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Question 1

a)

A registered design gives the design right holder the exclusive right to do the following acts in relation to a product in which a design right subsists, or a product that incorporates a component in which a design right subsists in the component which is incorporated into a product, that is to say:

Making, offering, putting on the market, importing, exporting, using a product in which the design right subsists in or storing it for these purposes in the UK.

b)

Copy the work i.e., make copies of the work

Issue copies to the public

Perform the work in public

Communicate the work in public

Rent or lend the work to the public

Make an adaptation of the work and do any of the above acts

All this acts must be in the UK

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Question 2

Current status:

Date of registration = date of filing (23rd January 2019)

A UK registered design gets an initial 5 year period of protection

This initial period ended 23rd January 2024

Validly could have been paid up the end of the month so 31st January 2024

The design ceases to have effect from 31st January (i.e., not the end of the grace period)

There is a 6 month grace period available

Renewal fee could have been paid from 31st January 2024 to 31st July 2024 by filing a form and paying the omitted renewal plus a surcharge

This period is also now over so cannot use the grace period

The UK registered design is not in effect today i.e., 22nd October 2024

Necessary steps to maintain his right:

After the end of the grace period i.e., 31st July 2024

But before 12 months after when the design ceased to have effect i.e., 31st January 2025

We should apply for restoration

Use a form, pay a fee, pay the renewal fee, can also file evidence that Ahmed was looking after his ill mother. There is no action that can be done after 31st

January 2025 that can maintain this right

6.5

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Question 3

To validly file a Hague application, you must be a qualifying person

A qualifying person in this context is a person that is a national or a habitually resident in a country that is party to the Hague agreement

Danielle is French and lives in France, therefore she can validly file the Hague Application because France is party to the Hague agreement

Danielle has designated the UK which is party to the Hague agreement

Danielle has designated the US which is also party to the Hague agreement

So this is valid so far

In the UK:

She will have to file a form and pay a fee within 12 months of filling of the date to request a deferred publication of max 12 months

If she files the form and pays the fee she will be successful in her request

In the US:

She will have to appoint a US attorney and sign a Power of Attorney

There is no deferred publication of 12 months in the US

She will be successful in her request

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1.5

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Question 4

Obscure Disclosures

A prior disclosure that is relevant for novelty must be a disclosure that could be reasonably known by people who specialise in that concerned sector and the prior disclosure must be in the geographical area consisting of the UK and the EEA

Confidential Disclosures

Any disclosure made under an air of confidentiality or under an NDA for example will not be considered relevant for novelty

Grace Period

Self disclosures made by the same applicant or successor in title in the period of 12 months before the filing date will not be considered relevant

Abusive Disclosures

Disclosures that were made due to a breach of security or theft etc. will not be considered relevant if they were made in the period of 12 months before the filing date

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Question 5

a)

To qualify for a UK unregistered design, you can qualify by reference to the designer if the designer is a qualifying person

A qualifying person is defined as someone who is a national or habitual resident in a qualifying country, such as England (Norfolk)

In the cases where there are two or more designers, only one of the designers need to be qualifying person

However, the unregistered UK design will only belong to that person who is a qualifying person

Since Tina is a qualifying person because she is British and lives in Norfolk (England)

Therefore, Tina qualifies for unregistered design right, but Jocelyn does not because USA is not a qualifying country

b)

Copyright subsist in work if the work was created by a qualifying person

A qualifying person is defined as someone who is a national or a habitual resident in a qualifying country such as the UK

The duration of copyright normally lasts form the end of the year in which author duties plus 70 years

In the cases where there are two co-authors, the duration of the copyright is when the later of the two authors dies then plus 70 years

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In this case, because Aiden died later than Roisin, the copyright will run from the end of the year in which Aiden died plus 70 years

1962 + 70 = 2032

The copyright in the play will expire at the end of 2032

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Question 6

a)

UK UDR does not subsist in surface decoration, so Chen cannot obtain this

b)

Yes, UK registered designs can protect ornamentation i..e, surface decoration so
Chen can get protection for the decoration

c)

Yes, if it is an original and artistic decoration then copyright subsists in the
decoration

Further, if the decoration was applied to the toaster, copyright might also subsist
in the toaster

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Question 8

a)

UK unregistered designs subsist in the shape or configuration of the whole/or part of a product.

