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Question 1

a) Direct evidence or direct testimony is evidence given in court under oath and offered as evidence of truth. <sup>✓1</sup> An example is a witness statement/testimony given in court of something that they have seen. <sup>✓1</sup>

b) Real evidence is physical evidence given in court for inspection. <sup>✓1</sup> An example is a photo or physical object. <sup>✓1/2</sup>

c) Documentary evidence is a type of real evidence given in court for inspection. An example is a letter or bank statement. <sup>✓1</sup>

4½

**MARKS AWARDED: 4.5/6**

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Question 2

There is no general privilege for confidential communications between a professional and client but there is legal professional privilege or legal advice privilege between a UK patent attorney and client which is an absolute right.

Legal professional privilege means that communications between attorney and client giving <sup>✓ $\frac{1}{2}$</sup>  legal advice, <sup>✓ $\frac{1}{2}$</sup>  fair and accurate report of proceedings is protected and confidential but does not protect communications to third parties. There is also litigation privilege which protects communications between attorney and client, attorney and third party, and client and third party regarding litigation proceedings, but this only applies when litigation proceedings are either seriously contemplated or existing.

1

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Question 3

- a) The overriding objective requires the Court to deal with cases expeditiously and fairly. However, delaying the hearing until next month will take a considerable amount of time, nor is it fair to allow Felicity to go on a 6-week tour of India while Kai waits. ✓<sub>1</sub>
- b) The overriding objective requires the Court to consider the financial positions of both parties and save costs. However, if Kai were to file a significant number of affidavits, this could potentially cost both Kai and the Court a considerable amount of money. ✓<sub>1</sub>
- c) The overriding objective requires the Court to save costs and consider the importance of a case. However, using multiple sets of different barristers will cost a significant amount of money that may not be necessary, especially when damages are not likely to exceed £1,000 so the case must not be that important.
- d) The overriding objective requires the Court to ensure that the parties are on equal footing and that the case is dealt with fairly. However, if Felicity is allowed to have one extra turn at filing evidence, this would not be fair and Kai should also be allowed the same. ✓<sub>1</sub>
- e) The overriding objective requires the Court to deal with cases expeditiously. Reserving an entire week of the Court's time when it is possible that Kai will agree to the management demands in a much shorter time is not dealing with the case expeditiously.

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f) The overriding objective requires the Court to consider the complexity of the case. Since there is only one issue, the case should not be particularly complex thus, the claim should not have to be split into separate actions for each patent.

✓1

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Question 4

Vicarious liability is where someone is liable for the torts of another. The close <sup>✓1</sup> connection test may be applied here where it is not a temporal or causal connection that is relevant but whether the employee is furthering the employer's business or business activity of the employer. For the employer to be liable for its employee's tort, the action must have arose during the course of normal <sup>✓1</sup> duties of the employee assigned to him by the employer where it is reasonable that such an act could have resulted from his duty. The Court will consider that the employer may be more likely to be able to compensate <sup>✓1</sup> for the damages resulting from the action that the employee.

**MARKS AWARDED: 4/7**

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Question 5

The patent attorney register is a register listing individual patent attorneys and kept under Section 275<sup>✓1/2</sup> of the Copyright, Designs and Patents Act. The individuals are legally registered to act and provide evidence for the prosecution of patents, conduct litigation before the Comptroller and follow the IPREG rules for conduct.

**MARKS AWARDED: 1/2**

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Question 6

Notification must be made by first class Royal Mail post to the last known address, notification is deemed to have been sent by the 2<sup>nd</sup> day of the month after posting; ✓1

by electronic communication for example by email which would normally be used in business; ✓1

or by personal delivery. ✓1

MARKS AWARDED: 3/3

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Question 7

a) As a legal professional and patent attorney acting for Janice, David owes a duty of care to Janice and inform and keep her updated of anything related to the prosecution of her patent.

b) Rule 4 – Competency: Janice only asked for advice whether she owned the invention or not, <sup>✓1</sup> not whether Janice could be classified as an employee under UK law. David should be carrying out professional work with due skill and diligence.

c) Although David has previously worked with Sirinda, there is a conflict of <sup>✓1</sup> interest and Janice should have been made aware that David previously worked with Sirinda.

