

Tutorial letter 101/4/2017

Essential Competition Law IPSP02Y


Semesters 1 & 2

Department of Mercantile Law

IMPORTANT INFORMATION:

This tutorial letter contains important information
about your module.

BAR CODE



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1 INTRODUCTION

Dear Student

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for semester 1 and 2, instructions on the preparation and submission of the assignments. Make sure that you submit assignments relevant for the semester in which you have registered.

This tutorial letter also provides all the information you need with regard to the prescribed study material and how to obtain it; and certain general and administrative information about this module. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

Since this module is delivered fully online, after registration you will be able to download study material on myUnisa. The following study material should be available for download:

- study guide for IPSP02Y
- tutorial letters
- prescribed cases (listed in tutorial letter 101)
- Legislation and International Instruments

You are also encouraged to register on *myUnisa*, a tool which will enable you to communicate with other students and lecturers, submit assignments, access library resources and download study material. You can access *myUnisa* on <http://my.unisa.ac.za>

Right from the start we would like to point out that **you must read all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE OF AND OUTCOMES FOR THE MODULE

Essential Competition Law (IPSP02Y) is one of the first four modules offered as part of a joint intellectual property programme by the University of South Africa and the WIPO Worldwide Academy. The focus of this module is on the special circumstances prevailing in developing countries. This module will approach the subject-matter against the background of international conventions and the obligations they impose on developing countries. It will then be demonstrated, using South African law as an example, how these obligations have been discharged. You will be expected to examine the law of your own countries to determine how these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module and have registered for the WIPO/UNISA Specialisation Program in Intellectual Property for the first time should note that this is an advanced module dealing with the finer detail and more complicated aspects of the topic. This module will therefore require a far greater effort on your part than did the DL101 module as well as an independent, responsible and critical approach.

The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to Competition Law within the structure and functioning of the legal systems of developing countries.

You will not be able to rely solely on the lecture notes. Indeed, it will be essential to supplement these by having recourse to the relevant statutes and decisions of the courts, and also by consulting any other prescribed materials.

After studying this module, completing the activities and critically evaluating your own responses, you should be able to use your knowledge of the general principles of the law of competition in everyday situations, understand the basic structure and functioning of competition law., engage with selected legal texts pertaining to competition law, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and regulation of competition.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

The lecturers responsible for this module are as follows:

Lecturer's name:	Mr MB Masuku
Building and office number:	Cas van Vuuren Building 6-72
E-mail address:	mankgmb@unisa.ac.za
Telephone number:	012 429-8836 + (27 12) 429-8836 (international calls)

Letters should be sent to:
The Module leader (IPSP02Y)
Centre for Business Law
PO Box 392
UNISA 0003
SOUTH AFRICA

3.2 Centre for Business Law

Students must address all queries on administrative matters to:

Administrators:	Mr Jerry Skhosana
Building and office number:	Cas van Vuuren Building 6-157
E-mail address:	cbuslaw@unisa.ac.za
Telephone number:	012 429-8774 +(27 12) 429-8774 (international calls)
Fax number:	+(27 12) 429-8206 / 2094

4 MODULE-RELATED RESOURCES

4.1 Prescribed books

There are **no prescribed textbook** for IPSP02Y. This means that you do not have to buy any additional books for this module. **You need only your study guide, cases, legislation and international instruments and the tutorial letters.**

4.2 Recommended books

There are **no recommended books** for IPSP02Y.

4.3 Electronic Reserves (e-Reserves)

4.3.1 Prescribed cases

Scanned copies of the prescribed cases will be uploaded to *myUnisa*.

For the purposes of assignments and examinations, a thorough knowledge of these cases is essential! You should bear in mind that the other cases discussed in your study guide are important and should not be ignored. They must be studied as they appear in your study guide.

