Lecture 10 – Business Reputation (Pt 2) & Trade Marks (Pt 1)

Business reputation (cont’d)

1. 2nd requirement: Misrepresentation. Review of issues including:
   a. Steps in establishing misrepresentation.
   b. Example: Misrepresentations as to ‘quality’.
   c. Misrepresentation in the context of character merchandising.
   d. Disclaimers: what effect do they have?

2. 3rd requirement: Damage.

TPA causes of action

3. Overview of Sections 52 and 53 TPA.
4. The role of ‘intention to deceive’.
5. Class of persons who may be deceived.
6. Proportionate liability.
7. Remedies.

Trade Marks

8. Introductory remarks: trade marks vs passing off/TPA.
10. What is a trade mark? Review of:
   a. Definition of ‘trade mark’: s17, and related definitions.
   b. Review of case law on what constitutes a trade mark.
   c. The requirement of ‘use’.
   d. The notion of a trade mark being ‘used to distinguish goods or services’.
   e. Section 41 and the notion of ‘inherently adapted to distinguish’.
   f. Review of case law on distinctiveness, including problems such as descriptive trade marks.