

FC4 Design and Copyright Law (D&C): Course Description

Course summary

This intensive two-day revision course is designed to help prepare trainee patent attorneys for the Foundation Certificate PEB examination FC4 Design and Copyright (D&C) Law for which candidates are expected to:

- “demonstrate knowledge of the main provisions of EU and UK law relating to design and UK law relating to copyright”;
- “demonstrate knowledge of the relevant procedures and formalities required to obtain the protections available for designs”; and
- “be able to recall the relevant principles, laws and rules, and/or apply them to one or more given scenario(s)”¹.

The underpinning knowledge will be presented via lectures linked to handout notes on the main topics of the syllabus, building on participants’ pre-course reading. There will be opportunities to practise questions from recent exams so that participants can learn, with feedback from the tutors, how to apply their knowledge to exam questions. The tutors will also provide advice on exam technique.

Content

The course comprises units covering the 13 themes of the D&C syllabus (see **Annexe A**), along with a unit on exam technique and a short closing session of advice on post-course final preparations for the exam. Below we set out a summary of the content of each unit and expected learning outcomes.

¹ FC4 syllabus, available from the Patent Examination Board website.

Pre-course preparation

Summary

Annexe B sets out guidance on pre-course preparation. Through reading the FC4 D&C syllabus and instructions to past papers, participants will understand what the syllabus covers, the expected depth of knowledge and the format of the exam. Through reading the syllabus-related sections of legislation and suggested books, participants will have an introductory understanding of design and copyright law. The course's lectures and notes will build on this initial understanding.

Expected learning outcomes

At the completion of your pre-course preparation, participants will be able to:

- describe the scope of the FC4 syllabus and the level of knowledge expected;
- recall the format of the exam, including numbers of questions they are required to answer from each part of the paper; and
- outline key features of UK and Community design law and copyright law.

Unit 1: Overview of the FC4 D&C Syllabus and Exam

Session summary

In this session, participants will gain a general overview of the FC4 syllabus and the exam and will receive advice from the tutors on how to structure answers and managing the time pressures of the exam.

Expected learning outcomes

At the end of this session participants will be able to:

- recall the main areas that the syllabus covers; and
- recount how many questions need to be answered and how marks are distributed across the paper.

Unit 2: Community Design Registrations (CDRs)

Session summary

This unit comprises several sessions, participants will gain knowledge of the areas covered in Themes 1-9 of the syllabus: the protection of designs; the law relating to registrable designs under the Community Design Regulation; the ownership of registered designs; the law relating to the application process for registered designs; priority; duration of registration; a registered design as a form of property; the law relating to the infringement of registered designs; and the law relating to declarations of invalidity of registered designs. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the requirements for a design to be registrable as a CDR - requirement of novelty and individual character; designs dictated by their technical function/character; designs contrary to public policy or morality;
- how the proprietor of a registered design is determined;

- how to make a design application, including a divisional application – the procedure from filing through to registration; available extensions of time; the consequences of delaying or deferring;
- the requirements for claiming priority;
- the duration of registration and the renewal process;
- the implications of surrendering a CDR;
- how a registered design may be transferred;
- acts which infringe a registered design;
- the exhaustion of rights in a CDR; and
- the grounds of invalidity and its consequences.

Unit 3: Unregistered Community Designs (UCDs)

Session summary

In this session, participants will gain knowledge of the areas covered in Themes 10 and 11 of the syllabus covering Unregistered Community Designs (UCDs): the law relating to UCDs and the law relating to their infringement. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the requirements for unregistered design right to subsist: novelty; individual character; originality; commonplace; exclusions;
- the commencement and terms of protection of UCD;
- the right to UCD;
- how the scope of protection is determined;
- the acts which infringe and which do not infringe UCD;
- who may bring an action for infringement of UCD and where that action may be brought;
- what are the potential sanctions in actions of infringement; and
- the exhaustion of rights for UCD.

