5. Client A

An hour or so into the Old Street meeting, Dean finds herself experiencing an acute sense of déjà vu. It's not the vague type, trace levels of some half-remembered episode contaminating the admixture of the present, jarring it, for a brief moment, into a blurred double-vision of itself … No, this is sharp, precise and instantly identifiable: what's inserted itself between this conference suite's long board table, leather swivel chairs, occupants thereof (on the one hand) and (on the other) her *apprehension* of these surfaces and personae is a photograph, a picture from a bundle she was served up on the second day of last week's stint in the LSE library.

The photo, taken some time in the 1950s, showed a managerial scenario: seven executive types – five men, two women – seated at three long tables set up in a U-shape round a hanging screen. On to the screen a film was being projected: it (in turn) showed a male worker, or perhaps experimental subject, sorting objects into a series of compartments, while beside him an imposing clock kept time. In their office, or laboratory, or cinema, the manager/scientist film-viewers seemed to be assessing the man's skill at this task, and hence (Dean surmised) his aptitude for such-and-such a post. She passed over the image at the time, angling for larger catches – didn't make a note of it or snap it with her phone; but now … now it seems to hang about the room's corporate air, both spectral and enlarged, a frame and backdrop for today's whole gathering.

The set-up: a 'symposium'. Dorley and Grieves, law firm in which she, as junior associate, serves, is offering, for a consideration of

one thousand pounds and change an hour, its services to Peacock, a consultancy. Despite this contractual relation and – to Dean – confusingly, Peacock are not D&G's client in this interaction; rather, they're acting as intermediary between the IP-specialists and their *actual* client, whom both parties, in all correspondence, documents and (now) verbal dialogue alike have followed the convention of referring to as *Client A*. Blind council: when a party's feeling shy, if you perform due diligence, check they're not gangsters, terrorists, what have you, it's all kosher, from a legal point of view at least. More than mere intermediaries, Peacock are *staging* the symposium, in the full dramaturgical sense. They laid down the rules of engagement some weeks ago: D&G's team have been instructed to present 'encomia' into which they, the Peacocks, are permitted, frequently and at will, to interject, interrogating their theses, premises, presuppositions and so on; the D&Gs, thus challenged, will elaborate, expand, extrapolate – and out of all this back-and-forth, like fragile truth wafting about the Agora at the end of a Socratic dialogue, to be breathed in and feasted on by all, will arise some peerless understanding of the current state of patent and copyright law; or at least of the parts of it falling within today's (disorientatingly vague) remit-parameters – namely, those of 'gesture'. It's being filmed, the whole exchange, recorded for eventual viewing by other consultants back at Peacock and, presumably, this Client A themselves, who'll trawl its contents for strategy prompts or market-recognition tools or whatever else it is they're after. Whence Dean's apprehension of this other, older scene, this object-sorting skit: in both scenarios, the players are simultaneously acting and not acting, doing what they're doing both because they're doing it for real *and* as a show, put on for post-hoc viewing by an audience that's lurking out of sight, beyond the frame …

There are, needless to say, big differences too – not least the props: in this state-of-the-art conferencing room, it's on not a canvas pull-down but a 65-inch back-lit LED that the embedded scene is appearing. A video-clip, it shows a dancer in great bat-like

silken wings twirling her arms, causing a web of floating ribbons to gyrate around her.

'Loie Fuller,' Dean's colleague Julius Leman, mid-encomium, is telling Peacock's delegation. 'Creator of the "Serpentine Dance" she's demonstrating here. She managed to patent the chemical compounds she used in her colour gels; and the salts that gave her cloths and stage sets their strange luminescence; but she never managed to patent the dance itself.'

'Why not?' Robert Elsaesser, Peacock's point-man, asks.

'The US Copyright Office,' explains Julius, 'denied her suit – in 1892, against an imitator, Minnie Bemis – on the grounds that her, Fuller's, performance, irrespective of its groundbreaking uniqueness, had no overarching structure, wasn't "about" anything …'

In the short pause while notes are jotted down, the dancer continues to twirl and gyrate. The gif, a digitised transfer from celluloid, has jumps and flecks, birthmarks of the old medium; like the spinning silks, it loops back on itself, over and over.

'1892 …' Elsaesser's teammate Roderick picks up the baton. 'Seems like a long way to track back.'

'Copyright's a long game, my friend,' Clive Dorley, QC, murmurs across the table at him.

'Naturally,' Roderick concedes. 'But maybe we could focus more on where the legislation's going, not on where it's come from.'

A collective under-the breath chortle, indulgent and patronising at once, issues from D&G ranks. The Peacocks, looking slightly hurt, retreat into the kind of silence that demands an explanation.

