

FINAL-TERM ASSIGNMENT

- **Registration No** : B.A L.L.B / 3-19/M007

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- **GROUP** : “E”

- **Title of Assignment** : Discuss in detail
“Tort of Incorporeal
Property”

- **Title Of Course** : LAW OF TORT-II

- **Name of Faculty Member** : NIGAHT NASEER

- **Submission Date** : 15th February, 2021

TORT OF INCORPOREAL PROPERTY

➤ **DEFINITION OF INCORPOREAL PROPERTY:-**

The property exists in contemplation of law, and has only ideal existence is known as incorporeal property. It is legal right in property having a conceptual existence but no physical existence. The incorporeal property is known as intangible property.

➤ **DEFINITION OF INCORPOREAL RIGHTS:-**

Incorporeal rights are rights to the property that cannot be seen or touched but are still enforceable by law. Generally, incorporeal rights have to do with intangible property such as copyrights, licenses, and easements. Incorporeal rights are also known as intangible rights.

➤ **EXPLANATION:-**

Unlike real property that can be physically quantified, incorporeal property (intangible property) is conceptual in nature. However the rights associated with the incorporeal property (intangible property) are just as valid as the rights associated with real property (tangible property). Incorporeal rights don't cover tangible property, such as real and personal property, e.g. land and equipment.

Just like other rights, incorporeal (intangible) rights are transferable and inheritable. Intangible or corporeal property can be sold, traded, willed, or given. The rights associated with the intangible or corporeal property will transfer along with the property.

• **FOR EXAMPLE:-**

Incorporeal (intangible) rights give the owner a set of legally enforceable claims, either over corporeal (tangible) property or over the ownership of incorporeal (intangible) property, an author who holds copyright of their work has the incorporeal (intangible) right to control when and how that work can be reproduced. However, the author does not have tangible rights over the finished book.

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The reader who buys that book also buys tangible or corporeal rights over the physical book as a piece of personal property that can be bought, sold, or destroyed at the owner's discretion. In this way, incorporeal rights are different from the corporeal rights over the property carrying those incorporeal rights.

➤ **TYPES OF INCORPOREAL PROPERTY (INTANGIBLE PROPERTY):-**

- **Pure Intangibles:-**

It includes things such as debts and intellectual property rights.

- **Documentary Intangibles:-**

It includes assets tied to documents, such as bills of lading or promissory notes.

➤ **TYPES OF INCORPOREAL RIGHTS (INTANGIBLE RIGHTS):-**

There are generally two kinds of incorporeal (intangible) Rights i.e.

- **Jura In Re Aliena or Encumbrances:-**

It includes incorporeal (tangible) rights over corporeal things. Such rights can include leases, easements, mortgages, and servitudes. In this way, one can have incorporeal (intangible) rights over a corporeal (tangible) property, such as in the right to quiet enjoyment of a property that is conferred with a valid lease agreement.

- **Jura In Re Propria:-**

It refers to the ownership of incorporeal (intangible) property. This type of right includes trademarks, copyrights, patents, and other types of intellectual property. In this way, one can have fully ownership of incorporeal (intangible) property and does not have a physical presence or possession.

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➤ **PATENT:-**

Patent is a privilege granted to the first inventor of any new manufacture or invention that he/she on his/her license shall have the sole right for certain period of making and vending such manufacture or invention. It is exclusive right to make, use, or sell an invention granted to the inventor of a unique device or process for a specified period of time.

• **Rights Conferred:-**

A patent granted to patentee conferred upon rights where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his/her consent, from the act of making, using, offering for sale, selling or importing for those purposes that product. If the subject matter is process, the exclusive right prevents third parties, who do not have his consent, from the act of using that process, offering for sale, selling or importing for those purposes the product obtained directly by that process.

• **Remedies for Infringement:-**

Infringement of patent means the violation of the monopoly rights granted to the patentee. The person infringing such rights shall be liable for damage which a court may grant on any suit for infringement. The patentee is entitled to damages or injunction or both.

➤ **COPYRIGHTS:-**

The exclusive statutory right of literary (authors, playwrights, poets), musical (composers, musicians), visual (painters, photographers, sculptors), video creators (vloggers) and other artists to control the reproduction, use, and disposition of their work, usually for their lifetime plus certain years.

• **Infringement of Copyrights:-**

Copyright is infringed when a person interferes with any right of the owner of the work without his/her permission, and that may be the following actions:

- i. Reproduction of the work in any material form.
- ii. Issue of copy if the work to the public.
- iii. Making of any adaptation of the work, copy of the film, translation of the work, sound recording of the work and etc.

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- **Remedies for Infringement of Copyright:-**

To claim any relief, plaintiff must prove that he/she has title in the copyright and there has been an infringement to it. The copyright owner entitled to damages or injunction or both.

- **TRADE MARK:-**

Any phrase, name, word, or graphic logo used by one manufacturer or marketer to distinguish its products from others. A trademark's main purpose is to assure the genuineness of an article (object), and it is roughly equivalent to a commercial signature.

A trademark may be located on a package, a label, a voucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings.

- **Infringement of Trade Mark:-**

Use of trade mark gives a title to the owner of the trade mark and the owner is entitled to its exclusive use and can sue for infringement when other using such mark deceives or is reasonably likely to deceive the public.

- **Remedies in Action for Infringement the Plaintiff has to Prove That:**

- i. The defendant has used a similar mark to the plaintiff's mark.
- ii. There is a reasonable probability that public is being deceived.

- **Defenses Denial of the Plaintiff's Title Non-Registration of the Mark:-**

- i. Denial of infringement as a fact.
- ii. Estoppels of plaintiff.
- iii. Acquiescence of plaintiff.

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**DIFFERENCE BETWEEN CORPOREAL (TANGIBLE)
& INCORPOREAL (INTANGIBLE) PROPERTY**

| Sr. # | CORPOREAL PROPERTY | INCORPOREAL PROPERTY |
|----------|---|--|
| 1. | Corporeal property is the right of ownership in material things. | Incorporeal property also called as intellectual or conventional property. it includes all those valuable interests which are protected by law. |
| 2. | Corporeal property is always visible and tangible. | Incorporeal property is intangible |
| 3. | Corporeal property can be perceived by senses. It can be seen or touched. | It cannot be Perceived by Senses |
| 4. | Examples: A House, Land, Car, Bike etc | Examples: Patents, Copyrights, Trademarks etc. |
| 5. | Corporeal property is divided into two classes- 1. Movable Property (Chattels) 2. Immovable property. (Land and buildings) 3. Real and Personal Property | Incorporeal property is divided into two classes- 1. Jura in re propria Over Material things. 2. Jura in re Aliena encumbrances, whether over material or immaterial things. |

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