Unit 4: UK Registered Designs

Session summary

In this session, participants will gain knowledge of the areas covered in Themes 1-9 of the syllabus as they apply to UK Registered Designs under the Registered Designs Act (RDA) and Registered Designs Rules (RDR). Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the requirements for a design to be registered under the RDA;
- how the proprietor is determined;
- how to make an application for registration under the RDA;
- the procedures from filing through to registration;

- the duration of right in a design registered design under the RDA;
- cancellation for registration under the RDA and the effect;
- exclusive licences ;
- grounds for invalidity of registration under the RDA;
- the consequences/effect of cancellation or invalidity of registration;
- applications for a declaration of invalidity;
- actions for infringement and sanctions;
- innocent infringement and the meaning of ‘infringing article’; and
- other remedies.

Unit 5: UK Unregistered Design Rights (UDR)

Session summary

In this session, participants will gain knowledge of Themes 10 and 11 of the syllabus as they apply to UK Unregistered Design Rights (UDRs). Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of:

- the characteristics of UK UDR;
- the rights conferred by UDR;
- how the term and proprietor of UDR are determined;
- how a design may qualify for UK UDR by reference to the designer, employer or first marketing;
- which acts and which acts do not infringe UK UDR; and
- the impact of licences on UK UDR.

Unit 6: Copyright and its Infringement

Session summary

In this session, participants will gain knowledge of Themes 12 and 13 of the syllabus: the law relating to copyright in literary and artistic works; and the law relating to infringement of copyright. Teaching will be through lectures by the tutors linked to handout material on the topics. There will also be practice of past exam questions.

Expected learning outcomes

At the end of this session, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions and scenarios - their understanding of:

- authorship and first ownership of copyright in literary and artistic works;
- the term of copyright in literary and artistic works;
- the acts which are restricted by copyright in a work;
- acts which infringe copyright; and
- permitted acts which do not infringe copyright.

Unit 7: Exam technique and question practice

Session summary

In this session, participants will receive advice from the tutors on how to structure answers and managing the time pressures of the FC4 D&C exam, and feedback on questions they are asked to attempt.

Expected learning outcomes

At the end of this session participants will be able to:

- recognise how to structure answers; and
- recall strategies for managing time pressures during the exam.

Unit 8: Final preparations for the FC4 exam

Session summary

In this closing session, the tutors will advise on how participants can best prepare for the FC4 paper in the intervening weeks before the exam. They will provide guidance on further practice of past exam papers and on materials to read, and recap key points on exam technique.

Expected learning outcomes

At the end of this session, participants will be able to:

- plan their final stages of revision and practice for the FC4 exam; and
- identify areas where they need to do further reading and practice.

Leading Cases

Throughout the aforementioned sessions, participants will gain outline knowledge of the substance leading cases that relate to the areas of focus of the syllabus. Teaching will be through lectures by the tutors linked to handout material on the topics.

Expected learning outcomes

At the end of the course, participants will be able to describe and explain - demonstrating this by applying this knowledge to their answers to past exam questions - their understanding of the principles established in the key cases on:

- designs right: *Scholes Windows v Magnet* (2001); *L Woolley Jewellers Ltd v A&A Jewellery Ltd* (2002); *Dyson Ltd v Qualitex* (2006); *Gardeco Ltd v La Hacienda Ltd* (2012); *Apple v Samsung* (2012).
- registered designs – *Procter & Gamble v Reckitt Benckiser, Jacob LJ* (2006/2007); *Dyson Ltd v Vax Ltd* (2011/2012); *Cegasa v Proin Clear Traffic* (2012); *Grupo Promer Mon Graphic SA v OHIM* (2012);
- s.51 of CDPA defence – *LB Plastics v Swish Ltd* (1979); *Lambretta Clothing Co. Ltd v Teddy Smith* (2004); *Lucasfilm Ltd v Ainsworth* (2009).

