

Patent Examination Board

Qualifying Examinations

Foundation Certificate Programme Specification

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1. Programme information

Awarding institution:	The Patent Examination Board
Accrediting body:	The Intellectual Property Regulator (IPReg)
Title:	The PEB Foundation Certificate (Qualifying Examinations).
Mode of study:	Self-study
Normal duration:	1-3 years part time

2. Overview and general educational aims of the programme

The Patent Examination Board is an examination agency which has been accredited by IPReg to offer an examination only route for the Foundation Level Qualification for patent attorneys. The Foundation Certificate is designed to meet the requirements of the initial academic stage of training for a patent attorney as defined in the IPReg Accreditation Handbook (<https://ipreg.org.uk/pro/getting-qualified/examinations-and-exemptions/ipreg-accreditation-handbook/>).

The aims of the Foundation Certificate programme are to

- a) provide a structure which is benchmarked within the QAA Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies (2014) as being at Level 6 – a Professional Graduate Certificate
- b) develop an understanding and appreciation by the candidates of all the Intellectual Property Law and Professional Ethics Subjects set out in Schedule A of the IPReg Accreditation Handbook
- c) equip candidates with the General Transferable Skills set out in Schedule B of the IPReg Accreditation Handbook.

All Foundation examinations assess IPReg core subjects and are mandatory to qualification as an attorney.

3. Programme Structure

The Foundation Certificate comprises five components, each having a detailed syllabus (<http://www.cipa.org.uk/patent-examination-board/support/>):

- FC1 – UK Patent Law
- FC2 – English Law
- FC3 – International Patent Law
- FC4 – Design and Copyright Law
- FC5 – Trade Mark Law

Each syllabus is assessed via a closed book, unseen three hour written examination.

In line with the IPReg Accreditation Handbook, the Foundation Certificate is structured to be equivalent to 60 QAA credits (where one credit is 10 hours of study). Candidates are thus

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expected to spend 120 hours of study preparing for each examination within the Foundation Certificate and 600 hours in total study.

4. QAA Level 6 Benchmarking

The Foundation Certificate is benchmarked within the QAA Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies (2014) as being at Level 6 – a professional graduate certificate. The QAA Level 6 descriptor has to be met in full for bachelor's degree with honours. It is also used as a reference point for other qualifications at Level 6 including bachelor's degrees, graduate certificates and graduate diplomas. The Foundation Certificate is a professional qualification, at undergraduate level taken by those who are already holders of a first degree in a relevant discipline.

The full Level 6 descriptor can be found [here](#).

The PEB therefore has to ensure that the learning outcomes for each Foundation Paper, which are set out in the syllabi, are tested at Level 6. This is achieved through ensuring that the setters and testers of the papers, all of whom are fully qualified practitioners, are aware of the requirements of Level 6.

Extracts from the QAA descriptor for a Level 6 qualification are set out below together with an outline of how a successful candidate will meet the descriptor requirements. It is noted that there is considerable overlap with the General Transferable Skills listed in Schedule B of the IPReg Accreditation Handbook and further information is provided below in relation to the General Transferable skills.

Holders of a Level 6 qualification can demonstrate	How this is met (where appropriate - syllabus extract)
<i>A systematic understanding of key aspects of their field of study including acquisition of coherent and detailed knowledge ...</i>	The five Foundation examinations cover each of the Intellectual Property Law and Professional Ethics subjects listed in Schedule A of the IPReg Accreditation Handbook. All examinations are closed-book.
<i>Conceptual understanding that enables the student to devise and sustain arguments, and/or to solve problems, using ideas and techniques, some of which are at the forefront of a discipline.</i>	Each question paper is divided into Section A and Section B. Section A questions principally test knowledge and understanding of the law and this is reflected in the learning outcomes in the syllabus using terms such as "define" or "identify". The knowledge and skills tested are representative of the work of a patent attorney trainee today and reflect current practice. Section B questions mainly test the candidates' ability to devise and sustain arguments based on these representative knowledge and skills. This is reflected in the syllabus which specify that a candidate will have to apply their knowledge. <i>For example: FC4 The law relating to registrable designs</i>

