

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS



LML4801

May/June 2015

PATENT AND COPYRIGHT LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

DR M DU BOIS

SECOND

PROF CJ VISSER

EXTERNAL

MR PDW VAN DER SPUY

Closed book examination.

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[TURN OVER]

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This paper consists of 3 pages

- **ANSWER BOTH SECTION A AND SECTION B.**
- **NOTE THE DIVISION OF MARKS AND USE THE AVAILABLE TIME ACCORDINGLY.**
- **REFER TO APPLICABLE LEGISLATION AND CASE LAW IN YOUR ANSWERS.**

SECTION A: COPYRIGHT LAW

- 1 Avi is an independent film maker who is trying to establish a reputation in the South African film industry. He teams up with Trent, a musician, to create a short film about the lives of farm workers in South Africa. Avi shoots video footage, takes dozens of photographs, writes short poems about the scenes that he has captured on film, and edits all of these into a coherent narrative. Trent composes the musical score (soundtrack) for the film. He decides to include a song that he wrote for an album released three years earlier. After the film is released to critical acclaim, a large media corporation (Dark Reflection Productions) approaches Avi with an offer to buy the rights to the film.
- 1.1 Identify the various types of copyright works contained in the final product, and discuss who the author of each of these works is, and who the owner of the copyright in each is. (10)
- 1.2 Will Avi or Trent retain any rights if all the economic rights vesting in the work are assigned to Dark Reflection Productions? (5)
- [15]**

[TURN OVER]

2 Jamie is a journalist employed by the news publication Big World Newspaper (BWN). The editor of BWN sends Jamie to Parliament to cover the annual budget speech delivered by the Minister of Finance. Jamie writes a story of two thousand words, including the most pertinent budget items, a short comparison of by how much the budget amount for each of these items has increased or decreased, and quotations from the speeches by prominent Members of Parliament. The story is published on BWN's web site and is read by a large number of visitors to the site. The next day, a similar story is published by Financial News Daily (FND), a news publication in competition with BWN. This article comprises five hundred words written by an employee, Debra, and contains the essential facts of and quotations from the speech by the Minister of Finance, and one quotation published by BWN the previous day, for which it credits Jamie as the source.

- 2.1 Who is the author and who is the copyright owner of the two articles? (5)
- 2.2 Will the article published by FND infringe the copyright in BWN's article? Discuss the test for direct infringement and apply it to the above facts. (15)
- 2.3 Assume that the article published by FND does in principle amount to copyright infringement. Will FND be able to rely on any of the fair dealing exceptions? (10)
- 2.4 Are there any other exceptions available to FND? (5)

[35]

TOTAL FOR SECTION A: 50

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| SECTION B: PATENT LAW |
|------------------------------|

3 Peter is an engineer for Roula Electric Cars. His research problem is that lithium-ion batteries (used in electric cars) do not provide sufficient battery energy density for electric cars to compete with petrol cars. Batteries are typically composed of two electrodes, a positive terminal (known as a cathode), and a negative terminal (known as an anode), with an electrolyte in between. This electrolyte allows ions to move between the electrodes to produce current. In lithium-ion batteries, the anode is composed of graphite.

Peter experiments with silicon anodes, which have greater power capacity. However, silicon anodes tend to suffer structural failure from swelling and shrinking during the charge-discharge cycle. Peter creates silicon nanowires (nanoparticles), which solves this problem.

These new silicon-anode batteries produce 40 per cent more electricity than regular lithium-ion batteries, and Clive, the Chief Executive Officer of Roula Electric Cars, is convinced that this invention will transform the competitiveness of their electric cars. Clive wants to register the invention. He is fairly confident that the invention is new and that it will fulfil its stated purpose. However, he is unsure whether the invention involves an inventive step and asks you, as his legal adviser, to advise him as to whether the invention indeed involves such a step. Refer to applicable case law. [20]

[TURN OVER]

- 4 Freshwater is at risk of becoming one of the earth's most limited natural resources. The attraction of desalinating seawater as a new source of freshwater can only increase. However, desalination has serious drawbacks. Apart from high energy use, the process produces a by-product of concentrated brine, which is harmful to marine life when returned to the sea.

Obakeng, a process engineer employed by Tshwane Natural Resource Solutions, has a promising approach to solve this problem. He views the brine from desalination not as waste, but as a resource to be harvested for valuable materials (lithium, magnesium, and uranium). Rare earth elements used in electric motors and wind turbines may be recovered. Potential shortages in these industries are already a strategic concern, and Tshwane Natural Resource Solutions intends to fill this market gap.

Obakeng's invention of a new process uses catalyst-assisted chemistry that facilitates extracting these metals from reject desalination brine at a cost that is competitive with land-based mining of ores. This economic benefit may offset the overall cost of desalination, making it more viable on a large scale.

- 4.1 Lindiwe, the owner of Tshwane Natural Resource Solutions, wants to apply for the registration of a patent for the invention. Is he entitled to do so? Provide reasons for your answer. (6)
- 4.2 To what extent must the registrar examine a patent application? (3)
- 4.3 The invention was completed on 25 January 2014 and the patent application was lodged on 7 July 2014. On 9 September 2014 the patent is granted. Until when will the patent be valid? (1)
- 4.4. Once the patent has been granted, what are the exclusive rights of the patentee? (5)
- 4.5 On 25 November 2014, Dinokeng (the owner of Tshwane Mining Inc) realizes that this new process invented by Obakeng can also be used to extract residual metals from mine waste water. He begins to use this process for his company. The legal representative for Tshwane Natural Resource Solutions institutes an infringement claim against Tshwane Mining Inc as soon as possible. How would the court go about to establish infringement? (15)

(15)
[30]

TOTAL FOR SECTION B: 50

TOTAL: [100]