ANNEXE A: EXTRACTS FROM THE FC4 D&C SYLLABUS²

Content theme	EU Law	UK Law
1. Protection of designs		
2. The law relating to registrable designs	CDR 1 & 3-9	RDA 1, 1B-1D
3. Ownership of registered designs	CDR 14 & 18	RDA 2
4. The law relating to the application process for registered designs	CDR 35-38, 40 & 45-50. CDIR 1-3, 6-8, 10-11, 14-17, 80 & 81	RDA 3 & 3C RDR 4-9, 11 & 26
5. Priority	CDR 41-44	RDA 14
6. Duration of registration	CDR 12-13, 51 & 67	RDA 8, 8A, 8B, 11 & 11ZE RDR 12
7. A registered design as a form of property	CDR 27-28, 32-34 & 72	RDA 15A, 15B, 17 & 19
8. The law relating to infringement of registered designs	CDR 10, 19-21, 80-82 & 89	RDA 7, 7A, 24A, 24B, 24C(1), 24D(1), 24F, 24G & 26
9. The law relating to declarations of invalidity of registered designs	CDR 25-26, 52 & 84	RDA 11ZA (& Sch A1), 11ZB & 11ZE
10. The law relating to unregistered community designs and UK design rights	CDR 1, 5-9, 11 & 14.	CDPA 213-221
11. The law relating to infringement of unregistered community designs and UK design right	CDR 10, 19-21, 80-82 & 89	CDPA 51, 226-228, 233, 236-237 & 254
12. The law relating to copyright in literary and artistic works		CDPA 1-4 & 9-12
13. The law relating to infringement of copyright		CDPA 16-19, 18A, 21-24, 27-29, 28A, 32, 36, 56 & 66

Notes

CDR = Community Design Regulation [Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs]

CDIR = Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing EC No. 6/2002

RDA = Registered Designs Act

RDR = Registered Designs Rules

CDPA = Copyright, Designs and Patents Act (CDPA)

² You should read the full syllabus, at http://www.cipa.org.uk/download/FC42015_Final.pdf, as this sets out the Learning Outcomes you will need to demonstrate on each theme to pass the exam, as well as the titles of each section of legislation.

ANNEXE B: HOW TO PREPARE FOR FC4 AND THE COURSE

A. Essential pre-course work

A1. Read and familiarise yourself with the FC4 D&C syllabus, to understand its scope and the levels of knowledge expected.

- The syllabus (extracts from which are reproduced in **Annexe A**) is available online from the Patent Examination Board website.

A2. Read and familiarise yourself with recent past D&C exam papers, Examiner's Reports, Mark Scheme (for 2014 onwards) and Sample Pass Scripts to understand the format and requirements of the exam. (NB Prior to 2012 the syllabus was wider, requiring more knowledge of copyright).

- Exam papers, Examiner's Reports, the Mark Scheme and Sample Pass Scripts are available online from the Patent Examination Board website.

B. Recommended additional pre-course work

B1. Read and consult the following presentations, textbooks and reference books.

