

Introduction

Although it can be useful in helping to identify important parts of the questions, candidates wasted time by repeating text from the question paper – no marks are awarded for stating what is given in the question without applying it to the current situation. Also repeating large portions of legal texts is unlikely to gain marks unless a question specifically asks for this (e.g. as in questions 5 and 8). Candidates should, however, ensure they note down key basic or perhaps obvious points – e.g. that the US is not a qualifying country for question 4 a).

Questions

Question number	Comments on questions
Question 1	<p>This was a straightforward question requiring knowledge of UK renewal and restoration procedures, and was generally well answered.</p> <p>Candidates who did well provided full details on when renewal fees were due and could be paid, and what options were available (or not) if a date had already passed for each of the two registered designs.</p> <p>Renewal deadlines in the UK expire on the actual date rather than at the end of the month, which led to some candidates failing to get marks. Some candidates also lost marks by not specifying basic information, for example, that the period in which a renewal fee can be paid late is 6 months.</p> <p>The question specifically asked for what action the client could take, and what further information might be needed, so candidates who strayed into other areas, such as third party rights, either missed out on marks that were available or wasted potentially valuable time.</p>
Question 2	<p>This question was answered by all candidates and, in general, to a very good standard. The question mainly concerned European filing procedures and strategies.</p> <p>Where candidates lost marks, this was due to not giving full and precise answers, and by merely reciting parts of the law and not applying it to the situation. For example, to gain full marks in part c), it was necessary to indicate for which designs publication was being deferred so that it was clear what fees were being paid for the two different versions of the design.</p> <p>Most candidates correctly identified that a specimen of the fabric could be filed for part b). It was also acceptable to provide an alternative answer, so long as the issue of the currently inadequate photographs was addressed, e.g. by taking and filing better photographs.</p>
Question 3	<p>This question was not popular and was, on the whole, not well answered. The question described a scenario and was looking for practical advice for a potential new client. Consideration of community registered and unregistered design rights was required.</p> <p>Many candidates simply regurgitated parts of the law, rather than</p>

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	<p>thinking about how to apply it to the present situation. The question was inspired by the recent 'Trunki' case, but could equally well be answered without detailed knowledge of that case.</p> <p>To score highly, candidates needed to provide a discussion of how use of colour or black and white line drawings affects the scope of registration and, when compared to the competitor's design based on pale, pastel colours, whether or not there might be infringement. The client's black and white silhouette design is described as 'striking', perhaps suggesting this has individual character, but a third party who uses pastel colours may not infringe such a registered design.</p> <p>A discussion of the options for filing for registration and for enforcing different designs against third parties was also required to gain high marks.</p>
<p>Question 4</p>	<p>This question was testing candidates' knowledge of UK unregistered design right and was a straightforward test of the provisions of the CDPA. It was generally well answered.</p> <p>Section a) was concerned with qualification by first marketing. Candidates lost marks for not giving full and precise answers, e.g. by not specifying that the provisions of section 220 CDPA apply if a design does not qualify under section 218 or 219 (qualification by reference to designer, commissioner or employer).</p> <p>Similarly, for part b), whilst the majority of candidates recalled that a design qualifies under this provision if any one of the persons meets the requirements, it was also necessary to specify that only those persons who do meet the requirements are entitled to UDR.</p> <p>Part c) was generally answered well.</p>
<p>Question 5</p>	<p>This question was attempted by all candidates, and was generally well answered.</p> <p>The question was clearly asking for recitation of the relevant parts of the CDR, and so simply stating the requirements was acceptable here. However, since the question was asking for fundamentally important definitions of a design, novelty and individual character, it was necessary to provide full and accurate definitions in order to score highly. Those candidates who had not learnt or understood these basic definitions did not fare well. For example, candidates lost marks by only referring to 'the relevant date' for part b), without specifying the priority or filing date for CRDs or the date the design was first made available to the public for CUDs.</p>
<p>Question 6</p>	<p>The question clearly asked what protection was available, how long it would last and what steps the client needed to take. The question asked what protection is available in the UK, but some candidates seemed to forget about CUD and missed out on marks. As such, the question needed to be answered considering UK and Community registered and unregistered design rights.</p> <p>Being a scenario-based question, some candidates struggled to gain high marks by not applying what they know to situation described. For</p>

