

Question 1

A district judge is similar in rank to a judge. District judge sits in County Court.

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MARKS AWARDED 0/2**Question 2**

- a) The principle that a case with the same material facts and evidence as a previous judgement should be adjudicated in the same way according to the doctrine of precedent. ✓1 It requires a defined hierarchy of courts and a method of knowing what part of the judgement of a judge is legally binding on other judges (viz. ratio decidendi).
- b) Full rehearing – judicial review is the exclusive jurisdiction of the High Court; and is applied for at the Administrative Division of the High Court.
- c) Within 3 ✓1 months of the date of the decision to be reviewed.

2

MARKS AWARDED 2/3**Question 3**

"Illegality", ✓1 through the secondary legislation being created ultra vires.

"Procedural impropriety", ✓1 such as the wrong person being conferred the power to make secondary legislation.

"Irrationality", ✓1 if the secondary legislation was incoherent, inconsistent or otherwise didn't make sense.

3

MARKS AWARDED 3/3**Question 4**

The regulated person should follow the "spirit and letter" of undertakings given to the court or other party. ✓1

MARKS AWARDED 1/2

Question 5

To comply with legislation regarding money laundering and proceeds of crime.

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MARKS AWARDED 0/1**Question 6**

The circumstances of the work undertaken, such as the complexity, importance etc. ✓1

The experience, ability or seniority of the regulated person. ✓1

The relationship the regulated person has with the client. ✓1

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MARKS AWARDED 3/4**Question 7**

Implied term must be reasonable and equitable. ✓1

Implied term must be necessary for business efficiency. ✓1

Implied term must be so obvious that it goes without saying. ✓1

Implied term must be capable of close expression. ✓1

Implied term must not contradict any express term. ✓1

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MARKS AWARDED 5/5**Question 8**

A claimant who has legal title has had the intellectual property right fully transferred (or assigned) to him, and he can use it to bring infringement proceedings against the alleged infringer. ✓1

A claimant who has equitable title only has all but completed the assignment aside from some formalities, where it is clear that the claimant and the ✓½ original owner fully intend to honour the transaction fully. The claimant cannot bring infringement proceedings but can apply for an equitable remedy such as an order for the assigner to fulfill the promise.

1½

MARKS AWARDED 1½/2

Question 9

a) Deeds require no consideration as compared with contracts, ✓1 which do require consideration. For contracts, consideration should be sufficient. but not necessarily adequate. Deeds require instead to be signed in the presence of a witness, and to be clearly stated that it is intended to be a deed.

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b) The deed must be in writing. ✓1

It must state clearly that it is intended to be a deed. ✓1

It must be signed: for an individual in the presence of a witness; ✓1 for a company by affixing the company seal and signing by a director in the presence of the company secretary, the director also stating his name and title.

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c) 6 months.

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d) Conveying real property. ✓1

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MARKS AWARDED 5/8

Question 10

It defines a trade secret as the following:

it must be secret;

it must have financial/commercial value because it is secret; ✓1

reasonable steps have been taken to keep it secret. ✓1

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MARKS AWARDED 2/7

Question 11

a) In exercise of a lien (Rule 13). ✓1

b) By writing upon the first contact they have. ✓1

c) So the client has plenty of warning and is not unduly surprised. ✓1

3

MARKS AWARDED 3/3

Question 12

- a) For a contract to exist between William and Tulip, there must be an offer, acceptance, consideration and an intention to create legal relations.

An offer can be defined as an expression of willingness to enter into a contract with someone else, with the intention ✓ (express or implied) that it shall become legally binding on the offeror as soon as it is accepted. In this situation, there are three "rounds" of offers – the first offer from Tulip to William (to make and sell 10,000 plant pots), followed by a first counter-offer from William to Tulip (to make them ✓ the way he wanted to and to give him 10% of profits) which terminates the first offer, followed by a second counter-offer from Tulip to William (offering 15% and the ability to adopt it for big plants) which in turn terminates the first counter-offer. ✓ So the only "live" offer is now this latter second counter offer. The fact that William owns a patent for the invention, and that William and Tulip are exchanging offers at the level of detail of including a percentage of profits indicates the intention to create legal relations exists, ✓ despite the informal setting of a fund day. ✓

Acceptance can be defined as final and unqualified acceptance of the terms of the offer, either expressly in writing or speech, or implied by conduct; William accepting Tulip's prizewinning flower is arguably an acceptance implied by conduct of the second counter-offer. Acceptance was communicated. ✓

Consideration is some mutual exchange of promises which there is evidence for i Williams forbearance of the production and selling rights of his patent in exchange for 15% of the profits. ✓

Need to advise William to contact Tulip to confirm the contract and its terms.

ICL 2

OA 5

C 2

9

- b) To establish malicious falsehood, we need three criteria:

- (1) that words were said as fact and were untrue; ✓
- (2) that these words were published maliciously; ✓

(3) that such publication resulted in special damage to William. ✓

William would need to establish that what was said in the pamphlet was untrue – i.e. by showing his plant pot is better than the chairman's. However, it is a defence for the chairman to say the words in the pamphlet are mere puff or ✓ boast. The "reasonable man" test for this would lean in the chairman's favour, as evidenced by the fact "people don't appear to take notice" of it and hence don't take it seriously. ✓

To show (2) above, William needs to prove that the chairman knew about William's plant pot, or had no reasonable grounds to not know – further evidence required. ✓

To avoid having to show (3) above, William needs to prove that the statement in the pamphlet was designed to cause pecuniary damage to him; considering Tulip agreed as a result to manufacture and sell the chairman's product, there is evidence here. Notwithstanding this, William could furnish an account of profits from the chairman's sale of his pots to determine the special ✓ harm.

