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2024



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## Intellectual Property Law & Practice

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<b>Colour Coding Guide</b>	<ul style="list-style-type: none"><li>❖ <b>Blue Text</b> – Reference to statutes and case law.</li><li>❖ <b>Green Text</b> – Reference to textbook<sup>1</sup> paragraphs, workshop tasks<sup>2</sup> and other notes in this guide.</li><li>❖ <b>Orange Text</b> – IP Applications / Oppositions.</li><li>❖ <b>Purple Text</b> – Used intermittently to denote key points / assist readability.</li></ul>
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<sup>1</sup> Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

<sup>2</sup> References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

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# 1. Introduction to Intellectual Property

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1. Overview of IP Rights	1-9
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## Overview of IP Rights

❖ [Commercial & Intellectual Property Law and Practice, Chapter 17](#)

<b>What is intellectual property?</b>	<ul style="list-style-type: none"> <li>❖ Intellectual property is a system of <b>intangible proprietary rights</b> over things which, broadly, arise out of intellectual effort.</li> <li>❖ They are proprietary rights; i.e., they are <b>assets</b> of a business with real value, which can be <b>bought, sold, assigned, licensed, or charged</b>.</li> <li>❖ This note provides an <b>overview</b> of the types of intellectual property rights which are available in the law of England and Wales. The rights are, individually, covered in more detail in subsequent sections of this guide.</li> </ul>
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### Types of IP Rights

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
<b>Trade Marks</b>	<ul style="list-style-type: none"> <li>❖ A trade mark acts as a “badge” which denotes that goods or services originate from a particular supplier.</li> <li>❖ Essentially, it protects a brand name other mark indicative of <b>trade origin</b>.</li> <li>❖ Provided that the name can be <b>represented in the trade mark register</b>, a mark may be composed solely of words.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Coca-Cola</li> <li>❖ Levi’s</li> <li>❖ BMW</li> <li>❖ <a href="#">Workshop 1</a> – the name “Rogue Art”.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Through registration.</b></li> <li>❖ If the mark is <b>unregistered, it will only be protected by the law of passing off</b>, which offers more limited protection.</li> <li>❖ When registered, Trade Marks are classified into groups or classes.</li> <li>❖ Goods are in classes 1 to 34. Services are in classes 35 to 45<sup>1</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Entry onto the trade marks register gives the owner <b>exclusive rights in the mark</b> (<a href="#">s9(1) Trade Marks Act 1994 (TMA 1994)</a>).</li> <li>❖ This means that they can object to use by an infringer of: <ul style="list-style-type: none"> <li>➤ An identical sign in relation to identical goods or services (<a href="#">s10(1)</a>);</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Indefinitely</b>, with renewals required every 10 years.</li> <li>❖ Trade marks which are not used for a five-year period are vulnerable to being revoked.</li> </ul>

<sup>1</sup> [Workshop 1, Prep Task 1, Question 1](#)

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
				<ul style="list-style-type: none"> <li>➤ An identical or similar sign in relation to similar goods or services where the use will give rise to a likelihood of confusion (<a href="#">s10(2)</a>);</li> <li>➤ A similar sign in relation to identical goods or services where the use will give rise to a likelihood of confusion (<a href="#">s10(3)</a>);</li> <li>➤ An identical or similar sign in relation to any goods or services where the use is detrimental to, or takes unfair advantage of, the distinctive character or reputation of the mark (<a href="#">s10(3)</a>).</li> </ul>	
<b>Passing off</b>	❖ Passing off is a tort which is committed where one person sells goods or services in a way that <b>misleads</b>	❖ Jif Lemon case - <a href="#">Reckitt &amp; Colman Products Ltd. v Borden Inc. [1990] 1 WLR 491.</a>	❖ A right to prohibit passing off arises automatically where the right holder can demonstrate:	❖ Passing off protects the right holder from an <b>unfair imitation</b> .	❖ <b>Indefinitely.</b>

