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Question 1 a

Mediation ✓1

Arbitration ✓1

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Question 1 b

Mediation – correspondence is not binding unless a contract is signed by both parties. ✓1

Arbitration – the outcome is binding. ✓1

MARKS AWARDED: 4/6

4

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Question 2a

Partnership is an agreement between parties in business, where both parties have equal liability (that is also unlimited, unless it's a limited partnership) and equal ownership of the business; equal share of the business; equal responsibility of the business.

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Question 2b

Example of a non-partnership relationship is where one party has a greater share of the business in comparison to another party, for example, an employee and an employer is not a partnership relationship as an employer has control over an employee and owns the business, while the employee does not own the business.

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Question 2c

When two people own a patent together, in the absence of agreement to the contrary, both people own the right to work the invention fully and independently, however, they are not allowed without other person's consent to surrender a patent.

MARKS AWARDED: 1.5/8

1½

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Question 3a

A deed must be in writing;

It must be clearly stated that it is a deed; ✓¹

At signing there must be witnesses, that also should sign. ✓¹

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Question 3b

12 years ✓1

MARKS AWARDED: 3/3

3

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Question 4a

High court ✓½

Court of Appeal by a judge

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Question 4b

3 months from the time the claimed act has occurred ✓₁

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Question 4c

Illegality

✓1

False application of the rule/law

Court has gone beyond its scope of power ✓1

MARKS AWARDED: 3.5/4

3½

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Question 5a

That there is a risk for a serious damage to the claimant if the defendant/infringer is to be allowed to proceed with the act.

In case of trade secrets, the trade secret has not yet been exposed to the public but will be if the infringer is not stopped.

The balance of convenience is tipping towards the claimant where he would suffer more damage than the infringer, if the infringer is allowed to proceed.

Evidence that the defendant/infringer possesses infringing item or document.

A high possibility that the defendant/infringer is going to destroy that evidence of infringement.

✓

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Question 5b

District judge – small claims track; cannot give interim injunction; award up to
10,000 GBP in damages. ✓₁

Judge – multi claims track; can award interim induction; up to 500,000 GBP in
damages. ✓₁

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Question 5c

Setting schedule.

✓1

Objections to admission of new evidence.

✓1

Courts administrative duty.

MARKS AWARDED: 4/6

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Question 6

Assignment of a contract is where both parties and new and old parties have to consent; both the benefits and debts are assigned.

Novation of a contract is where only the beneficiary new party has to consent; only the benefits and not the debts are transferred to the new party.

MARKS AWARDED: 0/3

0

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Question 7a

A patent attorney must act independently, with integrity, and honestly. ✓¹

A patent attorney must act in the best interests of each client. ✓¹

A patent attorney must uphold the rule of law and justice. ✓¹

A patent attorney must act so as to uphold the public confidence in the profession. ✓

Client care

Client money

Accountability

Competence

Complaint handling

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Question 7b

Framework applies so as to just application of law; including specifics of the case; without bias.

MARKS AWARDED: 4/7

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Question 8a

Advance payments for the work of a patent attorney are not part in the meaning
of the IPREG Client money guidance, and hence, this money may be transferred
to the firms account rather than being kept separate from the firms money in the
special account of the client.

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Question 8b

In case there has been a change in pricing and the client does not consent to the new price, the client must be immediately notified and refunded.

If the client decides to discontinue the work with a particular firm, all the client's money remaining in the account of the firm, including the advance payments for work that has not been performed must be refunded back. ✓1

If the patent attorney loses his licence, the advance payment not yet charged for the work must be refunded.

MARKS AWARDED: 1.5/3

1½

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Question 9a

To determine if the contract is formed in this case one could use the legal basis established in the Carbollic smoke ball case.

A. Is there an intention to create legal relations between Edward and Alishia?

✓½

They met in a side room of a chess competition in order to have polite conversation. This seems to be more of a social setting and not a formal setting to establish business and legal relations. However, Aishia becomes aware of Edward's patent and work. Aishia then sketches adapted moulding process to make better chess pieces and shows it to Edward, so he was made aware that his patented process may be used if the contract is formed. So it seems that the discussion might have turned from a social to a business setting in the private room before the final chess game.

✓1

However, continuing discussion after the chess game the setting is for the purpose of playing chess and not create legal actions.

