

Examiner's  
use only**Question 1**

- a) i) The magistrates court has mainly criminal ✓1 jurisdiction. It also has jurisdiction over a small number of civil matters, for example pub licensing.
- ii) The county court has civil ✓1 jurisdiction over all civil matters
- iii) The High court has mainly civil jurisdiction, although it can have jurisdiction over certain cases appealed from the magistrates' court. ✓2
- b) The High Court ✓½ has exclusive jurisdiction to hear applications for judicial review
- c) i) If EU law has vertical effect, this means that individuals in member states may directly rely on that EU law in actions against the state. ✓1
- ii) If EU law has horizontal effect, individuals in member states may directly rely upon that EU law in actions against other individuals ✓1
- d) Registered person:
- Patent attorney on the CIPA ✓1 register
  - Trademark attorney on the CITMA ✓1 register

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(8½)

**MARKS AWARDED 8.5/10****Question 3**

- a) i) The 'balance of convenience' is the test that the court applies when deciding whether or not to award an interim injunction established in American Cyanamid v Ethicon. ✓1
- When assessing the balance of convenience, the court will weigh up the damage to the claimant if an interim injunction is not awarded, against the damage to the defendant if an interim injunction is awarded. ✓1
- ii) An interim injunction cannot be obtained in the small claims track of the IPEC, as interim remedies are not available to cases on the small claims track. ✓
- b) i) A supervising solicitor is required when a search order is granted. ✓1
- The search order permits the claimant to enter the defendant's premises, escorted by a supervising solicitor, to search for, for example, infringing articles.

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- ii) The supervising solicitor is paid for by the claimant, however, the supervising solicitor must be impartial and unbiased. ✓1

If the defendant is likely to be an unaccompanied woman, the supervising solicitor should be, or should be accompanied by, a woman.

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- c) • ✓1 Damages (in the IPEC these are limited to £500000)  
• ✓1 Order for delivery up of any infringing articles  
• Injunction ✓½

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- d) A regulated person must not:

- rehearse any statements/answers with a witness before trial ✓1
- encourage the witness to answer in a way which is not ✓1 truthful

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MARKS AWARDED 9.5/10

#### Question 4

- a) i) **CONDITION:** a term of a contract of such importance that its breach goes to the root of the contract. ✓1 The breach of a condition is a repudiatory breach.

- ii) **MISREPRESENTATION:** a statement made by a party, before a contract is executed, which induces ✓1 the other party into entering into the contract, which is later found to be untrue. Misrepresentation may be wilful (fraudulent), negligent or innocent.

- iii) **PRIVITY:** only the parties to a contract may be under any obligation due to the contract, or may take any action for breach of the contract. This is subject to the Contracts (Rights of Third Parties) Act 1999. ✓1

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b) ASSIGNMENT

- Where a party to a contract transfers the benefit of the contract to another person, but the obligations of the contract remain with the original party ✓1
- The other party to the contract does not need to consent to the assignment (subject to any contractual agreement to the contrary). ✓½  
i.e. for a contract between A and B, if B wants to assign to C, he does not need A's consent.

### NOVATION

- Where a party to a contract transfers both the benefits and the obligations of the contract to another party. ✓1
  - Effectively, a new party replaces the original party. ✓1
  - The other party to the contract must consent to the novation ✓½
- c) A copyright licence cannot normally be assigned because the terms of the licence agreement are specific ✓1 to the person to whom the licence was originally granted. 1
- d) i) A lien is where the property of another person is retained, pending completion of some agreement. e.g. if a regulated person exercises a lien over a client until the client completes a payment. ✓½
- ii) A regulated person may only exercise a lien when it is permitted by law ✓½ 1

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**MARKS AWARDED 9/10**

### Question 5

- a) i) A fixed charge, ✓½ as it is unlikely that the factory owner will want to sell the factory while the charge is in place.
- ii) A floating charge, as the owner will still be able to deal with the individual IP rights i.e. assign or licence each right. ✓1 1½
- b) A limited partnership is a form of company with at least one general partner and at least one limited partner.
- The limited partner has limited liability up to the value of his contribution into ✓1 the company.
- The general partner has unlimited liability, and is responsible for the day to day management of the company. ✓1 2
- c) Memorandum of association and articles of association are required to form a limited ✓1 company 1
- d) A company limited by guarantee is a company where certain members have agreed to contribute ✓½ to the payment of any debts. This type of company may be used, for example, by a charity.
- A company limited by shares has a certain proportion of its shares (at least 25%) in the public's control, by making them available for sale to the public. ½

