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Q1

If the claimant does not have 'clean hands', for example, if there has been a material non-disclosure. ✓₁

If there has been foul play on the part of the claimant.

If it would not be equitable to do so. ✓_{1/2}

MARKS AWARDED: 1.5/3

1½

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Q2

In normal circumstances, 'privity of contract' means that the only parties between which the contract has been established are subject to the terms of the contract and therefore no other parties may enforce the terms of the contract or be required to execute the terms of the contract. However, where a third party^{✓1} is expressly mentioned in the terms of a contract and a benefit is conferred upon a third party^{✓1} by those terms of the contract, that third party has a right to enforce^{✓½} that contract. Furthermore, where the terms of the contract do not expressly mention a third party, a third party may enforce the contract where the terms of the contract do not expressly state otherwise and enforcement by the third party^{✓1} does not contradict or impinge on any of the other terms of the contract.

4½

MARKS AWARDED: 4.5/7

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Q3

The money involved in the case. ✓¹

The importance of the case. ✓¹

The complexity of the issues of the case. ✓¹

The financial standing of the parties involved in the case. ✓¹

MARKS AWARDED: 4/4

4

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Q4

A witness statement is a direct statement from an individual of a first-hand experience they have had i.e. they saw or heard something as it happened. It is accompanied by a declaration of truth. ✓1

An affidavit is a signed declaration from an individual of what they believe to be true. 1

MARKS AWARDED: 1/2

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Q5

There was no implication the information was confidential.

The information was of public interest.^{✓1}

MARKS AWARDED: 1/4

1

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Q6

Mediation takes place between the two parties and is conducted by an impartial mediator where they may be a trained specialist or not and conduct the negotiations between the two parties. ✓½

The outcome of mediation is non-binding on the concerned parties until a deed or contract is signed confirming the agreement(s) made in the mediation process. ✓1

MARKS AWARDED: 1.5/2

1½

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Q7

A sole trader has unlimited and sole liability and so their personal assets as well
as their business assets are at risk. ✓₁

A sole trader need not be registered with Companies House. ✓_{1/2}

1½

MARKS AWARDED: 1.5/2

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Q8

Tenants in common have an equal and dividable share of the property in question. Each tenant may deal as they wish with their share of the property including assigning, licencing or mortgaging their share. Upon the death of one of the tenants their share in the property passes on to their estate. ✓¹ ✓^{1/2}

Joint tenants, however, can make use of the property as they wish but may not assign, licence or mortgage the property without the consent of the other tenant(s). Subsequently, upon death of one of the tenants their share in the property passes to the surviving tenants and not the estate of the deceased. ✓^{1/2}

2

MARKS AWARDED: 2/5

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Q9

Corporate work is professional work undertaken by a registered and regulated person on the behalf of a company as their employer, on behalf of a company associated with their employer and where their employer is part of a union on behalf of that union.

MARKS AWARDED: 2/7

2

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Q10

a). A litigation practitioner has a duty to act honestly and justly and assist the Court in furthering the Overriding Objective. They must act within their competency with their client's interests foremost subject to the Law or any obligation from the Court or Tribunal.

b). The statutory duties of the litigation practitioner override any obligations they have to their client or otherwise where there is a conflict between the two.

✓1

1

MARKS AWARDED: 1/4

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Q11

a). For a contract to exist there must be an Offer, Acceptance of that offer, Intent to create legal relations and valid Consideration.

James clearly makes an offer to Priti when declaring he'll "...make those for you at £20 apiece.". However, that offer is voided by Priti's counteroffer of James making 75,000 at that price. Once more, Priti's counteroffer is voided when James counteroffers to make 100,000 of them. Presumably (but this would have to be determined), that is the final offer as we understand they do not discuss the walkie-talkies any further until James leaves. Ultimately, the price for the walkie-talkies manufacture remains the same, only the amount of them changes in each counteroffer so it does not materially affect the terms of the contract.

Of 1½

If no more is indeed said about the devices, then Priti's conduct could be enough to provide valid acceptance. However, upon leaving it appears James reiterates his final offer of making Priti £2 million on making 100,000 of the walkie-talkies. Priti appears to make a valid acceptance of that offer when replying "Hooray".

Acc 1

As they are dealing with Priti's intellectual property it must be considered that there is a valid intention to create legal relations by entering into business together.

In 1½

James giving Priti money in exchange for making and selling the products protected by her patent amounts to valid consideration whether or not it is what the products are truly worth.

