Paper Ref	Sheet	Percentage Mark Awarded
FC4	1 of 15	63%

Examiner's use only

1) a) Exclusive right to:

- make articles to the design, offer, put articles to the design on the market, import or export articles made to the design, use the design or articles made to it

b) Exclusive right to:

- copy the work

- issue copies of the work to the public

- show, perform or play the work in public

- communicate the work to the public

- rent or lend copies of the work to the public

- make an adaptation of the work, or do any of the above in regards to the adaptation

MARKS AWARDED: 6.5/8

6.5

Page sub-total

2)

- Ahmed's registered design was filed 23 January 2019.
- Registered design has term of 25 years, with renewals due every 5 years to keep registration in force
- First renewal was due on 23 January 2024, which has been missed
- Renewals are payable (with late fee) in six month grace period, i.e. by 23 July 2024. This has also been missed.
- Restoration is possible within a year of missed renewal, i.e. by 23 January 2025.
- Must show that failure to pay renewal fee was unintentional. Supporting evidence for this may be evidence that Ahmed was preoccupied caring for his mother, and did not wish to let design lapse.
- Should make request to UKIPO to restore the design in writing, with supporting evidence and with payment of fee for restoration. If successful, then must pay the renewal fee.

MARKS AWARDED: 6/7

6

Examiner's use only

3) – Danielle is French and living and working in Paris

- She must appoint representatives for the US. If she receives any objections from the UKIPO, she must appoint a representative for the UK.

-May need additional documents for the US such as power of attorney.

- She should request publication of the design, and pay the publication fee (for each design, if multiple in the same class are included).

MARKS AWARDED: 0/7

0

Page sub-total

Examiner's use only

4)

- Where the disclosure could not reasonably have become known in the geographical area comprising the United Kingdom and the European Economic Area in the course of business to the people working in the sectors concerned
- Where the disclosure was made by the designer or their successor in title to a person under terms of confidentiality (express or implied)
- Where the disclosure was made by the designer or their successor in title within 12 months preceding the filing date / priority date of UK registered design
- Where the disclosure was a result of acts made by the designer or their successor in title within 12 months preceding the filing date / priority date of UK registered design
- Where the disclosure was a result of an abuse in relation to the designer or their successor in title within 12 months preceding the filing date / priority date of UK registered design
- Where the prior disclosure is a valid design application in another territory and the UK registered design application validly claims priority

MARKS AWARDED: 6/6

6

Page sub-total

5)

a) - UK unregistered design right subsists in original designs.

- To qualify for UK UDR, at least one of the designers must be a qualifying person.

- Jocelyn is American and lives in America. America is not a qualifying country, and so Jocelyn is not a qualifying person.

- Tina is a UK national and is resident in the UK (i.e. Tina has a domicile or habitual residence in the UK). The UK is a qualifying country, and thus Tina is a qualifying person.

The oil pump thus does qualify for UK UDR, provided that it meets the other requirements (i.e. must be original, and must not be excluded from protection by the "must fit" or "must match" exclusions).

b) The play is a literary work co-authored by Roisin and Aiden. The play was first published in Ireland; according to the Berne convention, the authors shall enjoy copyright in countries of the union other than the country of origin the same rights accorded by respective laws to nationals now and hereafter, as well as the rights specially granted by the Berne convention. First published in Ireland (Country of origin), but UK is party to Berne convention. It is a joint work if both made contributions to the play which are not distinct. Assuming this is the case (this seems to be the case here from the play being co-authored), the copyright will expire 70 years from death of last author. In this case, Aiden died after Roisin, so copyright will expire 70 years from 1962 (i.e. 2032)

MARKS AWARDED: 6.5/7

6.5

Examiner's use only

6)

a) No; surface decorations are excluded from protection by UDR. Chen therefore does not have any UDR protection for the decoration.

b) Yes: UK design right covers surface ornamentations and decorations. Chen can separately apply for a UK registered design right to cover the decoration. Must meet the criteria (most relevant here is that the decoration must be new and have individual character and must not contain restricted emblems)

c) Copyright subsists in original artistic works. The decoration may qualify as an artistic work, in which case it is protected by copyright.

MARKS AWARDED: 5/5

5

Page sub-total

7)

a) – For a UK design to be registerable, it must be new and possess individual character.

- A design is new if it is not identical or differing only in immaterial features to any other design available before the filing/priority date of the design registration.

