



**NATIONAL OPEN UNIVERSITY OF NIGERIA**  
**PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE**  
**EXPRESS WAY, JABI - ABUJA**  
**FACULTY OF LAW**  
**DEPARTMENT OF PRIVATE AND PROPERTY LAW (PPL)**  
**OCTOBER/NOVEMBER EXAMINATION 2016**

**COURSE CODE: LAW 435 (PPL 435)**  
**COURSE TITLE: LAW OF INTELLECTUAL PROPERTY I**  
**CREDIT UNIT: 4**  
**TIME ALLOWED: 2 ½ HOURS**  
**INSTRUCTIONS: ANSWER FOUR QUESTIONS ONLY.**  
**QUESTION ONE IS COMPULSORY**

**QUESTION**

1. Bimbo and Tolu were partners in Foreverafter Ltd, an event planning business based in Lagos. The business operated by planning and assisting the plan events for Kolooil Nigeria limited in Abuja and Port Harcourt. The event planning contracts ran from 1 January each year. All the logistics and ground work was sub-contracted out by Bimbo and Tolu to Emmy Ventures Ltd ('Emeka'), a company wholly owned by Nnaemeka with whom Tolu had a long-standing friendship. Emeka employed ten labourers but all its equipment was leased from Relish Leasing plc ('Relish'). Central to the business of Foreverafter was an extensive computer database of clients and details of the contracts with them. This client database was originally created by Emeka, who gave it to Tolu, but both Bimbo and Tolu had substantially modified it subsequently while carrying out the business of Foreverafter.

Bimbo, with his friend Haruna, set up a wedding planning company called Bloom ventures Ltd ('Bloom') whilst Bimbo was still working with Tolu. Bimbo and Haruna were co-directors of Bloom. Bimbo made a copy of the client database, which she gave to Haruna. Tolu knew nothing of these developments.

Towards the end of the year, Emmy Ventures (which was then in financial difficulties) went into receivership. Bimbo immediately terminated his partnership with Tolu. Bimbo and Haruna sent leaflets to all ' clients (details of which were taken from the client database) announcing the start of a new event planning business called Bloom, which would take over from foreverafter.

At the beginning of last year, Bloom started working and employed all the labourers who used to work for Emmy Ventures. Bloom also bought most of the equipment previously used by Emmy Ventures from Relish. Bloom managed to 'capture' nearly all of Foreverafter' clients.

Tolu and Nnaemeka have commenced legal proceedings against Bimbo, Haruna and Bloom for breach of confidence on the basis of their alleged misuse of the client database.

- a. Consider whether Tolu and Nnaemeka are likely to be successful in the action. 15 MARKS
  - b. And, if so, how damages will be assessed. (Will it make any difference if Bimbo was not under a restrictive covenant in respect of anything he did following the termination of his partnership with Tolu). 10 MARKS
2. In *Campbell v Mirror Group Newspapers Ltd* [2004] 2 AC 457, Lord Nicholls said (at para 17):

The time has come to recognise that the values enshrined in Articles 8 and 10 [of the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms] are now part of the cause of action for breach of confidence.

To what extent is this statement valid in relation to industrial and commercial trade secrets? 15 MARKS

3. *Independent Television Publications Ltd v Time Out Ltd* [1984] FSR 64, Whitford J said of the 'fair dealing permitted acts' under the Copyright Act 1956 that '... once the conclusion is reached that the whole or a substantial part of the copyright work has been taken, [the] defence ... is unlikely to succeed'.

Answer the following questions.

(a) What is fair dealing and what is the scope of the permitted acts falling under the fair dealing provisions? 7 MARKS

(b) What is a substantial part of a copyright work? 5 MARKS

(c) Does Whitford J's sentiment hold true under the Copyright, Designs and Patents Act 1988? 3 MARKS

4. Yakubu, a chartered civil engineer, was employed by CCNCC Construction plc ('CCNCC') as construction manager on the construction of a large wind farm being built in Sokoto for Kalifate North Central plc ('Kalifate'), a supplier of electricity throughout the North East of Nigeria. A firm of consulting engineers Benko LLP ('Benko'), was engaged by Kalifate to design all the machinery and equipment and all

the foundations and buildings and also all temporary works (such as access roads for the construction equipment, scaffolding and temporary structures used in the erection of the wind machines).

