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Question 1

Permitted purposes include hoping that a person, as the recipient of the communication, who is doing or intends to do an act restricted by a registered design right, to be aware of the existence of the registered design right and to stop doing the act. A communication concerning a threat should include relevant information, including the design number or alternative and effective ways to access the design number, for the recipient to identify the registered design. Such treat should be based on a registered design right which is active when making such treat. The acts restricted by a design right include making, offering, putting on the market, importing, exporting and use of a product in which the design is incorporated or to which the design is applied, and storing the product for the above purposes. The proprietor or any person in title of the design right or other suitable representative should be the one making such threat.

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Question 2

If a product in which the design is incorporated or to which the design is applied is a component part of a complex product, the component part shall only be considered to be novel and having individual character if:

- The component part, once incorporated into the complex product, remains visible during normal use of the complex product; ✓1
- The visible features of the component shall be by themselves novel and have individual character. ✓0.5 ✓0.5

“Normal use” means the use by the end user, exclusive of maintaining, servicing or repair work of the complex product. ✓0.5 ✓0.5 ✓0.5

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Question 3

Copyright owner of a copyright work has the right to object to derogatory treatment. 0.5

In general, a copyright owner of a literary, dramatic, musical or artistic work has right to object to derogatory treatment on the work. 0.5

Derogatory treatment means alteration, making a deletion or making an adaptation of a copyright work. 0.5

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Question 4

- a) A person at the time when he is doing the act in relation to a product, does
^{✓0.5} not know or ^{✓0.5} unlikely to know that the design incorporated in or ^{✓0.5} applied to ^{✓0.5}
the product is registered in the UK.

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- b) No remedies can be sought after on the act that has been the innocent
infringer. But the innocent infringer is not allowed to do any more
restricted acts.

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Question 5

- a) ^{✓1} The Unregistered design right in the UK protects the design in shape or configuration (both internal and external) of an article.

Accordingly, the shape or configuration (both internal and external) of the coat can be protected by unregistered design right.

The panels of different textures by themselves may not enjoy the design right if there is no new shape or configuration involved.

Besides, copyright protect an artistic work which includes a graphical work, a photograph, a collage or sculpture; or a work of architecture of a model of architecture; or a work of artistic craftsmanship.

The coat falls into the artistic work, so it can be protected by copyright.

- b) ^{✓0.5} The duration of unregistered design right is 15 years from the date when the design of the coat is made. During the coat is put into the market within 5 years ^{✓0.5} from the date when the design is made, the duration is 10 ^{✓0.5} years from the date it is put into the market.

In case of a single known author, copyright lasts for 70 years after the author dies. In this case, the coat is designed solely by a designer, the copyright of it lasts for 70 years after the designer dies.

In case if the author is unknown, the copyright lasts for 70 years after the coat is made. But if during this period the coat is put into the market, the

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copyright lasts for 70 years from the date that the coat is put into the market.

If the author becomes known later on, the rule of known author mentioned above applies again.

In this case, since only “designer” is mentioned without further information, it depends on the cases discussed above.

- c) Exclusive license means the licensee has the same exclusive right as the property owner.

The licensee has the same exclusive right as the property owner as if the property right had been assigned to the licensee.

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Question 6

Acts which constitute an infringement by “copying” include:

The act of reproducing a copy of a literary, dramatic, musical or artistic work in any material form, including storing the work by electronic or other means. ✓1

For artistic works, it also includes making a copy in two dimensions of a three-dimensional work or making a copy in three dimensions of a two-dimensional work ✓1

For films, it includes making a copy of photograph from the whole or a part of images in the film. ✓1

For topographical arrangement, it includes making a facsimile copy of the work. ✓1

Copying of an adaptation of a copyright work is also an infringing act. It is immaterial whether the adaptation has been recorded when the act is done. ✓1

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Section B

Question 7

- a) The author of a design shall be the original proprietor of the design, except that for a design created by an employee in the course of his employment, the employer shall be the original proprietor of the design.

