

Foundation Certificate Syllabus

Design and Copyright Law FC4

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Effective from and including the 2018 examinations

**PEB Foundation Certificate
Design and Copyright Law FC4 (D&C)**

1. Guidance for Candidates

Format of PEB syllabuses

PEB syllabuses contain:

- 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).

Candidates should also refer to the Qualifying Examinations Foundation Certificate Programme Specification

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2. The Syllabus

Summary: To complete this examination successfully, you will need to demonstrate knowledge of the main provisions of International and UK law relating to design and copyright. You will also need to demonstrate knowledge of the relevant procedures and formalities required to obtain the protections available for EU and UK designs. You will also need to demonstrate knowledge of the relevant principles relating to subsistence and enforcement of UK copyright. You will be able to recall the relevant principles, laws and rules, and/or apply them to one or more given scenario(s).

The **Content** advises you what knowledge you need for this examination.

The **Learning Outcomes** describe what you will have to demonstrate in the examination to show that you have the required knowledge.

The final two columns list the key sections of the following **legal provisions** relevant to the content and learning outcomes.

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	Content	Learning Outcomes		
1	General provisions relating to copyright	a) Describe the rationale for the copyright system b) Explain the general provisions under the Berne Convention for extending copyright protection internationally	<u>Berne Convention for the Protection of Literary and Artistic Works</u>	Articles 1, 5
2	Protection of designs in EU, UK, USA, China and Japan	a) Explain what national, regional and international protection is available for registered designs b) Evaluate alternative ways in which a client's rights in a design may be protected, including advising on strategic considerations for the creation of a portfolio of national and international design applications c) Identify any grace periods for prior disclosures d) With reference to the Paris Convention, define the underlying principles for claiming priority for national and international applications e) Define who may file an International application f) Identify where an International (Hague) application must be filed and its contents	<u>Paris Convention for the Protection of Industrial Property</u> <u>Hague Agreement Concerning the International Registration of Industrial Designs</u>	Articles 1, 4 Articles 4, 5, 6

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3	Registered and unregistered rights in EU and UK	a) With reference to the provisions detailed on the right, compare the advantages and disadvantages of the different forms of protection for industrial designs within the EU and the UK	<p>EU Law</p> <p><u>Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs (CDR)</u> <u>Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing EC No. 6/2002 (CDIR)</u></p>	<p>UK Law</p> <p><u>Registered Designs Act (RDA)</u> <u>Registered Designs Rules (RDR)</u> <u>Copyright, Designs and Patents Act (CPDA) - designs sections</u> <u>Copyright, Designs and Patents Act (CDPA) - copyright sections</u></p>
4	The law relating to registrable designs	<p>a) Define the requirements for a design to be registrable including:</p> <ul style="list-style-type: none"> • Novelty • Individual character • Exclusions <p>b) Identify any grace periods for prior disclosures</p> <p>c) Apply (a) and (b) to a scenario</p>	<p>CDR 1 – Community design CDR 3 – Definitions CDR 4 – Requirements for protection CDR 5 – Novelty CDR 6 – Individual character CDR 7 – Disclosure CDR 8 – Designs dictated by their technical function and designs of interconnections CDR 9 – Designs contrary to public policy or morality</p>	<p>RDA 1 – Registration of designs RDA 1B – Requirement of novelty and individual character RDA 1C – Designs dictated by their technical character RDA 1D – Designs contrary to public policy or morality</p>
5	Ownership of registered designs	<p>a) Describe how the proprietor of a registered design is determined</p> <p>b) Define the right of the designer to be cited in a Registered Community Design</p> <p>c) Apply (a) and (b) to a scenario</p>	<p>CDR 14 – Right to the Community design CDR 15 – Claims relating to the entitlement to a Community Design CDR 18 – Right of the designer to be cited</p>	<p>RDA 2 – Proprietorship of designs</p>

