

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination October-November 2023

Semester: LLM-IPR I Semester

Subject: General Principles of Intellectual Property Law and Policy

Time: Three Hours

Marks: 100

**Instructions:**

- (1) This question paper contains six questions. You must answer any **four** questions according to the instructions given with each question.
- (2) In this examination no materials, aids and instruments are permitted.
- (3) No electronic devices including smartwatches are allowed in this examination.
- (4) You must start each answer by clearly identifying to which question they are responding.

Q.1).

Gypsophila is a flower that normally is white in colour and is commonly called Baby's breath or Chalk plant. Two rival plant breeders were involved in a dispute in relation to the Gypsophila plant variety. On 13 July 1998 Danziger obtained a European Community (EC) plant variety right (EU 3371) for a Gypsophila variety it had named 'Dangypmini'. This was sold throughout Europe as 'Million Stars'. From October 2001, Astée Flowers distributed 'Blancanieves' and 'Summer Snow' which were also Gypsophila varieties. As a result of Astée Flowers entering the Gypsophila market, Danziger began sending letters throughout the horticultural industry that warned potential customers not to purchase 'Blancanieves' or 'Summer Snow' from Astée Flowers because, in doing so, they would infringe the rights that Danziger held under their EC Plant Variety Right (which is similar to UPOV 1991 Act). Astée Flowers brought an action in respect of an alleged misrepresentations made by Danziger Flower Farm. Danziger counter-claimed that the Astée Flowers plant varieties were in fact essentially derived and sought a declaration to this effect. While this was going on, the Community Plant Variety Office granted plant variety rights to Astée Flowers for 'Blancanieves' (EU 12500) and 'Summer Snow' (EU 12501).

The evidence led by Danziger included assessment of genetic similarities which showed that 'the genotypical differences found between Blancanieves and Million Stars are too limited to have been realized through crossbreeding and selection'.

In assessing distinctiveness, the Community Plant Variety Office found that 'Blancanieves' was clearly distinguishable from all other varieties. In fact, based on observable phenotypic characteristics there were no less than 17 out of the 21 characteristics that were different.

Based on the claim and counter-claim the Civil Court of The Hague had to determine whether 'Blancanieves' and 'Summer Snow' were essentially derived from 'Million Stars'. The applicable law was the UPOV 1991 Act.

Discuss the possible outcome of this issue in light of breeder's rights under UPOV 1991.

(Marks 25)

Q.2).

- (a) The owner of football club 'Nabayuga' has made a unique floral design as the surface decoration of the football used by his club. He wants to protect the design of that surface decoration of his football under Design rights. He also wants to protect the same design as trademark for his club's merchandise. Advise him according to the provision of Indian Designs Act, 2000.
- (b) 'Nabayuga' made that design of Football and got it registered under Design Act, 2000 on January 20<sup>th</sup> 2010. In July 2021 they realized that they forgot to pay the renewal fees as prescribed in the Act, so the design is lapsed. They want to restore the lapsed design and seeks your help for this. Guide them accordingly. Substantiate with reference to relevant case law.

(Marks 20+5)

Q.3).

A new corn variety C-10, developed by Monsanto Co., is a registered variety in India as well and the United States. Shortly after the variety was registered in India, an exclusive contract was given by Monsanto Co. to supply the seeds to around 12,00 farmers and all the produce was to be bought back at a fixed price. A year later, Monsanto Co. alleged that even the farmers who were not the part of the collaborative farming programme were also indulged in illegally growing and selling the C-10 corn variety. Monsanto Co. has sued these farmers who were not part of the original contract for alleged infringement under the Indian Protection of Plant Variety and Farmers Rights Act, 2001.

A same contract was entered into by Monsanto Co. with farmers in United States. A similar exchange of the farm saved seeds has occurred in the United States as well.

- (a) Decide on this matter in light of relevant provisions under Indian laws and substantiate your answer with relevant case law.
- (b) Discuss the protection available to plant varieties in United States and discuss the relevant discourse for infringement of protected varieties.

(Marks 10 +15)

Q.4)

"Property is the embodiment of human personality". Compare the above philosophy in the context of various justifications for intellectual property.

(Marks 25)

Q.5)

Write short notes on:

- (a) Extant Varieties
- (b) Role of functionality in registration of Design under Design Act 2001
- (c) TRIPs on Plant Variety Protection
- (d) Trade Secrets as form of IPR
- (e) Meaning of Article under Designs Act, 2001

(Marks 5x5)

Q.6)

Explain the concept of Fair and Equitable Benefit Sharing under the Biological Diversity Act, 2001 with the help of relevant case law.

(Marks 25)