

**IPLC1 – Intellectual Property Litigation Certificate – Module 1 Written Paper**

**Thursday 16 November 2017**

**Time: 2.00pm – 4.00pm**

**Time allowed – TWO hours**

**INSTRUCTIONS TO CANDIDATES**

1. You should attempt **all** the questions in this paper.
2. Enter the question paper reference number (IPLC1), the question number, and your candidate number in the appropriate boxes at the top of each sheet of paper.
3. Start each question (but not each part of each question) on a new sheet of paper.
4. Use **black ink**.
5. Write on one side of the paper only.
6. Write within the printed margins.
7. Do not use highlighter pens on your answer script.
8. Do not state your name anywhere in the answers.
9. Write clearly, as examiners cannot award marks to answers that cannot be read.

**INFORMATION FOR CANDIDATES**

1. The total number of marks for this paper is 60.
2. At the end of the examination the invigilator will instruct you to:
  - a. Count the number of pages you have used.
  - b. Use the boxes on each answer sheet to number sheets in the format '1 of 25', '2 of 25', etc.
  - c. Place your answer sheets in order in the white envelope, seal the envelope and leave the envelope on the desk.
3. Do not staple the pages or use adhesive tape or treasury tags.
4. You may take the examination paper out of the examination room.
5. This question paper consists of **six** pages in total, including this page.

**Question 1**

- a) What is the *ratio decidendi* of a case and how can it be discerned? **2 marks**
- b) Discerning the *ratio decidendi* of a case is not always straightforward. Comment on the reasoning of judges that would form the ratio of a case in the following scenarios:
- i) Three judges in the Court of Appeal come to the same conclusion, but two of them reach that conclusion for reason A and the other for reason B.
  - ii) Three judges in the Court of Appeal come to the same conclusion, each for a different reason.
  - iii) One of three judges in the Court of Appeal gives a single judgment of the whole court, the other two confirming their agreement.

**3 marks**

**Total: 5 marks**

**Question 2**

The High Court now requires that alongside the Case Management Conference there is also a Costs Management Conference (CostsMC).

- a) Which costs and estimates are the parties required to set out? **3 marks**
- b) How must the parties present their costs information at the CostsMC?? **1 mark**
- c) What does the court decide at the CostsMC? **1 mark**

**Total: 5 marks**

### Question 3

You are representing a client in a patent infringement action in the Intellectual Property Enterprise Court and are in the middle of cross-examination of the other side's expert witness during trial. Your client feels that the judge is being influenced by the expert's view, to your client's detriment, and that confining cross-examination only to issues in the case may not be enough to counter this expert.

Your client tells you that the expert was embroiled in a controversy over a decade ago where one of the researchers working in the expert's lab had falsified data to support a publication and was also accused of financial irregularities.

While the expert was not personally implicated in this controversy and has since gone on to achieve great things, the reputation of his lab suffered over the short term as a result of this controversy. Hence, even a mention of this controversy irks the expert considerably. The client instructs you to use this information during cross-examination to undermine the credibility of the expert.

**a) Identify the relevant principles on which you should act.**

**3 marks**

**b) Explain what action you would take when dealing with this instruction and why.**

**2 marks**

**Total: 5 marks**

### Question 4

You act for a corporate client seeking revocation of a patent owned by an individual academic for adjustable focus spectacles. The academic is representing himself in the revocation proceedings. It becomes clear from the academic's submissions during trial that he has misunderstood a fundamental point of law to his detriment. Your client is pleased and does not see why you should be under any duty to correct the academic's understanding of the law.

**What action would you take and why?**

**3 marks**

### Question 5

Explain the difference between swearing affidavits and affirming affidavits.

**2 marks**

### Question 6

You are asked to be Commissioner for Oaths in connection with a statutory declaration being executed by your neighbour, Mr Harish Naidu, who is a devout Hindu.

**Does Mr Naidu's religion have any bearing on the form of the statutory declaration?**

**Give a reason for your answer.**

**1 mark**

**Question 7**

You are asked to be Commissioner for Oaths in connection with an affidavit which contains several hastily handwritten alterations and blank spaces.

**What steps would you take with regard to these alterations and blanks before the affidavit is sworn or affirmed?**

**5 marks**

**Question 8**

Which two of the following do **not** form an obligatory part of the trial bundle?

- Evidence
- Skeleton arguments
- Statements of case
- Disclosures
- Primers

**2 marks**

**Question 9**

In judicial review proceedings, what are the two grounds for alleging that a decision of the Comptroller was irrational?

