

# ESSENTIAL INDUSTRIAL DESIGN LAW (IPSP055)

18 MAY 2018

**DURATION: 7 DAYS**

**MARKS: 100**

## Instructions to all candidates:

- ☐ Answer all the questions.
- ☐ You have to submit your exam answers as **Assignment 3** via **myUnisa** on **25 May 2018**. Click on 'Assignments', select assignment number 3 and follow the instructions on the screen (as you did for Assignments 1 and 2).
- ☐ This is an open book examination.

### **PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THIS EXAMINATION.**

(a) Ensure that you give reasons for each answer when instructed to do so. A mere YES/NO or TRUE/FALSE will earn NO marks if instructed to discuss or provide reasons for your answer.

(b) We expect a certain amount of detail in your answers. Your total examination answer should be about four printed pages. Your answers to the various questions should be proportionate to the marks allotted to the questions.

(c) When answering the examination, remember that an open-book exam is a test at a higher level than the usual type of test, where memory is tested as much as insight. In an open-book exam, you need not memorise any information, so you are expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge and understanding, not memory skills.

(d) For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so. Also, because you have the guide available when answering questions, we do not give marks for direct quotations from the guide.

(e) Problem-type questions.

- A number of students lose marks because they do not approach these questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. For example, in a copyright question, first decide what aspect of copyright you are asked about, for example subsistence, duration, ownership or infringement. Different statutory provisions apply in each instance, and to

deal with infringement issues by considering the legislation relating to subsistence, will generally not earn marks.

- Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts.
- Next, apply these principles to the facts. This is where a number of students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve.
- Finally, state your conclusion - yes, X is the owner of the copyright in the work or no, Y did not infringe the copyright in the work.
- Also remember that the facts are merely there to illustrate the legal issues we want you to address - if you think the facts are insufficient, just say that it is impossible to reach a definite conclusion. Do not waste your time on unnecessarily lengthy speculation on what might be the case in various scenarios.

(f) Remember to give us adequate information to assess your knowledge. If you merely answer 'yes' or 'no' to a question that counts a number of marks, you cannot expect to earn more than a mark, irrespective of whether it is the correct answer.

(g) Finally, although some of you have worked together when doing this module and formed discussion groups or study groups, this does not mean that you may consult each other when formulating and writing the answers to the examination questions. You must work alone as otherwise we are unable to assess your abilities. Students who submit identical or substantially similar answers, or who have obviously copied answers from someone else, will be guilty of infringing the University examination regulations and will be liable to punishment as determined by the University Council.

## Essential Industrial Design Law

**Name:**

### 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 the answers to the examination questions are my own work.

I have acknowledged in the bibliography accompanying the answers 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 answers I will receive zero per cent for the examination.

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.

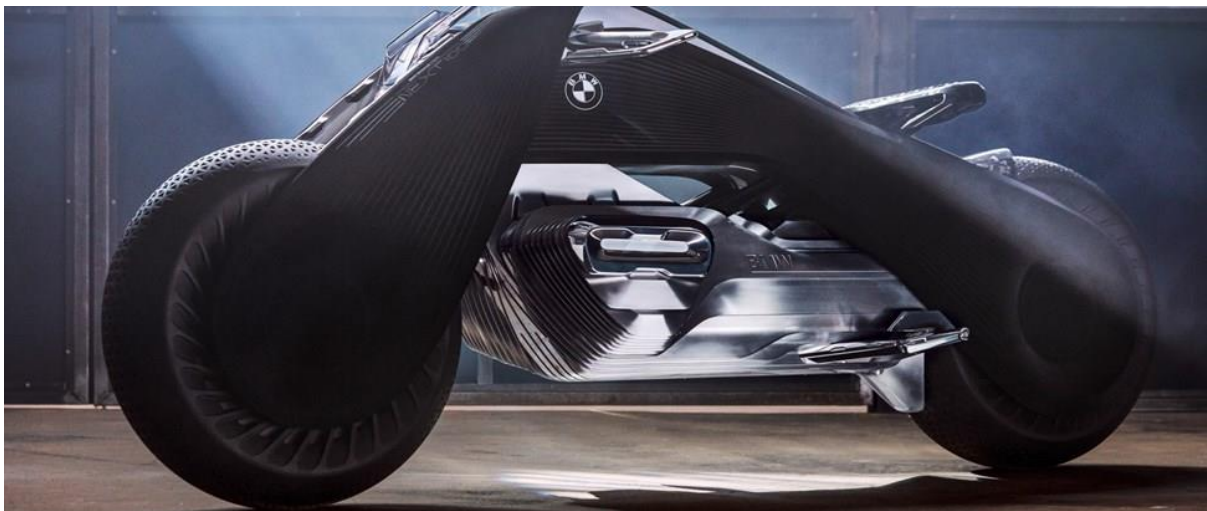
I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

