

Paper Ref	Sheet	Percentage Mark Awarded
FC4	1 of 13	61%

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Q1

The maximum duration of protection (and when the duration is calculated from) for:

- 1 A) Community Registered design rights is up to ^{0.5} 25 years – renewable every 5 years – from the ^{0.5} date of registration (i.e., the date of filing of the application);
- 1 B) UK Registered design right the same as A) above; ✓
- 1 C) Community Unregistered design right is (non-renewable, non-extendable) ^{30.5} 30.5 years from the data that it was first made available to the public in the EU; ^{0.5} 0.5
- 0.5 D) UK Unregistered design right is up to a period of ^{0.5} 15 years (non-renewable) from the data is was first recorded – but if it is made available to the public within ^{0.5} the first 5 years of said period then the duration of the protection is only 10 years after the date it was so made available -
- 2 E) Copyright created jointly by two known UK authors is protected for ^{0.5} 70 years from the end of the calendar year in which the last surviving joint author dies. ^{0.5} 0.5

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1.5

2

MARKS AWARDED: 6.5/7

6.5

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Q2

The scope of a UK registered design includes said design and any other design¹ that does not make a different overall impression¹ to an informed user, where the degree of freedom in the creation of the design is taken into consideration.¹

MARKS AWARDED: 3/3

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3

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Q3

A) Requirements for filing a design application in the UK:

- A request to register a design 1
- Identification information regarding the applicant 1
- A representation of the design or a specimen of the design (when appropriate) 1
- Filing fee 1

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B) USA and Japan are parties to the Paris convention therefore can file an application claiming priority (from UK application) up to 6 months after filing of the UK application. 0.5 0.5 0.5

1.5

MARKS AWARDED: 6.5/10

6.5

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Q4

A) An artistic work is defined in the CDPA as any

- ^{0.5} Graphic work (including drawings, paintings, maps, diagrams, etc) or ^{0.5} photograph – regardless of artistic quality -,
- Any ^{0.5} architecture work – including a building or a model or design for the construction of a building -, and
- And work of ^{0.5} craftsmanship.

2

B) Any textbook is a literary work and, under the CDPA, the author of a literary work in which copyright subsists has a right to be identified every time the work is made available to the public, e.g., on every copy of the textbook issued to the public, or every time ^{0.5} audiobook version is read to the public, etc.

0.5

MARKS AWARDED: 2.5/6

2.5

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2.5

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Q5

0.5
A) Qualifies for protection by reference to the UK designer if said designer did not create the design under the course of employment, however, the US designer does acquire any rights in the UK (because US is not a qualifying country within the meaning of the CDPA). If the design was created under the course of employment, the design may qualify by reference to the employer (of either or both of the designers) if said employer is a qualifying person.

0.5

1.5

∴ UK is = 0.5

0.5
B) It would not qualify by reference to the first owner (i.e., the employer of the designer) because the French company carrying out business in France is not a qualifying person. However, it may qualify if it was first marketed in the UK and the marketing is made by a qualifying person.

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C) It would qualify for protection with reference to the place of first marketing and the person by whom the marketing is performed, because it was first marketed in the UK by a qualifying person, i.e., the UK distributor.

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MARKS AWARDED: 4.5/9

4.5

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Q6

Non-novelty destroying disclosures:

- 1 {
- Disclosure by the author/designer within 12 months before the filing date,
 - or
 - Disclosure, within 12 months before the filing date, by someone who acquire the design from the author.
- ie successor in title

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MARKS AWARDED: 1/5

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Q8

A) The owner of UK registered design right has the exclusive right to use the design, or any other design that does not make a different overall impression on an informed user, where using the design includes: making, offering, putting into the market, importing, or exporting the design. Thus, advise the client that if Jacques design is similar enough to client's jacket that it does not make a different overall impression on an informed user, and Jacques is performing any of the above activities with his design, the client can seek to enforce his right and prevent Jacques from doing it.

2.5

B) Certain acts that may fall into the general activities above are nevertheless permitted (i.e., do not infringe) and therefore advise the client that they could not seek to prevent them. These acts include the reproduction of the design, in this case a jacket,

- for private and non-commercial use, 1
- for experimental and non-commercial use 1
- for the purpose of teaching or making citations, provided that the use is compatible with fair trade practices and does not affect prejudicially the normal exploitation of the design by the design owner,

Max 3

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Note that the last two are less likely than the first (though not impossible) given the nature of the design.

C) Jacques jacket was registered on 12 March 2016 therefore it was due for renewal on 12 March 2021. Since there have been no communications with

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UKIPO since registrations, it appears that renewal fee was not paid by the due date (because a request for renewal and corresponding fee would have been filed). Note to the client that a renewal of a registered design can also be paid up to 6 months after the renewal due date – in this case it was 12 September 2021, with an additional fee, to restore the registration without 3rd party right accruing, however, Jacques appears to also have omitted this act and therefore the registration is currently lapsed.

