

**FC4 – Design and Copyright Law
Question Paper – Sample Assessment Material**

In this paper the following annotations will be used:

- **CDR:** Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs
- **CDIR:** Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation EC No 6/2002 Council Regulation
- **CDPA:** Copyright, Designs and Patents Act 1988
- **RDA:** UK Registered Designs Act 1949
- **EUIPO:** European Union Intellectual Property Office (formerly OHIM)

Knowledge of Section/Article numbers is not required.

SECTION A

Question 1

Explain:

- a) what initial actions the EUIPO takes if it finds that a design is non-registrable; **1 mark**

- b) what possible actions the applicant needs to take in response; and **2 marks**

- c) the possible outcomes of the applicant's actions. **1 mark**

Total: 4 marks

Question 2

In relation to a UK unregistered design right in a design created after 1 October 2014, explain whether the following meet the qualification requirements under Section 217 (*'Qualifying individuals and qualifying persons'*) CDPA:

- a) **A company that employs a designer, where the company is formed in accordance with Italian law.** **4 marks**

- b) **A designer, resident in Japan, of a product that embodies a qualifying design. The product was first marketed in Spain.** **3 marks**

Total: 7 marks

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Question 3

Assuming no authority or licence to use has been granted, explain, with reasons, whether or not the following acts constitute infringements of UK copyright.

- a) **A student who photocopies a couple of pages of a book to help with her exam revision.**

2 marks

- b) **A film club watching a film on a DVD brought in from home by one of the members.**

2 marks

- c) **Reissuing advertising materials to households in the UK, where the materials have already been distributed with the copyright holder's consent in France.**

2 marks

Total: 6 marks

Question 4

How is joint authorship defined in Section 10 ('*Works of joint authorship*') CDPA?

1 mark

Question 5

- a) Explain when, according to Article 2 ('*Multiple Application*') CDIR, more than one design may be included in an application for registration of a Community registered design (CRD).

1 mark

- b) Explain whether the situation is the same or different for UK registered designs.

1 mark

- c) What is the time limit for providing information identifying the applicant where this has not been specified on filing a CRD?

1 mark

- d) What effect, if any, does this have on the filing date?

1 mark

- e) Further to (c) and (d), what happens if the information is not provided in time?

1 mark

Total: 5 marks

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Question 6

To determine the novelty and individual character of a UK registered design, a comparison must be made with earlier designs.

a) **Under what circumstances is a design considered to have been made available to the public according to Section 1B (*'Requirement of novelty and individual character'*) RDA?**

1 mark

b) **What exclusions apply?**

6 marks

Total: 7 marks

Question 7

a) **When and by whom can a Community registered design (CRD) be surrendered?**

1 mark

b) **Explain what is meant by 'partial surrender' of a CRD.**

1 mark

c) **When is partial surrender of a CRD allowable? Give an example.**

2 marks

Total: 4 marks

Question 8

a) **What requirements must the applicant of a Community registered design (CRD) application meet in order to substantiate a claim to priority from an earlier application?**

3 marks

b) **What action must an applicant take to claim the priority of an earlier application after a CRD application has been filed?**

3 marks

Include any relevant time limits in your answers.

Total: 6 marks

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SECTION B

Question 9

Over the summer your client designed a jewellery box which, on the outside, looks like a thatched cottage, and has painted roses climbing the walls. The front opens up and, on the inside, small ‘cupboards’ and ‘drawers’ are provided for storing items of jewellery.

- a) **Assuming that no similar design currently exists, explain in a memo to your client what UK unregistered design rights (UDRs) and Community unregistered design (CUD) rights, if any, might subsist and why, for each of the following:**
- i) **the overall configuration of the whole cottage;** **2 marks**
 - ii) **the shaped ridge area of the thatched roof;** **2 marks**
 - iii) **the painted roses;** **2 marks**
 - iv) **the drawers and cupboards.** **2 marks**

Your client tells you she heard that CUD protection is not available for parts of a design not visible in normal use and that she is concerned that parts of her design may not be protectable.

- b) **Briefly explain to her whether this is true and whether it applies to any parts of her design.** **2 marks**

Your client is also concerned that one of her competitors is manufacturing very similar jewellery boxes. She has asked you for some general information on infringement of a UDR in both the UK and the European Union.

To help her, write notes which you will use to explain to her:

- c) **what acts constitute primary and secondary infringement of a UK UDR;** **6 marks**
- d) **what acts constitute infringement of a CUD right;** **3 marks**
- e) **for a CUD right, and with reference to Article 19 (*‘Rights conferred by the Community Design’*) CDR, when is contested use of a design deemed not to result from copying.** **1 mark**

Total: 20 marks

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Question 10

Explain, with reasons, whether the rights listed under (a) to (e) below are protectable. State in your answer for how long and from when each type of right lasts.

In each case, assume there is novelty, individual character or originality, as appropriate. There is no need to discuss any issues relating to ownership or qualification requirements.

- a) **An application for a UK design registration for a logo for a pro-monarchy group including a portrait of the Queen in front of the Union Jack flag.** 5 marks

- b) **Copyright in an X-ray.** 4 marks

- c) **UK unregistered design right in a car door.** 6 marks

- d) **Community unregistered design right in a vehicle bumper sticker showing very offensive language.** 2 mark

- e) **Copyright in a painting by an unknown artist.** 3 marks

Total: 20 marks

Question 11

Josie Bloggs contacts you for advice regarding her design. She designs fixtures and fittings for yachts, and a few months ago she went to a boating convention in Greece to show off her new design. She talked to a lot of important people in the industry, and her design was very well received. She is now getting lots of enquiries and wants to understand what rights she has and whether she should do anything else to maximise her protection.

Assuming the design meets the requirements for being a design and has novelty and individual character, make notes advising Josie:

- a) **what Community design rights she has or may have;** 7 marks

- b) **if the situation would be different had she not publicly displayed her design and had only spoken to people at the convention in confidence;** 2 marks

- c) **what UK rights she has or may have in this situation.** 1 mark

Cont...

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Josie later receives a query from a large company who want to be given permission to use her design in France and Italy – it wants to include it in the yachts it sells. It wants to be the only company allowed to use it. Josie thinks this sounds appealing as she has lots of other ideas that she wants to develop and that would give her time to do so. However, given the interest she received in her design she wonders if she should give up all rights to her design.

Make notes for a meeting with Josie in which you:

- d) explain whether Josie can authorise the company alone to use her European design rights;**

4 marks

- e) consider what Josie needs to do to formally authorise the company to use her design;**

2 marks

- f) explain what rights and/or limitations such an authorisation of use would give Josie or the company.**

4 marks

Total: 20 marks

Question 12

You are contacted by Bob Smith, an individual who filed his own application for a UK registered design a few years ago. He tells you he has been enjoying success in selling his product and that he hadn't really thought about his design registration until one of his competitors told him his design shouldn't have been registered, although he didn't tell him why. Bob tells you he'd left the 'administration' relating to the design to his wife, but she'd been ill over the last few months. He looked at the online register last week and saw his registration had lapsed. He tells you he filed his design application on 7 January 2013.

Prepare notes for a meeting with Bob in which you:

- a) explain to Bob on what grounds his UK registered design may be found to be invalid, according to Section 11ZA ('Grounds for invalidity of registration') RDA; and**

10 marks

- b) explain to Bob why his registration has lapsed and what his options are for trying to get his registration back. (You need not consider whether any of the dates you refer to in your answer fall on a weekend or other day when the UKIPO is closed.)**

10 marks

Total: 20 marks