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
	<p><b>customers</b> into believing that they are buying the <b>goods or services of someone else</b>.</p>	<p>❖ Reckitt &amp; Colman, who are the owners of Jif Lemon Juice, successfully obtained an injunction to prevent Borden from marketing a lemon juice product in a similar lemon-shaped container.</p>	<p>➤ That they have goodwill, that is a <b>business reputation</b> amongst customers, or prospective customers;</p> <p>➤ That the defendant has made a <b>misrepresentation</b> in the course of trade, that has <b>led to deception</b>;</p> <p>➤ That the right holder has or may suffer damage e.g., due to <b>loss of profits / damage to goodwill</b>.</p>	<p>❖ It is a weaker right than a trade mark because <b>proving it is more uncertain</b>, however it can be pleaded in conjunction with trade mark infringement in the same proceedings.</p>	
<p><b>Copyright</b></p>	<p>❖ Copyright provides the right holder with protection against copying of:</p> <p>➤ Literary, Dramatic, Musical and Artistic</p>	<p>❖ <a href="#">Bloomsbury Publishing Group Ltd and Another v News Group Newspapers Ltd and Others [2003] EWHC 1205 (Ch)</a>:</p>	<p>❖ <b>Copyright subsists automatically</b> in works which fulfil the definition of certain categories set out in <a href="#">s1(1) Copyright, Designs and Patents Act 1988 (CDPA 1988)</a>, namely:</p>	<p>❖ Where copyright subsists, it provides the author with an <b>exclusive right to copy, publish, perform or show in public and/or to adapt the work</b>.</p>	<p>❖ Generally, <b>70 years from the date of death of the author</b> (though specific rules apply to “entrepreneurial copyrights”).</p>



<b>Type of IP Right</b>	<b>What is protected?</b>	<b>Examples</b>	<b>How is it obtained?</b>	<b>What benefit does it give?</b>	<b>How long does it last?</b>
	<p>Works (LDMA); and</p> <ul style="list-style-type: none"> <li>➤ Films, sound recordings, published editions, broadcasts and cablecasts (collectively referred to as “Entrepreneurial Copyrights”).</li> </ul>	<p>the publisher and author of the ‘Harry Potter’ books obtained an injunction to restrain unauthorised publication of the fifth book in the series after a copy was stolen from the printers and offered to national newspapers.</p>	<ul style="list-style-type: none"> <li>➤ <u>Literary, Dramatic, Musical and Artistic Works</u> (LDMA); or</li> <li>➤ <u>Films, sound recordings, published editions, broadcasts and cablecasts</u> (“Entrepreneurial Copyrights”).</li> </ul>	<ul style="list-style-type: none"> <li>❖ If anyone else does any of those things within the UK without permission, it will be likely be an infringement.</li> <li>❖ There are two types of infringement: <ul style="list-style-type: none"> <li>➤ <u>Primary Infringement</u>: these are direct acts of copying a copyrighted work.</li> <li>➤ <u>Secondary Infringement</u>: these are commercial dealings with an infringing copyright work, such as importing, or selling the work.</li> </ul> </li> </ul>	
<b>Database Right</b>	<ul style="list-style-type: none"> <li>❖ The database right protects “databases”, that is <b><u>collections of information, which are:</u></b> <ul style="list-style-type: none"> <li>➤ Arranged in a systematic or methodical way.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ Lists of customers’ names or addresses.</li> <li>❖ Entries in a phone directory.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The right <b><u>arises automatically</u></b> where the definition of a database is fulfilled.</li> <li>❖ It lasts for <b><u>15 years</u></b> from the end of the year of completion of the database.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The right grants the database owner a right of action against persons who <b><u>extract information from the database</u></b> without their permission.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b><u>15 years</u></b> from the end of the calendar year: <ul style="list-style-type: none"> <li>➤ Of <b><u>completion</u></b> of the database; or</li> </ul> </li> </ul>

