

# Law Relating to Design

## QUESTION 1:

**Who is a proprietor of a design and state the prohibition in registration of certain design?**

**(5 MARKS)**

**Ans:**

1. Design simply means any shape, configuration, pattern comprising of lines or colors whether 2D or 3D which is capable of individual application
2. As per the Design Act, 2000 the proprietor of the design is:
  - (a) The author of the design,
  - (b) Any person acquiring the design from the author, then the person who acquires becomes the proprietor and
  - (c) Where the author for consideration executed the work for some other person, then that person becomes the author.
3. Every Design that is novel can be registered under the act, subject to certain prohibitions:
  - (a) Designs which have been prior disclosed to the public in India or any other country
  - (b) Design which is not distinguishable from the other designs
  - (c) Some designs which are scandalous and obscene
  - (d) Designs which lack novelty or originality.

**QUESTION 2:**

**What is the duration of the registration of a design? Can it be extended? How can the Registration of a Design be cancelled?**

**Ans:**

1. Design protection is one of the categories of IPR where the focus is on the art that is the aesthetics and not on the craft.
2. The duration of the registration of a design is initially ten years from the date of registration, but in cases where priority has been claimed the duration may be ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made to the Controller before the expiry of the said initial period of ten years.
3. Once a design is registered the proprietor gets an exclusive right to use the same but the same may be cancelled by controller in the following case:
  - (a) The design has been previously registered in India
  - (b) It has been published in India or elsewhere prior to the date of registration
  - (c) The design is not new or original
  - (d) Design is not registrable
  - (e) It is not a design

**QUESTION 3:**

**‘Heavy Duty Company’ manufactures ‘Pick-N-Carry Hydraulic Self Mobile Cranes’ developed and registered under the Designs Act, 2000. They filed a suit for permanent injunction and infringement against ‘Robust Mechanicals Company’, who began manufacturing and selling mobile cranes that were visually identical to the original design of ‘Heavy Duty Company’ claiming that their machine is “new or original”.**

- (i) **With the support of a case law, discuss the requirements of for a design to be considered significantly “new or original”. (3 MARKS)**
- (ii) **What is the Court’s duty while determining if a design is “new or original”? (2 MARKS)**

**Ans:**

(i)

1. As per Design Act ,2000, if a design has to be registered it has to be new or original and one which has not been published elsewhere. Further, in one of the classic case Hon'ble Supreme Court of India held that expression new or original appearing in Section 4 means:

- (a) the design which has not been registered
- (b) has not been published anywhere
- (c) has been made known to the public
- (d) that it had been invented for the first time
- (e) it has not been reproduced by anyone.

2. In the present case, the plaintiff Heavy Duty company which manufactured 'Pick-N-Carry Hydraulic Self Mobile Cranes' and were registered under the Designs Act, 2000 had filed a suit for permanent injunction against Robust Mechanicals company for beginning to manufacture and sell mobile cranes that were visually identical to the original design of the plaintiff. Also, the defendant had made a claim that their machine is "new or original".

3. Corroborating the present case with the Supreme court's judgement the claim of the defendant that their machines were new or original will not be considered to be true, as for a machine to be new or original it has to comply with the above given pre-requisites

(ii) The court's duty in determining if a design is new or original is:

- 1. check if it has been published earlier,
- 2. the design is distinguishable from the other designs,
- 3. It is not against the public morality.

**QUESTION 4:**

**ES Ltd., a telecommunications company, is in the design phase of a new device that incorporates a cell phone with Internet capabilities. There is a concern that the new device may have nearly the same design as their competitor's product. What requirements ES Ltd. should comply with before applying for registration of the design of the new device under the Designs Act, 2000? (5 MARKS)**

Ans:

As per the Design Act, 2000, Any person who claims himself to be the author of a design and is desirous of getting the same registered he must ensure the following:

- (a) The design is original or new
- (b) It has not been disclosed to the public in India
- (c) It is distinguishable from the other design, not similar to that of the competitor's design
- (d) It is not contrary to the public order or morality
- (e) The finished article should appeal to and should be solely judged by the eye as the act protects the art and not the craft

Therefore, ES Ltd. which is a telecommunication company shall ensure that the above-mentioned measures are complied with before it applies its new device that incorporates a cell phone with Internet capabilities for registration.