

Foundation Certificate

FC4 Design and Copyright Law

Tuesday 22 October 2024

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

- a) What exclusive rights are given to the proprietor by registration of a design in the UK?

4 marks

- b) What exclusive rights are given to the rightsholder of a copyright in a work in the UK?

4 marks

Total: 8 marks

Question 2

Ahmed is a London-based designer. His UK registered design was filed on 23 January 2019. Ahmed did not renew his design, but he tells you that he forgot to do so because he was busy looking after his ill mother. He wishes to maintain his design right.

Advise Ahmed about the current status of his design right and any necessary steps to maintain his right.

7 marks

Question 3

Danielle is a French designer living and working in Paris. She has filed a Hague International Design application designating the UK and the USA. In her application, she has requested a deferment of publication for one year.

Advise Danielle about the results of her request for a deferment of publication, and any additional actions she must take.

7 marks

Question 4

What are the possible circumstances in which prior disclosure of a design does not invalidate the novelty requirement for a UK registered design?

6 marks

Question 5

- a) Jocelyn is an American designer living in Massachusetts. Tina is a British designer living in Norfolk. In April 2024, they jointly designed an oil pump.

Explain whether the design of the oil pump would qualify for a UK Unregistered Design Right.

3 marks

- b) Róisín, who was an Irish author living in Ireland, and Aiden, who was a British author living in Ireland, co-authored a play published in Ireland in 1958. Róisín died in 1959 and Aiden died in 1962.

When will the copyright in the play expire in the UK?

4 marks

Total: 7 marks

Question 6

Your client, Chen, who is a British national living in Kent, recently created a new decoration for the surface of a toaster. He already has a UK registered design right for the toaster.

Explain to Chen whether he has or can obtain any of the following:

- a) **A UK UDR in the decoration.**
- b) **A UK registered design right in the decoration.**
- c) **Copyright in the decoration.**

5 marks

Total for SECTION A: 40 marks

SECTION B

Question 7

Donatella is a British designer, who is employed by Wheelie, a bicycle wheel manufacturing company based in London. Last month, at the request of Wheelie, Donatella designed a brake pad for a bicycle wheel. Donatella designed the brake pad to fit exactly on the rim of the bike's wheel to allow cyclists to brake immediately. She also decided to add criss-crossed luminescent reflective strips on the brake pads which make them more visible during the night as well as more appealing to consumers.

As Donatella was designing the brake pads, it occurred to her that the bicycle wheel would benefit from additional improvements. Therefore, Donatella designed a uniquely shaped spring which is fitted inside of the bike's wheel. The spring is visible when air is pumped into the wheel, but not afterwards. Donatella designed the spring in her own time but used Wheelie's warehouse and the tools that were provided to her by Wheelie to design the brake pads.

Donatella wishes to register herself as the owner of both designs in the UK. Wheelie learns about Donatella's intentions and insists that they should be registered as the owners of both designs.

a) Discuss whether the brake pad can be registered.

11 marks

b) Discuss whether the spring can be registered.

2 marks

c) Assuming that both designs can be registered, who would be entitled to the designs in the brake pad and in the spring?

7 marks

Total: 20 marks

Question 8

Asnee is a Scottish interior designer from Dundee. Asnee is well known for his imaginative designs of plant pots and home décor. In November 2011, Asnee designed a new plant pot and made a document fully describing his design. The plant pot is made of clay, it has five openings where different plants can be planted, its surface has ridges and folds, and it comes in the colour purple.

Asnee has not registered his design. On 6 December 2021, he launched the plant pot in a public event in his Dundee shop. A day after the event, James, head of Dundee's Gardening Society, walks into Asnee's shop and mentions how beautiful and unique he found the plant pot, and purchases three such pots.

