

PATENT EXAMINATION BOARD
SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW
SOUTH AFRICAN DESIGN LAW AND PRACTICE 2026 – GROUP 1(c)

Paper 1 of 1

25 June 2026

Examiner: J Fiandeiro

Moderator: Adv O Salmon

Time: 4 Hours (240 minutes)

Total marks: 100

This paper consists of 9 pages (including this cover page)

Instructions:

This is a **closed-book examination**. No study or reference material is allowed into the examination venue.

- Answer all the questions.
- Write legibly. Answers that cannot be read will not be awarded marks.
- All answers must be answered using full sentences.

QUESTION 1

(9 marks)

- 1.1 Provide definitions of:
- a) a functional design **(3)**
 - b) an aesthetic design **(3)**
- 1.2 Who is the "proprietor" of a design for purposes of an application for design registration? Identify and briefly explain all possible categories of proprietor recognised by the Designs Act. **(3)**

QUESTION 2

(8 marks)

- 2.1 With reference to the Designs Act, explain what is meant by the "date of application". **(2)**
- 2.2 In each of the scenarios below, calculate the correct expiry date and first renewal date of the design registration:
- (a) South African Aesthetic Registered Design no. A2025/03201 for a foreign client. The application was filed on 15 September 2025 and claimed priority from a Convention country application filed on 14 March 2025. The design was registered on 10 February 2026 and published in the Patent Journal on 25 March 2026. **(3)**
 - (b) South African Functional Registered Design no. F2024/07144 for a South African client. The application was filed on 22 April 2024. The applicant's marketing team had previously presented the design at a trade show on 10 November 2023, and this date was cited as the release date. How do the expiry date and first renewal date differ from what they would have been had no release date been claimed? **(3)**

QUESTION 3

(12 marks)

KingMaker (Pty) Ltd, a chess manufacturer, has devised a new range of chess pieces with a striking contemporary look, including clean geometric lines, a satin-black finish, and subtle angular facets on each piece (king, queen, bishop, knight, rook and pawn). Each piece in the

set shares the same geometric style and satin-black finish, though each piece is naturally a different shape and size, as shown below:



The pieces are manufactured by a third-party factory using injection moulding, and KingMaker sells them exclusively as complete sets of 32 pieces. KingMaker comes to you for advice.

- 3.1 State the statutory definition of a "set of articles" under the Designs Act. In your answer, explain the requirements a group of articles must satisfy in order to qualify as a set. (4)
- 3.2 Can the chess pieces be registered as a set of articles? Apply the statutory definition to the facts above and explain your conclusion. In your answer, also address whether a single handcrafted chess piece (produced as a one-off prototype) could form part of a registrable set of articles. (5)
- 3.3 KingMaker asks whether the design should be filed as an aesthetic design or as a functional design. Briefly advise KingMaker. (3)

QUESTION 4

(14 marks)

- 4.1 Briefly distinguish between a correction under section 26 of the Designs Act and an amendment under section 27. When would you use each? **(4)**
- 4.2 Consider the following proposed amendments to registered design registrations. In each case, state with reasons whether the amendment would be allowable under the Designs Act:
- (a) The definitive statement reads: "The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a water jug, substantially as illustrated in the accompanying representations." The proprietor wishes to amend this to "water jug and lid"; the lid was depicted in the filed representations but was not mentioned in the definitive statement. **(2)**
- (b) The definitive statement reads: "The features of the design for which protection is claimed are those of the shape and/or configuration of a desk lamp, substantially as illustrated in the accompanying representations." The proprietor wishes to add "and/or ornamentation" to the definitive statement to broaden the scope of protection. **(2)**
- (c) The definitive statement for Part A (aesthetic) registration reads: "The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a garden chair, substantially as illustrated in the accompanying representations." The proprietor wishes to amend the article description to "garden chair and table set"; the application for registration was originally accompanied by representations of the chair only; no table was shown. **(2)**

- 4.3 Section 27(6)(b)(ii) of the Designs Act prohibits any amendment that would widen the scope of a registration. Explain what this prohibition means in practice and why it is particularly important in the context of post-grant amendments. Justify your answer with reference to case law. (4)

QUESTION 5**(16 marks)**

LuminArc (Pty) Ltd is the registered proprietor of a single aesthetic design registration (no. A2019/04471) covering two different light fittings, as shown below. The light fitting on the left is a three-pendant chandelier-style light fitting comprising two vertical suspension rods, a steel arched bar and three frosted glass dome shades hanging evenly from the arch. The light fitting on the right shows a single cylindrical pendant light fitting. The design was filed on 5 August 2019 with no release date, and was registered under Class 26 (lighting apparatus).