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	a) Define the requirements for a design to be registrable including • Novelty • Individual character • Exclusions b) Identify any grace periods for prior disclosures c) Apply (a) and (b) to a scenario.
<i>Apply the methods and techniques they have learned to review, consolidate, extend and apply their knowledge and understanding ...</i>	The five Foundation examinations allow a candidate to demonstrate that they have acquired each of the transferable skills listed in Schedule B of the IPReg Accreditation Handbook. The transferable skills include “applying the knowledge and understanding they have gained through the course to complex situations” which is similar to this Level 6 requirement. This is also reflected in the syllabus which specifies that a candidate will have to extend and apply their knowledge <i>FC1 - The impact of national security or public safety issues on filing UK or overseas patent applications</i> a) Describe the restrictions on publishing UK patent applications because of national security or public safety issues b) Explain the restrictions on the process for filing patent applications outside the UK c) Apply (a) and (b) to a scenario
<i>Critically evaluate arguments, assumptions. abstract concepts, and data (that may be incomplete) to make judgments ...</i>	Section B questions test the candidate’s ability to use their knowledge to assess the complexities of a given scenario, evaluating the different courses of action appropriate to the situation, giving reasoned advice and justifying recommendation(s). This is also reflected in the syllabus which specifies that a candidate may have to “evaluate”, “compare” or “explain” concepts, e.g. <i>FC3 General considerations for protecting inventions in</i> • Argentina ... • Poland a) Describe the rationale for and purpose of the patent system b) Evaluate and compare alternative ways in which a client’s invention may be protected in the listed countries, including outlining: • the strategic creation and management of a patent portfolio and • the principles for the legal protection of trade secrets and confidential information

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	c) For each country explain whether a patent or utility model can be obtained via the PCT, the EPC and/or the national route d) Explain the differences between patents and utility models e) Define the underlying principles for claiming priority, with reference to the Paris Convention or other treaties as appropriate f) Identify any grace periods for prior disclosures g) Apply (a) to (f) to a scenario
Communicate information, ideas problems and solutions to both specialist and non-specialist audiences	Questions which require a candidate to recite legal provisions allow a candidate to demonstrate that they are able to communicate information and ideas as if communicating with a specialist audience, e.g. another attorney or patent office. Scenario questions test candidates' ability to communicate with a non-specialist audience e.g. a client This is also reflected in the syllabus which specifies that a candidate may have to "outline" legal concepts, e.g. for a specialist audience and "apply", .e.g. for a non-specialist audience: <i>FC5 – Passing off in the UK</i> a) Outline the ingredients of a successful passing off action b) Apply (a) to a scenario
Holders will have	
the learning ability needed to undertake appropriate further training of a professional or equivalent nature.	Holders of the Foundation Certificate are able to proceed to study for the PEB Final Diploma.

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5. IPReg Intellectual Property Law and Professional Ethics Subjects

The IPReg Accreditation Handbook Schedule A specifies the Intellectual Property law and professional ethics subjects applicable to IP practitioners. The Foundation Certificate covers each of these subjects.

5.1 Distribution of QAA Credits

The Foundation Certificate is structured to be equivalent to 60 QAA credits (where one credit is 10 hours of study). A candidate is thus expected to spend 120 hours of study preparing for each examination within the Foundation Certificate and 600 hours in total study. The breakdown is shown below.

IPReg Subject	PEB Foundation Certificate Examination					Total credits
	FC1 UK Patent Law	FC2 English Law	FC3 International Patent Law	FC4 Design and Copyright Law	FC5 Trade Mark Law	
Fundamentals of the English Legal System	-	10	-	-	-	10
Patent Law	12	0.5	12	-	-	24.5
Design and Copyright Law	-	-	-	12	-	12
Trade Mark Law	-	0.5	-	-	12	12.5
Professional ethics applicable to IP practitioners	-	1	-	-	-	1
Total credits	12	12	12	12	12	60

The knowledge and understanding that are needed for each subject are set out in the syllabi. Each syllabus contains:

- A **summary** which gives an overview of the examination content and scope
- A **content** section which states the topics which are covered and gives the related IPReg patent law topics in brackets.
- A **learning outcomes** section which describes what you will have to demonstrate in the examination to show that you have the required knowledge and transferable skills
- Lists of the key sections of the **legal provisions** relevant to the content and learning outcomes (where relevant)

For example, the **summary** for FC1 states:

To be successful in this examination, you will need to:

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- demonstrate an understanding and appreciation of the Patent Law topics set out in Schedule A of the IPReg Accreditation Handbook in so far as they relate to patent law in the UK. You will thus need to demonstrate knowledge of the main provisions of the UK Patents Act 1977, the related Patents Rules, and the principles which underpin patent law in the UK.
- demonstrate that you have acquired the transferable skills set out in Schedule B of the IPReg Accreditation Handbook. You should refer to the section below, General Transferable Skills, for more information but, in summary, the transferable skills may be demonstrated by being able to recall the relevant principles, laws and rules, and/or apply them to one or more given scenario(s).

