



HERBERT CHITEPO LAW SCHOOL

BACHELOR OF LAWS DEGREE

LEVEL 5 SEMESTER 1

EXAMINATION QUESTION PAPER

MODULE CODE	LLB511
MODULE NARRATION	INTELLECTUAL PROPERTY LAW
DATE	NOVEMBER 2024
DURATION	3 HOURS
TOTAL	70 MARKS

INSTRUCTIONS TO CANDIDATES:

1. Write legibly.
2. Section A is compulsory.
3. Answer any TWO questions from section B.
4. Students are permitted to take into the examination unannotated copies of Zimbabwean and foreign Intellectual Property Statutes.
5. This question paper is 8 pages long.

SECTION A

This question is compulsory.

QUESTION ONE

Soaps International, is a multi-national company valued at a billion dollars United States dollars, and it has a presence in various African countries. This company was established in 1910 and has operated in numerous African countries since 1970. Its main products being washing powders and dishwashing detergents, with its most famous product being the SURF washing powder. This washing powder acquired household brand status in all African countries in which it was sold.

SURF washing powder was first sold in Zimbabwe by Soaps International in 1961. Since that time, the international company maintained its presence in Zimbabwe and even set up its African Headquarters in Harare. This was so until 2008, when Zimbabwe experienced a crippling economic crisis. Due to the economic instability, the company decided to cease operations in Zimbabwe and moved its African Headquarters to South Africa.

Realising the gap that had been left by Soaps International - Tamuka Soaps Zimbabwe, a small soap manufacturing business, which at that time, mainly focused on manufacturing pine gel and green bar soaps - approached Soaps International for an exclusive license to package and sell SURF in Zimbabwe. This license was granted in 2009, and it permitted Tamuka Soaps Zimbabwe to use all of Soaps International's registered trademarks that pertain to the SURF washing powder, as well as package it in glossy blue plastic with the product name "SURF" in bold red capital letters.

Tamuka Soaps Zimbabwe, went on to package and sell Surf washing powder, making use of the licensor's trademarks shown below:

Trade Mark No. 188/2000 SURF dated 13 October 2000 in class 3 in respect of:
"Cleaning preparations for laundry purposes"

Trade Mark No. 85/2015 SURF REMOVES TURF STAINS dated 13 November 2015 in class 3 in respect of:

"Detergents (not for use in industrial or manufacturing processes or for medical use); preparations and substances for all laundry use; fabric conditioning preparations; bleaching preparation included in class 3 soap; cleaning; polishing; scouring and abrasive preparations".

Tamuka Soaps Zimbabwe grew into a bigger company and made on average, five hundred thousand United States dollars, in profits, annually, from the sale of SURF. As a result, it then expanded into having packaging plants in all of Zimbabwe's big cities and supplying the product to numerous small towns and all major retailers across the country.

Another detergent manufacturing company, Pure Soaps Zimbabwe, launched a new washing powder in January 2020. This new washing powder detergent is marked TURF and packaged in a glossy blue plastic with the product name (TURF) in bold capital red letters, and it is distributed to various well-known supermarkets.

Tamuka Soaps Zimbabwe informs you that they received complaints from people who mistakenly bought TURF instead of SURF. They then wrote a letter to Pure Soaps Zimbabwe demanding that they stop selling TURF because this product violates their intellectual property rights. Pure Soaps Zimbabwe, however, refused to do so, arguing that their own washing powder is branded TURF and not SURF, and that they had not violated any of Tamuka Soaps' intellectual property rights.

Advise Tamuka Soaps Zimbabwe as to whether they can institute legal proceedings, and if so, on what legal basis? What factors will be considered by the courts and what would be their prospects of success?

[30 MARKS]

SECTION B

Answer any TWO questions from this section.

QUESTION TWO

Paulus Van Reenan, a South African television producer, created a new television game show, called “Minute to Win It”. In this game show, each contestant is given a minute to answer as many generally knowledge questions as they can. The one with the least number of correct answers is then disqualified. Disqualifications continue until only two contestants remain, and these two then participate in the final round of questions. The one with the highest number of correct answers then wins the competition. The winner is then given an option to double the prize money from R500 000.00 to R1 000 000.00, only if they manage to answer another 5 questions correctly within a minute. If they should, however, fail to answer 5 questions correctly within a minute, their prize money is then halved from R500 000.00 to R250 000.00.

This show was debuted on South Africa’s national television, SABC 1, in 2010 and gained a lot of popularity. For a consecutive period of five years, it received awards for being the best game show in South Africa. And the producer has in the last five years concluded licensing agreements with various African countries’ public broadcasters, including, Botswana, Zambia and Mauritius.