In this case, as the new seat is design in-house^{✓1}, which probably be created in the course of employment, the employer Chaise shall be the original proprietor of the design in the new seat.^{✓1}

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- b) The registered proprietor of a design has the exclusive right to use the design or any design does not produce a difference overall impression.

The use of a registered design includes making, offering, putting on the market, importing, exporting and use of a product in which the design is incorporated or to which the design is applied, and storing the product for the above purposes.

Remedies available for infringement of a registered design include damages, injunctions, accounts, etc.^{✓1}

In this case, the design registered by the garden centre is very similar to the Chaise's design. There is a high chance of infringement of the garden centre's registered design by the Chaise's seat products.

To mitigate the risk of infringement:

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One possible way is to make and sell products which have a different design from the registered design of the garden centre. This may involve modifying the existing design or develop another new design that is different from the registered design of the garden centre. ✓1

Another possible way is to prove that Chaise has been making and selling the design before the filing date (or registration date) of the garden centre's registered design. The making and selling of the design products before the registration should not be penalized. ✓1

A further possible way is to invalidate garden centre's registered design. For example, if there is evidence that garden centre's design should not have been registered. For example, if it can be proved that Chaise's new design is disclosed to the public before garden center file its design application, or that the garden centre's design is copied or derived from the Chaise's design, then garden centre's registered design may be invalidated on this basis. ✓1

A further possible way is that, if it can be proved that the garden centre 's design is copied or derived from the Chaise's design, then Chaise may ask order from the court to rename the proprietor of the garden centre's registred design to be ✓1

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c)

At the same time or after that, Chaise can try to file application for registration for its new design as soon as possible. ✓1

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If a disclosure was made by the design or any successor in the title of his during the period of 12 months immediately preceding the relevant date (i.e. the application date of the design application), the disclosure will be not considered in determining the novelty and individual character of the design. ✓¹

Therefore in this case, if Chaise file a design application for registration for its new design, within 12 months after its self-disclosure (in this case, it may be the demonstration at the garden centre a few weeks ago), such self-disclosure should be considered in determining the novelty and individual character of the design in Chaise's design application.

In addition, if a disclosure was made by a person other than the designer or any successor in the title of his as a consequence of an abuse in relation to the designer or any successor in the title of his, the disclosure will be not considered in determining the novelty and individual character of the design. ✓¹ Also, if a disclosure was made during the period of 12 months immediately preceding the relevant date (i.e. the application date of the design application) in consequence of the information provided or action taken by the designer or any successor in the title of his by the designer or any successor in the title of his as a consequence of an abuse in relation to the designer or any successor in the title of his, the disclosure will be not considered in determining the novelty and individual character of the design. ✓¹ Moreover, if a disclosure was made by a person other than the designer or any successor in the title under the condition of confidentiality (whether expressed or implied), the disclosure will be not considered in determining the novelty and individual character of the design. ✓¹

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Therefore, if the garden centre's registered design is a result of an abuse, breach of confidentiality agreement, or information provided or action taken by Chaise or Sylvie, the garden centre's registered design should be not considered in determining the novelty and individual character of the Chaise's design application.

Furthermore, Sylvie has noted that garden centre's registered design is very similar to Chaise's the new design of the handcrafted garden seat. In case that the Chaise's new design has been made available to the public before the garden center filed the application for the similar design, Chaise can use this prior disclosure as evidence to challenge the novelty and distinctive character of garden centre's registered design. ^{✓1} In particular, if the garden centre's design application has been registered (as it seems to be), invalid proceedings can be taken against garden centre's registered design, with the prior disclosure of the Chaise's the new design.

A further possible way is that, if it can be proved that the garden centre 's design is copied or derived from the Chaise's design, then Chaise may ask order from the court to rename the proprietor of the garden centre's registred design to be Chaise. ^{✓1}

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Question 8

a)

An alternative form of protection is registered design^{✓1}, which protects shape of a product, as well as ornamentation of the product. Accordingly, the new shape (and surface decoration if any) of bottle can be protected by registered design right.