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However, note to the client that Jacques may still apply to restore his registration by up to 12 months after the missed renewal due date, i.e., 12 September 2022, - with 3rd party rights accruing from 13 September 2021 up to the publication of the notice of the application for restoration - if he can prove that the omitted acts (missing payment of renewal) were unintentional and he pays all the corresponding fees and additional fees.

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D) Advise the client that if his jacket design is similar enough to Jacques' registered design so that it does not make a different overall impression on an informed user, the client's registration may be considered invalid due to lack of distinctive character (since Jacques' registration has an earlier registration date).

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Also note that any 3rd party rights that he (the client) could have accrued during the period on which the registration was lapsed do not include acts which were a continuation of an act that was performed while the registration was in force.

Thus, since the client started sales in April 2019, those sales may be considered an infringement to Jacques' registration and he (Jacques) could bring

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1 proceedings against him (the client) to recover damages, seek an injunction to

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1 stop him from selling, deliver up any stock, or any other remedy typically available for infringement of a property right.

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MARKS AWARDED: 15.5/20

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Q9

A) The author of a design is the owner of the design right therein, unless said author creates the design in the course of employment or under instructions from his employer, in which case the design rights belong to said employer.

Noah is employed by a furniture company and is tasked with designing chairs (which he does). While in in own time, Noah also designed complementary tables. Thus, it appears to be straight forward that the ownership of the design rights subsisting in the chairs lies in the employer, i.e., Aykera.

If no specific instructions were given, from the employer, regarding the creation of complementary tables, it could be argued that the design rights in the complementary tables are owned by Noah because, despite being employed by Aykera, the tables were created neither during the course of employment (i.e., in his time) nor under instructions from the employer. However, it could also be argued that depending on the description of Noah's employment duties (as described in his employment contract, or as implicitly understood), there may be a implicit or explicit instructions for him (hired as a designer) to create tables, in which case the design rights in the tables would belong to Aykera.

B) In order to transfer the design rights he must make an assignment in writing and signed by him (Noah, the owner of the registered rights) or by someone on his behalf. The assignment must be recorded in the Register within 6 months (of the assignment taking place) or as soon as practicable thereafter. This is necessary, for instance, if later filing in another country and claiming priority from the present registration, the applicant on the register must be the same as the applicant of the new filing.

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C) Aykera may consider bringing a claim to invalidate Noah's registrations on the grounds of lack of entitlement. ¹

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D) As an exclusive licence holder, Aykera would have the same exclusive rights to use the design (where using the design includes: making, offering, putting into

¹ the market, importing, or exporting the design) and enforce the design rights against infringement as the owner, including any rights and remedies available to ¹ the owner. Aykera's rights, as an exclusive licence holder would be concurrent with those of the owner (Noah).

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MARKS AWARDED: 15/20

15

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Q7

A) A design relates to the shape or appearance of a product, or a part of a
0.5 product, and includes features such as lines, colours, contours, configuration,
etc.

Under RDA, a design is registrable in the UK if it contains one or more features
that

- are not solely dictated by technical function
- are not required to be made in an exact form and dimensions to enable an
article on which the design is incorporated to mechanically connect with or
be placed in (or around) another article so that either article may function.

2.5

0.5 Since the shape of the vases is unusual, it appears that the shape is not solely
dictated by its technical function (i.e., to contain something). It also appears that
the pattern, which is 'interesting', would not be related to any technical function
0.5 but is merely decorative. Further, nothing in the vases would appear to indicate
that they should be connected to or placed in/around another specific article.

Thus, it appears that each shape of each of the 6 vases and the pattern of
0.5 decoration on the vases are registrable designs. 0.5

B) Route 1: filing an international design application with International Bureau
designating UK, France and Germany (since they are parties to the Paris
0.5 convention) or, alternatively, designating UK and the EU (since they are both
parties to the Paris convention). Note that EU rights are unitary and could be
enforced in France and Germany by a single action/claim.

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0.5 Route 2: filing a UK registration and EU (community) registration at the same time or within 6 months of each other (and claiming corresponding priority)

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C) Features that must 'match', i.e., features of an article for which their appearance depends on the appearance of the features of another article do not give rise to unregistered design rights in the UK, however, they are not excluded from protection under registered designs. Thus, the pattern-related features in future articles that must match her earlier design can be protected via UK design registration but cannot be relied on to enforce automatic unregistered design rights.

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D) Rosie can file an application for UK design registration as soon as possible and, on filing, apply for deferred publication.

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MARKS AWARDED: 6/20

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