1. (a) Briefly explain "genericization" of a trademark.

1. (b) Briefly describe the steps a trademark owner could take to prevent genericization of its trademark.

2. Briefly discuss the registrability of the following trademarks. Point form answers are acceptable:

2. (a) BUTTER for croissant pastries. The ingredients of the pastries include margarine but no butter.

2. (b) OBAMA’S CHOICE for coffee.

3. (c) CHARLOTTE TREMBLAY for cosmetics. There are two persons named Charlotte Tremblay presently living in Montreal. The mark has been used in British Columbia for over 10 years.

6. Indicate three ways by which an owner of a Canadian trademark registration may become aware of a third party’s Canadian trademark application for a potentially confusing trademark. Point form answers are acceptable.

8. Ferraro, Inc. is an Italian luxury sports car manufacturer and owns a Canadian trademark registration for the FERRARO mark in association with cars. The FERRARO mark is very well known in Canada where it has been used in association with luxury sports cars for decades. Bright red coloured FERRARO cars are particularly popular. Luxury Lavatories, Inc., a Canadian toilet manufacturer, recently started selling a high end, high performance toilet called FERRARO in Canada. The FERRARO toilet has a bright red body and a seat shaped like a sports car seat. Advise Ferraro on all possible causes of action and their likelihood of success. Point form answers are acceptable.

10. Klassen, Inc. is a German chocolate maker and has operated a retail store in Berlin since 2000 in association with the trademark NATUR. The store specializes in organic chocolates. Klassen also sells its own brand of chocolates at its store in Berlin, in packaging marked with the NATUR trademark. It has registered the mark in Germany for both services (retail store services) and goods
Kiassen has advertised its store and its chocolates since 2004 in English-language magazines published outside Canada that have substantial Canadian circulation among chocolate connoisseurs, and on its Internet website, www.Klassen.com, but it does not have customers in Canada.

In February 2010, Kiassen provided a few boxes of its NATUR chocolates to a company in Ontario in the course of negotiations concerning the company becoming a Canadian distributor for Klassen. Klassen subsequently decided not to appoint the Ontario company as a distributor. In October 2014, Klassen began advertising in Vancouver newspapers that it would be opening a retail store under the NATUR name in Vancouver in the summer of 2015 and that NATUR brand chocolates would be sold at the store.

Kiassen contacts you in December 2014 and asks you to protect its trademark in Canada. Discuss the steps that should be taken and the various grounds for a trademark application. Point form answers are acceptable.

END OF PART I
(Use a new booklet for Part II)
<table>
<thead>
<tr>
<th>Marks</th>
<th>Briefly comment with justifying reasons on whether the following subject matter is patentable in Canada and the United States, assuming it is new, non-obvious and useful:</th>
</tr>
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<tbody>
<tr>
<td>4</td>
<td>(a) An isolated human gene used in a screening test to identify patients at risk of developing familial ALS (Lou Gehrig’s Disease).</td>
</tr>
<tr>
<td>4</td>
<td>(b) A method of treating snoring by surgically excising a small segment of tissue from a patient’s soft palate (i.e. mouth) using a laser.</td>
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<tr>
<td>3</td>
<td>2. Claire invented a new gluten-free, nut-free, fruit-based food product in November 2013. She first disclosed the product to the public in December 2013 at a Whole Foods grocery store in West Vancouver by giving away free samples. After receiving venture capital funding, Claire eventually filed a Canadian patent application on January 15, 2014 claiming the unique combination of ingredients contained in her food product. Is Claire’s Canadian patent application valid? Do you need any further information in order to fully advise Claire?</td>
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<tr>
<td>4</td>
<td>3. Diane is a Vancouver psychiatrist researching new therapies for treating anxiety and post-traumatic stress disorder (PTSD). In April 2012 she discovered that a drug previously used in cancer therapy was surprisingly effective in treating PTSD. After conducting a confidential clinical trial, she filed a Canadian patent application in December 2012 claiming the new use for the drug. The application has now been examined and the Examiner has rejected all of the claims pursuant to Section 28.3 of the <em>Patent Act</em>. The Examiner has cited one prior art reference describing the use of a slightly modified form of the drug for treatment of Alzheimer’s Disease. The Examiner contends that it would be “obvious to try” using the drug for treatment of other brain disorders. Advise Diane on how best to overcome the Examiner’s rejection.</td>
</tr>
<tr>
<td>4</td>
<td>4. Is a method of doing business excluded from patentability in Canada and the United States, assuming it is not merely an abstract idea?</td>
</tr>
<tr>
<td>3</td>
<td>5. Briefly discuss the function of patent claims. What may be the consequences of making a claim overly broad or overly narrow?</td>
</tr>
</tbody>
</table>
| 3     | 6. In June of 2014 the C.E.O. of Tesla Motors, Inc. promised that Tesla “will not initiate patent lawsuits against anyone who, in good faith, wants to use our
technology”. Briefly discuss whether you think this “open source philosophy” will become commonplace in other fields of patented technology.

