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1.

- The person requesting the equitable remedy may not have acted equitably themselves, since the court will only grant an equitable remedy to someone appearing before the court with “clean hands” ✓1
- Damages, or any other legal remedy may be sufficient ✓1
- The requirements for obtaining the remedy may not have been met, e.g. there was no serious case to be tried, meaning the American Cyanamid principles are not met.

2

MARKS AWARDED: 2/3

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2.

Privity of contract means that only the parties to the contract can enforce it, sue based on the contract, or have obligations because of it. Third parties cannot enforce a contract, or have obligations from it.

Contracts Act 1999 allowed for exceptions to the general rule of privity of contract. It allows for third parties to enforce a contract when –

- The contract expressly states that the third may enforce it; or
- The contract confers to purport a benefit on the third party and, upon proper construction of the contract, it was intended that the third party could enforce it.

6

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3.

- The amount of money involved ✓1
- The complexity of the case ✓1
- The financial position of both parties ✓1
- The importance of the case ✓1

MARKS AWARDED: 4/4

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4.

A witness statement is verified by a statement of truth, which is signed by the person making the statement. There is no need for the witness statement to be sworn. The statement can be made and verified without the need for others to be present.

An affidavit is sworn by a solicitor, legal executive or notary. It does require verification by a statement of truth.

MARKS AWARDED: 1/2

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5.

- They had consent to do what ever act they have been accused of ✓₁
- It was in the public's interest to do whatever it is they have done ✓₁
- They have independently discovered the information
- There was no obligation of confidence, because the information was known to the public.

2

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6.

- Parties appoint a mediator who is a neutral person helping the negotiations ✓ $\frac{1}{2}$
- Proceedings are on a private and confidential basis ✓ $\frac{1}{2}$

1

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7.

- You have unlimited personal liability ✓½
- There are no formal requirements for formation – no requirements to file anything at Companies House ✓1

MARKS AWARDED: 1.5/2

1½

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8.

Tenants in common have separate, distinct shares in the property. They can do what they want with their share, such as mortgaging it or assigning it. Each tenant's share does not have to be equal to the other shares. There is no "right of survivorship", which means when one tenant dies, their share passes with their estate, or in accordance with their will. Their share does not go to the other tenant.

Joint tenants have equal, undivided shares in the property. There is a "right of survivorship", meaning when one tenant dies, their share passes to the other owner.

MARKS AWARDED: 4/5

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9.

Corporate work is work performed for the client by a regulated person. It includes litigation, advice, and advocacy work.

It is work completed by regulates persons and registered persons. It is work completed by a registered body.

0

MARKS AWARDED: 0/7

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10.

(a)

The litigator's duties are to act in the interests of their client.

(b)

There is an overriding duty to the court to act in the interest of justice. ✓1

MARKS AWARDED: 1/4

1

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11.

(a)

There are four requirements for the formation of a valid contract. There needs to be:

- An offer
- Acceptance of the offer
- Consideration
- Intention to create legal relations

Offer

An offer is an expression of willingness to enter into a contract on terms specified.

The initial offer is James saying "I'll make those for you at £20 apiece". ✓

Qualified acceptance does not count as acceptance, it counts as a counter-offer. ✓ ✓

Priti then makes a counter-offer, which overrides and dismisses the initial offer, when she says "I'll need you to make 75,000 ..." ✓

James then makes a second counter-offer (third offer in total) when he says he will have to make 100,000 of the walkie-talkies. ✓

So, the only offer standing after the conversation is James offering to make 100,000 walkie-talkies for £20 apiece. ✓

Acceptance

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Acceptance needs to be an absolute acceptance, matching the terms of the offer, and agreeing to all those terms. As specified above, the qualified acceptances count as counter-offers, and not as an acceptance.

Acceptance must be communicated, for example, by conduct, written agreement or verbally. There cannot be mental acceptance.

We are told that they carry on talking to each other, but do not discuss the walkie-talkies, so there was no acceptance in that part of the conversation.