- e) When handling such monies, a regulated person must place the money in an account separate from their personal accounts and must not deal with it for any other purpose than that for which it is intended. ✓1

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MARKS AWARDED 6/10

### Question 6

- a) IPEC is specifically aimed at allowing SME's like Simon's to bring proceedings.

#### IPEC

- damages are capped at £500000, ✓1 although all other remedies available in the High Court ✓1 are available
- recoverable costs are limited to a maximum of £50000 ✓½
- all evidence should be set out before proceedings, there is little opportunity to add evidence at a later date
- recoverable costs are limited to a maximum at each stage
- any trial is limited to a maximum of 2 day ✓½
- there are certain restricting conditions on the number of witnesses that can be used in IPEC (should be minimised)

- b) IPEC has a limit of 2 days for the maximum length of a trial.

Also, IPEC aims to reduce the amount of witnesses that may be used. ✓½

These may be an issue for Simon.

- c) A writer comparing the style of writing would be classed as opinion evidence.

This is only allowable if the witness is an expert ✓1 in the field, and can help the court to understand complex issues.

Therefore, the writer would only be allowed to give this type of evidence if – they solely aimed to assist the court in understanding complex issues.

- d) Simon could sue Jackie for malicious falsehood. ✓1

However, this would only cover the damage to his business (i.e. due to the reduction in sales) and not the damage to his reputation (which would be defamation) ✓½

The requirements for this action are:

- ① The defendant must have made a statement about the claimant's person or property which turned out to be untrue. ✓½

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- ② The statement made must have been made maliciously, ✓½ i.e. either with the intent to cause actual economic damage to the claimant, or with knowledge or recklessness as to the statement's falsity. ✓½
- ③ The statement must have caused special damage to the claimant, subject to Section 3 of the Defamation Action 1952. ✓½

Issues:

- The statement must have been published in permanent form. It is unclear whether it was. ✓1
- Jackie said that "in her opinion" the story was based on the cartoon. It may be difficult to prove that the statement was false as it was based on her opinion. ✓½

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MARKS AWARDED 9.5/15

### Question 7

- a) Sanjay and Freddy have a limited partnership. with Sanjay as the general partner.

Limited partnerships must also have at least one limited partner, which must be Freddy.

This means that Freddy has limited liability over the debts of the company, but Sanjay has unlimited liability. ✓1

In paying off the company's debts, Freddy is only liable to the amount that he contributed into the company, but Sanjay has unlimited liability, so any of his personal assets could be used to pay off the company's ✓1 debts.

I would advise that, instead, they form a Limited Liability Partnership. This would mean that they would both have limited liability up to the value they contribute into the company, so Sanjay's personal assets would not be at risk. ✓1

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- b) Elements of tort of negligence:

#### DUTY OF CARE

- In order to establish negligence, the defendant must have had a duty of care over the claimant.
- This is assessed by the "neighbour test", based on the principle that ✓½ everyone has a duty to avoid actions or omissions that could harm their neighbour.

- When establishing who the neighbour is, the proximity of ✓½ the claimant should be considered, along with the foreseeability that damage could be caused.

#### BREACH OF DUTY

- The above duty of care must have been breached
- This is assessed based on the ✓½ “reasonable man” test, or in this case “competent practitioner”
- Did the defendant do what a ✓½ competent practitioner would have done in the circumstances?

#### CAUSALITY

- ✓1 • Damage must have been caused as a direct consequence of the breach
- “but for” test

#### LEGAL CAUSALITY

- remoteness
- should the defendant have reasonably ✓1 foreseen that damage would be caused to the claimant?

In making his statement, David had a duty of care over Sanjay ✓½

David should have asked someone with more expertise in the field of company law to assist in giving Sanjay ✓1 advice.

David breached the duty of care and, as a result, Sanjay has lost his home.

