

FC2 (Law) UK Patent  
FINAL Mark Scheme 2019

**SECTION A**

**Question 1**

Briefly describe the difference in roles in the Intellectual Property Enterprise Court between a District Judge and a Judge.

**Total: 2 marks**

**Answer**

A District Judge sits on the small claims track and can't grant an interim injunction **1 mark**

A Judge sits on multi-track cases and can grant an interim injunction **1 mark**

**Total: 2 marks**

**Question 2**

Briefly answer each of the following.

a) What is meant by stare decisis? **1 mark**

b) Whether appeals to the Court of Appeal are by way of either a review only or full re-hearing of the case. **1 mark**

c) What is the time limit for applying for judicial review? **1 mark**

**Total: 3 marks**

**Answer**

a) Stare decisis is the principle of legal precedent by which the legal reasoning of a more senior court must be followed by a junior court. **1 mark**

b) The general rule according to the Civil Procedure Rules is that appeals are by way of review of a decision only and are not a re-hearing unless a specific rule allows otherwise. **1 mark**

c) The time limit is 3 months from when the grounds for making the claim arose. **1 mark**

**Total: 3 marks**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Question 3**

State 3 grounds on which a decision may be challenged by judicial review.

**3 marks**

**Answer**

a) Illegality.

**1 mark**

b) Unfairness.

**1 mark**

c) Irrationality and lack of proportionality.

**1 mark (awarded for either)**

**Total: 3 marks**

**Question 4**

With respect to Rule 3 of the *IPREG Litigator's Code*, what are the regulated person's obligation in respect of undertakings given to the Court or the other party?

**Total: 2 marks**

**Answer**

The regulated person must  
Comply with the letter and spirit of the undertaking

**1 mark**

Whether the undertaking was supported by consideration or not.

**1 mark**

**Total: 2 marks**

**Question 5**

Rule 11 to the *IPREG Code of Conduct* states: "In the event that a regulated person receives money from a client, other than by way of payment of fees or disbursements incurred but including money on account (for fees or disbursements) paid up front, they should ensure that such money is held on trust for the client in an account which is entirely separate from the regulated person's or the firm's professional business accounts"

What does the updated Guidance to Rule 11, introduced on 1 October 2015, state is the primary aim of this Rule?

**Total: 1 mark**

**Answer**

The primary aim of Rule 11 is to ensure that money paid by clients is only used for its specified purpose.

**Total: 1 mark**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Question 6**

With reference to Rule 4 of the *IPREG Code of Conduct* state the four matters that the regulated person should have regard to when considering whether the interest of the client would be served by the regulated person acting for that client.

**Total: 4 marks**

**Answer**

The circumstances (including in particular the gravity, complexity and likely cost) of the work	<b>1 mark</b>
The nature of the regulated person's practice	<b>1 mark</b>
The regulated person's ability, experience and seniority	<b>1 mark</b>
The regulated person's relationship with the client	<b>1 mark</b>
	<b>Total: 4 marks</b>

**Question 7**

List the five principles for implying terms into a contract as set out in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 52 ALR 20*

**Total: 5 marks**

**Answer**

One mark for each of the following, provided the candidate has conveyed the gist of each principle:

1. it must be reasonable and equitable;
2. it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;
3. it must be so obvious that "it goes without saying";
4. it must be capable of clear expression;
5. it must not contradict any express term of the contract

**Total: 5 marks**

**Question 8**

When bringing an action for infringement of an intellectual property right, explain the difference in the position of a claimant who has legal title from that of a claimant that has equitable title only following an attempted assignment of that right to the claimant.