Co 1

Therefore, it would appear that a valid contract does exist between James and Priti. Whether James is in breach of the contract by now selling the walkie-

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Q11 a). continued

talkies for £40 each would have to be determined but it appears not as the simple terms were in exchange for being allowed to make 100,000 of the walkie-talkies, James would pay Priti £20 per product amounting to a total of £2 million. If he proceeds to pay Priti the £2 million then James has fulfilled the contract.

Separate to this, another matter to consider is the enforceability of the contract.

The enforceability of contracts is affected by the mental state of the parties such as illness affecting the mind of one of the parties but also includes whether or not one of the parties is intoxicated with alcohol. As they were drinking alcoholic drinks at the book launch party either of their judgments may have been impaired affecting the enforceability of the contract but *prima facie* a contract does seem to exist between Priti and James.

5

b). To obtain an interim injunction, Priti must apply to the court where the action was started stating what remedy she seeks, in this case an interim injunction, and why she seeks it. She must provide any evidence on which she relies, and the application be served on both parties. In order to be successful, she must satisfy the *American Cyanamid* test. Firstly, she must demonstrate that a serious issue is to be tried and it is not a frivolous or vexatious claim. Secondly, she must demonstrate that damages would not be an adequate remedy. Finally, on the balance of convenience, the damage to Priti will be assessed if an interim injunction is not granted, the damage to James if an interim injunction is awarded will be assessed and the Court will consider what will happen if the status quo is maintained. This does not appear to be a frivolous or vexatious claim from Priti as she fears for the quality of the product James is producing and selling

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Q11 b). continued

100,000 units is a very large quantity making it a serious issue to be tried and so satisfying the first step of the test. She may have to provide evidence as to why she worries about the quality of the products, however. If the quality of the products is poorer, this may affect her reputation for which it may be hard to quantify damages, thus making damages an inadequate remedy and satisfying the second step of the test. ^{✓1} The effect it has on James if he was stopped from selling would have to be assessed. Provided it doesn't affect James materially in halting production and/or sale of the products before the conclusion of the action ^{✓½} for patent infringement is reached, and maintains the status quo prior to the commencement of the action, then Priti would likely be awarded an interim injunction for satisfying the third and final step of the test. This would also be the case if Priti was materially affected by James not being halted from production ^{✓1} and/or sale of the products before the conclusion of the action for patent infringement is reached and maintained the status quo prior to the commencement of the action.

c). James could bring an exhibit as evidence to the hearing for determining the award (or not) of an interim injunction, if so permitted by the Court. The evidence would be one of the walkie-talkies to demonstrate that the quality is in fact ^{✓1} satisfactory. Should he be able to prove this then that could persuade the court that damages may be an adequate remedy and/or Priti is not materially affected by refusal of an interim injunction and/or James would be materially affected by grant of an interim injunction.

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MARKS AWARDED: 12/20

6

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Q12

a). The tort of negligence requires a duty of care by the offender to the claimant. There must be a breach of that duty and that breach must cause damage to the claimant with the extent of that damage being foreseeable.

As Sindy's legal adviser, Christopher has a duty of care to her and as a professional or expert in his field, that standard is higher than for an ordinary individual. Whilst Sindy is a skilled technician in her field and could well have followed up with the missing page of the prior art document, as a professional patent attorney Christopher should have been more diligent in investigating the missing page of the prior art document as part of the duty of care he owed to Sindy. In not doing so, there is clearly a breach of that duty. Furthermore, as a result of Christopher's breach of his duty of care to Sindy, she suffered damage as her patent was invalidated on account of the missing page that Christopher did not follow up on; the damage suffered has been caused by the breach. With regards to Sindy's competitor using her fastener and reducing her market by 60%, this is reasonably foreseeable as a patent precludes third parties from making, offering to dispose of, disposing of, using, importing or keeping the patented invention for any of the previous reasons. In the absence of such protection, it can be expected that third parties will perform these actions and thus cause a drop in Sindy's market. Intellectual property rights are valuable assets as they secure (higher) investment from investors, thus, it can be expected that without such rights Sindy cannot secure such high investment for her products as she might expect. However, it must be assessed whether there are any breaks in the chain of causation and as Sindy admits she did not market

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Q12 a). continued

the product properly, this could be a break in the chain of causation and so Christopher may not be entirely liable for this damage. Finally, with regard to Sindy losing her house, as with the above, it can reasonably be expected that her loss of her intellectual property rights did not directly cause the loss of her house and so it is likely that Christopher is not liable for this damage caused as the damage was not foreseeable to this extent.