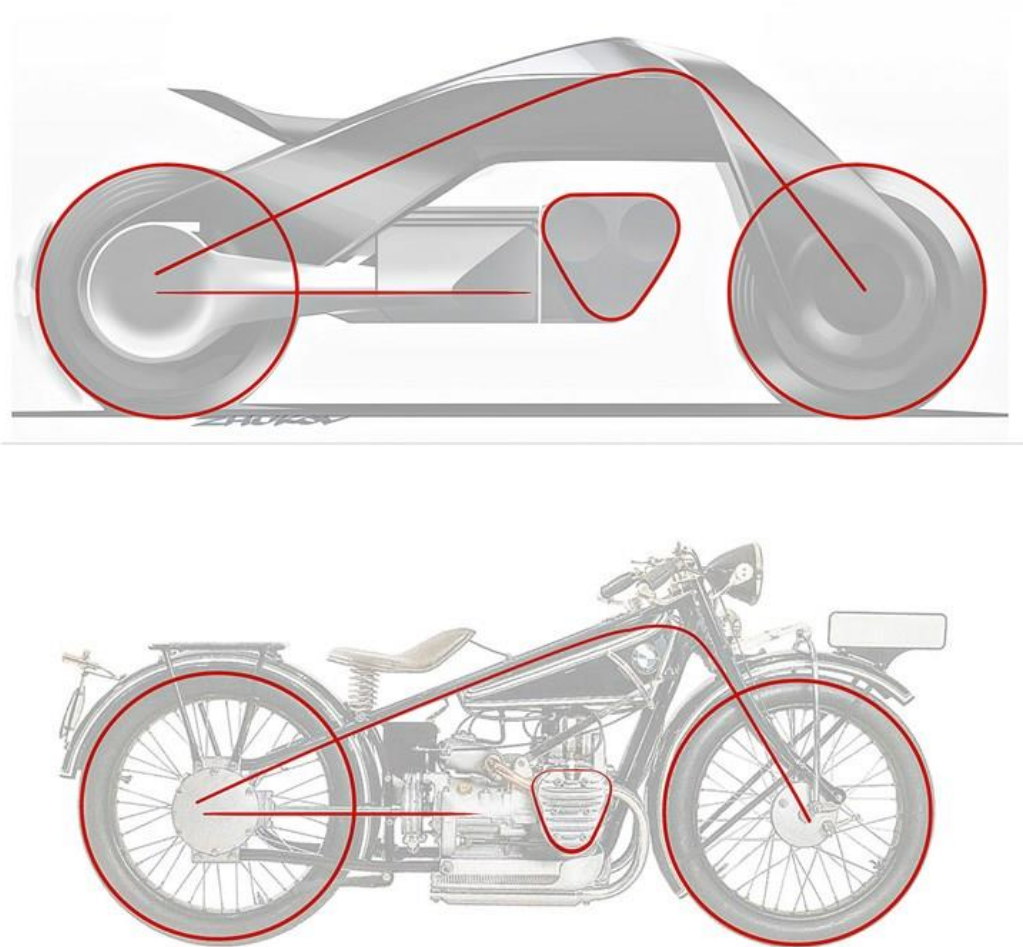
## QUESTION 1

BMW has continued its centenary celebrations by introducing the last of its four concept vehicles, the **Vision 100 Motorrad (Figure 1)**. The concept explores the future of the motorcycle, and the vehicles were shown at the SA Festival of Motoring at the Kayalami Circuit from 31 August to 4 September 2017. The Motorrad Vision 100 seeks to preserve the classic motorcycle experience, while employing advanced technology to enhance safety and the thrill of riding, even allowing for helmetless riding in perfect safety. Holger Hampf, head of design and customer experience at the BMW Group explained that it was important to them that the analogue riding experience would remain undisturbed (see **Figure 2** which shows the new motorcycle versus older designs). The display and operating concept acts so discreetly that it creates a natural and familiar movement. The block housing the bike's electric motor changes size, expanding outward as the speed of the bike increases. According to BMW, this allows the engine to optimise the aerodynamics and weather protection at speed. The reinterpretations of old technology with modern design also includes an update of BMW Motorrad's current lighting signature, with slender LEDs front and rear; and significant reduction of mechanical elements like brake cables and buttons, albeit with a red rocker-switch on the right-hand end of the handlebar to release the throttle, a vestigial nod to bikes gone by (see **Figure 3**). New technology includes the bike's triangular frame that's made of an unspecified 'Flexframe' material that bends to allow the bike to steer. The material is smart, too, flexing by a larger degree at lower speeds to allow easier maneuvering.

**Figure 1**



**Figure 2**



**Figure 3**



**(a)** Will the **Vision 100 Motorrad** design qualify substantially for either functional or aesthetic design protection in South Africa? Consider this by reference to the prior art depicted in the second sketch in **Figure 2**. Refer to 'originality' and 'not commonplace in the art in question', respectively, in your answer. Refer to applicable case law.

**(30)**

**(b)** Are there any other forms of intellectual property protection available to BMW for the **Vision 100 Motorrad**?

**(15)**

**(c)** Now assume that there are valid South African registered designs for the **Vision 100 Motorrad**. Carsmart International, a local replacement parts importer and distributor, sells BMW-compatible replacement lights for the **Vision 100 Motorrad**. With reference to the prescribed cases applicable to infringement, state whether the actions of Carsmart International amount to infringement of the South African design for the **Vision 100 Motorrad** lights. Carsmart International counterclaims that BMW's aesthetic design registration for the lights is invalid. Are they correct?

**(40)**

**(d)** Is it possible to register a design right for the semiconductor chip that regulates the control of the 'Flexframe' of the **Vision 100 Motorrad**?

**(15)**

**TOTAL 100**