

PAPER: IPLCI

Question 1

- (a) A witness statement is the evidence-in-chief of the witness. It is signed by the witness and contains a statement of truth. Lying in a witness statement is contempt of court.
An affidavit is a statement made under oath (sworn or affirmed), and lying in an affidavit is perjury.
- (b) An interim application for a search order is “not on notice” to the respondent, and requires written evidence to be supported by an affidavit.

Question 2

- (a) The scope of judicial review in the UK includes review of decisions of the UK IPO acting as Receiving Office under the Patent Cooperation Treaty (“R.O.”). The present decision relates to the IPO’s decision to treat the date of receipt of a PCT application filed at the UKIPO as R.O. as the PCT application filing date. Thus, the present matter is within the scope for judicial review in the UK.
- (b) The deadline for requesting judicial review is 3 months after the handing down of the decision to be reviewed. 14 weeks is more than 3 months. Thus, the deadline has been missed.
However, there appears to be mitigating circumstances explaining why the deadline was missed (client in hospital), and the court has discretion to extend the deadline for requesting review.
The action required is to file a request on form N461 at High Court with facts and submissions in support of review, with request for extension of deadline (with facts and submission in support of extension, e.g. hospital admission details). Pay the Court fee. This action should be done as soon as possible. Once issued by Court, the request should be served on the Comptroller, as soon as possible and at the latest within 7 days, as the respondent in the review.

Question 3

- (a) Leave to appeal from the IPEC has been refused from the IPEC. But permission to appeal may be sought from the Court of Appeal instead.

If the subsequent appeal is permitted by the Court of Appeal, but unsuccessful, leave to appeal at the Supreme Court could be requested from the Court of Appeal and the Supreme Court – permission from both is required.

For appeal at Court of Appeal to be permitted, it must be established that a reasonable person might have come to a different decision at first instance;

the decision appeal is irrational or unreasonable e.g. due to serious procedural error or a failure to consider matters relevant to the case, or an error in considering matters that are irrelevant to the case.

For appeal at the Supreme Court, permission to appeal is harder to obtain and it must be in the public interest to allow the appeal considering that the case will have been reviewed at appeal.

- (b) Procedure – file at Court of Appeal Appellant's Notice (N161) (four copies) with 21 days of handing down the decision from IPEC, including: request for permission to appeal supported by facts and submissions for permission; grounds of appeal supported by facts and submissions for grounds; copy of final decision appealed; copy of decision of IPEC refusing permission to appeal; and payment of the court fees.

Question 4

Each potential defendant is: (1) Rhoads plc; (2) Waterpel Ltd; and (3) Gary Grant.

For (1) and (2) we could check their company accounts at Companies House.

For all [(1); (2) and (3)], we could perform a credit check at a credit check agency.

For (3), we could check the statutory registers to see if he is bankrupt.

Question 5

- (a) The limitation period is 6 years from the infringing act. Thus, no action may be brought in respect of the earliest known act, which was over 6 years ago. However, each infringing act triggers its own limitation period. Thus, the last known infringing act could be the basis for an infringement claim. Any other acts between the date of claim and 6 years ago may also be the basis for the claim. In view of the provided dates, Gemma has only 5½ years to issue proceedings against Anthony.
- (b) No damages or account of profits may be obtained in respect of acts outside the limitation periods and Anthony may no longer be infringing thus delaying issuance will limit amount of damages or account of profit that Gemma could be awarded if successful.

Question 6

- (a) A letter before claim may be held to be a groundless threat of action, and so there is risk of a threats action against the claimant.
- (b) A patent infringement letter before claim should merely advise of existence of patent, unless the alleged infringer is e.g. making the product (primary

infringer), in which case the defendant would be unable to issue a threats action against the claimant.

- (c) “Without prejudice” on a letter prevents disclosure at court if the letter is a genuine attempt to settle the proposed claim (A1). However, it provides no protection against a statement held to be a threat as this aspect of the letter is not a genuine attempt to settle the matter.

