

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **CAL-I: Fundamental Rights and Social Justice**
Semester-I (Batch: 2013-14)



End Term LL.M. Examination: November-2013

Date: 18th November, 2013

Duration: 3 hours

Max. Marks: 70

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Constitution of India Bare Act not allowed.**

Marks

Answer any seven of the following questions.

- Q.1 "The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting". Examine the role of Supreme Court of India in expanding the horizon of the term "other authorities" in Article 12. (10)
- Q.2 Explain the meaning of doctrine of eclipse. Discuss the role of judiciary in evolving the said doctrine. Does the doctrine apply to post-constitutional laws? (10)
- Q.3 "The Fundamental Rights and Directive Principles constitute the 'conscience of the Constitution...' There is no antithesis between the Fundamental Rights and Directive Principles. They are complementary and supplementary to each other." Discuss the role of Supreme Court of India in strengthening the inter-relationship between fundamental rights and directive principles of state policy. (10)
- Q.4 Explain the meaning of the term "*to be a witness*" as interpreted by the Supreme Court of India in its various judgements. (10)
- Q.5 Dr.D.Gopal was the Director of Indian Institute of Medical Sciences (in short the "IIMS") immediately prior to the commencement of the Sub-section (1A) and by virtue of the legislative command contained in the Sub-section (1A) he had been made to demit his office as Director of the said Institute from the date of coming into force of this added provision. IIMS is a statutory autonomous body wholly financed by the Government of India. (10)

Dr. Gopal claims that he was a Gold Medalist in his batch of MBBS, passed out from the IIMS itself and thereafter he acquired additional qualifications in cardio vascular surgery and that he served the Institute for about three/four decades with honesty and respect without any blemish. Dr Gopal was to complete his five-year term in the Office of the Director on 2nd of July, 2008, but due to insertion of Sub-section (1A) he had to suffer a pre-mature termination and consequent removal from the office of the Director

on 30th of November, 2007. Sub-section (1A) with its proviso added to Section 11 of the IIMS (Amendment) Act, 2007 reads as follows:

(1A) - The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Provided that any person holding office as a Director immediately before the commencement of the Indian Institute of Medical Sciences and the Post-Graduate Institute of Medical Education and Research (Amendment) Act, 2007, shall in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Director and shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of his office or of any contract of service....

Dr. Gopal filed a writ petition before the Supreme Court of India challenging the constitutional validity of Sub-section (1A) of the IIMS (Amendment) Act, 2007. Frame the relevant issues and decide the writ petition.

- Q.6 Articles 15 and 16 of the Constitution of India has been amended on various occasions. Discuss the reasons behind such amendments. How far, in your opinion, such amendments fulfils the dream of the framers of Indian Constitution. (10)
- Q.7 Discuss the following case: (10)
- State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors 2006
- Q.8 Write short notes on the following: (10)
- i. Right against delayed execution
 - ii. Right to die as a fundamental right
- Q.9 "The Pai Foundation decision raises more questions than it has answered. The principles laid down by the majority in Pai Foundation are so broadly formulated that they provide sufficient leeway to subsequent courts in applying those principles while the lack of clarity in the judgment allows judicial creativity ...". Discuss the law laid down by the Supreme Court of India in P.A.Inamdar case in light of the said statement. (10)

Q.6 The plaintiff was a registered partnership firm dealing in utensils having its office at Loharpura, in Amritsar City. Rukmi Dutt and Pooran Chand are the two partners of the firm at present. One Mahabir Prasad Vishwakarma of Mirzapur obtained a patent No. 42514 of 1999 under the Patent Act in respect of the process of manufacture of hollow wares, such as 'lotas', 'batwas', 'degchis', 'batlois' etc., under a registration certificate dated the 7th August 2000 issued by the Patent Office. Mahabir Prasad Vishwakarma was thus said to have an exclusive right to manufacture hollow wares of the former description by the patented process and he was said to have been using the above patented process for the manufacture of the aforementioned hollow wares. The plaintiff firm alleged that the utility of the process having been ascertained, they at first obtained a licence from the original patentee Mahabir Prasad Vishwakarma on the terms and conditions given in the agreement dated 2-4-2001 and started manufacturing 'lotas', 'batwas', 'degchis' etc. after the said licence. On 10-5-2002 the plaintiff firm purchased the above-mentioned patent from the original patentee Mahabir Prasad Vishwakarma on payment of a consideration of Rs. 1,60,000/-. They thus became the sole proprietor of the patent since the date of the purchase and have been using it. (08)