'Law,' Dorley provides one, 'works on precedent.'

'It's Janus-faced.' Juliet McKraken, Senior Partner, backs him up. 'Looking backward to discern the future …'

Roderick's objection overridden, Julius ploughs ahead by jumping back three centuries.

'This lady,' he announces as the screen gives over to a pale figure swathed in ermine and red velvet – static this time, jpeg of an oil painting – 'is Queen Anne. Her 1710 decree, modestly titled "The Statute of Anne", is technically to do with publishing,

in that it endorses an author's rights over and above those of the printer who puts out their book. But what it *really* does is set out a whole raft of statements and provisions tying landed property to immaterial thought, paternity to "personality", private work to public interest …'

Dean, listening, fidgets with her own speaking notes, which seem trivial and unworked-through by comparison. She draws an arrow in their margin with her pencil for no other reason than to make the others think she's annotating, fine-tuning some insight …

'… via the legal deposit scheme.' Julius is still in flow. 'Very of its time. Part and parcel of the era of enlightenment and revolution. Seven decades later, the framers of the US Constitution more or less copy and paste the statute: Article 1, Section 8 – the "Copyright Clause" – applies at first to books and maps and charts; then printed music gets tagged on in 1831; then dramatic works in 1856 … photographs 1865 … movies 1912 … sound recordings 1972 (this one surprises people: you'd have thought sound would have come much sooner). Then – and here, perhaps, is what most concerns us – in 1976 a new Copyright Act extends protectable status to choreographic works and pantomimes.'

'And that's the latest upgrade?' asks Elsaesser. 'That's where we're at now?'

The D&G crew once more let loose a volley of indulgent-patronising chortles. Dorley quips: 'If things were that simple we'd all be out of work.'

A pause, while Peacock's delegation wait for the missing information to be supplied. Julius lets it run on for a few seconds, for effect, before taking up again:

'This is what happens: after that last Act is passed, you start getting instances of litigation that, in turn, set precedent. So in 1977, the producers of a Broadway musical successfully sue a Hollywood studio when a dance is reproduced without permission in a film. But over the following years, several other suits fall flat. People find that when they try to copyright individual moves or "steps", it doesn't work.'

'Why not?' Elsaesser asks.

'A step,' Julius answers, 'is an isolated unit, not a sequence. Think back to Queen Anne's authors: they could copyright a book, but not a word. So a composer, now, can copyright a symphony, but not a note; a painter a painting, but not a brushstroke. It's the same with movement. The devil's in the detail, though: thousands of hours of court-time have been spent arguing about the exact point at which a unit *turns* into a sequence. It's still up for grabs. And then, it gets more complex, on two fronts.'

He takes a sip of water. He's got the floor, and wants to hold it for a while.

'Firstly,' he resumes, wiping his lips, 'there'd already been successful acts of registering and litigation *prior* to 1976, the year choreographic copyright takes hold. Hanya Holm, a German émigré, managed to register her choreography for *Kiss Me Kate* in 1952. But that was thanks to having documented it in Labanotation – Rudolf Laban's system for codifying dance moves, for recording them in scores: it was covered by the older law protecting written manuscripts. By the same token Johnny Hudgins, an African American, won compensation three decades earlier for blackface tributes to him performed here in London, on the grounds that they were drawn from a "dramatic composition". That was an outlier, though.'

'How so?' asks Elsaesser.

'This,' Julius informs him, 'was back in the 1920s – an important period, given the rise in stock of African-diaspora culture: Harlem Renaissance and all that … It brought two separate world views into conflict. The folks sharing moves in uptown New York ballrooms hadn't inherited the same proprietorial notions as their European-descended counterparts. They'd *come* from chattel, after all, not held it. So they turn up at the Savoy and the Apollo on Saturday nights, tap and swing around together, unpacking and tweaking one another's steps, and – *hey presto!* – the Lindy and the Charleston are born. But no one owns them. Then a downtown Broadway maestro gets inquisitive, or brave, and ventures

north of 120th Street; and his eyes jump from their sockets; and before you know it all the sequences have been incorporated in some musical – whose producers copyright it. This pattern will continue in the entertainment world for decades: think of rock 'n' roll, or hip-hop. Crudely put: white people nicking stuff from black people pretty much describes the history of popular music.'

A reflective, or perhaps embarrassed, silence follows. There are no black people in this room. Elsaesser moves things on by asking:

'What's the second front?'

'The second front,' says Julius, 'hinges round a single word: *derivative*.'

'*Derivative*,' repeats Elsaesser.

'*Derivative*,' confirms Julius. 'Copyright grants to its owner a bundle of entitlements: to display, perform, distribute and reproduce a work, and to create' – he raises his fingers in inverted commas – '"works derivative of the original". What does "derivative" mean?'

