

Examiner's
use only**Question 1**

- a) Res judicata means the court has heard ✓½ on a particular matter and fact and issues relating to the case have not changed then the case can not be heard again on same matter. unless there is an appeal to be made from a lower court to a higher court based on leave from the lower court. ½
- b) i) The matters relating copyright or trademarks can be heard by the Appointed person.
- ii) The decisions made by Appointed person is final and cannot be appealed to any higher body. ✓½ ½
- c) i) The national courts of any contracting state can make a reference to the court of the European Union.
- ii) A reference is made to ECJ when there is a conflict or ambiguity in interpretation of European Law in context of national law and the case under consideration. ✓1
- iii) The Court of Justice does not make any decisions but resolves and provides an interpretation of the EU law about the matter in question and refers the case back to the corresponding national court where the final decision is made. ✓1 2

③

MARKS AWARDED 3/6**Question 2**

When considering proportionality the following factors are taken into account.

- i) The importance of the case. ✓½
- ii) The complexities of the issues involved. ✓½
- iii) The amount of the money involved ✓½
- iv) Financial conditions of the parties involved. ✓½

②

MARKS AWARDED 2/2

Question 3

Mediation.

- i) It is performed by a neutral third party known as the mediator. ✓1
- ii) The decision of the mediator is not binding.
- iii) It is private and confidential where parties negotiate according to their needs. ✓1
- iv) The parties are free to choose the mediator ✓1
- v) The decisions does not set any legal precedence. and the court is not obliged to enforce the decision of mediation.
- vi) It is not a legal procedure and if further conflicts arises then can lead to litigation which is slower and expensive.

3

MARKS AWARDED 3/4

3

Question 4

Case Management conference.

The solicitor and advocates prepare the documents for case management conference and judge oversees the process.

If parties have not carried out preaction protocol such as alternative dispute resolutions then the court proceedings stay until these have been performed.

Both parties exchange documents prior to case management conference. where these documents are relevant to facts of case, both parties have to submit all the documents which are in favour their case and opponent's case.

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MARKS AWARDED 0/4

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Question 5

- a) Two days. ✓1
- b) £50,000 – cap on the costs ✓1

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MARKS AWARDED 2/2

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Question 6

a) Misrepresentation is a false statement which relates to established and verifiable fact ✓1 or past event which induces ✓1 other party to enter into a contract thereby causing damage.

b) Fraudulent, Negligent and Innocent.

Fraudulent: False statement made recklessly ✓1 and where the party knew or had a reason to believe that it was false ✓1. Claimant has to prove that the statement was made recklessly.

Negligent: False statement where they believed it to be false but has not necessarily accessed whether it is true or not. Person making the statement has to prove.

Innocent: False statement made out of ignorance ✓1. Person making the statement has to prove.

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MARKS AWARDED 5/6

5

Question 7

Horizontal effect: It is the ability of an individual to evoke European regulation against another individual. ✓1

Vertical effect: It is the ability of an individual to evoke European regulation against the state. ✓1

The European ✓½ directive which has been implemented within fixed period (2 years) by the country has both horizontal & vertical effect.

The European directive which has not been implemented within fixed period by the country has only vertical effect.

2½

MARKS AWARDED 2½/6

2½

Question 8

- a) In case of foreign originating work, the principal for whom the work is ultimately being done is the client. ✓1 Although instructed by foreign attorney the client is still for whom the work is being done. A regulated person still has professional duty of care towards the foreign attorney. ✓1
- b) If the providing the information is prohibited by any rule of law.
- c) Any work carried out under terms of business ✓½ drafting, prosecution, freedom to operate analysis, invalidity & revocation proceedings are examples. ✓½ (legal)

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MARKS AWARDED 3/5

Question 9

- 1) If Cups LLP only performs work on software related patents then they do not have necessary competence ✓½ and expertise required to draft Philip's patent.
- 2) At the outset of the relationship Cups LLP should have sent terms of business. ✓½ to Philip According to IPREG code of conduct the regulated person should act competently, courteously, promptly, honestly and objectively avoiding any unnecessary expense to the client.

The attorneys at Cups Ltd have not acts promptly in that they have not reported the filing of the patent application within reasonable time. They have not been honest about their practices and they have not acted in the interest of the client.

- 3) Cups LLP should also have proper, written complaints procedure ✓1 and so anyone receiving services from them should be able to complain. They should also explain to Philip whether he could take his complain to Legal Ombudsman. ✓1

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MARKS AWARDED 3/5

Question 11

- a) The common law doctrine of 'privity' ✓1 means that anyone who is not party to the contract cannot enforce the contract. ✓1 They cannot sue another party or be sued by someone else.

Prima facie it appears that Felicity may not be able to enforce the contract. However, according to contracts Act 1999 there is an exception ✓1 to this rule in that if the contracting parties specified in the contract that third party can benefit from the contract ✓1 or contracting parties purported terms ✓1 into the contract for the benefit of the third party then third party will be able to enforce the contract. Furthermore, the contracting parties must not have excluded the possibility that the third party will be able to enforce the contract. ✓1 In this case it appears that the payment of royalties is a benefit ✓1 to third party in this case Felicity. It seems that Edward intended to include a term in the contract to benefit third party i.e. Felicity.

