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<b>FC4</b>	<b>1 of 10</b>	<b>66%</b>

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Question 1:

a) The first owner of the UK registered design right is normally considered to be the creator of the design, hence the designer unless the design was created during the course of an employment, which then the first owner is the employer.

2

b) the first owner of the UK supplementary unregistered design is the qualifying person, which is either:

- a person habitually resident in the UK or any other qualifying country;
- a corporate body, or any other body with a legal personality, which was formed under the UK law or the law of qualifying country, and has a place of business in that country, where the substantial business activity is taking place

0.5

**2.5** MARKS AWARDED: 2.5/4

Question 2:

a)

- copy the work
- lend or rent the work to the public
- issue the copies of the work to the public
- make an adaptation of the work to the public
- communicate the work to the public
- perform, play or show the work to the public

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b)

- sell, rent, or offer to sell or rent to the design
- make the design for the commercial purpose
- use the design for the commercial purpose

**7** MARKS AWARDED: 7/9

Question 3:

a) infringing article is an article of the design which has been used or produced in the UK, or imported to the UK without the permission of owner of the unregistered design right.

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b)

The UK registered design right has expired when the renewal fee has not been paid in the required time, which is on the anniversary of the date of registration.

When such fee has not been paid on time, the owner of the registered design right has 6 months from the initial deadline to file a request for restoration and pay the fee with an extra surcharge (a fine). The reasoning why the fee has not been paid does not need to be given at this stage and no rights have been lost.

2

However, if the 6 months have passed, then the owner needs to file a request for the restoration and provide an evidence that missing the deadline was not intentional. Then the registrar will decide whether such reasoning is sufficient and if yes, the UK design right will be restored when the fee and extra fine are paid. Such restoration will be published; and third party rights are formed.

2

To restore a UK registered design right, the owner of the right may apply for it.

**6** MARKS AWARDED: 6/9

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Question 4:

- a) Tina is falsely advertising that she owns the design rights even though the UK design right is no longer valid. Tina might be sued by a third party for invalidating the design right.
- b) The applicant of the UK registered design may apply for the cancellation and the cancellation will be effective from the date the UKIPO issues a receipt (or communication) of registering the application for cancellation.

**2** MARKS AWARDED: 2/4

Question 5:

- a) **No**, because the designer is living in China, which is not a qualifying country and is employed by the Chinese company, which again is not a qualifying person; so the designer and the company is not a qualifying person
- b) **Yes**, the nationality of the designer is irrelevant, and the designer is employed by the company which was formed under the law of qualifying country (I think that New Zealand is part of reciprocal arrangement countries); and the business is operating in the qualifying country, which is the UK; so the employer qualifies as the qualifying person.
- c) **Yes**, the first marketing of the product has taken place in the qualifying country (in the UK) by the qualifying person (in this case a British company); also it does not matter that the designer is Spanish and lives in Spain, if he is

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employed by the British company. The product is qualified by the first marketing requirement.

**7** MARKS AWARDED: 7/8

Question 6:

- a) No, because the copyright of that photo belongs to the photographer
- b) Yes, because the copyright is transferable to the next of kin
- c) No, because the drug is not an aesthetic creation, so it cannot have a copyright
- d) No, because the computer software is not subjectable to copyright; unlike computer program;
- e) Yes, the publisher is the rightful owner of typographical arrangements of published editions → newspaper
- f) No, a single word is not an aesthetic creation so it cannot be subjected to copyright

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**4.5** MARKS AWARDED: 4.5/6

Question 8:

a)

The UK registered design can be renewed every 5 years up to 25 years.

So, assuming that the current date is 10 October 2023:

- the registered UK design for the candlestick, which filed on 5 May 1997, cannot be renewed as it is after 25 years, so the UK design right is no longer valid and it cannot be renewed anymore.

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- the UK design right of a bicycle storage rack, filed 20 December 2019, can be renewed, however as said the renewal is every 5 years, so the next available date for renewal is 20 December 2024. Hence, we still have more than a year to do so for the right of the design to be renewed for another 5 years.

