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1.

The overriding objective is a procedural code which the courts should follow and includes:

- Allotting enough time to the case while also allotting enough time to other cases ✓½
- Saving costs ✓1
- Ensuring that the parties are on equal footing ✓½
- Dealing with cases expediently
- Dealing with cases in ways that are proportionate to
  - o The financial position of the parties
  - o The importance of the case
  - o The complexity of the issues
  - o The amount of money involved

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2.

a)

i) Ratio decidendi = the reason for deciding, it is the reason for the decision  
based on the material facts of the case ✓1

ii) Res judicata = a matter that has already been litigated may not be re-litigated  
by the same parties ✓1

b) The high court's administrative court has the exclusive right to hear  
applications for judicial review ✓1

3

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3.

A company may be served with proceedings by:

- Leaving the document(s) with a person holding a senior position in the company ✓1
- By leaving the document at the company's last known principal office or any office of the company that has a real connection to the claim ✓1
  - In these circumstances the act is deemed completed on the day they were left, if left before 4.30 pm on a business day, otherwise it will roll over to the next business day
- Sent by 1<sup>st</sup> class mail to the company's last known principal office or any office of the company that has a real connection to the claim ✓1
  - In these circumstances the act is deemed completed two days after leaving the document with the post, provided that it is left on a business day, if not left on a business day the day will roll over to the next business day
- By fax

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4.

Registered person =

- A patent attorney ✓ $\frac{1}{2}$
- A trademark attorney ✓ $\frac{1}{2}$
- A body that is registered in the patents act's or trademarks act's register, ✓<sub>1</sub>  
whether or not it is an ABS (= a licensable body according to the legal  
service act)

2

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5.

According to rule 2 of IPREG code of conduct rules 12 (complaints handling) and 17 (professional indemnity) are only applicable to regulated persons in private practice. ✓<sub>1</sub>

Regulated persons doing only corporate work may undertake work from third parties if the employer consents. ✓<sub>1/2</sub>

Private practice = regulated persons not only undertaking corporate work.

Corporate work = work undertaken by an agent or on behalf of (1) his employer, (2) a company controlling or controlled or in the same group as his employer, (3) any person employed by any of the afore mentioned companies/organisations where that work stems from any of the afore mentioned companies organisations or (4) anyone who has a common interest with any one of the aforementioned. ✓<sub>1</sub>

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6.

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7.

The claimant should show that:

- It is an extremely strong prima facie case ✓<sub>1</sub>
- That the damages are very serious ✓<sub>½</sub>
- That the defendant has incriminating material in his possession and there is a serious risk that the material will be destroyed id notice of the injunction is given ✓<sub>1</sub>

The applicant must also show the American Cyanamide test, as this is an interim injunction:

- There must be a serious issue tried
- Damages are not an adequate remedy
- The damage to the claimant if no injunction is granted is weighted to...
- ... the damage to the defendant if an injunction is granted
- If the above balance is equal, the status quo should be considerer
- As a last resort the merits of the case should be considered
- Cross-undertaking should be an adequate damage to the defendant

2½

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8.

a)

i) Condition = an express term of a contract that is of importance, the breach of it goes to the root of the contract and allows the repudiation of the contract

✓<sub>1</sub>

ii) Privity = only the parties to a contract may enforce the terms of the contract or are under any obligation to it, i.e. third parties cannot enforce a term or be under any obligation to it. Third parties can enforce a term or be under any obligation to it if the contract states so expressly or purports so.

✓<sub>1</sub>

2

b)

Assignment = transfers the benefit of a contract to a third party (i.e. a party not originally subject to the contract). Consent for assignment is only required from the party transferring and the party receiving the benefit.

✓<sub>1</sub>

✓<sub>½</sub>

Novation = transfers the benefit and the burden of a contract. In this case, consent is required from all parties and a new contract is made.

✓<sub>1</sub>

✓<sub>½</sub>

✓<sub>1</sub>

4

c)

i) A representation is a statement made by one party to another that results the other to enter the contract. If this statement turns out to be false, it is a misrepresentation. The misrepresentation can be fraudulent, negligent or innocent.

✓<sub>1</sub>

ii) Fraudulent misrepresentation = when a party knowingly gave a false statement to another party in order to make that that other party enter the contract.

