

*Roll No.* .....

**OPEN BOOK EXAMINATION**

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 7*

**NOTE :** *Answer ALL Questions.*

**1. Read the following case study and answer the questions given at the end :**

The plaintiff, Radio Today Broadcasting Ltd. (RTB), wished to run a radio station on the FM band, known as “Radio Today”, and intended to play both film and non-film songs on their radio station. They paid licence fees to the producers of the film and non-film songs, who were members of Phonographic Performance Limited (PPL). However, they did not intend to pay any royalties to the lyricists, composers and other artists, who were members of the Indian Performing Rights Society (IPRS), the defendant. The defendant threatened the plaintiff with violation of copyright law if the songs were played on their radio station, and the plaintiff filed the instant action claiming protection under section 60 of the Copyright Act 1957.

The plaintiff filed the present suit to seek an injunction against the continuance of threats of infringement, and the defendant filed a counterclaim alleging copyright infringement by the plaintiff.

The issue before the High Court of Calcutta was whether the plaintiff radio station was obliged to pay any royalty and/or licence fees to IPRS for the songs broadcasted through its radio station in addition to the licence fees paid to PPL, a society of producers.

The court held, following the Supreme Court decision in IPRS v. Eastern Indian Motion Pictures Association (EIMPA) that though the right of a composer or lyricist in respect of a song that was put into the sound track of a film was “extinguished” when he was paid, he could nonetheless still claim copyright in his song and reserve his right to assign it to others for commercial exploitation of his work in other modes if there was an express agreement between him and the producer of the film reserving his copyright.

In the present case, the plaintiff radio station did not contend that the IPRS members had assigned their exclusive rights to the producers by agreement. The court held that unless it was shown that these exclusive rights of the IPRS members were expressly assigned in favour of the members of PPL, IPRS was entitled to claim royalties from the plaintiff if it wanted to exploit the work by broadcasting the songs on its proposed radio station.

This decision is noteworthy for it affirmed, following the Supreme Court decision in IPRS v. EIMPA, the separate nature of the authorship rights of composers and lyricists in their musical compositions, and the derivative rights of producers in the sound tracks of their movies.

It resolved the misunderstanding that the Indian composers’ and lyricists’ as authors could

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not licence their songs for use with other media once they were assimilated into the producers' films as sound tracks. On the facts, the plaintiff radio broadcaster was held to require licences from both IPRS (representing the composers and lyricists) as well as PPL (representing the producers of both "film" and "non-film" songs) in order to secure permission to broadcast all the songs on their radio station. With the liberalization of the broadcasting industry by the Indian government since October 1999 to grant licences for private FM stations to provide entertainment-related broadcasting services, this decision affirmed the necessity for FM broadcasters to seek both IPRS and PPL licences for the broadcast of music (songs) and pay royalties to both.

**Questions :**

- (a) Discuss briefly the relevant provision of the Copyright Act dealing with the Statutory Licence for Broadcasting of Literary and Musical Works and Sound Recording.
- (b) Explain whether the plaintiff was legally right or wrong.
- (c) As per Section 60 of the Copyright Act, 1957, discuss whether plaintiff was eligible to get remedy in this case.
- (d) Discuss the relevant provision of the Copyright Act dealing with the 'assignment of copyright'. What was observed by the Court in this regard ?

*(10 marks each)*

2. (a) Discuss briefly the grounds for ‘opposition to registration’ and ‘refusal to registration’ of a trademark.

(3+3 marks)

- (b) “Developing countries see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement aims to achieve the transfer and dissemination of technology as part of its objectives, and specifically requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries”.

What is Technology Transfer ? Discuss its significance. Discuss briefly the problems encountered in technology transfer in developing countries.

(2+2+2 marks)

3. (a) “Most people immediately think of cars when they hear the name Nissan, and this is understandable since the company has used the label since the 1970s. In 1994, however, nissan.com was registered for Nissan Computer Corporation. This was five years before the automobile company decided they wanted the domain. Nissan Motors claimed that the domain name constituted trademark dilution, infringement and cybersquatting. This would typically be a valid claim, but the owner of the domain and corporation is named Uzi Nissan. Uzi’s companies are simply titled after his surname. Nissan Motors ended up registering a different domain for their company.”

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What do you mean by cybersquatting ? Did cybersquatting actually occur in this case ?  
Critically examine the Legal Scenario of Cybersquatting in India.

*(1+1+4 marks)*

- (b) “Given the present day scenario where the world seems to be living a dual phased physical and digital life the companies have started to assimilate the value of the IP more than ever before and the IP is now a part of all the major transactions such as business decisions and transactions, and that recognition has increased the demand for IP audits in order to assess the potential and to create a level playing field for the competitors in the relevant market sector.”

What is IP Audit ? Explain the benefits of conducting IP audit.

*(1+5 marks)*

4. (a) Industrial Designs establish the language of a product as well as the corporate branding and identity of an enterprise. What is the difference between an industrial design right and a patent ? What are the advantages to any business of protecting its industrial designs ?

*(2+4 marks)*

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- (b) Ravi Kamal Bali instituted an infringement suit against Kala Tech and Ors seeking an interim injunction preventing the defendant, from making, selling or distributing tamper proof locks/seals as it would be the infringement of his patent. He argued that Kala Tech's perform the same work, in substantially the same manner and gives the same output thereby contributing to the infringement. The plaintiff asked the court to apply Doctrine of Equivalents, while considering the question of infringement of patents.

With reference to this case, discuss the relevant Sections of the Indian Patent Act, 1970.

(6 marks)

5. (a) "Trade secrets, just as other intellectual property rights, can be extremely valuable for a company's growth and sometimes even critical for its survival". Discuss. Also explain what kind of information is protected by trade secrets ?

(3+3 marks)

- (b) In the case of Syed Mohideen v. Sulochana Bai, the Supreme Court of India stated that passing off right is a wider remedy than that of infringement. This is because the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as the business of another person.

Discuss in detail the significant differences between trademark infringement and passing off.

(6 marks)

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6. Section 3(k) of the Indian Patents Act states that “a mathematical or business method, a computer program *per se* or algorithms” are not considered to be inventions. However, it does not impose a blanket ban on patenting computer-related inventions in India. A software can be granted patent if it is attached with novel hardware, an invention which is unique and capable of industrial use.

Why is software not directly patented in India ? Does this help the Indian software business to grow ? Examine critically.

(6+6 marks)

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