List of prescribed cases

Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd 1981 (2) SA 173 (T)

Capital Estate & General Agencies (Pty) Ltd v Holliday Inns Inc 1977 (2) SA 916 (A)

Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and another 1998 (3) SA 938 (SCA)

Dunn & Bradstreet (Pty) Ltd v SA Merchants Combined Credit Bureau (Cape) (Pty) Ltd 1968 (1) SA 209 (C)

Federation Internationale de Football v Bartlett 1994 (4) SA 722 (T)

Geary & Son (Pty) Ltd v Gove 1964 (1) SA 434 (A)

International Tobacco Co (SA) Ltd v United Tobacco Co (South) Ltd (1) 1955 (2) SA 1 (W)

Long John International Ltd v Stellenbosch Wine Trust 1990 (4) SA 136 (D + CLD)

Post Newspapers Ltd v World Printing & Publishing Co Ltd 1970 (1) SA 454 (W)

Royal Beech-nut (Pty) Ltd t/a Manhattan Confectioners v United Tobacco Co Ltd t/a Willards Foods 1992 (4) SA 118 (A)

Stellenbosch Wine Trust Ltd v Oude Meester Group Ltd 1972 (3) SA 152 (C)

Webber-Stephen Products Co v Alrite Engineering (Pty) Ltd and Others 1992 (2) SA 489 (A)

4.3.2 **Legislation**

We will provide you with extracts from legislation and international instruments. It is sufficient to use legislation and international instruments as referred to in the study guide.

4.4 **Reading list**

Below follows a list of additional books you may consult for this module, should you wish to do so. Please note that you need not consult these books. They provide background or additional reading for students who wish to read more widely on the topics covered by this module. The University Library does not permit these books to be issued on loan and so you will have to make your own arrangements to obtain copies.

Van Heerden & Neethling *Unlawful Competition* 2ed (2008). This is an important work on the private law of competition.

Webster & Page *South African Law of Trade Marks* 4 ed (loose-leaf service 13 or 14). This contains a chapter on unlawful competition and passing off.

5 **ASSESSMENT**

5.1 **Assignments and learning**

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources or do research, for your active engagement in learning.

5.2 **General remarks**

You must submit your assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned contact assign@unisa.ac.za.

To submit an assignment **via myUnisa**

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

5.3 **Commentaries and feedback on assignments**

Assignments are marked electronically. Marked assignments will be sent back to students via *myUnisa* and will include commentaries and feedback on the assignment.

5.4 **Submission dates**

The closing dates for the submission of the assignments are:

FIRST SEMESTER

The first semester assignments can be found under Appendix A

Assignment numbers	Unique number	Due dates
Assignment 01:	701001	20 March 2017
Assignment 02:	724437	24 April 2017
Portfolio:	873353	19 May 2017

SECOND SEMESTER

The second semester assignments can be found under Appendix B

Assignment numbers	Unique number	Due dates
Assignment 01:	720263	21 August 2017
Assignment 02:	691055	22 September 2017
Portfolio:	856186	20 October 2017

5.5 Purpose of the assignment

The assignment is an extremely important part of the module. In the assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (merely copying the study material is not acceptable)
- pre-examination assessment: this is the only opportunity before you write the examination for us to assess your ability to answer examination-style question.

5.6 General approach to essay-type assignments

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. However, there are three easy steps to accomplish this:
 - **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - Use the study material to **finalise** your summary with **references to case law** and other relevant authority.
- You are expected to consult cases and legislation when answering an assignment, and to then cite these materials as authority in your answer. **Do not refer to sources you have not personally consulted.**
Quotations from case law and other sources must be kept to a minimum. All quotations must be **accurate** and **acknowledged** fully.
- Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments

on the basis that they worked together. Similarly, it is unacceptable for students to copy anything from the Internet or from any other source without acknowledgement and to pass it off as their own work. **That will amount to plagiarism and all students concerned will be given a zero grade.** Furthermore, these students may be subjected to disciplinary proceedings of the University.

- **Names of cases and Latin expressions** must either be underlined or typed in italics.
- **Neatness** is a prerequisite. **Plan** your answers in advance.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.
- Please ensure that your name and address, student number, module and module code, and assignment number are written clearly on the assignment cover. This information must be correct.
- Remember that your assignment must have precisely the same number as that given in this tutorial letter.
- It is wise to **make a copy of the assignment** before submitting it, in case your assignment gets lost or electronic submission fails.

6 OTHER ASSESSMENT METHODS

There are no other assessment methods for this module.

