

# INTELLECTUAL PROPERTY LAW EXAM NOTES

---

In accordance with Art 2(viii) of the Convention Establishing the World Intellectual Property Organisation (WIPO) 1967, intellectual property includes the rights relating to:

- Literary, artistic and scientific work
- Performances of performing artists, phonograms and broadcasts
- Inventions in all fields of human endeavour
- Scientific Discoveries (Not in Australia)
- Industrial Designs
- Trade Marks, Service Marks and Commercial names and designations
- Protection against unfair competition

## AUSTRALIAN CONSTITUTION:

**S51 (xviii)** – Legislative powers of the Parliament to legislate in regards to copyrights, patents of inventions and designs, and trade marks

CASE: Grain Pool of WA v Commonwealth (2000) – High Court held s51 (xviii) is meant to cover the whole evolving area of intellectual property law (plant breeders rights in this case)

- The process of adaptation is complex especially given the emergence of the internet, computers, genetic engineering, mobiles etc. The law of intellectual property does not simply reflect but also moulds technical, commercial and social reality

CONCEPT BEHIND INTELLECTUAL PROPERTY:

**A person/corporation has a legally sanctioned right to control, use or exploit it in certain commercially significant ways to the exclusion of all others within the jurisdiction**

## Legislation:

**Personal Properties Securities Act 2009 (Cth)** – creates and facilitates security interests in personal property through a system of registration. S10 of the PPSA defined IP as personal property by reference to common property rights being: design rights, patents, trademarks, plant breeder's rights, circuit layout rights and copyright.

**Copyright Act 1968 (Cth)** – 2 basic categories

1. PART III - Artistic, literary (including computer programs), musical and dramatic **works** (Most extensive level of protection) – words defined in pages 35 - 43
2. PART IV - Subject matter **OTHER than works or 'neighbouring rights'** (sound and television), broadcasts, films, sound recordings and published editions of works (Less extensive protection)

Copyright in **works** subsist for the **life** of the author **plus 70 yrs**

Copyright in subject matter **other than works** subsist for **70 yrs** from year of making

- Copyright Act 1968 (Cth) also covers moral rights protection, performers rights and the use of certain technologies

## **IDEAS/EXPRESSION**



- ❖ Protection is given, not for the ideas or information, but **only for the form** in which ideas or information are expressed: *Autodesk, Inc v Dyason* (No 2) [1993] 176 CLR 300.
- Need to identify an author.
- Can they claim for copyright?
  - The provider of idea/information expressed in form by another one
  - The recorder of a story composing by another one word by word
- **When ideas and expression are inseparable – copyright cannot be claimed**

*Kenrick Co Ltd v Lawrence Co*

## **COPYRIGHT PROTECTION IN WORKS - ELEMENTS:**

---

### **CONDITIONS THAT MUST BE MET**

- 
1. Express in Material Form
  2. Work must be original
  3. Have some connection to Australia
- 

### **1 MATERIAL FORM**

**Principle - Copyright does not exist until an idea is expressed in material form**

- There is no copyright in ideas or facts but **ONLY** in their expression

Section 22(1) of the Copyright Act 1968 (Cth) provides that making a work means reducing it to **WRITING** or **SOME OTHER MATERIAL FORM**

Material form definition s10 – includes any form of storage (Computer program storage) & doesn't matter if it is visible or not...therefore **HAS SUFFICIENT MATERIAL FORM**

#### **EXAMPLES:**

- Written down on paper or something else
- Recorded by keystrokes saved on a computer –
- Recorded on film
- Recorded on tape
- Recorded as software code saved on a computer
- recorded digitally onto a device

EXCEPTION: Broadcasts (pg 51 textbook) HOWEVER - DOES NOT INCLUDE: unrecorded speech or unrecorded performance. Sound = s22(2) will be material form if reduced to a sound

## 2 ORIGINALITY

### COPYRIGHT WILL SUBSIST ONLY IN AN ORIGINAL WORK

Section 32(1) and *Telstra Corporation v Phone Directories Company* [2010]

#### REQUIRED:

- **Originality of EXPRESSION not of ideas**

Quote: *University of London Press Ltd v University Tutorial Press Ltd* [1916]

- Copyright Acts are not concerned with the originality of ideas...but the expression of thought. Copyright...does not require that the expression must be in an original or novel form, but that the work must NOT be copied from another work – that it should **ORIGINATE FROM THE AUTHOR**

Quote: *Victoria Park Racing and Recreation Grounds Co Ltd v Taylor* (1937)

- ...Some originality must be produced...The work must be more than a copy of other material

**GREAT QUOTE:** *Elwood Clothing Pty Ltd v Cotton On Clothing Pty Ltd* [2008]

- While originality for the purposes of s32 of the Act does not require any particular level of novelty or creativity, it is still necessary to show that there has been the application of **SOME MINIMUM LEVEL OF SKILL AND EFFORT** to the making of the form in which the particular work is expressed
- Trivial contribution will not suffice – pg 45

IN EVERY CASE – IT IS A QUESTION OF DEGREE – *Sullivan v FNH Investments Pty Ltd* [2003]

#### ADDITIONAL FACTORS:

- ❖ It is **not necessary** for the work to be the expression of **novel or inventive**: *IceTV Pty Ltd v Nine Network Australia Pty Ltd* [2009] HCA 14 .
- ❖ The contribution of **author(s)** is therefore **directly connected to the notion of ‘originality’**: *Victoria Park Racing and Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479.

#### IMPORTANT:

The author must also have applied sufficient **‘independent intellectual effort’** in expressing the work into the relevant material form: *Telstra Corporation v Phone*