Recap of Designs for FD1

- 1. Slides
- 2. Designs table
- 3. FD1 Design Questions
- 4. FD1 Designs mark scheme and comments
- 5. FD1 Designs sample answers

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2024 Informals Advanced Lecture

Recap of design rights for FD1, David Clark - Appleyard Lees IP LLP

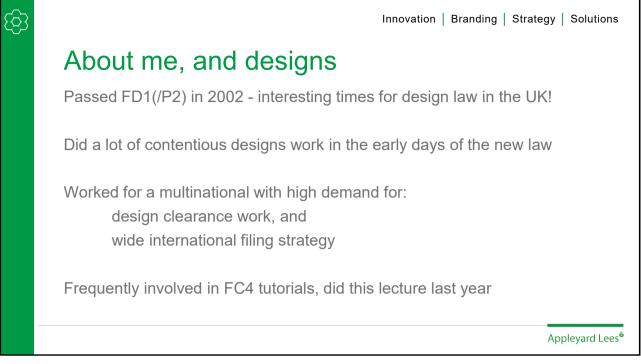
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Introduction

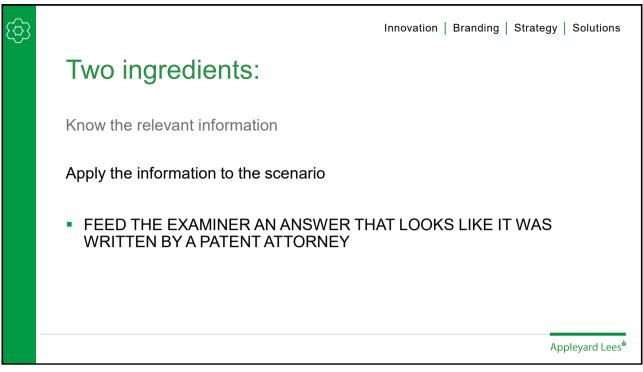
At the start, you want something predictable to settle the nerves...

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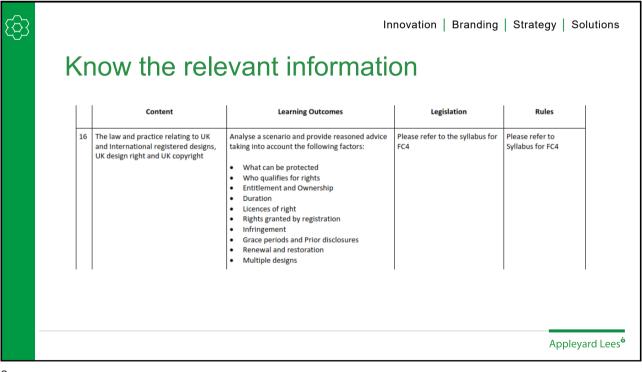








	Content	Learning Outcomes	Legislation	Rules
1	Available forms of intellectual property	 Assess the limitations of available forms of intellectual property: Patents 	Parts I and III of the Copyright, Designs and Patents Act 1988 (CDPA)	
		Designs Trade Marks Copyright Confidential Information Know How	The Patents Act 1977 (PA) The Registered Designs Act 1949 (RDA)	
			The Trade Marks Act 1994	
			Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act 1999) Articles 2 to 18	
			Council Regulation (EC) No. 6/2002 as amended	The Community Design Regulations 2005 as amended



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Know the relevant information

FC4 Section 2. The Syllabus

"To be successful in this examination, you will need to:

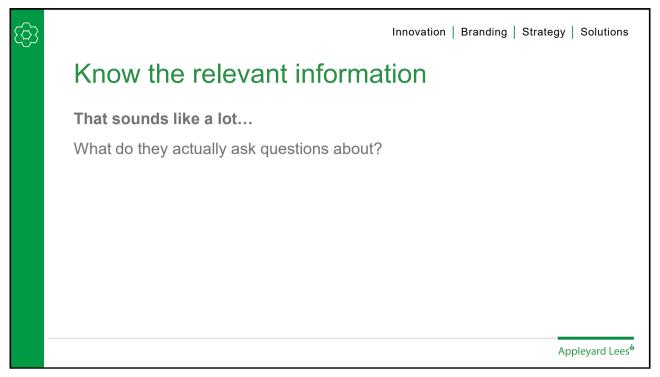
Demonstrate an <u>understanding and appreciation of the Design and Copyright topics set out in Schedule</u> <u>A of the IPReg Accreditation Handbook</u>. You will thus need to demonstrate <u>knowledge of the main</u> <u>provisions of International and UK law</u> relating to design and copyright.

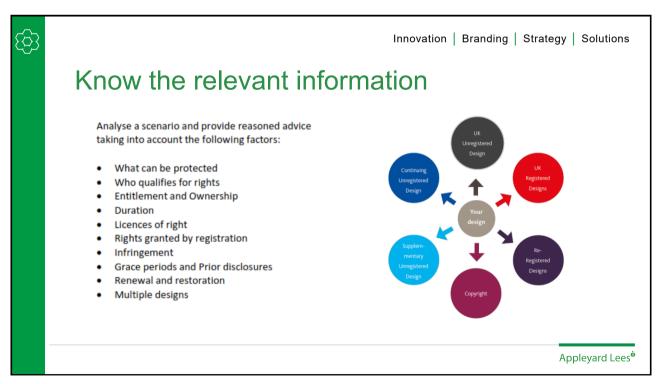
You will also need to <u>demonstrate knowledge of the relevant procedures and formalities</u> required <u>to</u> <u>obtain</u> the protection for <u>UK designs</u>.

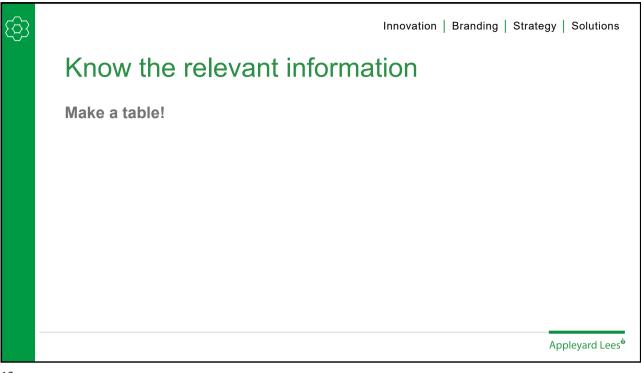
You will also need to demonstrate knowledge of the relevant principles relating to <u>subsistence and</u> <u>enforcement of UK copyright</u>.

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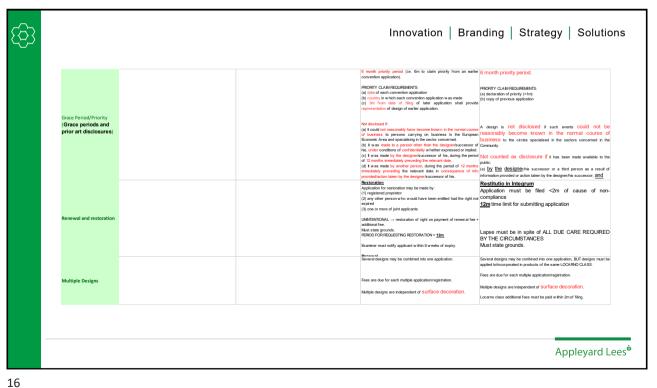


