

**NEW SYLLABUS**  
**OPEN BOOK EXAMINATION**

**443**

*Roll No. ....*

*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 carefully and answer the questions given at the end :  
Facts of the case : The plaintiff XYZ Ltd. is a Company publicly listed, organized and existing under the laws of USA, having its registered office at New York. Mr. ABC is duly authorised to sign, verify and institute the present suit. The plaintiff's group of companies is one of the world's most famous and well-known hotel and resort chain group using the trademark **sleepingcat** and its device. The plaintiff's flagship company sleepingcat Resort was launched in 1994 in Laguna Phuket under the trademark sleepingcat and its device. Hence, the mark is inherently distinctive of the business and products of the plaintiff and the continuous use of the trademark sleepingcat by the plaintiff group since the year 1994 has created goodwill and reputation in the said mark that is associated with the plaintiff and the plaintiff alone. The plaintiff Group's services and products under the trademarks sleepingcat and its device have been widely promoted *inter alia* through print and audio-visual media including television programmes, advertisements, articles and write-ups appearing in leading newspapers, magazines, journals, etc. all of which enjoy a wide viewership, circulation and readership all over the world. Many of these forms of media also have a substantial reach and circulation in India and are viewed by millions of Indians who travel abroad or who subscribe to the same in India every year. In addition, many people from all over the world including India access the plaintiff Group's websites : [www.sleepingcat.com](http://www.sleepingcat.com), [www.sleepingcatspa.com](http://www.sleepingcatspa.com),

www.sleepingcatgallery.com, www.sleepingcatresorts.com that have been registered since as early as 1996 and become acquainted with the plaintiff Group's business, services and products which further contributed to the reputation and notoriety of the mark sleepingcat and its device of the plaintiff. The plaintiff Group, being prior in the adoption and use of the mark sleepingcat and its device, is its proprietor and thus, entitled to the use of these marks under common law rights, to the exclusion of all others. Apart from having common law rights in the mark sleepingcat and its device, the plaintiff also has statutory right in the same. It is submitted that the plaintiff has registered or has sought to register the mark sleepingcat and its device in more than 30 countries of the world. The plaintiff is, thus, the registered owner of the trademark sleepingcat as well as the device in various countries.

The defendant Mr. X is the Managing Director of defendant No. 2 which is sleepingcat Tours and Travels (Pvt.) Ltd. having its office at Dadar, Mumbai and at Regal Building, Parliament Street, New Delhi. It is the case of the plaintiff against the defendant that sometime in 2004 it came to the knowledge of the plaintiff that the defendants had applied for registration of the mark sleepingcat under the Trademarks Act, 1999. The plaintiff had filed opposition against the purported registration applications in 2004. The said application were thereafter abandoned in February 2005 since the defendants failed to file any counter statements to the oppositions filed by the plaintiffs predecessor in-title and thus, the cases were closed. In June, 2005 the defendants filed an application with trademark office seeking registration of the mark sleepingcat with device, opposition to which was filed by the plaintiff in May 2006 and September 2006 respectively. While the said applications were under contest before the trademarks registry, the defendant used the trademark for advertising his services. It adopted the website www.sleepingcattours.com which was created on 16th August 2003.

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The plaintiff filed the suit against the defendant use of the trademark on 15 January 2019.

It plead to the court that :

- (1) The adoption of the mark sleepingcat and its device by the plaintiff is much prior to the filing of the application for registration of the mark sleepingcat and its device by the defendants and also much prior to the alleged use of it by the defendants.
- (2) It is submitted that the defendants belong to the same trade/industry and therefore, there exists every reason for the defendants to have been aware of the plaintiffs marks and also the goodwill and reputation of the said marks worldwide.
- (3) The plaintiff submits that there is no way in which the defendants could have honestly or by sheer coincidence adopted such a well known mark for their goods, except for ulterior gains. The conduct of the defendants is totally dishonest and is solely motivated to create mass deception and confusion by running a trade/business under an identical trademark. The defendants' activities are clearly motivated to encash upon the hard earned reputation and goodwill of the plaintiff's well known and recognized trademark sleepingcat and its device.

