

Examiner's
use only**Question 1**

- a) i) Magistrates court has criminal ✓1 jurisdiction.
 ii) County court has civil ✓1 jurisdiction.
 iii) High court has jurisdiction over civil ✓1 cases. But high court also has jurisdiction over appeals from Magistrates court by way of case stated ✓1.

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- b) High court ✓½ has exclusive jurisdiction to hear applications for judicial Review.

Application will be heard (decided upon) by 2 high court judges.

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- c) i) vertical effect means an EU citizen can take action against their national government. ✓1

EU Regulations are binding on all member States immediately & therefore person may always exercise their right.

For Directives a person can take vertical action against the government if the Directive is not implemented in time.

- c) ii) Horizontal effect means a citizen may take action against another citizen. ✓1

Available if the Regulation or Directive allows (but in case of Directive only once it has been implemented).

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- d) Registered person under IPREG:

- Any registered (Qualified) Patent ✓1 or Trademark ✓1 attorney working in a private practice.
- Any trainee working under supervision of a registered patent or TM attorney.
- Any person employed in an IP role in industry.

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8½

MARKS AWARDED 8.5/10**Question 3**

- a) i) 'balance of convenience' is the test developed by the American Cyanamid case for determining if an interim injunction should be granted. ✓1

The preference of the court is to maintain the status quo between parties immediately before proceedings.

- ii) Small claims track does not have the jurisdiction to order an interim injunction. ✓1 2
- b) i) Supervising solicitor is required when a search order has been granted.
The supervising solicitor is present to explain, in lay terms, the injunction & what is required of the defendant. ✓1
- ii) Characteristics of the supervising solicitor:
- must be an experienced solicitor.
 - where the defendant is a woman, solicitor should also be a woman or accompanied by one. ✓1 2
- c) Remedies for patent infringement from IPEC:
- damages or account of profits ✓1
 - delivery up or destruction ✓1
 - Injunction. ✓½ 2½
- d) Regarding a witness a regulated person must not:
- coach a witness in their answers. ✓1
 - contact a witness for the other side without permission. 1

7½

MARKS AWARDED 7.5/10

Question 4

- a) i) A condition is a term of the contract which goes to the heart ✓1 of the contract.
Breaching a condition amounts to a repudiatory breach.
- ii) misrepresentation is inducing ✓1 the other party into a contract on the basis of false information. misrepresentation can be innocent, negligent, or wilful.
- iii) privity of contract is the principle that a 3rd party cannot be bound by the contract. ✓1 3
- b) Assignment of a contract is the assignment of a parties rights or obligations under a contract to another party.
Novation is the change of name on a contract such as company name. 0
- c) copyright licence cannot normally be assigned as a licence is usually made up of several copyright rights which would require agreement from all the individual parties. 0

d) i) A lien is the withholding of client documents until a debt on the clients account has been settled. ✓1

ii) Regulated persons under IPREG (Patent & TM attorneys) do not benefit from the statutory lien available to solicitors.

Therefore a lien can only be applied with agreement of the client. ✓1

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MARKS AWARDED 5/10

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Question 5

a) Two types of charges, Fixed & floating.

Fixed charge appropriate for specific assets.

Floating charge appropriate for classes of assets that need to be dealt with normally on a day to day basis.

i) A factory building would be suitable for a fixed charge as it is a permanent structure that is not unreasonable to get permission from the loan provider to deal ✓1 with the factory.

ii) A portfolio of intellectual property rights would be appropriate for a floating charge as this would allow the proprietor to assign & license rights under the IP without constantly requiring permission. ✓1

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b) A limited partnership is a type of partnership (two or more owners, max 20 except for legal firms) where there must be at least one general partner and one limited partner.