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6	The law relating to the application process for registered designs	<ul style="list-style-type: none"> a) Describe how to make a design application, including a divisional application b) List the requirements for obtaining a filing date for an application c) Describe the procedure from filing through to registration, including any available extensions of time d) Outline how publication may be delayed or deferred and the consequences of delaying or deferring e) Explain the consequences of falsely representing a design as registered f) Apply (a) to (e) to a scenario 	<p>CDR 35 – Filing and forwarding of applications CDR 36 – Conditions with which applications must comply <i>CDIR 1, 2, 3, 6, 7, 8, 10, 11</i> CDR 37 – Multiple applications CDR 38 – Date of filing CDR 40 – Classification CDR 45 – Examination as to formal requirements for filing CDR 46 – Remediable deficiencies CDR 47 – Grounds for non-registrability CDR 48 – Registration CDR 49, 50 – Publication, deferment of publication <i>CDIR 15, 16</i></p>	<p>RDA 3 – Applications for registration <i>RDR 4, 6, 7, 8, 11</i> RDA 3C – Date of registration of designs RDR 35 – Fine for falsely representing a design as registered</p>
7	Priority	<ul style="list-style-type: none"> a) Define the requirements for claiming priority when filing an application b) Determine whether a later application can validly claim priority from an earlier application 	<p>CDR 41 – Right of priority, CDR 42 – Claiming priority CDR 43 – Effect of priority right</p>	<p>RDA 14 – Convention applications</p>

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8	Duration of registration	<ul style="list-style-type: none"> a) Define the term that a design is in force and describe the renewal process for maintaining the design b) Explain the restoration process and the implications of restoring a lapsed design c) Explain the implications of surrendering a Community Design Registration or cancelling a UK design registration d) Apply (a) and (b) to a scenario 	<p>CDR 12 – Commencement and term of protection of the registered Community design CDR 13 – Renewal CDR 51 – Surrender CDR 67 – Restitutio in Integrum</p>	<p>RDA 8 – Duration of right in registered design <i>RDR 12</i> RDA 8A, 8B – Restoration <i>RDR 13</i> RDA 11 – Cancellation of registration RDA 11ZE – Effect of cancellation or invalidation of registration</p>
9	A Registered Design as a form of property	<ul style="list-style-type: none"> a) Describe how a registered design may be transferred or licensed b) Explain the effect of registration of a transfer and the implications of non-registration c) Describe the rights of an exclusive licensee d) Describe the consequences of not recording a licence on the Register e) Apply (a) to (d) to a scenario 	<p>CDR 27 – Dealing with Community designs as national design rights CDR 28 – Transfer of the registered Community design CDR 32 – Licensing CDR 33 (1), (2) – Effects vis-à-vis third parties CDR 34 – Application for a registered Community design as an object of property</p>	<p>RDA 15A – The Nature of Registered Designs RDA 15B – Assignment &c of registered designs and applications for registered designs RDA 15C – Exclusive licences RDA 19 – Registration of assignments etc</p>

