

THE JOINT EXAMINATION BOARD
COMMON FOUNDATION LEVEL
UNITED KINGDOM DESIGNS AND COPYRIGHT LAW

4th March, 1992

10.00 a.m. - 1.00 p.m.

StudentBounty.com

Please read the following instructions carefully. This is a THREE HOUR paper.

1. You should attempt no more than four questions from Part A and no more than four questions from Part B.
2. The number of marks allotted to each question is placed in brackets at the end of the question.
3. Where a question permits of reasons being given for the conclusions reached, such reasons should be given.
4. Start each question (but not necessarily each part of each question) on a fresh sheet of paper and number it clearly in the margin. Write on one side of the paper only using BLACK ink. You must write your examination number and the designation of the Paper in the top right hand corner of each sheet. You must NOT state your name anywhere in the answers.
5. Unless specifically requested answers are NOT required in letter form.
6. NO printed matter or other written material may be taken into the examination room.

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PART A

You should attempt 4 (but no more than 4) questions from this section.

1. Your client asks whether he should protect his products by registered designs or whether he would be better off simply relying on his design right. Set out in note form the pros and cons of each course of action, assuming that both types of protection are actually available for the client's products.
(10 marks)
2. Write brief notes on two of the following:
 - (a) Design right in a computer-generated design.
 - (b) Design right in a kit of parts.
 - (c) "design document"(10 marks)
3. Write brief notes on any two of the following cases:
 - (a) Baumann -v- Fussell (1978) RPC 485
(photograph of cockfighting case)
 - (b) Masterman's Design (1991) RPC 89
(the hairy doll case)
 - (c) Ferrero's Application (1978) RPC 473
(the chocolate egg case)(10 marks)
4. Who is the first owner of:
 - (a) The copyright in a literary or artistic work.
 - (b) The design right in an original design.(10 marks)
5. List the circumstances under which a valid registered design application may be filed even though the design in question has already been published in the United Kingdom.
(10 marks)

6. List the conditions that must be satisfied before a design can subsist in a design. You need not consider the provisions relating to qualifying persons or qualification by first marketing.

(10 marks)

PART B

You should attempt 4 (but no more than 4) questions from this section.

7. Under the Registered Designs Act 1949 and the Rules made thereunder:

- (a) What information is publicly available in connection with a registered design?
- (b) Is the information in (a) still made publicly available if a design application is refused prior to registration?
- (c) In outline, what are the special provisions restricting the availability of information relating to certain designs?
- (d) What provisions are there, if any, allowing a person to search for a particular registered design?

(15 marks)

8. Your client, Playtime Limited, manufactures children's toys. One of his most popular products is his "Super Hero Fighting Man" model which is protected by a design registration. Your client explains that the registration originally stood in the name A Limited, and that he took an assignment of it in 1988. The assignment (which mentioned the registered design only and no other form of protection) was subsequently recorded.

Playtime Limited has now received a letter from B Limited stating that it is the owner of all rights in the "Super Hero Fighting Man" model and that in particular it owns the copyright in the original design drawing. B Limited threatens legal action for copyright infringement and cancellation of the registered design.

Advise your client.

(15 marks)

9. To what extent, if at all, can the following products (all designed recently by an English company) be protected by design right, registered design and copyright? Assume novelty and originality in each case.
- (a) A scale model of the Eiffel tower.
 - (b) A key.
 - (c) A ball gown made out of a fabric having a distinctive printed pattern.
 - (d) A wing mirror for a car.
 - (e) A paving stone having a distinctive, raised, non-slip pattern.

10. Your new clients, Rainyday Limited, tell you that they are the registered proprietors of a design for an umbrella. The representations show an umbrella having a fabric covering with a distinctive pattern printed on it, and a handle in the shape of a duck's head. The tip and shaft of the umbrella are shown in blue. The Statement of Novelty reads "the novelty in the design resides in the shape and configuration of the article as shown in the representations, excluding those parts shown in blue". The article is described in the registered design as "an umbrella".

Your clients tell you that Sunshine Limited, who are competitors, have for some time been selling a parasol having a fabric covering with the same distinctive pattern printed on it. Their parasol also has a handle in the shape of a duck's head, but not exactly the same head as the one on Rainyday's umbrella. At the tip of the parasol is a distinctive representation of a pair of duck's feet.

You check the Designs Register and find that the registration is in force and the proprietor is Rainyday Limited. The registration will finally expire next year.

Write notes for a meeting with your clients, indicating the points you think important for advising your clients and any questions that you need to ask.

(15 marks)

11. Your client is a designer of high fashion jewellery whose method of designing new articles is to work on models, without any preliminary drawings. Her latest design, created between October and November 1991, was exhibited at a gallery in January 1992 and attracted considerable interest. No articles have yet been sold, but a large chain of jewellers has expressed interest in manufacturing the design on a large scale. Sales are due to start on 1st May 1992. Your client asks how to protect her new design, if that is possible, and if so, how long the protection will last.

Advise your client

(15 marks)