MF 1½

P 1

M 2

D 2

6½

15½

MARKS AWARDED 15½/20

Question 13

- a) To qualify for remedies available for breach of a trade secret, follow the 3-step test laid out in *Ceco v Clark* : ✓1
- (1) does it have the necessary quality of confidence? The technique of BoardIt is non-trivial, definite and not generally known (the individual steps may be, but their combination likely not). Thus it would seem it does have this quality of confidence. ✓2
- (2) was the knowledge received in a situation that imparted an obligation of confidence? This may appear to be explicitly confirmed as true due to the term in Tina's consultancy agreement preventing her disclosing BoardIt's trade secrets to the public. However, Tina keeps all

information at Coolt a secret. Notwithstanding this, there is still a duty of fidelity (as described in Faccenda Chicken v Foulter) on Tina implied into her contract of employment to not use BoardIt's trade secrets to further her competitive advantage, so it doesn't matter that the trade secret wasn't made public. ✓2

(3) Was there a breach, and did this cause damage to BoardIt? Tina breached duty of confidence through misuse. It is unclear if her actions caused damage to ✓1 BoardIt, but the breach was done in bad faith by Tina and hence equity can provide remedies for BoardIt.

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b) Although Pargit's employment contract doesn't contain a term regarding trade secrets, there is an implied term of fidelity ✓1 (see Faccenda Chicken v Foulter) which imparts a duty of confidentiality regarding the list of possible customers. ✓1

Although Pargit has since left the company, the same case decided that trade secrets are still unable to be disclosed to another party despite the lack of contract or any implied terms within it. So Pargit still breaches a duty of confidence, and hence action can be brought against him. ✓2

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c) Pargit's knowledge of manufacturers is likely part of his stock of general knowledge, not least due to the fact that he is a regional sales manager. It is a defence to show this knowledge is indeed part of Pargit's general stock of knowledge, and hence BoardIt would struggle to successfully take action against Pargit in this respect. ✓2

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d) It is a defence for Pargit to show that the trade secret of BoardIt was developed by Tina independently of BoardIt's database. BoardIt need to obtain evidence that the trade secret was taken, which can be either of

(i) direct evidence;

(ii) indirect evidence (such as "fingerprints" of BoardIt's in the technology of Coolt's); or

(iii) persuade the court that the information contained within the ✓2 trade secret couldn't have been derived from legitimate sources.

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e) A springboard injunction will prevent the recipient using the trade secret for commercial advantage. ✓1 The court has discretion over how long it will last, usually as long as it takes for the recipient to comply with it's

provisions. The court also has discretion to cover derivative products, ✓1 which is useful to enforce against competitors that reverse-engineer their products (which BoardIt accep) and create a new one derived from it in an attempt to avoid the injunction.

An urgent injunction would prevent the recipient "stealing a march" in advertising", and are useful because information cannot be put back in the private domain. These don't last very long, of order a few days; evidence BoardIt could present in its favour in this case is that there is a significant time pressure and things need to be done quickly – perhaps evidence that Coolt's advertising would release prior to BoardIt's.

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MARKS AWARDED 17/20

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Question 15

- a) Alexander's claim is incorrect.

Copyright is a personal right, so any assignation of a contract where the benefit transferred is copyright cannot be done. The only way for the benefit derived by the contract to be transferred to Alexander is for Veejay to waive his rights under it in favour of Alexander.

Notwithstanding this, due to the "Parole Evidence Rule", which states that the terms of a contract cannot be changed or varied orally alone, any changes made to the contract between them made in this way are void.

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- b) All evidence both parties intend to rely on at trial will need to be disclosed prior to trial.

Their conversation would be sent to IPEC in the form of a sworn witness statement, ✓1 as the contract was oral, i.e. nothing was written down (and I'm assuming nothing was recorded) to use as documentary evidence.

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- c) i) For (i), likely grounds to object is multiple hearsay – "Percival states that Alexander's wife states that ...". This may not cause the evidence to be inadmissible, but may affect the weight the court attaches to it, and the costs. ✓1

For (ii), likely grounds to object is that statement of opinions are not admissible as evidence (unless it is expert evidence, which is not the case ✓1).

- ii) The case management conference. ✓1
- d) i) Measure of damages in an IP case can be one of "lost profits" ✓1 or "reasonable ✓1 royalty"
- "Lost profits" includes loss of sales, price erosion and ancillary damages suffered. ✓½
- "Reasonable royalty" includes the amount of royalties that could theoretically have been gained through a legitimate ✓½ royalty/licencing agreement.
- Likely to use "lost profits" as Alexander has already suffered a loss of profits of £40 ✓1 per copy due to Veejay's activities.
- d) ii) Case Management Conference.
- iii) The maximum costs the IPEC can make is £50,000; Veejay has made £32,500.

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MARKS AWARDED 8/20