



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER (2)

COURSE CODE : LLB 301
COURSE TITLE : Intellectual Property
DURATION : 3 Hours
LEVEL : 3.1
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer **four questions**, choose **TWO** questions from **each** section.
2. Each question carries **25 Marks**.
3. Start each question on a new page of your answer sheet.

Section A

Question 1

Discuss the case of *Mobil Oil Zimbabwe (Pvt) Ltd v Travel Forum (Pvt) Ltd* 1990 (1) ZLR 67 (HC) and consider the effect it has had on trademark law in Zimbabwe.

[25 marks]

Question 2

Ronnie and Sue are employed by Benjy's Nightwear who make pyjamas and dresses. Ronnie works in the marketing department and Sue works in the textile quality control department.

One evening at home, whilst examining some rejected samples Sue had saved from being dumped, they try making some experiments with some hologram designs that Benjy's picked up at a marketing seminar. They have the idea of applying holograms. Sue, drawing on her knowledge of quality control, concludes that this can be done by heating the material and the holograms. Over a period of months, they refine the idea. Through experimentation, they perfect the process of heat treating the holograms and the clothing so the holograms can be applied to the textiles. They then resign from the company and seek a patent for the process. Their contracts of employment with Benjy's Nightwear do not mention inventions.

What would your advice be if the court held that the patent belonged to Benjy's Nightwear and proved commercially successful?

[25 marks]

Question 3

Critically discuss the case of *Vivon Investments (Pvt) Limited v Win-King Investments (Pvt) Limited* HH 272-16.

[25 marks].

Question 4

- a. The case of *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA. 589 (A) is an important the requirements of patentability. (15).

b. Tanganda Tea Company has produced a new Rooibos Tea. It tastes like tea and coffee at the same time.

Can a new plant breed of a tea plant be patented if plant scientists have developed it in a laboratory and using new scientific methods? (10).

[25 marks]

Section B

(Answer two questions only.)

Question 5

“His duties changed over the years but one would not ordinarily include computer programming as part of the duties of a meteorologist. However, that is not the full picture. As meteorologist, King had to collect and collate meteorological data and transmit it to head office for analysis and storing. He developed his programs for this very purpose. Although he may have done it to make his own job easier, he did it because of his employment with the Bureau.”

Per Harms ADP in the case of **King v South African Weather Service 2009 (3) SA 13 (SCA)**.

Discuss the ownership of computer programs under the law of Copyright.

[25 marks].

Question 6

Albert Chipetiwa seeks to patent a canoe which can double as a glider over rapids. Using hydrofoils which can extend as wings, the innovation allows a canoeist approaching a large waterfall to glide over to the next stretch of calmer water. Albert wants to patent his invention, which he believes may help surveyors and travellers in remote areas, and to sell it as the first gliding canoe.

A search by the Zimbabwean Patent Office reveals a photograph of an Aztec carving which shows a winged canoe similar to the plans put forward by Albert, published in a book in Germany, ‘Did

God Fly A Canoe?' The author of the book, Eric Von Kontrick, claims that Earth was once visited by aliens who arrived by flying canoes.

Eric Von Kontrick further claims that indigenous tribes along the Amazon basin make their own gliding canoes for use in secret religious ceremonies. Eric also claims to have made a gliding canoe himself which he used on an uninhabited stretch of the Amazon. Unfortunately, his only model sank.

Advise Mr Chipetiwa as to the patentability of his invention.

Assuming the patent is granted, what should Albert Chipetiwa do if he discovers that Eric is seeking to import potentially infringing gliding canoes via DHL and FEDEX, who have a shipment coming to Zimbabwe?

Advise him as to the steps he should take to protect his patent.

[25 Marks]

Question 7

Sabrina is the successful owner of a chain of Indian food and pickle shops. She registers a trade mark in the name of 'BrinaSPICE', combining her anglicised nickname and the logo of an eye for the dot in the letter 'i'.

One week, a family friend, Getrude, who is also in the food retail business contacts her complaining of a drop in trade. In a moment of kindness, Sabrina gave Getrude a crate of her jarred pickles. Each jar carried her registered trade mark, brinaSPICE, Sabrina telling Getrude 'try selling these, let me know how you get on in two weeks'.

Sabrina did not have a chance to check Getrude's progress but, a few weeks later, is concerned when a customer comes in and starts telling Sabrina about how impressed he is with Sabrina's new shop. On making further inquiries, Sabrina is shocked to learn that Getrude has renamed her business 'Getty-spices' and, as well as selling Sabrina's stock, is marking her goods with a Getty-spice mark. Subsequently, suppliers and delivery workers comment on the similarity when delivering goods.

over the telephone that she has 'valid defences in law' and that she is entitled to use the mark

regardless and will carry on doing so. Getrude says that she will swear an affidavit/statement of truth. Due to a cooling in relations, Sabrina seeks advice on her position. Advise her accordingly.

[25 Marks]

Question 8

Mr. Spencer has a family traditional dance group. They have introduced a new dancing style called AmaPiano Twerking Jive. His group was invited to perform at the State House at the 2020 Independence Day celebrations.

Mr. Spencer and his group gave a chilling and astounding performance that left the audience, including the First family gasping for more. While Mr. Spencer and his group were performing, Mr. **Justice Mawire**, a freelance dancer and photographer, took several pictures of the group and also recorded a video of the novel dance without the knowledge of Mr. Spencer.

He proceeded to upload the dances on his own Youtube page. He also produced thousands of DVDs within an hour of the performance and deployed his employees **Gilmore Malik** and **Bongani Shumba** to sell them for US\$5.00 to the First family, the personal aides, security services and the on-lookers of the event on the streets.

The DVDs are now a real hit in Harare. On 20 March 2020, Mr. Spencer was surprised to learn that there is a new advert for *Dragon Energy Drink!*, a local energy drink, on ZBC One television station and in the Herald, which shows Mr. Spencer and his family dancing “energetically” from the pictures captured by Mr. Justice.

The *Dragon Energy Drink* advert insinuates that Mr. Spencer and his group were dancing with so much vigor because they had taken the *Dragon Energy Drink* before the dance.

In addition, Mr Justice is now offering dance classes titled and based on the Amapiano Twerking Jive and is charging US\$50.00 for wedding groups.

In order to market his new classes as a wedding choreographer and professional dancer, He also posted excerpts of the video of Mr Spencer and his family on his Instagram account and this has generated over 20 000 “likes” and nearly 5000 “shares” by his friends and other people who like

twerking dance videos. **Ginimbi**, a huge Instagram influencer has also shared this video on his Instagram account and it has gone viral.

Mr Spencer and his family have become celebrities overnight. However, it is Mr Justice who is getting more of the spotlight and money from wedding hires and trainings for bridal teams.

Spencer is aggrieved by Mr. Justice's actions and has approached you for advice on his rights, the exceptions to those rights, the remedies available to him and the challenges he will have to overcome to successfully sue the "infringers" of his rights.

Advise Mr. Spenser of his rights.

[25 marks]

END OF PAPER