

**NATIONAL LAW UNIVERSITY, JODHPUR**

End Term Examination April-May - 2023

Semester: LLM II Semester (IPR Honours)

Subject: IP Valuation &amp; Management

Time: Three Hours

Marks: 100

**Instructions:**

1. All questions carry equal marks.
2. Question Nos. 1 and 2 are compulsory. From Questions 3 to 6; answer any two questions.
3. Use of all kinds of electronic devices is prohibited.
4. In this examination no materials and texts of Agreements are permitted.

For Question No. 1 and 2 refer to the below mentioned factual matrix :

In 2023, a controversial situation erupted when "Modern Rhythms," a popular indie film production company, released their blockbuster musical film "Street Symphony." The film featured an extended dance sequence remarkably similar to the iconic choreography of "Manjummel Boys," a traditional South Asian dance troupe that has performed their signature dance for over 40 years, passing the choreography through generations.

The "Manjummel Boys" dance is characterized by distinctive rhythmic patterns, specific formations, and choreographic elements that blend traditional cultural movements with contemporary styles. While the dance originates from folk traditions, the troupe had created their own unique interpretation with specific sequences that became synonymous with their identity. They had performed this dance globally, including at major cultural festivals and on television shows, gaining significant recognition for their artistry.

"Street Symphony" became an international success, grossing over \$200 million worldwide. The film received critical acclaim specifically for the dance sequence in question, which was prominently featured in marketing materials. The film's soundtrack, including the music accompanying this sequence, became a bestselling album and was streamed over 500 million times on various platforms.

When members of the Manjummel Boys troupe viewed the film, they were shocked to see their distinctive choreographic elements reproduced without attribution or compensation. The film's director claimed the sequence was merely "inspired by" cultural dance forms in the public domain and represented a transformative use of traditional movements.

The situation was complicated by several factors:

1. The Manjummel Boys had never formally registered copyright protection for their choreography but had extensive video documentation of performances dating back to the 1980s.
2. The production company had previously approached the troupe about collaboration but negotiations broke down over compensation terms.
3. The film's choreographer had attended several Manjummel Boys performances and had taken detailed notes on their techniques.
4. The film's dance sequence incorporated approximately 70% of the signature elements of the Manjummel Boys' choreography but combined them with new movements.

5. The Manjummel Boys had previously licensed their choreography to smaller productions for cultural events but had never established a formal valuation methodology.
6. The dance form originated from traditional cultural practices, raising questions about whether the troupe could claim ownership of cultural heritage.

Following public backlash, the production company offered the troupe a one-time payment of \$50,000 as a "goodwill gesture" while maintaining they had no legal obligation to compensate them.

As an intellectual property valuation and management consultant:

Q.1).

Analyze the legal and ethical considerations in determining ownership of the choreographic elements in question. Propose solutions for establishing fair compensation that recognizes both cultural heritage preservation and commercial entertainment interests.

(Marks : 25)

Q.2).

Recommend strategic approaches for the Manjummel Boys to protect and monetize their intellectual property going forward.

(Marks: 25)

Q.3).

You have been tasked with valuing a portfolio of intellectual property assets for a merger between two pharmaceutical companies. Using the Goldscheider Rule for IP valuation, analyze how you would approach this valuation process. Explain the key principles of the Goldscheider Rule and how it differs from traditional income-based valuation approaches.

(Marks: 25)

Question 4).

Studio Ghibli, Inc. is a Japanese animation studio based in Koganei, Tokyo. The renowned Japanese animation studio co-founded by Hayao Miyazaki and Isao Takahata has a strong presence in the animation industry with its portfolio including various media such as short subjects, television commercials and two television films. Studio Ghibli maintains exceptional creative control, rejecting proposals for merchandise or adaptations that don't align with their artistic vision, even when financially lucrative (famously turning down a partnership offer from Disney that would have allowed for significant editing of their films). Studio Ghibli also maintains strict control over their iconic branding, including their studio logo (the silhouette of Totoro) and character designs. They've established strong trademark protection internationally, particularly for characters like Totoro, the soot sprites, No-Face, and Ponyo. Recently, through the use of Generative AI, there is widespread use of "Ghibli style" images being generated which has raised concerns over "unauthorised" use of the artwork. In light of this scenario, explain the basis of market approach for IP Valuation and discuss its viability for valuation in such scenarios.

(Marks: 25)

Q.5).