The only possible acceptance is when Priti says "Hooray" in response to the James saying he'll make her £2 million. However, "hooray" is not usually considered as a serious term, and so it may not have just been Priti showing delight at the idea of making £2 million. Priti shouting "hooray" does not unambiguously show that she is acceptance James' most recent offer, and so she can argue that there was no acceptance.

However, she did not contest James saying "you're giving me such a good deal". She should have contested this to make it clear there was no acceptance. However, failure to act does not count as acceptance itself.

Ac 2

Consideration

Consideration is the price for which a promise is bought.

In this case, James is promising to make 100,000 walkie-talkies, and the consideration which Priti is providing is £20 apiece and allowing James to manufacture. There is consideration in this case.

Co 1½

It needs to be sufficient, but need not be adequate, so it is irrelevant if £20 apiece represents a good bargain or a fair deal.

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Intention to create legal relations

They were at a party, which suggests it was a domestic/social event, rather than a commercial one. This supports the idea that there was no serious intention for the agreement to be legally binding. ✓

Further the fact they were drinking alcoholic drinks may indicate they were not having serious discussions, and may further support the idea that there is no intention to create legal relations. ✓

There was no follow-up conversation, and this suggests the discussion had not been serious. ✓

Additionally, if either of the parties drank an a lot of alcohol, meaning they were actually drunk, they could argue that they did not have the capacity to enter into any legal relations, since their judgement was impaired by the alcohol. ✓

As such Priti can argue that there was no intention to create legal relations.

In contrast, the fact that they were discussing the terms of the contract in detail, and that they were negotiating by making counter-offers, suggests that the discussions were actually serious, and this would support there being intention to create legal relations. ✓

Further, Priti was at the book launch where the book was about spying, which the micro walkie-talkie would be useful for. Her presence at such a place could suggest she went to the party with the intention of negotiating a manufacturing deal. ✓

In 2½

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Overall Priti can argue that no contract exists on the basis that there was no acceptance. And as a back-up/supporting arguments, she can argue there was no intention to create legal relations.

(b)

For an interim injunction to be granted, the American Cyanamid principles are applied. In this case, they are applied as follows: ^{✓½}

- Is there a serious case to be tried? ^{✓½}

Yes, there is a serious case to be tried since Priti will be concerned about potential damage to the reputation of her product. She has valid arguments for suggesting the contract is not valid, and so she can also claim that there is infringement of her patent. ^{✓1}

- Would damages provide an adequate remedy? ^{✓½}

Damages would provide a remedy for the fact she may have been able to get a contract with someone giving her a better price, or for loss of sales due to poor quality, but damages would not provide an adequate remedy for any damage to the reputation of her product/brand due to the low quality of the products. ^{✓1}

- Where does the balance of convenience lie? - Would the damages to James, should the injunction be ordered when it should not have been, be worse than the damages to Priti if no order for an interim injunction is made? ^{✓½}

If an order is made which prevents James from making the walkie-talkies, he will lose the profits he would have made from getting £20 for each additional walkie-talkie he would have made. ^{✓1} If the order is not made, Priti may suffer damage to

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her reputation, or to the reputation of her brand/product. She may also suffer financial damages since people may buy fewer walkie-talkies because of their poor quality. ✓1

- The courts will look to maintain the status quo ✓½

In this case, James is already producing the product and there are products of that quality already for sale on the market. This means that not granting an order would maintain the status quo. ✓1

Overall, it appears as though the convenience of the order is balanced for both parties, and so the court will probably maintain the status quo and not grant the order.

(c)

Real evidence – he could bring a walkie-talkie that was manufactured to demonstrate it is of high quality and functions properly. ✓1

16½

MARKS AWARDED: 16.5/20

7½

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12.

To establish liability in the tort on negligence, there needs to be –

- A duty of care owed to the claimant
- A breach of the duty of care
- Consequential damages resulting from the breach (causation)
- The damages must be reasonably foreseeable

Duty of Care

In establishing whether there is a duty of care, consideration is given towards the following: the proximity of the relationship between claimant and defendant, foreseeability of damages, whether it is fair and just to impose a duty of care. ✓1

In this case, Cristopher was a patent attorney, and the Sindy was his client, so the relationship was sufficiently close to impose a duty of care. ✓1

Since it is his job to draft the patent and try and help her obtain protection, it is fair to impose the duty of care for him to check the prior art documents, since it is his job.

