INSTRUCTIONS

1. This paper consists of FIVE (5) pages. Please ensure that you have all of the pages.

2. Please answer ALL QUESTIONS.

3. This paper contains TWO sections and students MUST answer BOTH sections.

4. The paper counts for a total of 70 marks.

5. Please ensure that you number the questions correctly.

6. Students are requested, in their own interest, to WRITE LEGIBLY.
Kulula and South African Airways (SAA) are rival airlines, competing in the same market space in South Africa. Kulula recently rebranded their aircraft to include a representation of the South African national flag on the tailfin and the words, “The Most South African Airway”, on the fuselage (body) of the airplane. SAA has somewhat similar markings on its airplanes. These markings are illustrated below. (Kulula’s tail fin colours are the same as SAA’s but the lettering on Kulula’s fuselage is white on a green background and the lettering on SAA’s aircraft is dark blue / black on a white background).
SAA has threatened to institute legal proceedings against Kulula.

Tlali Tlali, SAA spokesperson, said, “Although imitation is the sincerest form of flattery, SAA views the unauthorised use of our registered trademarks, copyright and intellectual property in a very serious light. To this end we have engaged attorneys to take legal action to protect our rights in this regard.”

Assume that you are the attorney for either Kulula or SAA (you may choose either one).

You are required to set out a reasoned legal argument supporting your client’s position. Please focus on the relevant legal issues involved and do not merely put forward your own personal opinion. In your argument you are required to deal with what is meant by “intellectual property”, and “trademark”. Restrict your argument to issues of trademark law and set out the legal criteria that must be satisfied in order to succeed in establishing trademark infringement; explain the various types of trademark infringement and the possible defences to allegations of such infringement. Also discuss the available legal remedies where there has been trademark infringement.

[30 Marks]
QUESTION 2

“Copyright” grants protection to the creator of an artistic work. When may someone, who is not the owner of copyright, use the subject matter without infringing the copyright? In your answer, set out the general requirements for copyright, the exceptions that permit unauthorised use of copyrighted material and discuss the legal remedies for infringement of copyright.

[20 Marks]
SECTION B

QUESTION 3

“It is generally recognised, however, that if the employment relationship is simply left to agreement between the employer and employee, employees will be exploited.” (Havenga et al General Principles of Commercial Law (2010) 7th ed. p 233).

Discuss and explain the above statement. Thereafter, identify any three principal examples of employment or labour legislation that modify the common law and briefly set out the main focus of each item of such legislation.

[10 Marks]

QUESTION 4

Set out, with reference to factual examples, the principal differences between “fair”, “unfair” and “automatically unfair” dismissals. What labour legislation is applicable to these legal concepts?

[10 Marks]

TOTAL SECTION B: 20 MARKS

TOTAL FOR PAPER: 70 MARKS