In 2021, Zimbabwe Broadcasting Commission’s (ZBC) television channel, began to air a game show called “2 Minutes to Win It.” The game show gives contestants two minutes to answer as many general knowledge questions as they can. The one with the least number of correct answers is then disqualified. Disqualifications continue until only two contestants remain, and these two then participate in the final round of questions. The one with the highest number of correct answers then wins the competition. The winner is then given an option to double the prize money from ZIG 500 000.00 to ZIG 1 000 000.00, if they manage to answer another 5 questions correctly within two minutes. If they should, however, fail to answer 5 questions correctly within two minutes, their prize money is then halved from ZIG 500 000.00 to ZIG 250 000.00.

Paulus Van Reenan comes to know of the game show (“2 Minutes to Win It”) being aired on ZBC’s television channel and writes a letter to both the production house (Sisonke Productions) and ZBC demanding that they stop airing the game show. Sisonke Productions, however refused to cease broadcasting the game show, stating that even though South Africa is party to the Berne Convention, Zimbabwean laws do not establish a right over such works.

Advise Paulus as to whether he can take any legal action against Sisonke Productions to protect his creation, that is the concept of the game show. In your answer set out and discuss all relevant laws. Cite relevant case law.

[20 MARKS]

QUESTION THREE

Mr Sibanda approaches you for legal advice. He informs you that during the Covid 19 era he was inspired to create a digitalised headgear that he believes is the first of its kind. This was inspired by the Covid 19 home remedy of steaming with water infused with zumbani or umsuzwana (herb). The headgear he created has a design like that of a helmet, in that it covers your face completely. It enables you to steam with any herb or product of choice, even plain water, whilst ensuring that you are receiving sufficient filtered oxygen. It also has a compartment into which you pour your water and then add the herb or product you wish to steam with.

The headgear then heats up the water to a safe temperature and allows you the option of selecting the lowest but still effective temperature, if you are sensitive to heat. It also enables you to pre-set a timer for the number of minutes that you would like your steaming session to last for. Over and above this, the headgear is digitalised, it records information about your previous steaming sessions, such as your body temperature at the beginning of the session, your average pulse, total time spent steaming during each session, and allows you to input information about how you were/are feeling before and after each session. This information can be accessed through a cell phone application.

Mr Sibanda further informs you that the steaming headgear in question is designed differently from any other that has been or is currently on the market, as it is transparent. He says he is aware of only one patent pertaining to a steamer, but that the steamer in question is designed like the usual oxygen mask that you put over your nose area only, and then it delivers steam infused with any herb or product you want to use.

You do your research and find out that the information about the steaming patent you got from Mr Sibanda is true. And you also find out that, "Hewlett Packard has acquired a patent in the United States for a smart helmet to be used by bikers. The smart helmet includes integrated electronics providing safety and convenience features. Helmet features a global locating system, an environmental interaction sensor, a mobile communications device, a small display panel, a microphone and at least one speaker. The helmet can provide data to a user, monitor the user's actions and condition, and send information to others about user's location and condition."

- (a) Advise Mr Sibanda as to whether he can legally protect his "first of its kind headgear" if so, which intellectual property right/s can he rely on? In your answer, set out the relevant legal considerations.

[15 MARKS]

(b) If Mr Sibanda informs you that he participated in an international science exhibition 5 months ago, and that he was part of the Zimbabwean delegation showcasing our countries' innovations. As part of the exhibition, he displayed his invention in public and a picture of it was published by the Herald newspaper. Would this affect your answer to question 3(a) and why/why not?

[5 MARKS]

QUESTION FOUR

“Intellectual property systems in developed countries are helping to keep poorer countries trapped in poverty. Laws on patents and intellectual property need to be relaxed and adapted to help developing countries fight poverty and gain access to technology, medicines, and research...Developing countries should set their own agenda and develop laws that give them easier access to cut-price drugs and generic versions of drugs that are still patented...Intellectual property systems may, if not used carefully, introduce distortions that are detrimental to the interests of developing countries. Developed countries should pay more attention to reconciling their commercial self-interest with the need to reduce poverty in developing countries, which is in everyone’s interest.”

*except from magazine article on Intellectual Property Rights.

Write an essay in which you critically analyse the view that intellectual property protection, may have the detrimental effect of maintaining the status quo, insofar as, the lack of development, in underdeveloped nations is concerned. In your answer, explain the link between intellectual property protection and development, as well as the impact that strong IPRs protections may have *re* the development of third world nations.

[20 MARKS]

[TOTAL MARKS 70]

END OF EXAMINATION