The general partners have unlimited liability for the business and can bind the partnership. ✓1

Limited partners are only liable for their stake in the partnership and cannot manage the business. ✓1

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c) Documents required for a limited company:

- memorandum of association.
- Articles of association. ✓1

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d) Company limited by shares means that, although the shareholders are not personally liable for business debts, the money they have already invested into the company to buy shares is available to settle debts etc. ✓1

Company limited by guarantee does not have shareholders but instead has trustees.

↳ typically how charities etc are set up.

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- e) Client money must be held in trust and separate from the accounts of the business.

↳ max holdable (without further arrangements necessary) is £250,000.

Where money is received from clients for purpose of paying disbursements, and/or money is already held for the client, the money for the disbursements may be paid into the firm accounts. ✓1

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MARKS AWARDED 7/10

Question 6

- a) IPEC:

Trial limited to 2 days, therefore might not have enough time for all witnesses. ✓1

Damages up to £50000, therefore plenty for what he wants to recover. ✓1

Costs up to £50,000, which is likely to be enough given the damages involved. ✓1

High court:

Unlimited powers to set procedure & length which would be useful to hear all his witnesses.

No limit on damages & no limit on costs – not likely to be relevant given damages sought however might leave him open for higher costs if he loses.

Can apply for an injunction against Jackie.

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- b) Problem is that IPEC trials only last for 2 days maximum. ✓½

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- c) Simon's writer would be considered an expert ✓1 witness.

Simon must get permission from the court to use an expert witness.

An expert witness has a duty ✓1 to the court first & foremost and must therefore be impartial regardless of which party is paying them.

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- d) Simon could bring an action for malicious ✓1 falsehood. Malicious falsehood requires:

- A statement of false fact, not opinion ✓½, about the claimant or their property made by the defendant.
- That the words (statement) complained of were published ✓½ maliciously.
 - the statement must be published in a permanent form
 - the defendant must have intent to cause injury to the claimant knowing that their words were ✓½ untrue or was reckless in considering if they were true or not.

- The claimant must have suffered damage as a result – however there is no requirement for special damage. ✓½

In bringing such a case Simon will have to prove his story on how the book was created (i.e. childhood event) as otherwise it will not be possible to prove that Jackie's statement was untrue. ✓½

Also will have to show that Jackie did not truly believe what she said & that she made the statement to deliberately cause ✓½ damage to Simon.

Simon must also prove he has lost sales as a result.

3½

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MARKS AWARDED 9/15

Question 7

- a) As the general partner of a limited liability partnership Sanjay currently has unlimited liability for the business. ✓1

The business does not have its own legal identity.

An alternative structure would be a limited liability company.

Such a company is owned by its members ✓1 & managed by shareholders (although the two can overlap). It is established by the owners entering into a memorandum and governed by Articles of association. ✓½

A limited company is required to publish/make publically available details of its activities & finances. ✓½

The advantage for Sanjay is that the company has its own legal identity ✓1 and therefore Sanjay cannot be personally liable for the business. (except for his shares in the business). ✓½

4½

- b) Tort of negligence requires:

- A duty of care to exist
 - consider the neighbour test – is claimant a person the defendant ought to have in mind when performing their acts or omissions.
- ✓1 – Also consider the foreseeability of the damage (not necessarily the specific person but class of persons), the proximity of the parties, & is it just to impose a duty of care.
- A Breach of that duty
 - ✓1 – the objective standard is the 'reasonable man' – a professional will be held to a higher standard for the duty to have been breached.
- Damage caused by that breach (causation)
 - ✓½ – was the breach a cause (not necessarily the cause) of the damage.
 - But the thing speaks for itself.

- That the defendant is legally responsible for the damage (Remoteness) ✓1

The main issue would likely be establishing if a duty of care existed. It might also be necessary to apply the “special relationship” test required for a duty of care under negligent misstatement.

A ‘special relationship’ requires:

- that the advisor professed to have specialist knowledge or skills
- that the advice was not given in a casual or off hand way
- that the advisor has not limited or excluded their liability.

