

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

22nd April, 1993

02.00 p.m. - 05.00 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. In the appropriate boxes at the top of each sheet please enter the designations of the paper, the question number, and your Examination number. Write on one side of the paper only using BLACK ink. You must NOT staple pages together. 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.
7. Answers MUST be legible. If the examiners cannot read a candidate's answer no marks will be awarded.

THE JOINT EXAMINATION BOARD
UNITED KINGDOM DESIGNS AND COPYRIGHT LAW

22ND APRIL, 1993

02.00p.m. - 05.00 p.m.

StudentBounty.com

PART A

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

1. Write brief notes on both of the following topics:

- (a) The rights given in the 1988 Act to seize infringing copies of a copyright work (known colloquially as "do it yourself seizure Orders").
- (b) Assignment and licences of copyright works made after commencement of the 1988 Act. (Ignore copyright in future works.)

(10 marks)

2. In the Registered Designs Act 1949 as amended what is meant by the terms:-

- (a) "article"
- (b) "design"
- (c) "set of articles"?

(10 marks)

3. Are the following true or false? Explain your reasoning:

- (a) Copyright and design right can never co-exist in a single article.
- (b) Copyright in a drawing of a three-dimensional article cannot be infringed by actually making the article.
- (c) Copyright protection in an artistic work is restricted once that work has been industrially exploited.

(10 marks)

4. Write brief notes on all of the following:
- (a) The duration of copyright in an artistic work which has not been industrially exploited.
 - (b) The duration of design right in a design.
 - (c) The duration of a registered design.

You need not consider any transitional provisions which may still be applicable in certain cases.

(10 marks)

5. Assuming that design right subsists in a particular design, what are the acts which, if carried out by a third party, would result in the design right being infringed?

(10 marks)

6. Your client is a small engineering company. The Managing Director writes:

"I would like your advice as to how we can best stop our competitors copying our products. Patents are too expensive, and registered designs, I believe, cannot be used to protect purely functional articles such as the type of thing we sell. Can we register our copyrights, or is there anything else we should be doing?"

Draft a reply in letter form. Marks will be given for both practical advice and explanations pitched at the appropriate level for the client.

(10 marks)

PART B

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

7. Assume that the following products have all been designed recently, and that they are novel and original. Indicate whether, and to what extent, design right, registered design and copyright protection is available in respect of:

- (a) A large bronze sculpture that will be sited in a prominent place in London.
- (b) A piece of costume jewellery.
- (c) A screw-in light bulb, the glass portion having an unusual pointed shape.
- (d) A running shoe.
- (e) A lid for a teapot, the lid having a distinctive floral pattern.

(15 marks)

8. Your client writes:

"My competitors, Toytown Ltd, make a well-known range of toy figures. To my knowledge, the range has been on the market for several years now (5 to 10 at least) without change. Toytown are making a lot of money on this, and I should like to introduce a competing range of figures of my own. The problem is that customers are used to the Toytown figures, and to be commercially viable it is going to be essential for my figures to look very similar to theirs. Can you advise me generally, and let me know if and when it will be safe for me to go ahead?"

Write a letter in reply to your client. You may assume that there is no patent or registered design protection, and you may ignore potential passing off problems.

(15 marks)

9. Little People Ltd is a company specialising in the manufacture of garden gnomes. In 1990, they approached an independent designer and commissioned from him a design for a new gnome, to be called the Model A. In spite of much publicity, the UK press launch of the Model A was a flop, and no Model A gnomes were ever sold. Disheartened, Little People Ltd approached Megagnome Corp, in confidence, with a plan for Megagnome to manufacture and sell the Model A in the UK under licence. Megagnome expressed no interest, and Little People Ltd decided to press ahead on their own. The designer was asked to make one or two modifications and a registered design application was filed, in Little People's name, on the resultant design, now known as the Model B. Little People Ltd now seek your advice in dealing with a letter they have received from the Designs Registry. The letter says that the Model B design cannot be registered because:

- (a) There is a similar design already registered in the name of Megagnome Corp.
- (b) The design is not new in the light of Megagnome's prior UK sales.
- (c) The design is not new in the light of the disclosure of the Model A at the press launch.

You investigate, and find that the Megagnome registration shows the Model A, and is based on an application filed a month after Little People Ltd's approach to them. The Megagnome sales are also of the Model A, and these started shortly after their own application was filed but about eight months before Little People's application was filed.

Advise your client, giving reasons for your advice.

(15 marks)

10. What copyright and/or design right (if any) subsists in each of the following cases, and who (if anybody) will be the owner of it?
- (a) An extempore speech, made in a public hall by A and not recorded by anybody, and that speech when recorded (without the permission of A) by B a person in the audience.
 - (b) A table of figures, produced on a computer by C, an employee of D. To produce the table, C used a commercially-available spreadsheet program which was written by E.
 - (c) A computer program, written by an independent programmer F. At the time of commissioning F to write the program, G stipulated that he (G) would own the copyright in anything done by F during the course of the commission. F agreed orally, but nothing was put in writing.
 - (d) A gearbox, designed by H for J Ltd as a result of a commission from J Ltd to H's employers, K Ltd. During the commission, H continued to be paid by K Ltd and to be responsible to them.
 - (e) Artwork for a new label commissioned by L from an advertising agency M.

(15 marks)

11. Your client is a manufacturer of writing instruments. One day he comes into your office with a copy of a competitor's design registration, and asks you the following questions:
- (a) "The registration says that the design is to be applied to "a ball-point pen". Does that mean that pencils and fountain pens are not covered? If so, I would like to use part of the design in our proposed new fountain pen range".
 - (b) "Why is the cap coloured blue in the drawings? Is it anything to do with the paragraph that says "Novelty resides in the shape and configuration of the article as shown in the representations, excluding those parts shown in blue"? What is the point of that paragraph?"
 - (c) "When does the registration expire? It says that it was filed on 15 March 1980, and that it claims priority from an earlier German application which was filed on 20 September 1979".
 - (d) "How do we find out whether the registration is valid? The pen shown looks very similar to one that I saw on sale in a shop in Paris about 20 years ago. Can we find out if that earlier pen was cited during the application procedure?"

Answer your client's questions and advise him generally.

(15 marks)