- A design has individual character if it produces on the informed user a different overall impression to the overall impression produced by any other design available before the filing/priority date of the design registration.

- The degree of freedom of the designer must be considered in assessing the overall impression produced on the informed user.

- The following is excluded: features of an article which must necessarily be provided in their exact shape and configuration to allow the article to be connected to or placed in, around or against another article so that either article may perform its intended function. ("must fit")

- Also excluded are features which are solely dictated by their technical function.

- In this case, the brake pad is designed to fit exactly on the rim of a bicycle wheel to allow cyclists to brake immediately. The shape of the brake pad is likely excluded from design protection (as it must fit the rim of the wheel, and it is in any case designed for a technical function of allowing braking immediately)

- The criss-crossed luminescent strips are provided to make the brake pad more visible during the night and more appealing to consumers. Features solely dictated by their technical function are excluded, and the luminescent strips are provided partially to make the brake pad more visible during the night (which is a

technical function). The material of the strips (being luminescent) is obviously chosen for technical function. However, the strips are criss-crossed, which is mentioned to be more appealing to customers. If the criss-cross pattern of the luminescent strips is novel and possesses individual character, it may qualify for protection (this assumes that the criss-cross pattern was not chosen for a technical effect, such as being more visible than sticking the luminescent strip round the exterior without criss-crossing).

b) - Complex products which comprise two or more interconnecting parts are only protectable where features of the design which possess novelty and individual character are visible during normal use.

- In this case, the spring would appear to meet the criteria for novelty and individual character (described as "unique").

- However, the spring is only visible when air is pumped into the wheel. This means that, in normal use, the spring is not visible, and therefore the spring is not registerable.

c) Brake pad:

- A design belongs to the employer if created by the employee in the course of business.

- Donatella is employed by Wheelie (not working on commission) and made the brake pad when instructed by Wheelie. A brake pad is a standard component of a bike, and being instructed to create a brake pad by Wheelie seems to fall within the normal course of business of a bicycle wheel manufacturing company. Thus, wheelie are almost certainly entitled to the brake pad design.

Examiner's use only

Spring:

- Donatella designed the spring in her own time, and came up with it herself. She was not requested to make it by Wheelie.

- However, Donatella used the warehouse and tools provided by Wheelie to develop the spring. Additionally, the spring is a component of a bike wheel. Wheelie makes bicycle wheels. The spring is a component Donatella could be expected to make in normal course of business as she is employed by a bicycle wheel manufacturing company as a designer. Wheelie are therefore likely entitled. As Donatella did come up with the design in her own time, this may be considered a work of joint ownership.

MARKS AWARDED: 13.5/20

13.5

Page sub-total

8)

a) - UDR protects original designs. James, who is head of Dundee's Gardening Society and thus likely is familiar with plant pot designs, commented that the designs are unique, so we can infer that Asnee's plant pots are likely original (not the same as or substantially identical to existing designs)

- Design includes features of shape and configuration. It does not include surface decoration or colour (or materials).

- UDR lasts:

- 15 years from the end of calendar year when the design is first recorded in a design document or an article is first made to the design; or

- if the design is put on the market or published in the 5 years from end of that calendar year, 10 years from the end of calendar year when that occurred.

- In this case, Asnee did not disclose the design in the 5 years after 2011 (he did not disclose till Dec 2021). Accordingly, the UDR lasts 15 years from end of calendar year when the design was first recorded.

- As design was first recorded in November 2011, Asnee's UDR lasts until 31 December 2026. The UDR will cover the shape of the plant pot and will include the ridges and folds, but will not cover material (clay) or colour (purple).

- Asnee also has complementary unregistered design right (CUD) as the design was made and published in the United Kingdom in December 2021. This lasts 3 years from the design being made available, i.e. until 6 December 2024. CUD covers the plant pots shape included ridges and folds, and <u>also</u> covers surface

decoration. This means the purple colour of the pot will be covered by CUD. The surface texture from the clay material will also be covered.

b) – Asnee has the right to reproduce the design by:

- making articles to the design

- making design documents for the purposes of making articles to the design

- For infringement of UDR, Orly must have copied the design. From the facts given, Orly has copied the design – she saw the design at the launch, took photos of the design to make a similar design, and made the similar design.

- Orly has thus infringed Asnee's UDR rights.

- Making the 10 plant pots is primary infringement; Orly's pots are substantially the same as the design (it is noted the pots are similar).

