

Examiner's
use only

Question 1

- a) The ratio decidendi is the legally binding ✓ part of the judgement. It can usually be discerned by determining which facts caused ✓ the judge(s) to arrive at the decision. In cases where there are more than one judge hearing the case (eg. Court of Appeal) the majority decision usually contains the ratio.
- b) i) Reason A is the majority and thus would likely form the ratio in that instance. ✓
- ii) No easily discernable ratio, as even though the overall decision is consistent the application of the law is not necessarily so.
- iii) The single decision will contain the ratio, as all judges are in agreement ✓ with the judgement and thus the reasoning in arriving at the decision.

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MARKS AWARDED 4/5

Question 2

- a) costs incurred up until the CMC ✓ including costs incurred in any pre-action negotiations and costs likely to be incurred until the end ✓ of the trial (eg expert witness costs, attorney charges, etc.)
- b) On the 'precedent H' form. ✓
- c) generally approves or disapproves expected costs on the cost-benefit approach, i.e. whether the proposed costs are proportionate and reasonably incurred. ✓ i.e. court approves the budget.

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MARKS AWARDED 4/5

Question 3

- a) Need to act with integrity and with the view to assisting the court. Upsetting ✓ the expert witness achieves neither of these and will probably only serve to annoy the judge.
- b) I would explain to the client that the controversy was not due to the actions ✓ of the expert per se as he was never implicated personally. It would seem that the expert witness is not demonstrably a shyster so upsetting him would probably weaken the case rather than help it. Could also potentially result in a costs sanction as it could be seen as an abuse of process. ✓

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MARKS AWARDED 3/5

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Question 4

- The academic is representing himself, i.e. he is a litigant in person.
- Whilst a representative has no specific obligation ✓ to other representatives, when it comes to litigants in person there is a duty to ensure that they are not specifically disadvantaged by not having legal representation (possibly set ✓ out in one of the 'codes of conduct').
- In this instance I think the reasonable thing to do would be to at least advise the academic to seek legal advice regarding the interpretation of the law. (i.e. give him a hint that doing so would probably be wise)
- Of course, duty is to our client so if the academic doesn't then seek legal advice then so be it.

2

MARKS AWARDED 2/3

2

Question 5

- A sworn affidavit is sworn on a ✓ holy book, eg. the bible, whereas an affirmed affidavit is not. ✓

2

MARKS AWARDED 2/2

2

Question 6

- No – if he is completing a sworn statement then it could be sworn on the holy book of Hinduism. Alternatively, he could just affirm the document.

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MARKS AWARDED 0/1

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Question 7

- ALTERATIONS
 - Preferably have the document retyped to include the amendments.
 - If retyping is not possible, then it would be necessary for both the person making ✓ the affidavit and the commissioner ✓ for oaths to initial and date each amendment prior to completing the statements of truth/Jurat.
 - Also need to make sure that the amendments were actually made by the person making the affidavit – if not then refuse to complete the affidavit. ✓
- BLANKS
 - Again, if retyping the doc (as above) then have the blanks removed at that stage.
 - otherwise, strike through any blanks ✓ and initial and date each strikethrough (the commissioner, of course) before completing the jurat. 4

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MARKS AWARDED 4/5

Question 8

- Skeleton Arguments (filed ~ 3 days before trial) ✓
- Primers (reading lists filed about a week before trial). ✓ 2

2

MARKS AWARDED 2/2

Question 9

- That the comptroller took into account things that he ought not to have taken into account. ✓
- That the comptroller did not take into account things that he ought to have taken into account. ✓ 2

2

MARKS AWARDED 2/2

Question 10

- a) 21 days from the date the decision was handed down.
- b) That there is a divergence in a point of law and it would be in the public ✓ interest to settle the interpretation of that point of law.

- c) – It was made per incuriam ✓
- The facts of the earlier case are substantially different to the case in question ✓
- A supreme court decision has overruled the earlier Court of Appeal decision. ✓

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MARKS AWARDED 4/5

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Question 11

- The likelihood of recovering all costs (attorney costs & disbursements) in a successful action is very low (probably nil). ✓
- Should the action fail (i.e. no infringement) then Fastfix would have to pay the other side's costs (again, not all, but a substantial portion of them) ✓
- The value of the action will determine in which court the case will be heard, which can have significant implications ✓ on costs recovery (capped in IPEC, not in Patents Court).

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MARKS AWARDED 3/3

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Question 12

- Mediation is much cheaper than litigation ✓
- Mediation will most likely result in a speedier resolution of the issue ✓
- Mediation will most likely result in an amicable solution and thus not damage business relations (particularly when considering that Parceloto are one of Clinkermail's "most reliable, long standing licensees"). ✓

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MARKS AWARDED 3/3

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Question 13

- To avoid litigation ✓
- To resolve issues/disputes in a quick and cost effective manner ✓
- In cases where the parties having the dispute are business partners or have an otherwise good business relationship, ADR can help ✓ solve that dispute amicably, thereby maintaining the good business relationship.

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MARKS AWARDED 3/3

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Question 14

- a) It is when a party requesting some form of immediate relief, eg. an interim injunction, pays into the court a sum of money to guard against a scenario where the relief is subsequently found to have been unjustly granted.
- b) The purpose of cross-undertakings is to ensure that a party against which a form of relief has been granted is indemnified (to some degree) ✓ in the instance that the relief should not have been granted, eg. if it transpires that an interim injunction should not have been granted.

1

MARKS AWARDED 1/2

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Question 15

- Relief sought ✓
- Details of the (allegedly) infringing article, preferably in table format. ✓
- Possibly a request for further information under Part 18 regarding DA's alleged infringing activities. ✓

2

MARKS AWARDED 2/2

2

Question 16

- a) If Khemko has complied with ✓ the pre-action practice direction, then 42 days ✓ from the date of service of the particulars of claim. 70 days ✓ that is, the term increases from 42 days to 70 day from the date of service of the particulars of claim if the pre-action PD has not been complied with.
- b) 28 days from the date of service of the particulars of claim.

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MARKS AWARDED 3/5

3

Question 17

- a) – Apply for specific disclosure (pre-action)
- Better yet, apply (without notice) for a search-and-seize order (“Anton-Piller” order) ✓
- Applying without giving notice to SE would ✓ minimise risk of SE destroying relevant evidence.

- b) – The relationship between TT and JH
- Copies of any relevant documents preceding ✓ JH leaving TT (eg. preliminary designs) ✓
- Proof of the similar prototype 'developed' by SE (eg. photos or leaflets obtained at the trade fair)
- Copy of employment contract between TT & JH showing IP developed by JH belonged to TT.
- A statement regarding SE's reputation for destroying evidence. ✓

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MARKS AWARDED 4/5

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Question 18

- In support of an application for an Anton-Pillar order (search & seize)
- In support of an application for a Mareva injunction (Freezing order).

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MARKS AWARDED 0/2

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