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b)

It seems that the company is infringing the bicycle storage rack as they are doing the following without the licence:

- selling the racks
- making the racks for commercial purposes (if they are manufacturing the racks directly in the uk)
- if they are manufacturing the racks outside of the UK, then they are probably importing the racks to the UK, which is also not allowed
- and they also seem to exhibit the goods (the bike racks), in the public (showing the infringing design in the store)

1.5

c) Akalemwa's actions are not considered as infringement because his actions are allowed as follows:

- Akalemwa (from now on I will use abbreviation A) purchases the storage rack, that is not an infringement;
- A is modifying the Esters's rack design is also not an infringement because he is using the rack for the experimental purposes;

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- A is reproducing the design for the class, which is not an infringement because he did so for the teaching purposes and he cited (referenced) the original author (Esther);

2

d)

Yes, Rory committed an offence. He is infringing Esther's design by reproducing and selling the infringed products; hence he is doing so for commercial purpose. Hence Ester can proceed with an infringement proceeding (in civil proceeding) against Rory, where she can claim remedies such damages, injunction, assets, and so on. Rory can defend himself that he did not know that he is infringing a registered UK design, because A did not explicitly said during the lecture that the design is registered. However, usually such registered products have 'registered' writing on it with a numbering.

3

However, if Rory actively knew that he is in fact infringing the registered design, he has also committed a criminal offence, where can be fined and he could also end up in jail.

12.5

MARKS AWARDED: 12.5/20

Question 9:

a)

This manuscript seems to have been created under a joint authorship. The date when the work was created is not relevant in this case because we know one of the authors. So, if joint authorship → then the copyright of the work lasts for 70 years from the end of calendar year of the last living author's death. If one author is unknown, then the death of the known author is taken into account. Hence, the

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copyright is effective until the end of the year of 2028 (1958 + 70). Hence Josh can upload the work 1.1.2029.

b)

Lisa seemed to have committed a secondary infringement by selling and exhibiting the copies in her shop for commercial purposes and without a licence. Hence, Josh can sue Lisa for infringing his copyright, but Lisa might have a defence that she was not knowingly infringing the copyright. If she succeeds, then the damages will not be paid to Josh, but he could still request an injunction of selling the copies.

1.5

c)

Josh has a moral right against Colchester Sentinel not to have his work subjected to derogatory treatment.

However, Colchester Sentinel might have a defence that they published the review as a caricature of Josh's work and that the review was not intended for malicious purpose.

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d)

Generally, the owner of the copyright is the person who created the work. And, if the work was created during the course of employment, then the employer is entitled to be the owner of copyright, unless agreed otherwise.

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It seems that Josh did not create the work for his employer → he was not instructed by the school to write the play, he merely used the space of the school to write the play, and he was not writing it during teaching, so he was

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creating the work during his free time (not during his course of employment).

Therefore, I believe that Josh is entitled to copyright of the play.

Question 10:

10.5

MARKS AWARDED: 10.5/20

a)

Features which are generally suitable for the registration in the UK:

- Lines, colour, contour, ornamentation, shape, the material of the design

The design to be eligible for registration in the UK, needs to be:

- New; and the difference in features cannot be just immaterial to an already known design
- and the design must produce a different overall impression to an informed user → must have an individual character

Hiroko has not disclosed the design publicly and she only sent the sample to me, her lawyer, so that is a confidential disclosure → therefore not publicly disclosed → so the design can be considered as new. Furthermore, the coffee pot is unique → might have an individual character.

b)

In the application for UK registered design right following must be included (if no priority is claimed):

- identification of the applicant
- a representation of the design:
  - whether it is a design document

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- or an article with the design
- or a specimen of the design (but cannot be hazardous or flammable)
- need to also file a form and pay the application fee

4

c)

She can directly file the applications separately (thus at national level) in the offices in Japan, USA and China according to their rules, and she can claim priority from the UK application.

4

For USA, the applicant has 12 months to claim the priority from the earlier application. For China and Japan, it is 6 months (similar to the UK). However, Hiroko could also file an international design application, thanks to Hague agreement, which now also includes China. Here, only one application is needed to be filed. And Hiroko has 12 months to claim the priority from an earlier design application.

d)

Hiroko can assign her right to the company, as the company is considered as a legal personality. The requirement for the transferring the registration:

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- file a form to request such assignment, and pay the fee;
- if the form is not signed by both parties, then also a document, which is clearly showing that the transfer has been done between the parties

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Such actions will result in that she will be no longer the only person owning the design right as the investors of her company would also have some legal rights to the design right.

14 MARKS AWARDED: 14/20

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