

LAW EXAM CHEAT SHEET

JUDGES MAKING LAW

★ First Essay Question

EXAMPLE QUESTIONS

1. Do judges make the law? Should they? Do they have more freedom to make law when applying the common law, compared with statutes? How is their power to make law constrained?
2. "Judges in New Zealand have a remarkable amount of discretion to make law; this is inconsistent with the democracy and the rule of law "

Analyse the extent to which judges have the powers to make law, any limits on that power, and the problems associated with it. Refer to cases studied in the course where relevant.

3. In New Zealand, do judges have unchecked power to make law according to **judicial discretion**?
4. Discuss how the common law, equity, statute law and judicial making is relevant to trade mark law.

HOW JUDGES MAKE LAW

COMMON LAW

- Have freedom to develop the law in response to the changing circumstances of society. → Can set new doctrines of precedents when needed.
- Invent foundational things under common law.
 - ◆ E.g. causes of action, negligence and defamation.
- Example: the tort of 'intrusion into seclusion'
 - ◆ *C v Holland* 2012 saw the high court invent this tort.
 - ◆ Entitled to damages when your reasonable expectation of privacy is breached, e.g. sitting in your backyard and having some take and publish pictures of you.

PASSING OFF

- The tort of passing off is part of trade mark law.
- It developed to protect brands.
- Common law developed this tort to prevent various traders from taking advantage of someone else's brand, and 'passing it off' as their own.
- The tort of passing off was set as a precedent in the case of *Perry v Truefit*

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Padhraic Smyth



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Table of Contents Judges Cheat Sheet 201classroom Law Project

1. Understanding the eBook Judges Cheat Sheet 201classroom Law Project
 - The Rise of Digital Reading Judges Cheat Sheet 201classroom Law Project
 - Advantages of eBooks Over Traditional Books
2. Identifying Judges Cheat Sheet 201classroom Law Project
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Judges Cheat Sheet 201classroom Law Project
 - User-Friendly Interface
4. Exploring eBook Recommendations from Judges Cheat Sheet 201classroom Law Project
 - Personalized Recommendations
 - Judges Cheat Sheet 201classroom Law Project User Reviews and Ratings
 - Judges Cheat Sheet 201classroom Law Project and Bestseller Lists
5. Accessing Judges Cheat Sheet 201classroom Law Project Free and Paid eBooks
 - Judges Cheat Sheet 201classroom Law Project Public Domain eBooks
 - Judges Cheat Sheet 201classroom Law Project eBook Subscription Services
 - Judges Cheat Sheet 201classroom Law Project Budget-Friendly Options

6. Navigating Judges Cheat Sheet 201classroom Law Project eBook Formats
 - ePub, PDF, MOBI, and More
 - Judges Cheat Sheet 201classroom Law Project Compatibility with Devices
 - Judges Cheat Sheet 201classroom Law Project Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Judges Cheat Sheet 201classroom Law Project
 - Highlighting and Note-Taking Judges Cheat Sheet 201classroom Law Project
 - Interactive Elements Judges Cheat Sheet 201classroom Law Project
8. Staying Engaged with Judges Cheat Sheet 201classroom Law Project
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Judges Cheat Sheet 201classroom Law Project
9. Balancing eBooks and Physical Books Judges Cheat Sheet 201classroom Law Project
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Judges Cheat Sheet 201classroom Law Project
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Judges Cheat Sheet 201classroom Law Project
 - Setting Reading Goals Judges Cheat Sheet 201classroom Law Project
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Judges Cheat Sheet 201classroom Law Project
 - Fact-Checking eBook Content of Judges Cheat Sheet 201classroom Law Project
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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