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FOR CS PROFESSIONAL EXAM PREPARATION

CS Professional 2024 Question Paper · Intellectual Property Rights - Law and Practice

EXAM
CS Professional

YEAR
2024

TYPE
Question Paper

SUBJECT
Intellectual Property Rights - Law and Practice

DATE
December 2024

NEW SYLLABUS

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Roll No. .....

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 8

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

1. An Indian Book Company is a registered partnership firm carrying the business of publishing Law Books. It publishes and prints various books in the field of law. Among many books published by them Law Reports is one of their publications. The said firm publishes all reportable judgements along with non-reportable judgements of the Supreme Court of India. After the initial procurement of the judgements, orders and proceeding for publication the appellants make copy—editing wherein the judgements, orders and record of proceedings procured, which is the raw source, are copy edited by a team of assistant staff and various inputs are put in the judgements and orders to make them user friendly. The appellants also prepare the head notes comprising of two portions, the short note consisting of catch/lead words written in bold; and the long note, which is comprised of a brief discussion of the facts and the relevant extracts from the judgements and orders of the court.

There is yet another company called Spectrum Business Support Ltd, came out with a software called Grand Jurix published on CD-ROMs. In CD all the modules of the Indian Book Company have been copied verbatim.

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A suit for Copy Right Infringement was filed by the Indian Book Company against the Spectrum Business Support Ltd. The defence of the Spectrum Business Support Ltd was that the judgements published in the Law Journals in India is nothing but merely a derivative work based upon on the judgements of the Courts, which lacks originality and therefore no Copy Right can be claimed by the Indian Book Company. In the light of the above facts of the case :

(*a*) Discuss the concept of originality under Copyright Law as laid down by various judgements of the court.

(*b*) How the right of persons with disability are protected under the Copyright Act 1957 ?

(*c*) Discuss the relation between Copyright Act and Designs Act.

(*d*) Differentiate between the concept of "authorship" and "ownership" in a copyright work under the Copyright Act.

(*e*) Discuss the scope and purpose of IP due diligence under Intellectual Property Rights Act.

(*5 marks each*)

2. A question of adjudication came up before the High Court of Delhi, whether Patents Act, 1970 permits export of a patented invention from India. The petitioner, Bayer Corporation (Bayer) filed a writ petition in the High Court of Delhi contending that Natco was granted

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a Compulsory Licence by the Controller of Patents for the drug 'Sorafenib Tosylate' under section 84 of the Patents Act, subject to certain terms and conditions contained therein, wherein one of the terms was that the Compulsory Licence was solely for the purposes of making, using, offering to sell and selling the drug covered by the patent for the purpose of treating HCC and RCC in humans within the territory of India. However Natco was manufacturing the product covered by the Compulsory Licence for export outside India and that the export by Natco was contrary to the terms of Compulsory Licence and amounted to infringement of the patent within the meaning of Section 48 of the Patents Act.

Natco filed a counter affidavit in the writ petition inter alia pleading (*a*) that Natco had not exported any product (subject matter of Compulsory Licence); (*b*) that under the scheme of the Drugs and Cosmetics Act, 1940 (Drugs Act) permission was routinely granted for export to various countries upon compliance of certain conditions and that there were similar provisions in the western countries including Europe; (*c*) that the Patents Act also provided that export of a patented product for generation or submission of regulatory permission was not an act of infringement.

Bayer contended that, the acts of a non-patentee (Natco) of making, using offering for sale, selling patented products would be infringement of patent and that the patentee was entitled to approach the Courts to prevent the non-patentee from doing the said acts.

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Natco argued (*i*) that the exports intended by Natco were only for research and development purposes and for obtaining the drugs regulatory approvals in the countries to which exports were intended (*ii*) that Natco was not intending export of the product covered by the Compulsory Licence for commercial purposes and that research and development activity with respect to patented drugs, for which submission of data to the Drug Regulatory Authority.

In furtherance to this an issue was raised during the proceedings in the Court related to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). India as a party to the TRIPS agreement has agreed to give effect to the provisions thereof without being obliged to implement in its law more extensive protection than is required by it, provided that such protection does not contravene the provisions of the TRIPS Agreement. Else, India is free to determine the appropriate method of implementing the provisions of the TRIPS Agreement within its own legal system and practice. The objective of the TRIPS Agreement, as per Article 31 of the TRIPS Agreement, member countries may allow use of patented product/process for certain purpose, vide Clause (f) which provides that such use should be predominantly for the supply of the domestic market of the member country authorizing such use. The submissions of both the parties traverse the contours of the Patents Act and TRIPS Agreement. Answer the following questions.

(*a*) Is Natco liable for infringement. Decide.