- ✓1 It is not clear whether David’s advice was offered at the drinks party or sometime after, and in either case what context the advice was given in.

Even if a Duty of care did exist it is not obvious whether that Duty was breached as David advised a perfectly normal type of company to Sanjay (& may not have been aware of all the facts) ✓1

If there was a duty of care & a breach then clearly there has been damaged cause due to the loss of the house.

- ✓1 There does not appear to be any intervening acts or contributory negligence which would limit David’s liability. At best, and again depending on David’s advice, it might be a defence that Sanjay acted willingly & in full knowledge of the consequences which would mean David would not be liable.

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MARKS AWARDED 8/15

Question 8

a) For a contract to exist requires:

- An unequivocal offer to enter into a contract, capable of acceptance, that the offeror intends to be binding once accepted.
↳ An invitation to treat is not an offer.
- Unconditional acceptance of the offer and all its terms.
↳ A counter offer is not acceptance.
↳ acceptance must be communicated to the offeror.
- Consideration – something of value to flow between ✓½ the parties.
Must be sufficient but need not be adequate.
- Intent to establish legal relations ✓½
↳ Domestic agreements normally regarded as not intended
↳ commercial agreements default is intent exists

Theresa showing the manufacturing agreement is not an offer as it should be regarded as an invitation to treat. ✓½

Angela's email of a manufacturing agreement constitutes an offer to Theresa. ✓½

Theresa did not communicate acceptance to Angela. ✓1

Therefore there is no contract.

- b) To stop Theresa before the launch event Angela must apply for an interim injunction. ✓½

Whether an application for injunction should be granted is based on the 'balance of convenience' test set out by American Cyanamid: ✓½

- a) There must be a serious ✓½ issue to be tried, and the claim must not be frivolous or vexatious.
- b) Damages must not be an adequate remedy ✓½
- c) weigh the damage to the claimant if the injunction is not granted, against
- d) the damage to defendant if the injunction ✓½ were to be granted.
- e) consider maintaining the status quo (the courts ✓½ preference is to maintain status quo)
- f) as a last resort only, consider the merits.

Should the injunction be granted Angela will have to take a cross undertaking in damages. ✓1

As Angela wants to stop the launch event which is tomorrow Angela will have to apply for an injunction without notice, (i.e. without notifying the other side) —Theresa ✓½

↳ only granted in exceptional circumstances as general rule of natural law is both sides should be heard.

Any undue delay in making the application will prejudice the application.

Any material non-disclosure will cause the order to be put aside.

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MARKS AWARDED 7.5/15

Question 10

- a) William is not the registered owner of the Patent.
Although he has the equitable ✓1 title, because Edward assigned him the right to the patent, he has no proof of such. ✓½
Therefore the court will require that Edward is a party to the infringement action as Edward is still the Registered owner.
- b) William can overcome the problem by having Edward sign an assignment document so that William can register his right to the patent at the UKIPO.
Alternatively William must convince Edward to become a party to the action.
The problem in both cases is that Edward has disappeared so neither appears to be an option.
- c) William has not registered his right and Pargit did not know the patent had been assigned to someone else. Therefore under the law of equity ✓1 Pargit owns the patent.
Further, if Pargit has his assignment in writing then he can register the assignment at the UKIPO and will have rights over William. ✓1
- d) The prototype is an example of physical ✓1 evidence, a material object presented to the court with its significance usually explained by a witness testimony.
The purpose of presenting the prototype light bulb fitting would be to support the case for infringement.
- e) Samantha has 'relevant knowledge' ✓1 of the patent application, through discussions with her former client Edward
There is a potential conflict (IPREG Rule 7) as she will be acting on the same/related matter for her current client William.
To act in the same or related matter for two different clients (or client & former client) requires permission from both parties.
As Edward is seemingly unavailable to reaffirm permission it is reasonable to accept his standing instructions. Therefore Samantha just needs permission from William which will presumably be given.

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MARKS AWARDED 5.5/15