

Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION
LWA316 – Intellectual Property Law	Reading Time: 20 minutes
	Writing Time: 120 minutes

INSTRUCTIONS TO CANDIDATES

1.1 The examination has two sections.

Section A: Suggested Time: 75 minutes	One Compulsory question: All students must answer this question. This question is worth 30 marks
Section B: Suggested Time: 45 minutes	Essay Questions: Answer ONE (1) only of 3 questions. This section is worth 20 marks

Answer all questions in the examination booklet provided. An additional booklet will be provided if required. Please ensure that your name and student number and the questions attempted are clearly indicated on each booklet used.

1.2 Note that questions **ARE NOT** of equal value.

1.3 Read **ALL** questions carefully.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book 1 x Scrap Paper

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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INTELLECTUAL PROPERTY LAW

SECTION A

Question 1 (Compulsory Question).

All students must answer both Part (a) and Part (b) of this Question

This question is worth 30 marks.

Part (a)

Jamie Lupton is the owner of registered trade marks of his brand name 'Begus' and the colour dark green, for goods in class 30, which includes tea products. Norton Trading Pty Ltd is a company incorporated in Australia which imports tea products supplied by Ali Abraham in Indonesia. Ali Abraham's tea products were produced from tea leaves which were harvested from Ali Abraham's tea plantation in Indonesia. These tea products have the words 'Bagus' on their labels and were sold widely in Australia. 'Bagus' is a Malay word which means 'good' when translated to English.

The packaging of the *Bagus* tea products were light green and red in colour. Norton Trading Pty Ltd's customers have always recognized the light green and red colour in the packaging of the *Bagus* tea products as Norton Trading Pty Ltd's corporate colour. Hence, Norton Trading Pty Ltd wants to register the light green colour as a trade mark. It also wants to register the name *Bagus* as a domain name in the .au domain.

Jamie Lupton claims that Norton Trading Pty Ltd has infringed the Trade Marks Act 1995, that it has contravened provisions of the *Australian Consumer Law* and that it has passed off its tea products as products originating from him. Advise Jamie Lupton and Norton Trading Pty Ltd.

[15 Marks]

Part (b)

Lang Pty Ltd produced and sold computer games on CD-ROMs. Xavier Dodson was making a quick profit by selling unauthorised copies of Lang Pty Ltd's computer games. However, the machine which plays these computer games contained access restrictions which incorporated an access code. Any user who wishes to play the computer games will need an access code to play the computer games. Xavier Dodson installed "mod chips" into the computer game machines to bypass the access code requirements, so that any user can play the computer games from the unauthorized copies of the computer games without using an access code. Lang Pty Ltd has brought an action against Xavier Dodson.

Xavier Dodson also owns a website which allowed his customers to download illegal music from his website. The website used a peer to peer downloading software which Xavier Dodson had created for its customers. It is a proprietary software which belongs to Xavier. Hence, Xavier had charged its customers a fee for using the software. CMG Music Ltd had found out that many of the songs that it had produced had been downloaded illegally from Xavier Dodson's website and is upset about it. CMG Music Ltd is now bringing an action against Xavier Dodson.

Advise Xavier Dodson.

[15 Marks]

SECTION B

Answer ONE (1) ONLY of the following three essay questions.

Each question is worth 20 marks and Section B is worth 20 marks in total.

Question 1

Can the equitable duty of confidence co-exist with the contractual duty of confidence when one has breached his duty of confidence in a business relationship? Discuss.

[20 marks]

Question 2

“I do not believe that in a controversial issue such as is raised by the present argument, I would be abandoning my responsibility as a judge to... hold that if public policy demands that a medical or surgical process should be excluded from patentability, then that is a matter that should be resolved by the Parliament”.

(Finkelstein J in *Bristol-Myers Squibb Co v F H Faulding and Co Ltd* (2000) 170 ALR 439.)

Discuss the statement above.

[20 Marks]

Question 3

Will the *Copyright Amendment (Online Infringement) Act 2015* be effective in preventing copyright infringements? Discuss.

[20 marks]

[End of Exam Paper]