

Flow Chart

How to Proceed for the 50 marks Case Study in the Exam?

You should attempt Q1. after completing Q2. to Q6. So that you can attempt the same with free mind and ample time in hand.



Read the Question first and not the passage because it is better to know the destination before starting the journey.



After reading the question, try to understand and analyze that in what combination of chapters, the questions are given in the paper.



After analyzing and depicting about the specified chapters covered, then go for reading the passage.

Note from the Author:

The 50 marks case study can be theoretical or practical based or a combination of both. The presentation of answer runs parallel to the content. There has to be a balance between Quality and Quantity of answers.

INTELLECTUAL PROPERTY RIGHTS – LAW AND PRACTICE
(Elective Paper 9.4)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

Read the following case on Copyright Law and answer the questions that follows :

The present case is in relation to widely publicized Telugu film entitled 'Sardar Rubber Singh'. This is a film that stars Mr. Savan Kalyan, at actor of considerable renowned in the Telugu film industry known as Tollywood. The movie was schedule to release on 8th April, 2016. From August 2015 Sardar Rubber Singh was widely advertised. The Plaintiffs themselves admit to having seen posters in January 2016, but waited till March 2016 for the trailer. Sardar Rubber Singh is scheduled for release on 8th April, 2016. The Suit was filed on 24th March, 2016, at the very last minute. Defendant says that Sardar Rubber Singh has been produced with a Rs. 65 Crore budget. It is scheduled for theatrical release in 2000 screens worldwide and over 600 screens in Hindi. Back-to-back distribution and commercial agreements have been executed with several large cinema chains in India, U.S.A. and across the world.

The case was filed on behalf of the plaintiff Aitraaz Khan. The Plaintiff alleged infringement in respect of his film 'Jabaang' on two footings. That is copyright infringement and passing off. Two films were produced by the Plaintiffs Aitraaz Khan. The franchise features. Mr. Balwan Khan who was shown as a colourful police officer known as 'Chulbul Pandey'. The first issue is that the Bulbul Pandey character from the Jabangg films has been infringed by the Defendants in their forthcoming film 'Sardar Rubber Singh'. This is a sequel to the Defendants' hugely successful 'Rubber Singh', a remake authorised under a written and undisputed assignment, of the first 'Jabangg' film.

In 2009/2010, the Plaintiff produced and released the first Jabangg film. The film script, story, screenplay and dialogue were written by Anubhav Singh, hired by the Plaintiff Aitraaz Khan on a commission basis for that purposes. The Plaintiffs created the unique character of Bulbul Pandey, portrayed by Mr. Balwan Khan. This character is described as "a corrupt but fearless police officer". According to the plaintiff there are various features that make this character unique they are :

- (a) Bulbul Pandey (portrayed by Mr. Balwan Khan) plays a corrupt but fearless police officer. He lives with his family and has a troubled relationship with his stepfather and half-brother. He calls himself "Robin Hood" Pandey.
- (b) Bulbul Pandey has his unique, funny and bizarre way of dealing with rogue elements. The character has developed a unique dance style. The entrie character of Bulbul Pandey was that of an endearing, loving and funny police officer, a

- (d) Discuss the terms Assignment and licenses, explain the procedure and conditions to be followed while entering in to an assignment. (10 marks)
- (e) Critically analyse all the provisions and grounds established by the defendant to put his case for infringement of copyright ? In whose favour the High Court awarded the judgement. (10 marks)

Answer 1(a)

According to Sec. 2 (f) of Copyright Act, 1957 – 'Cinematograph Film' means any work of visual recording and includes a sound recording accompanying such visual recording and 'Cinematograph' shall be construed as including any work produced by any process analogous to cinematography including video films. Thus, the term cinematographic film includes a video film which has been recorded in a VCR. [Entertaining Enterprises and Others v. State of Tamil Nadu and Others, AIR 1984 Mad 278]

The Bombay High Court in Fortune Films International v. Dev Anand and Others AIR 1979 Bom 17, held that in view of the definition of "artistic work", "dramatic work" and "cinematograph film", it would appear that the Copyright Act, 1957, does not recognize the performance of an actor as 'work' which is protected by the Copyright Act.

To overcome the lacuna in the law as pointed out in the aforementioned judgement of the Bombay High Court in relation to the protection of actors, the Act was amended in the year 1994 and a new concept of performer's rights was introduced into the law.

Performer's Right

Section 38 (as substituted in the year 1994) provides that where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. The performer's right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made.

Exclusive Right of Performer

As per section 38A without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of the Copyright Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:-

- (a) To make a sound recording or a visual recording of the performance, including-
- (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
 - (ii) issuance of copies of it to the public not being copies already in circulation;
 - (iii) communication of it to the public;
 - (iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;
 - (v) to broadcast or communicate the performance to the public except where the performance is already broadcast.