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	<p>example, many candidates simply stated that UDR can last for 10 or 15 years depending on the circumstances, whereas the question indicates that the product has already been sold in July 2014. As such, it is clear that the former will apply since first marketing has occurred within 5 years from the end of the calendar year in which first sale occurred.</p> <p>Part b) was generally not well answered but was looking for a discussion of whether the test that 'events would reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the Community' was met, and whether a website would provide public access (which it would).</p>
<p>Question 7</p>	<p>Some candidates attained good marks, but many did not fare so well by failing to state basic facts and through not being precise. For example, the 12-month grace period runs from the date of first disclosure of the design, but many candidates did not comment on whether this began with the sales in December 2013 – presumably yes, but the client would need to confirm.</p> <p>A key part of this question was consideration of the grace period and the priority period. These are not cumulative – a designer cannot make a public disclosure, wait 12 months to file a design application and then file further application claiming priority. Essentially, the 12-month grace period alone sets the final deadline for filing an application. As such, any further design applications, in Europe or elsewhere, would need to be filed by December 2014 and not February 2015. The majority of candidates missed this point.</p> <p>Candidates also failed to provide enough detail on the options available for protecting the second design. If filed in a multiple CRD with the first design, the US priority can only be claimed in respect of the first design.</p>
<p>Question 8</p>	<p>This question was a straightforward test of knowledge of UK copyright. Several candidates did not attempt this question and, of those that did, many candidates scored well. Being a test of basic definitions, as for question 5, candidates who were not able to accurately recite the relevant provisions in enough detail lost marks.</p> <p>Four marks were available for part b), which was looking for definitions of secondary infringement as stipulated in sections 22-26 of the CDPA. However, marks were lost where an inaccurate recollection or an incomplete answer was given.</p>
<p>Question 9</p>	<p>Part a) of question 9 was concerned with the requirements for making a claim to the priority of an earlier application, either on filing or as a late declaration after filing. Although a popular question, many candidates failed to score full marks for part a) by not being precise. To gain full marks, it was necessary to state separately the requirements for making a priority declaration on filing, and making one within a month after the filing date.</p> <p>Parts b) and c) were generally well answered although, for part c), some candidates failed to recite both parts of Rule 6 and missed out on a mark.</p>

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	<p>For part d), a simple recitation of section 1(3) RDA was all that was required.</p>
<p>Question 10</p>	<p>This scenario-based question was attempted by the majority of candidates, and required consideration of the facts and information given, and application of their knowledge in order to provide practical advice.</p> <p>The key areas for consideration were innocent infringement, product marking and groundless threats. Candidates who provided discussion and advice on each of these topics did well. However, a large number of candidates failed to comment on marking of the product, and the effect that this could have, at all. Marking the product with the design number is deemed to make the public aware of the registration.</p> <p>The majority of candidates also did not consider the possibility or need to check that the sole trader's design could pre-date the registration.</p>
<p>Question 11</p>	<p>Very few candidates scored well on this question which was largely unpopular. The question aimed to test candidates' knowledge of ownership of designs in Europe and the UK.</p> <p>Consideration was required of what rights Jane Smith, Deezyne and Conceptform may have had in the design. Very few candidates mentioned that there is no provision in the CDR for commissions, or questioned in whose name the design application had been filed and whether there had been any assignment of rights.</p> <p>Taking a logical approach makes it easier to gain high marks. Starting with Jane Smith, she would own the rights in the first instance but was she employed or commissioned or was there an agreement in place? When did she undertake the work? Was it part of her normal duties or entirely separate? Even if concrete conclusions could not be drawn, marks were available for considering these and other relevant questions.</p>
<p>Question 12</p>	<p>This question was the least popular and was, by far, the least well answered. The question clearly asked for both validity and infringement to be considered but, presumably not helped by this being the last question and candidates running out of time, many candidates failed to give full and detailed consideration to each.</p> <p>It was important to discuss the validity of Kitplane's design registration over both the Wright brothers' machine and Castplane's model in the event that it predates Kitplane's design.</p> <p>Similarly, for infringement, does the Castplane design post-date the registration? How does it differ from the Wright brothers' machine? A clear discussion of how the three different designs might relate to each other was required for each of validity and infringement.</p> <p>In addition, very few candidates provided sufficient discussion of who the informed user might be when determining the overall impression for each of validity and infringement.</p>