Another alternative form of protection is unregistered design right^{✓1}. Unregistered design right in the UK protects the design in shape or configuration (both internal and external) of an article, while it does not protect surface decoration.

Accordingly, unregistered design right thus protects the new shape of bottle, but not any surface decoration on the bottle.

Another alternative form of protection is patent, which protects functional features that are brought about by the new shape of the bottle.

b)

Advantages of registered design right:

- Compared with a trademark which requires use of the trademark, a registered design does not require use of the design. 0.5
- Shape is not a traditional trade mark like logos used by average customers to identify the origin of the product, and shape of bottle may be design for function use. This makes the shape less likely to be allowed to be registered as trademark. 0.5 On the other hand, shape is a subject matter of registered design, which is a better form of protection for shape than trademark. 0.5

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- Compared with unregistered design right, registered design right serves as stronger proof of the design ownership as it is registered at the registrar and published eventually. 0.5
- Compared with unregistered design right, the maximum duration of the right last longer, i.e. 25 years versus 15 years of unregistered design.
- A valid registered design at the register forms prima facie evidence for take action against infringers. 0.5

Disadvantages of registered design right:

- Need to be examined (on novelty and individual character), compared with unregistered design right. 0.5
- More expensive for filing, examination and renewal, compared with unregistered design right. 0.5
- Protection on fixed shape, compared with trade mark which protects whole type of goods (same classification) that may contain different shapes of bottles. 0.5

Advantages of unregistered design right:

- The design does not need to be registered for the design right to subsist, compared with registered design, trade mark, and patent. 0.5
- The design owner can take immediate action against any infringement as registration is not required for the right to be effective, compared with registered design, trade mark, and patent. 0.5

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- Does not need to pay application fees, examination fees if any and renewal fee for the design right, compared with registered design, trade mark, and patent. 0.5

Disadvantages of unregistered design right: 0.5

- Does not protect surface decoration and it is possible that there is new surface decoration on the new bottle, compared with registered design
- weaker proof of the design ownership as it is registered at the registrar and published eventually.

Advantages of patent:

- May offer a scope not limited to a fixed structure
- Cover functional features while other suggested property rights do not

Disadvantages of patent:

- Require the shape to have novel and inventive functional features for a patent to be granted, more difficult to obtain a patent in view of the prior art with numerous of bottles disclosed.
- Require substantive examination.
- More expensive to obtain a patent compared with other alternative forms.

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Question 9

- a) A design registered only if it is ^{✓1}novel and has ^{✓1}individual character by comparing with any design made available to the public before the application date of the design.

The design is made available to the public if it is published, exhibit or used in trade or other disclosed to the public. The disclosure is not considered as made available to the public if it was made by the design or any successor in the title of his during the period of 12 months immediately preceding the relevant date (i.e. the application date of the design). ✓1

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In this case, Haircraft began selling of the curling tongs in the UK some eight months ago, which is less than 12 months. The selling will not be regarded as public disclosure that influences the novelty and individual character of the design to be applied.

There is registrability given there are not other prior public disclosures apart from what is discussed above.

- b) In US, a design application can be filed within 12 months from the date of the design owner's self-disclosure. ✓1

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In China, no grace period of the owner's self-disclosure available or no unregistered design right is available. Nothing can be done to register the design in China. ✓₁

In France, a design application can be filed within 12 months from the date of the design owner's self-disclosure. ✓₁

In Germany, a design application can be filed within 12 months from the date of the design owner's self-disclosure. ✓₁

✓₁
c) Arrange signing of an assignment between the Haircraft and the external consultant to ensure the design right (including this initial design and potential subsequent modified versions) is on the hand of Haircraft. The executed assignment should be recorded at the register.

d) Application should be filed in the UK by tomorrow as a national application. ✓₁ A subsequent Hague International Application can then be filed within six months from the filing date of the first application, designating France, Germany, China and the USA, and claiming the priority of the first application. ✓ Alternatively, instead of the Hague International Application, individual national applications can be filed separately in France, Germany, China and the USA, within six months from the filing date of the first application, claiming the priority of the first application. ✓₁

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