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Q1.

Overriding objective.

Ensure all parties have an opportunity to heard. ✓½

Allocate resources to the case taking into account that the court has other cases to deal with. ✓1

Minimise costs. ✓½

Ensure that the rules are followed. ✓½

Deal with matters fairly. (2½)

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Q2

a)

i) ratio decidendi= the reason for the decision, that is the reasoning behind the conclusion made at a hearing of a higher court to be used as the basis for further decisions that rely on that precedent. ✓1

ii) res judicata= thing that has been judged. A matter that has already been decided by the court cannot be considered again. ✓1

b) the Court of Appeal, administrative division, has responsibility for applications for judicial review. ✓½

MARKS AWARDED: 2.5/3

2½

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Q3.

Proceedings may be served:

In person.

By first class post.

By leaving at the company's registered offices. ✓1

By any other method agreed by the court. ✓½

MARKS AWARDED: 1.5/3

1½

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Q4

Registered person means:

Registered patent attorney ✓1

Registered trademark attorney ✓1

Company that employs either of the above and is registered with IPREG as such.

✓1

3

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Q5

Complaints handling procedure and professional indemnity are only required by firms in private practice. ✓½

Private practice means professional work by a regulated person that is not solely corporate work. Corporate work means regulated, professional work for a regulated person's employer, subsidiary, holding, associated company of employer, employees of employer in work related matters etc. ✓1

1½

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Q6

When unable to provide services, the regulated person must make every effort to assist the client to appoint and transfer business to a new representative. ✓½

For example, if there is a conflict of interest, or the regulated person lacks competence or seniority to deal with the matter required.

½

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Q7

Interim search and seizure-

Must demonstrate that-

There is a strong likelihood that infringing items will be found. ✓½

There is a serious case to be made.

That there is ongoing damage happening that could not be adequately addressed by damages.

That the case will be dealt with promptly.

½

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Q8

a)

i) A condition is a term that goes to the heart of a contract. It must be carried out or there is a breach of contract. ✓₁

ii) Privity of contract is the assumption that only parties to the contract are entitled to enforce the terms of the contract, exception is when a third party clearly receives a benefit from the contract under the "Contracts- Rights of third parties act" and the contract does not contradict that right. ✓₁

2

b)

Assignment of a contract assigns the benefits of the contract to a third party, and can be made without the consent of the other parties. The same contract applies except that the benefit will be given to a new person. ✓₁

Novation of a contract means that a third person is given the benefits and the obligations of the contract, all parties to the contract must consent, and it is effectively a new contract involving the third party. ✓₁ ✓_½

3½

✓₁

c)

i) Misrepresentation is an untrue statement made to induce another person to enter a contract. ✓₁

ii) Fraudulent misrepresentation is where the person making the statement knew it to be untrue and made the statement with the intent of inducing the person to enter the contract in bad faith. [cntd] ✓_½

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Negligent misrepresentation is where the person did not know the statement to be untrue, but should have checked the facts before making it. ✓1

iii) Both fraudulent and negligent misrepresentation allow a contract to be rescinded and damages to be awarded, but fraudulent misrepresentation is more

✓1 serious, will have higher damages and may lead to criminal prosecution.

3½

9

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Q9

Small claims track- Limited to £10K damages. Cannot hear patent cases. Heard by a deputy or district judge. Less formality required.

Multi track. Damages limited to £500K, costs limited to £50K plus £25K for quantum hearing, Heard by Judge, normally limited to two days in court.

2

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Q10

Part 36 offer must:

State that it is a Part 36 offer. ✓½

Be made in a genuine attempt to reach a settlement.

Make a clear offer that the other party would be able to accept.

Be made without prejudice except as to costs.

½

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Q11

a)

Contract requirements

Offers and Acceptance

Sebastian (S) offers to make kettles and Belinda (B) replies "Fine, whatever".

This could be read as an offer and acceptance, but there has been no discussion of consideration.

