

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2017**

**Section A: generally marks are to be awarded only for fully correct answers and, unless stated otherwise, half marks should not be awarded. Whilst the precise use of the language contained in the mark scheme is not expected the candidate must refer explicitly to each issue referred to the mark scheme.**

**Section B: Marks are awarded for candidates demonstrating their understanding of the legal concepts rather than for strict compliance with the legal language used in the mark scheme. Except where half marks are already indicated, half marks may be awarded throughout where the candidate has demonstrated understanding but has not given a sufficient answer to achieve a full mark.**

**Part A**

**Question 1**

a) Which of these courts have civil and/or criminal jurisdiction?

- i) Magistrates Court;
- ii) County Court;
- iii) High Court.

**4 marks**

b) Which court has the exclusive jurisdiction to hear applications for judicial review?

**1 mark**

c) Considering the application of laws of the European Union such as Directives and Regulations, what is meant by the terms:

- i) vertical effect?
- ii) horizontal effect?

**2 marks**

d) Name the three types of person who are described as a 'registered person' in the IPReg Code of Conduct.

**3 marks**

**Total: 10 marks**

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**Answer**

- a) i) Criminal 1 mark  
ii) Civil 1 mark  
iii) Both Civil and Criminal 2 marks
- b) High Court (0.5) Administrative Court (0.5) 1 mark total
- c) i) Vertical effect is the ability of an individual to invoke a provision of European legislation against the state 1 mark  
ii) Horizontal effect is the ability of an individual to invoke such a provision against another individual 1 mark
- d) a registered patent attorney, a registered trade mark attorney, a body (corporate or unincorporated) registered in the patent attorney register or the trade mark attorney register whether or not an ABS; 1 mark each, max of 3 marks

**Total: 10 marks**

**Question 2**

- a) Briefly explain the route of appeal from decisions of the Intellectual Property Enterprise Court on:
- i) an interim decision; 1 mark
- ii) a final decision. 1 mark

**Cont...**

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- b) In civil proceedings before the Intellectual Property Enterprise Court:
- i) what is normally the next step in the litigation after the exchange of statements of case between the parties has been completed?  
**1 mark**
  - ii) who is responsible, principally, for pursuing this next step?  
**1 mark**
  - iii) if this next step is not followed, what is the court's most severe sanction?  
**1 mark**
- c) In accordance with the Civil Procedure Rules, state two methods by which a claim can be served properly on a defendant in the UK.  
**2 marks**
- d) State the overriding objective embodied in the Civil Procedure Rules.  
**1 mark**
- e) The IPReg Code of Conduct, Rule 4 (*Competence*) identifies factors that a regulated person should take into account when considering whether the interests of the client would be served by the regulated person or some other person providing professional services in fulfilment of the client's instructions. State two of these factors.  
**2 marks**

**Total: 10 marks**

**Answer**

- a) i) Interim decisions should be appealed to the High Court (Chancery Division)  
**1 mark**
- ii) Final decisions should be appealed to the Court of Appeal (Civil Division)  
**1 mark**
- b) i) the Case Management Conference  
**1 mark**
- ii) the claimant  
**1 mark**
- iii) to strike out the claim entirely  
**1 mark**

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- c) any two methods described in CPR Part 6.3 including personal service, 1<sup>st</sup> class post, document exchange or other service which provides for service on the next business day, leaving at the defendant's place of business, fax or other electronic means of transmission (provided there is a previous indication that services may be effected that way), by any method authorised by the court

**2 marks**

- d) to enable the court to deal with cases justly and at proportionate cost (both aspects required)

**1 mark**

- e) IPREG Rule 4, Any two of the following:

- i) the circumstances (including in particular the gravity, complexity and likely cost) of the work;
- ii) the nature of the regulated person's practice;
- iii) the regulated person's ability, experience and seniority; and
- iv) the regulated person's relationship with the client

**2 marks**

**Total: 10 marks**

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**Question 3**

- a) With reference to the obtaining of an interim remedy from the court explain:
- i) what is meant by the 'balance of convenience';  
**2 marks**
  - ii) whether the interim remedy you discussed in part i) can be obtained in the small claims track of the Intellectual Property Enterprise Court.  
**1 mark**
- b) With reference to the obtaining of an interim remedy from the court and the term 'supervising solicitor':
- i) explain when a 'supervising solicitor' is required;  
**1 mark**
  - ii) describe the characteristics of a 'supervising solicitor';  
**1 mark**
- c) State three remedies available to a successful claimant in a claim of patent infringement in the Intellectual Property Enterprise Court (additional marks will not be awarded for answers including remedies in the alternative).  
**3 marks**
- d) With respect to rules relating to dealings with a witness set out in the IPReg Code of Conduct, state two actions that a regulated person must not do.  
**2 marks**

