

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer **ALL** Questions.

1. Read the following case on Copyright Law and answer the questions that follows :

The present case is in relation to widely publicized Telugu film entitled 'Sardar Rubber Singh'. This is a film that stars Mr. Savan Kalyan, an actor of considerable renown in the Telugu film industry known as Tollywood. The movie was scheduled to be released on 8th April, 2016. From August 2015 Sardar Rubber Singh was widely advertised. The Plaintiffs themselves admit to having seen posters in January 2016, but waited till March 2016 for the trailer. Sardar Rubber Singh is scheduled for release on 8th April, 2016. The Suit was filed on 24th March, 2016, at the very last minute. Defendant says that Sardar Rubber Singh has been produced with a Rs. 65 Crore budget. It is scheduled for theatrical release in 2000 screens worldwide and over 600 screens in Hindi. Back-to-back distribution and commercial agreements have been executed with several large cinema chains in India, U.S.A. and across the world.

The case was filed on behalf of the plaintiff Aitraaz Khan. The Plaintiff alleged infringement in respect of his film 'Jabaang' on two footings. That is copyright infringement and passing off. Two films were produced by the Plaintiffs Aitraaz Khan. The franchise features Mr. Balwan Khan who was shown as a colourful police officer known as 'Chulbul Pandey'. The first issue is that the Bulbul Pandey character from the Jabangg films has been infringed by the Defendants in their forthcoming film 'Sardar Rubber Singh'. This is a sequel to the Defendants' hugely successful 'Rubber Singh', a remake authorised under a written and undisputed assignment, of the first 'Jabangg' film.

In 2009/2010, the Plaintiff produced and released the first Jabangg film. The film script, story, screenplay and dialogue were written by Anubhav Singh, hired by the Plaintiff Aitraaz Khan on a commission basis for that purpose. The Plaintiffs created the unique character of Bulbul Pandey, portrayed by Mr. Balwan Khan. This character is described as "a corrupt but fearless police officer". According to the plaintiff there are various features that make this character unique they are :

- (a) Bulbul Pandey (portrayed by Mr. Balwan Khan) plays a corrupt but fearless police officer. He lives with his family and has a troubled relationship with his stepfather and half-brother. He calls himself "Robin Hood" Pandey.

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- (b) Bulbul Pandey has his unique, funny and bizarre way of dealing with rogue elements. The character has developed a unique dance style. The entire character of Bulbul Pandey was that of an endearing, loving and funny police officer, a spontaneous and peculiar laugh adds charm to his steps. Bulbul Pandey rides a bike in the movie.
- (c) Bulbul Pandey wears aviators and has a unique style of tucking the aviators on the back of his collar in the Film.
- (d) Bulbul Pandey has a well-built body type, neat close-cut hairdo and handlebar pencil-thin moustache. Though a police officer, he wears a uniform with the top buttons open.
- (e) Bulbul Pandey is a very light hearted police officer who dances with the other police officials at the police station. Even his fighting style has comic elements.”

The Jabang film was extremely successful. This uniquely etched character of Culbul Pandey and it is suggested that this is no ordinary, generic or ‘stock’ police hero.

Some two years later on 21st January, 2011, the Plaintiff entered into an agreement with Rameshwara Arts, a proprietary concern of the Savan Kalyan, for the remake rights of the first Jabang film.

As per the agreement the Assignee obtained absolute rights for remaking the film in Telugu language only. The Assignee will be having absolute rights to exploit the remade version of the film in Telugu Language only all over the world in all dimensions commercially and non-commercially.