An example of the **content**, **learning outcomes**, and **legal provisions** from FC1 is shown below to explain how you could demonstrate the knowledge and understanding of the IPReg sub-topic “priority” within the Patent Law subject:

Content (IPReg topic)	Learning Outcome	Patents Act 1977	Patents Rules 2007
Priority (Priority)	<i>a) Identify the circumstances in which priority can be claimed</i> <i>b) Describe the mechanism for claiming priority, including late priority claims</i> <i>c) Explain the effects of claiming priority</i> <i>d) Determine whether a later application can validly claim priority from an earlier application</i>	<i>PA5 – Priority date</i> <i>PA6 – Disclosure of matter etc. between earlier and later application</i>	<i>PR3 and 6 to 9</i>

5.2. Professional Ethics

The IPReg Accreditation Handbook Schedule A specifies the Intellectual Property law and professional ethics subjects applicable to IP practitioners. These include:

- IPReg’s Overarching Principles and Code of Conduct;
- standards of care and duties to clients
- conflicts of interest;
- client confidentiality
- financial activity
- professional integrity.

Professional ethics are explicitly tested in Unit FC2. The syllabus requires candidates to be able to:

- a) Describe a Registered Patent Attorney’s ethical, legal and financial responsibilities as set out in IPReg’s:

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- i) Core Regulatory Framework Chapters 1, 2, 3, 6,
 - ii) Client money guidance
 - iii) Transparency and costs guidance; recalling the material to a high level of detail.
- b) Outline the authorization given to a Registered Patent Attorney under the Legal Services Act 2007 to conduct litigation
- c) Describe the right to privilege in communications with clients under the Legal Services Act 2007

Apply (a) to (c) to a scenario.

6. IPReg General Transferable Skills

The Foundation Certificate enables candidates to demonstrate that they have acquired the General Transferable Skills listed in Schedule B of the IPReg Accreditation Handbook. An outline of how candidates demonstrate that these have been acquired is set out below.

Transferable skill	How demonstrated
apply the knowledge and understanding they have gained through the course to complex situations	by using the syllabi to gain the knowledge and understanding to be successful in the examinations and by successfully answering a scenario question in any Foundation paper
recognise potential alternative conclusions for particular legal situations, and provide supporting reasons for them	by successfully answering a scenario question that has different conclusions, e.g. because there is insufficient information to obtain a single conclusion
select key relevant issues for legal research and/or discussion and to formulate them with clarity	by selecting the key relevant issues for legal research as set out in the syllabi and by discussing clearly the relevant issues when answering a question
use standard paper and electronic resources to obtain up-to-date legal information, including researching and analysing intellectual property law from primary resources on specific matters and applying the findings of such work to the solution of legal problems	using the up-to-date electronic links to the relevant primary legislation and the reading lists in the syllabi to research and analyse the specific matters set out in the syllabi and then applying the research to solve the questions, particularly the scenarios which present legal problems
make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question	by answering a scenario questions which has facts which are relevant to at least one area of law and requires a candidate to provide an answer which includes a personal and reasoned judgement

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use legal terminology with care and accuracy	by using the correct legal terminology when answering questions, particularly when reciting passages from legal texts
communicate legal information, whether orally or in writing, appropriately to the needs of a variety of audiences	by providing any information required by the question and by linking to the appropriate facts within the scenario as needed

Appendix A IPReg General Transferable Skills below contains example questions and extracts from the syllabi to show in detail what is required of candidates in the PEB Foundation Certificate examinations and how success in these examinations evidences that a candidate has acquired the General Transferable Skills.

7. The Minimum Competence Standard (Minimum Pass Descriptor)

As noted above, successful Foundation Certificate candidates have demonstrated achievement at QAA Level 6.

The Learning Outcomes in each syllabus specify what candidates must know, understand and be able to do. The questions set in the Foundation examinations are designed to specifically test candidates' ability to meet these Learning Outcomes.