Ansee's plant pot has ridges and fold which are protectable (lines and shapes)

The colour is also protectable, so the purple plant pot

The five openings features are protectable

No general prohibition on functional designs, so the 5 openings that could be argued as functional for a registered design are undoubtedly protected in a UK UDR

The product was launched on 6 December 2021

UK UDR lasts for 15 years from the end of the year of which it was disclosed i.e, the UDR will expire 30th December 2036

Unless it is offered to be sold or sold in the first 5 years from when then product was launched, then design right will last 10 years from when the design was offered to be sold or sold

In this case, we know that a day later James purchases the plant pots from Ansee, so the UK UDR in the plant pot will last until 31st December 2031

UK UDR are subject to exclusions such as

Method or principle of manufacturing

Must fit

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Must Match

However, the plant pot does not fall under any of this exclusions

Therefore, a UK IDR subsists in Ansee's plant pot

b)

The owner of the UK unregistered design right has the exclusive right to make articles according to the design (identical designs or ones that only differ in immaterial differences), and to make a design document which is purposed to enable someone to make an article according to the design.

It is necessary to show copying to prove primary infringement of a UK UDR.

Orly has taken a photo of Asnee's designs with the intentional of making similar designs. She then proceeds to make such designs

The fact that she intends to make a similar designs proves intentional copying

Similar design may be a design that differs only in immaterial differences

Therefore, Orly is probably directly infringing Asnee UK UDR in the plant pot because she intentionally copied Asnee plant pot to make a similar deisgn, and also offered them to sale so also in the course of business

Overall, Orly is directly infringing Asnee UK UDR

c)

Secondary infringement of an UK unregistered design right is when a person imports into UK an infringing article, is in possession or dealing with the infringing articles in the course of business, or providing the means which are specifically adapted to producing an infringing article

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It is necessary to show knowledge (actual or constructive) in order to provide secondary infringement of a UK UDR.

Nelly is in possession of and is dealing with the infringing plant pots and is offering them to sale in shop and displaying them in public

Nelly and Orly are business partners, Nelly should know where the products came from and if they are infringing or not. Regardless of whether Nelly did know or not does not matter, he should have known that the plant pots were infringing,

It does not matter if no one bought then, only that they were offered for sale

Therefore, Nelly is secondary infringing Asnee's plant pot.

d)

Tara may enter into a joint ownership with Asnee and his plant pots, this would involve Tara and Asnee becoming joint proprietor on the design right and recording the design right and interest

Asnee could assign all of this rights to Tara, this would allow Tara to do anything that Asnee could have done. It must be in writing, signed by the assignor

Asnee could partial assign some of his right to Tara, this would allow Tara to do some of the acts that Asnee can do, to the exclusive of anyone else. Again must in writing and signed by the assignor

Tara could wait and obtain an licensee as of right, which is available in the last 5 years of the UK UDR to everyone

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Question 10

a)

Can Ara studios pursue copyright action against Shanika:

An exclusive license gives the exclusive licensee the exclusive right to so anything that the design right owner could have done to the exclusive of everyone, including the design right owner.

This exclusive licensee includes performing the work in public because it is a musical and potentially literary copyright piece of work

So Shanika is infringing the Ara studios because she played Black Cement to the public, which is an infringing act, without the permission of the exclusive licensee

The exclusive licensee of Ara studios is valid from November 2020 to November 2055 because of licensee granted by Andrew. Shanika committed the infringing act in January while the license was in force.

If they are to pursue copyright action against Shanika, as the exclusive licensee, the action cannot proceed unless Andrew, the design right owner is also made party.