An entry of assignment in favor of the plaintiff firm is said to have been made in the registers of the Patent Office. The plaintiff further alleged that various publications relating to the patented process and the articles made there from were issued through circulars, market reports, newspapers etc. in order to give it publicity. The plaintiff's case was that in the last week of July 2004 the three persons/ individuals Mr. X, Y, and Z (defendants) approached the plaintiff for a licence to manufacture utensils with the patented process at village Bandhua in district Gurdaspur. A demonstration of the process was given to them at the plaintiff's workshop and the plaintiff further promised that they will be given every facility in the manufacture of hollow-wares. Mr. X, Y, and Z did not take any licence but on the contrary started manufacturing utensils with the patented process stealthily. Sita Ram and Babu Ram of village Bandhua obtained a licence from the defendants on 6th of August 2004. 16 other persons of the same place have also been authorized by the said Sita Ram Babu Ram, according to the terms of the licence, to use the patented process for manufacture of hollow-wares. On serving of notice to refrain from doing so, they continue to infringe the rights of plaintiff. They raised following pleas in the court for justification of their acts:

▪ The suit is not maintainable because only the patentee is entitled to sue against any infringement of the patent.

▪ The people of Bandhua know the art of manufacturing the utensils 100 yrs before the plaintiff took the patent.

▪ The patent given to the plaintiff does not involve any inventive step & hence their patent should be revoked unconditionally.

Carefully study the facts given above & answer citing suitable provision of law & authorities:

a) Whose claim is more appropriate?

b) Whether pleas raised by defendant are correct as per law?

Q.7 With the advent of the digital media & its ever growing speed, how do you see present IPR legislation protecting victims against, digital piracy, cyber squatting, and theft of designs in India? Explain citing suitable example & legal provisions. (05)

Q.8 In December 2009, the plaintiff applied for registration of its series trade mark "JCBMiller India – JCBMILLER INDIA" under the Trademarks Act, 1999 –for Class (07)

of glass bottles and beers etc. It also obtained registration for a design to be applied on its beer bottles under the Design Act, 2000 on 15th January 2010. Subsequently, the plaintiff introduced in India its beer bottles (bearing the registered design and also bearing JCBMILLER INDIA). It is pertinent to note that the plaintiff used to sell and distribute beer by filling beer into its recycled bottles and not into new bottles. The practice of using one's own recycled bottle was a common trade practice.

Prior to its series trademarks being successfully registered, the plaintiff found that the defendants ABC was manufacturing, selling and distributing beer in bottles having the plaintiff's registered design as well as bearing the name JCBMILLER INDIA. This led the plaintiff to sue the defendant for design infringement and passing off. The suit was initiated before the District Court of MP, where the defendants argued that such a use was unintentional and accidental. Plaintiff reached the High Court of MP through an appeal. The High Court of MP, after extensively hearing the case, dismissed the plaintiff's appeal.

Later in 2011, the plaintiff got its designs & TM registered from office of Mumbai, and found that the defendants are still infringing its designs & TM. Aggrieved thereby the plaintiff seeks your advice as to following questions of law. Give your able advice citing suitable provision of law with support of authorities:

- a) Whether the present suit is barred due to *res judicata* since the MP High Court had already decided on design infringement and passing off?
- b) Would the exceptions under Section 30(1) and Section 30(2) of the Trademark Act, be applicable in the present case?

Q.9 Discuss post TRIPS impact on Indian IPR legislation. (05)

OR

General principles governing IPR under TRIPS

Q.10 Differentiate between: (05)

- (a) Brand mark & Trade mark
- (b) Infringement & passing off

Q.11 Write Short Note on following: (06)

- (a) Biopiracy
- (b) Bioprospecting
- (c) Locarno agreement

OR

Define following terms under IPR legislations:

- (a) Trade description
- (b) Design
- (c) Deceptively similar
