

# Foundation Certificate

## FC4 Design and Copyright Law

**Tuesday 10 October 2023**

**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 pre-set 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

In the United Kingdom, who is considered the first owner of the following newly-existing rights:

a) A UK Registered Design?

**2 marks**

b) Supplementary Unregistered Designs?

**2 marks**

**Total: 4 marks**

### Question 2

a) With regard to section 16 CDPA (The acts restricted by copyright in a work), list the exclusive rights of the owner of the copyright in a work.

**6 marks**

b) With regard to section 226 CDPA (Primary infringement of design right), list the exclusive rights of a design right owner.

**3 marks**

**Total: 9 marks**

### Question 3

a) Explain what an 'infringing article' is as defined in relation to an Unregistered Design Right.

**4 marks**

b) Explain the conditions under which the right in a UK registered design which has expired may be restored, and who may apply for restoration.

**5 marks**

**Total: 9 marks**

### Question 4

a) Tina had a registered UK design for a toaster, but it expired in 2014. Nevertheless, she still puts her design registration number on the toasters she sells. What is Tina doing wrong, and what is the consequence her actions might have?

**2 marks**

b) Who may request a cancellation of a UK registered design, and from what date does the cancellation of a UK registered design take effect?

**2 marks**

**Total: 4 Marks**

### Question 5

In relation to a UK unregistered design right in a design created on 5 May 2023, explain whether the following persons would meet the qualification requirements:

- a) A sole designer who lives in China and is employed by a Chinese company. **3 marks**
- b) A company, employing a French designer, that was formed in accordance with New Zealand law and operating in the UK. **3 marks**
- c) An independent Spanish designer (resident in Spain), of a product embodying a qualifying design, the product having been first marketed in the UK by a British company. **2 marks**

**Total: 8 marks**

### Question 6

Explain whether the following individuals enjoy a copyright in the UK (assume the work is original; fixed in material form; was created in the UK by a British national; is not obscene, blasphemous or immoral; not created by an employee; and not the subject of a contract concerning ownership):

- a) A model, in a photo of them taken by a photographer. **1 mark**
- b) The legal heir of a deceased painter who died in 1989, in the painting. **1 mark**
- c) A microbiologist who invented a new drug for curing migraines, in the new drug. **1 mark**
- d) The programmer of computer software, in the software. **1 mark**
- e) The publisher of a newspaper, in the arrangement of the newspaper's first page. **1 mark**
- f) A copywriter, in a word they invented. **1 mark**

**Total: 6 marks**

**SECTION A Total: 40 Marks**

## SECTION B

### Question 7

Yasmin Dawood is a famous photographer based in Swansea. Recently, a British retailer, Nice Photos, approached Yasmin with an offer – they want to print her famous photo *Swansea at Sunset* as a postcard to be sold to the public. Yasmin is excited about Nice Photos' proposal and comes to you for advice.

- a) **Prepare a short brief explaining the possible legal options that will enable Yasmin to permit Nice Photos to produce these postcards commercially.**

**5 marks**

Unfortunately, negotiations between Yasmin and Nice Photos did not end in an agreement. A few weeks later, as Yasmin was walking down Swansea's high street, she saw a local gallery displaying her photo *Swansea at Sunset* on one of the gallery walls. She enters the gallery to find out that it was also selling copies of *Swansea at Sunset* for £100 each. The gallery owner tells Yasmin that the photos were legally purchased from an art dealer in Paris a few weeks prior. Yasmin indeed sold 250 copies of the photo to a French art dealer, but she never imagined they would make their way to the British market.

- b) **Advise Yasmin on whether the gallery infringed her copyright.**

**4 marks**

- c) **Yasmin also wants to know what remedies might be available to her if the gallery indeed infringed her copyright.**

**4 marks**

A few weeks later, while visiting the Swansea Museum of Modern Art, Yasmin discovers that a copy of her photo, which has been legitimately obtained by the Museum, is displayed with emoji stickers that the curator glued to the photo, which she finds dreadful. Moreover, the photo is displayed without her name next to it.

- d) **Advise Yasmin what legal action, if any, she may take against the museum.**

**7 marks**

**Total: 20 marks**

## Question 8

Your client, Esther, tells you that she has two registered UK designs. Esther tells you that her first registered UK design is for a candlestick, which she filed on 5 May 1997. Her second registered design is for a bicycle storage rack, which she filed on 20 December 2019. Esther mentions to you she has always been careful about renewing her registration.