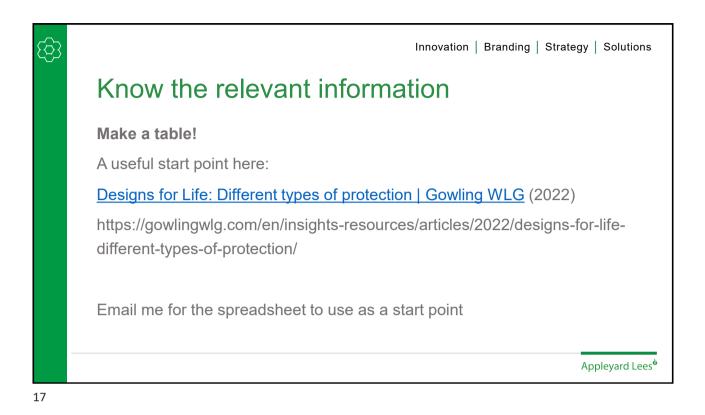


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Candidate X, 2019	Copyright	UK Unregistered Designs	LK Registered Designs	Community Registered and Unregistered Designs
	(a) CRIGINAL literary, dramatic, musical or artistic work (b) sound recordings, films or broadcast (c) the typographical amangement of published edition		an Appearance of the whole or a part of a product resulting from the features of, particular, the lines, contours, colours, shape, leaders or materials of the product or i commentation.	Appearance of the whole or a part of a product resulting from the features of, in particular, a a lines, contours, colours, shape, locature and/or maintails of the product itself and/or conservation.
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Cili NK (b) (c) SL (c) (c) (c) (c) (c) (c) (c) (c) (c) (c)	irculation in EEA, if not already, or outside EEA, OCT subsequent distribution or importation) sa) rent or lend the work to the public or perform, show or play me work in public (a ubstantial part must be infrigad; substantial does not cessarily refer to length, but rather a key part)	NE: MAKING ARTICLES TO THE DESIGN means copying the design so as to produce articles exactly or substantially to that design. In other words, it is only infringement if the design is NOT an independent	NERNING ARTICLE:	exporting or using of a product in which the design is incorporated
(b (c) SEL nec (d) (e) of a	ba) rent or lend the work to the public) perform, show or play the work in <u>public</u> (a ubstantial part must be infrigad; substantial does not iccessarily refer to length, but rather a key part)	In other words, it is only infringement if the design is NOT an independent	(a) It has been imported into the LIK	which it is applied, or stocking such a product for those purposes.
(c) SL nec (d) (e) of a	 perform, show or play the work in <u>public</u> (a ubstantial part must be infringed; substantial does not iccessarily refer to length, but rather a key part) 	In other words, it is only infringement if the design is NOT an independent work of creation by a designer unfamiliar with the design. A different		
ne (d) (e) af a	cessarily refer to length, but rather a key part)		t (b) its making to that design in UK would have been infringement	UNREGISTERED DESIGN - Only if the contested use results from COP the protected design.
(e) of a				the protected design. NB: criteria for infringement of an unregistered design right is the sa for a registered design right with the caveat of COPYING .
a 1	a) communicate the work to the public make an adaptation of the work (a translation a version).	(2) Design right is infringed by a person who without the locnce of the design right owner does, or authorizes another to do, anything which by virtue of this section is the exclusive right of the design right owner.	e y EXCLUDES: (a) private/not commercial act;	EXCLUDES:
COL	a dramatic work converted into a non-dramatic work, a version of book, new spaper or magazine in which the story is mainly	virtue of this section is the exclusive right of the design right owner.	(a) privation of commercial act; (b) experimental act; (c) reproduction for teaching purposes;	(a) private/non-commercial acts;
	arreyed by pictures, an anned venetic of a complete program, an	SECONDARY INFRINGEMENT (a) imports into UK (b) has in his possession	(d) Planes/Ships temporarily in UK registered in a 3 rd country:	(b) experimental acts; (c) reproduction for the purposes of making Citations or of teaching
			Nobele Roles Have	(d) Planes/Ships temporarily in EU registered in a
- tr	translations include converting a computer program into a different de/language	for commercial process, an article which he knowshas reason to believe is an infringing article (excludes the original article).		country; (e) carrying out of repairs/importing spares for SUCh Ships/aircr
infringement/Exclusions/	it is NOT fair dealing to covert a computer program from a lower well because to a higher level because	EXCLUDES:	may continue to use the design for the purposes for which, before that date the person had used incomented to use it	Exhaustion of Rights
granted by		INNOCENT INFRINGEMENT Primary Infringement - defendant did not know, and had no reason		Rights conferred by CDR shall not extend to acts reli
(mental and man and)	where the importing into the LIK, otherwise	to believe, that design right subsisted in the design claimant not	(a) if was copied from the design which was subsequently registered	to a product put on the market in the Community by holder of the CDR or with his consent.
the kno	han for private and domestic use, an article he low s/has reason to believe is an infringing copy.	entitled to damages. Secondary infringement – infringing article was innocently acquired 	(b) a right to license the design (c) right to assign or transmit the design UNLESS (i) the design was	
	Without licence possessing or dealing with an article © KNOWS (possess in the course of business; sell, let for hire.	- city renecy is carriaged for excenting a reasonable royalty.	used in the course of business; (ii) the design is assigned/transmitted with the part of the business in which the design was used.	Right to Prior Use - same as OK
off	fer or expose for sale or hire; exhibit in public or distribute in the		Who can bring infringement proceedings	Remedies
	euclicially affecting the owner of the copyright)) Without a licence providing an article specially	Who can bring infringement proceedings (1) The design right ow per	(1) The design right owner (2) Exclusive licensee	(I) injunction (II) seizure
de	esigned/adapted for making copies of an article	(-)	Remedies	(iii) seizure of materials used in the manufacture if it is known or obviou
ha	R KNOWS (make; import into UK; possess in the course of asiness; sell, let for hire, offer or expose for sale or hire)	Remedies Damages, injunctions, accounts of profit, delivery up, destruction	Damages (exempt for innocent infringement – not aware or had no reasonable grounds for supposing that the design was registered), inherefore accents of profit delivery in destruction	
	XCLUDES:		injunctions, accounts of profit, desvery up, destruction	
(0)) Making temporary copies) Research and private study			
(d)) Criticism, review and news reporting I) Caricature, parody and pastiche			
est) Copying and use of extracts of works by educational stabilishments (<5%)			
NB	B: The above must be for non-commercial use and must be "fair saling"			

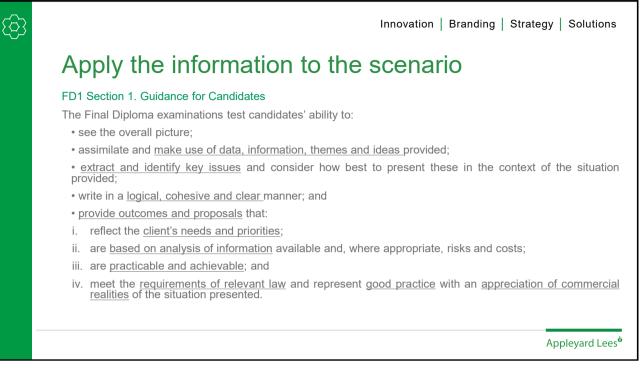


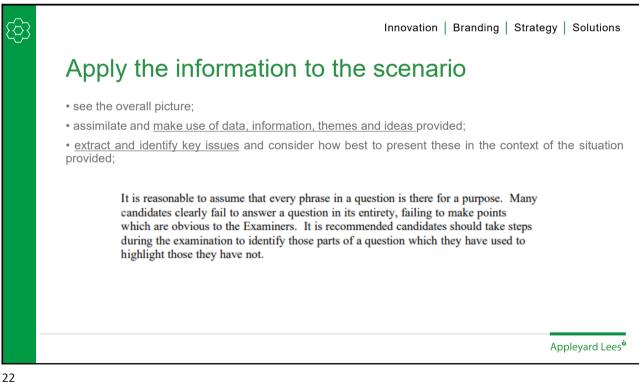


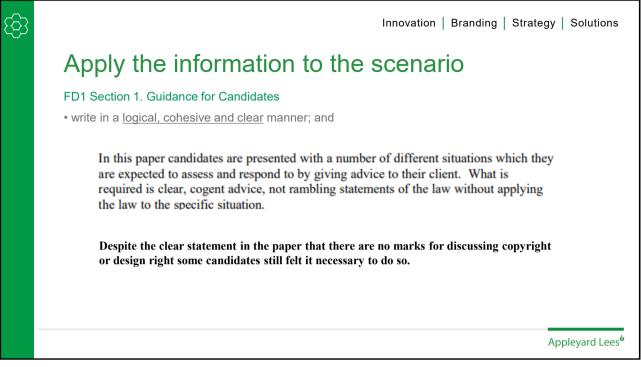


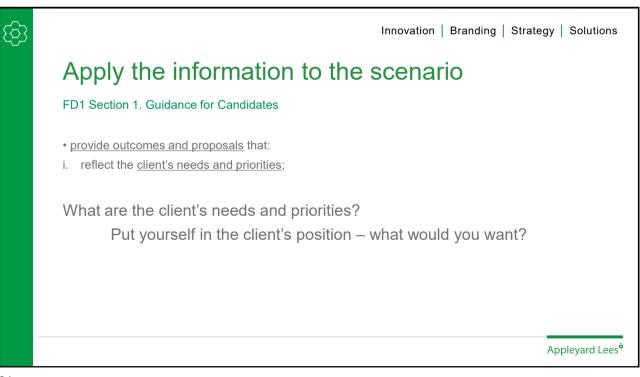
63	Innovation Branding Strategy Solutions
	Question spotting?
	UK government and EU consulting on revisions to statute – too early in the processes for practice-based questions this year?
	EUUDR / UKSUDR – an obvious area to examine post Brexit transition period, but too soon to go again?
	Sources of new case law, and hot topics
	https://www.marques.org/blogs/class99/
	called it as "visible in normal use" last year
	UK IPO Registered Designs Examination Practice guide? Updates here
	Appleyard Lees [®]