- Taking the photos of the plant pots could be considered as producing design documents for the purposes of making articles to the design (also primary infringement), as Orly's made her pots based off the photos. However, a photo may not give enough information to be considered as a design document for making a design as it does not provide detailed instructions on how to make the pot, or on specific measurements etc.

- The pots were clearly made for a commercial purpose; Orly wants to sell them in her shop. Thus no defence for private and non-commercial use.

c) - The pots made by Orly are an infringing article as making them in the UK was a violation of Asnee's UDR.

- Offering and putting on the market of Orly's plant pots are both secondary infringement, if Nelly knows or reasonably should expect that the plant pots are protected by design rights. Stocking the infringing article for these purposes is also secondary infringement.

- If Nelly was aware that the designs were at the launch in Dundee, or is aware that Orly copied the designs, Nelly is guilty of secondary infringement. If Nelly had good reason to believe Orly made the designs and did not know they were infringing articles, Nelly is not guilty of secondary infringement – this may be the case as Orly is a designer herself, so Nelly may believe Orly created the plant pots.

d) – Tara is unable to get a licence from Asnee to produce and sell the plant pots. There are exemptions to infringement, in which case Tara may still be able to make the plant pots:

- for private and non-commercial use

- for experimentation

- for the purposes of teaching or making citations, provided that this in accordance with fair trade practices and that Asnee is cited as the creator.

- if the plant pot is needed as a replacement part to repair a ship or aircraft registered overseas but currently in the UK, it could be created for the purposes of repairing said ship or aircraft. I'll admit, this seems unlikely.

- Asnee is unwilling to licence Tara to produce the plant pots – he may be willing to assign the rights over to Tara. If so, Tara would own the UDR and would be

Examiner's use only

able to produce copies of the plant pot. Would require an assignment document in writing signed by the assignor (Asnee) or their representative.

- UDR and complementary unregistered design are territorial; Tara could go make the pots overseas (although she could not import them back into the UK).

MARKS AWARDED: 12/20

12

Page sub-total

10) a)

- Ara studios has an exclusive licence to Black cement for 35 years, which was provided in November 2020.

- From this date until November 2055, Ara studios have the exclusive right to:

- copy the work

- issue copies of the work to the public

- communicate the work to the public

- play, perform or show the work in public

- rent or lend copies of the work to the public

- make an adaptation of the work, or do any of the above in relation to the adaptation

- Shanika played Black cement in January 2021, i.e. after the licence was assigned to Ara studios.

- It does not matter that Andrew does not want to pursue Shanika as Ara studios have an exclusive licence which was in force when Shanika committed the (alleged) infringing act.

- They may have a case to pursue Shanika for copyright infringement for playing the copyrighted work in public. She did this in a car park (i.e. in public) and 45 members of the public were in attendance.

- Shanika has the possible defence that she was doing this for teaching purposes or for study; she is a Professor of Musicology and did this to study peoples reactions. If she wishes to rely on this, this must be fair dealing in the work – we

would need to know how much of the work was played and how much would reasonably have been necessary to achieve the study in order to ascertain this - and the author must have been cited (we do not know if this is the case).

b) - The assignment of the copyright from Andrew to Roman will not affect the terms of the exclusive licence, subject to agreements to the contrary.

- Should check the terms of the licence to see if there are any relevant terms

- Absent agreements to the contrary, the exclusive licence continues (now between Roman and Ara Studios)

c) – Andrew has certain moral rights in the work. Among these is a right to be identified as the author of a work, which Cleo has violated by not citing Andrew in the end credits to her film. Also has the right to object to derogatory treatment of the work by alteration, adaptation or addition / removal, which harms his reputation or honour. This may be the case depending on the film A Day at the Dog Park, but there is nothing to indicate that the work has been treated poorly from the facts.

- As mentioned earlier in the question, Ara studios have an exclusive licence for Black Cement from 2020 until 2055. Cleo's film came out earlier this year (i.e. while Ara were in possession of the exclusive licence). This means that unless the exclusive licence has been invalidated (no evidence to suggest this), Cleo's licence is invalid; Roman cannot licence the work out to any other parties. However, Andrew no longer has copyright in the work so he cannot pursue Cleo or Roman for this directly. He could however contact Ara studios to inform them that Cleo has used the work in the film without a licence from Ara studios

7

MARKS AWARDED: 7/20

Page sub-total