- a) Prepare notes for a meeting with Asnee in which you will advise him on any UK unregistered design rights he owns in the plant pot (do not discuss Copyright or Supplementary Unregistered Designs).**

5 marks

Orly, a designer from Dundee, attends the launch at Asnee's shop. Orly takes photos of the plant pots with her phone because she wants to use these photos to make a similar design. Back at her own shop, based on the photos, Orly makes ten such plant pots. Orly asks her business partner and shop co-owner, Nelly, to display the plant pots in the shop window and sell them to customers. Nelly places the plant pots in the shop window, but no one buys any of the pots.

- b) Advise Asnee whether Orly's actions are an infringement of his UK unregistered design rights.**

5 marks

- c) Advise Asnee whether Nelly's actions are an infringement of his UK unregistered design rights.**

4 marks

Tara, another designer from Dundee, also attends the launch at Asnee's shop. Tara loves the plant pots and wishes to produce them to sell in her shop. She asks Asnee for permission to produce the plant pots, but he explicitly tells her he is not willing to license her to do so.

- d) Explain whether Tara may still be allowed to produce copies of Asnee's plant pot, and, if so, how?**

6 marks

Total 20 marks

Question 9

Maude works for a local bookshop in Aldringham, UK. Clive, the bookshop owner knows that Maude adores Bonnie, who is a famous novelist. Last month, Clive instructed Maude to go to the Aldringham library, as Bonnie was delivering a live speech there. Bonnie delivers a moving 30-minute ad-libbed speech. No recording devices of any kind are allowed in the library, but Maude utilises her typist expertise to secretly transcribe Bonnie's lecture verbatim on her laptop. She transcribes it without Bonnie's or Clive's knowledge.

a) Explain whether Maude, Bonnie or Clive might own the copyright to the speech.

8 marks

A few days after the speech, Maude prints the document containing Bonnie's speech using the bookshop's printer. She accidentally forgets to collect the printed document. Her colleague, Toby, finds the document. Toby has no idea who the author of the document is, but thinks the closing paragraph of the speech is especially noteworthy and takes a photo of it. He sends the photo to some of his peers.

b) Bonnie approaches you asking whether Maude's or Toby's actions infringed her copyright. Advise Bonnie.

8 marks

Bonnie is upset that her work is being disseminated without her permission, as she sees special value in personally delivering her speeches directly to her fans.

c) Advise Bonnie on the possible actions available to her against Maude or Toby, and which of those courses of action is best suited for her.

4 marks

Question 10

Andrew is a successful Cardiff-based musician, who, in 2019, composed the score to a musical work called *Black Cement*. In November 2020, Andrew gave Ara Studios, a Glasgow-based company, an exclusive licence to *Black Cement* for 35 years. Shanika is a Professor of Musicology at the University of West Suffolk, who studies how people react to different types of music. In January of 2021, she played *Black Cement* to a random group of 45 people in a local car park, documenting how they react to it. Shanika did not obtain a licence to play the work, but Andrew does not want to pursue action against Shanika.

- a) Ara Studios approach you asking whether they can pursue copyright action against Shanika, and whether there is any defence Shanika can rely upon?**

10 marks

A few months later, Andrew decides he wishes to retire, so, in March 2022, he assigns the copyright in all of his works, including *Black Cement*, as a gift to his good friend and fellow musician, Roman. Roman becomes Andrew's successor in title to *Black Cement*. Ara studios are very concerned about this, as Roman is known to ban any licensing of copyright works which he owns.

- b) Ara Studios ask you whether the assignment affects their licence. What will you tell them?**

4 marks

Earlier this year, Cleo, a successful filmmaker from London, produces a hit film called *A Day at the Dog Park*, which is played in cinemas across the UK. The film's soundtrack includes *Black Cement*, for which Cleo obtained a licence from Roman. The film's score mentions '*Black Cement*, copyright of Roman'. Andrew is very upset by this, but thinks there is nothing he can do as he assigned his copyright to Roman.

- c) Advise Andrew as to any action he might have against Cleo.**

6 marks