S then enhances the offer with the price of £20, which means that B has a consideration of receiving kettles, and S has consideration of money. ✓₁

B refuses this offer, with the £15 apiece fact being stated, this could be considered to be a counter offer to S to pay £15, but could also be read as a statement that she already has a manufacturing contract. ✓₁

It is not entirely clear whether the £ sum being discussed is the sale price or the manufacturing cost, and who would be receiving it, nor when. It could be implied that it is the price B would pay S for each kettle. ✓₁

S appears to assume £15 is a counter offer, and accepts with "Great", then adds what would be a condition that they'll be based on the design drawings. As it was already implicit that the kettle would be based on Bs design, this condition does not require a new acceptance.

B again makes what appears to be an acceptance "Fine, whatever" ✓_{1/2}

Consideration

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If what happened above constitutes an accepted offer, then S will receive £15 each, and will produce 10,000 kettles for B by the end of next month.

Both parties will receive a consideration.

Intention to form legal relations

The initial discussion takes place in a commercial environment, where both presumably are attending to do business. The later discussion in the cinema is less certain, S has drunk wine, B is tired. They appear to be there as a social occasion, however they both continued to discuss the issue. ✓1

The fact they have not seen each other for many years suggests that there is no ongoing history of doing business together. However the fact that they are cousins in some circumstances might lead to an assumption that they will do business. ✓1

Without knowing the relationship between them we cannot know whether "Fine Whatever" signified a legal acceptance or just a sarcastic comment intended to put off further discussion. ✓1

Contract to manufacture

On the face of it, there does appear to be a contract to manufacture kettles, with an implied license to S to make articles to B's design.

License to sell.

No discussion of who would sell the kettles has taken place, S does not have any right to sell kettles made to Bs design. ✓1

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7½

Q11 ctd...

b)

Copyright exists in the drawings, however the creative element added by the draughtsman does not give them copyright over in the material contained in the first sketches. Draughtsmanship is generally a technical function and not a creative one, they are paid to format the work, not to create original content.

Given the draughtsman was appointed to apply draughtsman-like style and layout to an existing work, there could be implied terms in the contract that are necessary to give the contract effect.

i.e. the draughtsman's contract would not have been effective to B if she was unable to reuse the drawings in her business. ✓1

Such an implied term must be:

Necessary. It seems to be necessary for copyright in a draughtsman's version of a sketch to be waived when the draughtsman has been paid for the work. The purpose of the drawings is clearly for people to manufacture items based on them which requires the drawings to be copied, adapted and passed on as the manufacturing process is developed. ✓1

Obvious

Given the above, it seems obvious that the draughtsman should have waived any rights in the drawings.

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Clear,

The implied term that the draughtsman will not enforced copyright is clear and understandable.

Not contradict anything else in the contract. – We are not told of any clause that says otherwise.

i) As stated above, B's in house draughtsman must necessarily adapt the drawings as the business expands and developed, and there should be no copyright issues. ✓1

ii) Copyright licenses cannot be assigned as it is a personal right. B presumably wants to retain some rights in the design and drawings herself. Therefore B needs to establish with the draughtsman that their rights in the drawings have been waived, or fully assigned to B's company.

4

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11½

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Q13

(Coco- Clark)

Is the "Spineless method" a trade secret? ✓½

Not generally known? The "Spineless method" is a traditional skill that a skilled bookbinder would seek to learn but it is not generally known any more. There is no need for a trade secret to be novel. ✓1

Has commercial value/would cause damage to Spineless (S) if used? Spineless has built up goodwill/reputation through using the method in trade. This is a niche market and unlikely to grow, so any competition would harm Spineless.

Was there an air of confidence in the way the method is controlled? As the method was only revealed to a small number of employees, and described as a lost art, there is an implication that it is confidential. ✓1

As use of the Spineless method will cause harm to S, was given in some air of confidentiality and is not generally known, S may be able to prevent Patrick (P) from using the method outside of his employment with them.

Patrick is already skilled as a bookbinder ✓½

The Patrick method was part of Patricks general bookbinding skill that he acquired doing his trade. (Haccenda Chicken). When not combined with the Spineless method, P is entitled to continue to use that skill and knowledge that he has acquired. ✓1

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P may also have a defense on the use of Spinless method that it is a traditional skill that he would expect to acquire in the course of trade as a bookbinder.

