



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL EXAMINATIONS
FOURTH YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 429: INTERLUETUAL PROPERTY LAW

STREAM: Y4 S2

TIME: 2 HOURS

DAY: FRIDAY, 11:30 – 1:30 P.M.

DATE: 29/07/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.*
- 2. Answer question ONE (Compulsory) and any other TWO questions.*
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.*

QUESTION ONE

The All Saints Cathedral was completed in 1723 and one of its notable original features was a large stained glass window depicting scenes from the Bible.

In May 2008, vandals break into the church and destroy this window. The Executive Board of the church (which owns the church and all its associated property) is naturally much dismayed, especially because stained glass is not a common artistic medium these days and it is a rare artist who has the expertise to produce it. After much searching, the Board engages Phillip Porter, to restore the window. A written contract between Porter and the Board provides that Porter will restore the window to its previous design and will be paid Ksh.2,000,000. The contract provides that the window must be completed by the end of 2010. The contract also provides, “the new window shall be

considered a work made for hire for purposes of the copyright laws.” The contract contains no other reference to copyright.

Working from photographs of the prior window, Porter manufactures pieces of stained glass in his studio. He skillfully reproduces the exact colors and shapes of each piece of glass from the original window. He also works on other artworks for other clients during the same period. In December 2010, the stained glass is ready, and Porter installs it in the window at the All Saints Church. Everyone is thrilled at how exactly Porter has managed to restore the design, shapes, and colors of the original window. The Board writes Porter a check for Khs.2,000,000.

Phillip Porter dies in 2030. He leaves his entire estate to his son, Paul Porter. Paul Porter dies in 2080. He leaves his entire estate to his daughter, Pamela Porter.

In 2085, Pamela Porter visits the All Saints Church and discovers that the church is selling postcards depicting her grandfather’s window. Pamela Porter sends the Board a letter demanding a 10% royalty on sales of the postcards and threatening to sue for copyright infringement if she doesn’t get it.

You are the church’s general counsel. The Chair of the Executive Board comes to you and says, “Sheesh, we own that window, don’t we? How could we not have the right to sell postcards of something we own? Please write me a memorandum discussing Porter’s demand and any defenses we might raise to her potential claim of copyright infringement, and advising us as to what we should do.”

- a. Write the requested memorandum. Assume no change in copyright law between now and 2022. (20 Marks)
- b. Discuss the remedies that Porter might be entitled to if she were to win a lawsuit. (10 Marks)

QUESTION TWO

- (a) Discuss the salient provisions made in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement to deal with the enforcement of Intellectual Property Rights. (10 Marks)
- (b) Using illustrations discuss the basic principles of the Berne Convention. (10 Marks)

QUESTION THREE

The first problem one encounters in studying traditional knowledge (TK) is the extent and meaning of the term itself. No globally accepted definition of TK exists, and therefore no clear delineation of its scope. The definition adopted by the World Intellectual Property Organization (WIPO) is that TK is “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.” While TK embraces traditional cultural expressions within its ambit, and includes distinctive signs and symbols associated with traditional knowledge, it does not extend to traditional cultural expressions as they necessarily would fall under the purview of copyright law. Discuss. (20 Marks)

QUESTION FOUR

Write a comparative and critical essay on the interpretation of patent claims with specific reference to the doctrine of purposive construction and the doctrine of equivalence. (20 Marks)

QUESTION FIVE

- (a) The rights conferred under copyright are distinct in certain aspects from other IPRs. Explain. (7 Marks)
- (b) Explain the role of patents as an incentive for research and development in industry. (8 marks)
- (c) Describe the non-commercial role of trademarks. (5 Marks)