

# **INTELLECTUAL PROPERTY LAW SUMMARY**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

**Question One – Copy Right**

A lecturer at Deakin University, Lisa Marks, was paid by a group called ‘Citizens Against Terrorism’ (‘CAT’) to write a paper on the legality of torturing terrorists for information. Over lunch on the last day of semester one 2010, Lisa told one of his Intellectual Property students, Nick Lockhart, that he does not believe she owns copyright over the paper.

When Lisa gives CAT her paper, CAT decides to turn the paper into a script for a play and they perform the play at the local theatre. CAT does not acknowledge Lisa as having contributed to the script or having written the paper on which the script was based.

A few months later, a lecturer at Monash University named Dr Frank presented a series of lectures on when it is appropriate to use torture on terrorists to illicit information. In these lectures, Dr Frank claims to quote several times from Lisa’s paper. The lecture is recorded to DVD and sold for \$30 a disc. However, Dr Frank misquotes Lisa and alters Lisa’s conclusions to fit his view points.....

SAMPLE ONLY

**Question Two – Patent**

Clara owned a small cafe on Collins Street in Melbourne called 'Clara's Coffee Shop'. In spring, many of Clara's customers would complain about how they were attacked by magpies on their way to work. The customers said that even when they wore normal hats, the birds were so protective of their nests that they would pierce the hats with their beaks.

So Clara set about devising a hat that would scare away magpies, but also looking stylish at the same time. After a great deal of effort she came up with a suitable design for a hat and employed a patent attorney to draft up a specification. However, Clara did not know that one of her waitresses, Rose, had photocopied some of her early drafts and had already approached a manufacturer with them. Rose had a prototype made and she had used it to protect herself on her way to work for a week.

Clara's hat comprised:

A bicycle helmet for protecting a person's head and face from magpie contact.

The helmet afforded the protection that a hat alone could not provide. The exterior shell of the helmet was covered with a bunched light Japanese fabric material to give the hat its aesthetic appeal. Attached to the helmet is a forwardly projecting visor that surrounds the rim of the helmet, creating a wide brim to ensure the helmet looked like a hat and to provide face protection. Beneath the exterior was a polystyrene inner moulding shaped to fit the upper half of the human head. Amongst the fabric on top of the helmet were nestled a pair of eyes to scare away the magpies. The eyes are lit up by two little light bulbs that are mounted behind the eyes (lenses). The batteries are contained in a compartment at the rear of the helmet, hidden by the fabric. The lights can be turned on and off by a switch.....

**Question Three – Trade Mark**

Wheels Ltd manufactures scooters and has come to you for advice. Wheels has long been producing scooters that require the user to push off with their feet when they wish to propel themselves forward. However, Wheels is starting to move into the market of motorised scooters. Its new product is a solar powered scooter, which is yet to have a trade mark.

A competitor of Wheels is Fast Pty Ltd. Fast registered a trade mark for a solar powered motorbike – ADVENTURE – in 2005, but the motorbike has not been in use for some years.

Wheels comes to you expressing its desire to register the mark ADVENTURE for its new solar powered scooter.

Wheels has a few other suggested marks for its future range of solar powered scooters:

- 1) GREEN MACHINE
- 2) EDJ

GREEN MACHINER is a well-known brand of carpet cleaners in Australia, made by a different company (Clean and Co). However, Wheels informs you that it wishes to advertise its scooter as 'Wheels – GREEN MACHINE', and as being more environmentally friendly than the cleaning products, so it does not expect to have any problems.

Wheels has another registered mark:

- 1) TRAIL BLAZER (for a sleek manual scooter).....



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