- b) For a contract to exist there must be following in place:

offer

acceptance of offer

consideration

Intention to create legal relations

the terms of the offer that define the contract.

Offer: The offer has to be specific and capable of being accepted. ✓½ In this case, Edward made an offer of £100,000. ✓1 However this offer was made in an informal setting at a dinner party. As nothing was discussed with regards to this offer in the meeting before the party. So, it appears that Edward made specific offer. So Sasha would have to prove that it was proper offer and mere puff or boast due to the informal settings.

Acceptance of offer: Sasha said 'Great' so it seems that she has unconditionally accepted the offer. ✓1

Consideration: The parties make a promise to each other so that contract is formed. ✓1 This doesn't have to monetary and some sort of benefit. in terms of contract. and consideration can be in the future and cannot

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be something that is required to be performed by law. ✓1 In this case, Sasha is offering payment of royalties due on sales as per License. But she is required to do this. as per the terms of the licence and cannot be considered as consideration.

Intention to create legal relations: The fact that they had a meeting before the party but there was no discussion of this in the meeting. But the fact that Edward drew a sketch shows his intention to develop the bind further. ✓1

Terms of the contract: These have not been clearly defined so Sasha will have a problem as to what are the actual terms of the contract.

12½

MARKS AWARDED 12½/20

5½

Question 12

a) For the tort of negligence the following has to demonstrated:

- The defendant owed the claimant duty of care.
- The defendant was in breach of that duty.
- The breach of duty caused damage
- The damage is not too remote.

Ayesha is patent attorney and even though Nicholas is not her client she has duty of care ✓1 towards him. This is example of professional negligence. Applying the 'neighbour test' she can reasonably ✓1 foresee what would be consequences of not renewing the patent and client could potentially lose their rights in relation to the patents. Ayesha took on the responsibility of renewing the patent but then did not fulfill her duties. ✓1 So, she was in breach ✓1 of duties – Ayesha not renewing the patent has the direct consequence of Nicholas losing his right under the patent hence there is an actual damage to the claimant (Nicholas). The damage is direct cause ✓1 of the failure of Ayesha to renew the patent. The damage in this case not remote ✓½ since there a direct effect on the claimant.

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b) 1. This damage is direct consequence of Ayesha not renewing so Ayesha will be liable for negligence. ✓1

2. There is causal link in that because the licencing deal has failed he has taken out a loan and paying interest on that loan. So Ayesha will be liable. ✓1
3. There is causal link in this case as well. Because he has lost investment because he no longer has the patent. So, Ayesha will be liable for failure to get investment but she may not be liable for failure to the business as they be other contributing factors. ✓1
4. Losing house because of the failure of the business seems like too remote ✓1 damage and Ayesha will not be liable for losing his house. 4
- c) Bottles & Co are vicariously ✓1 liable for the actions of their employee provided the employee carries out the task during the course of their employment. Firstly, Ayesha is a receptionist so, it is unlikely that she is expected to know the duty of care and professionalism required by a patent attorney. ✓1 Secondly, Nicholas and Ayesha have met in an informal setting. ✓½ Ayesha is expected to carry out renewal of patents as part of her job. ✓½ Hence, Bottles & Co will not be liable for Ayesha's actions. 3

12½

MARKS AWARDED 12½/20

Question 13

- a) The company name can not registered if it is the same ✓½ or too similar. In this case Alexander's company name is contained within Robert's trading name. ✓1 (see below) The fact that Robert is trading for past 10 years mean he has acquired goodwill under that name. ✓1 The similarity in the names could cause misrepresentation ✓ in public or may even economically link the two separate businesses. Robert's product relate to shelves in the office but it is not clear what products/services Alexander's company relates to. The fact that Robert has no intention to register his business as company is irrelevant. ✓1 3½
- b) A permission to carry out survey can be obtained from the court. However, survey evidence cannot make a weak case stronger. ✓1 Survey evidence can be used to substantiate a strong case. Furthermore, survey has to be performed for the relevant sector of public which have knowledge or regularly use the shelves which doesn't appear to be the case. ✓1 Furthermore the trademaks doesn't appear to too similar. 2

- c) If James has kept written record of the meeting he had with Alexander. Furthermore, James could give a witness statement in favour of his case. Furthermore, need to check whether James has actually paid £1000 that Alexander demanded in their discussion for settlement. 0
- d) Alexander has got a loan from the bank based on his trademark registration. and it has a fixed charge over this IP. This means Alexander has no control to deal with this IP. and should not be able perform the transactions like selling the trademark registration. ✓1 So, before offering to transfer trademark registration he should have repaid the bank loan which relates to this trademark registration. ✓1 (inc fixed charge above) 2

7½

MARKS AWARDED 7.5/20