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COURSE: INTELLECTUAL PROPERTY

TEST

Legal issues to consider

1. Whether or not John's work is eligible for protection; this writer answers in the affirmative
2. Whether or not John has a right in the work; this writer answers in the affirmative
3. Whether John's nationality is going to deny him of copyright; this writer answers in the negative
4. Whether Ope's act constituted an act of infringement on John's right; this writer answers in the affirmative

Generally, copyright means the right to copy. However, it goes beyond that as it is one of the three main branches of intellectual property and it is a property right that subsists in various works e.g literary work. Copyright can also simply be defined as a proprietary right which confers exclusive right to authorize or prohibit a wide range of activities relating to qualified subject matter.

The nature of copyright is what distinguishes it from other IP rights. Based on the knowledge of the nature of copyright;

- it protects the expression of an idea and not the idea itself and this provision can be seen in article 9(2) of the TRIPS Agreement.
- Copyright is vested in the copyright owner from the moment the work is put in a fixed form and as such no registration is required and this provision is backed up by article 5(2) of the Berne Convention.

Where there has been an infringement case, the first question to ask is whether or not such work qualifies for protection under copyright. By the virtue of section 1(1) of the Copyright Act, for a work to qualify, it must fall under any of the 6 categories of works stated and the categories of works are; literary, musical or artistic work and cinematograph film, broadcast, sound recordings. Where such work falls under any of these categories, then it qualifies,

The next question to ask is whether or not the work meets the requirements of originality, fixation and qualification of the author. By the virtue of section 1(2)(a), a work is said to be original when sufficient effort has been expended on making the work to give it an original character. This simply means that originality isn't newness but rather when time, labour, skill has been expended in a work. In the case of *University of London Press v University Tutorial Press* as well as the case of *Ladbroke Football v William Hill Football*, it was stated that originality is when a work isn't copied and it originates from the author. It is important to note that the word original doesn't mean that the work must be the expression of original or inventive thought.

In order to determine originality, the act is silent on that as it is a question of fact based on the circumstances of each case. A work will fail the originality test if it was copied as seen in the case of *leslie v young*.

Fixation is provided for in section 1(2)(b) and it basically just explains that once a work is in a fixed form, copyright automatically subsists in that work and it doesn't state that the work must be necessarily put in a fixed form by the author has explained in *donohgue v allied newspapers*. in the case of *yeni anikulapo kuti v iseli*, it established the importance of a work being in fixed form and in that case, it was held that copyright subsisted in Fela's work as it already been put in a fixed form.

Qualification of author is the last requirement and it applies to all categories of work. For a person to be eligible for protection under Nigerian law, the person must have some form of relationship with Nigeria either by way of;

1. Nationality or domicile – **section 2(1) copyright act**; if the author is a citizen of Nigeria or domiciled in Nigeria. Domicile means when a person is physically present, lives in Nigeria or regards as home or goes and come back.
2. Place of first publication- **section 3 copyright act**
3. Government works- **section 4 copyright act**
4. International agreement- **section 5 copyright act**

By the virtue of section 6-9 of the copyright act, it confers on the author both economic and moral right and anyone who does any of these acts without the permission of the author will be guilty of infringement and some the right ate as follows;

1. Right of reproduction
2. Right of publication
3. Right of communication
4. Right of performance in public, etc.

Now applying the rules and statues stated above to the scenario given and legal issues, john's work qualifies for copyright protection has it is a literary work which falls within the categories of work protected. Also, john work fulfils originality has he didn't do a verbatim copying of the purple hibiscus all he did was get his idea from it and has stated, copyright protects the expression of idea and not the idea itself. The fact that johns work wasn't put in writing doesn't disqualify his work has he recorded it which qualifies for fixation because a work is said to be fixed when it can be perceived, reproduced or communicated directly or with the aid of any machine or device.

Although, john is a Ghanaian, he has some form of the relationship with Nigeria because he schools in Nigeria and therefore domiciled in Nigeria. By the virtue of **section 6-9** with confers rights on authors and since john qualifies as and author he has those right and Ope infringed on his right of publication by publishing without his consent.

In conclusion, John has a right to sue for infringement.