

**ESSENTIAL COMPETITION LAW (IPSP02Y)
MAY 2017****DURATION: 12 – 19 MAY 2017****50 MARKS****Instructions to all candidates:**

- ☐ Answer all the questions
- ☐ Upload your answers on myUnisa using assignment 3/portfolio link on or before **19 MAY 2017**
- ☐ 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. As a rough guideline, your total examination answer should be about five to seven 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 trade mark question, first decide whether you are asked if a mark can be registered, opposed or infringed. Different statutory provisions apply in each instance, and to deal with infringement issues by considering the legislation that applies when cancellation is sought, will 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 may institute infringement proceedings or no, Y cannot obtain registration.
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) Finally, 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.

Essential Competition 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:

ANSWER ALL THE QUESTIONS.

Read the following scenario and answer the questions that follow.

SCENARIO

Brian operates fast food outlets throughout South Africa under the trade mark CHICKEN BITE. The outlets are well-known in South Africa for their tasty grilled and fried chicken. The spice used to prepare the chicken is a mixture of ingredients discovered by Brian after he visited India, Brazil and Portugal. The mixture of ingredients came in the hands of Danny, a businessman, after he picked up a memory stick (memory stick) which belongs to Brian at an Entrepreneurial Conference.

Danny decided to use the information in the memory stick to start his own fast food outlet in Cape Town under the trade mark CHIC 'N BITE. He further used the same mixture of ingredients to manufacture his own spices to prepare the chicken. The spice was similar to that of Brian although in a different container.

Answer the questions that follow, giving full reasons for your answers referring to decided cases and/or international instruments where appropriate.

QUESTIONS

- (a) Identify only three forms of unlawful competition which are applicable in the above scenario. (6)
- (b) Advise Brian, whether he can succeed with an action for unlawful competition against Danny based on the three forms of unlawful competition identified in question 1 above. (18)

- (c) Discuss whether the approach followed by South African courts/law complies with the requirements imposed by international conventions and other instruments; with specific reference to forms of unlawful competition identified in question 1 above. **(26)**

TOTAL MARKS [50]

END OF PAPER

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