



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

INTELLECTUAL PROPERTY - ITS PROTECTION IN
MALAYSIA: WITH SPECIAL REFERENCE TO PATENTS,
COPYRIGHT AND TRADEMARKS

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THIS DISSERTATION IS SUBMITTED AS A PARTIAL
FULFILLMENT FOR MASTER OF COMPARATIVE LAWS
1992/1993

KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
PETALING JAYA
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DEDICATION

To all my beloved

MUM

Your love give me strength
Your patience give me courage
With all my love
And all my heart
And all my thanks
For all that you
Have given me.

SISTER

May your life be ever
Full of love and joy

FRIENDS

Thank you
For accepting me
As I am.

With all my heart and love.

- NHPI (NIE) -

PREFACE

Praise to Allah the Almighty, the Most Gracious for giving me continuous strength in my research and study. Thanks to Him who gave His mercy and help me to finish my dissertation. Thanks to Him for His blessings and may Allah bless me in all my doings.

The idea to write a dissertation on intellectual property protection occurred to me when the Kulliyah of Laws, International Islamic University introduced a new subject of intellectual property for the students in late 1992. I was prompted into this decision primarily for shortage of reference books available on Malaysian intellectual property protection. Most of the intellectual property books are concern with the protection of intellectual property in other countries other than Malaysia. The references however, can be found in articles written by learned intellectual property lecturers and practitioners but, it is scattered in various journals. Thus, I write this dissertation with the idea of providing a concise and general introduction of intellectual property for the students who are taking this subject. It is not my purpose or intention to render legal advice or opinion in general terms for application to any particular situation. No general rules can be formulated for the solution of all intellectual property problems.

In writing this dissertation, I divide the discussions into six chapters. The first chapter meant to give an overview of the intellectual property, its nature and challenges as well as the development of intellectual property law in Malaysia. Chapter II deals with the protection in particular that is the international protection given under the various conventions and treaties. The protection of intellectual property is also available in the court of equity where the equity seems to jealously protects the interest of intellectual property owners from any infringements of their rights.

Copyrights, patents and trademarks are the portentous intellectual property substances which are strictly protected in Malaysia. The intellectual property owners thus can seek protection provided by specific statutes for copyright, patents and trademarks. Other subsidiary statutes are also available to give additional shield for the owner of intellectual property rights. The accessibility of equitable protection of intellectual property is well recognised by the Malaysian courts in the law of passing off. In fact, it is proven that the passing off actions are of more significant to the intellectual property owners. These extent of protection are regarded in Chapters III, IV and V.

Chapter VI deals with the piracy and counterfeiting activities which appear to be a very serious threat and menace to the intellectual property protection. The discussion on this topic is presented in such a way to demonstrate the availability and efficiency of protection discussed earlier in previous chapters to evacuate the pirates and counterfeiters.

Intellectual Property is a wonderfully interesting and unique subject matter, and it is hardly surprising that we have so many special rules about it. It has played different roles in our society at different times, depending on which of its characteristics was most important to people at the time. It should always be borne in mind that the law relating to intellectual property is continually growing and developing, just as technology which is developing at an escalating pace, so is the law that deals with it. Thus, what is presented in this script is the law applicable at the time of writing this dissertation. I hope this writing can be of help and assistance for those who pursue general knowledge on what is intellectual property is all about.

And finally, I would like to take this opportunity to record here my indebtedness and thank to those who assisted me in this writing. Some require special mention including my supervisor Dr. Mohsin Hingun who has read and re-read my drafts and made

invaluable suggestions for improvement. I was also much encouraged by Prof. Mohd. Akram who provide me some references in my research. Last but not least, I wish to thank my colleagues for their assistance and being courteous and helpful.

Rusni Hassan

MCL 1992/93

Kulliyyah of Laws

International Islamic University.

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ABBREVIATION

AC	Appeal Cases
All ER	All England Report
Beav	Beavan's Reports
CA	Court of Appeal
Ch	Chancery
Ch. D	Chancery Division Law Reports
CLJ	Current Law Journal
CLR	Criminal Law Review
EIPR	European Intellectual Property Reports
FSR	Fleet Street Reports
KB	King's Bench
LJ Ch	Law Journal (Chancery) Reports
MLJ	Malayan Law Journal
NZLR	New Zealand Law Reports
QBD	Queen's Bench Division
RPC	Reports of Patent, Design & Trade Mark Cases
SC(J)	Session Cases (Court of Justiciary)
WLR	Weekly Law Reports

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CHAPTER

1

INTRODUCTION

1. THE NATURE OF INTELLECTUAL PROPERTY

The constant flow of judicial decisions and the renewed interest of the government in the subject of Intellectual Property, have made it an increasingly difficult term to define. Broadly speaking we can say that Intellectual Property is a generic term for the various rights or bundles of rights which the law accords for the protection of creative effort, or more especially, for the protection of economic investment in creative effort. As a generalisation this is acceptable, but only barely so. Apart from the fact that some forms of creative endeavour (or investment therein) are not protected at all, some rights which are now described as forms of Intellectual Property have only a tenuous connection with the creative process, particularly those such as trademarks which are associated with business reputation and competitive relations. Moreover the nature and scope of the rights accorded can and do vary greatly.

The term "Intellectual Property" originally sought to distinguish the rights which protected literary and artistic creations. In its modern formulation it embraces both industrial and literary and artistic property. This point is perfectly