As per the agreement the term “Remake Rights” shall mean and included the rights to make a Film based on the Film and/or Script but not limited to the following :

- (a) The right to remake the Film in Telugu Language and for the Territory based on and using the story line, script, scenes, screenplay, dialogues, characters, picturisation, designs, dramatic work, artistic works and names of the characters, passages, title of the Film or any part thereof etc. of the Film in any manners as Assignee may deem fit the Film or the story line of the Film in any manner Assignee so chooses.
- (b) The exclusive right in the intellectual Property of the New Film including but not limited to the Copyright and all other ancillary rights and exclusive rights in the New Film and its underlying works.
- (c) Any and all other rights that are incidental to and are necessary for appropriate utilization of the above mentioned rights i.e. (i) and (ii) of this clause.

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As per the agreement the term “Script” means and includes jointly and severally the story, each script outline treatment, draft, re-write and polish and screenplay of the Film in Hindi with dialogues.

Plaintiffs’ case is that the Rubber Singh character portrayed by Mr. Savan Kalyan is nothing but an avatar of the Bulbul Pandey character portrayed by Mr. Balwant Khan.

If Rubber Singh brought into existence a wholly different persona, then surely its creators and owners have the right to further use that character and persona, no matter what any document said. Other than the name, there is no difference, and anyone seeing Rubber Singh on-screen, played by Mr. Savan Kalyan, will believe that he is seeing Bulbul Pandey albeit with a different visage.

Defendant’s contention is that the name was different. The portrayal was different. The stylization was different. The locales were different. So too were his mannerisms, qualities and, most of all, his core value system, his moral compass : where Bulbul Pandey is fearless but corrupt, Rubber Singh is fearless and honest. This was an adaptation developed distinctively. The script or story line underlying Rubber Singh, is said to have been developed by Mr. Savan Kalyan himself, has an independent copyright. Further they informed that the agreement of 21st January, 2011 relates not to a licence but to an assignment, a very different thing.

The Rubber Singh character for the first Telugu film, though a derivative character, was one that was unique to that particular film. This is reflected by the fact that there is an assignment in perpetuity and with exclusivity. Copyright vested with the Defendants within the meaning of Section 14(a) and (d) respectively of a literary work and a cinematographic film. The rights in the Rubber Singh character are wholly distinct from the rights in the Bulbul Pandey character. The rights in the Rubber Singh character vest in and only in the Defendants.

Defendants claim was not only that the producers had copyright in the cinematography film but that they also owned the rights in the script, and that it was the entirety of all of this material that was assigned.

There is also an argument in passing off that any person watching the Rubber Singh film is bound to recognise in the Rubber Singh’s character as portrayed by Defendant Mr. Savan Kalyan, the Bulbul Pandey character portrayed by Mr. Balwant Khan. It is one thing to say that the

character first portrayed by Mr. Balwant Khan is now being portrayed as an adaptation by Mr. Savan Kalyan. It is quite another thing to say that the two characters are exact and that anyone seeing Mr. Savan Kalyan's performance would think and only think of Mr. Balwan Khan's portrayal of a particular character and none other. Again of this conflation of the two personas, and of the Rubber Singh character having no persona of his own, there is no evidence.

The Court is of the opinion that both Bulbul Pandey and Rubber Singh wear their uniforms in a casual manner are hardly unique. The Rubber Singh character features a police officer who is both fearless and honest. The Bulbul Pandey in the Jabangg franchise is just as fearless, on the footing that we all want our heroes to be fearless, but he is at the same time corrupt, a nod to reality but hardly an aspiration. The setting of the two films is different, the Jabangg films are set in North India while the Rubber Singh films are in the Andhra/Telangana region. There are many other points of distinction too.

Basing on the argument advanced and reasons explained in the present case the Bombay High Court is unable to find for the Plaintiffs on either a prima facie or balance of convenience, as a result the court decline ad-interim reliefs.

Questions :

- (a) Examine the concept of cinematographic film and mention the right provided to performer under the Copyright legislation. (10 marks)
- (b) 'Computer programmes per se not patentable.' Discuss the patentability of computer programmes in India and other jurisdictions. Specify under which law they are protected. (10 marks)
- (c) Explain the term infringement of copyright and highlight any six statutory exceptions there in. (10 marks)
- (d) Discuss the terms Assignment and licenses, explain the procedure and conditions to be followed while entering in to an assignment. (10 marks)

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- (e) Critically analyse all the provisions and grounds established by the defendant to put his case for infringement of copyright ? In whose favour the High Court awarded the judgement.