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Answer

- a) i) The use by the court of its discretion weighing up the inconvenience or damage to either party if an interim injunction (or freezing order) is or is not granted,  
**1 mark**
- including whether damages are an adequate remedy to the claimant in which event the injunction should not be granted  
**1 mark**
- ii) No because they apply to the grant of an interim injunction/freezing order and an interim injunction/freezing order cannot be applied for in the small claims track  
**1 mark**
- b) i) A supervising solicitor must be present at the execution of a search and seizure order  
**1 mark**
- ii) A supervising solicitor must be independent [of the claimant's solicitors] and must be experienced in supervising search and seizure orders/be female if the defendant is female.  
**1 mark**
- c) 1 mark each for any three of the following: Final injunction, damages or account of profits, delivery up of infringing articles, declaration that a patent is valid and infringed  
**Maximum 3 marks**
- d) 1 mark each for any two of the following:  
i) rehearse or coach a witness in relation to his evidence  
ii) encourage a witness to give evidence which is untruthful or which is not the whole truth;  
iii) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness, whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded [key answer underlined]  
**Maximum 2 marks**
- Total: 10 marks**

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Question 4

- a) In the law of contract what is meant by the following terms:
- i) 'condition';  
1 mark
  - ii) 'misrepresentation';  
1 mark
  - iii) 'privity'.  
1 mark
- b) Distinguish between assignment and novation of a contract.  
4 marks
- c) Explain why a copyright licence cannot normally be assigned.  
1 mark
- d) In the context of the IPReg Code of Conduct, Rule 13 (*Liens*), explain:
- i) what is a lien?  
1 mark
  - ii) when is a lien available to a regulated person?  
1 mark

**Total: 10 marks**

Answers

- a) i) a term of a contract which goes to the heart/root of the contract  
1 mark
- ii) a false statement of fact made one party to another party having the effect of inducing that party into the contract  
1 mark
- iii) the principle that only parties to a contract may enforce the benefit or burden of its terms  
1 mark

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- b) assignment is transfer of the benefit of a contract to another party **1 mark**  
novation is the transfer of the benefit and burden of a contract to another party **1 mark**  
  
novation requires consent of all parties to the original contract and the new party(ies),  
whereas assignment requires the consent only of the party having the benefit and the  
new party taking the benefit of the contract **1 mark (half marks may be awarded)**  
in a novation the original contract is extinguished and a new contract created **1 mark**
- c) An assignment cannot be made where the benefit is a personal right and a licence of  
copyright is viewed as a personal right. **1 mark**
- d) i) is the right of a regulated person to retain possession of client papers or  
materials where fees remain unpaid **1 mark**  
  
ii) a regulated person may only claim a lien when and to the extent that the lien  
is available in law *or* the lien is an express term of business [either of this  
latter aspect is sufficient] **1 mark**
- Total: 10 marks**

**Question 5**

- a) State and explain the most appropriate type of charge for the following types of  
assets:
- i) a factory building; **1 mark**  
  
ii) a portfolio of intellectual property rights. **1 mark**
- b) Briefly explain the nature of a limited partnership. **2 marks**
- c) State the document or documents essential for the existence of a limited company. **1 mark**

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- d) Distinguish between a company limited by guarantee and a company limited by shares.

**3 marks**

- e) With reference to the IPReg Code of Conduct, Rule 11 (*Financial Matters*), what principles apply to the handling of monies received from clients with respect to unpaid professional disbursements?