(A1) = without issuing claim.

- (d) A letter advising of the existence of the patent and trying to identify the potential infringer. It should also set out action that may be taken (e.g. payment) to avoid action against the potential infringer.

Question 7

- (a) Is this money laundering?

It was settled very quickly and happened in an unusual jurisdiction for infringement. The amount is very large + without any negotiation.

- (b) I would tell my nominated person at the time, who would inform the relevant law enforcement authorities for money laundering (NCS). I would not alert the client or the other side of this action.

Question 8

A Commissioner for Oaths should decline to act for colleagues; and in respect of documents prepared by his firm.

These situations both apply to Benedict.

Question 9

- (a) The exhibits must be with the Declaration in order for the oath to be done correctly. So, no Lucy cannot administer the Declaration at this time.
- (b) It is not clear from the facts presented whether the deponent is competent to make the deposition because the document is drafted in a language which the deponent does not speak. – Lucy should check this. Lucy must also consider whether she is impartial in this matter relating to her friend’s boyfriend.

Question 10

- (a)
 - Jeff is an affected party.
 - The threat is groundless in that his product does not infringe the patent.
 - He is or will suffer harm as a result of the threat.

- (b) The statements on the website will cause harm to Gary.

I would consider adding libel to the causes of action because the statements identify my client, assert arguably untrue facts that cause harm to Gary – they are in writing – and seek to defame Gary.

- (c) We should file an application to the court requesting that the infringement action of Speed Bikes is stayed until the conclusion of the claim of Gary. This stay is not automatic and must be requested. This application could be filed on N244 with supporting evidence and arguments after Gary's threats claim is filed.

Question 11

The expert must be competent to provide an expert report on the matter.

The expert must be independent of Angpharm and Glomed.

The expert must understand their duty is to the court.

Question 12

- (a) To act with integrity; to administer justice and to uphold the rule of law.
- (b) The attorney has a duty to not mislead the court (IPReg code) and indeed to not mislead anyone (IPReg code in cross-reference to bar code and solicitor's code). This also flaws their argument to act with integrity. Withholding *Moody v Davis* from the other side would be misleading; Thus, we must advise the other side (and the court) of *Moody v Davis*, even if it harms the case.
- (c)
 - (i) If the action is to continue I would inform the court by filing an application for a case management conference on form N244, explaining the relevance of the new document, in view of the seriousness of the omission.
 - (ii) I would advise the client that my search for legal authorities was professed and thorough, but unfortunately the case was missed. The findings of fact are uncertain and this affected search – the other side missed it too!
I would advise that I cannot now mislead the court by not citing *Moody v Davis*. If he wished to retain me as his attorney we must cite the case, if he continues to instruct me to not cite *Moody v Davis*, I would have to resign.

Question 13

- (a) Only during the cross-examination of that witness, so that the witness can defend the accusation.
- (b) The advocate is forbidden from communicating with a witness at trial during an adjournment in the witness's oral testimony.

Question 14

- Confidential documents from your client that the client has not given permission to put before the court.
- Privileged documents for which privilege has not been lost by waiving this right or accidentally.

Question 15

Standard costs are typically awarded to the winning party and provide a contribution to the costs of the party awarded costs but not necessarily cover the full costs incurred. They are amended for work done in each category of work on a published scale of costs, and in an amount that is capped at each stage according to the published scale of costs.

Indemnity costs may be awarded to a party where the other side has taken action that disrupts the administration of justice or rule of law e.g. by misleading the court, or where their actions have unreasonably wasted court or the other side's time. Indemnity costs can cover the full amount of the cost incurred by the party awarded costs.

Question 16

- These details may be privileged or otherwise confidential.
- The witness may also be interviewed by the other side, thus telling the witness the details risks leaking the details to the other side, diminishing the client's case.
- The witness may lose his or her independence by e.g. wishing to comply with the interviewer's strategy or tactics by providing confirmatory evidence that is not true or biased.