

Design and Copyright Law FC4 (D&C)

Wednesday 14 October 14:00 to 17:00

INSTRUCTIONS TO CANDIDATES

1. You should attempt **ten** of questions 1 to 12.
2. Each question carries **10** marks.
3. If more than ten questions are answered only the first ten presented will be marked.
4. The total number of marks available for this paper is 100.
5. Start each question (but not each part of each question) on a new sheet of paper.
6. Enter the question number in the appropriate box at the top of each sheet of paper.
7. Do not state your name anywhere in the answers.
8. Write clearly as examiners cannot award marks to answer scripts that cannot be read.
9. The scripts may be photocopied for marking purposes.
 - (a) Use only **black ink**.
 - (b) Write on one side of the paper only.
 - (c) Write within the printed margins.
 - (d) Do not use highlighter pens on your answer script.
10. Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.
11. This question paper consists of 8 sheets, including this sheet.

In this paper the following annotations will be used throughout:

- **RDA:** UK Registered Designs Act 1949
- **CDIR:** Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs
- **CDPA:** Copyright, Designs and Patents Act 1988

Question 1

- 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) Explain what is meant by 'indication of the product' as referred to in Article 2 CDIR.
1 mark
- d) According to Article 3 CDIR, '*Classification and indication of products*', how should the indication of the product be worded and what is its purpose?
2 marks
- e) What is the time limit for providing information identifying the applicant where this has not been specified on filing a CRD, and what effect, if any, does this have on the filing date?
2 marks
- f) Further to (e), what happens if the deficiencies are not remedied on time?
1 mark
- g) What is the time limit for correcting an underpayment of filing fees for a CRD, and what effect, if any, does this have on the filing date?
2 marks

Total: 10 marks

Question 2

Assuming the following meet the statutory requirements for protection, explain for how long the following rights last, and from when:

- a) Copyright in software in an app for a mobile phone. **2 marks**
- b) Community unregistered design right in a chair. **1 mark**
- c) UK registered design right for a computer icon. **2 marks**
- d) UK unregistered design right for a toy. **3 marks**
- e) Copyright in a painting, the creator of which is unknown. **2 marks**

Total: 10 marks

Question 3

Explain, with reasons, whether your client is likely to infringe UK unregistered design right (UDR) by doing the following without the owner's consent:

In each case, assume UDR validly subsists.

- a) Photographing a vase and then making identical vases. **3 marks**
- b) Importing into the UK a rare statue by a famous artist for inclusion in a private collection. **2 marks**
- c) Whilst engaged in a licence deal with a third party, manufacturing and selling tea trays in the UK where the third party is the owner of the UDR in the tea trays. **2 marks**
- d) Including a picture of an article, knowing it is covered by UDR, on a social media site as a joke. **3 marks**

Total: 10 marks

Question 4

- a) To determine the novelty and individual character of a UK registered design, a comparison must be made with earlier designs. 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, and what exclusions apply?

7 marks

- b) Explain the basic requirements for claiming priority from an earlier application for registration of a UK design or designs. There is no need to discuss formal application requirements.

3 marks

Total: 10 marks

Question 5

Your client has contacted you for details on infringement of unregistered design rights in both the UK and the European Union.

- a) **Explain what acts constitute primary and secondary infringement of UK unregistered design right.**

6 marks

- b) **Explain what acts constitute infringement of Community unregistered design right.**

3 marks

- c) **For Community unregistered design right, when is contested use of a design deemed not to result from copying?**

1 mark

Total: 10 marks

Question 6

- a) When and by whom can a Community registered design (CRD) be surrendered?
1 mark
- b) From when does the surrender of a CRD apply and with what effect?
2 marks
- c) Explain the effect of a request for surrender of a multiple CRD.
1 mark
- d) Explain what is meant by 'partial surrender' of a CRD.
1 mark
- e) When is partial surrender of a CRD allowable? Give an example.
2 marks
- f) How do the requirements for surrender differ if a licence is registered against the CRD?
2 marks
- g) If an entitlement action has been brought before a Community design court, what effect does this have on OHIM entering the surrender of a CRD in the official register?
1 mark

Total: 10 marks

Question 7

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.

