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Section A

Question 1:

- a) ^{0.5} 25 years from the filing date of the Community Design ^{0.5} 1
- b) ^{0.5} 25 years from the filing date of the Registered Design ^{0.5} 1
- c) ^{0.5} 3 years from the date when the design is first publicly disclosed in the ^{0.5} Community. The design is considered publicly disclosed when during normal course of business, it becomes known when it is exhibited, used in trade or otherwise it become known to the circle of the Community specialised in the design concerned. 1
- d) ^{0.5} 15 years from the end of the calendar year when the design is first recorded in a design document or an article was first made to the design, whichever occurred first. If during the first 5 years of that calendar year, the design was made available for sale or hire, ^{0.5} 10 years from the end of the calendar year when the article was first made available for sale or hire. ^{0.5} 2
- e) The end of the ^{0.5} calendar year of which the last author dies plus ^{0.5} 70 years. ^{0.5} ^{0.5} 2

MARKS AWARDED: 7/7

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Question 2:

The scope of protection of a UK registered design is determined by the features of appearance of the product that are represented in the representations filed with the UK registered design application.

MARKS AWARDED: 0/3

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Question 3:

a) (i) A request for filing a design application;

(ii) Identify the person making the design application (name and address);

(iii) Representation and/or specimen to the article which design protection is sought

b) Options: (i) Filing a Hague design application claiming priority to the UK design application (first application) within 6 months from the filing date of the UK design application. Designate USA and Japan in the Hague design application. Filing a design application in China separately claiming priority to the UK design application within 6 months from the filing date of the UK design application. As China is still not a member jurisdiction under the Hague system. Need to find local representative in China for filing design application in China.

(ii) Filing design application in USA, China and Japan separately claiming priority to the UK design application (first application) within 6 months from the filing date of the UK design application. Need to find local representatives in all three jurisdictions for filing design application in China.

1 for priority x six months

MARKS AWARDED: 9/10

9

4

5

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Question 4:

a) Artistic work includes:

0.5 0.5 0.5 0.5
graphic work, sculpture, collage, work of artistic craftsmanship

2

Graphic work includes drawings, diagram, map, chart, photograph

Graphic work includes etching, lithograph, woodcut

b) (i) When the textbook is issued to the public;

0.5 0.5
(ii) When the textbook is printed and available commercially to the public;

1

(iii) When the textbook is published online

MARKS AWARDED: 3/6

3

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Question 5:

- a) ^{0.5} Yes. As one of the joint-designers is a qualifying person (UK individual ^{0.5} residing in the UK), the design would qualify a UK unregistered design right. 2
- b) ^{0.5} No. There is no mention whether the employee (designer) is a qualifying person (whether he is a British national or a national in one of the qualifying countries as defined in order 255). Assuming the designer is not a qualifying person, the employer (French company carrying out business in France) would ^{0.5} not qualify as qualifying person as ^{0.5} France is not a qualifying country. The design would not qualify a UK unregistered design right. 1.5
- c) ^{0.5} Yes. The designer which is a Swiss resident would not be a qualifying person as Switzerland is not a qualifying country. However, as the design was first ^{0.5} marketed in a qualifying country (UK) and by a qualifying person (UK distributor), ^{0.5} the design would qualify a UK unregistered design right. ^{0.5} 3

MARKS AWARDED: 6.5/9

6.5

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Question 6:

(i) The design was disclosed in breach of confidence by the designer within 12 months prior to filing the UK registered design application.

(ii) Third party obtained the design from the designer unlawfully and the design was disclosed within 12 months prior to filing the UK registered design application.

(iii) The disclosure is not a public disclosure but is an internal disclosure which is not available to the general public.

(iv) The disclosure was made during an internationally recognized exhibition (as defined under Paris Convention) and declaration were made at the time of filing the UK registered design application.

(v) The design was disclosed by a third party in breach of confidence within 12 months prior to filing the UK registered design application.

0.5

abuse ✓

0.5

1

MARKS AWARDED: 1/5

1

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1

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Section B:

Question 7:

a) A design covers features of appearance or a part or a whole product that are new and have individual character. A design is considered new if it is original and there is no prior design that is identical or substantially identical to the design. A design is considered to have individual character if the overall impression of the design given to an informed user is different from other design.

0.5 As the vase is of unusual shape, the shape would consider new and have individual character. It is possible to file just black and white line drawing of the vase to obtain broader scope of protection of just the shape of the vase design.

0.5 The pattern if it is new and have individual character, can also give rise to a design. It is possible to file design application with just the 2D pattern.

Another option is to file the vase of unusual shape with the pattern, but this would confer narrower scope of protection compared to the above options.

b) Option 1: File design applications separately in the UK, France and Germany.

