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FC4	1 of 11	56%

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Q1

a) The author is the first owner. If the author is under employment, then the employer is the first owner (subject to other contractual agreement between the employer and author).

1

1

b) A qualifying person – habitual resident in a qualifying country, government in a qualifying country, a business incorporated in a qualifying country having substantial activities within a qualifying country. Qualifying country includes UK, UK protectorates, New Zealand and Hong Kong.

So first owner is the first identified UK resident making the design in UK.

2

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Q2.

a) Design right owner has following exclusive rights in a work:

- copy the work
- issue copies of the work in the public
- rent or lend the work to the public
- communicates the work to the public
- make adaptations of the work to the public.

b) Exclusive rights of a design right owner includes excluding others from reproducing the design, selling the design, importing or exporting the design.

6

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Q3.

a) "Infringing article" in relation to Unregistered Design Right – include a design or any designs where overall impression on an informed user does not differ from said design

b) Conditions includes: application to restore has to be filed within 12 months from date of expiry (or within 6 months from the end of the 6 months grace period to pay late renewal) and has to satisfy that the non-payment was unintentional. The owner and any one who has rights to the registered design may apply for restoration.

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3

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Q4.

a) Cannot apply the registration number on the product if design has expired.

False indication is liable for fine.

b) Anyway can request a cancellation of a UK registered design.

2

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Q5

a) No. The sole designer resides in China (i.e. not a qualifying country), and is employed by a Chinese company. Assuming the Chinese company has business in China only, the Chinese company also does not qualify as a qualifying person. China is not a qualifying country.

1.5

b) Yes. The French designer is employed by the company formed in accordance with New Zealand law (qualifying country), and operating in the UK (qualifying country). Hence, the company is a qualifying person. The French designer, assuming he/she resides in the UK, would also qualify as a qualifying person.

2

c) The Spanish designer resides in Spain (i.e. not a qualifying country) and would not qualify as a qualifying person. The product would be protected under UK unregistered design when the product is first marketed in the UK (qualifying country) by a British company (qualifying person).

1.5

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Q6.

a) The model has no copyright in the photo. The photographer owns the right to the photo (recording of the light or radiation on an image – artistic work).

1

b) The painting is an artistic work. Deceased painter died in 1989. Expiry = 1989 + 70 years = 2059. The legal heir will own the rights to the painting until end of calendar year of 2059.

1

c) No copyright. The microbiologist may seek patent protection for the new drug instead.

1

d) The source code of the software is a literary work. The programmer will own copyright in the source code.

1

e) Arrangement of the newspaper's first page falls under literary work. The publisher owns copyright over the arrangement of the newspaper's first page.

0.5

f) Copywriter owns copyright over the invented word under literary work.

4.5

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Q7

a) Yasmin owns the copyright of the photo, Swansea at Sunset is an artistic work. She can execute a licence to permit Nice Photos to produce the postcards commercially. The licence should include clauses to limit the number of copies, value and consideration. Preferably, you should bring a legal representative along with her during discussion with Nice Photos.

1

b) There is no exhaustion of rights in copyright. Hence, the gallery infringes her copyright under secondary infringement for importing the infringing articles to UK and selling them in the UK.

c) Remedies include damages, injunction, account for profit, and delivery up.

4

d) Some moral rights are available to Yasmin.

Rights to be identified – Yasmin can get the museum to include Yasmin's name on the photo. She should be sufficiently acknowledged for her work.

2

Rights to object derogatory treatment of work – the emoji stickers that the curator glued to the photo, which she finds dreadful may be considered under derogatory treatment of work. Yasmin can object to the adding of the emoji stickers.

2

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Q8

a) Terms of a Registered UK design is 25 years subject to payment of renewal fees. Payment is not required for the first 5 years but renewal has to be paid for each subsequent 5 years (i.e. 4 times)

For the first registered UK design (a candlestick), filed on 5 May 1997.

First renewal has to be paid by 5 May 2002.

— skipped 2002–2017

Second renewal has to be paid by 5 May 2017

Third renewal has to be paid by 5 May 2023.

Fourth (and last) renewal has to be paid by 5 May 2027.

I assume the first, second and third renewals have been paid. Otherwise, they would be considered as lapsed due to non-payment of renewals. The fourth is not due for payment yet. I will send you a reminder closer to this deadline.

For the second registered design (a bicycle storage rack), filed on 20 December 2019, the renewal must be paid before 20 December 2024. The window to pay is not opened at this time. I will send a reminder closer to this deadline.

b) Types of activities that would constitute infringement of her UK design registration includes, without a licence from Esther:

- selling the bicycle storage rack in the UK,
- making the bicycle storage rack in the UK,

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- offers for sale of the bicycle storage rack in the UK,
- importing the bicycle storage rack to the UK,
- exporting the bicycle storage rack out of the UK,
- keep for disposal of the bicycle rack in the UK.

1

1

c) Akalemwa experiments with Esther's design in an attempt to figure out a way to make the storage rack more compatible with mountain bikes was carried out in his garage at his London home. This would likely fall within the meaning of fair dealing for experiment and research for non-commercial purposes. Hence, there is a defence to this infringing act.

2

Akalemwa reproduces Esther's design to show his students how it is built, mentioning to them that this was Esther's design in his class. This would likely fall within the meaning of fair dealing for teaching for non-commercial purposes. Furthermore, sufficient acknowledgement has been provided as Akalemwa has mentioned that the bicycle is Esther's design. Again, there is a defence to this infringing act.

2

d) Yes, the act of reproducing and selling the Esther's bicycle storage rack design in the UK which is protected under her second registered design (a bicycle storage rack) is an infringement. Esther can sue Rory for infringement and seek the following reliefs: damages, injunction, accounts, delivery up of the infringing articles.

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Q10

a) Design - whole or part of a product, arising from such features as lines, contours, shapes, colours, textures, material of product or its ornamentations.

The product means industrial or handicraft item, or complex products (replaceable parts that co-operate with each other so that either part can function).

The unique curved handle of the coffee can be filed. It has to be original (i.e. not available in commonplace to an informed user) and has individual character (i.e. the overall impression of the design to an informed user differs from overall impression of prior art design).

Since it is a new design for a coffee pot with a unique curved handle, it would satisfy original and individual character requirements.

b) Form DF2A should include various perspective images of the coffee pot with the unique curved handle, author's details (i.e. name and address), applicant's details (i.e. name and address), and official fees.

c) USA (US), China (CN) and Japan (JP) are convention countries and we can file direct in respective countries claiming priority from the earlier filed UK application. The US, CN and JP applications have to be filed within 6 months from the date of filing of the UK application.

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Alternatively, US, CN and JP are signatories of the Hauge system. Hence, we can file an international design application under the Hauge system and designate US, CN and JP. Similarly, the international application has to be filed within 6 months from the date of filing the UK application.

1

d) Yes, She can assign the registered design to the company by way of an assignment. She has to sign the assignment (assignor needs to sign) and record the assignment with the UKIPO.

2

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