**Issues in Labor Law and Intellectual Property Law involving IT**

(The first question pertains to Labor Law or the Law on Employment. This will **not**be covered in our final exam. The purpose of the first question is merely to acquaint you with the rules on how to determine whether or not a person is considered an employee.)

I. Daddy Gran Inc. (DGI) is a domestic corporation existing and organized under the Revised Corporation Code of the Philippines. DGI hired the services of a team of software developers headed by Tee Teamo for the purpose of creating a mobile application called "Sabak Daddy" to be owned by DGI. Pursuant to the contract between DGI and Tee Teamo's team denominated as "Contract of Employment", Tee Teamo's team is free to develop software applications for other clients, provided that the "Sabak Daddy" app is first completed within a period of two (2) years from the signing of the said contract. Their compensation will also be given twice a month for two (2) years. Eventually, the "Sabak Daddy" app was deployed. The "Sabak Daddy" app allows users or passengers to book private cars on demand to their destination and matches them with nearby available drivers. The destination is only made known to the drivers when the user or passenger has boarded the vehicle. DGI has an accreditation procedure for its drivers who are required to submit biodata, a professional driver’s license, and a negative drug test result, as well as pass a Road Safety Examination. Should they pass the accreditation process, the drivers are free to choose their own work hours, but DGI requires them to complete at least a total of forty-five (45) work hours per week; otherwise, the driver’s share in the fare will be reduced. The fare is determined by the "Sabak Daddy" app depending on distance, time, and the demand for rides. The fare is paid by the user or passenger through the "Sabak Daddy" app and DGI remits the driver’s share of seventy percent (70%) of the fare every week. DGI keeps thirty percent (30%) as its commission. The drivers are evaluated by the users or passengers through a five-star rating system integrated in the "Sabak Daddy" app. Drivers who consistently have an average rating of two stars or below may be removed from DGI's roster of drivers. The drivers use their own private vehicles, pay for fuel, and secure their own vehicle insurance.

**Are (a) Tee Teamo's team of software developers and (b) the accredited drivers employees of DGI or mere independent contractors? Explain completely. (30 points)**

(The second question pertains to Intellectual Property Law. This **will be covered** in our final exam. The second question serves as an introduction to Module 4 - Intellectual Property Law.)

II. Oracle Philippines, Inc. (Oracle PH) owns a copyright in the Java Platform Standard Edition (Java SE), a computer platform that uses the Java computer programming language. In 2015, Google Philippines (Google PH) acquired Android, a mobile operating system based on a modified version of the Linux kernel and other open-source software that primarily runs on smartphones and tablets, and sought to build a new software platform for mobile devices. To allow programmers who are familiar and comfortable with the Java programming language to easily work with its new Android platform, Google copied approximately twenty thousand (20,000) lines of code from the Java SE platform. The copied lines are part of a tool called Application Programming Interface (API) which allows programmers to call upon prewritten computing tasks for use in their own programs. Oracle PH sued Google PH in 2020 for copyright infringement for copying the said lines of code without their knowledge and consent. Over the course of protracted litigation, the parties vehemently ventilated (a) whether Oracle PH could validly copyright the copied lines from the API and (b) whether Google PH’s copying constituted a permissible fair use of that material thereby freeing Google PH from copyright liability.

**If you were the judge, how would you rule on the case filed by Oracle PH? Explain completely. (20 points)**

I. The determination of whether Tee Teamo's team of software developers and the accredited drivers of DGI are employees or independent contractors requires a factual analysis based on the control test and the four-fold test, respectively.

(a) Tee Teamo's team of software developers The "Contract of Employment" between DGI and Tee Teamo's team is not determinative of the employment relationship between the parties.

The control test is the prevailing test in determining the existence of an employer-employee relationship. The common law control test is the basic test, using the common law rules, for determining whether a relationship exists between the worker and the person or firm that they work for. Under the common-law test, the employer has the right to tell the employee what to do, how, when, and where to do the job.

Under the control test, the employer has the power to control the work of the employee, not only as to the result to be achieved but also as to the details and means by which that result is to be achieved. Based on the given facts, Tee Teamo's team is free to develop software applications for other clients, provided that the "Sabak Daddy" app is completed first. This provision suggests that Tee Teamo's team has the freedom to control their own work hours and the details of their work as long as they meet the agreed-upon deadline. Moreover, the fact that they are compensated twice a month for two years does not necessarily make them employees, as this arrangement may also be used for independent contractors.

Thus, based on the given facts, Tee Teamo's team of software developers are independent contractors and not employees of DGI.

(b) Accredited Drivers: The four-fold test is used to determine whether a person is an employee or an independent contractor.

The four-fold test includes the following factors: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control over the employee's conduct. The jurisdiction of the National Labor Relations Commission (NLRC) is limited to cases or disputes where there is an employer-employee relationship between the parties. If no such employer-employee relationship exists, then the regular courts would have jurisdiction over the case or dispute.

Based on the given facts, DGI selects and engages the drivers to use their private vehicles for the "Sabak Daddy" app. DGI also determines the fare and receives the payment from the users or passengers, and remits 70% of the fare to the drivers every week, indicating control over the payment of wages. Furthermore, DGI requires the drivers to pass an accreditation process and complete at least 45 work hours per week, indicating control over the selection, payment, and conduct of the drivers. Although the drivers use their own private vehicles, pay for fuel, and secure their own vehicle insurance, these factors are not determinative of the employment relationship.

Thus, based on the given facts, the accredited drivers are employees of DGI.

II. Based on the facts provided, if I were the judge, I would rule in favor of Google PH and hold that the copying of the API lines constituted a permissible fair use of the material and thus did not infringe on Oracle PH's copyright.

The fair use doctrine is recognized under Section 185 of Republic Act No. 8293 or the Intellectual Property Code of the Philippines. In determining whether the use of a copyrighted work is fair use, the following factors must be considered: (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (b) the nature of the copyrighted work; (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (d) the effect of the use upon the potential market for or value of the copyrighted work.

In the case at hand, the purpose and character of Google PH's use of the copied lines of code was transformative, as it sought to allow programmers familiar with the Java programming language to easily work with its new Android platform. The copied lines of code constituted a small portion of the entire Java SE platform and were used for a different purpose from that of the original work. Moreover, Google PH's use did not harm the market for the original work, as it did not offer a substitute or competition for the Java SE platform.

Therefore, applying the fair use factors to the present case, I would find that Google PH's copying of the API lines was a permissible fair use and did not infringe on Oracle PH's copyright.