(10 marks)

2. Read the following case and answer the questions given at the end :

One Shri Rama Krishna Bahadur the appellant in the present case, trading as M/s Om Perfumery, Makerganj, Mahatma Gandhi Road, Bhubaneshwar made an application to the Registrar of Trade Marks to register a trade mark by Digitally signed by name “RAMAYAN” with the device of crown in Class 3 in respect on incense sticks (agarbattis, dhoops) and perfumeries etc.

One Shri Laxman Singh the respondent herein, was a dealer for the sale of the products of the appellant and was also trading as M/s Badshah Industries, Shitkohra, Purohit Colony, Bhubaneshwar. The respondent herein filed a Notice of opposition to oppose the registration of aforesaid trade mark under Sections 9, 11(a), 11(b), 11(e), 12(1), 12(3) and 18(1) of the Trademarks Act, 1999 claiming that the impugned mark, being the name of a religious book, cannot become the subject matter of monopoly for an individual.

The appellant was in the business of manufacturing, trading and marketing of incense sticks since 1981 and the respondent was a dealer of the appellant. The goods under the trade mark “RAMAYAN” have been advertised by him through various means including the publication of cautionary notices in newspapers, extensive use, wide advertisement and the excellent quality of the products. The trademark “RAMAYAN” and the carton in which the products are sold has become distinctive in such a manner that use of the same or similar trademark or carton by any other person will cause confusion and deception in the trade and amongst the public. The sale was done through a network of dealers and distributors. The respondent was one of the dealers of the appellant. After the termination of dealership, the respondent started selling incense sticks under the trademark “RAMAYAN” written in the same style and manner.

The Assistant Registrar of Trade Marks, after holding that the impugned trade mark consists of device of crown and the word “RAMAYAN” is capable of distinguishing the goods and is not included in the list of marks not registrable under the Act, by order dated 31st March, 2004, dismissed the application filed by the respondent.

Taking in to account the trade mark, being the name of a religious book, cannot be a sufficient ground for refusal of registration under Section 9(2) of the Act and is not based on evidence on record that the feelings of any section of the Hindus having been hurt by its use in relation to incense sticks. Further it was submitted that the Assistant Registrar of Trade Marks rightly held that the impugned trade mark consists of device of crown and the word is capable of distinguishing the goods of the appellant and the trade mark is not included in the list of marks not registrable under the Act. It was further claimed that it has already been proved before the Court of Assistant Registrar that the appellant was using the trade mark since 1981 and hence, is the prior user in comparison to the respondent.

Being aggrieved by the order passed by the Assistant Registrar, the respondent preferred an appeal before the Intellectual Property Appellate Board. On January 10th, 2005 the Board, set aside the order passed by the Assistant Registrar of Trade Marks (31-03-2004).

Aggrieved by the order passed by the IPAB (10-01-2005), the appellant has filed this appeal by way of special leave before the Supreme Court of India. Appellant contended that it was unfortunate the Board, misconstrued the observations of the Standing Committee in the Eighth Report on the Trade Marks Bill, 1993. It was also contended that the Board erred in law while setting aside the judgement of the Assistant Registrar of Trade Marks while holding adversely about its distinctiveness, the mark causing deception and not having been used in an honest manner.

The respondent contended that the impugned mark, being name of a religious book, cannot become the subject matter of monopoly for an individual. He further contended that the mark "RAMAYAN" is not a distinctive mark and is devoid of any distinctive character. The mark is capable of distinguishing the goods of one person from those of another. It was also contended that the mark "RAMAYAN" is not registrable since it is name of a famous and well known religious book. It was also claimed that more than 20 traders in Patna and many more are using the trade mark and thus it has become public juris. It was further submitted that the impugned mark is identical with the respondent's mark "BADSHAH RAMAYAN" which is pending registration and the impugned registration will cause harassment to other traders and purchasing public would be bound to be confused and deceived. He further added that his application for the registration of the same trade mark claiming user since 5th November, 1986 is pending for registration.