- a) Esther wishes to renew the registration for both her designs. What will you tell her?**  
**5 marks**

Esther also tells you that she has seen a company selling what she believes to be an identical bicycle storage rack in the UK.

- b) Advise Esther on the types of activities by a third party that would constitute infringement of her UK design registration.**  
**4 marks**

Akalemwa is an enthusiastic cyclist and a lecturer at a London university. Akalemwa purchased one of Esther's bicycle storage racks. In his garage at his London home, Akalemwa experiments with Esther's design in an attempt to figure out a way to make the storage rack more compatible with mountain bikes. In addition, in his class, Akalemwa reproduces Esther's design to show his students how it is built, mentioning to them that this was Esther's design. Esther is very upset by this and seeks your advice.

- c) Explain to Esther whether Akalemwa's actions are considered an infringement of her UK Registered Design.**  
**5 marks**

Rory is a student in Akalemwa's class and owns a cycling shop in Reading. He thinks that Esther's bicycle storage rack design, which Akalemwa showed them in class, is great, and so he reproduces it and sells the reproduced products in his shop.

- d) Esther asks you whether Rory committed an offence. If so, what might the consequences for Rory be?**  
**6 marks**

**Total: 20 marks**

## Question 9

Josh Silver lives in Colchester and works as a teacher at a local school. He recently discovered in his attic an unpublished original manuscript that was co-written in 1946 by a local resident called Hilda Black, who died in April 1958, and another unknown author. Josh wants to upload a copy of the manuscript to his webpage.

- a) Advise Josh when is the earliest date that he can legally upload a copy of the manuscript to his website without having to seek a licence.**

**3 marks**

Inspired by his discovery, Josh authors an original play, which he calls *A Journey Through Time*. He uploads the play to his publicly accessible website. Ben, a local resident prints a hundred copies of *A Journey Through Time*, without permission, but then decides that he does not want the copies and places them next to the bin outside his house. Lisa, who walks past Ben's house, sees the copies and takes them to her shop, where she sells them for £1 each.

- b) Advise Josh on whether he can sue Lisa for infringing his copyright.**

**3 marks**

A week later, as Josh picks up a copy of a local newspaper called the *Colchester Sentinel*, he discovers that the *Colchester Sentinel* published a very unflattering review of *A Journey Through Time*. The review included the line 'Josh Silver should stick to his day job,' as well as several direct quotes from the play. Josh is upset.

- c) Josh asks you whether there is any defence the *Colchester Sentinel* can rely upon and, if such a defence exists, what will the *Colchester Sentinel* need to demonstrate to enjoy it?**

**9 marks**

Despite the *Colchester Sentinel's* review, *A Journey Through Time* becomes a huge hit and so Josh decides to write another play. However, due to his busy teaching schedule, Josh does not find the time to write at home. Therefore, throughout his workday at the local school, at times when he was not teaching in class, he used the staffroom computer to compose a new play he called *Me and the Moonlight*.

- d) Discuss whether Josh or the local school is entitled to the copyright in the play.**

**5 marks**

**Total: 20 Marks**

## Question 10

Your client, Hiroko, tells you that has recently come up with a new design for a coffee pot with a unique curved handle. She has not yet disclosed the design. Hiroko sends you a sample of her design and says that she wishes to obtain registered design protection in the UK.

- a) **Advise Hiroko what features can generally be suitable for registration in the UK, what the main requirements for a design to be registrable in the UK are, and whether her coffee pot may meet these requirements (you do not need to discuss any exclusions from protection).**

**7 marks**

- b) **Advise Hiroko what must be included in the application for the registration of her design.**

**5 marks**

Hiroko tells you that the USA, China and Japan are also important markets for her, and she wants to know what her options for obtaining protection in those countries are.

- c) **Explain to Hiroko what options are available for filing later applications covering the USA, China and Japan, and when these applications should be filed.**

**4 marks**

Hiroko is very successful, and has set up a company called Hiroko Home Appliances Ltd. She wants to assign her UK registered design to the new company, in order to attract investors. She would like to know whether she can transfer her UK registered design to the new company.

- d) **Advise Hiroko whether she can assign her UK registered design to the company, what is required to transfer the registration, and on the significance of these actions.**

**4 marks**

**Total 20 marks**

**SECTION B Total: 60 Marks**