**2 marks**

**Answers**

- a)
- i) fixed charge, as the property is ascertainable the time of the grant of the security  
**1 mark**
  - ii) floating charge, as the property may vary over time as rights are created or extinguished over time  
**1 mark**
- b)
- a general partnership where  
there is at least one general partner having liability for all the debts of the partnership  
and have responsibility for management of the business  
**1 mark**
  - there are additionally limited partners whose liability is limited to the amount of  
money they initially put into the business  
**1 mark**
- c)
- the Memorandum and Articles of Association  
**1 mark**
- d)
- a company limited by shares has shareholders whose liability for the company's  
debts is limited to the amount of the shares they hold  
**1 mark**
  - a company limited by guarantee has members whose liability for the company's  
debts is limited to a stated amount set out in the company's articles, usually nominal  
**1 mark**
  - a company limited by shares usually distributes its profits to its shareholders whereas  
a company limited by guarantee retains its profits to reinvest into its operations  
**1 mark**

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- e) Such funds constitute client monies that must be paid into a separate client account, **1 mark**

Unless the work has been completed in which case they may be paid into office account

**1 mark**

**Total: 10 marks**

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**Part B**

**Question 6**

Simon runs a small business writing books for children. He alleges that Jackie copied one of his novels. He believes he has lost about £50,000. He has lots of witnesses, so the trial might last more than one week. He accepts that the evidence of some of the witnesses will probably overlap. He hopes that a detailed review of his book will get wide publicity in newspapers reporting on the case.

- a) Advise Simon on any advantages or disadvantages in bringing his case in the Intellectual Property Enterprise Court (IPEC) compared with the High Court.**

**5 marks**

- b) What problems might Simon have if he wanted to bring his case in the IPEC?**

**1 mark**

Simon wants to use one of his writers to compare the style of writing in the books.

- c) Advise Simon whether he is permitted to use one of his writers to give such evidence including discussing any limits on the role of such a witness in proceedings.**

**2 marks**

At a recent book launch Jackie told an influential distributor that in her opinion Simon based his story on a newspaper cartoon shown six months before the book's release. Simon denies this, saying the book was based on a real event from early in his childhood. Simon says the resulting rumour hurt him and harmed his sales as it has taken the surprise out of the book and wants to sue Jackie for all damage.

- d) Referring to the book launch, advise Simon on what action he could bring to sue Jackie and any problems with bringing such a case.**

**7 marks**

**Total: 15 marks**

**Answers**

- a) a reasonable discussion covering the following, but there must be application to the facts to get more than half marks

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the IPEC is part of the High Court but has special rules relating to its jurisdiction including a limit on damages claimed of £500,000 and limited to cases on intellectual property, judges of the IPEC have the same powers of remedy as a judge of the High Court, the CPR applies equally in the IPEC as well as the High Court – so no disadvantages by using the IPEC

**up to 2 marks available**

administratively simpler - IPEC judges tend to apply simpler/streamlined rules of procedure, limited to cases requiring a trial of up to 2 days max – less expensive for Simon

**1 mark**

speedier - route through to trial – Simon will get a decision more quickly

**1 mark**

there is a special scale of costs in place awarded against the losing party with a cap of £50,000 – so Simon is not risking as much if he loses

**1 mark**

- b) the number of witnesses will cause the trial to last more than 2 days so the case would have to be transferred to the High Court

**1 mark**

- c) Opinion evidence may only be submitted by an expert  
expert must remain independent and unbiased opinion regardless of what the party may be paying them (CPR r35, Practice Direction 2.2)

**2 marks**

- d) a reasonable discussion of each of these elements will attract marks, but there must be application to the facts to get more than half marks

malicious falsehood

**1 mark**

a false statement of fact and not of opinion – Jackie's statement appears to be a statement of opinion rather than fact as she has a basis for making the claim, though we can prove that the statement is false

**1 mark**

published - Jackie has published the statement orally to the publisher, we have no further information on publication and so we need to investigate that [see below re proof of special damage that might be dealt with here]

**1 mark**

the statement is made with malice (an intention to cause loss or an improper motive by defendant including recklessness) – we need to show more than just that the statement is false but that is made with malice, that is more than negligence, must have a 'dominant improper motive', Jackie's lack of checking up on the origin of the story and that she is alleged to have copied Simon's story could be evidence of such a motive

**1.5 marks in total for discussing these issues**

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claimant should show that damage is caused as a result of the statement - however Simon should be able to rely on the exception in s3(1) Defamation Act 1952 the gist of which (where the said words are calculated to cause pecuniary damage to the claimant in respect of any office, profession, calling, trade or business held or carried on by him at the time of publication, "calculated" meaning 'more likely than not' so that he may recover special damages, that is financial damage caused as a result of the falsehood) must be discussed

**1.5 marks in total for discussing these issues**

hurt feelings - aggravated damages can be awarded for injury to feelings

**1 mark**

**Total: 15 marks**

**Question 7**

Sanjay met Freddy on holiday. Sanjay has a UK patent covering a new soft drinks can. Together, as a UK limited partnership, Sanjay and Freddy set up a factory manufacturing these drinks cans. Sanjay acts as the general partner.