PEB uses a minimum competence standard, defined in the Minimum Pass Descriptor, to determine whether a candidate has demonstrated sufficient knowledge, understanding and skills to be awarded a Pass in the examination. In the context of the Foundation Certificate Syllabus Learning Outcomes, the minimally competent script will meet the following criteria relevant to the individual papers with only minor errors or omissions.

Knowledge and Understanding	Demonstrate accurate recall of core knowledge Show understanding of key concepts
Complexity	Devise and sustain arguments Deal with a range of both straightforward and more complex or abstract issues and problems
Interpretation	Correctly interpret both Part A short answer questions and Part B scenarios
Critical analysis and evaluation	Analyse information and apply legal knowledge Identify a range of solutions to a question or problem Critically evaluate arguments, assumptions and data to make personal, reasoned judgements
Language	Use legal terminology appropriately and accurately
Communication	Communicate problems, ideas, information and solutions to both specialist and non-specialist audiences

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A candidate who achieves the level of minimum competence

- will have demonstrated sufficient knowledge, understanding and skills to meet requirements of the examination within the script but not necessarily within each answer.
- will have demonstrated their knowledge of up-to-date legal information obtained through use of paper and electronic resources and have applied this research to answer the questions appropriately.
- will not have produced contradictory statements or statements that would undermine advice provided or a client's patent rights.
- will have demonstrated readiness and learning ability to undertake appropriate further training of a professional nature.

8. Assessment method

Each syllabus is assessed via a closed book, unseen three hour written examination as follows.

Each question paper is divided into Section A and Section B.

Candidates are instructed to attempt **all** questions in Section A and **three questions from four questions** in Section B.

Each question in Section A is worth between 2 and 10 marks.

Each question in Section B carries 20 marks.

There are 100 marks available in total: 40 marks in Section A and 60 marks in Section B. The pass mark is 50%.

Section A questions principally test knowledge and understanding of the law specified in the syllabus. Section B questions mainly test the candidates' ability to apply that knowledge through analysing a scenario and being able to offer appropriate advice and guidance to clients.

9. Admission to the programme

Admission to the programme is in accordance with IPReg's requirements <https://ipreg.org.uk/pro/getting-qualified> and the [PEB Eligibility Policy](#).

All candidates agree to meet and be bound by the [PEB Qualifying Examinations Regulations](#) and the PEB's [policies](#).

10. Designations and employability

Most candidates will be employed before they start this programme of study. Successful completion of FC1 is a pre-requisite to advancing to the Final Diploma. Successful completion of the Foundation and Final programme is a pre-requisite for being admitted to the IPReg Register of Patent Attorneys.

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11. Quality Assurance

The PEB's Assessment Strategy <https://www.cipa.org.uk/patent-examination-board/policies-and-procedures/procedures/qualifying-examinations-qe/#accordion-3> sets out the framework for the quality assurance of PEB Qualifying Examinations.

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Appendix A IPReg General Transferable Skills

a) Apply the knowledge and understanding gained through the course to complex situations

The PEB Foundation Certificate is an examination only route. The unit syllabi set out the knowledge and understanding required in order to be successful in the examinations. Each syllabus contains:

- A **summary** which gives an overview of the examination content and scope
- A **content** section which advises you what knowledge and/or skills you need for the examination
- A **learning outcomes** section which describes what you will have to demonstrate in the examination to show that you have the required knowledge and/or skills
- Lists of the key sections of the **legal provisions** relevant to the content and learning outcomes (where relevant).

For example, the **summary** for FC1 UK Patent Law states:

“to be successful in this examination, you will need to demonstrate knowledge of the main provisions of the UK Patents Act 1977, the related Patents Rules, and the principles which underpin patent law in the UK. You will be able to recall the relevant principles, laws and rules, and/or apply them to one or more given scenarios”.

An example of the FC1 UK Patent Law **content**, **learning outcomes**, and **legal provisions** is shown below:

Content	Learning Outcome	Patents Act 1977	Patents Rules 2007
<i>Priority</i>	<i>e) Identify the circumstances in which priority can be claimed f) Describe the mechanism for claiming priority, including late priority claims g) Explain the effects of claiming priority h) Determine whether a later application can validly claim priority from an earlier application</i>	<i>PA5 – Priority date PA6 – Disclosure of matter etc. between earlier and later application</i>	<i>PR3 and 6 to 9</i>

The syllabus summary states that the candidate will need to be able to apply the relevant principles, laws and rules to one or more given scenarios. Thus, a candidate can demonstrate that they have acquired General Transferable Skill (a) by successfully answering a Foundation examination scenario question.

