

# INTELLECTUAL PROPERTY

English for Lawyers 1.3



# HW: Employment tribunal

„If you think you have been unfairly (1) \_\_\_\_\_ from your job, you can (2) \_\_\_\_\_ a claim for your case to be (3) \_\_\_\_\_ by an employment tribunal. A tribunal (4) \_\_\_\_\_ a court, although it is more informal. It hears different types of complaints from employees. If your complaint (5) \_\_\_\_\_ to a hearing, it will be heard by a panel of three people, which typically (6) \_\_\_\_\_ the chair, who is a qualified legal practitioner, and two non-legally qualified members, who may have experience as employers or union representatives, for example. The tribunal will (7) \_\_\_\_\_ whether your dismissal was fair or not. If your case is successful, the tribunal will also decide whether compensation should be (8) \_\_\_\_\_, and if so, how much. The tribunal may (9) \_\_\_\_\_ a cost order, requiring the claimant or the respondent (employer) to (10) \_\_\_\_\_ the costs (11) \_\_\_\_\_ by the other party.“

# Correct answers

1. ***dismissed***
2. ***file***
3. ***heard***
4. ***resembles***
5. ***goes***
6. ***includes***
7. ***decide***
8. ***awarded***
9. ***issue***
10. ***pay***
11. ***incurred***

# HW: Powell

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- Briefly summarize the text.

# Property and its classification

- personal
- movable
- land
- corporeal
- tangible
- real
- immovable
- chattels
- incorporeal
- intangible

# Intellectual property

- What is it?
  - ▣ creative expressions
  - ▣ creations of someone's mind
  - ▣ = *intellect that can be owned*
- What is creation?
  - ▣ something that has been created, e.g.
    - written
    - invented
    - performed
    - designed
    - composed
    - discovered
    - painted

# Intellectual property

- an area of law concerning **intangible property rights** and their protection
- the protection cannot apply to the ideas themselves, only to ideas or new products which have in some way taken on a material or artistic form
- a rapidly changing area



# Intellectual property

- traditionally, intellectual property rights are broken down into **three main areas**:
  - patents
  - trade marks (US: trademarks)
  - copyrights
  
- other areas:
  - trade secrets
  - design rights (e.g. industrial design, utility design)
  - *the concept of passing off*

# Patent

- **a monopoly right in an invention**
  - ▣ inventions, procedures, processes, systems, methods of operation, discoveries (**capable of industrial application**)
- a patent must be granted pursuant to the relevant legislation
- once the **patent is granted**, the protection remains in force for a statutory period of years (e.g. 20 years in the UK)
- a patent empowers the owner of an invention to take legal action against **unlicensed manufacture, use or sale of the patented invention**, and to claim damages

# Patent

- Most patent legislation requires that a patentable invention:
  1. is novel
  2. involves an inventive step
  3. is useful or capable of industrial application
  4. is an invention or, in the US, non-obvious

# Listening 1



# Registered trade mark

- similar to a patent in that it provides the holder with an exclusive right to use a „distinctive“ mark in relation to a product or a service
- the mark must be **distinctive**



# Passing-off (v: *pass off*)

- = practice of a company illegally trading on the reputation of another company by misrepresenting its goods or services as being those of the other company
- = to represent (goods, etc.) as those of another
- nezákonné použití ochranné známky
- **a passing-off action**
  - ▣ žaloba na nezákonné použití ochranné známky

# Copyright



- a right subsisting in original literary, dramatic, musical and artistic works and in sound recordings, films, broadcasts and cable programmes, computer programs, incl. software and multimedia
- copyright holders possess economic rights associated with their works, incl. the right to prohibit unauthorized use of the works
- copyright infringement
  - ▣ porušení autorského práva
- copyright only provides a partial monopoly in a work, as various rules provide exceptions by which a work may be copied without infringing on the rights of the author

# Listening 2: Right of fair use





# Right of fair use (GB: fair dealing)

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright law (title 17, U. S. Code). One of the more important limitations is the doctrine of “fair use.” The doctrine of fair use has developed through a substantial number of court decisions over the years and has been codified in section 107 of the copyright law.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair.

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for, or value of, the copyrighted work

The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

# Rights related to copyright

- sometimes **neighbouring rights** (*příbuzná práva*)

## Rights to

- **performing artists** (such as actors and musicians) in their performances
- **producers of sound recordings** (e.g. CD) in their recordings
- **broadcasting organizations** in their radio and TV programs

# Trade secret

- law provides protection against others from **misappropriating** the secret
  - ▣ using improper means, e.g. theft or fraud to obtain the secret
  - ▣ obtaining the trade secret from the breach of a confidential relationship

# How are the following creations of mind protected?

- inventions
- procedures
- processes
- systems
- methods of operation
- discoveries
  
- PATENT

# How are the following creations of mind protected?

- literal and artistic material, i.e.
- writings
- paintings
- photographs
- sound recordings
- films
- computer programs
- COPYRIGHT

# How are the following creations of mind protected?

- names
- logos
- slogans
- words
- symbols
  
- TRADEMARK

# How are the following creations of mind protected?

- formulas
- patterns
- business plans
  
- TRADE SECRET

# Whose right is it?

- to reproduce the work
- to prepare derivative works
- to distribute copies
- to perform the work publicly
- to display the work publicly
  
- COPYRIGHT OWNER'S



# Whose right is it?

- to exclude others from
- making
- using
- selling
- offering for sale
- commercially exploiting something
  
- PATENT HOLDER'S = PATENTEE'S

# Word study - Chromá



# Next week (December 3, 2013)

- Do you want bonus points?
  - Presentation!
    - for each topic from the 3rd semester
    - 1 person
    - 5-10 mins
    - 0-3 bonus points
- Mock credit test next week
- HW: revise

# References

- <http://www.copyright.gov/fls/fl102.html>
- [www.google.com](http://www.google.com)
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- Chromá, M. *New Introduction to Legal English Volume I*. Praha : Nakladatelství Karolinum, 2003. 562 p.
- Krois-Linder, A. *International Legal English*. Cambridge University Press, 2006. 320p.
- Powell, R. *Law Today*. Longman Group UK Limited, 1993. 128p.

Have a good week! 😊