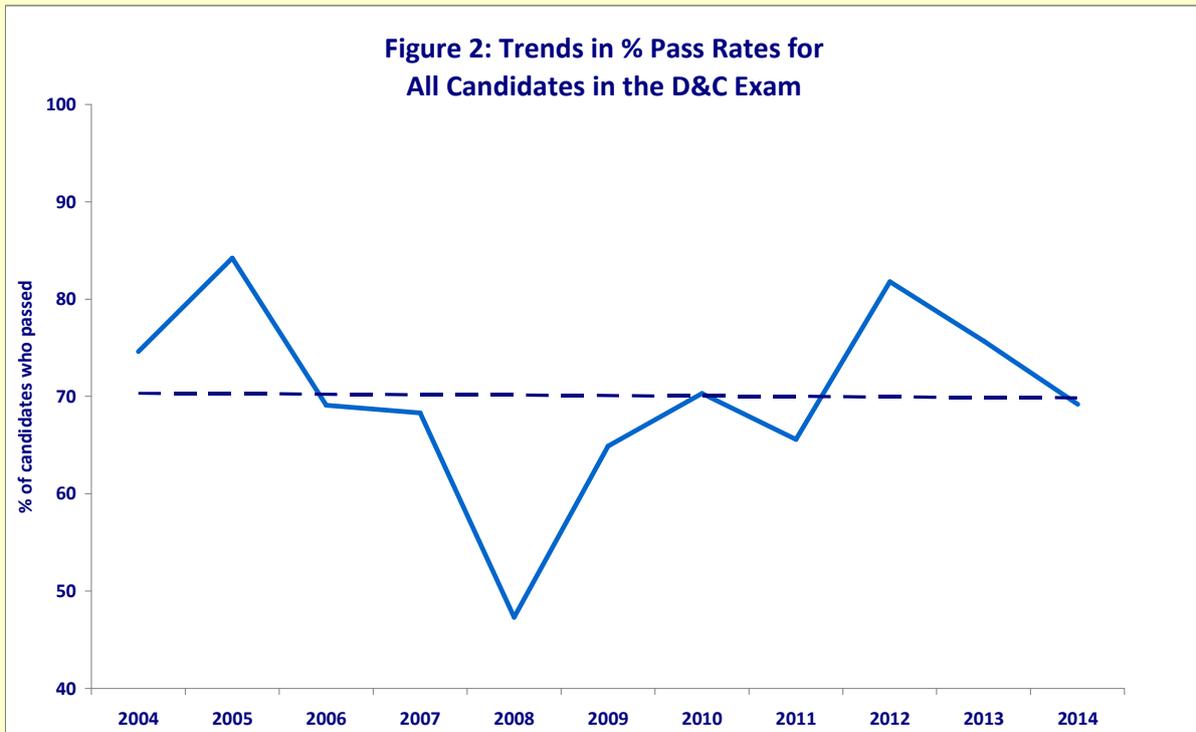
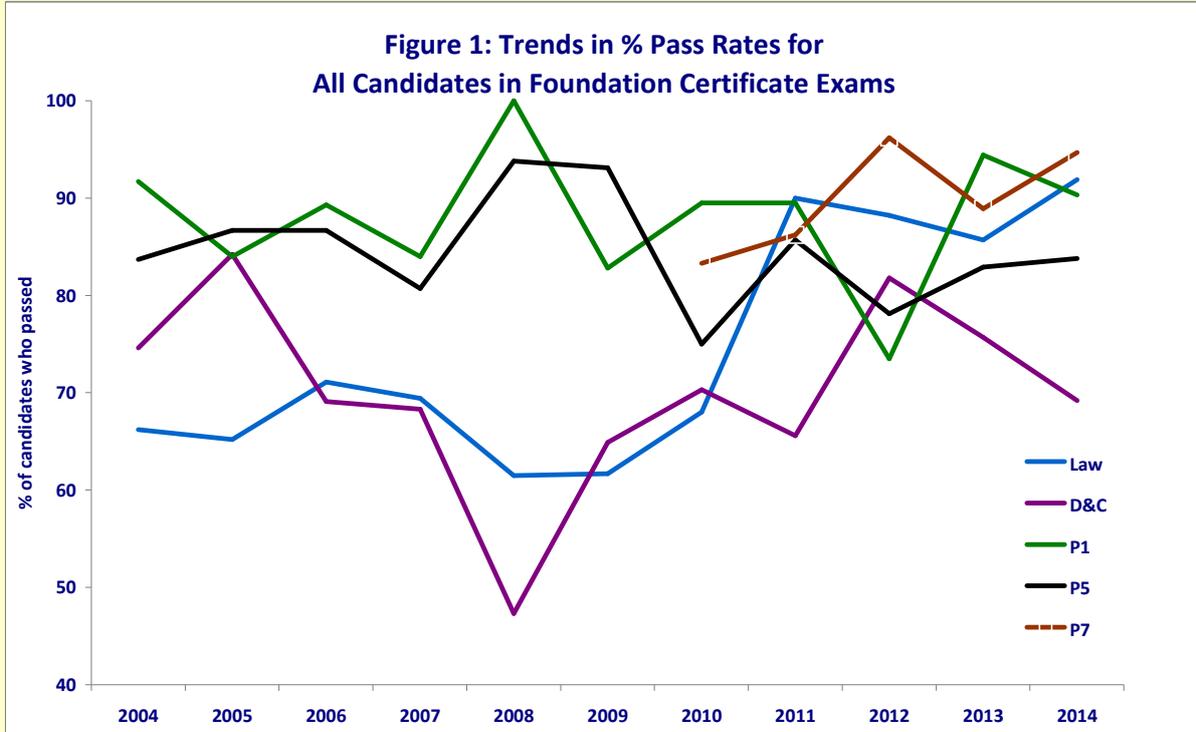
- CIPA Informals lecture on Introduction to Designs Rights & Introduction to Copyrights available on the Informals section of the CIPA website.
- CIPA's ***Designs and Copyright Training Manual*** (Rebecca Chambers), available from <http://www.cipa.org.uk/pages/info-textbooks>.
- The '*Birds' Eye View*' and '*UK Design Registry Procedure*' chapters from ***The Modern Law of Copyright and Designs*** (Laddie, latest edition).
- Two introductory books and revision tools on IP law which have chapter relevant to all Foundation courses: ***Intellectual Property Law*** by Jennifer Davis (OUP, latest edition), ch. 2 on copyright and ch. 7 on industrial design, and ***Intellectual Property Law Concentrate*** by Tim Press (OUP: latest edition), ch. 2 on copyright and ch. 8 on designs.
- The key practitioners' work on Community Design Law is ***European Union Design Law*** by David Stone (OUP: latest edition)
- The syllabus also suggests the following works:
 - Russell-Clarke & Howe on Industrial Designs (Sweet & Maxwell, latest edition) Martin Howe QC.
 - Community Design Law: Principles and Practice (Sweet & Maxwell: latest edition) David Musker.
 - Copinger and Skone James on Copyright (Sweet & Maxwell, latest edition) Nicholas Caddick, QC; Gillian Davies; Gwilym Harbottle.
 - Community Designs Handbook (Ed ITMA,CIPA, Imogen Wiseman and William Jones) (Sweet & Maxwell, latest edition)