Evidence that other bookbinder do/do not know the technique may be needed.

4

b)

While P was employed by S, he had a duty as an employee not to reveal confidential information and a duty of fidelity not do anything to undermine his employers business. He has no written contract so a contract will be implied according to employment law.

✓1

As he provided training to Sheena, while still employed, this was a breach of confidence and

✓½

1½

P should have known this would cause harm to S.

c)

Company names tribunal may refuse registration of a name if:

It is the same or similar to an existing business with a reputation/goodwill that would be damaged. Spinebind is only slightly similar to Spineless Ltd, but there is a risk of confusion. Or-

✓½

If a name is registered that another company has made serious plans/investment to register or use, and the person registering is only doing so in bad faith to prevent them from registering the name. The addition of "UK" to Spinebind will not be considered sufficiently different, as it is merely a designation of nationality.

✓½

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P would have been aware of S' intention, therefore the registration can be shown to be in bad faith.

✓1

2

MARKS AWARDED: 7.5/20

7½

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Q14

a) Obtaining Injunction

Serious issue to be tried? Aksana (A) believes that Gregory (G) is infringing her patent, based on the description in the newspaper. If the exhibition centre is over 50Meters long, then the demonstration would seem to confirm that it is an infringing article.

Damages would not be adequate remedy?

A is concerned that Gs pen product will be of inferior quality to one that she plans to market, and will therefore damage the potential market for higher quality goods. A does not have firm evidence of this apart from the other newspaper.

The damage for patent infringement would be straightforward to recover from damages, by an account of profit from G

A has not started manufacturing yet and therefore cannot demonstrate a clear loss of earnings. She does not know the market and cannot estimate her loss that would potentially arise from the demonstration.

Balance of convenience?

G has already invested significantly in making plenty of stock and in organising the demonstration, therefore stands to lose significantly if prevented from continuing.

A on the other hand has no imminent business nor started any marketing, so has no imminent losses to face if G goes ahead.

Preserve the status quo?

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The status quo is that the G's launch is already planned and A is not marketing,
 so the default position would be for the court to refuse the injunction and
 preserve the status quo. ✓1

6½

b)

A would need to undertake to –

Begin proceedings without delay. ✓1

Agree to compensate G for any loss caused by the injunction once proceedings
 are complete if in G's favour. ✓1

2

c)

G's lawyers are likely to suggest providing a sample laser pointer as physical
 evidence, accompanied by a witness statement describing it. ✓1

The information in it will be evidence of either/or:

The laser pen does not infringe, e.g it does not include the special lens. ✓½

The laser pen is of high quality and therefore does not damage the reputation of
 A's proposed product. ✓1
 Either of these points will require the evidence to be given
 by an expert witness as they are matters of opinion, and such a witness must be
 independent/unbiased.

3½

d) Assuming:

£10 is a fair sale price.

The license figures mentioned are what G would earn as a fraction of the sale
 price if they were manufacturing under license. "refuse accepting licenses"

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implies that they would prefer a higher percentage, but of sales price or profits? It is not clear which is meant.

Damages could be estimated as:

Account of profits – G could sell 1000 pens at £10 each, and would expect to earn at least 20% profit – $1000 * £10 * 80\% = £2,000$.

Damages in loss of earnings. A could have licensed to A.N.Other and sold 500 pens at £10 each, paying 10% to the licensor thus keeping 90% -

$500 * £10 * 90\% = £4,500$. However if the allegations about low quality of G's products are true, A may have marketed a higher quality pen at a higher price, but for G's disclosure of the lower quality cheaper one. So probably higher than this

Loss of license earning by A from G – If G took a license from A at the market rate of 10% to sell 1000 pens, A could earn $1000 * £10 * 90\% = £9000$. ✓1

A license seems like the best option for A, unless she could sell the higher quality pens at a high enough price to exceed the license income shown.

1

13

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