

IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

ESSENTIAL INDUSTRIAL DESIGN LAW

IPSP055

Tutorial Letter 101/3/2018

**SCHEME OF WORK, STUDY RESOURCES AND
ASSIGNMENTS**

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1 A WORD OF WELCOME

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 thoroughly.

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 the semester and instructions on the preparation and submission of the assignments.

This tutorial letter also includes certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

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

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

2 TUITION RATIONALE

Essential Design Law (IPSP055) is one of the advanced 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 design 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 the 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 industrial design protection in everyday situations, understand the basic structure and functioning of design law, engage with selected legal texts pertaining to design law, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and regulation of industrial designs.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Lecturer's name:	Dr M du Bois
Building and office number:	Cas van Vuuren Building 6-93
E-mail address:	dboism@unisa.ac.za
Telephone number:	012 429-3962 + (27 12) 429-3962 (international calls)

Letters should be sent to:

The Module leader (IPSP055)
Centre for Business Law
PO Box 392
UNISA 0003
SOUTH AFRICA

PLEASE NOTE:

1. Lecturers should be contacted regarding course content only.
2. Letters to lecturers may not be enclosed with or inserted into assignments.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Students must address all queries on administrative matters to:

Administrator:	Ms P Mofokeng
Building and office number:	Cas van Vuuren Building 6-148
E-mail address:	CBUSLAW@unisa.ac.za
Telephone number:	012 429-8432 (+27 12) 429-8432 (international calls)
Fax number:	(+27 12) 429-2094

Letters should be sent to:

The Administrator
Centre for Business Law
UNISA
PO Box 392
UNISA 0003
SOUTH AFRICA

5.1 Tutorial material

The tutorial material for Essential Design Law consists of the following:

- A study guide
- Tutorial letters

Apart from Tutorial Letter 101, you may also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be made available on *myUnisa* in due course.

Tutorial letters are part of your study material for assignment and examination purposes. Read and reread each tutorial letter; keep it for reference purposes, and study it again.

- Cases
- Legislation and international instruments

5.2 Prescribed textbook(s)

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

5.3 Resources

5.3.1 Recommended books

There are no recommended books for this module.

5.3.2 Additional books

There are no additional books you should read for this module.

5.3.3 Prescribed cases

Copies of the prescribed cases are available on *myUnisa* under 'Additional Resources'.

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

Allen Sherman Hof Co v Registrar of Designs 1935 TPD 270

Bayerische Motoren Werke Aktiengesellschaft v Grandmark International (Pty) Ltd (Unreported judgment in case no 5021212010 of the North Gauteng High Court Pretoria dated 18 July 2012)

Brudd Lines (Pty) Ltd v Badsey (2)1973 (3) SA 975 (T)

C & H Engineering v F Klucznik & Sons Ltd FSR [1992] 421

Clipsal Australia (Pty) Ltd v Trust Electrical Wholesalers [2007] SCA 24 (RSA) 1-15

Homecraft Steel Industries (Pty) Ltd v SM Hare 1984 (3) SA 681 (A)

Koninklijke Phillips Electronics NV v Kenwood Home Appliances 2002 BIP 206 (T)

Sunsmart Products (Pty) Ltd v Flag and Flagpole Industries t/a National Flag 2005 BIP 31 (CP)

Screentex (Pty) Ltd v Lyons & Co (Pty) Ltd 1967 (2) SA 375 (D)

Slavepak Holdings Ltd v Buddy Manufacturers CC 2002 BIP 221(T)

Swisstool Manufacturing Co v Omega Africa Plastics 1975 (4) SA 379

WRB Enterprises (Pty) Ltd v Plasbox Industrial Appliances (Pty) Ltd 1975 (1) SA 801 (T)

Xactics (Pty) Ltd v Tailored Containers (Pty) Ltd 1971 (2) SA 562 (C)

5.3.4 Legislation

Extracts from legislation and international instruments are available on *myUnisa* under 'Additional resources'.

6 HOW THE ASSIGNMENT SYSTEM WORKS

6.1 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, you are actively engaged in learning.

6.2 General remarks

You must submit assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax, post or e-mail.

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.