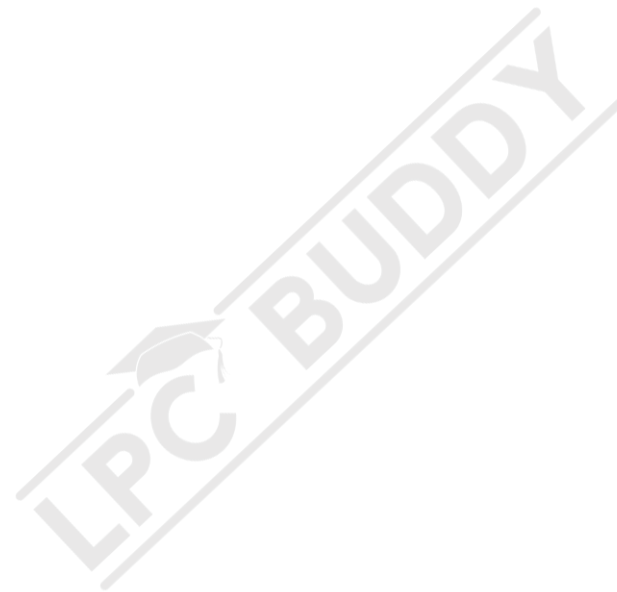
Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
	<ul style="list-style-type: none"> <li>➤ Individually accessible.</li> <li>❖ This covers information held in <b>electronic form</b>, or only as <b>paper documents</b>.</li> <li>❖ There must have been a “<b>substantial investment</b>” in <i>obtaining, verifying or presenting the contents of the database</i>”.</li> </ul>				<ul style="list-style-type: none"> <li>➤ During which the database was first made <b>available to the public</b> (<a href="#">Reg 17</a>).</li> <li>❖ A “<i>substantial new investment</i>” will restart the 15-year period. (<a href="#">Reg 17(3)</a>).</li> </ul>
<b>Registered Design Right</b>	<ul style="list-style-type: none"> <li>❖ A <i>registered design right</i> protects the appearance of: <ul style="list-style-type: none"> <li>➤ The <b>whole or a part of a “product”</b>;</li> <li>➤ Resulting from the features of the <b>product itself or its ornamentation</b> (i.e., decorative elements);</li> <li>➤ In particular, the lines, contours,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ The right can apply to protect the <b>design of a product, or its packaging</b>.</li> <li>❖ E.g., the shape of a Coca-Cola bottle.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The right must be <b>registered</b>.</li> <li>❖ To qualify for registration, the design must be <a href="#">s1B(1)</a>: <ul style="list-style-type: none"> <li>➤ “<b>New</b>” i.e., an identical design must not have been made available to the public; and</li> <li>➤ <b>Must have “individual</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ Registration gives the registered proprietor the <b>exclusive right to use the design</b> and ‘<i>any design which does not produce on the informed user a different overall impression</i>’ (<a href="#">s7(1)</a>).</li> <li>❖ “Using” in this context includes “... <i>the making, offering, putting on the market, importing, exporting or using of a product in which the design is</i></li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Up to 25 years</b> (<a href="#">s8</a>)</li> <li>❖ The right benefits from an initial registration period of 5 years, and is then renewable every 5 years.</li> </ul>

