



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER (1)

COURSE CODE : LLB 301
COURSE TITLE : Intellectual Property
DURATION : 3 Hours
LEVEL : 3rd SEMESTER
DATE : 11 AUG 2021

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.

PART A

(Answer two questions from this section)

Question 1

Using the case of *Polaris Zimbabwe (Private) Limited v Zapchem Detergent Manufacturers CC (trading as Starchem) Judgment No. SC 68/04*, discuss the requirements for a successful action based on passing off.

[25 marks]

Question 2

- a) With reference to the Plant Breeders' Rights Act, define and discuss in detail the requirements for a plant breeder's right in Zimbabwe. (15)
- b) Discuss what rights and entitlements it provides to a holder of these rights and consider whether they are effective in guaranteeing an incentive for the right holder. (10)

[25 marks]

Question 3

- a. Consider the theories justifying the existence of intellectual property rights. Discuss whether these theories adequately justify the creation of monopolies in respect of information in our modern-day society.
- b. With reference to the Industrial Designs Act [Chapter 26:02], what are the requirements of industrial designs and what do they protect?

[20 marks].

[5 marks]

Question 4

Using the case of *Gentiruco AG v Firestone SA (Pty) Ltd 1972 (1) SA 589 (A)*, and with reference to the Patents Act [Chapter 26:03], discuss the requirements of patentability commenting on why each of the requirements is critical in granting patent rights.

[25 marks]

Section B

(Answer any two questions)

Question 5

Imagine that you are sitting in the first-class cabin of a newly designed aircraft on a flight to Nairobi, Kenya for your honey-moon with your second spouse.

You are watching an in-flight movie called “*Kapfupi in London*” which is a Netflix remake of an old Zimbabwean classic, “*Kapfupi Street theatre*”.

You have the well-known WHOOSH drink in your hand. This is contained in a new and unusually shaped plastic bottle with a label containing a striking image and the word ‘whoosh’.

During the flight you read the free in-flight magazine, GO. Your seat is like no other aircraft seat you have ever seen. It has a novel reclining mechanism, converting into a bed, and it is apparently the safest seat available as it is highly energy absorbing.

You booked your ticket online with DANAIR but noticed when you entered a search for DANAIR, the first website in the list of hits was JETAWAY, a rival airline. DANAIR is a registered trade mark.

Discuss, using relevant statutory and case law, the intellectual property rights that you may have encountered on your journey.

[25 marks]

Question 6

Last year, Bethel graduated from Zimbabwe Ezekiel Guti University with a first-class degree in Mechanical Engineering. She has a job with a large bicycle manufacturer designing adult racing tricycles. She remembers that when she was a little girl, her father had attached a toy lawnmower to her tricycle and with delight she had ridden around their yard in Greystone Park all summer pretending to mow the lawn.

Bethel has now decided that a tricycle lawnmower would be a fantastic product. She has searched for lawnmowers on the internet but has not seen any tricycle lawnmowers.

Bethel owns a very attractive regular lawnmower called Swoosh®. The Swoosh® mower has a very unusual shape. In order to make her tricycle mower, Bethel has decided to modify the Swoosh® slightly and attach it to the latest racing tricycle that she has designed at work. She sees

that the instructions for the Swoosh® mower are very clear, and as she is not very good at writing concisely, she decides to use these instructions for her own mower. Bethel is calling her tricycle mower 'iSwoosh'.

Bethel has come to you, a distinguished graduate of ZEGU's Law Faculty for advice on how to patent her invention.

Advise Bethel on ALL intellectual property issues related to her mower.

[25 marks]

Question 7

In 2018, Karolina Herrera invented and patented '**Shangu**', an air-cooled horse exercise boot with the Zimbabwe Intellectual Property Office (**ZIPO**). The specification states that the boot is intended to prevent damage to a horse's leg caused by exercise-induced strain or by external striking.

The boot is formed of a leg-embracing collar secured around a horse's leg, and the surface of the boot includes at least one air intake, exit outlets and channels connecting the intake and outlets to allow coolant air or fluid to penetrate the surface and pass from one part of the boot to the other, hitting the horse's leg as it gallops.

Karolina became aware that '**Bhutsu**' is being marketed in Zimbabwe. This is a horse exercise boot that includes an outer layer which is made up of small holes throughout, with an inner layer of foamed permeable material. This allows air to flow into the boot and reach the leg when the horse is galloping.

Karolina felt that the Bhutsu boot infringed her patent. She wrote the Bhutsu Company a letter saying that if they did not enter into a licence agreement with her on reasonable terms, she would sue them for infringement of her patent.

Bhutsu Company states that they have been manufacturing their boots in secret since 2017 but have only recently placed them on the market.

Advise Karolina on the likelihood of an infringement action succeeding, and what remedies are available both to her and to the Bhutsu Company.

[25 marks]

Question 8

Last month, Mr Chivige took part in a cooking show hosted by Amai Chiramba where entrepreneurs attempt to gain investment from rich businessmen like Passion Yava and Winky Cee among others.

Mr Chivige won a substantial investment for his 'Zoo-mbanie sauce', a high-quality tangy sauce to be used with savoury dishes marketed in a coconut-shaped plastic bottle. Mr Chivige had created a song called '*Pamberi neZoo-mbanie*' which he sang on the television programme and which has since been used in an extensive advertising campaign to promote the sauce. An extended version of the advertisement has been released as a music video by Enzo Whyshall and has been a great success.

The video features Mr Chivige playing his piano sitting under a Zumbani tree while surrounded by bottles of the sauce. The sauce is marketed in most supermarket chains such as OK Store and P'n'P TM Supermarket.

Beauty runs an organic burger bar called Beauty's Burgers. The bar has a reputation for home-made produce. Beauty has put up a large sign in her shop saying 'Put Zumbani sauce on your Beauty Burger'. Beauty has the video of Mr Chivige as background music playing almost non-stop in her burger bar.

She has registered the domain name zumbanispace.co.zw and has started taking orders online to supply organic food shops with her zumbani sauce.

Advise Mr Chivige as to whether he could bring a successful passing-off action against Beauty.

[25 marks]

END OF EXAMINATION