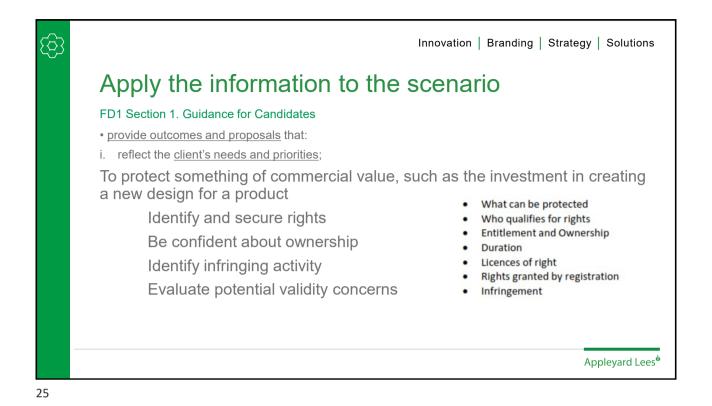


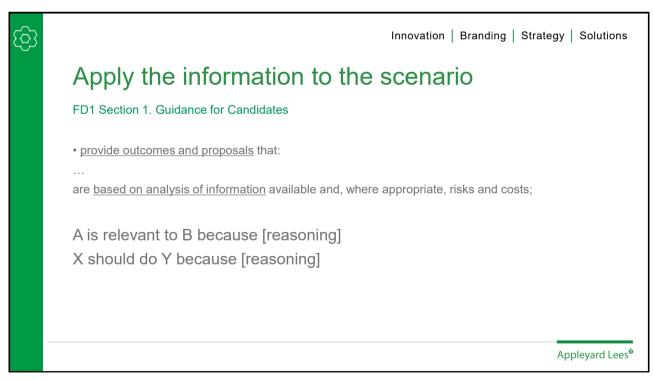






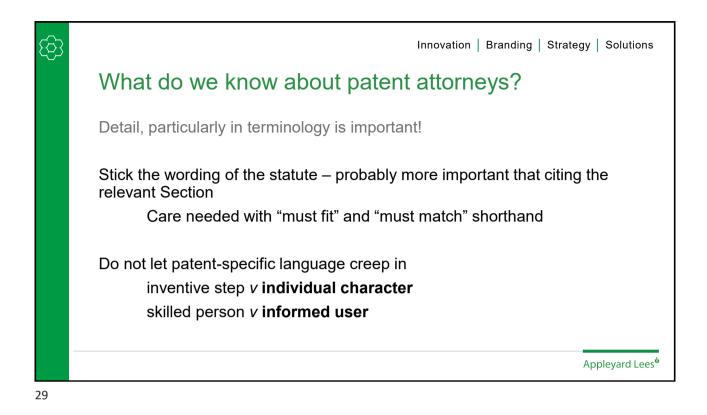


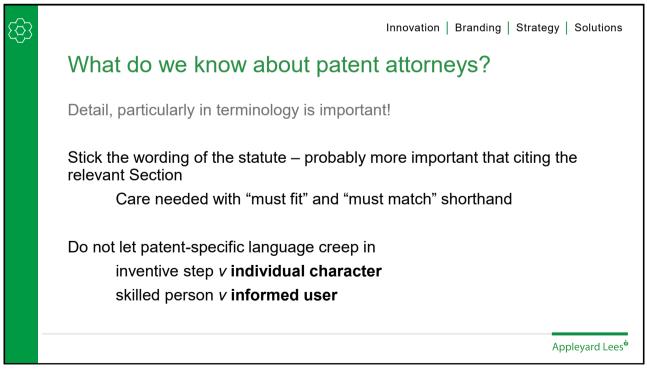


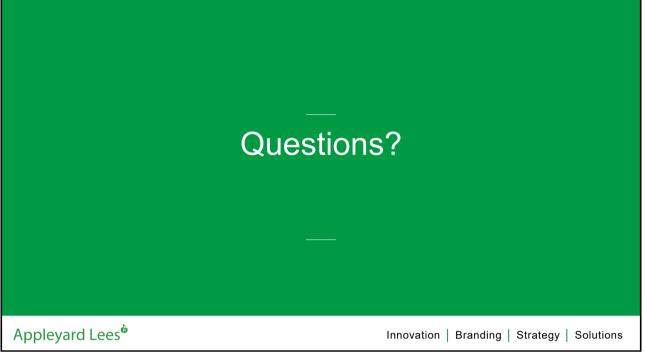


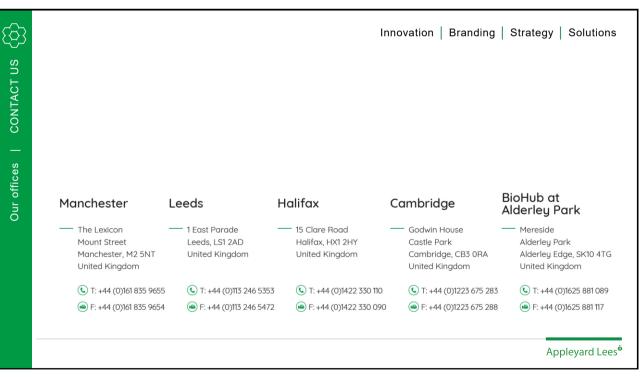












Candidate X 2019	Copyright	<u>UK</u> Unregistered Designs	<u>UK</u> Registered Designs	
	 (a) ORIGINAL literary, dramatic, musical or artistic works (b) sound recordings, films or broadcasts (c) the typographical arrangement of published editions 	Design - shape or configuration (whether internal or external) of the whole or part of an article.	features of, in particular, the lines, contours, colours, shape, texture or	
	Does NOT exist in literary, dramatic or musical work before it is recorded in writing.	NB: Shape - physical geometry Configuration - relative arrangement of parts/elements "Parts of parts" are not protectable	PRODUCT: any industrial or handicraft item other than a computer program; and, in particular, includes packaging, get-up, graphic; symbols, typographic type- faces and parts intended to be assembled into a complex product.	PRC to b
	Any work other than a dramatic or musical work, which is written spoken or sung, and includes:	Unlike for an Unregistered CDR, in the UK one cannot protect COLOUR.	COMPLEX PRODUCT: a product which is composed of at least two	
Covers What/ Definitions (What can be	 (a) a table or a compilation other than a database (b) a computer program (c) preparatory design material for a computer program (d) a database 	The definition of a design only covers 3D products (i.e. surface decoration is excluded – see "exclusions" below).	A design incorporated in or applied to a component part of a complex product is only new and have individual character if the component part	whic If c COI
protected)	ARTISTIC works (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality			coi (a) inte
	 (b) a work of architecture being a building or a model for a building (c) a work of artistic craftsmanship "Building" includes any fixed structure, and a part of a building or fixed 		"NORMAL USE" means use by the end user; but does not include any	use (b) ind
	structure. "Graphic work" includes painting, drawing, diagram, map, chart or plan, engraving, etching, lithograph, woodcut or similar. "Sculpture" includes a cast or model made for purposes of sculpture.		MADE AVAILABLE TO THE PUBLIC - published following registration, exhibited, used in trade or otherwise disclosed before the relevant date, except where these events could not reasonably become known in the normal course of business to the circles specialised in the sector concerned.	''N(ma
	words or action intended to be sung, spoken or performed with the	 (1) Design right is a property right which subsists in an ORIGINAL DESIGN. (2) A design is not ORIGINAL if it is COMMONPLACE in the design field in guestion at the time of its creation. 	(1) NEW - no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.	(1) <mark>the</mark> prio
Requires (What can be protected)	NB: Copyright takes precedence over UUKDR.		(2) INDIVIDUAL CHARACTER - the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.	(2) I the
		(a) a method or principle of construction	In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken (1) FEATURES SOLELY DICTATED BY THE PRODUCT'S	
Excludes (What can be		 (b) features of shape or configuration of an article which: (i) enable the article to be connected to, or placed in, around or against, another article (MUST FIT), or (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part (MUST MATCH), 	(2) MUST FIT - features of appearance of a product which must necessarily be reproduced so as to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to, or placed in, around or against, another product.	(2) nece prod mec that
protected)		(c) surface decoration (NB: surface decoration is a matter for <u>copyright</u> protection).		NB: asse syst (3) (
			<u>Schedule A1 grounds for exclusion</u> : royal arms/crown not allowed; flags not allowed if their use is misleading or offensive; permission is required to use an image of the Queen.	
	AUTHOR = PERSON WHO CREATES IT Sound recording \rightarrow the producer	Designer (person who creates it) is the FIRST OWNER unless the design is created during the course of employment.	ALITHOR - PERSON WHO CREATES IT	The succ
Qualification/	Broadcast → person making the broadcast Typographical arrangement of a published edition → publisher		Employer shall be treated as the original proprietor, where a design is created by an employee in the course of his employment.	If <mark>tv</mark> right
Ownership (Who qualifies for rights,	Computer generated \rightarrow person who arranged it	Can also get UUKDR if FIRST MARKETED in qualifying country by qualifying person. FIRST MARKETER is then the owner. QUALIFYING PERSON – individually habitually resident in a	NB: If a design is generated by a computer , the author is the person who made the necessary arrangements.	Whe dut
Entitlement and Ownership)	collaboration of two or more authors in which the contribution of each author is not distinct from the	qualifying country, or body corporate formed under law of qualifying country with a place of business at which		Corr agre
	other. A film shall be treated as a work of joint ownership UNLESS the producer and the principal director are	substantial business activity is carried out in any qualifying country.		Desi regi:

Community Registered and Unregistered Designs

Appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

PRODUCT: any industrial or handicraft item, including inter alia <u>parts intended</u> <u>be assembled into a complex product</u>, packaging, get-up, graphic symbols ind typographic typefaces, but excluding computer programs.

COMPLEX PRODUCT: a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product

f design applied to or incorporated in a product which is a component part of a complex product shall only be considered to be new and to have individual character:

a) if the component part, once it has been incorporated nto the complex product, remains visible during normal use

b) visible features of the component have novelty and ndividual character.

NORMAL USE" means use by the end user, excluding naintenance, servicing or repair work.

 NEW - no identical design has been made available to he public before the date of filing of the application or date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.

2) INDIVIDUAL CHARACTER – the overall impression it produces on he informed user differs from the overall impression produced on such a user by any design which has been made available to the public before he date of filing of the application or the date of priority.

1) FEATURES SOLELY DICTATED BY THE PRODUCT'S TECHNICAL

2) MUST FIT - features of appearance of a product which must necessarily be reproduced in its exact form and dimensions so as to permit the product in which the design is incorporated or to which it is applied to be nechanically connected to, or placed in, around or against, another product so hat either product may perform its function.

NB: Does not prevent a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

3) Contrary to public policy or to accepted principles of morality.

The right to the Community design shall vest in the designer or his uccessor in title.

t two or more persons have jointly developed a design, the ight to the Community design shall vest in them jointly.

Where a design is **developed by an employee** in the execution of his **duties** or following the instructions given by his employer, the right to the community **design shall vest in the employer**, unless otherwise igreed or specified under national law.

Designer shall have the same right as the applicant or the holder of the egistered design to be cited as such.

	70 years from the end of the calendar year in which the author dies.	15 yrs from the end of the calendar year in which the design was first recorded in a design document OR an article was first made to the design, whichever first occurred.	5 x 5 yrs from date of registration. Renewal fees may be up to 6m late.	5 x
	Unknown authorshin \rightarrow 70 years from the end of	If articles made to the design are made available for sale or hire anywhere		3 y
Duration	the calendar year in which the work was made.	within end of first 5 yrs, then 10 yrs from the end of the calendar year in which that first occurred.		to th
	If the work of unknown authorship was made			
	public during that period \rightarrow 70 years from the end			
	of the calendar year in which the work was first			
	made available.			
		Any person is entitled as of right to a licence to do in the last five years of		
Licences as of right		the design right term anything which would otherwise infringe the design right.		
	Without consent of the proprietor:	PRIMARY INFRINGEMENT	Without consent of proprietor uses the design and any design which	h The
	(a) copy the work (reproducing, storing in electronic form, making	(1) Without permission of proprietor reproduces the design for commercial	does not produce on the informed user a different overall impression	n
	3D copy of 2D work and making 2D copy of 3D work, taking a	purposes- (a) by <mark>making articles</mark> to that design	(may depend on the degree of freedom of the designer).	us
	photograph of a film/broadcast, making a facsimile copy of a typographical arrangement)	(b) by making a design document recording the design for the purpose of	Use includes making, offering, putting on the market, importing	1.
	(b) issue copies of the work to the public (putting into	enabling such articles to be made.	exporting or using of a product in which the design is incorporated or to	^o Infr
		NB: MAKING ARTICLES TO THE DESIGN means copying the design so	which it is applied or stocking such a product for those purposes.	in p
	NOT subsequent distribution or importation)	as to produce articles exactly or substantially to that design.	INFRINGING ARTICLE :	usir or s
	(ba) rent or lend the work to the public		(a) It has been/proposed to be imported into the UK	01 3
		In other words, it is only infringement if the design is NOT an independent work of creation by a designer unfamiliar with the design. A different size	(b) Its making to that design in UK would have been infringemen	t UN
	substantial part must be infringed; substantial does not	work of creation by a designer unraminal with the design. A different size	of the right in a registered design right or an exclusive	
	necessarily refer to length, but rather a key part)	[licence for that RUKDR.	NB:
	(d) communicate the work to the public	(2) Design right is infringed by a person who without the licence of the		regi
	(e) make an adaptation of the work (a translation, a version of a	design right owner does, or authorises another to do, anything which by	(a) private/not commercial act;	-
Infringement/Exclusions/R			(b) experimental act;	EX
emedies (Rights granted	book, newspaper or magazine in which the story is mainly conveyed by		(c) reproduction for teaching purposes;	(a)
	plotares, an altered version of a compater program, an analycinent of		(d) Planes/Ships temporarily in UK registered in a 3 rd country;	(b)
by registration,	an altered version of a database, an arrangement or transcription of a musical work)	(c) sells, lets for hire, or offers or exposes for sale or hire,	(e) carrying out of repairs/importing spares for such ships/aircraft.	(c) I
Infringement)	NB: For computer programs :	for commercial purposes, an article which he knows/has reason to believe	Right to Prior Use	(d)
	- translations include converting a computer program into a different		A person who, before the application date, used a registered design ir	
	code/language	EVCLUDES	good faith or made serious and effective preparations to do so may continue to use the design for the purposes for which, before that date	
	 it is NOT fair dealing to covert a computer program from a lower level language to a higher level language 		the person had used/prepared to use it.	
	anguage to a higher level language	INNOCENT INFRINGEMENT		Ex
	SECONDARY INFRINGEMENT	Primary Infringement – defendant did not know, and had no reason to	Does NOT include:	Rię
	(a) Without licence importing into the UK, otherwise than	believe, that design right subsisted in the design \rightarrow claimant not entitled to damages.	(a) If was copied from the design which was subsequently registered (b) a right to license the design	to
		Secondary Infringement – infringing article was innocently acquired \rightarrow	(c) right to assign or transmit the design UNLESS (i) the design was	_s ho
	reason to believe is an infringing copy.	only remedy is damages not exceeding a reasonable royalty.	used in the course of business; (ii) the design is assigned/transmittee	d
	(b) Without licence possessing or dealing with an article		with the part of the business in which the design was used.	<u>Ri</u>
	he knows (possess in the course of business; sell, let for hire,	,	Who can bring infringement proceedings	
	offer or expose for sale or hire; exhibit in public or distribute in the		(1) The design right owner	Re
		Who can bring infringement proceedings	(0) Fuch waited line and a	176
	course of business; distribute other than in the course of business prejudicially affecting the owner of the copyright)	(1) The design right owner	(2) Exclusive licensee	(I)

