

Question 1

The legal basis upon which we work to obtain a remedy, together with the facts we will have to prove in order to obtain the remedy, ie in order to prove our cause of action.

MARKS AWARDED 1/1

Question 2

There are bodies who are willing to finance litigation.

A further option is to approach the competitors of the wealthy company to offer them the patent or an exclusive licence so that they can sue.

MARKS AWARDED 0/4

Question 3

- Skeleton argument.
- Chronology of events.
- *Dramatis personae*.
- Any orders (eg interim order for specific disclosure) that the court has made so far in the claim.

MARKS AWARDED 3/4

Question 4

- 1) The previous decided case must have been before a court which is superior to the Patents Court, ie the Court of Appeal or the Supreme Court (formerly known as the House of Lords).
- 2) The binding precedent is contained in the ratio decidendi of the previous case (as opposed to the *obiter dicta*).
- 3) The decision of the previous case does not conflict with an earlier decision of a superior or equivalent court.

MARKS AWARDED 2/3

Question 5

- a) The UK High Court.
- b) (1) If the appeal is in relation to an interim decision of the IPEC multi-track, the appeal is to the UK High Court (ie the Patents Court).

- (2) If the appeal is in relation to a final decision of the IPEC multi-track, the appeal is to the UK Court of Appeal.

MARKS AWARDED 3/3

Question 6

- a) The legal principle is that costs should be reasonably incurred, reasonable in amount and proportionate to the claim. The principle is central to the CPR.
- b) As the prior art attacks were without merit, the £60,000 cost to my client for preparing the counterclaim was not 'reasonably incurred' nor 'reasonable in amount'.
I therefore request that the judge make a wasted costs order against the defendant for the £60,000 the claimant spent on the counterclaim.

MARKS AWARDED 1/5

Question 7

- a) Issue proceedings in the IPEC or Patents Court, seeking a court order for information from the 3rd party in relation to the identity of the defendant. This is known as a 'Norwich Pharmacal Order'.
- b) Norwich Pharmacal (House of Lords decision).

MARKS AWARDED 2/2

Question 8

- a) Advocates are not permitted to pay witnesses to give evidence. If he is willing to tailor his advice in favour of our client, then he not a suitable witness.
- b) The duty of the expert witness is to give an honest view of the questions put to him. He will be under oath in court, meaning that if he lies, he will have committed perjury.
- c) Generally speaking, he is correct that a lawyer's instructions to expert witnesses are privileged and so cannot be used by the other side. However, privilege can be lost.

MARKS AWARDED 1/5

Question 9

- a) The IPEC is for IP related disputes, in England and Wales. If the relevant acts occur in England or Wales, the IPEC can be used.
- b) Breach of contract.

- c) i) There is a licence in relation to ABC's UK patent, to manufacture, in the UK, products that are the subject of the patent.
ii) CBA has breached the licence in a relevant respect.
iii) As a result of the breach, ABC has suffered loss.

MARKS AWARDED 5/5

Question 10

- 1) Arbitration. The parties put their cases to an arbiter who decided the case. The arbiter's decision is legally binding.
- 2) Mediation. A mediator is appointed to help the parties arrive at an agreement. If the parties reach an agreement, it is legally binding on the parties.
- 3) UKIPO opinion. An opinion in relation to matters including novelty and inventive step can be requested from the UKIPO. It is not legally binding, but can help the parties reach an agreement.

MARKS AWARDED 3/3

Question 11

If the defendant rejects the offer and the defendant does not obtain a judgement at trial which is more favourable than the Part 36 offer, then the defendant will be liable for the claimant's costs on an indemnity basis, from the time of the P36 offer onwards.

My client has 14 days from the date of the offer to accept it.

MARKS AWARDED 1/5

Question 12

An attorney (or firm) can act against a former client, provided that both the new and former clients agree to this in writing beforehand.

However, the fact that I am aware of the fact that the former client likes to settle, unfairly advantages my new client. However, if the trial date is very close, there may not be time for the new client to find another attorney. Therefore, I will get written permission from both parties, and I will take on the client.

MARKS AWARDED 3/5

Question 13

The Commissioner for Oaths needs to ensure that the person swearing the oath/affidavit understands its contents and is competent to sign. Also, he should check that the exhibits are the exhibits referred to in the affidavit.

Therefore, check that Dr Dhani understands the content of the affidavit and the 3 items of correspondence. It may be necessary to obtain translations of these documents in a language he can understand.

The Commissioner should check that the correspondences are those referred to in the affidavit.

Ask Dr Dhani to affirm the affidavit. He should be asked to say “I sincerely, solemnly and truly affirm that this is my name and handwriting and that the contents of this, my affidavit, are true”.

MARKS AWARDED 3/5

Question 14

While the patent attorney is obliged to assist his client, he must not mislead or deceive the court (IPReg Code of Conduct). I will therefore not state in court that the defendant has acted fraudulently.

However, I can continue to represent the client in the trial. If I am asked for details of the fraud allegation, I will say “Client confidentiality prevents me from speaking on that topic”.

If the trial bundle has not yet been lodged, remove the fraud allegation from the statement of case. Also remove the witness statements and affidavit from the bundle. It may be necessary to seek the court’s permission for this.

MARKS AWARDED 2/5

Question 15

- a) 3 months from the date that the grounds for claim arose, ie 3 months after the date of the Comptroller’s decision.
- b) That the Comptroller’s decision was unlawful ie the Comptroller made an irrational decision, or otherwise erred in the application of the law to the factual situation.
- c) File second PCT. Application for Judicial review is to High Court and may be expensive.

MARKS AWARDED 4/5