

Question 1

- a) issues of same/similar facts between the same parties cannot be re-litigated in the same court (except appeal cases to appeal courts) ✓1
- b) i) if there is a wrong principle in the trademark hearing officer's decision. then can appeal to Appointed person. Or the hearing officer's decision is wrong. ✓1
- ii) Decision of Appointed Officer is final and cannot be appealed to any higher body. ✓½
- c) i) • any UK national court at any time can ✓1 make a reference to the ECJ (Court of Justice of the EU).
- Not litigant unless it is relevant to European Community law
 - Supreme Court has the obligation to refer as its the final national court.
- ii) to clarify and/or interprets EU law. ✓1 ECJ does not have jurisdiction on national laws.
- iii) ECJ gives preliminary ruling on the point of law but will return the case to national courts to make decisions on the facts. ✓1

5½

MARKS AWARDED 5½/6

Question 2

Deal with cases proportionately with regard to

- 1) the money involved in the case ✓½
- 2) the complexity of the issue ✓½
- 3) the importance of the case ✓½
- 4) the financial positions of each party. ✓½

2

MARKS AWARDED 2/2

Examiner's
use only

1

1½

3

2

Question 3

1. Mediation is an Alternative Dispute Resolution (ADR)
2. An informal, private, confidential approach to settle dispute compared to litigation in Court ✓1
3. Parties to a dispute can choose mediator, which is an impartial person who facilitates settlement negotiations between the parties. ✓1
4. Mediator's opinion is not binding. ✓1
5. The ADR is only efficient when both parties are willing to enter into a contract to make an agreement, which is binding.
6. Can be a part of without prejudice communication settlement.
7. parties can come up with their own settlement agreements flexible, but not always work.

3

MARKS AWARDED 3/4

3

Question 4

1. Decide procedural steps leading to trial that both parties to a dispute need to follow. ✓1
2. Claimant needs to initiate this step, otherwise the whole application may be struck out to the worst. ✓1
3. Case Management Conference (CMC) sets out timetable for some formal issues to be considered before trial for example
 - standard disclosure to be fulfilled
 - expert opinion to be provided ✓1
 - witnesses/cross-examination necessary?
4. CMC sets a date for trial. ✓1
5. CMC will encourage parties to settle dispute with ADRs
6. CMC will consider if it is needed and reasonable to have split trials for the case, deciding liability first then quantum/damages. If so, will order disclosure as necessary and proportionately.

4

MARKS AWARDED 4/4

4

Question 5

- a) 2 days, ✓1 no disclosure. On paper. cross-examination of witness restricted
- b) • upto £50,000. ✓1
 - IPEC small claim track can take cases upto £10,000.

2

MARKS AWARDED 2/2

2

Question 6

- a) • A false statement of facts ✓½ not of an opinion
- Made by one party to induce the other party to enter into a contract ✓1
 - The other party relied on this statement and suffered damage from it
 - Rescission of contract contract void never existed is a often granted and/or damages.

1½

b) 3 types of misrepresentation

- fraudulent
- Negligent
- innocent

1) fraudulent Misrepresentation

- The party made a statement that he is knowingly ✓1 without belief in the truth or reckless as to whether it is true or not. ✓1

remedy: rescission of contract contract void never existed and/or damages.

2) Negligent Misrepresentation

- Carelessly made the statement, having no reasonable ground to believe the truth of it. ✓1

remedy: rescission of contract contract void never existed and/or damages.

3) Innocent Misrepresentation

- The person genuinly/honestly believed that the statement was true ✓1

remedy: rescission of contract only contract void never existed only.

4

5½

MARKS AWARDED 5½/6

Question 7

- EU Directives aims at harmonising laws within the member states
- Set out objectives that member states are required to comply with within a set time, leaving the member states as to how to enact them into their national law: ✓1
- Only effective when it is transposed into UK law, normally by way of statutory instrument.
- When the directive is unconditional and clear ✓1 and the member state has not transposed it into the national law within the deadline ✓1, individuals can rely ✓1 on the rules given by the directive to act against the government (vertical effect). ✓1
- No horizontal effect in this case.
- Regulation has both Vertical and horizontal effects.
- Horizontal effect is a right an individual has that can rely on the rule of a provision to act against another individual. ✓1

6

MARKS AWARDED 6/6

6

Question 8

- a) is the principal that regulated person is ultimately providing service for ✓1, even though the instruction may come from a foreign patent/trademark attorney, to whom, the regulated person owes a ✓1 duty of care too. 2
- b) if there is a conflict of interest between the foreign client and any client already on the book. 0
- c)
 - carried out work on behalf of a registered person
 - work instructed by a registered person
 - work for a body controlled by a registered person ✓½ 2½

2½

MARKS AWARDED 2½/5

2½

Question 9

1. "they say they can fill all applications but in fact they only file software patents"

breach of Rule of Competence and digity.