- a) Advise Sanjay on an alternative legal structure for his business, describing the characteristics of his existing structure and the advantages of using the one you choose over his current business structure.**

**6 marks**

When Sanjay first met Freddy, Sanjay had asked David, a patent attorney he met at a drinks party, about what kind of legal structure to use for his business venture together with Freddy. David suggested the limited partnership that Sanjay eventually chose sounded good.

The business fails and Sanjay is made personally liable for the business's debts. Sanjay says David failed to warn him he would be personally liable for the business debts. As a result he lost his home. His wife, who worked from home, lost her business. David says Sanjay was already falling behind in his mortgage because Sanjay's business wasn't successful.

- b) Describe each element of the tort of negligence and discuss how they apply to the facts surrounding David's advice.**

**9 marks**

**Answer**

- a) Sanjay's existing business structure is a limited partnership in which Sanjay the general partner has unlimited liability whereas Freddy is likely to be a limited partner and have

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limited liability according to the amount Freddy has invested in the business and Sanjay alone has responsibility for managing the business

**up to 2 marks available, 1 for each point**

Alternative structures can reasonably be i) a limited company or ii) limited liability partnership both of which aim to limit Sanjay's liability:

Limited company:

A limited company has individual and separate legal identity

owned by its shareholders who have limited liability

managed by its Directors.

A limited company is solely liable for the debts of the company's business

beyond the shareholders liability according the value of the unpaid up shareholding

access to floating charges

unless a Director can be found personally liable usually for reasons of misconduct in fulfilling the Directorship.

**4 marks for any 4 points made**

OR

LLP:

Has element of partnership and limited companies, where the LLP has legal personality

All partners have limited liability

All partners have the right to manage the LLP's business unlike shareholders in a limited company

No requirement even for a written partnership agreement

The LLP pays no tax as the individual partners are taxed as individuals

Must be registered and file accounts with Companies House

**4 marks for any 4 points made**

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- b) a reasonable discussion with the following points though the answer need not be structured in this way, but there must be application to the facts to get more than half marks.
- i) duty of care (relationship of sufficient proximity to impose such a duty), the duty may be framed either as the 'neighbour principle' or *Caparo v Dickman/Hedley Byrne* negligent misstatement basis – David is a patent attorney and has taken it upon himself to supply advice, but the situation is at a party  
**2 marks**
  - ii) breach of duty (objective standard of care required of a person in exercising that duty, reasonable man test) – David should have known that Sanjay was attracting an unlimited personal liability in the business  
**2 marks**
  - iii) reasonable foreseeability/remoteness/causation in law – it was reasonably foreseeable that Sanjay might suffer if his business experienced difficulties, not relevant that David was at a party  
**2 marks**
  - iv) causation of damage/in fact/ (would damage have occurred "but for" test or other reasonable discussion of causation together with remoteness of the type of damage), with the following application to the scenario
    - loss of home, not too remote but arguably lack of causation because Sanjay was already experiencing difficulties in paying the mortgage
    - the damage to Sanjay's wife's business is probably too remote**up to 3 marks available**

**Total: 15 marks**

**Question 8**

Angela and Theresa met on holiday. They chat about the new laser pen Angela has invented and for which Angela has been granted a patent. Angela tells Theresa she is looking for someone to take a licence to manufacture the pen as she wants to retire. Theresa shows Angela a standard manufacturing agreement she has on her computer and mentions a licence fee of 25 pence per pen manufactured.

Back in the UK, Angela emails Theresa saying the deal sounded good. She attaches a similar manufacturing agreement. There is no mention of a licence fee. Theresa doesn't respond. Theresa then commences manufacturing the pen at her factory without telling Angela. A few weeks later Angela finds out and doesn't accept she agreed to Theresa manufacturing the pen.

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- a) Based on what is known so far, advise Angela on whether a contract with Theresa could exist.**

**6 marks**

Angela wants to stop Theresa manufacturing before a launch event that Theresa is holding, which takes place tomorrow morning starting at 7am.

