain.

MARKS AWARDED 5.5/10

Question 2

a)

- Consider whether damages would be an inadequate remedy for the claimant if he should succeed at trial after his application for an interim injunction is denied – if it would be inadequate, weighs in favour of granting interim injunction.
- Consider whether damages would be an adequate remedy for the defendant if he should succeed at trial after an interim injunction is granted – if it would be adequate, weighs in favour of granting interim injunction.

- Weigh the extent to which damages would be an inadequate remedy for either party.

c) There must be a 'special relationship' between the claimant and defendant such that the claimant trusted defendant to exercise a degree of care commensurate with advice given.

In particular:

- Defendant is a person who professes special knowledge or skill and make a representation by virtue thereof to the claimant.
- The statement/advice was not given casually or in an offhand manner or in circumstances where it was clear that the advice/statement was not intended to be taken serious.
- There must have been no disclaimer of responsibility.

b) The evidence can be admitted as hearsay evidence* provided the other parties are informed of the intention to do so. If the witness does attend trial his evidence (witness statement) will be considered direct evidence (e.g. first-hand evidence as to the relevant facts).

*Hearsay evidence is any out of court statement which is offered as evidence of the truth of its contents.

MARKS AWARDED 5.5/10

Question 3

b)

- An offer is an expression of willingness to enter into a contract on stated terms on the understanding that it will become binding on the offer or an acceptance of said terms by the person to whom it is addressed. Crucially it is capable of being accepted.
- An invitation to treat is not capable of being accepted, (merely it is an expression of willingness to negotiate a contract but the terms are not yet final or set out).

d) i)

stare decisis

- Precedents of an appropriate authority are binding on later judges.
- Requires an establish hierarchy of courts and a way of knowing which parts of a judgement are binding.

ratio decidendi

- The principle of law upon which a decision is based as applied to the material facts.
- Binding.

obiter dictum

- Remarks made by a judge which are not essential to the decision (e.g. where judge applies principle of law to a hypothetical example rather than the material facts of the case at hand)
- Not binding but has persuasive authority.

res judicata

- Parties who have litigated an issue on which the court has pronounced may not re-litigate that issue (don't waste the court's time).

c) When the client waives their right to confidentiality when the regulated person's overriding duty is to a court or tribunal or where withholding information is in breach of the law.

- * a) legal title – the owner in view of the law (common law)
equitable title – the person registered as owner.

MARKS AWARDED 8.5/10

Question 4

a)

- County court – civil law
- IPEC – civil law; IP cases where damages sought are less than £500,000
- High court – Queen's bench division
Chancery division – deals with IP cases
Family division
- Court of Appeal – criminal and civil law
- Supreme Court – criminal and civil law

b)

- An equitable remedy is a discretionary remedy (as opposed to e.g. damages which are a common law, this non-discretionary remedy) awarded by court.
- An injunction is an equitable remedy that may be awarded in an IP case.

- A court may not grant an equitable remedy to an otherwise successful party if damages are an adequate remedy.

c)

- A fundamental breach is a breach of a condition term in a contract.
- The breach goes to the root of the contract.
- Remedy is the right to terminate contract (in addition to damages) although may choose to reaffirm contract and continue obligations under the contract.
- For contract to be valid, require: offer, acceptance, consideration, and intent to create legal relations.

MARKS AWARDED 7/10

Question 6

Offer

- An expression of willingness to enter into a contract on stated terms on the understanding that said terms will become binding on the offer or (immediately) upon acceptable of said stated terms by the person to whom the offer is made.
- Must be communicated.
- Must be capable of being accepted (e.g. not an invitation to treat).

Acceptance

- Final and unqualified acceptance of the stated terms of the offer.
- Qualified acceptance is not acceptance – it is a counter-offer which kills the original offer.
- Must be communicated.

Consideration

- The price for which an agreement is bought.
- A valuable consideration may comprise some right/interest/benefit accruing to one part or some loss/detriment/forbearance/responsibility given/suffered/undertaken by the other party.
- Past consideration is no consideration.
- Consideration need not be adequate but must be sufficient.

Intention to create legal relations

- Domestic content – would a reasonable bystander have understood the agreement to be legally binding.

- Commercial context – rebuttable presumption that agreement is legally binding

Problems that may arise

Consideration

- Is consideration sufficient?
- Motive is not consideration.

* a) Samantha could not appeal the secondary legislation using judicial review on the grounds of unlawful sub delegation – may get quashing order to quash unlawful decision if successful.