You act for BrightForm CC, a competitor that has been importing and selling identical light fittings. In early 2024, LuminArc's attorneys addressed a notification letter in terms of section 37(1) of the Designs Act. BrightForm instructs you to respond. You check CIPC's online records and confirm that all required renewal fees have been paid. BrightForm brings to your attention that LuminArc had published a detailed product specification sheet, including photographs and dimensions of both fittings, and distributed it to electrical wholesalers on 10 March 2019, approximately five months before the filing date. You write back to LuminArc's

attorneys, in which you bring this disclosure to their attention. In response, LuminArc applies to amend the application papers to insert a release date of 10 March 2019, but does not file a fresh Form D3 declaration. The amendment application is subsequently allowed, after which LuminArc proceeds to issue a formal letter of demand. After further investigation you discover that LuminArc had exhibited the three-pendant light fitting at a public trade fair in October 2018.

In view of the above, please answer the following questions:

- 5.1 With reference to case law, was LuminArc entitled to amend the application papers to insert a release date? (4)
- 5.2 How does the October 2018 trade fair exhibition affect the validity of the registration? (3)
- 5.3 On the facts as presented, what are the main grounds on which the design can be revoked? (4)
- 5.4 Is it possible to file a single design application covering two different versions of a product, as was done in this case? What are the pros and cons of doing so? In this case, can the design be revoked on the ground that the design covers 2 different light fittings? (5)

QUESTION 6 (20 marks)

Aeroflow (Pty) Ltd is the registered proprietor of Aesthetic Registered Design no. A2021/08843 for a bicycle helmet (Class 2 — articles of clothing and haberdashery). With reference to the picture below, the helmet has a highly distinctive shell featuring:

- a series of large elongated ventilation slots running from the front to the rear of the helmet;
- a smooth, tear-drop rear profile tapering to a point at the back;
- a visor/peak protruding from the front of the helmet; and
- an external colour pattern of overlapping diagonal chevrons in red and white.



Aeroflow's main competitor, VeloGuard CC, has launched a helmet that looks virtually identical to Aeroflow's design. VeloGuard's defence is that the design registration is invalid because each of the features listed above is "necessitated solely by the function which the article is intended to perform" and therefore affords Aeroflow no design rights.

- 6.1 State the relevant statutory exclusion in section 14(5)(a) of the Designs Act and explain the meaning of the word "solely" as interpreted by South African courts. In your answer, refer to at least two decided South African cases and explain how those cases have interpreted the word "solely." (5)
- 6.2 For each of the four design features listed above, analyse whether VeloGuard's argument is likely to succeed i.e. whether each feature is necessitated solely by function. Justify your conclusion for each feature. (6)
- 6.3 One of the issues in *Homecraft Steel Industries (Pty) Ltd v SM Hare & Son (Pty) 1984 (3) SA 681 (A)* was whether the fluting on a metal fascia board was "solely functional." Briefly describe how the court approached this question and explain what principle emerges from that judgment regarding features that serve both a functional purpose and an aesthetic purpose. How does that principle apply to the bicycle helmet features in this question? (4)

6.4 Aeroflow wishes to enforce its registered design against VeloGuard. Assuming the design is valid, explain the step-by-step process a court would follow in determining whether VeloGuard's helmet infringes Aeroflow's registered design. In your answer address:

- how the scope of the registered design is determined, and the role of the definitive statement and the representations in this process;
- the perspective from which the two designs are compared (i.e. who the notional customer is and what level of attention they bring);
- whether the comparison is made feature-by-feature or holistically; and
- the relevance, if any, of the fact that VeloGuard's helmet incorporates features that are necessitated solely by function.

Refer to at least one decided case in your answer. (5)

QUESTION 7 (21 marks)

7.1 With reference to case law, can a “spare part” be protected by means of a design registration? Please advise in detail. (6)

7.2 What is the purpose of a statement of features (publication particulars) and how does it differ from a definitive statement? Which of these is optional? (4)

7.3 A client asks whether she can protect the colour of her new range of ceramic kitchen tiles (all tiles share a distinctive warm terracotta glaze). With reference to *Marley (South Africa) (Pty) Ltd v Piping Innovations (Pty) Ltd*, advise whether colour alone is a protectable design feature and whether your client's tiles are likely to qualify for protection. (3)

7.4 A registered design is found to have lapsed due to non-payment of renewal fees. Your client wishes to apply for restoration under section 23 of the Designs Act. Identify and briefly explain the criteria for restoration eligibility, and state the period within which the application for restoration must be made. (4)

- 7.5. GripTech (Pty) Ltd is the registered proprietor of South African Aesthetic Registered Design no. A2022/05311 for a sports water bottle, registered in Class 7. After registration, GripTech realises it should also have registered the same design in Class 9 (laboratory equipment) and in Part F (functional designs), since several structural features of the bottle are also functional in nature. Advise GripTech on whether it can file further applications for the same design in Class 9 and in Part F without those applications being defeated by the earlier registration. In your answer, identify the relevant provision of the Designs Act, state the conditions that must be met, and explain whether post-grant conversion of the existing Part A registration to Part F is available as an alternative.

(4)