B. Was there an offer made by Edward that is clear as to its terms and

✓½

subject matter? Usually, offer and acceptance is best done in writing however, it can also be done in conduct. Edward says "I **would** pay you 100,000 GBP to develop improved chess pieces!" The question is whether this can be considered as an offer or an invitation to treat. As in the case law for Carbollic smokeball where in the newsletter the advertisement read something like "If you get cold after using our Carbollic smokeball we will pay you 100 GBP". This in court was considered to be an offer and not an invitation to treat. An important detail is that Edward says that he "**would**

✓1

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pay” rather than the more definite “**will** pay”. This choice of words may be considered as not clear terms of the offer. As it is not certain that he will pay once the improved chess pieces are made. However, following the case law, and the general understanding of the words of the offer, Edward’s statement of offering precise amount of money (100,000 GBP) for performing a precise act (develop improved chess pieces), could thus be considered as an offer clear as to its terms and subject matter. ✓¹

After Edward and Alishia then finish the tournament, Edward says “I could enjoy winning more like that if I got more than 5 GBP for each piece!”. It is not clear what he is referring to, whether he would want to obtain 5 GBP per piece while playing or if it is a follow up to their earlier conversation about improved chess pieces, though they have not previously discussed sale of improved chess pieces nor their prices. The offer here is also not clear because “more than 5 GBP” is not a clear term – by how much more? 1 cent or 1 GBP or 100 GBP? Therefore, this cannot be considered an offer as it is not clear as to its terms or subject matter. ✓¹

- C. Was there a clear acceptance by Alishia of all terms of the offer? Alishia’s response “Great!” is not very clear as to what it refers to: great that Edward offered 100,000 GBP? Or great that he is interested in her to develop improved chess pieces? However, one may interpret her response as acceptance of the whole offer. ✓^½

The follow up conversation after the chess games Aishia response to Edward “Sure, I’ll get you that” but he did not hear her response. This is a more clear response of acceptance of terms of the offer, however, the

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offer made then by Edward was not clear as to its terms and there was no intention to create legal relations.

D. Was there consideration between Edward and Alishia? Consideration needs to be sufficient but need not be adequate, such as mutual ✓1 promises. In this case, Alishia may understand Edward's consideration as forbearance to sue as he owns the patent for improved moulding process; as well as he would pay 100,000 GBP to Aisha for improved chess pieces.

✓1 Consideration from the Alishia's side in turn the development of the improved chess pieces for 100,000 GBP.

The consideration in the second part of their conversation is not so clear – Edward said that he would enjoy winning more if he could get more than 5 GBP per piece. The consideration could again be forbearance to sue and Aishia's manufacturing pieces for the unknown price of more than 5 GBP which is not clear.

Taking all this into account, I would advise Edward that there seem to be a contract formed between him and Alishia, for her to develop improved chess pieces in exchange for 100,000 GBP. However, there was no contract in connection to sale or mass manufacture of these new chess pieces. So there can be infringement of his IP rights with regards to Alishia selling the improved chess pieces to the public.

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Question 9b

Ray vs Classic FM case law

The implied terms giving the right to the commissioner (Edward) as vested copyright to use the improved moulding for chess pieces as to multiply them and copy and sell them on the market free from the competition from the Alishia (creator of the improved moulding for chess pieces) or third party.

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Question 9c

To be liable for damage there needs to be a duty of care

1. Duty of care – objective standard, proximity of relationship – there seemed to be a contract between Edward and Alishia and hence, Alishia owed a duty of care to Edward with regards to not infringe his patent or sell improved chess pieces
2. Breach – there seems to be a breach by use where Alishia sells the improved chess pieces.
3. Causality in fact – Would Edward have two months of low sales but for Alishia not selling her own chess pieces? The answer is no, and therefore there is a causation in fact. Where Alishia's selling her chess pieces directly reduces the sales of Edward as they both have equal qualities and perceived equally exclusive by customers.
4. Causality in law – is it foreseeable and it is close proximity that Edwards sales would be negatively affected by Alishia's sales of chess pieces?
Yes.
5. Damages adequate remedy – yes. The profit of sales of Alishia can be equal to loss of sales by Edward. Profit of sales of chess pieces 10 GBP – 5 GBP = 5 GBP; she sold 6,000 in the last 6 months. Hence, the profit is 5 GBP x 6,000 GBP. The court may award Edward with this amount 30,000 GBP.
6. The selling of chess boards is not an infringing act, as was not part of their earlier contact and it is not clear if Alishia is infringing Edward's patent in manufacturing them.

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Question 9d

It would not have changed, as the patent is still being infringed by sale of items .

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MARKS AWARDED: 10/20

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Question 10a

Misrepresentation – a false statement of fact made prior to contract agreement that induces that other party to enter into a contract.

Flavian has given a negligent misrepresenting statement to Cecily. As he said carelessly, without checking, that the patent was “watertight”; even though Cecily just asked if the renewal fee was paid. He is a patent attorney and therefore a reasonable man would see that his statement can be taken as a legal advice.
✓1
However, Cecily did not enter the contract.

