



RHODES UNIVERSITY

**THE LAW OF
COPYRIGHT ©
AND
TRADE MARKS ®™
2016**

**Lecturer: Sarah Driver
s.driver@ru.ac.za**

1. INTRODUCTION

1.1. Overview of the course

The law of copyright and trade marks is an elective LLB semester course. This course examines the monopolies that are conferred on these branches of intellectual property as well as the legal implications at a national and international level.

The purpose of the course is to familiarise students with the basic principles of copyright and trade mark law. The law of copyright and trade marks is a vast area of law and due to time constraints there are aspects that cannot be considered in this course. Allied rights and duties that arise within this field such as performer's protection, registration of copyright in cinematograph films and geographical indications will therefore not be dealt with.

1.2. Credit value

10 credits which constitutes 100 notional hours of work. These notional hours include lectures, researching for the assignment and preparation for the test and examination.

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 copyright and trademark law locally and internationally;
- Identify and apply the relevant legal principles applicable to copyright and registered trademarks;
- Communicate the legal position as well as their own point of view; and
- Understand and explain the impact of technology on copyright and trademark 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 with reference to case law. Students are expected to

be able to discuss the facts and decisions of all the cases listed in the course outline at the relevant time.

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. BIBLIOGRAPHY

4.1. TEXTS

Students are required to supplement and consolidate their notes. The following texts which are all available in the Law Library form the core reading for this course:

- O Dean and A Dyer *Introduction to Intellectual Property Law* (2014) Oxford: Cape Town
- H Klopper *et al Law of Intellectual Property in South Africa* (2011) LexisNexis: Durban
- H Dean *Handbook of South African Copyright Law* (1987) Juta & Co: Cape Town
- F Schechter 'The Rational Basis of Trademark Protection' (1927) 40 *Harvard Law Review* 813
- J Neethling *Van Heerden-Neethling: Unlawful Competition* 2nd ed (2008) LexisNexis: Durban
- C Visser (ed) *The New Law of Trade Marks and Designs* (1995) Juta & Co: Cape Town
- G C Webster and N S Page *South African Law of Trade Marks* (1997) LexisNexis: Durban (The full text of this work is also available on My LexisNexis which can be accessed through the RU Library webpage. Go to Research Databases and select My LexisNexis.)
- T Woker *The Franchise Relationship under South African Law* (2012) Juta & Co: Cape Town

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

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

www.dalro.co.za (SA licensing body)

www.risa.org.za (Recording Industry of SA with information about piracy)

www.buys.co.za (Internet, media and IP law firm)

www.wipo.int (World Intellectual Property Organisation)

www.brandchannel.com (general information about branding issues)

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

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

www.patent.gov.uk (IP in the UK)

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

<http://www.lessig.org/> (the website of Lawrence Lessig, a Stanford professor, who questions the role of copyright and argues that it impedes the dissemination of knowledge)

<http://creativecommons.org/> (an organisation that aims to create a flexible and reasonable system of copyright control)

www.iacc.org (International Anti Counterfeiting Coalition)

5. ASSESSMENT

Specific outcomes	Assessment criteria	Assessment tasks
<ul style="list-style-type: none"> • Trace the development of copyright and trade mark law locally and internationally 	<ul style="list-style-type: none"> • Describe the historical development of copyright and trade mark law • Identify and describe the main international agreements that relate to copyright and trade marks 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Essay questions in test and examination (summative)
<ul style="list-style-type: none"> • Identify and apply the relevant legal principles applicable to copyright and registered trade marks 	<ul style="list-style-type: none"> • Identify and distinguish between the legal principles applicable to copyright and trade marks with reference to factual situations • Apply statutory and common law principles to given copyright and trade mark issues 	<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"> • Communicate the legal position as well as argue their own point of view 	<ul style="list-style-type: none"> • Describe, explain and argue the relevant legal principles with reference to case law and legislation • Demonstrate the ability to critically reflect and evaluate the current law 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Problem, theory and essay questions in test and examination (summative) • Research essay (summative) • Write case notes in test and examination (summative)
<ul style="list-style-type: none"> • Understand and explain the impact of technology on copyright and trade marks 	<ul style="list-style-type: none"> • Analyse the inherent problems in regulating copyright and trade marks nationally and an internationally • Utilise www. Resources to research South African and comparative law 	<ul style="list-style-type: none"> • Class discussion and questioning (formative) • Problem and theory questions in test and examination (summative) • Essay questions in test and examination (summative) • Research essay (summative)

The class work component for this course amounts to 30% of the final mark and the remaining 70% comprises a two hour examination.

Students are assessed for the class work component on the basis of two pieces of work (either two tests or one test and an assignment subject to the students' choice) each of which counts 15% of the final mark.

The assignment requires students to research and write an essay on either copyright or trade marks 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;
- case note questions in which students are required to set out the facts and decision of a case and provide a critical evaluation of the decision; and
- essay type questions in which students fully canvass a particular area of the law relating to copyright or trade marks.

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.

COURSE OUTLINE

Introduction to intellectual property

TRADE MARKS

TOPIC 1: INTRODUCTION TO TRADE MARKS

TOPIC 2: REGISTRATION OF TRADE MARKS

TOPIC 3: TRANSACTIONS INVOLVING TRADE MARKS

TOPIC 4: INFRINGEMENT OF TRADE MARKS

TOPIC 5: DOMAIN NAMES AND THE INTERNET

COPYRIGHT

TOPIC 1: INTRODUCTION TO COPYRIGHT

TOPIC 2: REQUIREMENTS FOR THE SUBSISTENCE OF COPYRIGHT

TOPIC 3: TRANSACTIONS INVOLVING COPYRIGHT

TOPIC 4: INFRINGEMENT OF COPYRIGHT

TOPIC 5: COPYRIGHT AND THE INTERNET

TOPIC 6: TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

COUNTERFEIT GOODS