5 x 5yrs from date of filing (CRDR).

3 yrs from the date on which the design was first made available to the public within the Community (**CURDR**) (i.e. shall NOT have protection if not made available within the Community)

The scope of the protection conferred by a Community design shall include any design which does not produce on the informed user a different overall impression.

Infringes if: **WithOUT CONSENT** of proprietor uses the design. use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

UNREGISTERED DESIGN - **only if** the contested use results from **copying** the protected design.

NB: criteria for infringement of an unregistered design right is the same as for a registered design right with the caveat of **COPYING**.

EXCLUDES:

(a) private/non-commercial acts;

(b) experimental acts;

(c) reproduction for the purposes of making citations or of teaching;

(d) Planes/Ships temporarily in EU registered in a 3rd country;

(e) carrying out of repairs/importing spares for such ships/aircraft.

Exhaustion of Rights

Rights conferred by CDR shall not extend to acts relating to a product put on the market in the Community by the holder of the CDR or with his consent.

<u>Right to Prior Use – same as UK</u>

<u>Remedies</u>

(I) injunction

			_
		6 month priority period (i.e. 6m to claim priority from an earlier convention application).	6 r
		(a) date of each convention application	PRI (a) (b)
Grace Period/Priority (Grace periods and prior art disclosures)		(b) It was made to a person other than the designer/successor of his, under conditions of confidentiality whether expressed or implied.	A d be spe Nc
		 (c) It was made by the designer/successor of his, during the period of 12 months immediately preceding the relevant date. (d) It was made by another person, during the period of 12 months immediately preceding the relevant date in consequence of info provided/action taken by the designer/successor of his. (e) It was made during the period of 12 months immediately preceding 	(a) info (b) or tl
		Application for restoration may be made by:	Re Ap
Renewal and restoration		Must state grounds. PERIOD FOR REQUESTING RESTORATION = 12m	La BY Mu
		Renewal 6m before the end of the registration period	Ex
		Several designs may be combined into one application.	Sev app
Multiple Designs		Fees are due for each multiple application/registration.	Fee
		Multiple designs are independent of SURFACE decoration.	Mul Loc

δ month priority period.

PRIORITY CLAIM REQUIREMENTS: a) declaration of priority (<1m) b) copy of previous application

A design is not disclosed if such events could not be reasonably become known in the normal course of business to the circles specialised in the sectors concerned in the Community.

Not counted as disclosure if it has been made available to the public: a) <u>by the designe</u>r/his successor or a third person as a result of information provided or action taken by the designer/his successor; <u>and</u> b) during the <u>12-month</u> period preceding the date of filing of the application or the date of priority.

Nee pot disclosure if the design has been made qualishes to the public Restitutio in Integrum

Application must be filed <2m of cause of non-compliance **I2m** time limit for submitting application

Lapse must be in spite of ALL DUE CARE REQUIRED BY THE CIRCUMSTANCES Must state grounds.

Examiner must notify applicant within 6 weeks of expiry.

Several designs may be combined into one application, BUT designs must be applied to/incorporated in products of the same LOCARNO CLASS.

ees are due for each multiple application/registration.

Aultiple designs are independent of SURFACE decoration.

ocarno class additional fees must be paid within 2m of filing.

Sample Answers 2022

2)

UKUDR

In the UK, unregistered design rights will automatically subsist in the **original** design from the date that it was first recorded, which appears to have already happened.

The client is based in the UK so is a qualifying person for UKUDR protection.

This protection will last up to 15 years from the first recording or up to 10 years

from first sale if this happens in the first 5 years of protection term.

Hence, this protection will readily cover the length of time required.

However, this protection does not cover surface decoration so, if any aspect of the design relies on surface decoration, this will not be protected.

This protection is also limited to the UK.

Supplemental UKUDR & Community UDR

If the design is novel and has individual character (providing a different overall impression to the informed user over the state of the art) then supplemental UKUDR will subsist in the design automatically from the date that the design is first disclosed in the UK or EU. Similarly, Community UDR will subsist in the design automatically from the date that the design is first disclosed in the EU. The launch event, which is being streamed to retail customers in **both** the UK and EU will trigger this automatic protection in both jurisdictions, provided no earlier disclosure is made.

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✓204 206

√205

This protection will last for 3 years from the launch event and should therefore	
just cover the client's intended use of the design.	
The two unregistered rights will, in combination, cover both the UK and EU, as	
the client requires. Surface decoration is also protected by these rights.	
However, copying of the design is required for infringement.	
Registered UK/Community rights	
If the design is novel and has individual character (explained above), it can also	
be registered for broader protection not limited to protecting against direct	(210
copies.	√210
Although there is a cost associated, the initial term lasts 5 years, so safely	
covers the client's intended use of the design. After the first 5 years, the	
registrations can then be allowed to lapse to avoid further costs.	
Also, broader protection can be obtained by filing the applications for registered	√202
designs in both the UK and EU by using line drawings. This will provide	
protection for the shape, irrespective of colours, etc.	
If advantageous, it is further possible to cover different aspects of the design	
individually and cost effectively using a multiple application in each of the UK and	
EU.	
Surface decoration will also be protected.	
Further, direct copying of the design is not required for infringement.	

If possible, I recommend this approach as it provides the most robust protection and will definitely cover the intended use of the design (where as unregistered protection particularly in the EU is cutting it fine).

The applications should be filed before the launch event to reduce likelihood of a competitor accruing prior use rights, but a 12 m grace period is available after first disclosing the designs to validly file the applications.

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MARKS AWARDED: 7/10

Question 2:

UK unregistered design:

- UK unregistered design right subsists from when an article is first made to the design or recorded in a design document. No public disclosure is required for this design right to subsist. The dated drawings by Senior would count as a design document and therefore Senior have UK unregistered design protection for their design.
- Senior are UK manufacturer and therefore are a qualifying person in a qualifying country.
- The design must be original in the sense that it is not commonplace in the relevant technical area in a qualifying country. This would appear to be the case as the design is distinctive.
- UK unregistered design right subsists for 15 years from the end of the calendar year in which the design was recorded in the design document. Senior have not made available an article made to the design for sale or hire as they maintained the design as confidential information, and therefore this would be the appropriate term. Check the date on the drawings to ascertain when UK unregistered design protection would have started, in order to ascertain whether the design is still covered and whether a licence of right would be available (which is available in the last 5 years of the design right term).

-	In order to enforce the UK unregistered design, Senior would have to	
	show that the design had been copied. This does not appear to be the	205
	case as Ms Alten is surprised by the fact that Senior have the design.	
	Therefore, Senior cannot enforce the design against Ms Alten.	1000
-	Prepare evidence that Ms Alten did not copy the design, for example, her	¥ 204
	own documents detailing the design.	
-	Ms Alten also has UK unregistered design right protection dating from	201
	when she first made an article to her design or recorded her design in a	201
	design document. The design is original because Senior's design is not	
	commonplace in the technical area concerned in a qualifying country,	
	because they kept the design confidential. However, she would also have	¥ 203
	to show copying to enforce it, which Senior did not do.	
Regis	stered design	
-	The design is distinctive and therefore the design meets the requirements	
	The design is distinctive and therefore the design meets the requirements	
	of novelty and individual character (i.e. it creates a different overall	
-	of novelty and individual character (i.e. it creates a different overall	¥207
-	of novelty and individual character (i.e. it creates a different overall impression on the informed user)	¥207
-	of novelty and individual character (i.e. it creates a different overall impression on the informed user) Senior's drawings do not invalidate the design because the details of the	√ 207
-	of novelty and individual character (i.e. it creates a different overall impression on the informed user) Senior's drawings do not invalidate the design because the details of the design were not made available to the public and were kept confidential.	√ 207
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-	of novelty and individual character (i.e. it creates a different overall impression on the informed user) Senior's drawings do not invalidate the design because the details of the design were not made available to the public and were kept confidential. Disclosures are only novelty-destroying if they become known in the circles specialising in the sector concerned in the UK or EEA, which is not	¥207
-	of novelty and individual character (i.e. it creates a different overall impression on the informed user) Senior's drawings do not invalidate the design because the details of the design were not made available to the public and were kept confidential. Disclosures are only novelty-destroying if they become known in the circles specialising in the sector concerned in the UK or EEA, which is not the case here.	¥207

- Senior would have prior user rights if they had made serious and effective preparations in good faith to make or sell articles made to the design. However, for prior user rights to apply, they would need to have continued their preparations, whereas Senior in fact did not pursue the design. Therefore, Senior do not have prior user rights based on the information available. Check whether Senior continued work on the design at any point prior to the filing of the UK design application.
- Ms Alten's registered design protects designs which do not create a different overall impression on the informed user. As Senior's design only differs in immaterial details, the UK registered design will cover Senior's design.
- Therefore, based on the information available, Senior in fact do need to obtain a license from Ms Alten in order to make or sell walking frames to their design.
- Ms Alten does not need to take a licence from Senior for their unregistered UK rights in order to make or sell walking frames made to her design because she did not copy the design.
- As Ms Alten is expecting the design to be popular, consider filing overseas registered designs claiming priority from her UK design application, within

6 months of the filing date.

