QUESTION 1 (30 marks)

You are a lawyer specializing in intellectual property law. You have been approached by a number of clients who pose the following questions to you. Answer their queries, referring to case law where relevant.

a) Is it possible to register a trade mark in relation to the shape of a product?  
(10 marks)

b) What is the relevance of ‘propriety’ in South African trade mark and copyright law?  
(10 marks)

c) Discuss the requirement in the Copyright Act 98 of 1978, that for the creation of a valid copyright, a work must exist in material form.  
(10 marks)
A.R.R.R Roberts, writing as Don Brine, writes a book titled ‘The Va Dinci Cod’. The story is written in the form of a satirical novel which quickly becomes a bestseller. Roberts is then contacted by Random House Publishers, who allege that Roberts has committed copyright infringement of an existing bestseller published by themselves – The Da Vinci Code by Dan Brown. Roberts alleges that his work does not constitute infringement as it was created merely as a parody of Brown’s book.

Advise him whether this is an available defence, as well as other defences available in terms of the Copyright Act 98 of 1978.