

GX 1826

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2002/2003

Exam Code(s)	2BL1, 2BL2, 2CW1, 3BA1, 3CL1, 3BC1, 3BL1, 3BL2, 3CW1, 4BA4, 4BC2, 4BC3, 4BC4, 4BL2
Exams(s)	2 nd 3 rd & 4 th LL.B 2 nd & 3 rd Bachelor of Civil Law 3 rd & 4 th Bachelor of Arts 3 rd & 4 th B.Comm. Degree Erasmus & Occasional Students
Module Codes(s)	LW356
Module(s)	Industrial & Intellectual Property Law
Paper No.	
Repeat Paper Special Paper	
External Examiner(s)	Mrs. Charlotte Waelde
Internal Examiner(s)	Professor Liam O'Malley
<u>Instructions</u>	Answer any THREE questions. All questions carry equal marks.
Duration	TWO Hours Erasmus student have 2½ Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	
No. of Pages	5
Department(s)	Law

1. Answer EITHER part 1(A) OR part 1(B).

1(A) Advise, with reference to case or statute law as appropriate, on the copyright issues arising in the following situations:

- (i) University Press Ltd (the 'Company') planned to include a 35-page extract from the work of a famous deceased author in an anthology of Anglo-Irish literature that the Company proposed to publish. When the Company sought permission from the representatives of the author's estate, it was quoted an exceptionally high licence fee. The work itself had been temporarily out of copyright following the expiration of 50 years from the author's death, but copyright was renewed five years later when the duration of copyright was extended to the life of the author plus 70 years on the transposition of an EC directive. In the interval, when the work was out of copyright, the Madigan Press Ltd published an edition (the 'Madigan edition') of the author's work that was criticised by some for its sloppy editing. University Press Ltd approach you for advice (a) as to whether it will be entitled to avail of a much cheaper licence deal for an extract from the Madigan Press edition, and if not, (b) whether, in publishing an extract from the author's original work, the Company will be able to raise the defence that the extract was not in any event a substantial part of the deceased author's work.
- (ii) Julia, a successful author of novels and short stories, was upset when she went to see a new play – *The Fall of Darkness* – at her local theatre. The play, she alleges, was strikingly similar to her short story – *As the Moon Grew Dim*. When pressed, she admitted that there was no copying of large amounts of her text. She insisted, however, that seven of some ten 'episodes' were the same or very similar in both, and the tone and character of the play's dialogue was very similar to that used in her short story. Advise Julia.

OR

1(B) The Copyright and Related Rights Act, 2000, provides that 'the author of a work' will have certain moral rights. Briefly explain the justification for such rights, their scope, and their practical relevance for users and licensees of copyright material.

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2. Answer EITHER part 2(A) OR part 2(B).

2(A) Section 17(2) of the Copyright and Related Rights Act, 2000 states that 'copyright subsists, in accordance with this Act, in (a) original literary... works'. Examine, with reference to case law where appropriate, the requirements which need to be fulfilled before copyright will subsist in a literary work, and explain how these requirements apply to a compilation, if at all.

OR

2(B) Advise, with reference to case or statute law as appropriate, on the copyright issues arising in the following situations:

- (i) Johnny Jones has been chosen to sing a Eurovision song written and composed by Alfie Duke called *Corrib Love*. After the song was performed on television, many callers complained that the song was very like a previous Eurovision winner - *Sally Garden Blues*, by Geoff McCall. Although the lyrics are different, both are love songs, have a similar 'upbeat sound', and there are two short musical phrases of the chorus which are the same in both. Alfie Duke insists his work was an independent creation, and that he had no recollection of the earlier McCall song. There has also been a threat of legal proceedings from the naturalist, Dr A. Goodman, who claims copyright in the words 'Corrib Love', which he has used as a title for his book on the ecology of the Corrib river and lake.
 - (ii) Provincial Press Ltd approached local TV and Radio stations for permission to publish radio and TV programme listings in a number of its provincial papers. Permission has been denied, and the company approaches you for advice as to whether they will be in breach of copyright if they proceed to publish the listings without licence.
3. One of the central problems of patent infringement is the determination of the scope of protection of patents granted. Although section 45 of the Patents Act, 1992 states that the extent of patent protection 'shall be determined by the terms of the claims; nevertheless, the description and drawings shall be used to interpret the claims', the application of this provision and its Interpretation Protocol is neither simple nor uniform. Discuss

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4. Answer **EITHER** part 4(A) **OR** part 4(B).

4(A) Critically assess the tests applied by the courts to determine the presence of an inventive step required for the grant of a patent under the Patents Act, 1992.

OR

4(B) Advise as to patentability in the following hypothetical situations:

- (i) Mr Wilson developed a new type of trainer cup for infants. It has a valve in the lid that opens when the baby sucks, and closes when it stops. It is 'spill-proof' and a preliminary check has failed to find any such patent for a trainer cup. Preliminary research strongly suggests that it will be a great commercial success.
- (ii) Research Inc has developed a technique for isolating and reproducing human gene sequences that can be used in cancer research. The technique does, however, involve human biological material, and the underlying genetic code is available on the Internet.
- (iii) Minerva Ltd has developed a new slimming product which, if used as part of its ten-week slimming method, is alleged to be very effective. It is discovered that it also has useful therapeutic qualities with regard to the treatment of certain intestinal diseases.

5. Answer **EITHER** part 5(A) **OR** part 5(B).

5(A) Section 10 of the Trade Marks Act 1996 provides as a ground for the refusal to register a mark that it is an identical mark to an earlier trade mark, which was registered in relation to similar goods or services, or a similar mark to an earlier trade mark, which was registered in relation to identical or similar goods or services and

'there exists a likelihood of confusion on the part of the public, which includes the likelihood of association of the later trade mark with the earlier trade mark'.

Section 14 similarly provides that a trade mark will be infringed where a person uses in the course of trade an identical sign in relation to similar goods or services, or a similar sign in relation to identical or similar goods or services where

'there exists a likelihood of confusion on the part of the public, which includes the likelihood of association of the sign with the trade mark'

Analyse and discuss the meaning of 'likelihood of association' in these sections.

OR

5(B) Critically examine the extent to which the Industrial Designs Act, 2001 has altered the legal regime governing designs in Ireland. To what extent, if at all, has it satisfactorily resolved the overlap between copyright and design protection in regard to utilitarian or industrial products?

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6. Write brief notes on any **TWO** of the following:
- i. Patent protection for computer software;
 - ii. Passing Off as an alternative to Trade Mark protection;
 - iii. Short term patents in Irish law;
 - iv. International convergence in intellectual property law;
 - v. Confidence or Trade Secrecy in intellectual property protection;
 - vi. The novelty requirement in patent law.

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