Yakubu's job description stated that his duties are as follows; To oversee and manage the wind farm project, to liaise and co-operate with Kalifate and Benko, to ensure that the project is constructed on time and in accordance with the specification and drawings, to keep detailed records of the project, to report back to CCNCC regularly and draw attention to any changes made to the specification and drawings, and any acts or omissions that could affect the sums due to CCNCC, to ensure that CCNCC's workforce is engaged efficiently and productively, to liaise with and oversee the work of CCNCC's subcontractors. To carry out tasks specifically assigned by CCNCC and all ancillary and implied tasks and duties concerning the above. Further duties were set out which related to Yakubu's position as line manager of CCNCC's workforce on site and in respect of health and safety issues. One day, Yakubu was watching the workers erecting the temporary structure designed by Benko which would be used to lift and support the parts of a wind machine during its construction. He thought that the structure was overcomplicated. That evening, he sat down at home and thought about how it could be improved and he sketched an alternative design. Over the next few weeks, he thought more about his idea and sketched it out, adding details and designing the structural aspects. He wondered why no one had come up with that design before.

Yakubu did not speak to anyone about his design except for Aisha, a structural engineer working for Benko. He had a private meeting with Aisha, in confidence, and asked her if she thought his design would be strong enough. She suggested making some of the parts from a high-grade steel, known as Hi-Steel. This would make the assembled structure lighter, easier and quicker to assemble. Aisha also told him that she thought his design might be patentable as it was quite a clever design.

Eventually, Yakubu decided to go to see a patent agent and he took along his sketches of the design and the calculations he had made. A few days later, his patent agent told her that he could find no similar designs and that his design was probably patentable. He suggested that he should apply to trademarks, patents and designs registry under the federal ministry of industry, trade and investment. Yakubu duly applied for a patent registration in his own name as proprietor and sole inventor. Soon after, the wind farm project was completed and Yakubu was made redundant by CCNCC.

When Yakubu's patent application was published, CCNCC and Benko found out about it. The patent has just been granted to Yakubu. CCNCC now claims that it is entitled to it. Benko discovered that Aisha had made the suggestion concerning the use of Hi-Steel and now claims that it is jointly entitled to the patent and that Aisha should be mentioned as joint inventor.

Advise Yakubu as to whether he has any entitlement to the patent and whether Aisha qualify as a joint inventor. 15 MARKS

5. Mrs Ifeoma had an idea for a television program from her favourite united kingdom Television program “who wants to be a millionaire”, instructed her lawyer Barrister Ikenna to aid her in obtaining a patent and copyright for her idea of a television program “who wants to marry a millionaire”. The game show is aimed at young Nigerian women who compete to win the heart of a young male Nigerian entrepreneur. Barrister Ikenna goes ahead to register the patent. 2 weeks after registration, Barrister Ikenna received a petition challenging the registration of “who wants to marry a millionaire” from Apex solicitors based in Lagos acting on instruction from sony pictures international Uk sole proprietors of the Television show “who wants to be a millionaire”. Advise Mrs Ifeoma and Alex on the issue of jurisdiction.

- i. Answer the following question with reference to British South Africa Co. v. Companhia de Mocambique (1893) AC 602.

How would the courts interpret the issue of jurisdiction? 15 MARKS

6. The category of artistic works includes works of artistic craftsmanship. The qualification 'irrespective of artistic quality' does not apply to such works. This leads judges to look for some special attributes when deciding whether the work in question is a work of artistic craftsmanship in which copyright subsists. The performance of judges in this respect has been patchy to say the least. As the term 'artistic craftsmanship' is not capable of precise definition, it would be better if this category of artistic works was eliminated from the list of works in which copyright can subsist. Discuss. 15 MARKS