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As an example, a candidate could demonstrate that they have acquired the knowledge and understanding of the topic of “priority” by successfully answering the questions based on the following scenario:

Your client rings you on a Friday and describes a rubber widget to you that he has developed. You draft and file a patent application P1 for it that day. Claim 1 of the application reads:

1. *A rubber widget*

Your client rings you again on Saturday. He has discovered that the widget can also be made from metal and in fact he intends to publish a paper relating to the metal widget on Sunday. On the Saturday you draft and file a new patent application P2. Claim 1 of P2 reads:

1. *A widget, the widget being either metal or rubber*

P2 claims priority from P1.

You have now received a search report on P2 from the UK Patent Office. The search report cites your clients own paper.

- c) *Explain how the UK Patent Office can cite the clients own paper even though it was published after P2 was filed. You should give some thought to what filing date the UK Patent Office will award P2. **4 marks***
- d) *What restriction could you make to claim 1 of P2 so that the UK Patent Office could no longer cite the paper? Explain your answer. **2 marks***
- e) *Stepping back to point where you have drafted but not filed P2, how should you have proceeded to ensure all the subject matter obtains a filing date before the date of publication of the paper? At the end of your filing strategy you should have only one pending patent application covering both embodiments. **4 marks***

(FC1 UK Patent Law 2018, Question 5)

Although the scenario is relatively short, it is complex and requires knowledge and understanding of various aspects of priority including:

- the effect of claiming priority on the filing date of an application when the application is filed on a closed day
- determining whether a later application can validly claim priority from an earlier application; and
- recognising how circumstances can be changed by not claiming priority.

Candidates who achieve a Pass in each of the Foundation Certificate examinations demonstrate that they can apply the knowledge and understanding they have gained to complex situations.

b) Recognise potential alternative conclusions for particular legal situations, and provide supporting reasons for them

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Some questions in the Foundation Certificate examinations are based on a scenario that enables candidates to demonstrate that they have acquired this transferable skill.

Questions may contain insufficient information to allow a single conclusion to be reached as, for example, in the question below:

Your client, Great Gears Ltd, owns UK patent GB1234567 relating to a gear assembly. You receive the following email from a director of Great Gears Ltd:

We have recently become aware of a competitor, Britney Gears Ltd, who has started manufacturing and selling an almost identical gear assembly. We have checked the status of our patent online and have found it has lapsed due to non-payment of a renewal fee. We are surprised by this as we use a renewal reminder service to send us reminders but we never received the reminder. Our default instructions to the reminder service are to pay a renewal fee in the absence of instructions from us. What can we do?

Prepare notes for a meeting with your client, restricting your answer to issues relating to patents only. The notes should contain advice to your client in relation to both actions your client could take and also third-party rights.

20 marks

(FC1 UK Patent Law sample assessment materials, Question 12)

A candidate who has the ability to recognise potential alternative conclusions for particular legal situations, and provide supporting reasons, for them will recognise that there is insufficient information in the question above to determine when the non-payment of the renewal fee occurred. The candidate is expected to recognise that this leads to three different alternatives for the legal conclusions depending on whether the renewal fee was due: in the last six months; between six and 19 months ago; or more than 19 months ago.

The mark scheme states that candidate will be awarded three marks for recognising there are three alternatives and nine marks for explaining the impact of and actions associated with each alternative. The remaining eight marks are awarded for explaining the third-party rights which are applicable to only one alternative. Thus, there are some marks available for recognising that there are alternative conclusions and more marks available for providing the supporting reasons.

The question below also has alternative conclusions (i.e. infringed or not infringed) as highlighted in the question itself:

Full marks can be obtained from this question regardless of the ultimate conclusions reached.

- a) *Explain in a note to your supervising attorney whether the sign below, if used in the UK, infringes the earlier UK registered trade mark. (Assume no defences or counterclaims are available, and that the earlier mark has been used on a small scale.)*

<i>Earlier Trade Mark</i>	<i>EINSTEIN</i>	<i>Wine</i>	<i>(Class 33)</i>
<i>Sign</i>	<i>EINSTEIN'S</i>	<i>Wine glasses</i>	<i>(Class 21)</i>

10 marks

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Candidates who achieve a Pass in each of the Foundation Certificate examinations demonstrate that they can recognise potential alternative conclusions for particular legal situations, and provide supporting reasons for them.