- a) **Make notes for advising Ms Bloggs on what Community design rights she has or may have (assuming the design meets the requirements for being a design and has novelty and individual character).**
7 marks
- b) **Would the situation be different if she had not publicly displayed her design and had only spoken to people at the convention in confidence?**
2 marks
- c) **Would your advice change if Josie Bloggs wanted to know what UK rights she has or may have?**
1 mark

Total: 10 marks

Question 8

Over the summer your client designed a jewellery box which, on the outside, looks like a thatched cottage, even having 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, for each of the following discuss what UK unregistered design rights (UDR) and Community unregistered design rights (CUD), if any, might subsist and why:**
- i) **The overall configuration of the whole cottage;** **2 marks**
 - ii) **The chimney of the cottage;** **2 marks**
 - iii) **The painted roses;** **2 marks**
 - iv) **The drawers and cupboards.** **2 marks**

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

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

Total: 10 marks

Question 9

You receive a query from Susan, who makes and sells garden furniture with another person Steve. Together they designed a picnic bench suitable for large numbers of people. It's basically a large ring shape, and people can sit around both the outside and inside of the ring on benches that fold down from each side. They have a UK design registration in their names that covers their product. You are told Susan and Steve have not been getting on too well recently, as Susan found out Steve had been making plans to sell furniture to their design himself to make some extra money.

- a) **Explain whether or not Steve is allowed to sell the products himself, without consulting Susan.** **3 marks**
- b) **Explain whether or not Steve can sell his part of the registration to someone else.** **4 marks**
- c) **Explain whether or not Susan can license use of the design to someone else.** **3 marks**

Total: 10 marks

Question 10

Your client tells you he has developed a new technique for use in the assembly of flat-packed houses. The assembly includes a collection of panels. The edges of each panel have male and/or female connectors configured to lock the panels together. Effectively, the same panel is used for everything, but on differing scales, to create a structure with walls, floors, ceilings, and door and window spaces, etc. Your client also tells you that the panels need to be assembled together in a correct order.

Make notes on what UK national unregistered rights may be available to him. Ignore trade marks. There is no need to discuss ownership/entitlement of the rights.

Total: 10 marks

Question 11

You receive the following enquiry:

“I own a shop and am always on the lookout for new stock, or new ideas for things to sell. Last Christmas whilst shopping for a present for my daughter, I noticed that one of the toys I was looking for was extremely popular and attracting a good profit no doubt. As such I decided to commission my own version to be made, cheaply, but as close to the original as possible, as I thought this would be a good earner. Yesterday, I received a letter from a solicitor telling me that I am infringing a UK registered design, asking me to do various things. Can you please let me know if I have done anything wrong, what risks I now face, and advise me what my options are?”

Make notes that would form the basis of a response, giving reasons where appropriate. Restrict your answer to discussion of UK registered designs.

Total: 10 marks

Question 12

Your client Martha tells you that her friend Harold developed a piece of software. Martha has always been interested in the software and, when its development was complete, Martha paid Harold some money in return for a CD containing the software. Martha later realised that the code would be more useful to her in a different form and has modified it and translated it into a different programming language. She has now started selling her modified version of the software via a large online retailer. Harold found out and is complaining that this is an infringement of his copyright.

Make notes, giving reasons, and including any questions you need to ask, to advise Martha on:

- a) **the likelihood that she has infringed Harold's copyright;** **6 marks**

- b) **whether there is any infringement of Harold's copyright by anyone else buying and reselling Martha's amended software; and** **3 marks**

- c) **give an example of what she could do to improve her situation.** **1 mark**

Total: 10 marks