**Total: 2 marks**

FC2 (Law) UK Patent  
FINAL Mark Scheme 2019

**Answer**

The holder of the legal title can bring an action for infringement in his own name

**1 mark**

A reasonable response covering i) must rely on the rules governing equitable assignments and ii) join the assignor to any action for enforcement of that right

**1 mark**

**Total: 2 marks**

**Question 9**

- a) Explain the difference between a deed and a contract with respect to any consideration required. **3 marks**
- b) State 3 essential formalities for an individual to create a deed instrument. **3 marks**
- c) State the limitation period for bringing a claim for breach of a deed. **1 mark**
- d) State a type of transaction where execution of a deed is required by law. **1 mark**

**Total: 8 marks**

**Answer**

- a) A contract must be supported by consideration (**1 mark**) whereas a deed requires no consideration (**1 mark**)  
A reasonable discussion of why there is a difference such as this is because a deed is considered a solemn promise by the person making the deed whereas a contract is seen as a bargain between the parties (any reasonable explanation of the difference will obtain these marks). **1 mark**
- b) i) the document must state that it is a deed ii) it must be in writing iii) the signature of the party (parties) must be witnessed. **3 marks**
- c) 12 years **1 mark**
- d) Any reasonable correct answer – the usual one is a transfer of *real* property **1 mark**

**Total: 8 marks**

**Question 10**

How does The Trade Secrets (Enforcement, etc) Regulations 2018 implementing the EU Directive on Trade Secrets (Dir 2016/1943) define a trade secret?

**Total: 7 marks**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Answer**

A trade secret information which is

- i) Secret in the sense that it is not as a body or in the precise configuration and assembly of its components (1), generally known among (1), or readily accessible to (1), persons within the circles that normally deal with the kind of information in question (1)  
**4 marks**
- ii) Has commercial value because it is secret  
**1 mark**
- iii) Has been subject to reasonable steps (1) under the circumstances, by the person lawfully in control of the information, to keep it secret (1).  
**2 marks**

**Total: 7 marks**

**Question 11**

With reference to Rule 4 of the *IPREG Code of Conduct*:

- a) when might it be acceptable to delay a transfer of responsibility for a client's matter to a new representative when asked to do so by the client?
- b) how is it best to warn the client of this?
- c) why is it best to use this method to warn the client of this?

**Total: 3 marks**

**Answer**

- a) in exercise of any lien
- b) at the start of the relationship in the written terms of business
- c) because there is no statutory lien such as solicitors have the benefit of and the common law on this issue has never been clarified.

**Total: 3 marks**

FC2 (Law) UK Patent  
FINAL Mark Scheme 2019

**SECTION B**

**Question 12**

William owns a patent covering a particular self-watering plant pot. William is very protective about his invention.

William's local allotment society holds a fund day digging on the allotment. Whilst digging alongside Tulip he describes his plant pot. Tulip says, "That sounds great, I could make and sell 10,000 of those!"

Whilst continuing to dig William says "Sure, well, you'd have to make them the way I wanted you to and give me 10% of all your profits."

Tulip lays down her spade and, offers William her prizewinning big flowering plant, telling William, "I'll give you 15% so long as I can adapt it for big plants."

Williams says nothing, and takes Tulip's prize winning flower back home. They never speak again.

- a) Prepare notes for a meeting with William in which you advise William whether a contract to manufacture the plant pot exists between William and Tulip.**  
**10 marks**

Sometime later William finds out that the chairman of the allotment society has sent out pamphlets to all allotment holders. In the pamphlet, the chairman states that he has designed a plant pot that keeps the plant watered "better than any other pots on the market today". People don't appear to take any notice of this pamphlet except as compost.

The chairman created a document to show that his was the best product on the market. He showed this document to Tulip in a private meeting. He succeeded in persuading Tulip to manufacture and sell his pots. The document fails however to assess William's product. Tulip refuses to sell William's plant pot any longer because of this meeting.

- b) Prepare notes for a meeting with William in which you advise William whether he can bring claims for malicious falsehood against the chairman, including any further evidence required by William to establish a claim.**  
**10 marks**

**Total: 20 marks**

**Answer**

- a) A reasonable structure and discussion covering the following:

Intention to create legal relations.

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

Though William and Tulip have met at a social event / the circumstances do not suggest they are sitting down to negotiate a contract / Tulips words could be interpreted as being jokey / but they are talking in detailed terms.

**2.5 marks**

Offer / Acceptance

Tulips offer needs to be certain as to its terms. Certainty as to subject matter / numbers to manufactured / terms as to way in which they should be made (though details not concluded) / royalty rate.

**2.5 marks**

Acceptance of all terms of the contract, needs to be to be communicated, but can be by conduct.

