

Examiner's
use only

Question 1

- a)
 - the point of law that determines the outcome of the case
 - can be discerned by reading and analysing the case – not always straightforward
- b)
 - i) ratio may be discerned from reason A, as that is the majority reasoning. ✓
 - ii) no ratio, as no majority reasoning was reached ✓
 - iii) ratio can probably not be discerned from the single judgement, as you don't know the reasoning of the other two judges for their agreement

2

MARKS AWARDED 2/5

2

Question 2

- a)
 - legal costs accrued to date ✓
 - estimate of legal costs to the end of trial ✓
 - e.g. costs of preparing letter before claim, analysing evidence, preparing statements of case and trial bundle, counsel's costs, costs for experts; experiments etc.
- b) as an itemised schedule
- c) what costs are reasonable ✓

3

MARKS AWARDED 3/5

3

Question 3

- a) I have a duty to do the best for my client.
However, I have to act with integrity and professionalism. ✓
The court would not look favourably on me if I intentionally made the witness uncomfortable during cross-examination, especially as the witness was not personally involved in the controversy. ✓ I also have no evidence that the client's information is true.
- b) I should not use the client information to undermine the witness due ✓ to the reasons in part (a), and should inform the client as such. If they insisted, I would withdraw from the case.

3

MARKS AWARDED 3/5

3

Question 4

I do not have a duty to the other side ✓, and therefore I am under no obligation to correct the academic's understanding of the law.

I should not, however, take advantage of the ✓ lay opponent. I might suggest that the academic should seek legal representation.

I also have a duty to the court, so if the court is being misled by the academic's arguments, I should inform the court. ✓

3

MARKS AWARDED 3/3

Question 5

By swearing an affidavit, you are making an oath to a higher being, and you swear on the holy book of your faith. ✓

By affirming an affidavit, you are bound by your conscience. No higher beings or holy books are involved. ✓

Both types of affidavit are as valid as each other.

2

MARKS AWARDED 2/2

Question 6

No, the form of a statutory declaration does not involve religion. ✓ A statutory declaration is made possible by statutory instrument.

1

MARKS AWARDED 1/1

Question 7

Alterations

- if illegible, make sure they are corrected to be legible ✓
- alterations must be initialled by the deponent ✓ and by me ✓ (including any corrections to make them legible)
- (before the above) make sure the deponent understands the alterations and check whether he is aware that they were made ✓

Blanks

- blank spaces are not allowed – I could reject the affidavit
- alternatively, I could put a cross through the blank spaces – this is an alteration, so the deponent and I should initial the crosses ✓.

5

MARKS AWARDED 5/5

3

2

1

3

Question 8

- skeleton arguments ✓
- primers ✓

2

MARKS AWARDED 2/2

2

Question 9

- i) the Comptroller did not take into regard things that he should have taken into regard ✓
- ii) the Comptroller took into regard things that he should not have taken into regard ✓

2

MARKS AWARDED 2/2

2

Question 10

- a) 28 days from the Court of Appeal's decision ✓
- b) There is an arguable point of law that is of public importance, that the Supreme Court ought to consider at this time ✓
- c) The earlier case was decided with carelessness/mistake ✓
 There are several conflicting decisions
 The earlier case does not follow the settled view of the EPO Boards of Appeal ✓
 The present case can be distinguished from the earlier case ✓

5

MARKS AWARDED 5/5

5

Question 11

1. An estimate of the costs involved
2. A warning that not all of the costs incurred may be recovered, even if we win (shortfall in costs) ✓
3. A warning that if we lose, the company may have to pay the costs of the other side ✓
4. Mention alternative ways of funding the litigation e.g. no win-no fee, third party funding, after the event insurance ✓

3

MARKS AWARDED 3/3

3

Question 12

1. Mediation will be cheaper than litigation ✓
2. Parceloto Ltd is a reliable and longstanding client and it would be beneficial for the relationship to continue. This might be possible with ✓ mediation, but the relationship would likely be destroyed with litigation.
3. Litigation might bring bad publicity to Clinkermail and may make other licensees question whether they want to continue doing business with ✓ Clinkermail.

3

MARKS AWARDED 3/3

3

Question 13

1. Encourage parties to settle before litigation ✓
2. Encourage parties to exchange information so that if litigation proceeds, the proceedings can be dealt with more efficiently ✓
3. Identify issues at an early stage ✓

3

MARKS AWARDED 3/3

3

Question 14

- a) where one side makes a financial undertaking to the other side (via the court) in respect of damages that may be incurred by the actions (e.g. injunction) taken by said one side. ✓
- b) to make the defendant whole if the claimant loses. ✓

2

MARKS AWARDED 2/2

2

Question 15

1. Examples of alleged infringement of each of the relevant claims of the patent ✓
2. Damages as a result of the infringement ✓

2

MARKS AWARDED 2/2

2

Question 16

a) If the pre-action PD was followed by the claimant ✓, Elemental Lab has 42 days ✓ after the acknowledgement of service within which to file a defence.

If the pre-action PD was not ✓ followed, then they have 70 days ✓ from the acknowledgement of service to file a defence

b) 3 months

3

MARKS AWARDED 3/5

3

Question 17

a) Make a search order application (Anton ✓ Pillar) to the court to preserve evidence. At the same time, request an interim injunction to stop Squirrel's potentially infringing activities.

b) Information setting out the case that:

- the defendant's conduct poses a real risk to the claimant
- that the defendant is in possession of incriminating evidence ✓
- that the defendant is likely to destroy the evidence if the order is not granted ✓

3

MARKS AWARDED 3/5

3

Question 18

1. Declaring change of name where change by deed poll was not performed ✓

2. Declaring land use and occupation over a particular period of time. ✓

3. Declaring originality of a product during patent prosecution

2

MARKS AWARDED 2/2

2