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
	<p>colours, shape, texture or materials (<a href="#">s1(1); s1(2) Registered Designs Act 1949 (RDA 1949)</a>)).</p> <p>❖ A “product” is “any industrial or handicraft item” <a href="#">s1(3)</a>.</p>		<p><b>character</b>” i.e., the design must give a <i>different overall impression</i> from earlier designs to the “informed user”.</p>	<p><i>incorporated or to which it is applied” <a href="#">s7(2)</a>.</i></p>	
<b>Unregistered Design Right</b>	<p>❖ An <i>unregistered</i> design right protects the <b>shape and configuration of 3D objects</b>.</p> <p>❖ The right protects “<i>The <b>shape</b> or <b>configuration</b> (whether internal or external) of the whole or part of an article</i>” (<a href="#">s213(2)</a>).</p> <p>❖ The <b>shape</b> or <b>configuration</b> must be “<b>original</b>” (<a href="#">s213(1)</a>) i.e., not a copy, and not “commonplace” in a qualifying country.</p>	<p>❖ The right protects <b>any 3D shape</b>, such as the shape of a Coca Cola bottle.</p> <p>❖ Broadly, an unregistered design will <b>protect a shape only</b> i.e., a 3D shape, whereas registered designs protect <i>appearances</i>, and so are capable of protecting 2D and 3D articles and surface patterns.</p>	<p>❖ Unregistered design rights arise <b>automatically</b> when the design has been:</p> <ul style="list-style-type: none"> <li>➤ <b>Recorded in a design document;</b> or</li> <li>➤ <b>An article has been made to the design.</b></li> <li>➤ <a href="#">s213(6) CDPA 1988</a>.</li> </ul>	<p>❖ The right prevents third parties from <b>copying the design</b>.</p> <p>❖ The design owner has an exclusive right to <b>reproduce the design of a 3D object</b>, for commercial purposes by either making articles to the design, or a design document recording the design (<a href="#">s226(1) CDPA 1988</a>).</p>	<p>❖ <b>15 years</b> from the end of the calendar year in which the design is first created OR</p> <p>❖ <b>10 years</b> from the thing that is designed being made available for sale or hire (<a href="#">s216 CDPA 1988</a>).</p>
<b>Patents</b>	<p>❖ Patents <b>protect inventions</b> (which can</p>	<p>❖ A bagless Dyson vacuum cleaner.</p>	<p>❖ Via <b>registration</b>.</p>	<p>❖ A patent is a monopoly right entitling the patent holder to</p>	<p>❖ <a href="#">s25(1)</a>: <b>20 years</b> from the date of</p>

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
	<p>be <i>either</i> products or processes (i.e., methods to perform a specific task)).</p> <ul style="list-style-type: none"> <li>❖ They grant the inventor an <b>exclusive period of time</b> to commercially exploit their invention.</li> <li>❖ The scope of the protection is <b>defined by the patent specification</b>; this describes the invention and includes a list of statements known as “claims” which define the boundaries of the patent holder’s monopoly.</li> <li>❖ The patent is infringed where that “boundary” is crossed.</li> </ul>		<ul style="list-style-type: none"> <li>❖ To be registered, the product or process must: <ul style="list-style-type: none"> <li>➤ Be <b>new</b> (<a href="#">s1(1)(a)</a>);</li> <li>➤ Constitute an <b>inventive step</b> (<a href="#">s1(1)(b)</a>);</li> <li>➤ Be <b>capable of industrial application</b> (<a href="#">s1(1)(c)</a>); and</li> <li>➤ Not be within any of the <b>exclusions</b> in <a href="#">s1(2)</a>.</li> </ul> </li> </ul>	<p>sue for infringement where a third party engages in <b>any of the acts prohibited by <a href="#">s60 PA 1977</a></b>.</p> <ul style="list-style-type: none"> <li>❖ Prohibited acts include: <ul style="list-style-type: none"> <li>➤ <b>Making, disposing of, offering to dispose of, using, importing, and keeping</b> a patented product (<a href="#">s60(1)(a)</a>).</li> <li>➤ <b>Using or offering for use</b>, a patented process, in circumstances where the infringer knows, or it is obvious to a reasonable person, that such use without the consent of the proprietor would amount to an infringement (<a href="#">s60(1)(b)</a>).</li> <li>➤ Disposing of, offering to dispose of, using, importing, or keeping a product obtained</li> </ul> </li> </ul>	<p>filing the application.</p>