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MARKS AWARDED: 7/10

7/10

Question 2 Entitlement You should check to see whether L did in fact copy the design from W. Their design and first dislclosure were after the date of first sale by W, so this seems likely. If so, W are the original designers, and are entitled to any registered	
design rights for the pattern.	
There is a 12 month grace period for disclosures resulting from the designer. As	√203
the pattern was first disclosed in April 2020, W are within the grace period (up to	
April 2021), so can still file their own registered design.	
They should file a (UK or community) registered design to the pattern itself:	√204
Given the pattern is "striking" and consumers have "never seen anything like it".	
The design to the pattern should be registerable, as it is new (differ in more than	√201
immaterial differences) and shows individual character (creates a different overall	√202
impression on the informed user) over known designs. However, it will need to	
be new and individual over prior filed designs, and designs which could	
reasonably be known in the EEA in the sector concerned, and over prior filed	
design rights .e.g. L's design. However, this appears to have been copied from	
W. Thus, this design can be discounted as a disclosure resulting from the actual	
designers (W) within the grace period.	
Burden of proof to show that the design was copied by L will lie with W.	

They can file in UK (registered design) to the pattern itself, but as they are very	
successful designs commercially, and they are selling online, may be preferable	
to file a community registered design to get protection across EP. Do this asap,	
to avoid any other conflicting registrations, e.g. due to independent creation.	
They could also file a design to the pattern applied to decorative tableware to	
cover their specific products, and give further protection. File as part of a	
multiple design registration to save costs.	
Could then file a priority claim within 6 months in any other states of interest	
abroad if of interest, e.g. US. Though, they should do this within 1 year fo first	
disclosure (by April 2021) to take advantage of the grace period.	
Their design right (UK or community) will cover the pattern no matter what it is	√205
applied to, so they should be able to stop the competitor L selling all of their	
products with the design applied in the UK (and abroad in EU if a community	
registered design is applied for).	
Assuming L copied, W are entitled to the design. They should apply for their own	
design asap as set out above, relying on the grace period.	
Currently L have an in force registered design right, so could bring infringement	
action against W. However, W could counterclaim for entitlement, due to	
copying.	
W should pre-empt this, by applying to have L's design revoked either due to non	√207
entitlement, or due to lack of novelty/individual character in view of the prior	√206
disclosures of W (tableware sold in April). This was sold at craft fairs in the UK,	
which although small, would attract relevant people in the sector, so desings	

could reasonably be known in European economic area in the sector concerned (sector of the prior art).

W may instead be able to obtain ownership of L's design if they can show that they are entitled.

If L did not in fact copy the design, then they are entitled to their design right. However, you can apply to have it revoked due to lack of novelty/individual character in view of W's sale in April. Should provide evidence of such disclosure and sale.

If L did not copy, and their designs to the curtains/seat covers etc. are new and individual in their own right, e.g. due to their shape, these designs could be valid (though no indication that anything beyond the pattern is new and individual.

Monitor for further designs submitted by L.

Communication from L merely draws attention to design - so is therefore a permitted communication and not an actionable threat.

Registered designs provide monopoly protection for 25 years from registration, renewalbel in 5 year trances, so are a strong right for W.

No need to show copying for infringement.

MARKS AWARDED: 7/10

Question 2

Registered design

Registered design gives best scope of protection because it permits the holder to prohibit use of the design, or any design not producing on the informed user a different overall impression, and does not require proof of copying. Registered design protects the appearance of the whole or part of a product resulting from the features of lines, contours, colours, shape, texture and/or materials of the product or its ornamentation. Hence, the overall appearance of the ship (shape, colour, contours etc.) would be covered. The model ship is a handicraft product for which a design may be registered.

File a Community Registered Design (CRD) application because this will give protection in both UK and the Netherlands via one application, thus saving money and effort. File the application before the exhibition date; although there is a grace period of 12 months available, this does not prevent others from arriving independently at the design themselves and filing their own application, so better not to rely on the grace period.

Registered design will enable holder to prevent others from using the design; using the design = making, offering for sale, putting on the market, importing, exporting, or using an article made to the design, or storing such an article.

A CRD must be new and have individual character. The ship model is likely to be new because it is not an exact replica of the Mayflower. Individual character will depend whether it creates a different overall impression than any article made available to the public before the priority date; arguably it does compared to the wooden beam remnants, in terms of outward appearance of the ship model (the beams are presumably internal).

CRD lasts 25 years (renewable every 5 years).

File in black and white line drawings for best protection. If colour important,<208</th>file separate CDR application with colour drawings.

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use only

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Unregistered designs

Community Unregistered Design (CUD) protects the same as a CRD but only if can prove copying of the design. CRD lasts 3 years from date the design is first made available to the public in the Community, which will be date of exhibition in a few weeks. Arises automatically.

UK Design Right (UKDR) protects an original design, ie. one not being commonplace in a qualifying country (UK, EU, reciprocal countries) in design field in question at time of its creation. Protects shape and configuration, , whether internal or external, of the whole or part of an article but not surface decoration. Hence, unlike CDR and CUD, would not protect colour of the model.

Lasts 15 years from end of calendar year in which the design was first recorded in a design document or by making articles to the design, or if shorter, 10 years from end of calendar year in which articles made to the design first made available to the public by sale or hire. Unless the researcher made the design in 2014 or earlier, UKDR will expire end of 2029, subsisting due to exhibition sales in a few weeks.

UKDR only protects against copying the design, which requires proof of copying.

Is the researcher a qualifying person (habitual resident of a qualifying person)? If yes, they would own the UKDR. If not, the UK museum would be a qualifying person (UK company with substantial business activity in UK, as they presumably sell goods/services in the museum) and would qualify for UDR by first marketing in UK/EU, ie. at the exhibition.



MARKS AWARDED 7/10

✓ 209

Question 2

Any registered designs registered in UK will provide absolute monopoly with no need to prove copying.

Registered design lasts 25 years from filing subject to 5 yearly renewals.

First owner of designs is the designer (i.e. the design agency) unless this has been altered by agreement so check the contract to see who owns – if no terms alter default position then SS aren't entitled to file & need to have the rights transferred before filing in their name or can file in design agency's name & assign subsequently

Designer employed by design agency won't own the designs himself/herself as will have been created in the course of employment duties.

"Private" testing won't be one unclear word as prior art against the designs as long as the testing was under duty of confidence – need to check this. If it was confidential then no prior art ("assuming features are registrable") prevents registration of the novel aspects of the design that have individual character considering design freedom.

There is a 12 mth grace period so the exhibition in bath won't be novelty destroying for any design filed in 12 mths of exhibition but best not to rely on grace period as any independent 3rd party disclosures would be one unclear word & 3rd parties could obtain prior user rights so advise to file ASAP & definitely before the exhibition.

SS in all likelihood own designs so displaying at the exhibition won't be a breach of applicant's confidence.

Turning to the designs themselves – all aspects relate to showers so can file probably an EU design in one Locarno classification but no restriction on classifications in UK – so advise to file an EU or UK design (depending on markets of interest) in a single application to save fees.

Protectable aspects are shape of tray and surface pattern on base. These should be protected as separate designs.

Surface decoration is part of a product & hence is registrable (c.f. UK unregistered rights).

Shape is also a registrable part of a product.

Both aspects have aesthetic qualities ("new & distinctive") so aren't solely dictated by technical function & so aren't excluded.

The shape should be protected by black line drawings rather than solid coloured drawings to broaden the scope of protection (c.f. Trunki case) as the colour would be limiting if filed & so not in client's interest.

Same applies to surface pattern – should only depict the shape that produces the "distinctive" pattern using black lines unless the colour is necessary to provide the requisite distinctive character.

If filed in black lines then subsequent infringements would only have to give the same overall impression as the shape depicted & any coloured infringements could be prevented.

NB EU designs are substantively similar to UK & better value.

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Question 2

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He has taken no steps \rightarrow priority claim is not an option.	
In general, community and UK registered designs are very similar. File CRDs because he has interests in Europe, and UKRDs as a brexit-based precaution.	
For both UKRD & CRD, there is a 12 month grace period for designer disclosures made public in the EEA. As the US launch may have become known, recommend filing within 1 year from first disclosure. However, recommend filing ASAP to protect from risk of independent creation.	201
Bracelet, necklace and ring are likely to all fall within the same top level locarno class, and so recommend filing one app to the three designs. This will save money, and the designs will protect against anything which does not produce a substantially different overall impression on the informed user. Right will last upto 25 years, renewals due every 5 years.	209
Validity of registration	
The designs appear to be novel and posess individual character \rightarrow "particularly distinctive appearance". The only other issue is for the ring, is its design solely dictated by technical function? Did you have design freedom, i.e. is there any other way of making that mechanism? If no, patents would have been your only option, but not now in view of US disclosure. If yes, then registration for ring likely to be valid.	203
Mr Rough	
Any potential infringement/3 rd party disclosure in the grace period could only be caught/discarded if one could prove copying. This seems likely as the articles are "replicas". Therefore, any design rights of Mr Smooth's could be enforced, once registered, to stop Mr Rough (i.e. through an injunction). Remedies being: damages or account of profits, delivery-up/destruction of goods, injunctive relief declaration of infringement.	206
Ring	
If registrable, it seems the design for the ring is infringed as, irrespective of the lack of functionality, it produces the same overall impression on the informed user.	207
Bracelet	
The bracelet appears identical, and the design should be registrable and so Rough could be stopped from (or sued for) MUDOIKE the bracelet.	
Necklace	
Rough doesn't make Necklaces. So no infringement here.	
Earring	
Smooth will have no registration for earrings (any attempt would not be novel), but if the earring does not create a different impression to the ring ("includes appearance of mechanism") and ring mechanism appearance is registrable, MUDOIKE the earrings could also be stopped from or sued for MUDOIKE the earrings.	210
Therefore, once designs are registered, apply for injunction, or bring proceedings in court.	;
6 MARKS AWARDED 6/10	D

Question 2

Your UK client X is a well-known manufacturer of hairdryers which are sold in the UK and widely throughout the EU. The client has sent you details of a new design, created in-house, for a hairdryer which it will sell only for the next three years, after which it will be replaced by a future design. Launch is scheduled to be in London in November with live streaming to retail customers based in the UK and the EU and who operate throughout the UK and EU.

Prepare notes for a discussion with your client as to the forms of design protection that may be available during the intended period of sale and what might be done to maximise design protection throughout the UK and the EU.

