

## CAPITA SELECTA MAIN PAPER 2021

### QUESTION 1

A has a pub in London called THE COOL MONKEY. He conducts business there for three years. B, a Johannesburg entrepreneur, opens a pub called THE COOL MONKEY. Describe A's legal position in terms of preventing B's use of the name THE COOL MONKEY with reference to common and statutory law.

#### Answer

Assume three years enough reputation. Slenderella case - Morals not relevant, is there a business? Tie rack case. Same, but granted on copyright grounds - Caterham case. Whether the plaintiff has, in a practical and business sense, a sufficient reputation amongst a substantial number of persons who are either clients or potential clients of his business. And further principles of the case. Discuss section 35 as interpreted in the McDonalds case.

### QUESTION 2

XX commences use of the trade mark PORSCHE in relation to televisions. Porsche Motor Company, the owner of the PORSCHE trade mark, wishes to interdict this use. Consider and evaluate the protection that might be available to Porsche Motor Company under the "unfair advantage" rubric in section 34(1)(c) of the Trade Marks Act 194 of 1993 with reference to case law.

#### **Answer:**

SA case law

Verimark case

Statements that can be made applicable to unfair advantage

Overseas case law

CA Sheimer

Electrocoin

Oasis case

Vodafone

Pfizer

Motivate your conclusion

### QUESTION 3

Lionel Nessi is a famous member of the Bafana Bafana soccer team. A sports clothing manufacturer, Hadidas, brings out a soccer boot called Lionel Nessi. What is Mr Nessi's legal position in terms of preventing the use of his name according to South African law.

O'Keeffe case, Grutter, Wells Kumalo

Views of Cornelius

[20]

TOTAL: 60