Regulated person should only work within their expertise and competence, always considering the nature of the issue, the nature of their firm's practice, their seniority, ability and experience, as well as caring the relationship with the client. ✓1

Regulated persons should act in digity puting client's interest first – Cups saying filing one application the following week clearly not putting the client's interest first which is getting a well-written patent which is likely to be granted. This also shows that Cups lacks of professional service and client care. If they are not be able to perform, or out of their scope of competence, they should advise the client, Philip to seek another professional and provide cooperation and arrangement in support of that.

Cups's comment about Philip being crazy breach the rule of antidiscrimination, they are attacking philip personally. ✓½

Cups sent the first ever letter to Philip 2m later shows that they are not acting in timely manner, and terms of busniss should always have been sent at ✓1 the beginning of the relationship. Cups should act promptly, honestly, objectively, competantly, courteously and cousicientrously and save client's cost.

Cups should inform the client in writing at the beginning of the relationship the procedure and rules of complaint. ✓½ Tell client that they have right to complain to Legal Umbudsman, and the outcome of the complaint has to be documented. ✓1

Cups should cooperate with the Legal Umbudsman for the investigation of the case.

3

MARKS AWARDED 3/5

3

Question 10

a) law: breach of confidentiality ✓1

- No contractual obligations of confidentiality as the parties, William and Racing Mamia is not bound by a written contract.
- When lack of contractual relationships, confidentiality arises from equity. based on fiduciary relationship – whether it is conscious for the receiver of the info to disclose the information. Also on maxims of equity – whether it is just and reasonable to do so.

Racing Mainia (RM) can bring a claim of breach of confidentiality against William. Three elements need to be satisfied

- 1) the information must have quality of confidence ✓1 in it – RM relies on the new tyre ✓1 to compete with his competitive, which has been tested internally and shown advantage, liking to be the core of their technology. Not publicly known, not easily accessible to public and has commercial value in ✓1 it and kept secret.
 - 2) the information must be given in the circumstances importing an obligation of confidence. ✓1 The reciever must know its confidential and for a limited purpose.
 - Reasonable man test
 - 3) there must be an unauthtorised use of the information to the detriment of the claimant. ✓1
 - William plans to use the new tyres from RM for his business shows that RM advantage will be taken away
 - Caused actual/potential damages to RM.
- detriment also depends on the scope of obligation. As said earlier, no written contract, so the scope is not bound by express terms of contract. But there is consideration pay to William from RM and there may be an oral contract and what said in the oral contract are bound too. The relationship of sufficient proximity – employers and employees
 - requires Williams to act in good faith – Williams has duty of fidelity to employers.

- RM can show that he is acting in bad faith – copying the new tyre design without permission ✓1 during his employment. RM can also show to court William won't be able to derive the new tyre idea with other legitimate means otherwise.
 - If the oral contract exists and recognised by court could rely on ✓1 implied terms to define William's contractual obligation of confidence.
- (b) Injunction – prevent William disclosing the confidential information, as confidence cannot be put back
- ✓½ “balance of convenience” to decide the issue of the order
- urgent injunction ✓1 ex-parte without notice necessary? Is there a serious ✓½ issue to be tried? Claims not frivolous and vexatious? Yes, because RM about to unveil the new tyre very urgent and they have found the trace of copying the design. ✓1
 - sworn affidavit as evidence
 - apply to court in writing
 - RM can show that if with notice, William may publish the info to give him a head start (unfair advantage to RM)
 - Consider if damages are necessary for RM if RM wins the case
 - ✓1 Consider disadvantages of granting injunction to both parties and merit of the case. If balanced, preserve status quo. ✓½
 - IP Enforcement Directive can give RM extra damage when William knows he obtains the information without authorisation.
 - Apply for springboard injunction to stop Williams from using the information for a certain amount of time

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4½

12½

MARKS AWARDED 12½/20

Question 12

a) Yes, liable for tort negligence claim

1) Duty of care ✓ $\frac{1}{2}$

- A relation of sufficient ✓**1** proximity imposed duty of care by law.
 - Ayesha represents herself as a professional with skills and profession within a field to ✓**1** Nicholas by telling his she was a patent attorney.
 - Nicholas relied on her advice and its in her contemplation that her advice will be relied on (“assumption of responsibility”) and the reliance is reasonable
 - damage caused: patent lapsed, cannot licence to other people.

2) Breach of duty

- objective standard test (“Reasonable man”) higher standard for professionals to be expected to conduct to the standard within her profession. Factor to determine the Standard:
 - ✓**1** • serious of the loss
 - likelihood of the damage
 - cost/practibility defendant conducted to prevent the loss
 - utility of the defendant’s conduct.

Facts: severe loss

- ✓**1** patent lapsed and not forceable.
- lost chances of licensee
- lost profits.

3) Causation in fact

“but for” test:

- loss occurred because of this? ✓**1**

4) legal causation

Remotenes test: would this type of loss be reasonably foreseeable by the defendant?