B1. Familiarise yourself with parts of the legislation in the syllabus and relevant information on:

- The **IPO website**: this provides access to current legislation (CDPA and RDA, incorporating amendments, and rules), designs forms and designs decisions <http://www.ipo.gov.uk/pro-types/pro-design.htm> ; <http://www.ipo.gov.uk/pro-types/pro-copy.htm> [Remember to click 'IP Professional' in the top right hand corner of the home page]
- The **Registered Designs Rules 2006** (<http://www.legislation.gov.uk/uksi/2006/1975/contents/made>).
- The **OHIM website**: <https://oami.europa.eu/ohimportal/en/designs> for the CDR and CDIR.

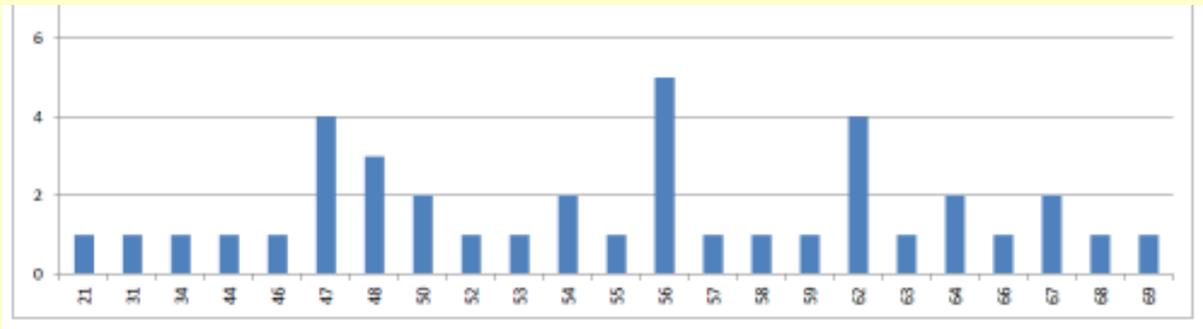
ANNEXE C: TRENDS IN OVERALL PASS RATES FOR D&C

Figure 1, drawing on PEB data for all candidates, indicates that, since 2004, the pass rate for the D&C exam has fluctuated year to year: from a low of 47% in 2008 to a high of 84% in 2005. **Figure 2** indicates that the linear trend for passing has been broadly stable at around 70%.



In 2014, the PEB published (**Figure 3**) the distribution of marks for all the candidates who took the D&C exam.

Figure 3: The mark distribution of D&C exam candidates in 2014



This is the first year PEB has published this information, so we do not know whether mark distribution in 2014 was typical. Analysis of the marks indicates a wide spread in marks, but a fifth of the candidates scored 46 to 48 marks, and so were 'narrow fails'. This highlights the importance of candidates maximising all possible marks available: one or two marks can mean the difference between a pass and a fail.