Offer by William but Counter-offer made by Tulip. Did William accept offer – William's act of taking a significant present could be interpreted as an acceptance but is a weak basis on which to make such a claim as he could have been merely polite or friendly.

**3 marks**

Consideration.

Must be sufficient but need not be adequate; A plant can constitute sufficient consideration, though a better answer would be the forbearance to sue/mutual promises

**2 marks**

b)

Malicious Falsehood

malicious falsehood is a false statement of fact and not of opinion – the statements are of fact however a court would likely distinguish (in addition to the question of malice) the pamphlet as a 'mere puff' where the public are unlikely to take the statements seriously and

the statements to Tulip that purport to be serious and to try to tempt Tulip into making or selling his pots

**2 mark**

Publication

published – the chairman's pamphlet and his statements to Tulips are both publications

**1 mark**

Malice

the statement is made with malice (an intention to cause loss or a dominant improper motive by defendant including recklessness) – we need to show more than just that the statement is

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

false but that is made with malice, that is more than negligence, must have a 'dominant improper motive'  
the chairman's lack of checking up on William's product could be taken as being reckless (actionable) or merely negligent (not actionable)  
more evidence such as whether the chairman knew of William's rival product could be evidence of maliciousness

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

Damage

claimant must show that identifiable damage (special) is caused as a result of the statement - however William 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

wrt the pamphlet there is no loss identifiable and William will have to show the pamphlet was calculated to cause damage

wrt documents shown to Tulip, special damage can be shown through lost royalties  
hurt feelings - aggravated damages can be awarded for injury to William's feelings

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

**Total: 20 marks**



**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Question 13**

**(Do not consider any action under The Trade Secrets (Enforcement, etc) Regulations 2018 number 597 implementing the EU Directive on Trade Secrets (Dir 2016/943).)**

BoardIt Ltd specialises in developing techniques to coat parts of printed circuit boards.

A particular technique was held in a series of directions in a database that Tina, a freelance technologist consultant, helped create. Each direction in the database is information separately known to the public. Those directions have been brought together as a collection of data by BoardIt. Tina has said to BoardIt that she is wanting to stay with BoardIt for the long term, become a director and share in their success. There is a term in Tina's consultancy agreement preventing her from "disclosing BoardIt's trade secrets to the public" only after she has left BoardIt.

Tina left BoardIt and immediately setup CoolIt Ltd. At CoolIt Tina developed further techniques to coat printed circuit boards, techniques that were more speedily developed because of the database developed at BoardIt. Tina keeps all information at CoolIt secret.

- a) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Tina for developing CoolIt's new techniques.**

**7 marks**

Pargit is employed by BoardIt as a regional sales manager Pargit knew of the advantages such techniques could bring to circuit boards but didn't know about the database. During his time at BoardIt Pargit developed a list of all possible purchasers of circuit boards. He has also developed a knowledge of all technologists capable of manufacturing using these techniques. Pargit's employment contract didn't contain a term relating to BoardIt's trade secrets.

Pargit then left BoardIt and joined CoolIt. The day before leaving Pargit sent Tina the list of all possible purchasers developed whilst at BoardIt.

- b) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for sending the list of possible customers to Tina.**

**4 marks**

Whilst working at CoolIt Pargit uses his knowledge of possible manufacturers to assist with CoolIt's business.

- c) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for using his knowledge of manufacturers gained whilst at BoardIt.**

**2 marks**

Pargit believes that Tina has developed CoolIt's technology independently of BoardIt's database, using only the information that is in the public domain. Pargit continues to sell CoolIt's technology highlighting the benefits of these coating techniques.

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

- d) Prepare notes for a meeting in which you advise BoardIt whether it can take action against Pargit for his selling activities selling Tina's new techniques developed whilst at CoolIt.**

**4 marks**

BoardIt has just learnt of Tina and Pargit's activities at CoolIt and is fearful that they will 'steal a march' on BoardIt's marketing, but accepts that competitors will reverse engineer their products because of the Tina and Pargit's activities at CoolIt.