✓<sub>½</sub>

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Negligent misrepresentation = when a party gave a false statement, not knowing if it was true or not, to another party in order to make that that other party enter the contract. <sup>✓1</sup> In this case, the aggrieved party has the right to rescind the contract and obtain damages.

iii) In the case of fraudulent misrepresentation, the aggrieved party has the right to sue for tort, rescind the contract and obtain damages.

In the case of negligent misrepresentation, the aggrieved party has the right to rescind the contract and obtain damages.

✓1

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3½

9½

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9.

Three differences between small claims and multi-track in IPEC:

- The judge in the multi-track can grant an interim injunction but not the judge in the small claims track cannot ✓<sub>1</sub>
- The small claims track can handle copyright, unregistered design and trademarks while the multi-track can additionally handle patents, registered designs and registered plant varieties ✓<sub>1</sub>
- The costs are capped at £500.000 for damages and £50.000 for costs in the multi-track and the corresponding numbers for the small claims track is £50.000 and £25.000

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10.

The following information must be contained in a part 36 offer:

- If it relates to the whole or part of the claims, and which claims it relates to if it only relates to a part of the claims ✓<sup>1</sup>
- The deadline for responding, which must be at least 21 days ✓<sup>½</sup>
- It must be in writing and state on its face that it is a part 36 offer ✓<sup>½</sup>
- It must state the conditions of the offer, i.e. what is offered and what is sought in return
- If it is made by the defendant, it must state that the defendant offers to pay a lump sum at 14d of acceptance

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11.

a) Four elements are required for the formation of a valid contract: offer, acceptance, consideration and intention to create legal relations.

Intention to create legal relations

*Domestic and social agreements do usually not result in an intention to create legal relations while commercial transactions do.*

In the case of Belinda and Sebastian:

Belinda and Sebastian meet at a home lifestyle exhibition, where Belinda has a stand where she promotes her design. Her design is related to home lifestyle as it is a kettle. In such circumstances, it would be assumed that discussions about contracts should be taken seriously. ✓<sub>1</sub>

Sebastian is drinking in this event which could be to Belinda's benefit when arguing that no contract exists. ✓<sub>1</sub>

The actual discussion about the contract, however, takes place in the cinema. This environment is not an environment where you would typically negotiate contracts. ✓<sub>1/2</sub>

However, Sebastian is discussing precise figures and Belinda and Sebastian are coming from the home lifestyle exhibition. Also, it does not seem like Sebastian or Belinda have been drinking too much. Arguably, there has been an intention to create legal relation, at least from Sebastian's side. ✓<sub>1/2</sub>

Offer/Acceptance

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*The offer is an expression of willingness to enter into a binding agreements with the offeree upon acceptance. The offer can be given orally, in writing or by conduct. The offer must be certain as to its terms. Examples that are not offers: mere puff/boost, request for information, tenders, invitation to treat.*

*The acceptance must be an unqualified acceptance of the full terms of the offer. Can be written, oral or by conduct. The original offer is terminated, inter alia, by an counter offer, rejection, revocation, laps of time or occurrence of a terminating event.*

Sebastian makes a first offer to make 10,000 of the kettles by the end of the month. Belinda replies "fine, whatever", which is not 100% clear as to its meaning but could be taken as an unqualified acceptance to what Sebastian said.

Sebastian then says "I can make each for you at £20 apiece." Belinda says, "Well, I'm getting them much cheaper than that already, at £15 apiece." Sebastian says, "Great, they'll be based on your design manufacturing drawings.". Sebastian has arguably not heard what Belinda said here because he is not acknowledging that she is getting her design manufactured cheaper compared to what he offers. Misrepresentation has possibly happened here, where Sebastian would believe that he is able to make the design more cheaply than Belinda's current supplier and that Belinda therefore is eager to enter into the contract.

A representation is a statement made by one party to another that results the other to enter the contract. If this statement turns out to be false, it is a

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misrepresentation. The misrepresentation can be fraudulent, negligent or innocent.

Belinda again says, "Fine, whatever.", which most likely would be interperated as her acceptance to the full terms of what Sebastian has offered, especially because she says fine. Would she just have said "whatever", Belinda would have had a stronger case. ✓1

### Consideration

*Consideration can be some benefit or right to one party and some forbearance, detriment or obligation to the other. The law looks for an element of recipitory or bargain. It must move from one party to another. It must be sufficient but must not be adequate.* ✓1

It seems like Sebastian has given his home appliances manufacturing facility to make Belinda's design and Belinda is giving her forbearance by not enforcing her IP rights against him. However, it is arguable if Belinda has also accepted that Sebastian sells the kettles to a third-party. ✓1

All in all, there seems to be consideration.

