

LML4801

October/November 2011

PATENT AND COPYRIGHT LAW (LLB)

Duration . 2 Hours

100 Marks

EXAMINERS :

FIRST

SECOND .

PROF S GEYER
PROF CJ VISSER

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

This paper consists of 3 pages

ANSWER BOTH QUESTION 1 AND QUESTION 2.

Note the division of marks and use the available time accordingly.

Refer to applicable legislation and case law when answering the questions.

The following scenario applies to both **QUESTION 1** and **QUESTION 2**:

Michael, Jane, and their five-year-old son Ben recently visited a game park in South Africa's Mpumalanga province. During their stay they encountered large herds of elephants.

Michael, a chemical engineer, is very interested in the park management's strategies to protect the park's plant life and biodiversity, generally, against elephant destruction. Michael notices that game rangers from local communities, who are stationed in small, unfenced camps in the park, plant a certain indigenous shrub around their homes and fruit and vegetable gardens to keep elephants away. Using an ingredient derived from this shrub, Michael invents an elephant repellent that can be sprayed by light aircraft over botanical reserves and other areas in a park where the park managers would like to keep elephants away

Back home in Cape Town, Ben turns six and Jane decides to host a birthday party with an 'Africa Bushveld' theme. She borrows a book on paper-folding art (origami) from the library. It contains diagrams and step-by-step instructions on how to fold different animals and other models from paper. The book includes photographs of what each completed model should look like. The paper models in the photos were designed and folded by the origami artist himself. He also wrote the instructions. The photographs and diagrams in the book were done by Amy, a freelance photographer and graphic designer, who was hired by the origami artist to help him with his book. Jane follows the instructions in the book to make many different animals for party decorations. She also uses the book to fold a party box for each child

[TURN OVER]

QUESTION 1: PATENT LAW

- (a) Can the repellent that Michael developed be patented?

In your answer you have to address the following issues:

- whether the repellent qualifies as an "invention",
- the requirements for an invention to be patented, and
- the basic test for each requirement. (20)

- (b) Michael wants to lodge an application for a patent accompanied by a complete specification. In light of the origin of one of the repellent's active ingredients, explain to Michael what additional form, statement, and documents need to accompany his application. (8)

- (c) Write down only the number and the date needed to complete the following statement:

Michael lodges the patent application on 1 February 2011 and the patent is granted on 6 June 2013. The term of Michael's patent is ___ years from _____. (2)

- (d) An elephant repellent in the form of pellets that are scattered around the protected area, called ELEPHANTS AWAY, was patented in South Africa in 2009. Michael's repellent contains four ingredients, and ELEPHANTS AWAY shares three of these four ingredients. Michael is concerned that his product would infringe the ELEPHANTS AWAY patent. Briefly explain to him how patent infringement is established in terms of South African law. (10)

- (e) Suppose that Michael cannot exploit his patent without infringing the ELEPHANTS AWAY patent. Discuss the possibility of a compulsory licence being granted to him. (10)

[50]

QUESTION 2: COPYRIGHT LAW

- (a) Answer the following questions with regard to the origami book from the library:

(i) Of which types of copyright 'work' does the origami book consist? (4)

(ii) Who is the author of each work? (6)

(iii) Who are the owners of the copyright in the photos and the instructions? (7)

(iv) What is the duration of the copyright in the diagrams? (3)

- (b) The origami artist is not sure whether his instructions on how to fold the models meet the originality requirement. Explain to him what 'originality' means in the copyright context. (10)

- (c) One of the party guests' mother, who owns party shops in and around Cape Town, is very impressed with the party boxes that Jane folded. At home she unfolds the box given to her child. She makes a few measurements and, with the help of the folding lines on the square piece of paper, she works out how the box was made. With the help of her workers hundreds such party boxes are folded and sold in her shops.

If we accept that copyright does subsist in the origami artist's diagram to make these boxes, does the shop owner infringe the copyright in this diagram?

In your answer you have to address the following issues:

- the relevant exclusive rights of the copyright owner
 - indirect copying
 - the two-step test for direct copyright infringement
 - whether the 'fair dealing' exception excuses the shop owner's infringement
 - whether the reverse-engineering exception excuses the shop owner's infringement (20)
- [50]**

TOTAL:[100]