6.3 Feedback on assignments

Feedback on the assignments will be made available to all students registered for this module in a follow-up tutorial letter, and not only to those students who submitted the assignments. The feedback will be made available on the *myUnisa* site for IPSP055 under 'Announcements'. The tutorial letter number will be 201, 202, etc.

As soon as you have received the feedback, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the examination.

6.4 Submission dates

The closing dates for the submission of the assignments are:

- ... for the **First Semester**

Assignment 01: 13 April 2018 (Unique number 751243)

Assignment 02: 26 April 2018 (Unique number 898979)

- ... for the **Second Semester**

Assignment 01: 31 August 2018 (Unique number 697451)

Assignment 02: 05 October 2018 (Unique number 700265)

6.5 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.

6.6 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 unique 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 in the post or electronic submission fails.

7 HOW THE EXAMINATION SYSTEM WORKS

7.1 Examination admission

All students who submit the compulsory assignment 01 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.

Submission of assignment 02 is not compulsory in the sense that it will not grant you admission to the examination. However, the mark obtained for this assignment will count towards your final mark. The marks obtained for the assignments will be taken into account - provided you obtain an examination mark of at least 40% in the examination. 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/June 2018. If you are registered for the second semester you will write the examination in September/October 2018.

7.3 Examination paper

At the end of the semester you will write **one paper** on Essential Industrial Design Law. The paper counts 100 marks. This will be a 'take home' examination: You will be given the examination paper to answer at home, and then return it to us via *myUnisa*.

Make sure that the Administrator always has your current fax number and e-mail address.

7.4 Examination date

Semester 1

The Essential Industrial Design Law examination date will be announced via e-mail and on the *myUnisa* site for IPSP055.

Semester 2

The Essential Industrial Design Law examination date will be announced via e-mail and on the *myUnisa* site for IPSP055.

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

Should the examination dates for two or more of your modules fall on the same day, you must contact the Administrator immediately so that special arrangements can be made for the submission of your answers.

8 ASSIGNMENTS

PLEASE NOTE!!! PLEASE NOTE!!!

1. Please **consult** the brochure ***Your Service Guide @ Unisa*** for instructions on how to complete assignment covers and submit written assignments.
2. **Make sure that you submit your written assignments before or on the closing date. No extensions will be granted for the submission of assignments.**
3. The marks that you obtain for the assignments will form part of your year mark and may count towards your final mark if you obtain a subminimum of 40% in the examination.
4. We **restrict the length of your assignment answers**. Your answers should, therefore, be concise and logical. This will also teach you to be brief and to the point in the examination.
5. **The detailed commentary on each assignment** will be sent to you in a tutorial letter so that you can check your answers by using the commentaries. **Remember**, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENTS FOR SEMESTER 1

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 13 April 2018 (Unique number 751243)

Your answers to the assignment questions should **not** exceed three 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

Straight Line Designs is a one-of-a-kind workshop that has been operating out of Vancouver, British Columbia for the past 25 years. In addition to installations, sculptures and private commissions, designer Judson Beaumont and his staff of eight full-time craftspeople have designed and constructed a variety of wacky cartoon-style furniture and projects for public institutions and children's exhibitions throughout North America and abroad. Focused on quality and custom design, Judson's studio stays far away from mass production and is as imaginative as children themselves.

Website: StraightLineDesigns.com

Beaver Cabinet



Straight Line Designs wants to register the design for this cabinet in South Africa. Advise whether the design will qualify for design protection and what the steps are to register it.

TOTAL: 20 MARKS

ASSIGNMENT 02

CLOSING DATE: 26 April 2018 (Unique number 898979)

Your answers to the assignment questions should **not** exceed three 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

Designer Deniz Karasahin decided to challenge old-fashioned plaster casts with his prototype of an innovative 3D-printed medical cast, called Osteoid. The ingenious design, with multiple ventilation holes, prevents the wearer from developing itchy skin and bad smells, which plaster casts are prone to. Moreover, the Osteoid features a low-intensity pulsed ultrasound system that makes the healing process up to 40% faster with only 20 min of operation daily.

Website: adesignaward.com

Figure 1



Figure 2

Analyse the possibility of design infringement on the registered design of **figure 2** by the manufacturing of the medical cast in **figure 1**. In analysing for infringement, refer to the method of comparison as discussed in case law.