MARKS AWARDED 6.5/15

Question 8

b)

- Fraudulent misrepresentation is a criminal offence. Negligent misrepresentation is a common law tort. Both induce a party to enter into a contract on the basis of a statement which turns out to be false.
- Contract may be rescinded and damages granted as remedies in both incidences. Fraudulent misrepresentation allows the innocent party to sue under tort (this is not the case for negligent misrepresentation).
- Fraudulent misrepresentation – beyond reasonable doubt (a jury must be sure of guilt)
Negligent misrepresentation – on the balance of probabilities (more likely to be guilty than not).
- Not for fraudulent but yes for negligent by providing a disclaimer of responsibility.

c) Shouldn't advise client to make a statement which is reckless to the fact of whether or not the statement is true – not looking after interest of client (client care) – if turns out to be false, may be grounds for Adelita to claim damages (e.g. malicious misstatement).

d)

- Fundamental breach – breach of condition (term of importance) – breach goes to the root of the contract – innocent party has right to terminate the contract (although they can reaffirm and continue performance of duties specified by contract). Damages available as remedy too.
- Breach of warranty (term of lesser importance) – not a repudiatory breach – contract remains in force and obligations under contract continue – damages available as a remedy.

- With regard to the issue of 6 months to supply tooling, question to ask is whether this substantially deprives Nicholas of the benefit of the contract – if so it will be a fundamental breach.
- It is not clear if this is so to me but on balance I would say it is as a fundamental breach as contract provides for 12 months use but Nicholas is only able to use for 6 months due to the 6 months it takes to deliver tools.

e)

i.

- Can only recover damage which can be reasonably foreseen (not hindsight) by the parties to result from the breach of contract.
- Damage cannot be too remote.

ii.

- Nicholas has a duty to mitigate losses.
- Cannot recover damages for losses he ought not to have incurred.

*a) no – claim of 100% increase is part of an invitation to treat – claim was not an offer as it was not capable of being accepted.

MARKS AWARDED 9.5/15

Question 9

a) Sole trader – individual makes all decisions – has unlimited liability.

Limited company – liability limited to contribution e.g. only liable up to amount equivalent to the worth of their shares – personal property is not at risk.

b)

- Debenture is a loan where the borrower is a company.
- Charge over the property of company provided as security.
- Charge must be registered at Companies House to be enforceable.
- Charge can be 'fixed' or 'floating'.
- 'Fixed charge' is a charge over a particular item of company's property.
- Company cannot sell item without the consent of the lender.
- 'Floating charge' is a charge on (usually) all of a company's present and future assets.
- Company may deal with assets in the ordinary course of business.
- In event of a default the floating charge 'crystallises' to a fixed charge on assets held presently by the company which were previously held under the floating charge.

- Since Joe needs to sell the radios (valuable assets) in order to make a profit/give Greg a return on investment a floating charge is the most appropriate.

c) Aiden ought to consider whether this is within his area of expertise/competence or whether it might not be better for a solicitor to review the draft loan agreement (and communicate this to Joe).

d) Abbett can use company names tribunal to object to his choice of company name if they believe they are a party aggrieved by an opportunistic registration of a similar name to one in which they have goodwill/a reputation – Abbett will have to prove goodwill/reputation but the name need not be registered.

Also Abbett can object if suspect that the registration is intended to be used to extract money from him or to prevent him registering the name – not using Abed Ltd as a company name could lend weight to this objection.

MARKS AWARDED 9.5/15

Question 10

a)

- Existence of a duty of care
 - 'neighbour principle' – take reasonable care to avoid action or inaction which may reasonably be foreseen as likely to cause damage to a person (e.g. a claimant in a negligence case).
- Breach of the duty of care
 - It is up to the standard of care required.
 - 'reasonable man test'.
 - Consider how likely damage is, cost and practicality of awarding damage, seriousness of damage, importance of results to be achieved.
- Causation.
 - (in fact) – the breach is a cause of the damage – 'but for' test (e.g. but for action of defendant, claimant would not have suffered damage).
- Remoteness (legal causation)
 - Was the kind of damage reasonably foreseeable.
 - Is there a break in the chain of causation (e.g. intervening acts).

c) Duty of the expert witness is to the court and not to the person paying them – duty is to provide an opinion that enables court to correctly determine facts relating to a specialised issue.

e)

- Words complained of are untrue
- False statement made in relation to claimant (e.g. books if decides to pursue this course of action) or claimant's property which are intended to cause actual economic harm.
 - Published maliciously
- Out of personal spite or with intention or motive to injure claimant without just cause or excuse or where has knowledge of or is reckless as to the falsity of the statement.
 - Causes special damage
- Claimant must prove that he has suffered actual economic losses as a direct consequence of the malicious publication of the false statement
- Not necessary to prove if the statement was calculated (likely) to inflict pecuniary damage on the claimant in relation to the office, position, calling, trade or business held/carried on when the statement was made (or if published in permanent form and calculated to inflict pecuniary damage).

MARKS AWARDED 6.5/15