



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Procedural Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: IRS0000/ILS41Y0 Introduction to Legal Studies
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: SSA TBA

<u>DATE</u>	:	<u>SESSION</u>	:
<u>ASSESSOR(S)</u>	:	MS KB MOKOENA	
<u>MODERATOR</u>	:	DR ES FOURIE	
<u>DURATION</u>	:	<u>MARKS</u>	: 100

NUMBER OF PAGES: 7 PAGES

INSTRUCTIONS:

1. Answer ALL THE QUESTIONS IN YOUR ANSWERBOOK
 2. Number your answers clearly
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QUESTION 1

1.1. Differentiate between an offence charged in the alternative and a competent verdict on a lesser offence.

[5]

1.2. Provide 3 competent verdicts for the charge of robbery in terms of section 260 of the Criminal Procedure Act 51 of 1977.

[3]

1.3. Provide 2 competent verdicts for the charge of common assault in terms of section 267 of the Criminal Procedure Act 51 of 1977.

[2]

1.4. List any three (3) rights guaranteed in terms of section 35 in the Constitution to:

a. an arrested person; [3]

b. a detained person; and [3]

c. an accused person. [3]

1.5. Distinguish between the following:

a. a charge sheet and an indictment; [2]

b. competence and compellability of a witness; [2]

c. direct evidence and circumstantial evidence. [2]

1.6. Discuss “necessity” as a defence that excludes unlawfulness. [3]

1.7. Discuss “restoration” as an aim of punishment and sentencing. [3]

1.8. When can a caution and discharge be appropriately imposed as a sentence on a convicted person? [1]

1.9. List the principles derived from the case of *Waymark NO v Commercial Union Assurance Co Ltd* 1992 (3) SA 779 (Tk) relating to legal professional privilege? [6]

1.10. Fill in the blanks. Provide your answers in your answerbook.

<i>Court a quo</i>		<i>Court of appeal</i>
	↓	↓
a. _____	→	High Court
b. Single judge in High Court	→	_____
c. Single judge in High Court or full bench	→	_____
d. High Court or Supreme Court of Appeal	→	_____

[4x ½]

[40]

QUESTION 2

Mr X is the registered proprietor of two '**French Connection**' trademarks in class 25 of the register in respect of clothing. Mr Z later became the registered proprietor of the identical '**French Connexion**' mark in class 3 of the register in respect of, broadly, cosmetics and toiletries. Mr Z built up a substantial reputation for his '**French Connection**' clothing, which was sold through national chain stores with numerous branches throughout the country. Mr X alleges that he intended to expand his business into the field of cosmetics, toiletries and perfumery, which he proposed selling under the '**French Connection**' label.

2.1. What is the duration for trademark protection?

[2]

2.2. Provide the definition of a trademark as provided for in section 1 of the Trade Marks Act 194 of 1993.

[3]

2.3. Assume for the purposes of this question that Mr Z's mark '**French Connexion**' is unregistered. Discuss whether Mr Z's actions amount to trademark infringement under the Trade Marks Act 194 of 1993. Refer to the relevant provision.

[5]

2.4. What is the lifespan of:

- a. An aesthetic design;
- b. A functional design

[2]

2.5. Provide any three statutory remedies for copyright infringement in terms of section 24 of the Copyright Act 98 of 1978.

[3]

2.6. When is the right of identity infringed? Refer to relevant case law

[2]

2.7. Read the following extract and answer the question below:

“... This formula has been described in an American court as one of the best-kept trade secrets in the world. Most of the ingredients of Coca-Cola are common knowledge, but the ingredient which gives it its distinctive taste is a secret combination of flavouring oils and other ingredients, known as "Merchandise 7X“

The formula for Merchandise 7X has been tightly guarded since Coca-Cola was first invented. It is known to only two persons in the company at any one time - only these two persons may oversee the actual preparation of Merchandise 7X. Their identity is never disclosed to outsiders, and they are not allowed to fly on the same aeroplane at the same time. The written version of the formula of Merchandise 7X is kept in a security vault in a bank in Atlanta, and this vault can only be opened by a resolution of the company's board of directors.

The company decided not to produce Coca-Cola in India, a potential market of 550 million persons, because the Indian government required disclosure of the secret formula as precondition of doing business there.”

Assume Coca-Cola wants to protect its trade secret in South Africa. What are the requirements for the protection of a trade secret?

[3]

[20]

QUESTION 3

3.1. Distinguish between an *ex parte* application and a bilateral application.

[2]

3.2. When will the court issue a *rule nisi*?

[3]

3.3. Write a short note on the distinction between adversarial / accusatorial court proceedings and inquisitorial court proceedings. In your answer, also indicate which one of these two court proceedings apply in the South African civil courts.

[5]

3.4. Is it possible to have an overlap between civil and criminal proceedings? If so provide an example of a situation where this overlap can exist and explain if both matters can be heard at once.

[2]

3.5. You are required to answer this question in table format. No marks will be awarded for failing to adhere to this instruction. There are various differences between a *civil* court case and a *criminal* court case. Complete the following table:

	Civil case	Criminal case
Classification	<i>a.</i>	<i>b.</i>
Example of this type of case:	<i>c.</i>	<i>d.</i>
Example of the name of the case/reference:	<i>e.</i>	<i>f.</i>
Parties involved?	<i>g.</i>	<i>h.</i>
Who is <i>dominus litis</i> (in control of the case)?	<i>i.</i>	<i>j.</i>
Who bears the onus/burden of proof?	<i>k.</i>	<i>l.</i>
Interest being affected?	<i>m.</i>	<i>n.</i>
Aim of the proceedings?	<i>o.</i>	<i>p.</i>

[16x ½]

[20]

QUESTION 4

Consider the passage below and answer the question that follows.

“After dinner at a guest lodge during a business trip to Botswana, Adrian Simmers (hereinafter referred to as ‘the Respondent’ or ‘Mr. Simmers’) invited another guest, Catherine Markides (hereinafter referred to as “Ms. Markides”) to his room. Ms. Markides was not a co-employee but an external consultant who worked for Loci Environment (Pty) Ltd. Mr. Simmers and Ms. Markides were both in Botswana relating to a joint project their companies were working on.

According to Ms. Markides, the Respondent, in addition to the room invitation, told her that he felt lonely and made advances towards her. She refused the request and the Respondent asked her to phone him in the middle of the night if she changed her mind.

According to the Respondent, he asked Ms. Markides once and half-jokingly, ‘do you want a lover tonight?’ After Ms. Markides rebuffed the request, he said to her: “come to my room if you change your mind”. This was merely a once-off incident and he did not persist with his conduct after she rebuffed him.

Ms. Markides complained that she felt insulted and shocked by the Respondent’s conduct and also voiced concern about comments made by the Respondent about another male colleague who was present at the lodge, a one Mr. Le Roux. After she informed the Respondent’s employer, Campbell Scientific Africa (‘the employer’), about the incident, the Respondent was charged with sexual harassment and was subsequently dismissed.”

Compare the judgments of the Labour Court and the Labour Appeal Court in *Simmers v Campbell Scientific Africa (Pty) Ltd and Others* (2014) 35 ILJ 2866 (LC) and *Campbell Scientific Africa (Pty) Ltd v Simmers and others* [2015] JOL 34906 (LAC).

[10]

[10]

QUESTION 5

5.1. Discuss the rules applicable to attorneys' Trust and Business Accounts respectively.

[5]

5.2. Discuss any five (5) characteristics a legal practitioner should possess according to Du Plessis.

[5]

[10]

TOTAL MARK ALLOCATION: 100