TOTAL: 20 MARKS

ASSIGNMENTS FOR SEMESTER 2

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 31 August 2018 (Unique number 697451)

Your answers to the assignment questions should **not** exceed three 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

Kobi Levi graduated from Bezalel academy of art & design in Jerusalem in 2001 and has the following to say about his designs: 'In my artistic footwear design the shoe is my canvas. The trigger to create a new piece comes when an idea, a concept and/or an image comes to mind. The combination of the image and footwear creates a new hybrid and the design/concept comes to life. The piece is a wearable sculpture. It is "alive" with/out the foot/body. Most of the inspirations are out of the "shoe-world", and give the footwear an extreme transformation. The result is usually humoristic with a unique point of view about footwear. Another aspect of the creation is the realization. All the pieces are hand-made in my studio. The challenging technical development is the key to bring the design to life in the best way.' He designed this violin shoe (**figure 1**) for the '8 variations for Stradivari' exhibition at Cremona, Italy.

Figure 1

Assume that Kobi Levi wants to register the design for this shoe in South Africa. Advise him whether the design will qualify for design protection and what the steps are to register it.

TOTAL: 20 MARKS

ASSIGNMENT 02

CLOSING DATE: 05 October 2018 (Unique number 700265)

Your answers to the assignment questions should **not** exceed three 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:

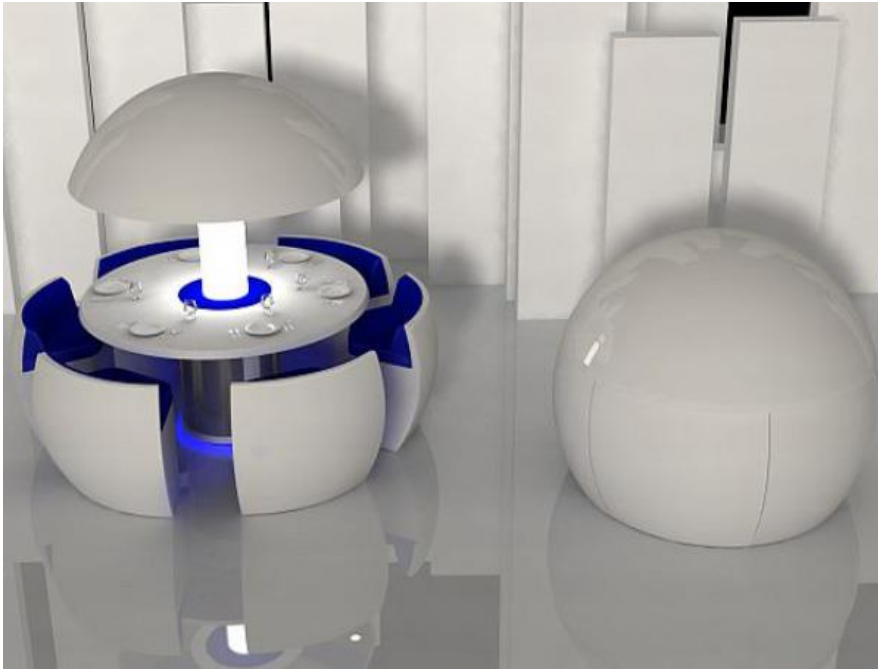
Name:

QUESTION

In the case of *Homecraft Steel Industries* Judge Corbett said:

‘The test for infringement is whether the article alleged to infringe embodies the registered design or a design not substantially different from the registered design...’ The court noted: ‘This must be decided by the eye; and in applying this visual test the court must bear in mind the reaction of the likely customer.’

In referring to the depictions below, **figure 2** shows the representation of a registered design. Created by Turkish designer Faith Can Sarioz, this dining table features the innovative concept of a sphere which can be closed to save space. Open, this pod-like dining table blossoms like a flower and seats six. It houses a light at the centre with a glowing blue light at the base. Consider whether this design may infringe the design represented in **figure 3**.

Figure 2**Figure 3**

Analyse the possibility of design infringement on the registered design of **figure 3** by the manufacturing of the space-saving table in **figure 2**. In analysing for infringement, refer to the method of comparison as discussed in case law.

TOTAL: 20 MARKS.

IPSP055/101

We hope that you will enjoy this module and we wish you success with your studies.

Kind regards

DR M DU BOIS