

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : *Answer ALL Questions.*

1. Case Study :

Comfort Travel is a brand name for the manufacturer of luxury cars by ComfoCar Ltd. The company is based in Japan. It has earned world-wide reputation of producing varieties of luxury cars. It has presence in many countries across the world. In India it has acquired registration in different classes of luxury cars for its trade mark "Comfo", "ComfoTrvl" and "Comfo Device" during the years 1989-2003. It launched the world-wide world's first commercial hybrid car called "Deception" in Japan in the year 1997 and in other countries like UK, Australia, the USA etc. during the year 2000-01. The company claims to have registered the trade mark 'Deception' in different countries as early as the year 1990 (in Japan) and in other jurisdictions around the world. In India the car was released in the year 2009 and till then the company had not registered the mark in India.

It plans to enter in the Indian market in the year 2008 with new luxury car. The Company discover that the Company ZZZ had not only got the "deception" registered in India way

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back in the year 2002-03 for all types of auto parts and accessories but they had also been using the said trade mark in carrying out trade in such auto parts and accessories. The first party or plaintiff therefore approached the trade mark registry for cancellation of the registered trade mark of the defendant and also filed the suit in the court questioning the other party's using the well-known trade mark of the first party without their authorisation and taking unfair advantage of the reputation and goodwill of the first party earned over a period of time across the globe. Plaintiff prayed for permanent injunction restraining the defendant from using the plaintiff's registered trade mark and permanent injunction restraining the defendant from using the well known unregistered marks "deception".

The defendant replied that they are using the mark 'Comfo', 'Comfo India' and 'Comfo device' on the packaging materials in which the auto parts manufactured by them are packed for the purpose of item identification and nothing more. Since operating in the same area of industry they are supposed to indicate the cars for which the spare parts have been manufactured by displaying the name on the packaging of the products. Therefore, it is honest use under section 30 and therefore protected under the Act.

With regards to the 'Deception' they had registered the mark in year 2002 and continuously using same since the year 2001. They have been regularly supplying the auto accessories to various automobiles giants. By the time they have acquired market reputation for the mark and their services. Since they are operating in India from a time when the plaintiff has not established the product, therefore they are entitled to have the trade mark in their favour.

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In the background of the above facts, analyse the following issues :

Questions :

- (a) What is the nature of Intellectual Property Rights in general and trade mark in particular the territorial or international or both ?
- (b) What are the essentials for a mark to be a well-known trade mark ?
- (c) Can a trade mark which has acquired reputation in foreign State is entitled to acquire trade mark in India ?
- (d) What are the grounds of passing off and infringements ?

(10 marks each)

2. (a) Dr. Albert Costa is Professor and Scientist with TATA Institute of Medical Science, working in the area of molecular biology. During the process of his research with regards to the environmental impact in his lab, he accidentally invents a new micro-organism which eats up the plastic content and converts it to bio product. Hoping that his invention will eradicate the plastic related environmental pollution worldwide, he wants to take the credit for his invention. What kind of Intellectual Property Rights protection he is entitle to ? Give justification if any.

(6 marks)

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- (b) Regenerate Inc. is a Multinational Company operating around the world over and specialises in genetic mutation of the plants and seeds. In India, it has opened its subsidiaries in Ahmedabad. It collects the seeds of tomato plant from traditional farmers from Punjab region and successfully genetically modified it to grow up/cultivate in arid tropical areas of Indian subcontinental. The experiments is a huge successful one. The genetic manipulation of seeds not only makes it suitable for other ecological environment, but also enhances the quality and size of the tomato. Advise them as to how their interest as inventor will be protected under current Intellectual Property Rights regime in India.

(6 marks)

3. (a) Mr. XYZ is a professional photographer hired by the tv channel *Nature & Discovery* to capture the movement of various animals in the jungle and create documentary. Mr. XYZ fixed his camera in different parts of the jungle for 24×7 hours. On the fourth day when he returns back to the place of camera, he discovers that his cameras are uprooted from their places. On search he discovers various selfies of the monkeys on his camera. He takes the credit for the monkey selfie and publishes it across the globe. He is highly appreciated for the photo. PETA, an NGO files

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case against him alleging that it is not his copyright work, but of the moneys, as they clicked the photos by themselves. Decide the fate of copyright authorship and ownership in the given case with proper justifications.

(6 marks)

- (b) During his stay for sociological research at tribal populated area of State A among tribal people, Mr. X discover that the indigenous community are immune from mosquito related infections and diseases. On testing the blood samples, he discovered that their immunity power is comparatively more in comparison to the urban people of the same age in neighbouring areas. Upon further research, he discovered that they consume daily certain herbal leaves of specific plant only found in their region. He shares this knowledge in the article published in the international journal *Nature and Medicine*. Company ABC impressed by the research article investigated and did the research from their end to verify the fact and on confirming the medicinal properties in the plant they started manufacturing medicines with the ingredients of the specific plant and its leaf to enhance the immunity power. Advise them if they can seek patent rights on medicine.

(6 marks)

4. (a) XYZ company has ventured into design work. It provides logistic as well as creates architecture design for their clients. They made a three-dimensional diagram for the new corporate office for ABC Company Pvt. Ltd. in Delhi in 2006, and paid the consideration of ₹ 10 lakh for that. However, it planned in 2016 to work on it and create infrastructure according to the design. To their surprise, they discovered the same architecture design as created by the other builder in making commercial complex. What kind of rights are violated and what is the remedy ?
- (b) Discuss how labour theory is different from the functional theory in justifying the intellectual property.

(6 marks each)

5. (a) Geographical indications serve to recognize the essential role geographic and climatic factors and/or human know-how can play in the end quality of a product. Discuss.
- (b) What are the cases and the legislations you can quote that will justify that trade secrets are protected in India ? Elucidate.

(6 marks each)

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6. Mr. Zubair claimed that around 2006 he wrote the script of the film “Once upon a time” and had it registered with the Film Writer’s Association in Mumbai. He asserted that upon registration, he was accorded a registration number : No.RNA-1856743. He claimed that he was looking out for producers, for conversion of the script into a film when he met Mr. Subhash Kapoor. As per him the meeting took place in and around May-June 2007 and agreed to convert it to movie. The pre-production work for making of the hindi version of “once upon a time”, according to the him, commenced in and about July, 2007. Between July-January, 2008, several other producers had expressed interest in producing a hindi film, based on the script. However nothing happened as all such producers/production houses demanded transfer of entirety of rights in the script, which included derivative works, remakes and versions of films produced by them. Zubair was interested to grant a license to the producer to use his script for the limited purpose of making a cinematograph film in hindi language alone. The shooting of the film “once upon a time” commenced in December, 2008. The film finally completed on August, 2010.

The film received excellent reviews from the critics and also won the Grand Jury Prize at the New York Film Festival, the film, did not do well commercially. As per Zubair the commercial failure of the film was on account of the producers not being able to provide wide publicity to the film. He claimed that since he got to know in March, 2013, that

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the producers are attempting to dub the film in Telugu, Punjabi, Bangla language and also, perhaps, were wanting to remake and/or adapt the said film, albeit, without his prior consent.

Zubair feel betrayal and plan to take action against producer.

Advise him on the following issues :

- (a) Who has the rights with regarding dubbing of the movie ?
- (b) What are the derivative rights ?

(6 marks each)

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