NAME: NDUKWE EMMANUELLA CHEKWUBE

MATRIC NO: 16/LAW01/130

INTELLECTUAL PROPERTY LAW 11

400 LEVEL

MID-SEMESTER TEST

ANSWER

The legal issue in this scenario is whether john has copyright to his work under the Nigerian law as he is Ghanaian and also whether a foreigner can claim copyright in Nigeria.

According to Copinger and Skone James, copyright is one of the main branches of IP Law which gives the owner the exclusive rights to authorize or prohibit certain uses of his work by others. Under the *Section 1(2) of the copyright Act,* it states that a literary musical or artistic work shall not be eligible for copyright unless, *(a)* sufficient effort has been expended on making the work to give it an original character, and *(b)* the work has been fixed in a definite medium of expression, now known or later to be developed.

The requirement of originality therefore means that that the work originated from the author and that it was not copied from another work. The work must be as a result of the authors intellectual creation, independent skill and labor. In *Ladbroke (Football) v William Hill,* the court held that the respondent had exercised commercial judgment, experience and skill in the selection of forms of bet and it was therefore protectable as an original work in which copyright subsisted. A work that is drawn from or inspired by another work or other existing works would still qualify. It doesn’t matter that what the author created existed before,so far his creation is not a result of copying the existing work.

With regards to fixation, the work must be fixed in a definite medium of expression now known or later to be developed. Through fixation, copyright can protect the expression of ideas and not the idea itself. In *Anikulapo – Kuti v Iseli,* the court stated that the requirement of fixation simply means that the work must be in a tangible form without specifying the particular form it must take. They noted that rather than score the music on paper, a composer may choose to put his music on tape or some other recording device in order to obtain copyright.

Also, before a person can qualify for copyright protection under Nigerian law, there must be some connection between the author and Nigeria. This could be in respect of nationality or domicile of the author, place of first publication, government works and by virtue of international agreements. By virtue of *Section 5 of the Act,* works which on the date of first publication are made by authors who are nationals or domiciled in a member state, or the work is first publishes in a member state, UN or its agencies, AU or ECOWAS may be protected by copyright in Nigeria. This is because of the principle of national treatment and fulfilling obligations under international treaty. Copyright protection in Nigeria doesn’t extend to all countries, but only to a fellow member of a treaty and to the extent of its obligation under each treaty.

In applying the stated rule to the given scenario, John had expended sufficient time, work and effort in his work and seeing that the work was not copied from another work, he had passed the originality test. He had also but his work in a definite medium of expression which was the tape recording, and under the law, that amounted to fixation. In reference to whether he can be protected under the Nigerian copyright law, since he is Ghanaian, then by virtue of *Section 5,* Ghana, being a member state of the AU and ECOWAS, he is protected under the Nigerian copyright law, because of the principle of national treatment.

My advice to John, is that he is eligible for copyright under the Nigerian law, and that he is the author of his work, and therefore he can sue Ope for infringement on his copyright and also he can claim for damages.