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INTELLECTUAL PROPERTY TEST

ANSWERS:

The issues to be determined to in the factual scenario is that of expression of ideas, fixation of works, whether a foreigner is going to be able to protect his rights under Nigerian law and is there infringement of copyright. I will attempt to answer the following questions.

Copyright falls under the branch of intellectual properties and the concern of copyright borders on the protection of the expression of ideas and not the idea itself for there has to be a fixed medium of an idea. The question also falls under the category of rights which deals with creative works i.e literary works and the two major requirements of works under this category are originality and fixation. Originality means there was labour and time expended on the work. In the case of Donoghue V Allied Newspapers ltd where it was held by the court that the plaintiff had no ownership over the work for the fact that even though the idea stemmed from him the work was original for there was use of effort in the creation of the new work which is original. Again, it was stated in the case of University of London V University Tutorial Press that copyright is concerned with originality but with the expression of ideas. Fixation according to Section 1(2) of the Copyright Act states that a literary, musical or artistic work must be in a definite medium of expression. With regard to the category of sound recordings fixation can be by recitation of a poem, recording of a sound, etc and it may be digital or analogue. For a sound recording to be protected it must be in a fixed format. In the case of CBS Songs v Armstrad Consumer electronics the people were accused of authorizing copying of music by the use of their twin cassette. Once a recording is in a fixed format, copyright exists in that work and as such infringement is possible. Again, another important criteria for protection of copyright is the qualification of an author. There are four ways in which that is possible by nationality, place of first publication, copyright in government works and reference to international agreement. For a person to qualify for copyright he must be a national or be domiciled in the country. This is found in section 2 of the CA. Also, it was stated in the case of Ifeanyi Okoye and Anor V Prompt and Prompt Quality services, it was held that the plaintiff was a citizen of Nigeria and he enjoyed copyright. Again, if a country is a member state to an international treaty they enjoy copyright in the place of first publication so far the country of the publication is a member of the treaty. Also the bern convention allows a copyright owner to enjoy protection. This was established in the case of Microsoft V Franike.

It can be seen from the case that John although he got the idea from the novel, he had expended some intellectual work in the making of his novel and the work was in a fixed form and so it is liable to be protected by copyright for it is an expression of an idea. Also, john is a foreigner but is domiciled in Nigeria and that automatically vests copyright in his work. Nigeria and Ghana are both members of similar international bodies so his work is protected for it was published even though not by the author but it was still published as such copyright was infringed. The rights of John have been infringed by Ope and he will succeed in action brought before the court because he meets the criteria of qualification of an author, the work was not copied but it was an expression of an idea.

In conclusion, although John is a foreigner but he has met all the criteria that will enable him bring an action against Ope for infringement of his work because his work is original, expressed, enjoys copyright, the work is fixed and he meets the criteria for the qualification of an author under Nigerian copyright law.