### Conclusion

All four elements for forming a valid contract seems to have, arguably, been fulfilled. Therefore, it is unlikely that Belinda will be successful in arguing that there has been no contract, unless she is able to rely on the misrepresentation. In the case of misrepresentation, it would probably be innocent which would give the affected party the right to rescind the contract. However, Sebastian seems the be the innocent party in this case.

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b)

Unless the contract between the parties stated that the IP rights will belong to Belinda, Sajit is the owner.

✓1

1

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12.

The question is whether Zara has committed the tort of negligence. In order to establish the tort of negligence, the following four is required: the defendant must have owed a duty of care to the claimant, the defendant must have breached that duty, the claimant must have suffered damage as a result of this breach and the damage must not be too remote from the breach.

### Duty of Care

*The Donoghue and Caparo test is applied. The neighbour principle states that reasonable care should be taken to avoid acts that might injure your neighbours.*

*The following should be considered:*

- ✓½ - *The proximity of the claimant and defendant*
- *If it is foreseeable that damage would happen*
- *It it is just fair and reasonable to impose a duty of care on the defendant*

Zara has a duty of care against Bao as it is clear that not handling his patent application properly might cause damage to Bao, i.e. the patent that he has spent time and money on, does not actually cover his invention. Accordingly Zara would hurt her "neighbour".

Additionally, the claimant and defendant are proximal as they are in a patent attorney-client relationship. As a patent attorney, Zara should be aware of all potential damage that could happen due to a poorly drafted patent. Accordingly, this condition is satisfied.

### Breach of that Duty

*The reasonable man test is applied:*

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- Was it foreseeable that the damage would happen and the extent of that damage
- ✓½ - What would have been the practicality for preventing it
- Was there something more important that Zara attended to that caused the breach of the duty, like saving someone's life

*Where the defendant is a professional in the field the standard of duty is higher.*

It was foreseeable that a poorly drafted patent would result in issues with bringing infringement actions. Zara ought to have been aware of this. The only practicality for Zara of preventing the damage would have been to request the information from Bao. It does not seem like Zara had something more important to attain and thus missed to include the extra feature. Additionally, Zara is a patent attorney so the standard is especially high. Accordingly, this point is satisfied.

#### Factual Causation

*The but for test is used: but for the defendants actions, would the breach have happened?*

It seems like the breach is a direct cause of Zara's actions as she was aware of the feature but did not make any effort to request more information from Bao in order to include the feature in the patent. Accordingly, this point seems to be satisfied.

#### Remoteness

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*If there are any breaks in the chain of causation, the defendant might not be liable for all the damage that the claimant has suffered. There can be a break in the chain of causation by a natural event, by a third part or by the claimant.*

Firstly, Bao promised to sent information about the additional feature to Zara, but failed. Accordingly, contributory negligence has taken place, which will help Zara.

In this case, Bao has suffered the following damage:

- i) The article that was found not to infringe reduces Bao's market for his primary invention, extracting wipes from the top of the cylinder, by 20%.
  - ➔ Here it seems like there is no break in the chain of causation except Bao's contributory negligence. Zara is liable for the<sup>✓1</sup> damage.
- ii) He fails to expand his market to include cylinders with the added benefit. Bao argues that this was because a venture capitalist withdrew extra funding for a marketing assistant because of the finding of non-infringement by the variant and also because Bao is not good at marketing. Zara argues that she shouldn't be responsible for Bao not being good at marketing.
  - ➔ The infringement proceeding failure is a direct cause by Zara but the fact that Bao is bad at marketing is a break in the cain of causation.<sup>✓½</sup>
  - This damage could be argued to be too remote but not with a very<sup>✓1</sup>  
good prospect.
- iii) Bao can no longer afford to pay his rent.

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→ This damage could depend on a number of factors and there could be a number of breaks in the chain of causation. <sup>✓½</sup> Most probably, this would be considered to be too remote. ✓1

9

b)

A sole trader is an individual doing business on his own. He has full personal liability as the sole trader is not an own legal entity.