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10	The law relating to infringement of registered designs	<ul style="list-style-type: none"> a) Identify the acts which infringe the right in a UK or a Community design registration b) List the statutory exceptions to infringement c) Define who may bring an action for infringement and for a Community Registered Design d) Describe the remedies which may be claimed and any limitations on the remedies e) Outline the limitations based on a prior use right f) Explain when proceedings for a groundless threat of infringement may be brought in the UK g) Define the exhaustion of rights in a Community Design Registration h) Outline when the offence of unauthorised copying is committed i) Describe the consequences of committing the offence j) Apply (a) to (i) to a scenario 	<p>CDR 10 – Scope of protection CDR 19 – Rights conferred by the Community design CDR 20 – Limitation of the rights conferred by a Community design CDR 21 – Exhaustion of rights CDR 22 – Rights of prior use in respect of a registered Community design CDR 89 – Sanctions in actions for infringement</p>	<p>RDA 7 – Right given by registration RDA 7A – Infringements of rights in registered designs RDA 7B – Right of prior use RDA 24A – Action for infringement RDA 24B – Innocent infringement RDA 24C(1), 24D(1), 24F – Other remedies RDA 24G - Meaning of ‘infringing article’ RDA 26 – Threats RDA 35ZA – Offence of unauthorised copying etc. of design in course of business</p>
11	The law relating to declarations of invalidity of registered designs	<ul style="list-style-type: none"> a) List the grounds of invalidity and who may file an application for declaration of invalidity b) Describe the consequences or effect of invalidation of the registration c) Apply (a) and (b) to a scenario 	<p>CDR 25 – Grounds for invalidity CDR 26 – Consequences of invalidity CDR 52 – Application for a declaration of invalidity CDR 84 – Action or counterclaim for a declaration of invalidity of a Community design</p>	<p>RDA 11ZA and Sch. A1 – Grounds for invalidity of registration RDA 11ZB – Applications for declaration of invalidity RDA 11ZE – Effect of cancellation or invalidation of registration</p>

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12	The law relating to unregistered community designs and UK design rights	<ul style="list-style-type: none"> a) Define the requirements for unregistered design right to subsist: <ul style="list-style-type: none"> a. Novelty b. Individual character c. Originality d. Commonplace e. Exclusions b) Explain how the term of an unregistered design right is determined c) Describe how the proprietor of unregistered design right is determined d) Define how a design may qualify for UK unregistered design right by reference to the designer, employer or first marketing e) Describe how an unregistered design may be transferred or licensed f) Describe the rights of an exclusive licensee g) Apply (a) to (f) to a scenario 	<p>CDR 1 – Community Design CDR 5 – Novelty CDR 6 – Individual character CDR 7 – Disclosure CDR 8 – Designs dictated by their technical function and designs of interconnections CDR 9 – Designs contrary to public policy or morality CDR 11 – Commencement and term of protection of the unregistered Community design CDR 14 – Right to the Community design</p>	<p>CDPA 213 – Design Right CDPA 214 – The designer CDPA 215 – Ownership of design right CDPA 216 – Duration of design right CDPA 217-220 – Qualification for design right protection CDPA 222 – Assignment and licences CDPA 223 – Prospective ownership of design right CDPA 225 – Exclusive licences</p>
13	The law relating to infringement of unregistered community designs and UK design right	<ul style="list-style-type: none"> a) Identify the acts which infringe UK design right or Community unregistered design and the acts which do not infringe b) Describe how the scope of protection is determined c) Define who may bring an action for infringement d) Describe the remedies which may be claimed and any limitations on the remedies e) Describe the impact of licences of right on UK unregistered design right 	<p>CDR 10 – Scope of protection CDR 19 – Rights conferred by the Community design CDR 20 – Limitation of the rights conferred by a Community design CDR 21 – Exhaustion of rights CDR 89 – Sanctions in actions for infringement¹</p>	<p>CDPA 51 – Design documents and models CDPA 226 – Primary Infringement of Design Right CDPA 227 – Secondary Infringement – importing or dealing with infringing articles CDPA 228 – Meaning of infringing article</p>

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Repeats sections from infringement of CDR because there is no differentiation between the registered and unregistered rights in EU