The following defence were raised by the defendant :

- (1) The plaintiffs have no area of operation from India nor do they have any office in India, while the defendants are a company incorporated within India and have their area operations in India and have been actively conducting business since 1996 without any interruption. The plaintiffs are only trying to take advantage of the goodwill and reputation of the defendants and to encash on the presence of the defendants' business which the defendants have established for the last 12 years in India and abroad under the trademark of sleepingcat and its device.

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- (2) The defendant No. 2 is one of the leading tour and travel companies including camping and adventure sports and lay special emphasis on providing services to suit the clients and to provide such hospitality designed to fit into its natural surrounding, using indigenous resources as far as possible which may reflect the landscape and architecture of the area of travel and also catering to all such needs of clients visiting India and taking the advantage of the facilities and other opportunities available in India with regards to well known tourists spots in India.
- (3) The plaintiffs are conducting a business of hotels, resorts and spas while the defendants are primarily conducting services relating to travel and tourism in India through their company and the trademark sleepingcat and its device. There is no trade connection between the business of the plaintiff and defendants.

*Questions :*

- (a) Can an unregistered mark entitle for trademark protection ?  
(10 marks)
- (b) What are the essential ingredients of 'passing off' ?  
(10 marks)
- (c) Does the court have jurisdiction in the given case ?  
(10 marks)
- (d) Is the current suit barred by limitation ?  
(10 marks)

: 5 :

2. (a) Ajit developed a method of hedge against price fluctuation in energy market. He used a simple concept of mathematics and familiar statistical approach to achieve the above purpose. Ajit termed it as innovative procedure to calculate the risk at this competitive time. Advise him on patentability of his innovation
- (b) Rajesh is a poet and maintains a blog 'poet.blog.com'. He occasionally published his work on websites. He claims copyright infringement due to google's alleged copying and distributing one of his work. Google defend and said that it is using an automated program called Googlebot. The program creates index of the work available on internet. The program created a cached version of the site. The cached version was then included in search result of google search engine. One clicks on the link to the cached version, the user can view a snapshot of the page as it appear at the time the Googlebot found on site. Advise is there any copyright violation of Rajesh.

(6 marks each)

3. (a) Looking at the growth of mobile phones and other electronic devices in Indian market an Indian firm interested to make investment to market integrated circuits in India. The problem is the firm does not have the technology to manufacture IC (Integrated Circuits) therefore the Indian firm is negotiating with an American technology company for signing the technology agreement for IC. Advise the American company how the agreement can be signed between the American company and Indian firm and can American company apply to cancel the registration of Indian firm as a registered user of layout design in future if the American Company is dissatisfied with Indian firm.

(6 marks)

: 6 :

- (b) Texas based Rice Tec Inc. claimed that their invention pertains to a novel breed of rice plants and grains therefore UPSTO granted the patent on 'Basmati Rice Lines and Grains' in September, 1997 after three years examination and accepted all the 20 claims put forward by Rice Tec Inc. What was the consequence when India challenge the patent and why patent granted to three hybrid varieties Bas 867, RTI 1117 and RT 1121.

(6 marks)

4. FACTS : Anand, the news reporter on behalf of the print media newspaper WORLDNEWS approach Alexander for his comments on the Indian foreign policy after the surgical strike of Indian force against Pak Sponsored terrorism. Alexander assured him to provide a piece of article written by him instead of the interview due to paucity of time. His Article was critical of the role of Pakistan and China on terrorism issue. Subsequently, he sends the article to Anand, which he submits to the WORLDNEWS as an editorial article after making certain corrections. The edited version of article is soft on China for his role of international terrorism.

Based on above facts answer the following questions :

- (a) Who owns the copyright on the given piece of article ?  
(b) Is there any violation of the rights of the author of the copyright work ?

(6 marks each)

5. (a) Company ABC is a biotechnology related company. It created a new organism by doing the genetic manipulation with the traditional existing organism. Advice on the patentability of such genetic manipulation.

(6 marks)

: 7 :

(b) Article 1(2) of the Agreement on Trade—Related Aspects of Intellectual Property Rights (TRIPS) states that intellectual property shall include protection of undisclosed information.

Discuss India's National IP Rights Policy for future of Trade Secrets in India.

(6 marks)

6. Company ABC is specialised in the area of creating software as per the needs of the clients. It developed a software which enhance the performance of the computer in terms of speed. Company ABC wants to provide the IPR protection to the software. Please advise on this issue to the company.

(12 marks)

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