**2 marks**

**Question 10**

Your client is Heavenly Hair Plc, an international market leader in the manufacture of luxury hair products. Its bestselling product, 'Hirsute Homme', is a patented shampoo treatment for male-pattern baldness. It retails at approximately £25 per 250 ml bottle in the UK. Three years ago, Heavenly Hair filed a patent infringement claim against Lovely Laundry Ltd over Lovely Laundry's use of the active ingredient of Hirsute Homme in its latest range of fabric conditioners. Heavenly Hair claimed it would be inevitable that the fabric conditioner, retailing at just £3.50 per litre, would eventually make its way into hair treatment too. However, last week, the Court of Appeal dismissed your client's patent infringement claims against Lovely Laundry Ltd. Your client now plans to appeal the ruling on the basis that the Court of Appeal failed to follow its decision in an earlier case, *Roberts v Chung Fang Co*.

**a) How long does Heavenly Hair have to make an application to the Supreme Court for leave to appeal?**

**1 mark**

**b) What is the test for granting permission to appeal to the Supreme Court?**

**1 mark**

**c) State three circumstances in which the Court of Appeal's decision in the earlier case of *Roberts v Chung Fang Co* would not bind it.**

**3 marks**

**Total: 5 marks**

**Question 11**

You are about to have an initial consultation with Fastfix Ltd, which is concerned that a large multinational company is infringing three of its adhesive technology patents.

**State three pieces of information you should include in your 'client care letter' in relation to legal costs.**

**3 marks**

**Question 12**

The well-known postal company, Clinkermail Ltd, and one of its most reliable, longstanding licensees, Parceloto Ltd, are in dispute about a term contained within their licence agreement.

**Identify three benefits to Clinkermail of resolving the dispute by mediation as opposed to litigation in this particular case.**

**3 marks**

**Question 13**

Identify three objectives of Pre-Action Protocols.

**3 marks**

**Question 14**

a) What is a cross-undertaking in damages?

**1 mark**

b) Explain the purpose of a cross-undertaking in damages.

**1 mark**

**Total: 2 marks**

**Question 15**

Your client, Horticultural Horizons Ltd, is initiating proceedings against Domestic Automaton Ltd for infringement of its 'Ghostgardener' patent. Domestic Automaton Ltd is marketing a self-propelling garden robot using very similar technology to your client's patented robotics. However, you still need to find out more detailed information about Domestic Automaton's alleged infringing activities.

Your colleague has accurately set out the heading of the Particulars of Claim including the Claim number, court and party names. She has also included the following content in the main body of the Particulars of Claim: patent number, name of claimant as proprietor of the patent and reference to relevant claims of the patent.

**Set out two other inclusions which should be inserted into the main body of the Particulars of Claim above.**

**2 marks**

**Question 16**

Elemental Lab synthesises tiny faceted diamond grains for use in the manufacture of cutting and polishing tools. Elemental Lab has been served by Khemko Ltd with a Claim Form and Particulars of Claim alleging patent infringement in relation to its diamond grain production method. Elemental Lab has already filed an acknowledgement of service.

**a) How long does Elemental Lab have to file its defence if the action is in the IPEC?**  
**4 marks**

**b) How long does Elemental Lab have to file its defence if the action is in the Patents Court?**  
**1 mark**

**Total: 5 marks**

**Question 17**

You have just been instructed by Jeff Banks. Jeff is the Managing Director of Topple Tots Ltd, which is a company which designs and manufactures activity toys for young children. Eighteen months ago one of Topple Tots' key designers, Jack Holmes, resigned and started working for rival company, Squirrel Enterprises. Jeff always suspected that Jack copied Topple Tots' detailed plans for a new folding toddler gymnasium before leaving Topple Tots, but he did not have any proof. However, last week Jeff noticed that Squirrel Enterprises was displaying a very similar prototype gymnasium at a trade fair in Dusseldorf. Jeff is aware that Squirrel Enterprises has a reputation for stealing ideas and inventions, and even burying evidence when litigation is pending.

**a) State what application could be made to the court by Topple Tots in order to preserve evidence in this case, and how additional protection may be achieved when making it.**  
**2 marks**

**b) What information should be included in the application's supporting affidavit?**  
**3 marks**

**Total: 5 marks**

**Question 18**

Give two examples of a situation where a statutory declaration can be used.

**2 marks**

**Total Marks [60]**