



<u>FACULTY</u>	: LAW
<u>DEPARTMENT</u>	: MERCANTILE LAW
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: HRA0021/CML41B0 CAPITA SELECTA MERCANTILE LAW
<u>SEMESTER</u>	: SECOND SEMESTER
<u>EXAM</u>	: NORMAL (FIRST) EXAMINATION

<u>DATE</u>	: 29 October 2020	<u>SESSION</u>	: 08:30:11:30
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<u>ASSESSOR(S)</u>	: PROF RW ALBERTS
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<u>MODERATOR</u>	: PROF E HURTER
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<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 80
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NUMBER OF PAGES: **2 PAGES** (Including the cover page)

INSTRUCTIONS:

1. Your answers must be substantiated in detail.
2. Submit the answers on Blackboard.
3. This is an open-book examination. You may use any materials but are not allowed to share information with other students.
4. You are not allowed to be in contact with other students.
5. Your answers will be tested for plagiarism in general and in respect of the answers of other students.
6. Do not copy and paste from any sources. Answers must be provided in your own words.
7. Use quotation marks where literally quoting from sources.
8. You may contact the lecturer by WhatsApp (**0823769275**) during the examination.
9. Save your work frequently.

QUESTION 1

X copies a watch made by Y. Assess the legal position regarding the copying of shapes in terms of the law of unlawful competition, and indicate the legal position of the parties.

Refer to Schultz, Bress Designs, Heyneman, Bush Lapa, Premier Hangers and Van der Merwe cases. Motivate your answer,

[20]

QUESTION 2

ORLANDO PIRATES is a famous soccer team. The mark is registered. Their owner finds out that a new soccer team, SOWETO PIRATES, has filed a trade mark application for the latter. What principles will be applicable in the process of the comparison of marks?

Refer to Dairybell and Sabel cases. Apply principles.

[15]

QUESTION 3

HH commences use of the trade mark MAZDA in relation to skate boards. Mazda Motor Company, the owner of the MAZDA trade mark, wishes to interdict this use. Consider and evaluate the protection that might be available under the “unfair advantage” rubric in section 34(1)(c) of the Trade Marks Act 194 of 1993, with reference to overseas case law. The decision in Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another [2005] ZACC 7 is NOT applicable.

CA Sheimer

Electrocoin

Oasis case

Vodafone

Pfizer

Motivate your conclusion

[20]

QUESTION 4

X wishes to register the shape of an object as a design. Analyse the possible exclusions from registrability as a design with reference to case law.

Discuss section 14(4)-(6) of the Designs Act and the BMW cases.

[15]

QUESTION 5

Analyse the reasoning of the court in the decision of Kumalo v Cycle Lab (Pty) Ltd [2011] ZAGPJHC 56 in coming to its decision.

Discuss the case.

[10]

TOTAL: 80
