

PAPER: IPLCI

Question 1

- (a) A witness statement is not sworn, an affidavit is.
- (b) By a witness statement.

Question 2

- (a) Judicial review is available for appealing a decision of the IPO in its capacity as the receiving office under PCT. So in theory it is available to the client.

But an application should have been made within 3 months of the decision so as things stand it is too late.

- (b) Can still apply to have the decision Judicially reviewed. Request to have the period for filing the application extended, citing client's hospitalisation as reason for the delay.

Question 3

- (a) May apply to the Court of Appeal for leave to appeal.
- (b) Should file the relevant form for appeal.

The form should indicate that permission to appeal is sought.

Form should identify the IPEC decision accompanied by a copy of the decision setting out the grounds for appeal and facts/documents relied upon.

Question 4

Can search records at Company House to obtain most up to date company accounts.

Can also apply for pre-action disclosures for necessary documents that would enable an assessment of whether it is worth bring a claim. This application should include Rhoads as a defendant.

Question 5

- (a) For infringement, limitation period restarts after each new instance of the infringing act. So in this case, Gemma still has 5 years 6 months to bring a claim.

- (b) Any backdated damages awarded will only go back 6 years. Further delay in issuing proceedings may mean that damages are not awarded for those infringing acts dating more than 6 years ago. So if the interim acts fall outside of the 6 year period damages for those acts could not be recovered.

Question 6

- (a) For patent infringement cases, letter before claim may be viewed as a threat and is actionable if it is found to be groundless.
- (b) Should limit content to those excluded from a groundless threat action in S70 Patents Act, i.e. merely providing information regarding the patent, enquire as to who may be infringing the patent, or only discuss acts of making or imparting a product.
- (c) No. Case law has established that the test for whether a letter is a threat is whether a reasonable person would understand it to be a threat.
- (d) Could issue a claim but delay service. That way the letter would not be a threat because proceedings had already been issued.

Question 7

- (a) Case settled too quickly and may be sham litigation and may involve money laundering.
- (b) Should report the incident to the authority whilst not informing client.

This does not breach duty of disclosure to client because Anti Money Laundering Act permits.

Question 8

The deponent is his work colleague so is too close to Benedict.

The matter also relates to Bailey & Scott, Benedict's employer, so Benedict has a vested interest in the matter.

Both means that Benedict is not independent.

Question 9

- (a) No. Because the boyfriend cannot verify whether the declaration is true. Also Lucy cannot verify that the exhibits are those referred to in the declaration.

- (b) Also need to check that the declaration does not relate to matters about the relationship between her and Helen. If it does then her independence is compromised.

Question 10

- (a) Jeff was aggrieved by the threat as he is potentially losing his suppliers.

There is no infringement since the plastic cover has no mechanical capabilities and therefore outside the scope of the patent.

The Claimant knows that there is no infringement since they have already been informed.

- (b) Can also claim malicious falsehood because Speed Bikes have made a false statement on the Cycle Nut website.

Need to indicate in the Particulars of Claim the details of the statement (i.e. that it is false). Also need to detail the damages or potential damages suffered by Jeff.

Also need to show that Speed Bikes intend on causing damage to Jeff.

- (c) Not necessarily. It may cause Speed Bikes to reconsider and settle the case without going into proceedings. But Speed Bikes may simply file a counterclaim.

It is however advantageous to inform Speed Bikes of our intention to file claim for groundless threat and malicious falsehood and see if they are willing to settle. If not then file our claim ASAP.

Question 11

Expert will be chosen from the relevant field, i.e. vaccines for influenza.

Expert should be able to meet trial date timetable (to be decided during case management conference).

Case management conference will decide the issues for which the expert's report should address.

Case management conference will also decide if the expert is to be instructed jointly by both parties.

CMC will set date for submission of the expert's report and if any experiments are required.

Question 12

- (a) Duty to the court (i.e. to not mislead the court) overrides duty to client.

Duty to inform the court of all relevant legal precedents, whether support or adverse to case, overrides duty to client.

Duty to act within the law also overrides duty to client.

- (b) The only duty to opposing side is to act professionally. No duty of disclosure so need not inform opposing side.
- (c) (i) Inform client that the overriding duty to the court requires me to inform the court of *Moody v Davis*. If he insist on withholding it from the court then I would resign from the case and he should find alternative counsel.
- (ii) *Moody v Davis* was issued only days before *Smith and Matthews*, so it is reasonable for it to be not identified. This is evident from the fact that the opponent has also overlooked it.

Question 13

- (a) Not at any time during cross-examination.
- (b) Not at any time when the witness is giving evidence in court, including any intermission or breaking in court proceedings.

Question 14

Any privileged documents belonging to the opposing side.

Any privileged documents belonging to the client.

Any illegally obtained documents.

Question 15

Standard Costs are capped and are assessed based on tables set out in the CPR.

Question 16

A witness is not a party to the proceedings so may be interviewed by the opposing side. Since there is no duty of confidentiality placed on witnesses, anything disclosed to the witness may then be disclosed to the opposing party.