

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

Thursday 15th November 2001

14.00 hrs. - 17.00 hrs.

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

1. You should attempt no more than ten questions.
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 any 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.
8. **NO** writing whatsoever, including numbering of papers, is allowed prior to the commencement of the examination or after it has finished.
9. Please put your answers in **QUESTION NUMBER ORDER** before placing in the envelope provided.

This paper consists of **six** pages, including this page.

1. Explain, with brief reasons, whether the following statements are true or false in relation to works created in 2000:
- a) It is not possible for future copyright to be assigned.
 - b) An assignment of a copyright work must be signed by both the assignee and the assignor.
 - c) X Limited have an exclusive licence to use art work created by Mr. Y. Mr. Y assigns his copyright in the art work to Z Limited who were aware of the licence to X Limited. Z Limited are still bound by the licence to X Limited and so cannot use the art work themselves.
 - d) B commissions C to design a watering can. B owns the design right in the watering can, but C owns any copyright in the watering can.
 - e) The person named as author on a published book is presumed to be the owner of the copyright unless the contrary is shown.

(10 marks)

2. Discuss whether the following are permitted acts under the Copyright Designs & Patents Act 1988:

- a) A University student photocopies one chapter of a library book for personal study.
- b) A man uses a video-cassette recorder to record a particular television programme in order that he can watch that programme at a more convenient time.
- c) A woman writes an article which is published in a magazine. The article is a review of a novel and contains brief extracts from the novel.
- d) A famous actor reads aloud an extract from a novel.
- e) The actor's reading in d) above is recorded by a woman on her personal tape recorder.

(10 marks)

3. Explain whether copyright might subsist in the following:-

- a) A Christmas cake recipe.
- b) An extemporised jazz trumpet solo.
- c) A library catalogue, with entries arranged:-
 - i) Alphabetically by author
 - ii) Alphabetically by title
 - iii) By subject matter classification.

(10 marks)

4. Comment upon the registrability of the following under the Registered Designs Act 1949:-
- A football shirt having particular pattern of coloured bands.
 - A well-known cartoon character used for the first time as “merchandise”, in the form of statuette appearing on a pair of book ends.
 - The title screen and setup menu pages from a computer game.
 - A nuclear fallout shelter, formed from prefabricated concrete sections slotted together on site.
 - Flint tools made by Australian aborigines and sold for use as paperweights.
 - An artificial roofing slate, of a size and shape designed to fit in with “real” slates used in Victorian buildings.

(10 marks)

5. Explain how each of the following acts might constitute infringement of copyright (ignore any moral rights):-
- Without permission, borrowing a disk containing control data and loading it into the memory of a computer numerically controlled machine tool for commercial use.
 - Copying the design of a piece of recently completed public sculpture for commercial use as a design on a T-shirt without permission.
 - Using without permission a digital camera to take a “still” from a pre-release screening of a film, for publication in a magazine.
 - For commercial use, reproducing from a newly published anthology an absolutely identical copy of a poem whose literary copyright has expired.

(10 marks)

6. a) What is the term of an associated design?
- b) When and how may the period for subsistence of rights in a registered design be extended (renewed) as of right, despite the fact that the period for paying the renewal fee has expired?
- c) When may the period for subsistence of rights in a design be extended at the Registrar’s discretion, despite the fact that the period for paying the renewal fee has expired?

(10 marks)

7. a) What is meant by, and what is the significance of “originality” in relation to copyright?
- b) How does originality in relation to unregistered design right differ from originality in relation to copyright?
- (10 marks)*
8. Your client is an artist who has been approached by a company who wish to commission your client to produce a mural to adorn a particular external entrance of their flagship building.
- a) What rights could your client have to be identified as author of the mural, how long will those rights last and can they be assigned or waived?
- (6 marks)*
- b) Some time later your client has completed the mural in its intended position. The company has a new director who intends to remove part of the mural in order to change the entrance way, even though your client is unhappy about this, and is concerned that irretrievable damage to the mural will result. Your client recalls that you explained “moral rights provisions” to her and asks you to advise whether any of them might apply.
- (4 marks)*
9. Your client X, Inc. is a Delaware, US company who manufacture garden fences including their “Victoriana” range of PVC fences made in the style of Victorian wrought iron fences. The Victoriana range was created by an American employee of X, Inc. in 1997 with the aim of giving the “look and feel” of a Victorian wrought iron fence whilst making a design suited to modern tastes, ensuring the design was suitable to be manufactured cost effectively in PVC and ensuring the design was practical for all weather use. The Victoriana range was launched by X, Inc.’s UK distributor X(UK) Limited at a trade show in London in 1998.
- a) Discuss whether unregistered design right subsists in X Inc.’s Victoriana range of fences
- (6 marks)*
- b) What would be the duration; and
- (2 marks)*
- c) Who would be the owner of any such design right?
- (2 marks)*

10. Discuss whether copyright and unregistered design right subsist in the following items. (Assume that works have been created in 2001).
- a) An original sample garment created by a fashion designer as a prototype for mass production. The designer made the sample garment using a machine and intended the garment to appeal to herself and the buying public. (4 marks)
 - b) A new tight fitting case for a compact umbrella. The umbrella case differs from other umbrella cases because it does not lose its shape when the umbrella is removed from inside it. This is achieved by seaming the case in a particular manner such that the outward facing seams stand away from the case and also give a pleasing appearance. The umbrella case is not commonplace. (4 marks)
 - c) A patterned carpet that is mass produced to an original design and design drawings of the carpet. (2 marks)
11. Explain what copyrights (not unregistered design rights) exist in the following cases and who is the owner of those rights. Assume all works were created in 2001.
- a) A computer program written by Ms A as part of her duties as an employee of B Enterprises Ltd., a UK Company.
 - b) Ms A's computer program mentioned in part a) above is arranged to automatically generate circuit diagrams for particular situations. An operator enters the values of five variables to generate required circuit diagrams.
 - c) An instruction manual for the computer program mentioned in part a) above written by Mr C a freelance technical writer. Mr C was commissioned by B Enterprises Ltd. to write the manual. Mr C provided a master copy of the manual and took it to a high street copy bureau who have printed 100 copies of the manual. (10 marks)

12. Your client A Limited last year commissioned another firm B Limited to make some moulds which it uses in the production of a range of cast aluminium garden ornaments. Drawings for some of the ornaments were created last year by one of A's employees. The remaining drawings were produced by another of A's employees 10 years ago. That employee has since left A and joined B, and the first ornaments were sold by A two months ago. None of the designs concerned are registered.

Last week Mr. C, the Managing Director of A, was very annoyed to discover that B had begun selling a complete range of garden ornaments which matches A's range product-for-product.

Mr. C wants to know what action he can take against B, and what remedies are available to him in any successful court action.

He also wants to write a strongly worded letter to B and to garden centres stocking B's garden ornaments, warning them that he will take court action against them if they do not immediately withdraw the products concerned from sale.

Make notes on the advice you would give to Mr. C. Restrict your answer to questions of copyright and unregistered design right.

(10 marks)