

Foundation Certificate

FC4 Design and Copyright Law

Tuesday 19 October 2021

10:00 to 13:20 UK British Summer Time (GMT + 1 hour)

Examination time: 3 hours 20 minutes plus 10 minutes upload time

The 3 hours 20 minutes is allocated as follows:

10 minutes – Downloading and printing the question paper;

3 hours – Answering the questions;

10 minutes – Two screen breaks of 5 minutes each.

At 13.20 you MUST immediately stop answering the questions. You then have **10 minutes** in which to upload your Answer document to the PEBX system.

You MUST upload your Answer document to the PEBX system by 13.30. After 13.30 you will not be able to upload it and your examination will be void.

INSTRUCTIONS TO CANDIDATES

1. You should attempt **ALL** questions in Section A and any **three** questions in Section B.
2. The marks for each question in Section A are shown next to the question. Each question in Section B carries **20** marks.
3. If more than the required three questions are answered in Section B, only the first three presented will be marked.
4. The total number of marks available for this paper is 100.
5. You must use the Answer document for your answers.
6. Do not attempt to change the font style, font size, font colour, line spacing or any other preset formatting in the Answer document.
7. Start each question on a new page. To begin a new page, press the control key and the enter key simultaneously.
8. When you begin a new question, type in the question number at the top of the page.
9. Do not state your name anywhere in your answers.

This question paper consists of **7 sheets** in total, including this sheet.

AT THE END OF THE EXAMINATION

10. Upload your Answer document to the PEBX system. You should upload it as a Word document. PEBX will automatically convert it to PDF.

SECTION A

Question 1

State the maximum duration of the following rights and from when the duration is calculated:

- a) a Community Registered Design; **1 mark**
- b) a UK Registered Design; **1 mark**
- c) Community Unregistered Design Right; **1 mark**
- d) UK Unregistered Design Right; **2 marks**
- e) Copyright in a work created jointly by two known UK authors. **2 marks**

Total: 7 marks

Question 2

Explain how the scope of protection of a UK design registration is determined?

3 marks

Question 3

Your client wishes to obtain registered design protection in the UK, USA, China and Japan for a new design.

- a) **What are the minimum requirements for obtaining a filing date in the UK?** **5 marks**
- b) **What options are available for filing later applications covering the USA, China and Japan, and when should these applications be filed?** **5 marks**

Total: 10 marks

Question 4

- a) How does the CDPA define an 'artistic work'? **3 marks**
- b) In relation to what acts does the author of a textbook about patent law have a right to be identified? **3 marks**

Total: 6 marks

Question 5

Explain whether and why the design of a rocking horse would or would not qualify for UK Unregistered Design Right in the following circumstances (assume that the rocking horse was designed in 2021):

- a) It was designed jointly by a UK individual and a US individual resident in their home countries.

3 marks

- b) It was designed by an employee of a French company carrying out business in France

3 marks

- c) It was designed by a Swiss resident and was first marketed in the UK by a UK distributor.

3 marks

Total: 9 marks

Question 6

List five circumstances in which a disclosure of a design does not destroy the novelty of a later filed UK registered design.

5 marks

SECTION A Total: 40 marks

SECTION B

Question 7

You are approached by Rose Smith, who designed a range of six vases in September 2021 but is yet to disclose them. Each vase is an unusual shape, different from all the others and anything Rose has seen before. In addition, each vase is decorated with the same interesting pattern, which repeats several times on each vase.

Rose is also considering using the same pattern on other home furnishing products like cushions and lampshades, although she has not yet finalised these designs.

- a) **Advise Rose of the features of designs that in general are defined as being suitable for registration in the UK and the two main requirements for a design to be registrable in the UK. Discuss whether her vases and pattern may meet these requirements.**
10 marks
- b) **Advise Rose of routes for obtaining registered design protection in the UK, France and Germany for her current range of vases.**
2 marks
- c) **Advise Rose of any protection she may have or may obtain now for future products that incorporate the same pattern**
4 marks

Rose decides to delay the launch of her vases until she is ready to launch her entire range of home furnishing products. She anticipates that this may take another 12 months. However, she recently attended a trade show and overheard a competitor, Rob, discussing his own new range of unusually shaped vases that he plans to launch next week. Rob told his colleague that he plans to see how the vases perform on the market before applying for registered design protection only for the vases that perform the best.

Rose is worried that Rob's vases may have similar shapes to her vases.

- d) **Ignoring any prior users' rights, advise Rose what steps she can take to obtain an earlier UK filing date than Rob without making her design available to the public before her own product launch.**
4 marks

Total: 20 marks

Question 8

Ignore Unregistered Design Rights when answering this question.

Your client, Chin, has a UK Registered Design for a jacket, registered on 1 April 2019 and launched later that month, although sales so far have been slow. He has since been informed by a colleague that an individual, Jacques, has used a similar design in the UK but at this stage the nature of Jacques' use is unclear.

Bearing in mind the nature of the design in question, write notes for a meeting with Chin in which you advise him of:

- a) **the possible activities of Jacques that he can seek to prevent based upon his UK Design registration;**
4 marks

- b) **the possible activities of Jacques that he cannot seek to prevent based upon his UK Design Registration.**
3 marks

In further investigations, you discover that Jacques has a UK Registered Design for his jacket design, which was registered on 12 March 2016. There has been no communication with the UKIPO since then.

- c) **Advise Chin of the status of Jacques' UK Design Registration, including what steps Jacques could have taken and by when to ensure his registration was renewed or maintained**
8 marks

- d) **If Jacques successfully maintains his UK Design Registration, advise Chin on the implications for his UK Design Registration and any implications in relation to his sales to date.**
5 marks

Total: 20 marks

Question 9

Noah has designed a new range of tables and chairs in the last year for which he owns a UK Design Registration in his own name. Noah has been employed as a designer by a furniture company, Aykera, for the past five years.

He was tasked with designing the chairs by his boss at Aykera, but he also designed complementary tables in his own time.

Aykera has recently discovered Noah's registered designs and has asked him to transfer the rights in all of the designs to Aykera.

- a) **Discuss whether it is Noah or Aykera who is entitled to the registered designs in the tables and chairs.**
8 marks

- b) **If Noah agrees to transfer the design registration for the tables and chairs to Aykera, describe the requirements for effecting the transfer and recording it on the register, including any consequences of non-registration.**
5 marks

- c) **If Noah refuses to transfer the design registration to Aykera, explain the options available to Aykera.**
3 marks

- d) **If Noah was deemed to be the valid owner of the design registration, explain the rights Aykera would have if Noah offered them an exclusive licence to use the designs subject of the registration.**
4 marks

Total: 20 marks

Question 10

Your UK client designed a new beach towel in July 2020, which has an unusual shape allowing it to be easily folded into a beach bag. The towel is printed with an image of a unicorn, which the client designed herself. No registered design rights have been applied for.

- a) Discuss what unregistered rights may subsist in the UK in the beach towel and unicorn image. (Do not discuss qualification requirements and do not discuss continuing unregistered design right.)**

8 marks

Your client's product recently gained high-profile publicity when it was endorsed by a celebrity who was using it on holiday. As a result, a competitor has launched an almost identical beach towel that copied your client's design.

- b) Write notes on the acts which may constitute infringement of each of the unregistered rights discussed above.**

8 marks

- c) Your client mentions that they have heard that some rights that applied prior to Brexit could still be relevant to this product. Advise your client on what is required for continuing unregistered design right to subsist in the UK and explain how the term of that right is determined.**

4 marks

Total: 20 marks