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The court observed that the word “RAMAYAN” represents the title of a book written by Maharishi Valmiki and is considered to be a religious book of the Hindus in our country. Thus, using exclusive name of the book “RAMAYAN”, for getting it registered as a trade mark for any commodity could not be permissible under the Act. If any other word is added as suffix or prefix to the word “RAMAYAN” and the alphabets or design or length of the words are same as of the word “RAMAYAN” then the word “RAMAYAN” may lose its significance as a religious book and it may be considered for registration as a trade mark. However, in the present case, the court finds that the appellant had applied for registration of the word “RAMAYAN” as a trade mark. It also finds that in the photographs, after adding “OM’s” to the word “RAMAYAN”, at the top and in between “OM’s and RAMAYAN”, the sentence, “Three Top Class Aromatic Fragrance”, is also written. Thus, it is not a case that the appellant is seeking the registration of the word “OM’s RAMAYAN” as a trade mark. Further, from the photographs, it also find that the photographs of Lord Rama, Sita and Lakshman are also shown in the label which is a clear indication that the appellant is taking advantage of the Gods and Goddesses which is otherwise not permitted.

There are many holy and religious books like Quran, Bible, Guru Granth Sahib, Ramayan etc., to name a few. The answer to the question as to whether any person can claim the name of a holy or religious book as a trade mark for his goods or services marketed by him is clear ‘NO’.

In relation to the artistic work said to have been created, there is not doubt that both the marks are identical in design, colour, scheme and the reproduction of photographs is in such a manner that an ordinary buyer would reasonably come to a mistaken conclusion that the article covered by one brand can be the article covered by the other. Both the parties have claimed to be manufacturing units engaged in certain goods.

The respondent claimed that though he had been in the business since 1980, he had developed and published the artistic work in 1986 and has also been using the mark as a trademark and claiming use since 1986 whereas the appellant herein claimed use of the trademark since 1987. However, by filing an application to the concerned authority, the appellant has claimed the use since 1981. Further, in various pleadings in the Title Suits filed by the respondent herein, the appellant herein has admitted the use and publication of the artistic mark of the respondent before the date of claim of the first use by the appellant, that is, 1987. From these facts, it is clear

that the respondent herein was using the artistic mark earlier in point of time to that of the appellant herein.

In view of the foregoing discussion, the Supreme Court of India do not find any irregularity in the order passed by the Intellectual Property Appellate Board consequently, the appeal fails and is accordingly dismissed.

Questions :

- (a) Analyse the judgement of the Supreme Court. Find out the reasons and provisions of law applied by the court in giving such judgement. (5 marks)
 - (b) Do you agree with the order passed by the Assistant Registrar of Trademarks Registry ? Explain the concept of domain names mentioned under trademarks law. (5 marks)
 - (c) Examine the requisites for registration, duration and renewal of trademark as per trademark legislation. (10 marks)
 - (d) Discuss in brief various kinds of mark and mention the provisions in relation to registered user under the Trademarks Act, 1999. (10 marks)
3. 'There are two kinds of opposition in grant of patent.' Discuss the provisions of Pre grant opposition and procedure followed in such situation as per the Patent legislation. (5 marks)
 4. Explain the criminal remedies in case of infringement, piracy or falsification of GI under the Geographical Indications of Goods (Registration and Protection) Act, 1999 ? (5 marks)
 5. Define 'design' and analyse non-registrable designs with examples. (5 marks)
 6. 'Unfair competition is going on in relation to intellectual property.' Discuss the safeguards and multilateral agreements in this regard. (5 marks)