Type of IP Right	What is protected?	Examples	How is it obtained?	What benefit does it give?	How long does it last?
<b>Confidential Information</b>	<ul style="list-style-type: none"> <li>❖ Information is deemed confidential where it has the necessary quality of confidence.</li> <li>❖ This requires the information to:               <ul style="list-style-type: none"> <li>➤ Contain some <b>element of originality</b>;</li> <li>➤ Be clearly identifiable as an <b>idea of the confider</b> (as opposed to another);</li> <li>➤ Be of <b>potential commercial attractiveness</b>;</li> <li>➤ Be <b>sufficiently well developed</b> to be capable of actual realisation.</li> <li>➤ <a href="#">Fraser and Others v Thames Television</a></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ The right can apply to any information, from <b>trade secrets to wedding photographs</b> for a high-profile wedding.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The right arises automatically if the information satisfies the three-limb test from <a href="#">Coco v AN Clark (Engineers) Ltd [1969] RPC 41</a>, namely:               <ul style="list-style-type: none"> <li>➤ Did the information have the <b>necessary quality of confidence</b> about it?</li> <li>➤ Was the information imparted in circumstances <b>importing an obligation of confidence</b>?</li> <li>➤ Was there any <b>unauthorised use</b> of the information?</li> </ul> </li> </ul>	<p style="text-align: center;">directly from a patented process (<a href="#">s60(1)(c)</a>).</p> <ul style="list-style-type: none"> <li>❖ The right <b>protects against unauthorised disclosure</b> of the information.</li> <li>❖ If the information is disclosed, the right holder can <b>sue a defendant for</b>:               <ul style="list-style-type: none"> <li>➤ <b>Damages</b> and / or</li> <li>➤ An <b>injunction</b> and / or</li> <li>➤ <b>Delivery up</b> of the confidential information.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Indefinitely</b> (as long as the information retains its confidential nature).</li> </ul>

<b>Type of IP Right</b>	<b>What is protected?</b>	<b>Examples</b>	<b>How is it obtained?</b>	<b>What benefit does it give?</b>	<b>How long does it last?</b>
	<a href="#">Ltd and Others [1984] 1QB 44</a>				



## IP Protections Afforded to Different Types of Work<sup>1</sup>

Item		Details		
A Brand Name (e.g., Rogue Art)	Rights Which May Subsist	Why is the right available?	Protection provided?	Steps Required to Gain Rights
	<b>Trade Mark</b>	<ul style="list-style-type: none"> <li>❖ This is a badge of origin capable of being registered as a trade mark, providing: <ul style="list-style-type: none"> <li>➤ There are <b>no grounds for refusal</b> under <a href="#">s3 Trade Marks Act 1994 (TMA 1994)</a>; or</li> <li>➤ There is no reason why this <b>could not be registered</b>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <a href="#">s9(1)</a>: the proprietor has <b>exclusive rights</b> in the mark which are infringed by a defendant making any of the uses of the mark set out in <a href="#">s10 TMA 1994</a>, <b>in the UK without their consent</b>.</li> <li>❖ The trade mark holder can prevent use by an infringer of: <ul style="list-style-type: none"> <li>➤ An identical sign in relation to identical goods or services (<a href="#">s10(1)</a>);</li> <li>➤ An identical or similar sign in relation to similar goods or services where the use will give rise to a</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ To be registrable, the mark: <ul style="list-style-type: none"> <li>➤ Must meet the <b>definition</b> in <a href="#">s1(1) TMA 1994</a>; and</li> <li>➤ Must <b>not be caught</b> by either the: <ul style="list-style-type: none"> <li>▪ <a href="#">Absolute Grounds for Refusal (s3 TMA 1994)</a>: broadly, these are policy reasons as to why a trade mark should not be registered.</li> <li>▪ <a href="#">Relative Grounds for Refusal (s5 TMA 1994)</a>: broadly, this is where a mark infringes the rights of somebody who has a prior mark.</li> </ul> </li> </ul> </li> </ul>

<sup>1</sup> [Workshop 1, Task 1](#)