- e) Assuming an injunction will be granted by the court against CoolIt, Tina and/or Pargit, prepare notes for a meeting in which you advise BoardIt of how long the injunction will last including evidence that BoardIt could present to the court in its favour on this point against**

**3 marks**

**Answer**

a)

A reasonable structure and discussion covering the following:

The law of trade secrets under UK common law (*Coco v Clark*) (case name not required)

**1 mark**

including

the information has the necessary quality of confidence – the database has commercial value as technical information giving direction on how to recreate the technology and can therefore be protected

even though each element is known publicly the collection of directions in the database can constitute a trade secret

**2 marks**

whether there is an obligation of confidence – Tina has a written obligation not to disclose BoardIt's trade secrets to the public, that is the extent of the express contractual obligation

**1 mark**

a reasonable discussion covering:

there has been breach by misuse by Tina but not disclosure to the public – so the express obligation doesn't apply

the court may imply an obligation into the contract that Tina should not use the information to immediately compete with BoardIt given the circumstances, alternatively, the rule will impose an equitable obligation on Tina's conscience that she should not misuse secret information which would further BoardIt's business

discussion of damage that results from breach

**3 marks**

b)

Pargit sends BoardIt's confidential information to Tina before he has left his employment  
Therefore his contract of employment covers this situation

**1 mark**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

His contract of employment has no express confidentiality terms so the court will apply the general implied obligations of an employee employment contract (*Faccenda Chicken* – case name not required)

Before leaving his employ he has an obligation not to disclose information whether it is his general skill and knowledge or BoardIt's trade secrets

The list of possible purchasers is at least part of his general skill and knowledge if not a trade secret so BoardIt can take action to prevent Pargit's actions.

**3 marks**

c)

After leaving BoardIt Pargit has no obligation to BoardIt wrt his general skill and knowledge as distinct from trade secrets [avoid double mark if candidate has made distinction in part b) but mark can be awarded in this part if not under part b)] (*Faccenda Chicken* – case name not required)

His knowledge as to general suppliers / manufacturers is likely to be considered as his general knowledge not a trade secret

So he is free to use this information for CoolIt

**2 marks**

d)

the common law rule acts on a person's conscience

so there will be no strict liability placed on Pargit where he has not knowingly taken part in misuse of the database

this is the case both under Pargit's contract of employment and any equitable obligation

so no action can be taken against Pargit's unknowing actions even if he has used some of it in the course of selling the CoolIt products

**4 marks**

e)

a reasonable discussion including:

an injunction will not normally be granted once the information has fallen into the public domain (equity will not act in vain)

courts would be willing to grant a so called "springboard" injunction to compensate BoardIt where the breach has been used by Coolit/Tina/Pargit to cut development time

court will have discretion as to the length of the injunction

so BoardIt could gather evidence showing how long it took to develop the database and ask

the court to prevent Coolit/Tina/Pargit from selling their products for that amount of time

(another example of evidence is acceptable provided it relates to the time value of the database).

**3 marks**

**Total: 20 marks**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Question 14**

Sangita, Ernest and Priti are in a pub late one Saturday night. They are old school friends meeting at a reunion. Priti makes it known to the others that she is now a patent attorney and soon to be promoted to partner. Neither Sangita nor Ernest are lawyers.

Ernest owns a patent and is chatting to Sangita about licensing it. For some of the conversation Priti was at the bar buying drinks when Sangita and Ernest discussed an option for Ernest to get out of any deal they made. Sangita leaves and afterwards Ernest says to Priti that he is worried that he has given away all rights to his patent. Priti doesn't ask about any details and simply tells Ernest not to worry as it was a conversation in a pub between friends. Ernest goes home and takes no further action.

A court later finds that there was a contract between Sangita and Ernest to sell part of Ernest's patent and that Ernest had a 2 week option to get out of the contract. Ernest has lost out financially. It turns out at trial that Ernest and Sangita had done business before.

- a) Prepare notes for a meeting in which you advise Ernest whether he can take action against Priti for his financial loss directly related to losing his patent rights?**

**10 marks**

Ernest has a separate exclusive sales contract with Mendip. When they were negotiating the contract on the top deck of a noisy bus Edward asked Mendip how many sales outlets Mendip owned. Mendip couldn't hear Ernest properly and so he just used the opportunity to boast about how he had more than one hundred places he could sell products at. Ernest then counter-signs the contract with Mendip.