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		<ul style="list-style-type: none"> f) Define the exhaustion of rights for a Community Unregistered Design g) Explain the interaction between copyright and UK design right in a design h) Explain when proceedings for a groundless threat of infringement may be brought in the UK i) Apply (a) to (h) to a scenario 		<p>CDPA 229 – Rights and remedies of design right owner</p> <p>CDPA 233 – Innocent infringer</p> <p>CDPA 234 – Rights and remedies of exclusive licensee</p> <p>CDPA 235 – Exercise of concurrent rights</p> <p>CDPA 236 – Infringement of copyright</p> <p>CDPA 237, 254 – Licences of right</p> <p>CDPA 244A – Exception for private acts, experiments and teaching</p> <p>CDPA 253- Remedy for groundless threats of infringement proceedings</p>
14	The law relating to copyright in literary and artistic works	<ul style="list-style-type: none"> a) Define literary and artistic works b) Define authorship and first ownership of copyright in literary and artistic works c) Define the term of copyright in literary and artistic works d) Define the right to be identified as the author or director e) Define the right to object to derogatory treatment of work 		<p>CDPA 1 – Copyright and copyright works</p> <p>CDPA 2 – Rights subsisting in copyright works</p> <p>CDPA 3 – Literary, dramatic and musical works</p> <p>CDPA 4 – Artistic works</p> <p>CDPA 9 – Authorship of work</p> <p>CDPA 10 – Works of joint authorship</p>

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		<ul style="list-style-type: none"> f) Outline the rights conferred on performers and persons having recording rights g) Outline the consent required for recording of live performances h) Describe how copyright may be transferred or licensed i) Apply (a) to (h) to a scenario 		<p>CDPA 11 – First ownership of copyright CDPA 12 – Duration of copyright in literary, dramatic, musical or artistic works CDPA 77 Right to be identified as author or director CDPA 80 Right to object to derogatory treatment of work CDPA 90, 91, 92 – Dealings with rights in copyright works CDPA 180 Rights conferred on performers and persons having recording rights CDPA 182 Consent required for recording, &c of live performance</p>
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15	The law relating to infringement of copyright	<ul style="list-style-type: none"> a) List the acts which are restricted by copyright in a work b) Identify the acts which infringe copyright c) Define the permitted acts which do not infringe copyright d) Outline the criminal liability for making or dealing with infringing articles e) Apply (a) to (d) to a scenario 		<p>CDPA 16 – The acts restricted by copyright in a work</p> <p>CDPA 17 – Infringement of copyright by copying</p> <p>CDPA 18 – Infringement by issue of copies to the public</p> <p>CPDA 21 – Infringement by making adaptation etc.</p> <p>CDPA 22-24 Secondary infringement</p> <p>CDPA 27 – Meaning of ‘infringing copy’</p> <p>CDPA 28A, 29, 30, 30A, 36, 50A-50C, 56 – Selected permitted acts</p> <p>CDPA 76 – Adaptations</p> <p>CDPA 96 – Infringement actionable by copyright owner</p> <p>CDPA 101 – Rights and remedies of exclusive licensee</p> <p>CDPA 107 – Criminal liability for making or dealing with infringing articles, &c</p>
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3. Reading

NB All of the legal texts referred to in this syllabus are essential reading.

Other books and/or websites listed here can be used to support your learning. It is not an exhaustive list and other sources of information can be used.

- *Russell-Clarke and Howe on Industrial Designs* (2016) 9th ed. Martin Howe QC, pub. Sweet and Maxwell
- *Copinger and Skone James on Copyright* (2016/2016) 17th ed./1st supplement Nicholas Caddick, QC; Gillian Davies; Gwilym Harbottle, pub. Sweet and Maxwell
- *Community Designs Handbook* (Ed ITMA,CIPA, CITMA, CIPA, Katy Cullen and William Jones) (2017), pub. Sweet and Maxwell
- *Laddie, Prescott & Vitoria: The Modern Law of Copyright and Designs* (2011) 4th ed. Charlotte May et al., Pub. LNUK

Older but potentially still useful:

- *Designs and Copyright Training Manual* (2008) Rebecca Chambers, Ed. Keith Farwell and William Jones, pub. CIPA
- *Community Design Law: Principles and Practice* (2002) David Musker pub. Sweet and Maxwell

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4. The Examination

This syllabus is assessed via a three hour unseen examination. The pass mark is 50%.

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

There are 100 marks available in total: 40 marks in Section A and 60 marks in 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 1 and 10 marks.
- Each question in Section B carries 20 marks.