A limited company is a legal entity in its own, it is owned by its owner and run by its directors. The owner/directors do not have any liability on the debts of the company. A company is formed by incorporation to the companies house and closely controlled by statute. The company can allot shares and thus obtain funding from the public. The company must comply with certain statutes and thus file annual accounts that becomes public.

In Bao's case, when he buys premises, this can be bought in the company name and the intellectual property can be applied for in the company's name. These assets will be separate from his own assets. <sup>✓½</sup> Additionally, he can request a debenture from a bank in the name of the company and use these assets to secure the loan. In this way he protects himself if the company would default. <sup>✓½</sup>

If any of the employees were to sue the company, they would not sue him personally as the company is its own legal entity. <sup>✓1</sup>

2

c)

He must apply to the companies house and send them:

- The memorandum of association

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- States that the subscribers wishes to from a company under the company act, that they will all become members and that they will all take at least one share, if shares are allotted
- The articles of association and
  - Sets out the internal regulations of the company, i.e. the rules between shareholders, members and directors
  - Sets out details about shares and their allotment
- ✓<sub>1</sub> - Form 10N0
  - States the company name and the company secretary

After Bao has sent these documents to the companies house, we can start allotting shares. In relation to his relatives, he could make them shareholders in which case they will receive a portion of the company's annual profit. He could also make them members of the company and then set out in the articles of associations that they do not have the power to run the company. He as an member and director could then run the company.

✓<sub>1</sub>

✓<sub>1/2</sub>

✓<sub>1</sub>

3½

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13.

*The faccadely Chicken test is used to determine the employees responsivity to it's employee after leaving employment:*

- *It is an implied term in a contract agreement that confidential information and trade secretes should not be disclosed outside the company*
- *The employee has a duty of good faith against his employer*
- ✓1 - *After the employment ends, the ex-employee cannot disclose trade secrets and confidential information but general know-how, experience and skills cannot be restricted*

*In the UK, the Coco v Clark test is used for the determination if the information is confidential*

- *The information must have the necessary quality for confidential information*
  - o *It must be secret*
  - o *Useless and trivial information will not be protected*
- *The information must have been disclosed to the recipient in circumstances purporting that it is confidential*
  - o *The recipient must have known or had reasons to believe this*
  - o *Reverse engineering is permitted*
- *The confidentially must have been breached to the detriment of the one disclosing such information*

*According to the EU directive*

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*A trade secret is secret in the sense that it is not as a body or in its precise configuration and components, known, or readily accessible to persons usually dealing with such information*

a)

The method used by Spineless seems to be secret because only Spineless's small number of book binding employees use the method of rebinding. The information seems to be valuable to Spineless because they have developed a reputation and it gives a longer life to the books. Patrick have learned the method while working at Spineless and thus the ought to have known that the method is secret. Patricks and Sheena's company is competing with Spineless and thus arguably confidentially have been breached to the detriment of spineless.

→ It seems like the bookbinding is confidential information, however, it is arguable if it is valuable as books ia an dying art

Patrick did not have an written employment agreement. However, a contract does not need to be in writing in order to be effective. Therefore, it was implied during his time at Spineless that he must protect their trade secrets and confidential information. Also, Patrick has been an employee of Spineless and has a dusty not to disclose or use their confidential information.

→ Spineless can demand that patric is not using their method but they cannot demand that he stops using his own method.

b)

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Patrick is by an implied term in the oral employment agreement not allowed to disclose confidential information outside the company. He can teach his own know-how and experience but cannot disclose what could be a trade secret or confidential information belonging to the company. ✓1

1

c)

A person can apply to the companies house tribunal to object the registration of a new company name on the basis that it is the same or confusingly similar to a name in which they have goodwill. ✓1

Then unless the defendant can show that:

- The company was formed on the general course of company formation ✓½ and is not available to the claimant for sale on standard terms
- The company has previously been operating under that name and laid ✓½ dormant, or substantial start-up costs have been incurred
- The "claimant" interests are not really affected
- The acts on which the "claimant" relies happened after the "defendant" registered the name ✓1
- The name is registered in good faith

The defendant will be ordered to change his name.

The names could be seen as being confusingly similar, i.e. Spinebind and Spineless. Spineless has been operating under the name for longer than

✓1 Patrick. Since Patrick has worked at Spineless, it could be seen as bad faith for him to try to register the name.

4

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