7 EXAMINATION

7.1 Examination admission

All students who submit the compulsory assignment in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students who do not submit the compulsory assignment before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

The marks obtained for the assignment will --- provided you obtain an examination mark of at least 40% --- count up to 20% of your final mark. You need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark. You need to obtain a final mark of 50% (combined examination mark and year mark) to pass this module.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May 2017. If you are registered for the second semester you will write the examination in October 2017.

7.3 Examination paper

At the end of the semester you will write **one paper** on Essential Competition Law. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home. The examination must then be submitted on *myUnisa*.

We will inform you of the specific examination date during the course of the semester.

7.4 Examination date

Semester 1: 19 May 2017

Semester 2: 20 October 2017

Please ensure that you will be available during these periods as no deferments or extensions will be permitted. If you fail to write an examination you will forfeit your fees.

Enquiries regarding examination results must please be forwarded to exams@unisa.ac.za

8 CONCLUSION

We encourage you to immediately start studying and not wait for the last minute to do your assignments or prepare for the examination. Your success is our priority, because through you we will achieve our goal.

We wish you all the best with your studies at Unisa – A University in service of humanity.

9 ADDENDUM

APPENDIX A: FIRST SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 1

FIRST SEMESTER UNIQUE NUMBER: 701001 (CLOSING DATE: 20 March 2017)

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

Dry Company, a whisky producer, hears that Frost Company has launched a new whisky under the name MOON DELIGHT. Frost Company states that this whisky is made in Scotland according to traditional methods and contains 50% less calories than ordinary whisky. Neither of these allegations is true. Dry Company loses sales as it seems that health conscious people buy MOON DELIGHT products because they believe these false claims. Can Dry Company take legal action against Frost Company?

[10]

ASSIGNMENT 2
FIRST SEMESTER UNIQUE NUMBER: 724437 (CLOSING DATE: 24 April 2017)

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

"I am not the first nor will I be the last to lament upon the difficulty of determining the dividing line between lawful and unlawful interference with the trade of another.... What is needed is a legal standard firm enough to afford guidance to the Court, yet flexible enough to permit the influence of an inherent sense of fair play" (per Van Dijkhorst J in *Altas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd* 1981 (2) SA 173 (T) 186 -188). Discuss this quotation and indicate whether this statement complies with the requirements imposed by various international conventions and other instruments to determine whether competition is unlawful. **[10]**

APPENDIX B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 1

FIRST SEMESTER UNIQUE NUMBER: 720263 (CLOSING DATE: 21 August 2017)

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

John is a Canadian shoe manufacturer. He markets shoes and boots in Europe, the United States of America, Canada, Australia and Southern Africa. The products are marketed under the mark PRETTYPEDS. John's mark PRETTYPEDS has not been registered as a trade mark in South Africa. John's ranges of footwear all have a distinctive red stripe which contains the word PRETTYPEDS, that runs the full length of the sole and is clearly visible when the footwear is being worn. Peter, a local manufacturer, commences marketing a range of footwear in competition with John. Peter's products are marketed under the mark PURTYPEDI. Peter's shoes have an orange stripe with the name PURTYPEDI written across it in bold black script. Explain to John the nature of an action for passing off and advise him as to what he must prove to succeed with a passing off action against Peter. **[10]**

ASSIGNMENT 2**SECOND SEMESTER UNIQUE NUMBER: 691055 (CLOSING DATE: 22 September 2017)**

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

"I have no doubt that a trader who filches information from a competitor, information which he knows to be secret and confidential, and which has been developed by the competitor's skill and industry, is acting unfairly and dishonestly if he uses the information for his own profit and to the detriment of his rival. His conduct amounts to deliberate misappropriating of a business asset which was acquired by another's skill and industry. It is difficult to appreciate how this conduct differs in principle from the conduct of a man who steals goods from the shelves of a rival's shop. Both types of conduct constitute unlawful interference with the trade of another; both types of conduct are in my view actionable, and fall within the principles of the *lex Aquilia*." (per Diemont J in *Stellenbosch Wine Trust Ltd v Oude Meester Group Ltd; Oude Meester Group Ltd v Stellenbosch Wine Trust* 1972 (3) SA 152 (C) 162). Discuss this quotation and indicate whether this statement complies with the requirements imposed by various international conventions and other instruments. **[10]**