(FC3 International Patent Law 2018, question 10)

(c) Select key relevant issues for legal research and/or discussion and formulate them with clarity

As explained above in relation to General Transferable Skill (a), the syllabi for the Foundation Certificate examinations set out the content, learning outcomes and legal provisions (where appropriate). The syllabi thus specify the key relevant issues which should be selected for legal research by the candidate. An example of the **Content, Learning outcomes**, and **legal provisions** from the FC5 Trade Mark Law syllabus is shown below:

Content	Learning Outcomes	International Law	UK Law
<i>The law relating to registrable trademarks</i>	a) Define a trade mark b) Outline what cannot be registered as a trade mark c) Describe the overlap with design protection d) Define an earlier trade mark e) Apply (a) to (d) to a scenario	<i>EUTMR 1 – European Union trade mark</i> <i>EUTMR 4 – Signs of which a European Union trade mark may consist</i> <i>EUTMR 7 – Absolute grounds for refusal</i> <i>EUTMR 8 – Relative grounds for refusal</i>	<i>UKTMA 1 – Trade marks</i> <i>UKTMA 3 – Absolute grounds for refusal of registration</i> <i>UKTMA 5 – Relative grounds for refusal of registration</i> <i>UKTMA 6 – Meaning of earlier trade mark</i>
<i>Case law on Registered Trade Marks</i>	a) Describe the legal principles established by the named leading cases b) Apply the principles from these cases	<i>Relative grounds – procedure for assessing “similarity” of marks and goods/services:</i> <i>ix. Sabel BV v Puma AG, Rudolf Dassler Sport (C-251/95)</i> <i>x. Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc. (-39/97)</i> <i>xi. Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel VB (C-392/97)</i>	

In the Foundation Certificate examinations, a candidate who has the ability to select key relevant issues for legal research and/or discussion, and to formulate them with clarity, will select the key issues which are relevant to the question. For example:

Explain the following trade mark law terminology:

a) *Distinctive character*

2 marks

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- | | |
|-------------------------------------|---------------|
| b) <i>Acquired distinctiveness</i> | 1 mark |
| c) <i>Enhanced distinctiveness.</i> | 1 mark |

FC5 Trade Mark Law 2018, Question 1

Candidate who have the ability to select key relevant issues for legal research and/or discussion, and to formulate them with clarity, will recognise that Questions 1(a) and 1(b) relate to “*The law relating to registrable trademarks*” and will select the key legal provision – Section 3 of the UKTMA – when answering the question. Similarly, candidates who have this ability will also recognise that question 1(c) relates to “*Case law on registered trade marks*” and will select the key legal provision - *Sabel v Puma*.

The mark scheme shows that a candidate can be awarded full marks by accurately and clearly explaining the terminology.

Candidates who achieve a Pass in each of the Foundation Certificate examinations demonstrate that they can select key relevant issues for legal research and/or discussion and formulate them with clarity.

(d) Use standard paper and electronic resources to obtain up-to-date legal information, including researching and analysing intellectual property law from primary resources on specific matters and applying the findings of such work to the solution of legal problems

Where appropriate, each Foundation syllabus includes up-to-date electronic links to the relevant primary legislation. For example, in order to be successful in the FC4 Design and Copyright Law examination a candidates will need to research and analyse the following primary legislation:

- Berne Convention for the Protection of Literary and Artistic Works
- Paris Convention for the Protection of Intellectual Property
- Hague Agreement concerning the International Registration of Industrial Designs
- Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs (CDR)
- Commission Regulation (EC) No. 2245/2002 of 21 October 2002 implementing EC No. 6/2002 (CDIR)
- Registered Designs Act (RDA)
- Registered Designs Rules (RDR)
- Copyright, Designs, and Patents Act (CDPA).

The syllabus contains a reading list which clarifies that the legal texts are essential reading and also provides the titles of books which may be used by the candidate to conduct additional research.

As explained above in relation to the first General Transferable Skill, the syllabi for the Foundation Certificate examinations set out the content, learning outcomes and legal provisions (where appropriate). All Foundation syllabi thus specify the specific matters which should be selected researched and analysed from the primary resources by the candidate.