- b) Advise Angela on the appropriate court order to seek and what form the evidence will take. In advising Angela, apply the relevant legal test and any undertakings she will have to give should the order be granted.**

**9 marks**

**Total: 15 marks**

**Answers**

- a) a reasonable discussion covering the following

though Angela and Theresa have met on holiday their prolonged discussions and exchange of draft agreement appear to suggest a real intention to create legal relations;

Theresa appears to make an offer capable of acceptance (refer to certainty);

though Angela says that the deal sounded good she is in fact making a counter offer

by sending a similar but different agreement/there doesn't appear to be acceptance by Angela;

there is no evidence of Theresa accepting the counter offer (acceptance must be communicated) so no contract at point of Theresa starting manufacture nor after the children's party;

there is no evidence of consideration that is the mutual promise to give the licence (ie not sue) by Angela and Theresa to pay as the promises are as yet undefined

**6 marks, 1 for each point (half marks possible)**

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- b) marks should only be awarded for application of the facts to the correct test or rule, the candidate need not agree with the examiner's conclusion on each point provided the argument is reasonably based on the rule, but each aspect of the rule does need to be addressed:

Angela should apply for an urgent interim injunction without notice  
Supporting evidence to the court must be made in a sworn affidavit – a witness statement will not suffice

The court will apply the principles established in the case *American Cyanamid*

**2 marks**

is there a serious issue to be tried – Angela appears to have a serious chance of demonstrating that Theresa is manufacturing the patented pen in the absence of a licence;

are damages an adequate remedy in the event Theresa's behaviour continues and that behaviour were to be found at trial to be wrongful – Angela could be awarded a licence fee;

where does the balance of convenience lie as between the parties (including the merits of the case) - Angela does not herself have an ongoing business that is going to be damaged however it might affect the reputation of Angela's product;

if otherwise balanced between the parties, objective is to preserve the status quo ante - Theresa hasn't launched yet so probably best to stop her.

**Up to 4 marks**

Angela will have to give undertakings:

To pay damages to Theresa should the injunction be found to have been granted in error

To commence proceedings as soon as possible

To bring notice of the application to Theresa's notice as soon as possible so as to arrange for an inter partes hearing of the application

**For any two points, Up to 3 marks**

**Total: 15 marks**

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**Question 9**

Alexander is Nicholas's overseas sales agent. Alexander tells Nicholas that due to local laws in some of the countries in which he sells, local trade mark registrations must be held in Alexander's name due to trading regulations. Nicholas agrees and continues to spend money on promoting the trade marks in those countries. Alexander continues to trade under Nicholas's trademarks and also sells his own products under the mark without telling Nicholas. Nicholas finds out and demands Alexander assign the trade mark registrations to him. Alexander fails to do so. Nicholas accuses Alexander of failing in his duty as trustee.

- a) With reference to the scenario, explain why Alexander might be considered a trustee and the requirements for establishing such a trust.**

**5 marks**

Meanwhile Nicholas is suing a rival in the Intellectual Property Enterprise Court for trade mark infringement. Because of the nature of his case, Nicholas needs to establish that his mark has an enhanced reputation and the mark used by his rival is causing customer confusion. At trial, Nicholas wants to use survey evidence to support his case. He will first conduct a pilot survey and then a full survey.

- b) Advise Nicholas:**

- i) whether, with respect to such evidence of customer confusion, he needs any permissions of the court, and, if so, explain the test to be applied together with the likely decision; and**

**7 marks**

- ii) whether there is a distinction for survey evidence gathered to show enhanced distinctiveness. Explain your answer.**

**3 marks**

**Total: 15 marks**

**Answers**

- a) There are three requirements for a finding of a trust:  
Certainty of Intention – that the parties must have had the clear intention of Alexander holding the registrations for Nicholas

**1 mark**

Certainty of Subject matter - the UK TM registration is certain in scope and the parties clearly show an intention that Nicholas will be the one to use the mark in his business

**1 mark**

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Certainty of Object – the beneficiary, Nicholas and his business are clearly ascertainable.

**1 mark**

A trust can be express, implied or constructive or any reasonable discussion on the law of constructive trusts.

**1 mark**

fraud is not required to create a constructive trust but unconscionable conduct is required, Alexander has induced Nicholas to permit Alexander to hold the marks/Nicholas to spend money on the marketing but Alexander has secretly made profits as a result using the marks, Alexander's conscience must be affected

**1 mark**

b) Any reasonable discussion, no case names or verbatim reasoning required, half marks permitted.

i) He can conduct a pilot survey without permission at his own risk as to costs but requires permission to conduct the full survey.