10 marks

2021

Question 2

You have recently filed a UK design application for your UK client, Ms Alten (A), for registration of a distinctive new design for a walking frame for elderly and disabled people. Subsequently, Ms Alten made a prototype, which she demonstrated to a UK manufacturer, Senior Ltd (S), who she had never dealt with before, to discuss large-scale production of the walking frame.

To Ms Alten's surprise, immediately following the demonstration, Senior revealed dated drawings made by their development department some years previously and showing an almost identical design, differing only in immaterial details. Senior explained that, although they believed the walking frame would eventually be a popular product, they felt at that time the market was not ready for such a distinctive design and had not pursued it, with all details of the design remaining in-house as confidential information.

Ms Alten has subsequently received a letter from Senior advising that they own the rights in the design and do not need any licence from Ms Alten to make or sell walking frames made to their design. In addition, any registration by Ms Alten resulting from the application will be invalid and she cannot make or sell walking frames made to her design without infringing Senior's rights.

Prepare notes for a meeting with your client regarding UK Unregistered and Registered rights only.

10 marks

Question 2

New clients, Mr and Mrs Ware (W), come to you with a problem. They make hand-decorated ceramic tableware (tea sets and dinner sets) which they sell at craft fairs in the UK. They developed a new decorative pattern which they have applied to the tableware since April 2020 and which is fast becoming their top-selling line. Visitors to their stall say they have never seen anything like it and observe how striking the new pattern is. To capitalise on the pattern, Mr and Mrs Ware have, in July 2020, set up a website for online sales and, more recently, have started developing new products using the pattern, especially on table coverings and serviettes.

They have just received a letter from a well-established UK retailer, Lately Ltd (L), advising that Lately Ltd registered a design to the same pattern and also, particularly, when it is applied to curtains, seat covers, ceramic napkin rings and candle holders. The letter merely draws attention to their registered design. Mr and Mrs Ware have invested a significant sum to develop products incorporating the pattern and to set up their sales business.

You check and find the designs were registered in the UK by Lately Ltd in June 2020 but you have searched and cannot identify any evidence of a prior disclosure or sales by Lately. Mr and Mrs Ware inform you that Lately Ltd is well known for copying popular designs.

Advise your clients on the situation regarding UK registered designs only.

10 marks

Question 2

You are contacted by the curator of a UK nautical museum. The curator advises you that an independent researcher has contacted them, in confidence, with a small model of what the researcher believes is the famous ship, Mayflower, that was used to transport the Pilgrim Fathers to Virginia, USA in 1620. There is no existing record of the design of the Mayflower. A number of original wooden beams purported to be from the remnants of the Mayflower provided the inspiration for the researcher's design, although the design is unlikely to be an exact replica.

The curator advises you that the museum is planning, at considerable expense, to commission an initial batch of 100 hand-crafted wooden reproductions of the design, which are to be marketed in conjunction with the opening of a new exhibition in a few weeks. There is likely to be interest in the models from the UK and the Netherlands during the exhibition.

Advise the curator on how best to protect the design for the benefit of the museum ignoring issues of copyright.

10 marks

2018

Question 2

Your UK client, ShowerSafe Limited (SS), manufactures shower trays and shower enclosures for users who lack mobility. SS has sent you an email with solid-coloured drawings of a shower tray which it says has new and distinctive shape features and a new and distinctive surface pattern on the base of the tray.

The design was created by an external design agency.

Prototypes of the design have been tested in private, but SS has committed to displaying the tray at the 'ShowerAid' exhibition in Bath, which takes place in two weeks.

Provide SS with advice on how best to protect all the new features of the shower tray by *registered design protection only* in the UK and whether the drawings they have provided are suitable for filing. Prepare notes for your client assuming the new features are registrable.

10 marks

2017

Question 2

Your US client, Mr Smooth, comes to you with his new ring which has an adjustment mechanism allowing the ring to be resized for different fingers. The adjustment mechanism gives the ring a particularly distinctive appearance, and so he has replicated its appearance (but not the mechanism itself) in a matching bracelet and necklace. Mr Smooth tells you that he launched his jewellery range in the US around nine months ago, and will shortly be launching in Europe.

Mr Rough, a competitor of Mr Smooth, has a business making low-cost replica jewellery. Three months ago, Mr Rough launched, in the UK, a matching ring, bracelet and earrings, which can be sold individually or together as a gift set. The ring is not actually adjustable, but includes the appearance of Mr Smooth's mechanism. The bracelet appears identical to Mr Smooth's. The earrings include the appearance of the mechanism.

Mr Smooth asks for your help in stopping Mr Rough. He has not yet taken any steps to protect his products.

Make notes, relating to registered designs only, in preparation for a meeting with your client.

10 marks

2016

Question 2

You are contacted by KitchenBitZ Ltd (KBZ), who have been developing a new toaster having an unusual appearance. The toaster has been in development since the beginning of 2015 and was first offered for sale through KBZ's website in August 2015.

KBZ has received a letter from a major appliance manufacturer, Deutsch GmbH (D), drawing attention to its GB registered design GB-RD1, which clearly shows a toaster that is essentially the same. GB-RD1 was filed in July 2015 without any claim to priority.

KBZ asks what they should do as their toaster clearly infringes GB-RD1, but have made a significant investment in the design of the toaster. Moreover, the appearance of the toaster can be carried over into other small kitchen appliances and this could be a very profitable extension to KBZ's business, although no work has been carried out so far.

KBZ tells you their new toaster design has been noticed by another UK company, which has expressed interest in either taking a licence or purchasing the rights to the design.

Make notes, relating to <u>registered designs only</u>, in preparation for a meeting with your client.

10 marks

2015

Question 2

Your US client Lighting US Inc. (L) sent you an email late last night with various attachments and asks you to obtain registered protection in Europe.

You open the attachments to the email and find three separate US 'design patent' applications. There are a total of five different looking designs in the applications. Two of the designs are for torches, two are for lanterns, and one is for a floodlight. The application for torches has a filing date of 12 April 2015, and the other two have filing dates of 13 April 2015. The US inventors are different for each application but your client has sent a copy of the signed assignments from the inventors to Lighting US Inc.

Your client explains that today and tomorrow are national holidays in the US and he will be unavailable, so asks you to take whatever action is necessary to protect his interests in Europe at the minimum expense because he plans to launch his products late next year.

He apologises for the late instructions but says that even if it is too late to obtain registered protection he has heard that there is an automatic protection for designs in both the UK and elsewhere in Europe so it won't matter too much.

Ignoring patent law and copyright, prepare notes for a follow-up call with your client on what actions you have taken and why.

10 marks

2014

 Your UK client, ACCEZORIES (A), designs and manufactures spoilers for cars which are purely aesthetic in nature.

In 2010, after a short development period, ACCEZORIES started selling the new spoilers at a motor show. The spoilers are an interesting and unusual shape. However, they must be able to fit to the relevant part of the vehicle to which they are secured.

ACCEZORIES calls you today because a high street auto centre CAR BITZ (C) has recently started selling (in the UK and France) cheap replicas of their spoiler.

ACCEZORIES want to know if they can stop these replicas being sold. They have no registered protection for their products.

Write notes for a meeting with your client considering UK and Community <u>Unregistered Design Rights only</u> - do not consider other forms of protection.

10 Marks

2013

2. You are contacted by your client who manufactures and sells crockery. Four months ago the client introduced a new range in the UK. The crockery was based on well known shapes, but with new eye-catching decoration produced by an employee. The new range is proving to be very popular and the client is exploring the possibility of export to other EU countries.

Your client has in the last two weeks discovered that another UK company is about to launch a range of soft furnishings incorporating a design which is rumoured to be identical to your client's new decoration and considers this is likely to have an adverse impact on your clients' products.

Write notes for a meeting with your client considering UK and Community Registered Design Rights <u>only</u> - do not consider other forms of protection.

10 Marks

Year	Question	Answers	Examiner's report
2022	2 2 Forms of UK and EU design rights available		This question was generally well answered. However, many candidates
		201 Client is owner of all UK/EU design rights because this is an in-house design (i.e.	recited details that were clearly not required. The question concerned
		created by an employee in the course of employment)	forms of design protection that were available and could be used to
		202 UKRDR and UKURD are forms of design right available to the client	maximise the client's protection, not whether the design met any
		203 UKSUDR is available from date of launch because it will be a first disclosure and	conditions for registrability. Despite being guided towards the various
		in the UK	types of design right, many candidates were unable to resist discussing
		204 EURDR is available to the client	the validity of the design, which was awarded no marks.
		205 EUUDR is available from first disclosure to the public within the EU (unless the	
		design has previously been disclosed in such a way that, in the normal course of	While a good proportion of candidates correctly stated the law for
		business, the design could reasonably have become known to circles specialised in	EUUDR and UKSUDR, recognising the need for the first disclosure to
		the sector concerned, operating within the EU)	be within the particular territory, relatively few recognised the practical
		206 Both UKSUDR and EUUDR should be available because first disclosure in the	issue that a disclosure in one territory could preclude protection in the
		UK and EU will be simultaneous (retail customers from the UK and EU who operate	other and a potential solution was simultaneous disclosure.
		throughout the UK and EU).	
		207 Registered design applications can be filed within 12 months of first disclosure	One of the key pieces of information was the simultaneous launch and
		(disclosure at the launch would establish a date of first disclosure)	this was overlooked by many as to its impact.
		208 Care should be taken, for the registered design, to ensure that the design does	
		not publish before the launch	The fact that the publication of the design application could prejudice the
		209 One of UK or EU RDR can claim priority from the other within 6 months of filing	various UDRs was rarely considered.
		210 Advise J that although registered rights incur a cost, they have the advantage of	
		no requirement to prove copying	Some candidates interpreted the "in house" aspect of the scenario to
			relate to the novelty of the design, rather than ownership

Year	Question	Answers	Examiner's report
2021	2	UKUDR	The average mark achieved for this question was 5 out of 10.
		201 Both A and S have original distinctive designs entitled to	
		UKUDR (because there was no prior contact between them)	Whilst discussion of registered designs was generally well handled, the complexities around
		202 A has supplementary UKUDR (The Designs and	unregistered rights were often not fully recognised. Most candidates noted that Senior has
		International Trade Marks (Amendment etc) (EU Exit)	UDR in its frame, but very few noted that Alten also has UDR in addition to her application for
		Regulations 2019)	a registered design. In fact, both parties independently created their designs and are,
		203 Your client cannot stop S from making and selling their	therefore, both
		design under UKUDR	entitled to UDR. However, in the absence of copying, they cannot stop each other via such
		204 S cannot stop your client from making and selling her own	unregistered rights.
		design under UKUDR	
		205 Because there would be no copying UK Registered Design	The question states "You have recently filed" and "Subsequently made a prototype which
		206 A is rightful owner of her Registered Design (reason	she demonstrated". However, a significant number of candidates were concerned about
			public disclosure by Alten to Senior and the need to rely on a grace period.
		207 A's design is registrable because there has been no prior	
		publication so the design is novel	Few candidates seemed to identify that Alten had supplementary UKUDR, which is surprising
		208 and "distinctive" design implies individual character	given the recent changes in the law (and the FD1 Syllabus) relating to Brexit.
		209 S has no third party rights because no continuous serious	• • • • • • • • • • • • • • • • • • •
		and effective preparations	Several candidates wasted time on irrelevant points such as detailing the length of registered
		210 S will infringe, because the designs are not materially	design protection which, as the design application was recently filed, was not yet relevant to
		different (or would not produce a different overall impression), if	the client.
		it should make or sell walking frames (according to either	
		design)	Overall, however, this question was answered well by many candidates.