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An example of the **content**, **learning outcomes**, and **legal provisions** extracted from the FC4 Design and Copyright Law syllabus is shown below:

Content	Learning Outcomes	International Law	UK Law
<i>The law relating to copyright in literary and artistic works</i>	a) <i>Define literary and artistic works</i>		CDPA 1 – Copyright and copyright works CDPA 4 – Artistic works
<i>The law relating to unregistered community designs and UK design rights</i>	a) <i>Define the requirements for unregistered design right to subsist:</i> a. <i>Novelty</i> b. <i>Individual character</i> c. <i>Originality</i> d. <i>Commonplace</i> e. <i>Exclusions</i>	CDR 1 – Community Design CDR 5 – Novelty CDR 6 – Individual character CDR 11 – Commencement and term of protection of the unregistered Community design	CDPA 213 – Design Right

The research and analysis of the specific matters may then be applied by a candidate to solve the questions presented in the Foundation Certificate examinations, particularly the scenarios which present legal problems. For example, the specific matters from the syllabus listed above may be applied to answer the following question:

Taylor is a British writer and publisher, and keen on protecting her ideas to prevent others copying them. She found that she seems to make certain ‘buzzwords’ popular by using them in her publications. These buzzwords are existing words that she has used in previously unrelated context and that she thinks will catch on, but she is keen to prevent anyone else using them. She often uses the words in speech bubbles, and also in combination with a drawn little stick man figure that has become her insignia.

a) Advise Taylor on copyright she may own in the UK. 5 marks

b) Advise Taylor on design rights she may own in the UK. 4 marks

FC4 Design and Copyright Law 2018, Question 12

A successful candidate will recognise that they need to apply specific matters from several primary resources. Question 12 part (a) requires candidates to apply the relevant sections of the CDPA. Question 12 part (b) requires candidates to apply the relevant sections from the CDPA and the relevant articles from the CDR.

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Candidates who achieve a Pass in each of the Foundation Certificate examinations demonstrate that they can research and analyse intellectual property law from primary resources and apply the findings of such work to the solution of legal problems.

(e) Make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question

Some scenario questions in the Foundation Certificate examinations allow candidates to demonstrate that they have acquired this General Transferable Skill. The question will contain a scenario having facts which are relevant to at least one area of law and candidates will be asked to provide an answer which includes a personal and reasoned judgement.

An example of such a question is shown below:

Your client writes:

I used to work for an automotive manufacturer. I worked in the accounts department however since I have a background in chemistry I was assigned a task of developing new coatings. As a result of this I developed a new coating which, when applied to a spark plug, significantly increases the reliability of the spark plug. I filed a GB patent application having one claim to a combination of coating and spark plug. The application has been granted. I now make and sell these coated spark plugs. Sales have really taken off so I left my employment and sell them full time.

I have received a letter from my former employers demanding that I assign the patent to them immediately. They have threatened me with future infringement proceedings if I do not comply immediately. I understand they have sent letters to my customers again threatening infringement proceedings. They have already started supplying the coating to customers in the UK and abroad.

I would like to retain my patent and stop their supply.

a) Summarise the provisions of Section 39 UK Patents Act (Right to employee's inventions). In your opinion, who is entitled to the invention, your client or his employer? Explain your answer. 8 marks

FC1 UK Patent Law 2018, Question 8

It is clear from the question that the candidate must provide a personal and reasoned judgement, i.e. an opinion, on who is entitled to the invention. The relevant area of the law is Section 39 of the UK Patents Act.

Candidates who achieve a Pass in each of the Foundation Certificate examinations demonstrate that they can make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question.

(f) Use legal terminology with care and accuracy

This General Transferable Skill is achieved by candidates using the correct legal terminology when answering questions, particularly when reciting passages from legal texts.

For example:

With reference to the CDPA, what acts can be done without infringing UDR?

