

# Foundation Certificate

## FC4 Design and Copyright Law

**Tuesday 18 October 2022**

**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 **6 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**

Who is entitled to file a design application using the Hague System? (Assume the latest 1999 'Geneva Act', revision applies.)

**3 marks**

### **Question 2**

Your client wishes to obtain registered design protection. Advise your client on the requirements for a design to be registrable in the UK and outline any exclusions from protection.

**8 marks**

### **Question 3**

Outline how the country of origin of a copyright work is determined by the Berne Convention.

**9 marks**

### **Question 4**

List the acts restricted by copyright in a work. (Do not discuss 'secondary infringement', i.e. acts involving infringing copies of a work.)

**6 marks**

### **Question 5**

In relation to UK unregistered design right in a design created on 10 January 2021, explain whether the following would meet the qualification requirements:

- a) A designer who is an individual who lives in Australia.  
**3 marks**
- b) A company that employs a German designer, the company being formed in accordance with Hong Kong law and operating in the UK.  
**3 marks**
- c) A designer, resident in Italy, of a product embodying a qualifying design, the product having been first marketed in the UK by a UK company.  
**3 marks**

**Total: 9 marks**

### **Question 6**

Explain who has the right (also called 'standing') to bring an invalidity action in relation to a UK registered design.

**5 marks**

**SECTION A Total: 40 marks**

## SECTION B

### Question 7

David is a Manchester-based artist who creates paintings of seaside landscapes. His most celebrated pieces are a series of paintings of Brighton Beach in southern England, which he produced in 1998.

- a) **Advise David whether copyright law protects his Brighton Beach pieces, and if so, what protection is provided (but do not list the restricted acts).**

**4 marks**

Due to the success of the Brighton Beach pieces, he was recently invited to work with Lands End Collective, a studio in St Ives in south-west England. While doing so, he created a series of paintings of St Ives. The paintings are on display in the studio's gallery.

- b) **Advise David on any ownership issues that need to be considered in respect of copyright in the new series of paintings.**

**4 marks**

Because they have been so well received, a large retailer, Stubbs Ltd, has approached David to enter into discussions about the production of prints of his seaside paintings, to be sold in its shops nationwide.

- c) **Advise David on the possible legal options that will enable Stubbs to produce these prints commercially.**

**4 marks**

The discussions with Stubbs are ongoing and David visits London for a meeting. He decides to do some shopping for gifts for his family and is astonished to see another large retailer, Turner's plc, selling postcards bearing his Brighton Beach series of paintings.

- d) **Advise David on what legal action he could take, including the remedies available to him.**

**8 marks**

**Total: 20 marks**

## Question 8

Your client, Marion Eastwood, is a UK fashion designer who creates extremely flamboyant and artistic items of clothing. At a fashion show held in Edinburgh in February 2021, Marion launched her Golf Ball Dress, the dress being described as something 'entirely different to the norm' by the fashion press. The dress is white, spherical in shape, and has dimples in its material.

In September 2021, Marion attended a fashion show in London and one of her competitors, Osmund Bowtie, showed a new, white, spherical dress with dimples in the material. Marion is considering taking action and has asked for your assistance.

- a) Make notes for a meeting with Marion in which you will advise her on any unregistered design rights she owns in the dress. Do not discuss copyright.**

**8 marks**

Marion asks you to advise her on whether she can prevent any activities of Osmund relating to the design she saw at the London Fashion Show.

- b) Set out your advice to Marion.**

**6 marks**

Marion tells you that she has also been selling another of her creations, the Sunflower Dress, in France and Germany, since it was exclusively launched at the Paris Fashion show in December 2021.

- c) Advise Marion on unregistered design rights she may own in the Sunflower Dress in the UK and EU, and their duration, and any issues that need to be considered if she wants to file UK and Community design applications for the Sunflower Dress.**

**6 marks**

**Total: 20 Marks**

## Question 9

You receive an email query from a new client Sin Free Cakes.

Sin Free Cakes manufacture a low-calorie cake product called 'Angel's Share'. The cakes are shaped like angel's wings. There are no other cakes on the market that use an identical or similar shape and the Sin Free Cakes are hugely successful.

Sin Free Cakes tell you that they filed a UK design registration, using a line drawing of the shape of the Angel's Share cake and that it was registered on 30 September 2017, but they are not sure where their paper work for the design is.

Sin Free Cakes alerts you to the website of a major retailer that is selling a very similar cake that has been manufactured by a large well-known cake manufacturer, Mrs Pickling. Mrs Pickling has recently launched a new health-conscious cake called 'Halo', which is a sponge cake shaped like a halo and wings.

Sin Free Cakes has received a large number of emails and social media communications querying whether the Halo cake is produced by them, and they want some advice on whether they can object to the continued sale of the Halo cakes.

- a) **Advise Sin Free Cakes on the status of their UK design registration and steps they may need to take.**

**4 marks**

- b) **Advise Sin Free Cakes on their position with respect to the acts of Mrs Pickling.**

**6 marks**

After your meeting you find a Twitter post from Mrs Pickling's account from 2014. It contains a photograph of the Mrs Pickling sales team at a cake manufacturers' conference in London in 2014. The sales stand includes promotional materials relating to a Halo cake and photographs of a cake with an extremely similar design to that used in the Halo cake that your client has taken issue with.

- c) **Make notes to use during a call with Sin Free Cakes to advise them on the impact of the Twitter post on their position.**

**6 marks**

- d) **Advise Sin Free Cakes on the risk that the Halo design poses to their activities.**

**4 marks**

**Total: 20 Marks**

## Question 10

Your client, Marvin, has designed a toaster that bears a distinctive pattern on its front and back panels. In addition to the toasters, Marvin believes that there is potential for the pattern to be used across a range of kitchen appliances and containers, and he has already started to design a kettle and a bread bin that incorporate the same pattern.

Marvin would like some advice on how he can go about protecting his toaster, kettle and bread bin designs, all with the pattern applied to them, and also the pattern on its own. He knows that his largest markets are likely to be the UK, France, Germany and the USA.

After speaking to Marvin, you looked up the following Locarno classification numbers:

Toasters – 07-02;  
Kettles – 07-02;  
Bread bins – 07-07;  
2D graphic designs – 32-00.

- a) Explain to Marvin his possible routes to secure protection in these four jurisdictions, for all four of the designs of interest to him, and advise on methods for reducing the cost.**

**10 marks**

You are yet to file any applications for Marvin as he is still considering the cost. He calls you and tells you that he is thinking about showing the toaster design at a trade show tomorrow.

- b) Advise Marvin on whether he should proceed.**

**2 marks**

Marvin tells you that he owns a UK design registration for an earlier product that he designed, a fridge, that was registered in 2019. He has seen a company selling what he believes to be an identical fridge in the UK.

- c) Advise Marvin on the types of activities by a third party that would constitute infringement of his UK design registration.**

**4 marks**

Marvin tells you that he has set up a company, Starvin Marvin Appliances Ltd, and he asks whether he can transfer his UK design registration to the new company.

- d) Explain what is required to transfer the registration, and why these actions are important.**

**4 marks**

**Total: 20 marks**