



KENYATTA UNIVERSITY

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPL 301: INTELLECTUAL PROPERTY LAW

1ST SEMESTER 2021/2022

TIME: 2 HOURS

INSTRUCTIONS:

1. Answer **ALL** questions.
2. Support your answer with relevant illustrations from case la, statutory provisions and any other references
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
7. All Kenyatta university Examinations rules apply as if they were contained herein.

QUESTION 1

Mganga, a scientist, was carrying out research for his Master of Science Degree at the University of Maarifa. His thesis was on the prevalence of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that causes coronavirus disease 2019 (COVID-19). While conducting his research, Mganga realized that there were very few cases of the disease in Bora Uhai village in northern Kenya. Upon further investigation, he found that the villagers usually took a concoction made from local herbs and which they called Dawa Kuu. The villagers had used the herbal concoction for over a century, and they believed that the herbal concoction protected them from a myriad of diseases.

Mganga completed his thesis and was awarded an MSc. Degree with distinction. His supervisor, Professor Mbele, invited Mganga to make a presentation of his thesis at a conference of distinguished scientists. After Mganga made his presentation, Tamaa, the sales and marketing manager at Bio Tech Limited, approached Mganga. Bio Tech Limited is a multinational corporation that manufactures various plant-based products. Tamaa requested Mganga to obtain samples of the herbs that are used in making Dawa Kuu for the company and in return Mganga would be paid USD 5,000. Mganga was hesitant and he told Tamaa that Bio Tech Limited would have to get the consent of residents of Bora Uhai first. In addition, Mganga insisted that Bio Tech Limited would have to share with the villagers the proceeds arising from the commercial use of Dawa Kuu.

Tamaa declined Mganga's conditions and he instead paid Mlafi, another young scientist, USD 10,000 to collect the samples of the herbs that are used in making Dawa Kuu. Bio Tech Limited then used those herbs to plant more herbs in their green houses in Shambani area. The company also manufactured their own version of Dawa Kuu, and secured protection for the herbal concoction. Bio Tech Limited also registered the words "Dawa Kuu" in respect of the concoction and the company added the words "Sourced from Bora Uhai Village" on all the packaging. As a result of vigorous marketing, Tamaa secured a multi-billion tender for the supply of "Dawa Kuu" to the government for use in treating the population in Kenya.

The residents of Bora Uhai village are aggrieved by the actions of Bio Tech Limited and they have threatened to file a civil suit against the company. Tamaa has hired you as his lawyer to defend the company.

- (i) Identify and explain the intellectual property rights of the various persons mentioned in the above scenario. (10 marks)
- (ii) Explain the legal steps that the villagers could take to challenge the protection of Bio Tech Limited's concoction. (10 marks)
- (iii) Discuss the likely consequences if the villagers are unsuccessful in challenging the protection of Bio Tech Limited's concoction? (10 marks)

QUESTION 2

Dr. Msanii is a physics lecturer employed at Top Minds University. She often spends several hours of the day seated in the corner of her office where she composes poems and songs. In March 2021, Dr. Msanii published a collection of her poems and songs in a book titled "Never Have I Ever". Because Dr. Msanii believes that creativity is a shared experience, her poems and songs borrowed many lines from local and international artists.

However, Dr. Msanii was very concerned when she heard that there was another book titled "Ever Have I Never" that had been published in June 2021. Because this second book was very similar to Dr. Msanii's book, many people thought that she had written both books. However, the second book was written in such a ridiculous fashion that many people made fun of Dr. Msanii.

Recently, Dr. Msanii received a notice from Top Minds University demanding that she replaces her name with that of the university in the copyright notation for her book. The university argued that Dr. Msanii was paid her salary when writing the book and that the book was published at the university's press. The university also ordered Dr. Msanii to account for all the profits that she earned from the sale of the book.

Dr. Msanii has approached you for legal advice on how to respond to the university.

- (i) Explain the various rights that Dr. Msanii could assert in relation to her book of poems and songs. (10 marks)
- (ii) Discuss the actions that Dr. Msanii could take to protect her rights as against the university and the author of the second book. (10 marks)

QUESTION 3

“Even though intellectual property differs from real property in terms of the subject matter of protection, the juridical basis for the protection of intellectual property is the same as that for real property.” - Anonymous

Critically analyse the above statement using at least two theoretical perspectives. (20 marks)