NAME: KEGHKU, ANNE-MARY M.

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COURSE TITLE/CODE: INTRODUCTION TO INTELLECTUAL PROPERTY.

CONTINOUS ASSESSMENT TEST.

ANSWER.

The legal quagmire presented in the given question can be answered while considering the issues of whether John has copyright in the concerned work stated or if he can claim copyright over the work as a foreigner in Nigeria.

Copyright according to Oyewunmi is defined as a proprietary right which confers exclusive right to authorize or prohibit a wide range of activities relating to qualified subject matter including the performance, transformation, adaptation, publication and other forms of use or exploitation of the protected work. Copyright is considered as a negative right because it prohibits, prevents or restricts.

Copyright seeks to protect the expression of ideas and not the idea itself. For instance, in a literary work; copyright will be vested in the storyline and not the plot as seen in Art 9.2 TRIPS. It also does not need the work to be registered before it can enjoy protection. Copyright is vested in the owner from the moment the work was created or fixed in a particular medium of expression which could be writing, painting, recording and so on as buttressed in Art 5.2 of the Berne Convention.

Furthermore, by virtue of section 51 of the copyright act, fixation of sound of any kind would qualify, it can be in analogue, digital or any other format allowing it to be qualified for copyright. This was stated also in the case of CBS Songs ltd. & Ors v. Amstrad Consumer Electronics Plc.

Copyright also concerns itself with whether the author is qualified or not and by virtue of section 2 of the CA, if the author or one of the authors is a citizen r domiciled in Nigeria, he may qualify in reference to nationality or domicile. Domicile is considered a place a person is physically present and regards as home to which the person intends to return and remain even though currently residing elsewhere. Also, if a work is first published in Nigeria, that work would be doing eligible for copyright.

In applying the aforementioned rules to the scenario presented, the work although inspired by another would be eligible for copyright because it passed the test of originality and was fixed as a sound recording which qualifies it by virtue of Section 1(2) (b) CA. Furthermore, John who is not a Nigerian can also claim his rights because he is domiciled in Nigeria by his education here.

In conclusion, John can bring a successful action against Ope for infringement because he has copyright over the work and can seek remedies such as injection, statement of account and damages.