

**INSTRUCTIONS:**

- 1 Your answers must be substantiated in detail.
- 2 This is an open-book examination. You may use any materials but are not allowed to share information with other students.
- 3 You are not allowed to be in contact with other students.
- 4 Your answers will be tested for plagiarism in general and in respect of the answers of other students.
- 5 Answers must be provided in your own words.
- 6 Use quotation marks where literally quoting from sources.

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**QUESTION 1**

A is a student who sells t-shirts with the wording "First National Assholes". First National Bank approaches you for legal advice. Discuss their legal position in terms of the Trade Marks Act 194 of 1993.

**[20]**

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**QUESTION 2**

X files an application for the mark GREEN RIVER for shoes. Green River is a river that runs through the town where he lives. Analyse the concept of geographical names as a possible obstacle to registration. You must also refer to overseas case law.

**[20]**

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**QUESTION 3**

B has a registration for PURPLE TIGER for socks. C uses the mark PURPLE TIGER in relation to wetsuits. Does this use amount to infringement? What would be the position if C had a registration for his mark in relation to wetsuits, and commenced use three years prior to B?

**[20]**

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**QUESTION 4**

Mr D Tail produces copyright infringing CDs of a band called the AMASHOVAS. The outside of the cover of the CD is blank. On the inside part is the name of the

band and the titles of the songs. What is the band's legal position in terms of South African and foreign trade mark law?

**[20]**

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**QUESTION 5**

Your client has a restaurant which he describes as follows

"[A] festive eating atmosphere having interior dining and patio areas decorated with artefacts, bright colours, paintings and murals. The patio includes interior and exterior areas, with the interior patio capable of being sealed off from the outside patio by overhead garage doors. The stepped exterior of the building is a festive

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and vivid colour scheme using top border paint and neon stripes. Bright awnings and umbrellas continue the theme."

- (i) Would there be protection available in terms of the common law if someone should copy this concept?
- (ii) Your client's restaurant is called AMIGO, which is Spanish for friend. Another restaurant, with a plain appearance, opens in town. It is called UMNGANE, which is Zulu for friend. Can this use be prevented?

**[20]**

**TOTAL: 100**

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