

UGANDA MARTYS UNIVERSITY NKOZI
FACULTY OF LAW OF LAW

SEMESTER II 2022/2023
END OF SEMESTER EXAMINATION

COURSE NAME: INTELLECTUAL PROPERTY LAW 1
COURSE CODE: LLB 4105

Date: Monday 19th December 2022

Time: 9.30am – 1.00pm

Duration: 3 & ½ HRs

Instructions.

1. This paper has 2 sections. There is no compulsory question.
2. You must answer **any four (4) QUESTIONS**. All questions carry equal marks.
3. This examination is partially open book and students **SHALL NOT** during the examination make reference to any materials except reading lists and the relevant statutes.

SECTION A

QUESTION ONE

Kafeero works with Jaguar Limited as a research and development engineer. Last month, he wrote two manuals, the first one he wrote during his lunch break and it contains information for all the company's customers, their particulars and their consultation patterns. The second manual he wrote after office hours and it is a manual for the optimal operation of diesel-powered generators. Both manuals were written using the company's resources.

While Kafeero was out of office, Okello the managing director of Jaguar Co. Ltd found the manuals in Kafeero's office desk and confiscated them. He distributed the manuals to the company customers for a sales promotion. Kafeero demanded for his manuals but Okello assured him that the manuals were the company's property. Kafeero was so furious and vowed to fight his boss who is always reaping where he did not sow.

Daniel works with the Daily Monitor. He got Kafeero's manual and made a satirical version of the manual. The version states that the customers of Jaguar are so disgruntled by the poor service delivery offered by the company and that they are looking for better engineering service providers. Daniel has put the version in the new vision newspaper and on Spark TV a local TV station. Kafeero is angered by this version and the customers of Jaguar Ltd want serious action taken against Kafeero for writing "rubbish".

You are informed further, that Okello dismissed Kafeero immediately. Kafeero approached his friend Nasser, who is a powerful political figure. Nasser called for a press conference where he addressed journalists about Kafeero's dismissal. The next day New Vision a newspaper made a report of Nasser's speech. Nasser sued New Vision for using his speech without his permission.

In a separate development, Robert a Ugandan musician composed a song entitled "Chilling with the big boys"! The song has since become a hit and is loved by many Ugandans. Last month Robert performed the song at one love beach. Cathy from the audience recorded the

performance using her mobile phone and posted it live for her friends who were not able to attend. The video spread like a wild fire and has made Robert more famous.

Giggs, a photographer took photographs of Robert at the beach and used the photographs on billboards to advertise for Kaki sugar factory stating "chilling with the big boys no need for any other brand"! Robert was furious with Giggs stating that he did not permit Giggs to take photos of him and that Giggs was going to face legal action.

Discuss all the legal issues arising and advise all the parties on their legal rights. (25 marks)

QUESTION TWO

- (a) While copyrights protect the rights of authors, related or neighboring rights exist to protect the interests of persons and legal entities who contribute to making the copyright works available to the public. Explain and discuss the rationale for neighboring rights. (13 marks)
- (b) Discuss the challenges faced by state agencies during the enforcement of copyright protection in Uganda. (12 marks)

QUESTION THREE

- (a) Discuss the role played by the different international organizations in fostering Intellectual Property rights internationally (15 marks)
- (b) Discuss the remedies available for Trademark Infringement and Copy Right Infringement (10 marks)

SECTION B

QUESTION FOUR

- (a) With the help of decided cases, discuss the importance of **priority** in patent registration (2 marks)
- (b) Citing the statutes and case law, discuss the remedies available to the holder of a patent in case of breach (7 marks)
- (c) Explain what is meant by passing off, how different is it from trade mark infringement? With the help of decided cases, give examples of situations when one can bring an action against another party for passing off (10 MARKS)

QUESTION FIVE

- (a) Discuss the Importance of Intellectual Property Rights both locally and internationally. (15 marks)
- (b) Explain Fair Use under s.15 of the Copy Right and Neighboring Rights Law and with decided cases, how and when can it be invoked as a defense (10 marks)

QUESTION SIX

In March 2020, Jackson invented a herbal medicine that treats blindness. Jackson did not have money to apply for a patent, and approached SAFE Health Care Ltd for financial assistance. Jackson explained to the company directors how the herb works and Safe Health Care Limited fell in love with the discovery, and in fact offered Jackson a job in the company.

In 2021, Safe Health Care Limited came up with a herbal medicine that cured blindness and was similar to Jackson's. Jackson confronted Daniel one of the directors stating that the company had

"stolen" his idea and had not paid for it. Daniel dismissed Jackson right away stating that Jackson was an employee so the company owned all rights in the invention.

You are told that further last month, Safe Health Care Limited was trying out the new medicine on patients, to see clearly how it works. Daniel believes that this prior test of the herbal medicine is important before they get to have their invention finally protected, that after all the patients will never know that it has not yet been registered.

The invention proved very successful and Safe Health Care Limited has applied for a patent for the new discovery. Jackson intends to sue safe health care limited "**stealing**" his herbal medicine cure.

Discuss all the issues arising and

- (a) Advise Jackson on the strengths of any possible suit against SAFE HEALTH CARE LIMITED (18 marks)
- (b) What defenses can SAFE HEALTH CARE LIMITED raise against Jackson's suit? (7 marks)

QUESTION SEVEN

- (a) Musaaazi a newly enrolled Advocate of the High Court was heard advising one of his clients that "Your Intellectual Property Rights are protected with or without registration." Critically examine his assertion. (13 marks)
- (b) What are Trade Secrets and when can one sue for Infringement on their trade secrets (12 marks)