6  7. Jonathan is the owner of a Canadian patent for a “Wrist-worn Electronic Device” or smartwatch. The watch has a central portion consisting of a receptacle for holding a mobile electronic device and first and second strap portions for securing the central portion to the wrist of a user. The first strap portion includes a short-range wireless antenna (e.g. a Bluetooth™ antenna) and the second strap portion includes an accelerometer for detecting movement of the watch. Jonathan’s patent includes a single claim directed to “a receptacle for holding a mobile electronic device and at least one strap portion comprising an antenna”.

Eric is a University of British Columbia electrical engineering graduate who is developing his own smartwatch. He recently raised 2 million dollars in start-up capital on a crowdfunding site and has commenced selling the first commercial version of his product. Eric’s watch has the same structure as Jonathan’s watch, including a receptacle for holding a mobile electronic device, but includes a GPS module in the first strap portion and a GPS antenna in the second strap portion. The GPS module is not yet fully operational since it is designed to work with a European satellite which was launched into the wrong orbit by the European Space Agency.

Advise Jonathan whether he has good grounds for suing Eric or his customers for patent infringement in Canada.

2  8. Briefly explain why the US-based pharmaceutical company Eli Lilly is challenging Canadian patent law pursuant to the North American Free Trade Agreement (NAFTA).

END OF PART II
(Use a new booklet for Part III)
Answer the following questions, citing statutory or case law authority and explaining your reasoning as appropriate. Point form answers are acceptable. [13 Marks]

1. a) List two benefits of copyright registration, and the statutory section conferring each.

2 b) Your client designs a new chair and comes to you for advice to protect the intellectual property in this new chair. Advise your client as to what type of intellectual property should be used to protect this new chair, and briefly explain why. Cite the provision of the Copyright Act that supports your advice, and advise your client of any deadlines that must be observed in seeking intellectual property protection for the chair.

3 c) What is the test for originality in Canadian law. Cite the leading authority. Briefly explain why the standard of originality is important from a policy perspective.

2 d) Susan was a professor and worked as an employee of the University of British Columbia. Susan wrote a set of faculty guidelines for the University in the course of her employment in the year 2000, shortly before her death on 20 August 2001. Who is the author of the guidelines? Who is the owner of copyright in the guidelines? List the date when copyright will expire in the guidelines.

1.5 e) Setting aside the issue of intent, what must an author contribute to a work to be considered a joint author? Cite legal authority.

2.5 f) List two provisions in the Copyright Modernization Act that change Canadian copyright law in a manner that takes into account freedom of speech concerns, and briefly explain how these provisions respect freedom of speech. Cite the section of the Copyright Act corresponding to each.
2. Do the following acts give rise to liability for infringement of copyright or moral rights in Canada if done without the consent of the copyright/moral rights owner? Explain briefly, citing case or statutory authority. Point form answers are acceptable.

Detailed analysis of potentially complicating issues is not expected -- deal with only the single most relevant potential issue and one authority in your response.

[8 marks]

1 a) Rebroadcasting a live telecast of a football game.

1 b) Using Canadian artist K'naan's original musical composition "Wavin' Flag" in support of a politician's campaign, when you know that K'naan supports a different political party.

1 c) Writing down a story that a friend told you orally and publishing and selling copies of that story.

1 d) Photocopying the entirety of the Metro Vancouver White Pages and selling multiple copies.

1 e) Transferring a print of a painting from a paper poster to canvas by lifting the ink off the paper and moving it onto the canvas.

1 f) Using the title of a hit song as the title of a book that you write.

1 g) Baking a cake based on a copyrighted recipe book.

1 h) Posting your own performance of a Celine Dion song on YouTube.

3 3. Briefly describe what the "idea-expression dichotomy" is, and explain the rationale behind this doctrine. Name one test developed in the context of software to help enforce this doctrine and name the case that discussed this test in Canada.

3 4. What must a plaintiff prove to establish copyright infringement? What types of evidence can be adduced to help a plaintiff establish copyright infringement?

What types of evidence can be adduced by a defendant to establish that there was no copyright infringement?
Your client Allison manufactures and sells a line of children's construction toys. The toys are primarily designed for girls, but are similar to toys more historically used by boys, such as LegoTM and other modular construction sets. Allison produces a parody version of the entirety of the Beastie Boys' song "Girls", in which she makes fun of traditional stereotypical toys used by girls, such as dolls and toy cooking sets, and shows images of girls engaging in activities more typically associated with boys, for example building potato cannons and building train sets, using Allison's construction toys. She posts this parody on YouTube to advertise her toys and it goes viral, receiving over six million views after one week.

The Beastie Boys send a nasty cease and desist letter to Allison even though they have actually seen sales of their recordings go up as a result of Allison's video. Allison has come to you for advice.

Briefly advise Allison as to whether she has a defence to the allegation of copyright infringement. Also identify two potential remedies the Beastie Boys could obtain assuming they brought an action against Allison and succeeded, citing authority for each remedy.

END OF EXAM