7½

b). Privilege normally precludes the observation of documents or disclosure by either the other party or the Court. However, documents marked 'without prejudice' and genuinely aimed at settlement are entitled to privilege such that both parties may observe their contents, but the Court may not. If a document is marked 'without prejudice' but is not genuinely aimed at settlement then it is not privileged and conversely, documents not marked 'without prejudice' but genuinely aimed at settlement are entitled to privilege. However, if a document can demonstrate that a settlement was agreed/has been reached then it can be brought before court for that purpose only.

2½

c). 'Without prejudice save as to costs' means that the document is entitled to privilege and so may not be observed by the Court, except for once proceedings have concluded and the quantum of costs and damages is at issue so as to assist in deciding the amount Christopher will have to pay (or indeed receive from) Sindy in costs incurred by the undertaking of the legal proceedings.

1

d). The key information to be found in the letter is the amount proposed to settle and the time by which his acceptance must be issued. The consequence for Christopher of the statement 'this letter is intended to have the consequences set

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Q12 d). continued

out in CPR Rule Part 36' is that should he not accept Sindy's offer and she goes on to be awarded at least the amount she offered to settle for in damages, then Christopher will be liable for interest on that sum of damages not above the base rate by more than 10% as well as Sindy's costs and interest on those not above the base rate by more than 10% and an uplift not more than £75,000 with interest at 10% of the first £500,000 of damages and 5% on the remainder up until the cap.

1½

MARKS AWARDED: 12.5/20

12½

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Q13

a). i). The *EU Directive on Trade Secrets (Dir 2016/943)* details that to be a trade secret the information must have the necessary quality that it is indeed secret i.e. it is not publicly known. Furthermore, it must confer some value in being a secret and kept as such. Finally, there must be concerted efforts to keep it a secret.

In this case, it appears the use of Dentist's Mix is not known to help with the concreting industry and despite the only barrier to academics suggesting its incorporation being in obtaining Dentist's Mix in sufficient quantities, it appears that the best proportions of concrete ingredients (including Dentist's Mix) so that the concrete sets firmly and is less prone to cracking in the frost is indeed not publicly known and has the necessary quality that it is secret. The fact it is secret clearly confers an advantage that the concrete does not crack in the frost and (this would have to be ascertained but) it is considered that this would be of commercial value to MegaMix. Finally, MegaMix have made efforts to keep the best proportions a secret in writing to Patrick to tell him not to disclose this information. Consequently, it can be considered that the best proportions of concrete ingredients so that the concrete sets firmly and is less prone to cracking in the frost constitutes a trade secret under the *EU Directive on Trade Secrets (Dir 2016/943)*.

See overleaf ii) b). In view of the test set out above, it is considered that whilst it is generally not known that Dentist's Mix helps with the concreting industry, academics have suggested that it is possible with the only hindrance being obtaining it in sufficient quantities. This could mean that the simple use of it in concrete itself is not

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Q13 a). i). continued

secret. Furthermore, the fact that MegaMix openly stores their bags of Dentist's Mix by the side of the road at their concrete mixing plant could allow the inference and/or reverse engineering that Dentist's Mix is indeed added to the concrete mix further rendering the information as not secret causing the assessment of the information as a trade secret to fall down at the first hurdle before the commercial value of the secret is assessed. Furthermore, in openly storing the bags of Dentist's Mix at the side of the road at the concrete mixing plant, MegaMix are not making efforts to keep the fact that they use Dentist's Mix in their concrete a secret. Thus, it is considered that the use of Dentist's Mix in adding to the concrete mix does not constitute a trade secret.

b). Whilst working at SlowSet, Patrick is obliged to keep the secrets of his former employer, MegaMix, confidential despite not being bound contractually.

However, MegaMix cannot prevent him from using information and skill that he has acquired as a result of his experience over the course of his employment with MegaMix provided the information was not deliberately memorised or copies made prior to him leaving MegaMix for use in his new role.

c). As a company, to secure a debenture (a loan) SlowSet can secure the money borrowed against fixed or floating charges. SlowSet regularly buy and sell the concrete delivery lorries and so it would not be advisable to secure the debenture against these as fixed charges because they are not permanent, however, the debenture could be secured against them as floating charges that when recovery of the debenture is actioned the lorries currently owned by SlowSet could be seized. The patents could also be secured against but as a

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Q13 c). continued

fixed charge and the licences in respect thereof could be secured against as floating charges as they could change regularly like the lorries. Finally, the mixing machinery themselves could be secured against as fixed charge.

✓½

✓½

3½

MARKS AWARDED: 11.5/20

11½

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