**1 mark**

There is no general exclusion of such evidence in law but the overriding objective of the CPR requires the court to balance the value of making a survey with the likely cost.

**1 mark**

The test to be applied by the court: even if the evidence is technically admissible, the judge should not let it in unless (a) satisfied that it would be valuable and (b) that the likely utility of the evidence justifies the costs involved.

**3 marks**

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This test applies to both types of evidence however in the case of evidence of confusion the court has stated that “in the general run of cases where witnesses have been identified by a tailored series of questions, they will have been led towards a particular mindset which no longer represents the unstimulated evidence of people in the real world.” [*Interflora II*].

Or, setting out the Whitford guidelines on survey evidence:

No leading questions

Statistically relevant

Relevant cross-section

Full disclosure of method

**2 marks**

- ii) Any reasonable discussion covering issues set out in the following:

In the case of evidence of evidence of distinctiveness the issue is different “In the case of a survey as to confusion, the question whether the survey is likely to be of real value may readily be answered in the negative in a case where the goods or services in question are ordinary consumer goods or services and the judge feels that there will be no real difficulty in the court determining the issue of confusion without a survey. Conversely, in the case of a survey as to acquired distinctiveness, the court may feel that it is not able to determine such a dispute based on its own experience and/or the court may feel the need to guard against an idiosyncratic decision. A further possible distinction between a confusion survey and a distinctiveness survey is that the former may involve a prediction as to the likelihood of something happening whereas a distinctiveness survey addresses the issue of whether something has happened.” [*Enterprise Holdings*]

**2 marks maximum**

**Total: 15 marks**

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**Question 10**

Edward owns a patent for an energy efficient light bulb fitting. In a meeting with William, Edward gives William his prototype light bulb fitting. He promises to assign the patent to William. William knows Edward hasn't valued the patent and agrees to pay £50 for the patent even though William knows the patent is worth £10 million. Edward agrees to £50. The assignment is not recorded in writing and no transfer is recorded at the UKIPO. Edward then disappears and cannot be contacted. Later, William needs to take action to sue Pargit, who he says is infringing the patent.

- a) Assuming infringement would be established and Pargit has no other defences, explain what problem William has in bringing a claim against Pargit.**  
**4 marks**
- b) How can William overcome this problem and what other problems might he face?**  
**4 marks**

William brings the action anyway. During trial it turns out that after the meeting with William, Edward assigned the patent to Pargit for £1. Pargit was not told about the agreement with William.

- c) What does the law of equity tell us about the purported assignment to Pargit?**  
**3 marks**

Edward's prototype is presented at trial as evidence.

- d) Explain the nature and purpose of this evidence.**  
**2 marks**

William wanted his patent attorney, Samantha, to act at trial. Samantha had previously discussed the patent application for the fitting with Edward. Edward decided to use a different patent attorney to file the application and immediately wrote to Samantha saying she shouldn't feel restricted from acting for anyone else because of the conversation they had.

- e) Can Samantha act for William? Explain your answer.**  
**2 marks**

**Total: 15 marks**

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**Answers**

- a) William doesn't have legal title **1 mark**
- an assignment of registered design is only effective when made in writing **1 mark**
- however there is a contract supported by consideration therefore the Court will view this as an equitable assignment **2 marks**
- b) Apply to the court for an order [for specific performance] **1 mark**
- Specific performance/order is an equitable remedy and though the contract is enforceable as a matter of law William has, arguably, acted unfairly towards Edward, so the court may refuse specific performance **3 marks**
- c) Pargit is a 'bona fide purchaser of property for value without notice'. A purchaser of property over which another has an equitable interest may take free of that equitable interest where that purchaser purchases for valuable consideration without actual or constructive notice of the earlier equitable right. **3 marks**
- d) Edward's prototype is real/physical evidence, evidence that the meeting took place/that the particular fitting was discussed **2 marks**
- e) Conflicts Rule 7 – No. Samantha has likely acquired "relevant knowledge" about Edward even if he has waived the conflict in writing (which is unlikely as his waiver was not specific to this claim); candidates who conclude that Edward has not provided relevant knowledge can still be awarded marks provided they justify this **2 marks**

**Total: 15 marks**