Damages would have been foreseeable; as a patent attorney he would know that any disclosure in the missing page could jeopardise the application's novelty/inventiveness, and that this would cause the patent to be invalid.

As such, he owed a duty of care to Sindy, and should have checked the missing page.

Breach of duty of care

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In assessing whether there has been a breach of the duty of care, the test is to determine the care a reasonable person in the circumstances would have applied, having consideration to: the likelihood of damages, the seriousness of potential damages, the costs/practicality of avoiding damage, and the importance/urgency of the situation (meaning certain circumstances justify taking higher risks). ✓1

In this case, a patent attorney is the reasonable person, and they would have checked the last page of the prior art document. They would know that the page could jeopardise the application's novelty/inventiveness, and would know there is a good possibility of the last page being relevant, since it is given to him as prior art. Further, since it would not have taken long for him to check the last page, or to find the missing page (he could look it up online), there is no reason that costs/practicality would prevent him from checking it. ✓1

He would be expected to realise the last page was missing, since it the document would be incomplete and end abruptly.

If he was unable to find the document's last page himself, he could have chased Sindy for it. ✓1

Additionally, you can argue that since he did not review the whole document, he may have not fully understood/appreciated the prior art/t disclosure, and so he was not doing his job properly.

As such, he did not apply the level of care which the reasonable person would have done, and so there was a breach of the duty of care.

Consequential Damages and Foreseeability

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The “but-for” test is applied for causation. Foreseeability is assessed as whether the reasonable person would have foreseen damage of the type that actually occurred.

(i)

A competitor uses her fastener, and this reduces her market. She will therefore be losing sales and suffering losses from lost/stolen sales, and from the loss of potential licensing agreements.

However, even if the last page had been reviewed, the application would still lack novelty over it, and so amendments to the claims would be required. In order for damages to be consequential, a set of alternative, allowable claims would still need to have protected the fastener of the competitor.

Assuming Christopher would have been able to amend the claims to be allowable in view of the last page, and that the amended claims would still protect the fastener, then but for him missing the last page, the patent would not have been found invalid, and she would not have suffered this loss. So there is causation for (i), but it is conditional as explained above.

The damage is foreseeable, since the entire purpose of a patent is to obtain a monopoly for your products. A patent attorney would foresee a competitor making the product is the patent was found invalid.

✓ 1½

He would be fully liable for this damage.

(ii)

But for the patent being found invalid, she would have got a higher price for her goods. However, she did not market it properly, and so there is only contributory

✓ ½

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negligence since she made an intervening act, meaning Christopher cannot be liable for all the damage.

Having patent protection removes any competition for the product, and so this inevitably increases the price of the protected goods. As such, a patent attorney would have foreseen this type of damage. ✓1

As such, Christopher would be jointly liable for this damage.

(iii)

Sindy took out the mortgage of her own accord, and knew the risks of failing to make repayments. She could have prepared for difficult financial times, and could have brought a house she knew she would be able to afford. In this case she appears to have got a mortgage based on her planning to earn money from an idea which she didn't yet have patent for.

But for the Christopher failing to obtain the final page, she may still have failed to pay her mortgage, since they not have sold enough of the product.

A patent attorney would not have foreseen damages of this type, since they would not expect Sindy's mortgage to rely solely on the patent. ✓1

As such, Christopher would not be liable for this damage.

Further for all cases, Sindy not giving the last page to Christopher may mean she has contributed to the losses, and this will reduce the damages Christopher has to pay. ✓½ ✓½

(b)

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“Without Prejudice” is a public policy which means discussions made “without prejudice” cannot be seen by the court when making decisions or determining costs. It is meant to encourage settlement negotiations. ✓1

It does not protect fraudulent/illegal activity, but that does not appear relevant here. The discussions will not be considered to be “without prejudice” if he can demonstrate that no genuine settlement discussions occurred.