Item	Details		
			<p>likelihood of confusion (<a href="#">s10(2)</a>);</p> <ul style="list-style-type: none"> <li>➤ A similar sign in relation to identical goods or services where the use will give rise to a likelihood of confusion (<a href="#">s10(3)</a>);</li> <li>➤ An identical or similar sign in relation to any goods or services where the use is detrimental to, or takes unfair advantage of, the distinctive character or repute of the mark (<a href="#">s10(3)</a>).</li> </ul>
<b>Passing Off</b>	❖ Passing off is <b>available as of right</b> where the claimant can show that they have <b>goodwill</b> i.e., that they have a business reputation amongst customers.	❖ Provides a right to prevent use which misleads a customer into believing that <b>goods or services being sold are those of someone else.</b>	❖ The right holder must be able to show goodwill; i.e., that <b>they have a business reputation</b> amongst customers, or prospective customers; and that there has been a <b>misrepresentation leading to deception and damage.</b>
<p>❖ <b>Copyright is unlikely to be applicable.</b> A brand name is not usually enough to constitute a Literary Work (in <a href="#">Exxon Corpn and Others v Exxon Insurance Consultants International Ltd [1981] 3 All ER 241</a> the word “EXXON” was not able to be protected by copyright).</p>			



Item	Details			
A logo.	Rights Which May Subsist	Why is the right available?	Protection provided?	Steps Required to Gain Rights
	<p><b>Trade Mark</b></p>	<ul style="list-style-type: none"> <li>❖ This is a badge of origin capable of being registered as a trade mark, providing:               <ul style="list-style-type: none"> <li>➤ There are <b>no grounds for refusal</b> under <a href="#">s3 Trade Marks Act 1994 (TMA 1994)</a>; or</li> <li>➤ There is no reason why this <b>could not be registered</b>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <a href="#">s9(1)</a>: the proprietor has <b>exclusive rights</b> in the mark which are infringed by a defendant making any of the uses of the mark set out in <a href="#">s10 TMA 1994</a>, <b>in the UK without their consent</b>.</li> <li>❖ The trade mark holder can prevent use by an infringer of:               <ul style="list-style-type: none"> <li>➤ An identical sign in relation to identical goods or services (<a href="#">s10(1)</a>);</li> <li>➤ An identical or similar sign in relation to similar goods or services where the use will give rise to a likelihood of confusion (<a href="#">s10(2)</a>);</li> <li>➤ A similar sign in relation to identical</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ To be registrable, the mark:               <ul style="list-style-type: none"> <li>➤ Must meet the <b>definition</b> in <a href="#">s1(1) TMA 1994</a>; and</li> <li>➤ Must <b>not be caught</b> by either the:                   <ul style="list-style-type: none"> <li>▪ <a href="#">Absolute Grounds for Refusal (s3 TMA 1994)</a>: broadly, these are policy reasons as to why a trade mark should not be registered.</li> <li>▪ <a href="#">Relative Grounds for Refusal (s5 TMA 1994)</a>: broadly, this is where a mark infringes the rights of somebody who has a prior mark.</li> </ul> </li> </ul> </li> </ul>

Item	Details		
			<p>goods or services where the use will give rise to a likelihood of confusion (<a href="#">s10(3)</a>);</p> <ul style="list-style-type: none"> <li>➤ An identical or similar sign in relation to any goods or services where the use is detrimental to, or takes unfair advantage of, the distinctive character or repute of the mark (<a href="#">s10(3)</a>).</li> </ul>
	<p><b>Passing Off</b></p>	<ul style="list-style-type: none"> <li>❖ Available as of right where the claimant can show that they have <b>goodwill</b> i.e., that they have a business reputation amongst customers.</li> </ul>	<ul style="list-style-type: none"> <li>❖ This would allow the claimant to <b>prevent use of a logo</b> which fools a customer into believing that goods or services being sold are those of someone else.</li> <li>❖ The logo is capable of protection if the Claimant can show: <ul style="list-style-type: none"> <li>➤ <b>Goodwill;</b></li> <li>➤ That there has been a <b>misrepresentation;</b></li> <li>➤ That this has led to <b>deception and damage.</b></li> </ul> </li> </ul>
	<p><b>Copyright</b></p>	<ul style="list-style-type: none"> <li>❖ Copyright can subsist in a logo as an “<b>artistic work</b>”.</li> <li>❖ <a href="#">s1(1) Copyright, Designs and Patents Act 1988 (CDPA 1988)</a>: <i>Copyright is a property right which subsists in accordance</i></li> </ul>	<ul style="list-style-type: none"> <li>❖ This would protect against people making an identical or similar logo for <b>70 years</b> from the death of the author.</li> <li>❖ Copyright will subsist automatically if the author can show that the thing in question is capable of fulfilling the definition of one of the categories in <a href="#">s1(1) CDPA 1988</a>.</li> <li>❖ In this case, the work is most likely to be capable of being protected as an “artistic work”.</li> </ul>