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Total: 5 marks

FC4 Design and Copyright Law 2018, Question 2

The full text of CDPA 244A - Exception for private acts, experiments and teaching, which is required to answer this question is set out below:

Design right is not infringed by —

- a) an act which is done privately and for purposes which are not commercial;*
- b) an act which is done for experimental purposes; or*
- c) an act of reproduction for teaching purposes or for the purpose of making citations provided that—*
 - i. the act of reproduction is compatible with fair trade practice and does not unduly prejudice the normal exploitation of the design, and*
 - ii. mention is made of the source.*

Candidates are not required to know article/section numbers when answering the question. A candidate will achieve full marks by reciting the legal text in its entirety. Paraphrasing is permitted but the candidate must be accurate and careful when using legal terminology. For example, candidates will not be awarded marks if they:

- a) omit key parts of a legal phrase, e.g. the marks for using the legal terminology in 244A(a) are awarded as follows:
 - an act which is done privately **(0.5 marks)** and
 - for purposes which are not commercial **(0.5 marks)**;

The marks for using the legal terminology in 244A(c) are similarly awarded for the individual parts of the legal phrase.

- b) incorrectly use legal terminology by combining phrases from different legal sections, e.g.
 - when reciting 244A(b), no mark is awarded for answers that indicate non-commerciality as a requirement for the experimental purpose

By achieving a pass mark for similar questions in each of the Foundation Certificate examinations, a candidate thus demonstrates that they can use legal terminology with care and accuracy.

(g) Communicate legal information, whether orally or in writing, appropriately to the needs of a variety of audiences

Each of the Foundation Certificate Examinations is an unseen written assessment. Successful candidates' written answers will provide the legal information which is relevant to the question in an appropriate format. It is acceptable for a candidate to use bullet points when answering questions provided that the answer is coherent and complete.

When answering questions in a written assessment, a candidate will often be asked to explain their answer and may also be asked to provide precise legal information. For example question 9 from FC2 English Law 2018 is set out below

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Philip goes to a firm of patent attorneys, Cups LLP, to draft and file his patent application. His patent concerns the juice from a flower he was picking a few days earlier, which he drank and it had a soporific effect on him.

During their initial chat with Philip the attorneys at Cups say they are great at filing all types of patent applications. They say they will file the application the following week. In fact they only file software patents but think Philip is crazy, so they draft and file the application anyway.

The first letter they ever send to Philip is when they file the application two months later. They accidentally send Philip the draft reporting letter in which they have made statements about how they think Philip is crazy.

Philip calls and leaves a message with Cups to ask how to complain about the service he is being given but Cups never contact him. Philip doesn't know where else to turn to with his complaint.

Explain how Cups has breached the IPReg Code of Conduct. Candidates should identify the name of the relevant Rule(s) in their answer (the Rule number is not required). **5 marks**

A candidate can demonstrate that can communicate legal information appropriately by naming the relevant Rule(s) as required by the question and by linking the named Rule to the appropriate facts within the scenario to provide the requested explanation.

An important audience for patent attorneys is a client (whether this is an external client for those working in private practice or a colleague within a different part of the company for those working in-house). Thus in many of the scenario questions, a candidate will be expected to advise a client or explain a legal situation to a client. As an example is set out below:

Your client has a European patent application filed on 15 April 2014 that includes 15 claims and 25 pages of text (including claims). A rule 71(3) communication was issued on 3 September 2018. The text intended for grant includes several amendments made by the Examiner. The GB designation has been withdrawn during prosecution.

Your client also wishes to obtain patent protection for a second, unsearched invention that is sufficiently described in the patent application as filed, but not claimed.

Draft a memo to your client advising her of:

- a) three options for responding to the rule 71(3) communication together with associated deadlines and cost.*** **8 marks**

FC3 International Patent Law 2018, Question 7

As illustrated in the mark scheme, a candidate is expected to explain the relevant legal information in their answer but there is no need to reference the articles or rules. It is also recommended that when a question specifies the number of options, each option is clearly numbered in the answer. For example, an answer could be presented as:

Four months from the date of the rule 71(3) communication, i.e. 3 January 2019
Option i

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- *approve the text communicated in the R71(3) communication,*
- *file French and German translation of the claims and*
- *pay the grant fee*
- *No claims fees are due*

Option ii

- *disapprove the grant text and*
- *request that the text submitted by the applicant forms the basis for grant*

Option iii

- *do nothing and*
- *request further processing within 2 months of issuance of a notification of loss of rights*
- *together with filing translations and paying the grant fee and surcharge*

By achieving a pass mark for similar questions in each of the Foundation Certificate examinations, a candidate thus demonstrates that they can communicate legal information, whether orally or in writing, appropriately to the needs of a variety of audiences.