✓½

It appears as though Christopher cannot use the notes as part of his defence.

However, Christopher may be able to argue that Sindy was not making genuine attempts to settle, and that she was trying to weaken his defence by lying about which claims she would pursue, and hence giving him no time to prepare a full defence. In this case, since there would not be any genuine settlement discussions relating to the house claim, he could use his notes relating to the house claim as part of his defence.

1½

(c) “without prejudice save as to costs” is a public policy which means the document cannot be considered by the court when making a decision, but it can be considered when determining the costs to be awarded after a decision has been made. ✓1

1

(d)

If the letter is a valid part 36 offer, it will –

- be in writing ✓½

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- specify that it is a part 36 offer
- include a period of no less than 21 days within which, if the offer is accepted, Christopher will have to pay the Sindy's legal costs for claim (ii).
– This only applies if it's at least 21 days before trial.
- specify whether it relates to the entire claim or just part of it
- specify whether it takes into account any counter-claims

If Christopher accepts the part 36 offer, he will have to pay Sindy's legal fees in relation to claim (ii).

If Christopher does not accept the part 36 offer and Sindy obtains a judgement which is at least as beneficial to Sindy as the offer was, then Christopher will have to pay interest on the Sindy's costs of no more than 10%, and will have to interest on the damages awarded of no more than 10%.

MARKS AWARDED: 15.5/20

15½

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14.

In order to establish malicious falsehood, there needs to be –

- A false statement of fact, not opinion

Ernest says that the bottles are made from faulty plastic, and that they will break as soon as they are picked up. He doesn't say something like "I believe it will break" or something that suggests it is an opinion, he states it as a fact. Further, we are told that this statement is not true. As such, Ernest's statement is a false statement of fact, as required.

- The words need to have been malicious

We don't know if Ernest had knowledge of his statements falsity, but we do know he was reckless and careless as to whether what he was saying was true.

Further, the words were said with the intent to cause damage to Amy's reputation, and the reputation of her products because of his dislike towards her.

As such, the words are malicious.

- The statement needs to have caused damage.

Ernest says the statement to people, and so it is not published in a permanent form, and as such, there is a requirement for special damage. Since we are told that people ignore the statement, Amy is unlikely to suffer any damages, and so there is probably no case for malicious falsehood since there is no special damage.

Further, Ernest may argue that it was a mere puff or boast to emphasize the benefits of glass over plastic, but it seems unlikely that this would be a successful defence because of the manner of the statement.

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(b)

The expert has an overriding duty to the court before any party paying them. It would probably be argued that Amy's expert would not act as a neutral and in the interest of justice.

✓½

✓½

1

(c)

Vicarious liability allows employers to be liable for the tort of their employees. In order to establish whether the employee is liable, the courts consider whether there is a close connection.

✓½

✓1

In this case, Ernest was at the show on behalf of Strong Bottled Ltd (Strong), and was acting on Strong's behalf. However, both of the statements were made of Ernest's own accord due to his personal dislike of Amy, and they were made on order or behalf of his employer.

✓1

✓½

As such, it appears unlikely the Strong will be liable for the malicious falsehood of Ernest.

However, Strong may have instructed Ernest to go to the trade show and make negative statements about competitors. We assume this is not the case but, if it was, then Strong would be liable for the malicious falsehoods.

3

(d)

A limited company is a legal entity in its own right, and is liable for its own debts. Amy would most likely be a shareholder and a director, and she would have limited liability for debts up to the value of her investment.

✓1

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In contrast, as a sole trader, Amy has unlimited personal liability for any debts accrued.

In order to raise additional funds, Amy could sell shares in the limited company to investors. She could not do anything equivalent acting as a sole trader. ✓1

Further, as a limited company, she may be able to pay less tax by paying corporation tax, which is taxed a lower rate than income tax. ✓1

2½

MARKS AWARDED: 13/20

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