In fact Mendip could only sell a specialist product like Ernest's at 20 of his outlets. Assume that each outlet could sell 100 units of Ernest's product. Ernest could have sold his product exclusively at another retailer that had 50 outlets for selling the product and at twice the price Mendip achieves.

- b) Prepare notes for a meeting in which you**

- i) advise Ernest what kind of action he can take against Mendip over the contract?**

**8 marks**

- ii) how damages might be assessed in this matter. No detailed figures need be discussed but showing the relevance or otherwise of the figures is important.**

**2 marks**

**Total: 20 marks**

**Answer**

- a)  
A reasonable discussion covering

Negligence & Duty of Care

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

Priti must owe a duty of care for negligent misstatement creating pure economic loss to Ernest for her to be liable

**1 mark**

Possessing a special skill – Priti is a lawyer and Ernest is not

**1 mark**

Is it reasonable for Ernest to rely on Priti – they are in a pub and haven't met for a long time and appears to be a one-off meeting

**1 mark**

But Priti must know or ought to have known (objective standard) that Ernest would rely on what she said – reasonable discussion from the facts of whether Priti should have thought it was reasonable

**1 mark**

Breach

Priti breach, max 3 marks for reasonable discussion including: should have questioned Ernest in more depth including as regards i) the facts of the case ii) the previous business relationship he had with Sangita iii) discussion that occurred whilst Priti was getting drinks at the bar, should have followed up with Ernest

**3 marks**

Causation

Causation in fact required, using the “but for” test, did Ernest's failure to follow up either i) option with Sangita or ii) for advice with Priti break chain of causation, (may be dealt with an issue of contributory negligence, within same mark awarded here)

**2 marks**

Causation in law required, depending on the foreseeability/remoteness of the type of loss, the type of loss (is foreseeable as it was directly related to Ernest losing his patent)

**1 mark**

b)

i)

Action for a misrepresentation

A misrepresentation made in either case is a false statement of fact (number of sales outlets for those types of product)

that is made prior to concluding a contract

where the statement is made in such circumstances that a person is induced into entering the contract (Ernest concludes the contract subsequent to hearing Mendip make statement) and it is reasonable that reliance should be placed upon the statement (they are on a noisy bus, but they were discussing a real business deal)

**4 marks (half marks may be awarded)**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

Types of Misrepresentation

Discussion including Does Mendip misrepresentation's about the number of sales outlets amount to

Fraudulent: (where the maker of the statement knows or is reckless as to the untruth of the statement – such as Mendip not caring as to whether he is answering Ernest's question, Mendip should have known Ernest had particular types of products) or;

Negligent: (where the person making the statement is negligent in making a statement that turns out to be untrue – such as Mendip was careless in not checking whether his answer was relevant to Ernest's question)

**4 marks (can award full marks provided at least 2 types are contrasted)**

ii)

Reasonable discussion covering the following:

Basis of contractual damages is to put the parties in the position should the contract have been performed.

So difference between profit Ernest would have made if Mendip did have 100 outlets and what he did in fact make

Actual profit made up of sales at 20 outlets but should have made same profit per unit from 100 outlets (at x100 per outlet)

That Ernest could have made a better bargain elsewhere not relevant (candidate might mention mitigation in which case this mark could be allocated depending on the reasonableness of the answer)

**2 marks**

**Total: 20 marks**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

**Question 15**

Veejay is Alexander's next door neighbour. Alexander is a well-known artist. One day Alexander asks Veejay if he could put together a quick sculpture to help finish off Alexander's new collection being launched the next day.

Veejay creates the sculpture to fit with the Alexander's new collection. Alexander pays Veejay a handful of cash for the work but otherwise there are no terms discussed and no written contract.

Alexander writes a letter to Veejay claiming that ownership of the copyright in the sculpture was assigned to Alexander under the oral contract with Veejay.

- a) Prepare notes for a meeting in which you advise Veejay whether Alexander's claim is correct (assume that copyright does reside in the sculpture and that a contract was agreed by the parties).**

**6 marks**

Later that year Alexander found Veejay selling copies of the sculpture on the internet. Alexander gave no permission to Veejay to copy or sell the sculpture. Alexander brings proceedings in the Intellectual Property Enterprise Court ("IPEC") for copyright infringement.