Item	Details			
		<p><i>with this Part in the following descriptions of work... (a) original literary, dramatic, musical or <b>artistic works</b>.</i></p> <ul style="list-style-type: none"> <li>❖ <a href="#">s4(1)(a)</a>: “Artistic Work”: includes “a <b>graphic work</b>”.</li> <li>❖ <a href="#">s4(2)</a>: “<b>Graphic work</b>”: includes “<i>any painting, drawing, diagram, map, chart or plan...</i>”</li> </ul>		<ul style="list-style-type: none"> <li>▪ The work must be “original” i.e., the author must have created the work through their own skill, judgment and individual effort and that it is not copied from other works (<a href="#">Ascot Jockey Club Ltd v Simons [1968] 64 WWR 411</a>).</li> </ul>
	<p><b>Registered Design</b></p>	<ul style="list-style-type: none"> <li>❖ The logo is potentially capable of being protected as a registered design as it is a “<b>graphic symbol</b>”.</li> <li>❖ A design is the <b>appearance</b> of:</li> <li>❖ The <b>whole or a part of a “product”</b>: <ul style="list-style-type: none"> <li>➤ A product is any industrial or handicraft item (<a href="#">s1(3) Registered Designs Act 1949 (RDA 1949)</a>) and specifically <b>includes “graphic symbols”</b>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ Registration gives the registered proprietor the exclusive right to use the design for <b>up to 25 years</b>;</li> <li>❖ Infringement occurs where a third party does anything which infringes that exclusive right to use the design, or any design which “does not produce a different overall impression on the informed user”.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ In order to be registered, the design must be: <ul style="list-style-type: none"> <li>➤ “New” (<a href="#">s1B(1)</a>): i.e., it must <b>not have been made available to the public</b> anywhere in the world before the application to register is first filed.</li> <li>➤ Have “individual character” (<a href="#">s1B(1)</a>): i.e., it must give a <b>different overall impression</b> from earlier designs to the “informed user”.</li> </ul> </li> </ul>

Item	Details			
		<ul style="list-style-type: none"> <li>❖ <b>Resulting from the features of the product itself</b> or its ornamentation (i.e., decorative elements); <ul style="list-style-type: none"> <li>➤ In particular, the lines, contours, colours, shape, texture or materials (<a href="#">s1(1); s1(2) RDA 1949</a>).</li> </ul> </li> </ul>		
A photo frame.	<b>Rights Which May Subsist</b>	<b>Why is the right available?</b>	<b>Protection provided?</b>	<b>Steps Required to Gain Rights</b>
	<b>Registered Design</b>	<ul style="list-style-type: none"> <li>❖ The <i>appearance</i> of the photo frame is potentially capable of being protected as a registered design.</li> <li>❖ A design is the <b>appearance</b> of:</li> <li>❖ The <b>whole or a part of a “product”</b>; <ul style="list-style-type: none"> <li>➤ A product is any industrial or handicraft item (<a href="#">s1(3)</a>) and specifically <b>includes “graphic symbols”</b>.</li> </ul> </li> <li>❖ <b>Resulting from the features of the product itself</b> or its</li> </ul>	<ul style="list-style-type: none"> <li>❖ Registration gives the registered proprietor the exclusive right to use the design for <b>up to 25 years</b>.</li> <li>❖ Infringement occurs where a third party does anything which infringes that exclusive right to use the design, or any design which “does not produce a different overall impression on the informed user”.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ In order to be registered, the design must be: <ul style="list-style-type: none"> <li>➤ “New” (<a href="#">s1B(1)</a>) i.e., it must not have been made available to the public anywhere in the world before the application to register is first filed.</li> <li>➤ Have “individual character” (<a href="#">s1B(1)</a>): i.e., it must give a different overall impression from earlier designs to the “informed user”.</li> </ul> </li> </ul>

