

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW DEPARTMENT OF MERCANTILE LAW

NOV/DEC Examination

COURSE : **Intellectual Property Law**
Course Code : **LLB 301**
TIME ALLOWED : **3hrs**
TOTAL MARKS : **70**

30 NOVEMBER 2018

INSTRUCTIONS TO CANDIDATES

1. The paper consists of **Two (2) Sections, A and B. Answer One (1) Question from Section A, and Two (2) Questions from Section B.**
 2. Marks for each question are indicated in (...) and/or the total in [...].
 3. The question paper consists of **4 pages** including the cover page. Please ensure you have them all.
 4. Each question should be on a fresh page and every page must be numbered.
 5. Cell phones (and any electronic gadgets) are not allowed into the examination room.
 6. Notes, handouts and textbooks are not allowed into the examination room.
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Section A

Answer any One (1) question

Question 1

a) Write short notes on the following:

- i) Use deemed to be novelty destroying, (5 marks)
- ii) Copyright and ideas (5 marks)

(b) In certain circumstances, a patentee will not be entitled to the relief in proceedings for infringement. Discuss this restrictions and rights of a potential infringer in terms of the Patents Act [Chapter 26:03] as amended. (10 marks)

[Total for Question 1: 20 Marks]

Question 2

- (i) You are a law officer working for a large commercial firm in the country. Part of your duties are to provide legal advice on whether works created by certain clients enjoy copyright protection. Make a list of all the relevant principles you should keep in mind in order to determine whether a work enjoys copyright protection. (5 marks)
- (ii) You warn your client that a patentee could institute proceedings for infringement. What relief would the patentee be able to claim? (5 marks)
- (iii) Your client works in the pharmaceutical industry and specifically produces generic medicines and wants to start manufacturing and testing a new drug. You advise that patent searches should first be conducted in order to establish whether or not there may be an existing patent which may be infringed by the exploitation of their new drug.

Your client is adamant that she wants to proceed with launching her new generic medicine, even although it is basically a copy of the patented medicine, as she is convinced that the patentee is abusing her patent rights. In this regard, discuss the requirements for patentability in order to obtain a compulsory licence.

(10 marks)

[Total for Question 2: 20 Marks]

Section B: Answer any Two (2) questions

Question 3

Glory has a business which specializes in making confectionary (sweets), cakes and other party favours for children's birthday parties. She recently spent time on a holiday in Bindura where she came across a coffee shop which specializes in making the most magnificent cakes. The shop is called "The Goody Shop" and the cakes are sold under the name "Goody Cakes". These cakes are sold at various outlets throughout northern parts of Mashonaland Central and East Provinces. Glory likes this name and she wants to use the name "Glorious Goodys" as the name of the products that she sells. She says this name is a play on her own name.

Glory approaches you for legal advice, and as a result of your discussion she informs you that she does not want to register the name as a trademark because the process is too expensive. However, she tells you that she intends to use the name "Glorious Goodys" as her trademark despite the fact that she will not be registering it. Discuss the following issues which arise during your consultation.

(a) You inform Glory that you should still establish whether the word "Goody" or "Goody Shop" is already registered as a trademark. Explain to Glory why this is inherently necessary and what differences it would make if the words were or were not registered as trademarks. **(18 marks)**

(b) Glory informs you that she has developed a wonderful recipe for chocolate sauce which she would like to patent. Discuss whether or not Glory would patent this recipe. **(7 marks)**

[Total for Question 3: 25 Marks]

Question 4

(a) B, a producer of beer, approaches you for legal advice. She informs you that she wishes to market a beer. Her marketing department has suggested the following two trademarks: "Cool 'n Light" and "Zimba Gold". They have also designed a label which will contain the trademark, a Zimbabwean style beer mug and a script border stating that the beer has been endorsed by the World Health Organization (WHO). B informs you that she has not obtained permission from WHO to use its name.

With reference to the above facts, what advice would you give B concerning the registrability of her proposed trademarks "Cool 'n Light" and "Zimba Gold", as well as the label? **(10 marks)**

(b) D is the proprietor of a trademark "Rocky", which is registered in the United Kingdom (UK) in respect of a soft drink. D has not registered his "Rocky" trademark in Zimbabwe. Although "Rocky" soft drink is not available in Zimbabwe, it has become known in

Zimbabwe through advertisements in most overseas magazines available in Zimbabwe, and also as the sponsor of most major international sporting events which are broadcasted on Supersport TV channels and on Zimbabwe Broadcast Corporation (ZBC) TV. F, a local producer of soft drinks, has now applied for the registration in Zimbabwe for the trademark "Rocky" in respect of a soft drink.

Advise D whether he can prevent F from registering the mark "Rocky" in relation to a soft drink? Would your advice differ if D had registered his "Rocky" trademark in Zimbabwe in respect of a soft drink? **(8 marks)**

- (c) You are an attorney and one of your clients is a best-selling author. Her secretary stole a digital copy of her newest book and places it on a web page on the internet. For what type of relief would you ask the court if you institute an action for copyright infringement on behalf of your Client? Give reasons to support your answer. **(7 marks)**

[Total for Question 4: 25 Marks]

Question 5

- (a) X has designed a new oil container. The advantage of the design is found in the fact that oil freely flows from the container when tilted. The design also draws the attention owing to its particular shape while the planar areas along the sides present a neat pattern.

Is this design registerable under the Industrial Designs Act [Chapter 26:02]? Motivate your answer in the light of the requirements of design protection. In the process also assess whether it does not perhaps qualify for both aesthetic and functional protection while indicating in which aspects the design resides. **(15 marks)**

- (b) Y has an aesthetic design registration for an article that is used in a place where it is not visually exposed. Z also makes and sells identically similar articles. Y sues Z for infringement of her design. Will Y succeed? Discuss. **(10 marks)**

[Total for Question 5: 25 Marks]

.....The End.....