

THE JOINT EXAMINATION BOARD

PAPER D&C Design and Copyright

Wednesday 2nd November 2011

2.00pm - 5.00pm

Please read the following instructions carefully.

Time Allowed – 3 HOURS

1. You should attempt **TEN** of the twelve questions contained in this paper.
2. **All questions carry ten marks.** If more than ten questions are answered only the first ten presented will be marked.
3. Please note the following:
 - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
 - b. Enter the Paper Number (D&C), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
 - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly, examiners cannot award marks to scripts that cannot be read;
 - f. Reasoning should always be given where appropriate.
 - g. You must number all the pages of your answer script. Once the exam finishes, an additional 5 minutes will be allowed for you to do this.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
 - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
 - b. your mobile phone is found to be switched on;
 - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
 - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order, number all the pages and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

Question 1

Are the following statements true? If not, in each case write brief notes explaining the correct position:

- a) If an article is made industrially from a copyright artistic work, copyright in that article ceases after 25 years. (4)
- b) The commissioner of a new painting can exploit the copyright in it. (2)
- c) Literary copyright ends 70 years after the death of the author or authors of the work in which copyright exists. (4)

Question 2

According to the Copyright Designs and Patents Act 1988:

- a) When does copyright in a literary or artistic work start to subsist? (3)
- b) When does UK unregistered design right start to subsist? (3)

According to the Community Design Regulation,

- c) When does an unregistered Community design right start to subsist? (4)

Question 3

Your new UK client has produced a new design which has all the requisite properties to be protected either by UK unregistered design right or UK Registered Design (or both). Write your new client a letter explaining the possible advantages and disadvantages of

- a) relying on unregistered design right;
- b) seeking protection by registered design;
- c) an advantageous strategy for when to apply for registration. (10)

Question 4

Explain the circumstances in which a publication of a design does not destroy novelty of an application for registration of the identical design filed later at the UKIPO. (10)

Question 5

In relation to UK unregistered design right, what is meant by the following, according to the Copyright, Designs and Patents Act 1988?

- a) "original" (2)
- b) "design" (1)
- c) "designer" (2)
- d) "qualifying individual" (2)
- e) "qualifying country" (3)

Question 6

According to Community Design Regulation (EC) No. 6/2002 of 12 December 2001, what rights are conferred upon whom by proprietorship of a Community Design Registration? (8)

Under what circumstances are those rights exhausted? (2)

Question 7

X Ltd is the owner of original and distinctive designs for a set of china crockery. They put the crockery on the market in the UK a year ago and it was such a success that one month ago they registered the designs in a single UK application, specifying that they were to be applied to "ceramic crockery".

They now discover that Y Ltd are selling in the UK "crockery" which is identical in appearance but is made of plastic, and that Y Ltd registered in the UK identical designs in a single application two months ago, specifying "plastic tableware".

What is the relationship between the registrations and what action, if any, may X and Y take against one another in situations where

a) it is shown that Y Ltd had copied X Ltd (6)

and

b) it is shown that there was no copying ? (4)

Question 8

A manufacturer makes dolls and multiple sets of clothing for each. He also makes miniature accessories (e.g. tools, cutlery, miniature toys) for the dolls to hold, these having portions which are able to be fitted between the dolls' slightly flexible fingers.

The dolls have been available for years and will remain unchanged, but the manufacturer is about to bring out entirely new sets of clothing, some made from new fabrics, and a new range of accessories for them to hold. He asks whether or not there is protection (registered or unregistered).

He is only interested in protection under Community Design Regulation (EC) No. 6/2002 of 12 December 2001.

Make notes on the points you will make in your reply. (10)

Question 9

A new client comes to you. She has been unemployed for the last six months but found that something she started to do as a hobby, namely making presents for friends, might have commercial value. She buys in lapel badge blanks in the shape of teddy-bears that have been available for many years. She paints them by hand, always using at least three colours.

A common feature is that she always paints a bandana-like head-covering with a white background and spots of two other colours. She has just been approached by a football club who would like to mass manufacture badges in the same style in the club colours.

Make notes on the advice you will give about forms of protection which are available under the Copyright Designs and Patents Act 1988 (as amended), and the Registered Designs Act 1949 (as amended), and outline a practical course of action you propose to recommend, giving brief reasons. Ignore any trade mark issues. (10)

Question 10**Secondary infringement of copyright.**

Summarize the provisions of the Copyright Designs and Patents Act 1988 regarding the following. In every case there is no licence from the copyright owner.

- a) Importation of a copyright work
- b) Dealing with a copyright work in the course of business
- c) Making or dealing with means for making a copyright work

(10)

Question 11**Community Design Regulation – Restitutio in integrum.**

- a) Who may apply for re-establishment of rights? (2)
- b) What substantive conditions must the applicant fulfil if he is to succeed? (3)
- c) Within what time-limit must an application for re-establishment be filed, and what other actions must be taken within the same time-limit? (4)
- d) What must an application for re-establishment contain? (1)

Question 12**Procedure in applying for a UK Registered Design.**

- a) What must a non-convention application for registration include and/or be accompanied by in order to obtain a filing date? (3)
- b) What are the "first and second requirement[s]" that an application must comply with, as specified in Rule 5(2)(3) of the Registered Designs Rules 2006? (2)
- c) What special provisions apply if the design is a repeating surface pattern? (1)
- d) If the registrar issues a "statement of objections" to registration, what is the term for reply? (1)
- e) What is the time-limit for completion of an application? (3)

This is the end of the D&C Paper.