Given the inherent subjectivity in valuing intangible assets and intellectual property, discuss how can businesses ensure that their valuations accurately reflect future economic benefits while mitigating the risks of overestimation or underestimation?

(Marks: 25)

Q.6).

Write Notes on the following:

- a. The concept of Amortization in IP Valuation
- b. Domain Name Valuation

(Marks : 10+15 = 25)

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Sunrise Studios, a major streaming platform, has developed a new television series called "Modern Anne," based on L.M. Montgomery's classic novel "Anne of Green Gables." The series features a contemporary reimagining of Anne Shirley as a tech-savvy teenager in present-day Prince Edward Island.

The series incorporates:

- Core characters and basic plot elements from the original 1908 novel
- Anne's distinctive red hair in braids and her imaginative personality
- Several unique scenes and character developments first introduced in the 1985 Sullivan Entertainment miniseries
- Visual aesthetics and mood similar to the 2017-2019 "Anne with an E" Netflix/CBC production
- A modern storyline dealing with social media, environmental activism, and LGBTQ+ themes

Prior to production, Sunrise Studios:

- Confirmed the original novel was in the public domain
- Registered the trademark "Modern Anne" for entertainment services
- Created promotional materials featuring their version of Anne with the tagline "A new chapter begins at Green Gables"
- Did not seek licensing from Sullivan Entertainment or CBC/Netflix

After the series trailer release, Sunrise Studios received cease-and-desist letters from:

1. Green Gables Heritage Place (operated by Parks Canada), claiming trademark infringement over the use of "Green Gables" in promotional materials
2. Sullivan Entertainment, alleging copyright infringement for adapting specific scenes and character developments unique to their 1985 production
3. Montgomery Media, a company formed by L.M. Montgomery's heirs, claiming they own trademark rights to "Anne of Green Gables" as a brand and the distinctive visual appearance of Anne with red braids
4. CBC/Netflix, asserting that the visual style and certain thematic elements too closely mimic their "Anne with an E" series

The series has already completed production at a cost of \$30 million, with a marketing campaign worth \$5 million underway.

As an intellectual property consultant:

Q.1).

Evaluate the legal merits of each claim against Sunrise Studios and identify which elements of their production are legally defensible and which may constitute infringement. Your analysis should incorporate relevant copyright and trademark law principles.

(Marks : 25)

Q.2).

Recommend a strategic approach to resolve these disputes while preserving the commercial viability of the series and develop a forward-looking IP protection strategy for Sunrise's "Modern Anne" intellectual property.

(Marks : 25)

Q.3).

Write short notes on the following:

- a. Contribution of Intangible Assets towards Valuation of IP Assets
- b. Securitisation of IP Assets

(Marks: 12.5+12.5= 25)

Q.4).

Explain the fundamental principles and theoretical underpinnings of the cost approach in the context of valuing intellectual property. Assess the specific strengths and limitations of the cost approach across different categories of intellectual property.

(Marks : 25)

Q.5).

Company 'A' owns a patent for a revolutionary manufacturing process that significantly reduces production costs in the timber industry. Company 'B' has been using a similar process without a license for five years, generating substantial profits. After discovering the infringement, Company 'A' files a lawsuit seeking damages.

Analyze the key considerations a court would apply when determining a reasonable royalty rate in this scenario. Elaborate your answers with relevant case law and examples.

(Marks: 25)

Q.6).

A Venture Capital firm Atlas Partners, is considering a significant investment in Ayurtech Innovations, a rapidly growing beauty and wellness startup. Ayurtech's flagship brand "Baby Forest" has gained popularity for its natural, ayurveda-inspired products for infants and children. Recently, luxury ayurvedic brand "Forest Essentials," an established market leader with trademark protection across multiple categories, has sent Ayurtech a cease-and-desist letter alleging trademark infringement. Forest Essentials claims that Ayurtech's "Baby Forest" brand creates consumer confusion through:

1. The use of "Forest" in the brand name
2. Similar packaging aesthetic featuring botanical illustrations and earthy color schemes
3. Marketing language emphasizing "ancient ayurvedic recipes" and "natural forest-derived ingredients"
4. Similar product categories including baby oils, creams, and bath products

Atlas Partners has paused their planned \$15 million investment pending comprehensive IP due diligence. Ayurtech's founders maintain they conducted trademark searches before launching and believe their brand is sufficiently differentiated through the "Baby" prefix and their exclusive focus on children's products, whereas Forest Essentials primarily targets adults.

