INTERNAL EXAMINER : MS S SONI
INDEPENDENT MODERATOR : MS D MADURUMUTHU
EXTERNAL EXAMINER : MS S DRIVER

INSTRUCTIONS

1. Students are requested in their own interests, to write legibly.

2. Students must answer all questions.

3. This paper consists of FOUR (4) pages. Please ensure that you have them all
QUESTION 1
Discuss, referring to relevant case law, whether a shape can be registered as a trade mark in terms of the Trade Marks Act 194 of 1993.

[Total Q1: 10 marks]

QUESTION 2
George works for the Daily Times newspaper. He publishes an award-winning story on crime and youth in South Africa. George hears that the newspaper has sold his story to an American newspaper for publication. George alleges that his copyright has been infringed. With reference to relevant case law discuss ownership of copyright and advise George.

[Total Q2: 10 marks]

QUESTION 3
Juan, an Argentina citizen who is on holiday in South Africa for two months, makes a short documentary film about the trade in drugs on Durban’s beachfront, which he hopes to sell to the SABC or the BBC for a lot of money. When his ex-girlfriend Jane steals his tape of the film and broadcasts it on a campus TV station, he immediately institutes a copyright infringement claim against her. Jane claims that no copyright exists in the work as Juan is not a ‘qualified person’ in terms of the Copyright Act 98 of 1978. With reference to the relevant provisions of the Act as well as any applicable international law, advise Juan.

[Total Q3: 10 marks]
QUESTION 4

One day, a woman in a lab coat enters your office holding a small, plastic box full of soil. On closer inspection, you notice little mushrooms growing in the soil. "These will replace dental floss," she says. Seeing your puzzled look, she adds, "Trust me. Chew one and see what happens." You're very suspicious, but you're also in need of a new client, so you hold your breath, cross your fingers, and start chewing one of the mushrooms. Sure enough, the mushroom breaks down and acts like an adhesive strong enough to dislodge three-week old food particles that have evaded your twice daily traditional flossing but weak enough not to stick to or between your teeth.

"I'm a chemist, and my cousin is a farmer," the woman continues. "He has a horse, and that horse has the cleanest teeth I have ever seen. I watched that horse for three months, and the only unusual thing he did was constantly chew on these little mushrooms. Unfortunately, the mushrooms did nothing for me, so I brought them into the lab and started trying to replicate the conditions in the horse's mouth. "My first idea was to soak the mushrooms in the horse's saliva, but that still did nothing. It took a lot of trial and error to replicate the precise temperature, humidity, pH, and soaking time conditions, but when the precise conditions were present, the mushroom/saliva mixture began to work as floss replacement. Unfortunately, it smelled and tasted horrible."

"I spent another month in the lab working on the saliva improving the flavour. I also broke down the saliva's chemical composition, which wasn't difficult, and I can now manufacture synthetic saliva in large batches for very little money." Your excitement about the prospect of this new client is tempered a little by the thought of the horse-saliva-soaked mushroom remaining in your mouth.

“So that’s my idea. These mushrooms soaked in synthetic, purified horse saliva to create an improvement on dental floss. I want to start selling it, but I am hoping I can somehow stop the big floss companies from ripping off my idea. Can you help?"
You tell her that you'll be in touch. Advise her by explaining the type and requirements of intellectual property she may be able to use to protect the mushrooms and/or the synthetic saliva and the advantages of each type of intellectual property.

(Assume that nothing mentioned in this question would qualify for a plant patent.)

[Total Q4: 20 marks]

[TOTAL FOR PAPER: 50 MARKS]