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**THE LAW OF
PATENTS AND DESIGNS
2008**

1. INTRODUCTION

1.1. Overview

The Law of Patents and Designs is an elective LLB semester course. The major theme of the course is the statutory framework and selected case law applicable to these branches of intellectual property in South African law.

The purpose of the course is to familiarise students with the scope and effect of the statutory rights created in the Patents Act 57 of 1978 and the Designs Act 195 of 1993. International conventions are also considered as are other current debates related to patents in the global intellectual property system.

1.2. Credit value

10 credits

1.3. Assumptions of prior learning

Students would need to know and be able to do the following in order to benefit from this course:

- Be capable of communicating in written and spoken English;
- Be capable of critically analysing and extracting relevant legal information from case law, legislation and other source material; and
- Be capable of independent learning.

2. OUTCOMES

2.1. Critical cross-field outcomes

It is intended that successful participation in the course will assist students in developing the following competencies:

- Identifying and solving problems;

- Organising and managing themselves;
- Collecting, analysing and evaluating information;
- Communicating effectively; and
- Using technology.

2.2. Intended specific outcomes

It is intended that students will be able to do the following on successful completion of the course:

- Trace the development of innovation and patent law;
- Identify and apply the relevant legal principles applicable to patents and designs;
- Communicate the legal position as well as argue their own point of view;
- Explain the international regulation of patents and designs in broad terms; and
- Explain and comment on the controversies surrounding the patenting of modern biotechnological inventions, access to patented drugs in developing countries and the recognition of traditional knowledge and indigenous genetic resources in patent law.

3. TEACHING METHODS

A detailed course outline with a comprehensive reading list and bibliography are provided for this course. Students are expected to read ahead of the next lecture in order to acquire a basic familiarity with the relevant topic and then take their own notes in lectures. Lectures are conducted in a structured but discursive manner allowing for questions and discussion. Practical examples are routinely considered during lectures.

There are no tutorials in this course and there are two compulsory lectures per week for the duration of the semester, although students may be absent without leave for a total of five lectures during the course.

4. STUDENT ASSESSMENT

Specific Outcomes	Assessment criteria	Assessment tasks
<ul style="list-style-type: none"> • Trace the development of innovation and patent law 	<ul style="list-style-type: none"> • Demonstrate an understanding of the history of innovation and how technological factors have shaped human history • Describe the historical development of patent law 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Theory questions in test and examination (summative)
<ul style="list-style-type: none"> • Identify and apply the relevant legal principles to patents and designs 	<ul style="list-style-type: none"> • Identify and distinguish between the legal principles applicable to patents and designs with reference to factual situations • Apply statutory and common law principles 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Problem and theory questions in test and examination (summative)

	to given patent and design issues	
<ul style="list-style-type: none"> • Communicate the legal position as well as argue their own point of view 	<ul style="list-style-type: none"> • Demonstrate the ability to critically reflect on what has been read and learned • Describe, explain and argue the relevant legal principles with reference to case law and legislation • Critically evaluate the current law of patents and designs with reference to a given context 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Problem and theory questions in test and examination (summative)
<ul style="list-style-type: none"> • Explain the international regulation of patents and designs in broad terms 	<ul style="list-style-type: none"> • Describe and explain the relevant legal principles with reference to international treaties 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Essay/theory questions in test and

	pertaining to patents and designs and the bodies that administer these treaties	examination (summative)
<ul style="list-style-type: none"> • Explain the controversies surrounding the patenting of modern biotechnological inventions, access to patented drugs in developing countries and the recognition of traditional knowledge in patent law 	<ul style="list-style-type: none"> • Critically evaluate the ethical dimensions from a legal perspective of biotechnology, access to patented drugs in developing countries and the recognition of traditional knowledge in patent law 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Essay question (summative) • Essay/theory questions in test and examination (summative)

The class work component for the course amounts to 30% of the final mark and the remaining 70% comprises a two-hour examination which will be written in November 2008.

Students are assessed for the class work component on the basis of two pieces of work (one assignment and one test). The test will count for 10% of the final mark and the essay will count for 20% of the final mark.

The assignment requires students to research and write an essay on one of three topics depending on their interests.

The test and examination will contain questions of the following types:

- problem questions which require the application of statute and common law to solve practical issues;
- theory type questions in which students are required to describe, explain and critically evaluate the current law; and
- essay type questions in which students fully canvass a particular area of the law.

It is always a good idea to have a look at past examination papers to give guidance as to the type of questions that may arise. Past examination papers can be accessed through the RU Library webpage.

5. BIBLIOGRAPHY

5.1. Texts

There is no prescribed text for this course but you will be required to supplement and consolidate your lecture notes and to research for the assignment. The following texts which are all available in the Law Library form the core reading for this course:

- L Bently and B Sherman *Intellectual Property Law* 2 ed (2004) Oxford University Press: Oxford
- T.D. Burrell *Burrell's South African Patent and Design Law*, 3 ed, (1999) Butterworths: Durban (This is the leading work on the Law of Patents and Designs in South Africa. The full text is available on the My LexisNexis database which can be accessed through the RU Library webpage)
- W R Cornish *Intellectual property: Patents, Copyright, Trade Marks and Allied Rights* 5 ed (2003) Sweet and Maxwell: London
- C. Visser *The New Law of Trade Marks and Designs* (1995), Juta & Co, Ltd: Kenwyn

5.2. Websites

There is a wealth of information available on the internet and the following sites are useful:

www.heinonline.org (Electronic access to a vast array of legal journals. This database can be accessed through the RU Library webpage. Go to Research Databases and select Hein-On-Line.)

www.adamsadams.co.za (SA IP firm)

www.spoor.co.za (SA IP firm)

www.derebus.org.za (SA Attorneys Journal)

www.patent.gov.uk (UK patent office)

www.espacenet.com (European patent office)

www.uspto.gov (USA Patents and Trademark Office)

www.wipo.int (World Intellectual Property Organisation)

www.wto.org/english/tratop_e/trips_e/trips_e.htm (TRIPS gateway on the WTO website)

www.pub.ac.za (Public understanding of biotechnology)

www.saiipl.org.za (SA Institute of IP Law)

www.delphion.com/gallery (a collection of weird and bizarre patents)

<http://listverse.com/bizarre/15-truly-bizarre-patents/> (another collection of weird and bizarre patents)

6. COURSE OUTLINE

The topics covered in the course comprise the following:

1. Introduction to patents.
2. The nature and content of patents.
3. Patentable subject matter and exclusions.
4. Patent ownership and exploitation.
5. Patent application procedure.
6. Infringement of patents.
7. Introduction to designs.
8. Scope of design monopoly.
9. Design ownership, exploitation and procedure.
10. Design infringement.