Andrew will not be liable for damages unless he takes part in the proceedings

Ara studio are not affected by their ability to apply have interim injunctions granted

Defences that Shanika can reply upon:

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She was not aware of the exclusive licensee, if the licence was granted in November 2020 and by Jan 2021, when Shanika committed the act, the grant of licence had not been recorded at the UKIPO, then Shanika could have a good defence that she did not know and she would be innocently infringing and no damages would be awarded to Ara Studios. And the court would not award costs or expenses for acts committed before the assignment

Shanika is a Professor of Musicology so she could say that the act of reproduction was for teaching purposes or for making citations that is compliance with fair trade and mentions the source.

b)

As Roman is now the design right owner as the successor in title, he exclusively licenses Black Cement to Ara Studios

Because Andrew has given Roman all his copyright as a gift i.e., Roman did not obtain it for a sufficient consideration, no exclusive licensee will be affected by Roman's decision

The original exclusive license granted by Andrew will be safe unless acquired for a sufficient consideration and then cancelled

c)

Andrew as the author of the copyright work has the right be identified when the work is performed in public

Roman does not have this right because he is not the author, but he is the exclusive copyright

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This right must be asserted

Cleo, the producer, of the film is infringing this right of Andrews because they have not named the correct person for Black Cement

Therefore Andrew can take action against Cleo for infringement of his right to be identified when the work is shown in public

Andrew still has this right even if he assigned his copyright to Roman because is a moral right of the authors and is always available if it has been asserted.

Moral rights include, right to object to derogatory treatment of the work and the right to privacy of certain personal photographs

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Question 9

a)

Copyright is an automatically right that comes into existence when the original and artistic work is first recorded, irrespective if the person performing the work actually knew they were being recording. Copyright includes typographical arrangements.

Therefore, copyright might subsist in the typographical arrangement of the lecture if it is an original and artistic piece of work

Maude

Maude attends the speech. No recording devices are allowed in the library, so we assume that no one else has made a recording

Maude has managed to secretly transcribe Bonnies' lecture verbatim on her laptop – this is a typographical arrangement of Bonnies lecture

The speech is transcribed Maude's typist expertise in a typographical form from an audio form and so qualifies as an original and artistic piece of work

Maude is the author of the typographical arrangement.

Clive

Maude is employed by Clive, a bookshop owner, who instructed her to go to a library to see the author Bonnie who she adored. It does not seem that Bonnie was there for any particular business reason. Clive did not instruct Bonnie to transcript the piece of work, nor does it appear that he was expecting her too.

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Therefore, without evidence to the contrary, Maude is both the author and owner of the typographical arrangement of Bonnie's speech.

Bonnie

Bonnie performed the speech, in ab-libbed format, at the library. She may own the copyright that subsists in the recording used in so that she can ad-libbed the speech (but we do not know this). But she does not own the typographical arrangement of the speech that was expertly prepared by Maude.

Overall, Maude owns the typographical arrangement of the speech and Bonnie owns the audio recording of the speech. Clive does not own the copyright in any format because he sent Maude to the speech because Maude likes the author, not for any other particular reason to do with her employment.

b)

Copyright infringement

Primary infringement of copyright to make copies, issues copies to the public, or make an adaption of the copyright and then make copies of the adaption or to issue copies of the adaption to the public

Secondary infringement of copyright to import copies into the UK, possess or deal with infringing copies and to provide means that are specifically adapted to make infringing copies. It is necessary to show knowledge (actual or constructive) i.e., that the secondary infringer knew that the copies were infringing copies, or should have known

Maude

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She prints Bonnies speech

But Maude is the author and owner of the typographically arrangement of the speech which extended to the when the words are printed on a piece of paper.

This is not an infringement because Bonnie does not own the copyright in the speech in its printed format

If someone was to record the speech being spoken then Bonnie could bring an infringement action against them

Toby

Toby does not make the copy, he does issue a "copy" of the speech to the public, but it only the last paragraph

This is not probably not infringement because you can use 5% of someone's else's work without a license or their permission, if the speech was 30 minutes long, the last paragraph was probably around 5% of the entire speech. So no direct infringement to Maude (or Bonnie)

While he was taking photos of the speech he was dealing with and had the speech in his possession which could be secondary infringement but he did not know who the author was so no knowledge, whether constructive or actual so no secondary infringement either to Maude or Bonnie

c)

File a request for an injunction that restricts Maude or Toby from performing the speeches live in public. This is the best course of action since Bonnie would be the only person that could deliver the speeches in public

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File an infringement action for the right to be mentioned as the author, when the speeches are performed in public

File an infringement action for the right to object to derogatory treatment when the speeches are performed in public

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4.5

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