Year	Question	Answers	Examiner's report
2020	2	<u>Registrability</u>	The average mark for this question was 6 (10 marks available).
		201 Appears to be novel (first sold April	
		2020)	The designs question this year was better answered than in previous years and this is a positive trend. This
		202 Has individual character because	year the question was concerned solely with aspects of registered designs.
		striking pattern	
		203 Can rely on 12 month grace period to	An important consideration is whether the clients can secure registration for their design which is a new
		secure registration (providing Lately design	decorative pattern, initially applied to ceramic tableware and more recently extended to further products.
		derived from Wares design)	Tableware bearing the new pattern has only been available since April 2020 so is novel. It is said to be "striking"
		204 File application for UK Registered design for the pattern. Potential	and therefore satisfies the requirement for individual character (see S1B RDA). In order to gain the marks for registrability it is important that candidates do not just state the law but also link it to the facts provided in the
		infringement by Wares	question. Although Lately has a publication of the pattern with its registration which is after April but before any
		205 Registration extends to products	application the clients may file, the clients can take advantage of the 12 month grace period provided that
		beyond those specified so will include	Lately's design has been derived from the clients' design (copied) (see S1B RDA). An application for a UK
		those sold by Wares	registered design should therefore be filed for the pattern. A common error made by candidates related to
		206 Registration is invalid – because lack	incorrectly stating that the grace period was 6 months rather than 12 months.
		of novelty over sales by Wares	
		207 Can take actionany one of have	It should be noted that while an application for registration must specify one or more products (Rule 5(2)) it is
		design revoked/declaration of	the design, not the product, that is protected (S7(1) RDA). Many candidates missed this important distinction.
		invalidity/entitlement action etc	Nevertheless, the clients are at present still at risk of an infringement action from Lately. As explained above, it
		208 do Wares have a prior user right ?	is the design that is registered not the product, so the scope of any design registration extends beyond the
		209 discussion point – an appreciation prior	product(s) specified in the application. Consequently, Lately's design registration covers all the products sold,
		user rights would not apply to all products	or to be sold, by the clients.
		at all time points needed – eg in respect of	
		the ceramic products but not for the later	However, Lately's registration is invalid because it lacks novelty due to the sales by the clients before Lately's
		products?	application was filed. The clients actually have several options here, including declaration of invalidity (on the
		210 Cannot take action until the design is registered or until the outcome of	grounds of lack of novelty or entitlement) (S11ZA RDA) or rectification (on the same grounds) (S20 RDA). In any event, the clients have a prior user right (S7B RDA) although this only applies to the initial tableware
		entitlement proceedings are concluded.	products and not to the new products (S7B(1) RDA).
			The clients' application will result in a registered design which they can enforce against Lately, but no action can be taken until the design is registered (S7 RDA).

Year	Question	Answers	Examiner's report
2019	2	<u>Ownership</u>	The average mark achieved for this question was 6 out of 10. It was good to see a much stronger set
		201 Design was from an independent researcher, who	of marks being achieved in the designs question than has been achieved in previous years.
		is therefore the owner	
		202 Client will need an agreement in place if they want	It is clear from the question that the independent researcher is the owner of the design. Consequently,
		to control the situation - licence or assignment	the museum will require an agreement (an assignment or a licence) to be in place if it wishes to control
		Registrability	marketing of the models. This was dealt with well by most candidates. The design appears to be new,
		203 New – design appears to be new becauserationale	for example because the question states that there is no existing record of the design of the Mayflower, and possesses individual character because the limited number of wooden beams cannot convey many
		204 Individual character – discuss, e.g. details not	aspects of the design, leaving the researcher considerable freedom when completing the design. The
		previously known, design freedom etc.	design should be registered either as a Community registered design or in both UK and the Netherlands
		205 Register the design eitherUK/NL or EU	in order to cover the client's needs and can best be protected with line drawings. It is advisable to seek
		206 Is advisable to register before the conference but	registration before the opening of the exhibition, but if this is not possible then the grace period may be
		may use grace period	used, although this does not protect against independent third-party designs. This has been covered a
		207 Term discussion – Either a) seems design may	few times now in FD1 and is generally well answered.
		have been short lived benefit therefore no need for	
		long term/term of 5 years may be enough; or b) the	The question states that there is likely to be interest in the design during the exhibition, so the
		significant interest/expense may warrant requiring a	commercial value of the design may be short-lived and the initial registration period of 5 years may be
		longer duration	sufficient. However, some candidates felt that the "considerable interest" may suggest a need for a
		208 Need line drawings to best protect the design.	longer duration of protection. Candidates were awarded the mark for justifying why term was relevant
		UDR	to their advice regardless of which way they went. Answers that mentioned the term for a registered
		209 UDR (UK and EU) could automatically exist but	design but failed to give advice on tailoring it to the needs of the client did not attract the mark.
		210still recommend RDR becauserequires UDR	Unregistered design rights will, or will in due course, exist automatically in UK and EU but registration
		proof of ownership and copying, (one reason is	may be preferable because, for example, unregistered design right requires proof of ownership or proof
		enough)	of copying to enforce. A justified reason was required for the mark.

Year	Question	Answers	Examiner's report
2018	2	UKRDR	The average mark achieved for this question was 6 out of 10. Generally this question was well answered but
		201 File multiple UK design applications, one	incomplete analysis meant available marks could not be awarded.
		for the shape and one for the pattern (or one	
		application that is later divided)	The designs question covered a number of aspects of designs law and practice including application
		202. Need line drawings to best protect the	procedure, representations and ownership. Candidates were expected to advise their client that two UK
		shape of the tray	designs applications should be filed, one to the shape and one to the pattern. The design was created by an
		203. discussion required regarding practicality	external design agency and candidates were expected to explain that the first owner is the designer and not
		of use of solid drawings for the surface pattern.	the client. Although most candidates scored well on the ownership part of the question there were still some
		204. Cannot have both line drawings and	who referred to ownership by commission, which is not current law and changed in 2014.
		tonally shaded solid drawings in the same	
		application (but can in separate designs of a	The separate needs of the shower tray (shape) and the surface pattern (decoration) were often blurred
		multiple design application)	together and not recognised. When filing strategy for both was discussed very few mentioned the possibility
		205 Best to include a disclaimer (verbal/visual)	of later dividing a single application.
		in the shape application to exclude pattern -	
		protection is sought for the shape and contours	Although candidates often recognised the benefit of line drawings for optimal protection of the tray, discussion
		alone - For the above see Designs Practice	often did not extend to the related point of appropriate drawings for the pattern and the incompatibility of both
		Note DPN 1/16	drawing types in a single application. The available mark for discussing the use of a disclaimer was
		206 The first owner of the design is the designer not SS (S2 RDA 1949)	infrequently awarded.
		207 Need to ensure a contract or assignment is	The client had provided solid CAD drawings and candidates were expected to appreciate these might not be
		in place transferring ownership to SS (S2 RDA	ideal. According to Designs Practice Note 1/16 line drawings are required to best protect the shape, but this
		1949)	is not necessarily the case with the pattern and some discussion of the practicality of using the solid drawings
		208 Best to file the applications before the	was expected. However, it is not permitted to mix simple outline drawings with tonally shaded CAD drawings
		exhibition starts (S1B RDA 1949)	in the same application. The practice note also explains that for shapes it is best to include a disclaimer to
		209 But can file up to 1 year after first disclosure	pattern, for example along the lines of "protection is sought for the shape and contours alone".
		(S1B RDA 1949)	
		210 However, does not protect against	Finally, although many appreciated the existence of a grace period, many still did not advise to act quickly
		independent third party designs (S1B RDA	and that reliance on the grace period is inadvisable since it does not protect against independently derived
		1949)	disclosures: this is a way of mitigating risk for your client.

Year	Question	Answers	Examiner's report
2017	2	Registrability	The average mark achieved for this question was 4 out of 10. It is important for question 2 to
		201 Registered design protection can still be sought	bear in mind that it is the design of the adjustment mechanism that is under consideration, even
		in the UK/Europe because less than 12 months has	if that design may be applied to different products, such as a ring, bracelet, necklace or earrings.
		lapsed since your clients disclosure (grace period).	Candidates are told the adjustment mechanism has a particularly distinctive appearance and
		202 Grace period does not protect against 3rd party	what is more it is found on items which are not themselves adjustable. This should indicate the
		disclosures however, Mr Rough copied from Mr	design is unlikely to be solely dictated by its function and is likely to be registrable.
		Smooth	
		203 The mechanism appearance may not be solely	The client has disclosed the design as part of the ring, bracelet and necklace around nine
		dictated by function, so it is likely that registered	months ago. Registered design protection can still be sought in the UK or Europe due to the
		design protection would be available for these items	grace period. Although the grace period does not protect against third party disclosures, the
		as a whole.	question makes it clear that the competitor is known for making replica jewellery and launched
		204 Recommend filing a single or multiple	his products after the client's launch in USA. To the extent that the competitor copied the design
		Community design registration covering the	from the client (which seems very likely) the disclosure can be discounted.
		mechanism per se	
		205 Recommend filing on the appearance of the	Since the design does not appear to be solely dictated by function, both the mechanism itself
		mechanism, when applied to each jewellery item.	and all the products sold by the client should be registrable. Given the client's intended launch
		Infringement	in Europe, a Community registered design is indicated and registration should be sought at
		206 From registration - it will be possible for Mr	least for the mechanism itself and ideally also for each of the products (ring, bracelet and
		Smooth to enforce his reg design right.	necklace) sold by the client. This can be accomplished by filing several independent
		207 For infringement the mechanism must confer on	applications or preferably by filing a single multiple application to save costs.
		the user the same overall impression which is likely	
		due to being replicas (conclusion required)	It is then necessary to consider how the applications can be used to carry out the client's wish
		208 The bracelet at least is identical therefore if Mr	to stop the competitor. This is only possible after registration and to prove infringement the
		Rough has copied then this was not in good faith and	competitor's designs must confer on the user the same overall impression. This seems likely to
		prior user rights will not apply.	be satisfied because of the replica nature of the competitor's products.
		209 Because the design was copied before the	
		registration no criminal sanctions will apply to Mr	The competitor's bracelet at least, is the same as the client's product and to the extent the
		Rough.	competitor has copied the client's design the bracelet was not sold in good faith and prior user
		210 The earrings/ and giftsets containing them would	rights will not apply. Because the design was copied by the competitor before registration, no
		be covered by the appearance of the mechanism	criminal sanctions will apply.
		RDR as design is not limited to the article to which it	
		is applied	The earrings and giftsets are covered by the proposed registered designs in a number of ways.
			A design is not limited to the article to which it is applied so a registration of the appearance of