0.5 This would be the most expensive options, need to find representatives in France and Germany for filing design applications in these two jurisdictions. Can file multiple design application to save cost. ✓

Option 2: File a multiple design application in the UK first (covering all 6 vases), and then within 6 months from filing the UK application, file in France and Germany. This option would separate out the initial cost for filing but would still

3.5

No Hague mentioned

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be an expensive option, still need to find representatives in France and Germany for filing design applications in these two jurisdictions.

Option 3: File a multiple design application in the UK first (covering all 6 vases), and then within 6 months from filing the UK application, file a multiple Community Design application. As all vases would belong to the same class, they can be filed as one multiple Community Design application. The Community Design application would offer protection in both France and Germany. This would be a cheaper option.

0.5
0.5

multiple/costs suits

1.5

c) There is no unregistered design right for surface decoration in the UK.

0.5 Therefore, would suggest Rose to file registered design application for the pattern. The pattern might qualify as graphic work under copyright.

1

1.5

d) Rose can file a UK registered design application and at the same time request deferred publication for up to 12 months. File the design application as soon as possible at the UKIPO. In order to file a UK design application, need to file a request with the UKIPO including representations of the design.

1

1

1

3

MARKS AWARDED: 9.5/20

9.5

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Question 9:

a) As the chairs were designed during the course of employment at Aykera and Noah was specifically tasked to design the chairs, the design of the chairs would likely belong to the employer, Aykera. As Aykera is employer of Noah and the task was given by the employer to employee Noah.

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1 The tables were designed during Noah's own time. The design of the tables might belong to Noah.

b) The transfer should be recorded in writing (an assignment document), have to be signed by the assignor (Noah). A request has to be filed with the UKIPO to record the transfer (file form and pay fee). If the transfer is not recorded on the register, in case of infringement, the new owner would not be awarded cost and expenses. Moreover, if a bona fide purchaser who is unaware of Aykera purchases the design directly from Noah, and their transaction (the later transaction) was recorded with the register, Aykera cannot act against the later purchaser.

3

c) Aykera can bring the case to court with regard to the entitlement issue and file invalidation of the design for the same issue.

1.5

d) Aykera would have the same right as if the owner of the designer registration (except against the owner) if Aykera becomes the exclusive licensee. Aykera can make, offer for sale, produce, import, export, uses and stock product which the design is incorporated or applied to. Aykera can also bring proceeding to potential infringer.

1

10.5

MARKS AWARDED: 10.5/20

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10.5

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Question 10:

a) UK unregistered design does not subsist in shape or configuration of article that belongs to:

(i) Methods or principles of constructions;

(ii) shape or configuration of an article that must reproduce in the exact form and dimension that is connected to, placed in, around or against another article in order to enable either article to perform its function; (must fit)

(iii) shape or configuration of an article that is dependent on another article which the designer intends to form an integral part of the article; (must match)

(iv) Surface decoration

UK unregistered design right arise when the design is first recorded in a design document or an article was first made to the design, whichever occurred first. If during the first 5 years of that calendar year, the design was made available for sale or hire, 10 years from the end of the calendar year when the article was first made available for sale or hire.

¹
- The unusual shape of the beach towel would likely qualify as unregistered design right unless the unusual shape must be reproduced in the exact form and dimension in order to perform its function (to be easily folded into a beach bag).

¹
- The printed image of a unicorn would consider as surface decoration which would not qualify as unregistered design right. ¹

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- The printed image of a unicorn would likely qualify as graphic work in copyright. 1
- The unusual shape of the beach towel and the printed image would both qualify as unregistered community design if the design was made available to the public prior to 31 December 2020 in Europe (including UK). 1

5

b) Unregistered design rights confer the owner to:

- (i) reproduce the design commercially; 0.5
- (ii) record the design in a document for the purpose for making an article of the design. 0.5

The act of copying the design and applying the design to an article for commercial purposes would infringe unregistered design right as it was done without the design right owner consent. 0.5

The identical beach towel would be an infringing article as the making of this article would infringe the design right. 3.5

Acts that would constitute infringement of the unregistered design right include:

Offer for sale or hire, uses, stocking the infringing article for the aforementioned purposes 0.5
0.5
0.5
'has in possessin'

Would infringe copyright when the graphic work is printed on a commercial product. 0.5

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c) Unregistered community design would apply as the beach towel was made in July 2020 (prior to 31 December 2020), assuming it was first made available in Europe including UK prior to 31 December 2020. Nothing need to be done to continue this right in the UK. 0.5

1

0.5 The term of protection for unregistered design right is 3 years from the date when the design is first publicly disclosed in the Community (Europe). The design is considered publicly disclosed when during normal course of business, it becomes known when it is exhibited, used in trade or otherwise it become known to the circle of the Community specialised in the design concerned.

MARKS AWARDED: 9.5/20

9.5

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