(*5 marks*)

(*b*) Discuss the relevance of Art. 31 (f) of the TRIPS Agreement in the instant case.

(*5 marks*)

(*c*) Explain the concept of working of patented inventions with special reference to life saving drugs.

(*5 marks*)

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(*d*) Company A has got registration for its new design of bottles for soft drink but after substantive examination it was found that the design is not new or original. Discuss grounds of cancellation of registration.

(*5 marks*)

(*e*) What are the various provisions under Indian Laws governing Patenting of Bio-technology ?

(*5 marks*)

3. In the Territory of India there are different States and each State has different culture, follow different dressing pattern, different food habits and preparation of different dishes peculiar to different States. Accordingly there is a dispute between Odisha and West Bengal regarding their popular sweet desert called "Rasagulla". For the purpose of getting GI The West Bengal State Food Processing and Horticultural Development Corporation Ltd have moved to Chennai Registry of GI and accordingly the latter has granted GI to West Bengal with a brand name of Banglar Rasagulla tag in the year 2017. The decision was made by Registrar primarily based on the confidence with the product as the same is ancient and traditional with regard to its quality, taste, popularity, peculiarity of its availability in different parts of the country with its brand name Calcutta Rasagulla. The Calcutta Rasagulla is otherwise known as Banglar Rasagulla. It has the following features. White in colour, Spongy in Texture, Syrupy sweet dessert in Taste. This was made by Nobin Chandra Das a renowned sweet producer of Bengal at his home Bagbazaar, Kolkata. Later on an application was filed in the year 2018 by State of Odisha through its Odisha Small Industries Corporation Ltd and Utkal Mistanna

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Byabasayee Samiti. Their contention is that the Odisha Rasagola is famous for its flavour, texture and colour. The said sweet is very soft in nature, brown in colour and also not overly sweet. The Odisha Rasagola is distinctive in nature due to overall qualities. Over and above this the said sweet dish has been mentioned in historical literature written about Odisha indicating the geographical origin of the meal to this Region. It is in prevalent since 12th Century, distributed at Lord Jagannath Temple, Puri, Brown in colour, soft and tender and last but not the least not very sweet and it is called as Odisha Rasagola. Based on the application made by Odisha Small Industries Ltd and another the State of Odisha has received a GI designation for the "Odisha Rasagola".

(*a*) Whether the Registrar of two States for GI is in order to Register GI for West Bengal Rasagulla called Banglar Rasagulla and Odissa Rasagola in the light of similarity in names which is confusing the general public and popularity of Calcutta Rasagulla in general.

(*b*) What are the grounds under which protection granted to the breeder can be revoked under Protection of plant varieties ?

(*c*) What are different types of technology transfer agreements and their essential elements ?

(*d*) What are the measures that include in the traditional knowledge associated with generic resources, related access and benefit sharing issue ?

(*e*) What is trade secret ? How are trade secret protected ?

(*5 marks each*)

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4. A Company named Ramsung manufacture Automobile under the name **Roi Jaguar**. The Ramsung Company is engaged in the manufacture of a wide range of automobile products including diesel engines, generating sets, agro equipments, construction equipments and road construction equipments. The General Manager of Ramsung is tasked to protect its brand in accordance with Indian law. At one point, the General Manager left the company. Soon after he left, Ramsung Company discovers a very similar product in the Indian market in the name of **Roi Lynx**. Both brands thus exist with the same word followed by the name of a species of big cat. After some research, Ramsung finds out that after quitting the job, its former General Manager has started competing against it with very similar products.

A suit for permanent & mandatory injunction, was filed. It is claimed that the word/mark Rio Jaguar is an essential and prominent feature of plaintiff 's trade name. It is alleged that defendant is engaged in a business which is similar to the business of the plaintiff company and is dealing in products as that of the plaintiff company.

In view of the above information, answer the following questions :

(*a*) Whether the plaintiff will get injunction against the defendant.

(*5 marks*)

(*b*) What are the factors to be kept in mind to decide the question of deception under the Trademark Act, 1999 ?

(*5 marks*)

(*c*) Discuss the significant differences between trade mark infringement and passing off.

(*5 marks*)

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(*d*) In the course of conducting an intellectual property audit, the audit team discovers that few employees are subject to written agreements with the company although many have access to highly proprietary information. Moreover, the audit team has discussed with the hue the purchased another company two years ago but has not filled any documents to notify any statutory agencies that it is now the owner of various intellectual property assets. What should the audit team advise the client with regard to these matters ?

(*5 marks*)

(*e*) Whether SBB (State Biodiversity Board) can advise the State Government regarding biodiversity conservation ? If so, whether the authorities may be compelled to reconsider the land acquisition of a biodiversity rich area for commercial activities ?

(*5 marks*)

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