Yes. Ayesha knew it needs renewal and the consequence of it. ✓1

Defence:

- Conitributory negligence:

Nicholas should seek to have a written contract with Ayesha for an agreement of delegating her to take of his patent. Given the conversation occurred in an informal casual way, it may not be taken seriously.

a) 6½

1) £50,000

- direct and foreseeable loss ✓1
- Yes Ayesha liable.

2) Bank loan

- Ayesha would not be liable for it
- too remote; not foreseeable at the time of tore committed – break in causation
- Nicholas has duty to mitigate risks to not take unreasonable steps to suffer more loss. (“Mitigation of damages). ✓1½

3) £150,000 investment

- possible
- direct consequence of not having patent ✓½ renewed
- Contributory negligence from Nicholas
- Nicholas should take reasonable steps to ensure the patent renewed in time as he was aware of the fact too.

4) House

- NO
- Not foreseeable at the time of tort committed
- too remote. break in causation. ✓1

In general, the court will only award costs that are reasonable and for "real" damages.

b) 4

c) Yes, but may be partial liability

- Vicarious liability of employers to employees
- Employers are liable for wrongs done by their employees.
- "Close Connection test" ✓1
 - the Employee is employed by the employer
 - Employee is undertaking tasks on behalf of employers.
 - Employee's activities is a part of business's activity of the employer. ✓1

But Ayesha is not a Patent Attorney, and she is fraudulent about her job and ran away, which would be considered as a criminal act. In this case, "Ex turpi Causa", which means that Bottles & Co wont be liable for Ayesha. Causation in the liability of employers on employees misconduct broken.

Also, being a receptionist Ayesha conducted in the manner outside the scope of her normal employment activities by giving advices on renewal of patent. At least, contributory negligence from Ayesha. ✓1 The firm does not have totally liability.

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13½

MARKS AWARDED 13½/20

Question 13

- a) Robert put an objection to the tribunal, which are based on “too like” issue to object the registration of Alexander’s company name

“too like” means

- difference is trivial, which is true. in this case and the simultaneously appearing in the companies page will confuse the public. ✓½
 - Sound/look similarly, may suggest a connexion between the company and the name. ✓½
 - Robert doesn’t need to hold a company name registration to bring the objection. But he has to show that he has good will/reputation ✓1 in the name when the company’s name (Alexander’s company) registered at the Company House.
 - Alexander can argue that his accompany has been operating under the name (“NewsShelvers Ltd) and substantive cost of start-up investments have been put in, which is true in this case ✓1. Alexander can also show that he adopted this name in good faith and name is registered in the ordinary course of company registration. if so, the objection may be refused. ✓1 But even though if Robert shows that you registering the name to extract money ✓1 from him or prevent him from registering then objection is upheld. Robert shows evidence.
 - if upheld then Alexander has to change the name.
- b) • First Pilot survey can be carried out by Alexander without Court’s permission, but to his own risk of costs
- Second survey must be carried out with court’s permission and if he wants to present any information from the survey to Court as evidence, he must service the survey to the other party and the court.
 - Carried out by an independent agency, following certain rules
 - 1) samples of the interviewers must be significantly big
 - 2) the interviewers must represent a broad section of population
 - 3) data clearly recorded, carried out objectively. ✓1 (real value)

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- Survey helps the court to find out the extent and nature of confusion between the names and the reputation of Alexander's trade name.
 - But these facts are only decided by courts and public's opinion is not relevant. The only opinion allowed ✓1 is the one of the court.
 - Can be given more weight if one interviewer of the survey appeared in court giving oral evidence. Useful for looking for potential witness.
- c) Offer:
- Alexander gave an unambiguous offer capable of acceptance, clearly communicated to James.
 - forbearance to sue is a good offer.

2

- Acceptance:
- James replied "that's deal" unconditional, unqualified acceptance of the full terms of the offer.
 - Communicated to the offeror, can be done in written, orally or by conduct.

Consideration: £1000 not moved away from James, though promised.

Intention: intention to form a legal relation. Yes, occurred during settlement, intention assumed.

Oral agreement. Not a binding contract but court may recognise this as an equitable assignment, because both parties are intended to form a contract and there is a consideration involved.

- Court may order James to pay £1000 to Alexander within a set time to complete it.

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- d) Check if registered. register the charge at the trademark office as soon as the occurrence.

If not registered, the subsequent assignee, licensee and chargee can take free of the charge as long as they were not aware of the transaction.

Under Trade Mark law, charge is a registrable transaction. Without registration, the transaction will be deemed void and not effective.

Should also register the charge with the Companies House within 21 days of the transaction. ✓½ (asset)

- due to fixed charge, cannot assign trade mark or any transaction without chargee's permission ✓1, meaning cannot license.
- Check if debts ✓1 (security) paid off and charge lifted.

9½

MARKS AWARDED 9½/20

2½