

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: Introduction to Laws of IPR & International Intellectual Property
Organizations
Semester- I (Batch: 2022-23)**

End Semester Examination: November 2022 (LL M)

Date: 28th Nov, 2022

Duration: 3 hours

Max. Marks: 50

Instructions:

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

Marks

- Q.1 Identify the theory from the given statement and discuss the same. (5x2=10)
- a) 'A person who labours upon un-owned resources has a natural right to the fruits of his efforts and that the state has a duty to respect and enforce that natural right'
 - b) 'Maximum benefit of the maximum members of the society should be guaranteed by the law in force and in the regulations made thereunder.'

- Q.2 ABC Industries Pvt. Ltd. (hereinafter plaintiff) are manufacturers of a variety of stationery products including writing instruments and Prarthana Stationers as well as Pooja Instruments Ltd. (hereinafter Defendants) are manufacturers, traders and sellers of stationery products. Plaintiff has filed a suit for permanent injunction restraining the defendants from manufacturing, selling, advertising, trading, dealing either directly or indirectly an identical duplication or obvious and/or fraudulent imitation of the plaintiffs' copyright in the registered design of their in a writing instrument (ball point pen) called *Write well*. According to the plaintiff, the novelty of its design lies in the shape and configuration of the pen which registered in the year 2019. (5x2=10)

The plaintiff pleaded that under Section 22 of the Designs Act, 2000 (hereinafter Act) which provide that during the existence of the copyright in any design, no other person shall use the registered design for commercial purposes, sale of the article, etc., being a design, which is identical or an imitation of the registered design of the plaintiff.

The plaintiff claimed that its pen design had two unique features: 1) The main body of the ball point pen is placed in a transparent plastic box, which gives an excellent grip; 2) The ball point used is sharp enough to give clarity in writings. Accordingly, the plaintiff's product appeals to the customer's eye, as per Section 2(d) of the Industrial Designs Act 2000.

The Defendants contended that the features which are alleged by the plaintiffs to be their exclusive creation and being different parts of their registered design have been used by them from their own earlier designs commencing from the year 2011. Thus, as

per section 4 of the Act, the plaintiff's product falls under the category of designs that cannot be registered.

Based on the information stated above, answer the following questions considering the relevant provisions and case laws:

- a) Identify and evaluate the interplay between section 4 and 19 of the Industrial Designs Act 2000.
 - b) Enlist and analyze the factors that were considered by the court in determining whether there was an act of design piracy in this case?
- Q.3 The inventions based on traditional knowledge (TK) may benefit from patent, trademark, and geographical indication protection or be protected as a trade secrets or confidential information. In light of the above statement, how is traditional knowledge defined under the Convention of Biological Diversity? With the help of relevant provisions, critically analyses the legal framework of laws in India for the protection of traditional knowledge. (Write in 300 – 400 words) (4)
- Q.4 The ICMAR, Kisan Bhawan, Dr Annie Besant Road, New Delhi-110001, had approached you to register their plant variety of the crop: Lentil (*Lens culinaris Medik*) under the denomination, Azad Masoor. The essential characteristics of the plant variety include that it is a medium plant height, it has an erect growth habit. The stem has anthocyanin colouration. It has a medium leaflet size and foliage intensity with violet flowers. The plant has brown seeds of medium size. With the help of the relevant provisions of the Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Protection of Plant Varieties and Farmers' Rights Rules, 2003, answer the following questions of your client: (3x2= 6)
- a) Is the plant a registrable variety under the Protection of Plant Varieties and Farmers' Rights Act, 2001? What are the conditions to register it?
 - b) What procedure has to be followed to register plant variety in India for a farmer and a community, along with relevant documents? (Write in 500-600 words)
- Q.5 Write Short Notes (**Any Two**) (300 Words each) (3x2= 6)
- a) Article 5 of the International Convention for the Protection of New Varieties of Plants, 1961, lays the 'Conditions of Protection' of the plant variety, as that the breeder's right shall be granted where the variety is (i) new, (ii) distinct, (iii) uniform and (iv) stable. Trace this provision's similarities with the relevant provisions of the Protection of Plant Varieties and Farmers' Rights Act, 2001.
 - b) Farmer's and communities' rights under the Plant Varieties Act 2001.
 - c) The United States, Uniform Trade Secrets Act (Drafted by the National Conference of Commissioners on Uniform State Laws, as amended 1985).
- Q.6 What is a Trade secret? Although India has no exclusive trade secrets law, the Indian parliament has protected trade secrets under various other statutes. Explain. (Write in 300 – 400 words) (4)
- Q.7 The World Intellectual Property Organisation (WIPO) administered systems of international protection significantly simplify the process for simultaneously seeking (10)

Intellectual Property (IP) protection in a large number of countries. These systems of international protection include three different mechanisms of protection for specific industrial property rights. On the other hand, applicants for national or international IP protection are required to determine whether their creation is new or owned/claimed by someone else. To determine this, a huge amount of information must be searched. International classifications facilitate such searches by organizing information concerning inventions, trademarks and industrial design into indexed manageable structures for easy retrieval.

In the light of the above statement, analyse the role and significance of the global protection and classification system provided for the trademark and its incorporation in Indian law. Also, state and discuss the features of such systems for international IP protection.