However, Sanjay could also be liable for contributory negligence, as his business failures were also a cause of the loss. ✓1

Therefore, damages could be apportioned between David and Sanjay.

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**MARKS AWARDED 9.5/15**

### **Question 8**

a) Requirements for the formation of a valid contract:

- offer
- acceptance
- consideration
- intention to create legal relations

#### OFFER:

- an offer is an expression of willingness to enter into an agreement, with the intention ✓½ that it will become legally binding upon the offeree once accepted.

- It seems like Theresa made an offer to Angela by way of the standard manufacturing agreement with licence fee. ✓1

#### ACCEPTANCE:

- acceptance must be a final and unqualified agreement to the terms of the offer
- Angela did not accept the terms of Theresa's original offer. ✓½
- Angela sent Theresa another manufacturing agreement without the licence fee, which would count as a counteroffer ✓½
- A counteroffer "kills" the original offer and renders it incapable of subsequent acceptance.
- Theresa did not agree to the terms of Angela's counteroffer
- Therefore there is no valid ✓1 acceptance.

#### CONSIDERATION

- Both parties contributing something to the agreement (i.e. Theresa contributing money, Angela contributing licence) ✓½
- must be sufficient but need not be adequate
- seems there was valid consideration
- must move from promisee

#### INTENTION TO CREATE LEGAL RELATIONS

- For domestic and social agreements, there is a rebuttable presumption that there is no intention to create legal relations
- For commercial agreements, there is a rebuttable presumption that there is such an intention.
- Seems here that it was a commercial agreement, so parties probably did have an intention to create legal ✓½ relations.

Overall though, no valid contract as there was no acceptance due to Angela's counter offer. ✓½

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- b) Angela should seek an interim ✓½ injunction to order Theresa to not launch.

The evidence should be strong evidence that Theresa intends to launch and could be documentary evidence in the form of their email exchange

On assessing whether to award Angela an interim injunction, the court will apply the balance of convenience test, as follows:

- there must be a serious ✓½ issue to be tried (not frivolous or vexatious)
- damages must not be an adequate remedy ✓½

- weigh up the damage to the claimant if the interim injunction is not granted against the damage to the defendant if the interim injunction is granted ✓½
- consider what would happen if the status quo was maintained (preferable if all other factors ✓½ are the same)
- finally, as a last resort only, consider the merits.

There is a serious issue to be tried and damages are not an adequate remedy (as Theresa must be stopped from launching) ✓½

There must have been no undue delay by Angela in applying for the interim injunction.

Angela must give a cross-undertaking in damages, ✓1 meaning that she must pay damages to Theresa if the interim injunction is awarded but should not have been, and Theresa suffers as a result of this.

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MARKS AWARDED 9/15 4

#### Question 10

- a) Only the legal owner of the patent may take this action.

William would only be the legal owner of the patent if it was assigned in a written assignment document which met all of the formalities. ✓1

As Edward did not validly assign the patent to William, William is not the legal owner of the patent. ✓1 2

- b) William does, however, have an equitable title in the patent.

Due to the agreement between William and Edward, a contract was formed, so Edward is the equitable owner and is not without rights.

It is irrelevant that the value of the payment does not seem like enough, a contract has still been formed (consideration need not be adequate). ✓1

William is therefore the equitable owner.

William can get his equitable title converted to a legal one by fulfilling the requirements of filing a valid assignment document.

However, as Edward has disappeared, it may be difficult to get him to sign the document. 1

- c) Pargit is a bona fide purchaser of property for value without notice, ✓1 as he was unaware of William's rights to the patent when he genuinely agreed to the assignment for value. ✓1



As a bona fide purchaser, the law of equity tells us that Pargit does not have to honour any agreement with William. ✓1

Pargit's assignment is still valid.

- d) This is real evidence ✓1, presented to the court as proof of its existence.

It is often accompanied by a witness statement to explain its significance.

- e) Samantha may have acquired relevant knowledge ✓1 during their conversation. and according to IPReg, it may be a conflict of interests to act against someone who you have previously acquired relevant knowledge.

However, as Edward has consented to her acting for another client, this may not be a breach.

I would advise Samantha to write to Edward explaining the situation and requesting his specific consent for her to represent William.

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**MARKS AWARDED 8/15**

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