UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG CAMPUS

SCHOOL OF LAW: JUNE 2016 MAIN EXAMINATION

MODULE AND CODE: INTELLECTUAL PROPERTY (LAWS4IP & LAW4IP)

FULL TIME & PART TIME

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DURATION: 2 HOURS : TOTAL: 50 MARKS

INTERNAL EXAMINERS : MS S SONI
INTERNAL MODERATOR : MS D MADURAMUTHU
EXTERNAL EXAMINER : MS S DRIVER

INSTRUCTIONS:

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY

1. This paper consists of THREE (3) pages. Please ensure that you have all of the pages.

2. You are required to answer ALL the questions. Please note the allocation of marks to particular parts of some of the questions. Where no such allocation is indicated, the question or part of the question will be marked as a whole.

3. This is a closed book examination. No reference materials of any kind may be brought into the examination room or consulted during the examination.

Continued/...
QUESTION ONE

Answer the following questions, referring to case law, where relevant:

1.1 In terms of the Trade Marks Act 194 of 1993, a mark must be ‘capable of distinguishing’. Discuss this requirement. In the course of your answer list five types of marks that are expressly excluded from being registered.

(10 marks)

1.2 It has been said that whilst it is important that intellectual property is afforded statutory protection, humour and parody also play a valuable role in society which deserves a measure of protection. Comment on this statement with reference to SAB International t/a Sabmark International v Laugh it off promotions 2006 (1) SA 144 (CC).

(10 marks)

1.3 List and describe the requirements for patentability in terms of the Patents Act 57 of 1978.

[10 marks]

[TOTAL FOR QUESTION ONE: 30 MARKS]
QUESTION TWO

Tom is a lawyer. He is briefed and paid by John to draft and submit a brief to Court on a legal issue involving alleged criminal behaviour by John. The Court accepts Tom’s argument and issues an order absolving John of any criminal responsibility in the matter. The matter is published in the *VexisNexis Law Reports of South Africa*.

Professor Edith, an academic at the Stellenbosch Law School, wishes to compile a set of case studies into a book to be used for teaching legal writing. She wishes to incorporate four critical paragraphs from the court papers which Tom prepared, as well as write a case study on the matter based on the published *VexisNexis* law report.

She asks Tom’s permission to use part of his court papers in the book but he refuses. Professor Edith then comes to you asking whether she can publish the court papers in her book, anyway. She also asks, if the answer to the question is “No,” whether she can at least use the four paragraphs appearing in the published law report. Advise her. In the course of your answer you must:

2.1 List and discuss the requirements for a valid copyright and;

2.2 Address the question of whether either source is copyright protected.

(20 marks)

[TOTAL FOR QUESTION TWO: 20 MARKS]

[TOTAL FOR PAPER: 50 MARKS]