

Intellectual Property

**Elective
Past
Papers**

LL.B. IV



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2020/2021

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ABOUT GhSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at resources@ghsl.org.



Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

3. Organisational Skills

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

4. Taking your own class notes

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

5. Participation

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

6. Practice is the key to success

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.

UNIVERSITY OF MALTA
FACULTY OF LAWS

CML 4014 - INTELLECTUAL PROPERTY

DATE: MONDAY 22ND JANUARY 2018 DURATION OF EXAMINATION: 8. 30AM TO 10. 35AM

Answer ONE question from SECTION A and ONE question from SECTION B
All questions carry equal marks
Answer each question on a separate script

SECTION A

1. A “trademark” is defined by the Trademarks Act (Chapter 416 of the Laws of Malta) as “any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings”. Analyse this definition by reference to the various non-conventional (non-traditional) type of trademarks that exist and the various legal implications that they give rise to.

2. The Trademarks Act provides for a so-called grace period of non-use of five (5) years. Discuss.

SECTION B

3. A work shall not be eligible for copyright unless it has ‘an original character’. Discuss

4. “If the existence of the copyright work has no causal connection with the production of the alleged infringing work, even though the latter be identical with the former, there is no infringement of copyright” (per Diplock L.J. in Francis, Day and Hunter v Bron (1963) Ch. 587). Discuss

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CML4014 INTELLECTUAL PROPERTY

Date: Wednesday 30th January 2019

Duration of Examination: 10:00AM-12:05PM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from Section A and **ONE (1)** question from Section B.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. "The absolute grounds for refusal of a trademark application go to the heart of the subject in that only those trademarks which are highly distinctive may be registered." Discuss this statement. (50%)
2. Those trademark registrations which are not put to genuine use, by or with the consent of the trademark proprietor, risk being removed from the Maltese trademarks register. Discuss. (50%)

Section B

3. What is a 'literary work' for the purposes of the Copyright Act (Chapter 415 of the Laws of Malta)? (50%)
4. EU directives on copyright when dealing with the requirement of originality state that the work must be "the author's own intellectual creation". What do these words mean? Does this criterion apply to all categories of works protected under the Maltese Copyright Act? (50%)

**University of Malta
Faculty of Laws**

June 2019 Examination Session

**ECL5033 INTELLECTUAL PROPERTY LAW: ISSUES AND HARMONIZATION IN AN
INTERNATIONAL & EU CONTEXT**

Date: Monday 3rd June 2019

Duration of Examination: 08:30 AM – 11:35 AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE(1)** question from **EACH** section. In total you need to answer **THREE (3)** questions. All questions carry equal marks.

SECTION A

1. The Biotech Directive was ten years in the making. What were the most controversial features proposed? Outline the main routes to secure patent protection in the UK, Germany, France and Malta highlighting the advantages of each route.
2. Is an EU Trade Mark necessary at all when each and every EU country has an established trademark regime? What added value, if any, does the Madrid system have and when would you advise a client to go the national, EU or international route?

SECTION B

3. A number of critics have commented that the provisions in the Copyright Directive (Directive 2001/29/EC of 22 May 2001) which provide protection to (i) technological measures and to (ii) rights-management information, are mainly ineffective, difficult to apply in context and subject to varying degrees of interpretation. How far would you agree with this statement?
4. "The Computer Programs Directive (Directive 09/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs) is a classic example of one of the most successful pieces of EU legislation in the field of EU copyright law." Comment on this statement with particular reference to the main provisions of the Directive.

SECTION C

5. Examining the matter through the development of CJEU case law, how far does the doctrine of exhaustion of rights properly balance the protection of intellectual property rights in parallel import cases?

6. Please discuss both of the below: * The Artists Resale Right as provided for in Directive 2001/84/EC; AND * The requirements of novelty and individual character under EU Design legislation (such as Council Regulation (EC) No 6/2002).

University of Malta
Faculty of Laws

January 2020 Examination Session

CML4014 INTELLECTUAL PROPERTY

Date: Tuesday 21 January 2020

Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from Section A and **ONE (1)** question from Section B.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. One of the requirements of a trademark is that it needs to be a sign which is capable of distinguishing the goods or services of one undertaking from those of other undertakings. Discuss.

OR

2. A trademark shall not be registered or, if registered, shall be liable to be declared invalid where because of its identity with, or similarity to, an earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public, including the likelihood of association by the public with the earlier trademark. Discuss this relative ground of refusal that is found in Article 6 of the Trademarks Act.

Section B

3. Under article 3(2) of the Copyright Act (Cap. 415 of the Laws of Malta) "A literary, musical, or artistic work shall not be eligible for copyright unless the work has an original character ..." and under article 3(4) of the same Act "A database shall not be eligible for copyright unless by reason of the selection or arrangement of its contents, it constitutes the author's intellectual creation". What do the phrases "original character" and "author's intellectual creation" mean for the purposes of the Copyright Act?

OR

4. "[I]t is well established that to constitute infringement of copyright ..., there must be present two elements: first, there must be sufficient objective similarity between the infringing work and the copyright work, or a substantial part thereof, for the former to be properly described, not necessarily as identical with, but as a reproduction or adaptation of the latter; secondly, the copyright work must be the source from which the infringing work is derived" (per Diplock L.J. in *Francis, Day and Hunter v Bron* – (1963) Ch. 587). Discuss.



L-Università
ta' Malta

FACULTY OF LAWS
DEPARTMENT OF COMMERCIAL LAW
FEBRUARY 2021 EXAMINATION SESSION

CML4014 Intellectual Property

Friday, 19th February 2021

Examination time: 08:30 – 10:30 + 15 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone: 2340 3251; 2340 3204

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

By sitting for this examination, I declare that I am aware of the provisions of the regulations regarding conduct during examinations and I pledge to observe them.

Students may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

Students may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

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INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from **Part A** and **ONE (1)** question from **Part B**. Each question carries equal marks.

Answer **each question on a separate document** and save the documents as PDF files. Upload each of the files in the section of the question answered.

Word limit: **1500 words per answer.**

PART A

1. "A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds..." (Article 4(2), Trademarks Act, Cap. 597 of the Laws of Malta). Discuss, with particular reference to the various non-conventional (non-traditional) trademarks that exist and relevant case-law on the same.
2. Non-distinctive and descriptive trademarks may not be registered or, if registered, shall be liable to be declared invalid. Discuss this statement referring to the relevant provisions of Article 5 of the Trademarks Act (Cap. 597 of the Laws of Malta), and to salient case-law.

PART B

3. What constitutes an original literary work for the purposes of the Copyright Act (Cap. 415 of the Laws of Malta)?
4. In terms of the Copyright Act (Cap. 415 of the Laws of Malta), the author of a copyright work is the person who created the work and to claim joint authorship one must, amongst other things, "establish [that one] has made a significant and original contribution to the creation of the work" (Godfrey v Lees [1995] EMLR 307). Discuss.