



<u>FACULTY</u>	: LAW
<u>DEPARTMENT</u>	: MERCANTILE LAW
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: CAPITA SELECTA MERCANTILE LAW (HRA0021/CML41B0)
<u>SEMESTER</u>	: SECOND SEMESTER
<u>EXAM</u>	: SECOND SUPPLEMENTARY EXAMINATION 2021

DATE : 2021 **SESSION** : 8-11

ASSESSOR(S) : PROF RW ALBERTS

MODERATOR : PROF E HURTER

DURATION : 3 HOURS **MARKS** : 80

NUMBER OF PAGES: **2 PAGES** (Including the cover page)

INSTRUCTIONS:

Your answers must be substantiated in detail.

Submit the answers on Blackboard.

This is an open-book examination. You may use any materials but are not allowed to share information with other students.

You are not allowed to be in contact with other students.

Your answers will be tested for plagiarism in general and in respect of the answers of other students.

Do not copy and paste from any sources. Answers must be provided in your own words.

Use quotation marks where literally quoting from sources.

You may contact the lecturer by WhatsApp (0823769275) during the examination.

Save your work frequently.

QUESTION 1

A British business, XX, uses the trade mark SOFTEE in relation to chocolate products. The mark has been in use for three years. A South African business, YY, adopts the trade mark SOFTEE also in relation to chocolate products. Does XX have any remedy in South Africa to prevent YY's use of its trade mark? Analyse the common and statutory law relief that might be applicable. There are no registered marks. You must specifically refer to relevant judgments.

[20]

QUESTION 2

AA commences use of the trade mark VOLKSWAGEN in relation to wheelbarrows. Volkswagen, the owner of the VOLKSWAGEN 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. Do not refer to South African cases.

[15]

QUESTION 3

Mr X, a well-known rugby player, visits a gymnasium, and his photo is taken without him being aware thereof. The shop later places an advertisement alongside his photo. Assess his remedies in terms of private law with specific reference to case law.

[15]

QUESTION 4

Mrs Jacobs designs a computer program that causes a dispenser to release food for pets every few hours. Assuming that the program otherwise complies with the requirements of the Patents Act 57 of 1978, would the program be patentable? Explain the legal position by analysing the various relevant provisions of the Act, and refer to relevant case law.

[20]

QUESTION 5

Indicate which tests South African courts apply when comparing marks for similarity. Refer to European case law also.

[10]

TOTAL: 80