He pauses again. Was that a question? The Peacocks look at one another awkwardly before Elsaesser, spreading his palms, hands the unsolved riddle back to D&G.

'Everything's derivative of something else,' says Julius. 'Nothing comes from nowhere. Copyright disputes, in the choreographic field, have traditionally been argued on a genealogical basis, rather like paternity suits: if Work A can be demonstrated to have been the "father" or "grandfather" of Works B, C or D . . .'

On the long table, water glasses stand untouched, bubbles in them fewer, slower, smaller than before – third-generation stragglers, great-grandchildren of some lost spring. From ermine and velvet, Queen Anne looks on palely. It takes a few seconds for Elsaesser to frame the obvious question:

'And how is that demonstrated?'

'By having the best lawyers.' Dorley's older, wiser voice floats up from his chair's recesses.

There's a round of laughter, which, since Dorley doesn't join it, soon dies out. He wasn't joking.

'Show them the K-pop case,' McKraken instructs Julius.

Obediently, Julius calls up a file that's lying minimised on his docking station. On the LED, Anne crumples out of view, a genie returned to her flask, to be replaced by a troupe of contemporary, floppy-haired Asian boys advancing in syncopated steps across a lunar landscape, chasing an elusive alien girl. These in turn are sucked away to docked oblivion as Julius pops another file and the scene changes – or, in fact, doesn't: here, in grainier texture, is a striped and blanche-faced *mimique* performing, in similarly extraterrestrial environs, more or less identical movements.

'D&G took on this case ourselves, three years ago, and won,' Julius overdubs. 'We acted for the estate of Jean-Louis Barrault, the French mime artist this band were ripping off. That they're doing this is obvious. Self-evident. But in *law*, that's nothing; it has no significance. What allowed Barrault's descendants to prevail, despite the migration in medium, vaudeville to video-streaming, and the quite considerable time-lag, over fifty years … What swung it for them was the fact that Barrault, prior to his death, had – unusually – bought back all rights to his own work from the various producers who'd contracted him over the course of his career. If not, proprietorship would have been corporate rather than individual – and, to further muddy the waters, dispersed; it would be a matter of tracking down whichever outfits had acquired or inherited the holdings of whatever other outfits held them prior to that.'

During the last few moments, the Peacock gang have, in some kind of Pavlovian reaction to the content of his spiel, been sitting up straighter, straining forwards, eyes lit up with new levels of attentiveness. Are they actually breathing faster? It seems so to Dean, although it could just be the overheated ventilators on their laptops, or an uptick in the suite's AC …

'This,' says Elsaesser, voice charged with more directed purpose, 'is intriguing – in point of view of where Client A's interests lie.'

'Can you be more precise?' McKraken asks.

Elsaesser, weighing his words, answers:

'In corporate, rather than individual, ownership …'

'… of movement, yes,' says McKraken. 'So we've understood – which is why we've asked Julius to paint the spectrum for you …'

'A task he's doing admirably,' Roderick jumps in again here. 'But I wonder: why are we hovering around dance and music? I mean … entertainment's certainly part of the picture; but it's not the *focal* point. Client A, as we've outlined, is more interested in these questions as they pertain to what we used to call "the industrial arena".'

Dean, sensing that she's going to be called on soon, tenses up.

'The law,' Dorley's benevolently chiding voice weighs in once more, 'works not just by precedent, but by analogy as well.' The Peacocks look confused, so he continues: 'Choreography may seem like a niche subject; but it's the paradigm for all fields in which flesh and bones, bodies in motion, meet with the legal codifications that both support and constrain them; as such, choreographic legislation should be seen as the umbrella for *all* argument involving movement. Which, if I understand correctly, is precisely Client A's concern.'

The Peacock team, quieted once more, sit back. Dean scrutinises them. Besides Elsaesser and Roderick, there are two others: a young woman about her age and a man in his mid-thirties who's been taking notes continuously; plus the three camera people, two male and one female, filming the proceedings – one front-on, one from each side. They're all got up in smart-casual attire: slim chinos, open shirts or jumpers topped by blazers for the men, jackets over patterned dress or jeans for the women. She's checked Peacock's website: they have lavish premises in Hammersmith – brainstorming studios, hospitality suites, summiting pods … D&G's own offices in Goodge Street have two large rooms set aside for just this type of pow-wow. Why have they been Ubered out here, to this new-build Old Street flexi-hub with spaces hireable by month, or day, or hour? Despite the first-name informality, the free-flow format, the light, glassy airiness bathed in aroma of fair trade, she senses that this meeting has been crafted, from top down, not only to ensure that things are rigidly hermetic, but, beyond that,