The question is if the reasonable man could foresee that Flavian’s advice can be relied upon by a third party, i.e. Cecily’s friend. If it would not be foreseeable, ie
✓1
Flavian could not have possibly known that his advice can be relied upon by someone other than Cecily, then he cannot be liable. Knowing that Gregory was offering to sell his patent, Flavian could have anticipated that there are other people apart from Cecily who could be interested in buying his patent. Given that he did not state in this letter to Cecily any disclaimer saying that this advice is
✓1
only for a certain situation or that if someone else wants to invest they should seek a specific for their question/intention legal advice or that he is not liable for his advice; and given that he is a patent attorney he could have foreseen that his advice can be relied upon by other’s like Cecily’s friend. His advice related to the
✓1
subject matter of his expertise and therefore he can be liable.

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Question 10b

There needs to be causation in law and in fact for Flavian to be liable.

- i) The money they have invested is lost; but for test: They would not invest but for the Flavian's advice? There is a direct causality of fact, the friend would not have invested and lost the money, but for the Flavian's advice that the patent is watertight. Direct link between the business success and the patent it relied on. There is causation in law as it is close proximity and foreseeable that money invested is lost when patent is not valid – direct relationship. Flavian is liable.
- ii) Share of future profits; causation in law – pure economic loss is not part of something Flavian can be liable for. As future profits of the business depend on more than just the patent for example, management, global sudden epidemic. Therefore, Flavian is not liable.
- iii) What they would have otherwise done with the money – similar to ii, too far removed (no causation in law) from the actual action and hard to estimate what would Flavian be liable for. No way to know for certain what would that other investment be. There is also a break in the chain of causation in fact as it is far removed. Not direct link. Therefore, Flavian is not liable.

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Question 10c

Should be in writing. ✓½

Clearly stated that it is a Part 36 offer of the Civil procedure rules. ✓½

Clearly stated for what claims (the money they put into Digory's business).

Acceptance should be set to be within 21 days. ✓½

Attempt for genuine settlement.

State the amount offer as settlement – 50,000 GBP. ✓½

2

MARKS AWARDED: 11.5/20

11½

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Question 11

Ex parte interim search and seizure order

Grounds and requirements:

The court may apply some of the principles established in the American Cyanamid case (though for interim injunction some principles still useful for ex parte injunction).

- a. Is there a serious issue to be tried? Yes, it is clear that the safety of inexperienced climbers is at risk as well as very serious damage to the reputation and then sales of Wiliam's business as there is newspaper reporting that the faulty cheap carabiner is his (when in reality they are not). Damaging to reputation to his brand and since a key feature for climbers safety nobody will buy his products if they are perceived to be unsafe.
- b. Are damages an adequate remedy if the infringer is allowed to continue and then later be found to have been conducting a wrongful act? No, damages would not be an adequate remedy as there would be a serious reputation damage, and there are a cheap knock off. Interim injunction is not appropriate as the damage is already ongoing.

Wiliam needs to admit serious evidence showing that the infringing items (cheap carabiners) are located in the premises on that island for which he is seeking ex parte order. There is document evidence of the consignment notice address identifying a pub in close proximity to the island and that boats are seen coming

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from and to the island from the port near the pub. Wiliam wants to seek order for
 the premises on the island near this pub. That is a weak evidence as it does not
 clearly state where the premises that has the infringing items is located. Is it a
 pub? Or another premises on the island close to the pub? Wiliam needs to admit
 evidence of exactly the infringer's premises.

Witness evidence where locals told Wiliam that a boat comes form the island
 every 6 weeks carrying climbing equipment. This could be strong witness
 statement. But William doesn't want his lawyers to mention it to the court which
 weakens his claim that the premises on this island contains the cheap faulty
 carabiners. The court needs to see the evidence connecting to the island to be
 able to issue ex parte interim of the specific premises on the island. So Wiliam
 needs to change his mind and tell the court about this witness statement.
 Additionally, Wiliam can go to the island and try to see himself these various
 farms and acquire real physical evidence of what premises contains infringing
 items or direct evidence.

There are previous reports from police raids 2 months ago that the drug dealers
 destroyed evidence. Wiliam suspects that this premises from the same island
 where the cheap unsafe carabiners are stored. So there is a plausible reason to
 believe that the infringers if from the same island and/or used the same garage
 they might be inclined to similar behaviour of destroy the evidence of cheap
 carabiners or their documents of sale contracts or how much or where they
 manufacture and distribute them before the trial. This is strong evidence. To

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strengthen this argument there is witness statements saying that boats coming from the island were seen throwing packages into the water – also the court might see it as destroying evidence. Wiliam could collect some of these packages from the water as real evidence, since he knows the boats come every 6 weeks.

If the imitation carabiners are found to infringe his patent, the court may issue seizure order (deliver up) or destroy all infringing items.

Wiliam needs to prove that if infringers are allowed to continue his business will suffer serious damages such as to the reputation. He has strong document evidence in terms of the newspaper that reported that these cheap unsafe carabiners were originating from him. The damage to this brands reputation has begun.

MARKS AWARDED: 7/20

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