	the mechanism itself will prevent sales of both the earrings and the giftsets, (as arguably would
	registrations of any of the client's individual products), while the giftsets also include the ring
	and bracelet as specific products and either registration would prevent sales of these.
	It is evident that candidates continue to find the design question challenging. Fewer candidates
	attempted a 'data dump' of everything they knew about registered designs and the majority
	attempted to tailor their advice to the situation at hand which is very encouraging. Some
	candidates felt the disclosure by the third party in the grace period was a disclosure that meant
	the designs were not registerable and as a result lost a few marks for not appreciating they had
	been copied and was a disclosure that could be ignored. Those that stated they could file a
	design did not say what they were filing for. It is important to be specific when giving information;
	saying 'file a design' is not good enough. You need to show you have an understanding for
	what is registerable (and what might not be) as this may well be important later in discussion
	about what rights you can enforce.

Year Que	uestion	Answers	Examiner's report
2016 2		UKRDR 201. Was there a prior disclosure which would invalidate D's registered design 202. KBZ may have prior user rights because development started well before filing of GBRD1. 203. Need to show KBZ has made serious and effective preparations to use the design prior to the filing of GB-RD1. 204. This is likely to be the case – reason needed - (e.g. given that there was 6 months of development prior to GB-RD1 filing and only 1 month afterwards till sale or because of the significant investment). 205. If copied there is infringement and KBZ must stop making and selling the toaster. 206. (If not copied) write to D to explain existence of prior user rights. 207. Cannot extend the prior user right to use of the design to other small kitchen appliances (no preparations for such purposes). 208. Cannot licence the prior user right to a third party. 209. Can assign the prior user right but only if assigned with the relevant part of the business 210. No protection is available for the other kitchen appliances.	 The average mark on this question was 4 out of 10. Those candidates who approach the designs questions in the same manner they approach the patents questions with sensible analysis generally score better than those who simply regurgitate information. Most candidates identified the possibility that prior art may exist to invalidate the design or identified potential for prior user rights to have been generated. A disappointingly small number contemplated that your client may in fact have deliberately copied in which case there would have been infringement. A number of candidates discussed in great detail the registerability of the kitchen appliances and the possible term they could attract whilst not appreciating that prior user rights only protect against continued preparations and not extrapolation to the other appliances. Additionally many candidates appeared not to appreciate that, although a registered design application is required to specify a product, the resulting registration is not limited to that product. Such a registered product, which is the situation set out in the question. As nothing could be registered no discussion of Locarno classes or term was required. Candidates should ensure they are up-to-date with developments in the law. Prior user rights for designs became available as from 1 October 2014.

Year	Question	Answers	Examiner's report
2015	2	Priority, CRD, UKURDR, CURDR	The average mark on this question was 7 out of 10. Compared to the average mark achieved in designs
		201 File today (at least on the torches)	questions from previous years this was generally well answered.
		202 because the 6 months priority period	
		expires today	While many candidates identified deadlines of relevance e.g. 6 month priority period, a proportion failed to
		203 File a CRD for a series of 5 designs or file	advise that specific action should therefore be taken today. One candidate suggested that US closed days
		different applications - max 3 (providing this is	would allow UK filing deadlines to be extended.
		due to a discussion regarding the Locarno	
		class - see below)	Most understood the principle that designs in the same Locarno class could be combined to save costs,
		204 Different designs relate to articles in the	however, a smaller proportion applied the facts of the question to reach a conclusion on whether to file a single
		same Locarno class, i.e. all lighting devices or	or multiple applications – a mark was available for consideration of the facts regardless of candidate's detailed
		may not be considered same class -	knowledge of the Locarno system. It was however, necessary to come to a conclusion on whether they can be
		discussion required.	combined because they are all lighting related, or they need to be filed separately because they are different
		205 each design must claim priority from the	products.
		relevant US design patent on which it was	
		based	Again specificity with terminology let some candidates down in this question – many appreciated that priority
		206 Assignment documents appear to be	needed to be claimed but it is important to appreciate that each design is only entitled to claim priority from the
		sufficient	relevant US design on which it is based and for which there is different dates. Candidates who simply state
		207 term would last 25 years from registration	'claim priority' are not giving specific enough advice.
		As your client has specifically discussed	Some candidates suggested requesting a copy of the assignment for review – the question says it has been
		UDR	provided - careful reading of what the question does and does not say is important. Few commented on the
			sufficiency of the assignment documents.
		208 UK UDR would not apply because there	, 5
		is no qualifying person	Some candidates recognised that the client was not a qualifying person but did not comment on the designer.
		209 CUDR is only 3 years (expire October	Qualification can be through a number of routes. It is advisable to explain your reasoning stating 'there is no
		2018)	qualifying person' is correct but stating that 'there is no qualifying person because the client is US based' is
		210 Copying would need to be shown for	better and shows the understanding of the legal point and facts. Some candidates appreciated that protection
		infringement	would last 25 years but stated it would run from registration of the design not application of the design.

Year	Question		Answers	Examiner's report
2014	2		UKUDR and CUDR	The average mark on this question was 6 out of 10. This year's design question related to
		i.	ACCEZORIES is based in the UK and therefore	unregistered designs only (and was clearly indicated as such in the instructions to candidates)
			is a qualifying person in respect of UDR	yet again some candidates felt it necessary to discuss registered protection which simply
		ii.	UDR lasts the earliest of either 1 mark	wastes time and shows a lack of attention to instructions.
		iii.	15 years from the end of the calendar year in	
			which articles first made or recorded or 1 mark	This year's design question was well answered in comparison to previous years. However, too
		iv.	10 years from the end of the calendar year in	many candidates are making basic errors such as listing two possible deadlines but not
			which the articles first sold (31 Dec 2020) (if in the	advising their client which of the two dates is the one that applies – especially in cases such as
			first 5 years). 1 mark	this one where the earlier date is the critical date. Other candidates merely mentioned the
		۷.	Licences of right are available in the last 5 years	shorter date without explaining why they felt this date was the relevant one in this situation -
			i.e. by 1st Jan 2016/in 15 months. 1 mark	your client needs clear information. Also many candidates stated the correct time periods of 10
		vi.	CUDR will exist and last for 3 years from the first	or 15 years but without explaining they ran from the end of the calendar year – this can have
			disclosure - which has passed so no protection	potentially a 12 month difference in exclusivity period for your client and is vital information to
			remains. 1 mark	convey. Only a handful of candidates discussed the possibility of licences of right applying in
		vii.	therefore no action can be taken in France. 1	the last 5 years: even fewer calculated this date correctly and appreciated that within a short
			mark	time frame this was likely. This question was very simple in respect of Community Unregistered
		viii.	The criteria of original designs (not	Design - the rights had expired. More candidates could have realised this earlier in their
			commonplace) is met because the spoiler is said	answers and saved significant amounts of time.
		. .	to be an "interesting and unusual shape". 1 mark	The second (marked) was seend dollber when he includes a weither but for a secolidate shows and
		ix.	The part which must-fit the vehicle/spoiler	The word 'replica' was used deliberately to imply copying but few candidates drew any
			(attaches) is not protectable due to the must-fit	conclusions in this respect.
			exclusion. 1 mark	Finally, some condidates minurelevated the must fit evaluates this king that it evaluated the
		Х.	It is necessary to prove copying, which is likely to	Finally, some candidates misunderstood the must-fit exclusion thinking that it excluded the
			be possible because the shapes are replicas.	whole spoiler rather than just the part which fits to the vehicle.

Year	Question	Answers/Examiner's Report
2013	2	Examiners report and mark scheme combined in 2013:
		The average mark on this question was 5 out of 10. Every year there is a design question and yet often this is a poorly answered question. P2 is a practice paper and marks are awarded for applying the law to the facts and not simply for stating the law. Candidates who have pre-prepared a script covering various aspects of designs law and which they reproduced in the exam generally score badly.
		This year's design question related to registered designs only yet some candidates still wrote about UDR. Candidates would also do better to structure their answers using headings where necessary.
		UKRDR and CRD A discussion was expected regarding the design being owned by the employer and regarding the location of the employer. (1). Surface decoration can be protected (1) but the design must be new and have individual character. Many candidates stated this part of the law but did not then go onto say whether or not this applied. To gain the mark candidates need to apply the law to the facts given such as "this appears to be the case as the design is stated to be new and is eye-catching in design". (1) The design itself will be protected therefore it will not be limited to the item to which it is added (Design is therefore not limited to crockery) (1) A 12 month grace period applies to the clients designs (1) but no grace period would apply if the competitor conceived the design themselves.(1) No need to prove competitor copied the design for enforcement/monopoly right (1) Candidates were often unclear as to the extent of the grace period, e.g. stating that it does not protect from third party registrations. The position is much more serious, in that it does not protect against independently derived disclosures at all, including the upcoming launch if their design was independently conceived rather than copied.
		CRD would be useful to cover the exported goods (1). A discussion regarding prior user rights was expected (1) Prior user rights would exist for the community registered design (providing the design was not copied). However, this would not be the case for the UK RDR. Few candidates realised that UK RDR does not have a prior user right exception and therefore it is advisable in the event the third party design was not copied and they are a bona fide prior user Advice File registered community and UK designs (1). Those candidates which had not considered prior user rights generally failed to gain this mark as they believed filing a CRD covered the UK adequately.