- b) Prepare notes for a meeting in which you advise Veejay of the form in which evidence of Alexander and Veejay's conversation would be sent to the IPEC in the lead up to trial.**

**3 marks**

Alexander's wife overheard what Alexander and Veejay said during their conversation. Alexander's wife reported the conversation to Alexander's friend Percival. Alexander's wife has now disappeared without trace.

Percival wants to give evidence i) of what he says was discussed during the conversation between Alexander and Veejay, and ii) to give his opinion of the artistic merit of the sculpture. Veejay wants to prevent this evidence being admitted into the proceedings by the IPEC as he knows that Percival is Alexander's friend.

- c) Prepare notes in which you advise Veejay of**  
**i) the likely grounds on which to object to Percival's evidence, and**  
**ii) the most appropriate stage of the IPEC procedure to raise such an objection.**

**3 marks**

**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

Alexander's letter claims damages for copyright infringement. Veejay sold each copy for £50, he sold 650 copies and has 100 left. It costs anybody £10 to make each copy.

**d) Prepare notes for a meeting in which you advise Veejay**

- i) **what principles will the court be likely to use when determining the quantum of damages in an intellectual property case. (Calculations are not required but explaining the significance of relevant figures is important.)** **6 marks**
- ii) **at what stage of the proceedings would the IPEC normally consider the issue of damages if quantum is in dispute,** **1 mark**
- iii) **on the maximum costs order the IPEC might make should Alexander win on the question of quantum.** **1 mark**

**Total: 20 marks**

**Answer**

a)

reasonable discussion including:

issue is implied assignment of title/copyright's first owner is author/creator/CDPA 88 does not automatically assign

Assignment is dependent on whether a term will be implied into the contract between Alexander and Veejay and this depends on the circumstances of the case

Such circumstances are only likely to arise if Alexander needs in addition to the right to use the copyright works the right to exclude Veejay from using the work and the ability to enforce the copyright against third parties

Such as:

Veejay is engaged for a separate work, this is not a derivative work

But the work must fit in with Alexander's other work

Alexander would not want the public knowing that he is not the artist

But sale of copies are not the primary purpose of the work being produced

**Max 6 marks**

Alternative answer to part a)

Not made in writing by Alexander

but CDPA '88 requires a valid assignment to be in writing

Equitable assignment, not legal

Alexander may own an equitable assignment

Provided there was an intention to take an assignment

Can be perfected by the court

Alternative possible licence only for stated use could be implied by contract

**Max 6 marks**



**FC2 (Law) UK Patent  
FINAL Mark Scheme 2019**

b)  
in a witness statement  
signed by a statement of truth  
attaching the sculpture (or pictures of the sculpture or letter) as exhibits  
to admit the physical evidence (or documentary evidence)

**max 3 marks**

c)  
i) this reported speech of evidence of what was said is prima facie hearsay evidence and can only be admitted in civil proceedings by a decision of the judge who considers the weight to be given to the evidence

**1 mark**

expert evidence is the only opinion evidence, consideration to bias must be given to get full mark

**1 mark**

ii) the Case Management Conference (CMC)

**1 mark**

d)  
i) the basic approach to damages in IP matters is to put the parties in a position had the infringement not been committed

where there is a market this is usually a mix of

- stolen sales, where Veejay has taken the £50 for each sale
- lost profit, where Alexander has not been able to benefit in selling into the market he could have profited above £10 cost per unit, but could have sold at a higher price
- a court may award a reasonable royalty (examples include 5% on £40 per unit at 650 units sold)

in practice a mix of these approaches

and possible uplift for a) flagrant copyright infringement b) IP Directive

- some correct application of the law by referencing to the figures given must be made to attract full marks

**6 marks**

ii) quantum in IP cases is usually decided in a separate trial after liability has been decided,

**1 mark**

iii) the IPEC has a scale of costs awards in the favour of the winning party, this attracts a maximum award of costs of £25,000.

**1 mark**

**Total: 20 marks**