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Question 8

a) Concurrent estate: property can be owned by multiple persons. For a tenancy in common, each owner has a legal and equitable title i.e., equal and undivided share in owning the patent. They each can work the invention without the others consent but cannot assign, mortgage or license without the other owner's consent.

bi) *ratio decidendi* means under the "doctrine of precedent" where the Court tends to follow decisions made in previous cases where particular facts are the same. The *ratio decidendi* of a case are the facts of the case that hold authority for deciding the case. Higher courts bind lower courts by following this rule.

ii) *res judicata* means that issues litigated by a party in which a decision has been made by the Court cannot be relitigated by the same party.

c) A condition is an important term of a contract which goes to the heart or root of the contract. Breach of a condition will allow repudiation of the contract.

2

✓1

✓1

1

3

**MARKS AWARDED: 3/5**

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Question 9

✓<sub>1</sub>  
a) Privity: only parties to a contract may enforce the benefit or burden of a  
✓<sub>1</sub> contract. However, in certain circumstances, a third party (Ahmed) can enforce  
the terms if it is expressly permitted and purports to confer a benefit to Ahmed.  
✓<sub>1/2</sub> This Act cannot be relied upon if there is a clause which excludes the Act or a  
✓<sub>1/2</sub> clause which rules the third party out from relying on it. Further information from  
the contract whether these clauses exists would be required. ✓<sub>1</sub>

Normal boiler plate clause means that the contract will adopt standard clauses  
that are common to most transactions of the same type of contract.

If there is not such a clause and there is an express term which permits Ahmed  
✓<sub>1</sub> to rely on the act, then he may enforce the contract. However, the contract must  
also purport to confer a benefit to Ahmed. Since term 8 states that the  
agreement is entered into for the purposes of Olivia assisting Edward to set up a  
✓<sub>1</sub> business, and Olivia is merely paying Ahmed the royalties which are ultimately  
due to Edward, there would need to be some other kind of benefit in the contract  
conferred to Ahmed for him to be able to enforce the contract.

If the above are satisfied then:

Terms 6 and 8 are express terms of contract which are in writing and are,  
therefore, agreed by the parties and binding.

Term 6: The term does not specify who should send the invoice (Edward or  
Ahmed). Edward sends a letter to Olivia, not an invoice which would not satisfy  
this term. The contents of the letter need to be considered and whether it would  
constitute an invoice specifying the necessary information for Olivia to pay the

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royalties. If the letter is an invoice and Olivia has not paid within 4 weeks, there would have been a breach of this term by Olivia.

b) Intention to create legal relations: the conversation occurs at Edward's local amateur drama society which would be considered a social setting and unlikely that Edward is intending to have any kind of business or commercial meeting with Dipti to negotiate a contract. Edward is also in the middle of setting up the stage lighting and practicing his lines so he is probably not taking anything too seriously and speaking in a jokey manner. Since Edward starts speaking terms of the contract (profit margin), this could be considered intent by Edward and there is clear intention from Dipti.

Offer: should show willingness to enter into a contract which may be done orally, written or by conduct but must be certain as to its terms, the subject matter and numbers to be manufactured. Dipti's statement that he could supply the LED diodes to 5,000 theatres around the country does not specify the number of diodes to be made or by when for example.

Consideration: must be sufficient but need not be adequate, there needs to be some form of monetary consideration or forbearance to a mutual promise flowing from Dipti to Edward. Although Dipti offers of 15% profit margin to Edward may be consideration, they do not specify how much this would be i.e., how much Dipti would sell the product for and thus, the 15% profit. Dipti offers Edward two tickets to a London show which could be acceptance of Edward's terms by conduct but most likely not as there is nothing mentioned or said about it being an acceptance and was not part of the offer to be considered.

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Acceptance: must be final, unqualified by written, verbal or by conduct. Edward's response to Dipti's initial statement about supplying to 5,000 theatres could be considered acceptance as he said sure <sup>✓½</sup> however, he also said that he would like to meet the theatres, perform there and states that there would have to be a 10% profit margin. This could be considered a counter-offer from Edward <sup>✓1</sup> however it does not state the conditions required for it to be an offer (described above, no exact terms on how many diodes to be made etc.). His 10% profit margin is also really just a statement and not an offer.

License could have been granted to Dipti by contract.

12½

MARKS AWARDED: 12.5/20

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Question 11

An assignment of copyright in writing, signed by Irena should have been made. The conversation between Heavy and Irena in the foyer establishes that Irena will create the stand and Heavy will pay £10,000 for this work. Since ownership of copyright is the only issue, Irena is essentially employed by Heavy to do this work. Since the design of the stand arises from Irena's duty of work specifically assigned to her by Heavy, Heavy would own the copyright in the design documents. Irena also spoke frequently with Heavy's employees. Although it is not specified about what, if it was in regards to designing the stands then Heavy would also have considerable contribution in the design of the stand.

