

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL. B – FINAL EXAMINATIONS
L5313 – INTELLECTUAL PROPERTY LAW

JANUARY 2024

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. This paper contains **SIX (6)** questions. Answer any **FOUR (4)** questions.
 2. All questions carry equal marks.
 3. All answers must be numbered and begin on a new page.
 4. Where relevant, reference to provisions of the *Industrial Property Order* 1989 and *Copyright Order* 1989 must be made.
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QUESTION 1

a) Motlatsi, an owner of a bakery in Leribe has been using the name Sweet Treats since 2010 when he opened the bakery. The bakery is well known by the public around the local towns in Leribe for its affordable prices and a variety of freshly baked products. Motlatsi has not registered the name as a trademark for the business. In January 2023, he discovered that another business has been using the same name in the Botha Bothe district with similar variety of baked products. The Botha Bothe business has even opened a Facebook page which is popular with customers. Motlatsi contacted the business owner, Tokelo, who replied that he is also in business and there is nothing wrong with some competition. Tokelo registered the name Sweet Treats in 2023. Motlatsi is of the opinion that the business has been taking his clientele and wishes to sue the business for infringement of his business's trademark, alternatively an interdict ordering the business to immediately stop using the name.

Advise Motlatsi on the prospects of success in his action for infringement.

10 Marks

b) Putsoa, an inventor of a dish drying machine has been looking to expand his business to South Africa, China and Zimbabwe. He intends to acquire patent protection in the three countries, including Lesotho. He comes to you for advice on the best application route to cover the stated countries.

15 Marks

[25 MARKS]

QUESTION 2

Briefly explain the following:

a) Free use

5 Marks

b) Secondary infringement

5 Marks

- c) Moral rights **5 Marks**
- d) Exhaustion principle **5 Marks**
- e) Non-exclusive license **5 Marks**

[25 MARKS]

QUESTION 3

a) Parmalat, a company that produces dairy products, wishes to register a mark for the business. Botsoa, a local graphics designer, is engaged to create a “catchy” mark accompanied by a strong punch line that will attract as many customers as possible. The company has approached you for advice on the nature of marks that are not permissible as valid marks under the *Industrial Property Order* 1989.

Discuss five grounds under the *Industrial Property Order* in terms of which a mark cannot be registered. **15 Marks**

b) Billi Bob, a well-known musician, desires to bequeath his estate among his three children. He receives about ten million Maloti in royalties annually for his songs from the Maseru Collections Society. He approaches you for advice on whether the rights he has in his songs are inheritable. Advise Billi Bob. **10 Marks**

[25 MARKS]

QUESTION 4

Copyright is granted to authors of original literary, artistic and scientific works for the sole purpose of their creation as per Section 3 of the *Copyright Order* 1989.

Discuss fully the fundamental requirement of originality for grant of copyright under the *Copyright Order* 1989. **[25 MARKS]**

QUESTION 5

a) Mpho and Kutlo are fourth year students in the Faculty of Science and Technology at NUL. For two years they have developed an invention which they have not yet made known. They are interested in applying for a patent for the invention. On two occasions, they had to invite Prof. Moss, their science professor, to advise them on the progress of the invention. Four months after completion of the invention, they feel ready to file the application for patent.

Advise them on whether they can still apply for patent despite the disclosure made to the professor.

5 Marks

b) Bean, a local social influencer is always cautious about his looks, clothing and where and with whom he hangs out. He is invited by his friend to a music festival in town by ABC band, a famous amapiano group from South Africa. For the occasion, Bean wears clothing from MJ Designs that is specially designed for him for the occasion. The music at the festival is composed and performed by ABC band. Both Bean and his friend are holding the latest phones by ZU Technology. Each of the clothing bears the name of the designers visible on the front. They drive a 2023 Toyota corolla. They wear jewellery and other accessories from YR Jewellers. For lunch, they have special meals made from trout fish and other special ingredients that are only grown in mountain region of Lesotho.

Identify the type of intellectual property rights (IPRs) in the above scenario. Briefly explain your answer.

15 Marks

c) Advise the manager of ABC Band on the possible acts of infringement that may occur at the festival that the band must prevent and be cautious of.

5 Marks

[25 MARKS]

QUESTION 6

Discuss any two philosophical justifications for the existence of IP protection.

[25 MARKS]