

## SCIENT 704 – First Semester, 2023

### Contract Analysis Assignment

You work for Spell Ltd (Spell), which is based in Auckland. Spell supplies hospitals in New Zealand with medical supplies. Sarah, the innovation manager at Spell, finds that Amy, a surgeon employed by Auckland Hospital, has developed a ground breaking, innovative surgical instrument. Amy developed the instrument in her spare time at home as she was frustrated with the limitations of the existing instruments she was using when operating on patients. (Note: this particular surgical instrument does not meet the requirements for patent protection and Amy has not applied to register a patent.) Despite the lack of a patent, Sarah thinks the surgical instrument would be a wonderful addition to the products Spell sells. Sarah enters into negotiations with Amy and her lawyer about Spell manufacturing and selling that surgical instrument.

Amy's lawyer has provided Spell Ltd with a contract. You have been asked to review the draft contract. Spell wants to do the following:

- (a) Obtain the rights to manufacture and sell the surgical instrument in New Zealand and internationally to hospitals, GP practices and veterinary practices for 10 years. Spell doesn't want any else to have the rights to sell it in New Zealand during that time.
- (b) Dispute Resolution – if a dispute arises between Amy and Spell, Spell does not want the matter to court and wants to keep the costs and time of resolving that dispute as low and as quick as possible.

In addition:

- (i) If there are any errors in the contract, use the comments tool in Word (or similar programme) to explain what the error is, why it is an error and provide the correct alternative wording in the comments. For obvious errors, such as typos, use track changes to fix those typos.
- (ii) If you think changes to existing clauses should be made, for example, that they unduly favour Amy, then use track changes or comments to provide a suggested alternative. Also explain in the comments why the change should be made.
- (iii) If additional clauses are required to achieve what Spell wants, insert them into the contract using track changes and explain why they are required in the comments.
- (iv) If clauses/certain parts are not required, use track changes to delete those clauses/parts and explain why they are not required in the comments.
- (v) Do not talk about patent law in your answer.
- (vi) If you are suggesting making changes because of legal reasons, ensure you explain and reference the correct law.
- (vii) Make sure you look and following the rubric for this assignment. For example, you are required to write succinct explanations etc. For example, take this example about registering a trade mark (HAMMER) over a hammer. (Note: this question does not involve a trade mark it is just an example!) Instead of saying in a comment "According to section 18 of the Trade Marks Act 2002, the Commissioner must not register a sign that designates the intended purpose of the goods. Therefore, as the good is a hammer, the word HAMMER cannot be registered as it describes goods, this is, it is descriptive." A succinct explanation would be, "Under s 18 of the Trade Marks Act 2002, HAMMER cannot be registered over hammers as it is descriptive".