However, the stand is merely being used for a celebration and probably will not confer any monetary benefit to Heavy. The Court will consider whether the design of the stand has resulted in significant commercial value to Heavy and the contributions of Irena and Heavy to the design.

Bi) To decide whether an interim injunction would be allowed, the Court will consider the balance of probabilities (relevant case is *Cyanamid v Ethicon*). The Court will consider the damages Heavy if the injunction is not granted and the damages to Irena if the injunction is granted. The case must be serious and the damages cannot be an adequate remedy to the injunction and the Court will also consider if Heavy will give a cross-undertaking of damages. Since Irena selling the documents to online sales during the winter months is only supporting the sales and preventing Irena from making anymore sales of the documents will likely reduce the damage caused to Heavy, the Court will likely grant an interim injunction for this.

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ii) According to the balance of probabilities above, the damages to Irena if an injunction is granted would be serious to the music festival organiser who has made serious preparations for the music festival. It is also not the organiser who potentially infringed the copyright material but Irena. Therefore, it is unlikely that the Court will grant an injunction for Heavy for this.

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MARKS AWARDED: 9/20

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Question 12

a) Trade secret is a secret but not a body or precise configuration and assembly of components which is generally known among people who normally deal with the information or easily accessible by these people. The secret must hold commercial value and the person who is lawfully in control of the secret must have taken reasonable steps to keep the secret a secret.

Nicholas owns a biscuit manufacturing technology and would like to merge businesses with Alexandra and so could be a competitor to Alexandra's business. The new machinery process gives competitive advantage to Alexandra and so has commercial value, <sup>✓1</sup> however Nicholas believes that the machines are well known and that it is obvious to use the combination of machines. If this is true, then the machinery process cannot be considered a trade secret since it is a body which is generally known among people who normally deal with the information. However, Nicholas had to actively make a mental note of the new configuration suggesting that it is not generally known. <sup>✓½</sup>

The route that Alexandra takes around town could be considered a trade secret, however unlikely because it is easily accessible and Alexandra has not taken steps to hide this from Nicholas but has in fact, taken Nicholas on the route herself. <sup>✓½</sup>

The cog at the village fete is a trade secret which is used in her factory and therefore has commercial value as it is would be a part of the machinery process. <sup>✓½</sup> Nicholas taking the cog under his coat which confirms that he is a competitor and may have malicious intent to steal Alexandra's trade secret for his own <sup>✓½</sup>

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commercial benefit. It does not matter that he could have easily memorised the design so long as it is not a generally known design. ✓1

i) Nicholas is using the new configuration, increasing the value of his business. Since Nicholas believes that the new configuration is obvious, it may not be considered a trade secret because it is generally known among those working in the same field. Alexandra would then not be able to take action on this unless they could prove that the configuration is not generally known and would constitute a trade secret in which Nicholas wrongly obtained the information. ✓½

ii) Nicholas is using the same route as Alexandra to sell his biscuits. As explained above, Alexandra did not take active steps to hide this route and it is easily accessible to those in the same field so unlikely for Alexandra to be able to take action on this. ✓½

Although Nicholas has not used the gear cog, he is keeping possession of it and has likely based his new configuration of the machine process and designs on it. ✓1  
The combination of the new configuration, sales route and gear cog has granted Nicholas significant commercial value and Alexandra can take action on this. ✓½

b) Misrepresentation: false statement of fact made prior to concluding a contract which induced Alexandra into entering the contract and because reasonable reliance was placed on the statement, it likely became a term in the contract. ✓1  
Nicholas' actions would come under negligent misrepresentation as he was careless in making the statement (only read the results briefly). ✓1  
Nicholas stated that the combination would increase the market share by 30% but in fact reduced it by 10%. There is a direct causal link between Nicholas' statement and Alexandra entering the contract, resulting in the 10% reduction in market share. ✓1

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Although Nicholas is not a market research expert, he stated that he conducted the market research and Nicholas would most likely be liable for negligent misrepresentation. The remedies available for this would be that Alexandra can either rescind the contract or sue Nicholas for damages. However, since Alexandra was in fact sceptical about Nicholas' claim and she knew that Nicholas was not a market research expert, there could be contributory negligence whereby Alexandra was also liable for the damages. This would mean that damages may be reduced.

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MARKS AWARDED: 12/20

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