Item	Details			
		<p>ornamentation (i.e., decorative elements);</p> <ul style="list-style-type: none"> <li>❖ In particular, the lines, contours, colours, shape, texture or materials (<a href="#">s1(1)</a>; <a href="#">s1(2) RDA 1949</a>).</li> </ul>		
	<p><b>Unregistered Design</b></p>	<ul style="list-style-type: none"> <li>❖ The <b>shape</b> of the photo frame may be protected as an unregistered design.</li> <li>❖ This protects “<i>The <b>shape or configuration (whether internal or external) of the whole or part of an article</b></i>” (<a href="#">s213(2) CDPA 1988</a>).</li> <li>❖ “Articles” in this context refers to an “article of manufacture”; i.e., simply, a “particular thing”.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The owner has an exclusive right to reproduce the design for commercial purposes by making either:                             <ul style="list-style-type: none"> <li>❖ <b>Articles to the design</b> (<a href="#">s226(1)(a)</a>).</li> <li>❖ A <b>design document recording the design for the purpose of enabling the articles to be made</b> (such as an engineering drawing) (<a href="#">s226(1)(b)</a>).</li> </ul> </li> <li>❖ The right will last for either 10 years after it was first sold, or 15 years after it was created (<a href="#">s216</a>).</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Originality:</b> The shape or configuration must be “original” (<a href="#">s213(1)</a>) i.e., it must:                             <ul style="list-style-type: none"> <li>➤ <b>Not be a “copy”</b>, in the copyright sense of not being original;</li> <li>➤ <b>Not be “commonplace”</b> in the design field in question (i.e., the design must be distinguishable, in some way, from all the other goods of that type in the marketplace, in a qualifying country).</li> </ul> </li> <li>❖ Where the definition is fulfilled, protection arises <b>automatically</b>.</li> </ul>
<p><b>A wallpaper pattern.</b></p>	<p><b>Rights Which May Subsist</b></p>	<p><b>Why is the right available?</b></p>	<p><b>Protection provided?</b></p>	<p><b>Steps Required to Gain Rights</b></p>

Item	Details			
	<p><b>Copyright</b></p>	<ul style="list-style-type: none"> <li>❖ Copyright can subsist in a pattern as an “<b>artistic work</b>”.</li> <li>❖ <a href="#">s1(1)</a> <i>Copyright is a property right which subsists in accordance with this Part in the following descriptions of work... (a) original literary, dramatic, musical or <b>artistic works</b>.</i></li> <li>❖ <a href="#">s4(1)(a)</a>: “Artistic Work”: includes “a <b>graphic work</b>”.</li> <li>❖ <a href="#">s4(2)</a>: “<b>Graphic work</b>”: includes “<i>any painting, drawing, diagram, map, chart or plan...</i>”</li> </ul>	<ul style="list-style-type: none"> <li>❖ This would protect against people making an identical or similar pattern for <b>70 years from the death of the author</b>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Copyright will <b>subsist automatically</b> if the author can show that the thing in question is capable of fulfilling the definition of one of the categories in <a href="#">s1(1) CDPA 1988</a>.</li> <li>❖ In this case, the work is most likely to be capable of being protected as an “artistic work”.</li> <li>❖ The work must be “<b>original</b>” i.e., the author must have created the work through their own skill, judgment and individual effort and that it is not copied from other works (<a href="#">Ascot Jockey Club Ltd v Simons [1968] 64 WWR 411</a>).</li> </ul>
	<p><b>Registered Design</b></p>	<ul style="list-style-type: none"> <li>❖ The pattern is potentially capable of being protected as a registered design as it is a “<b>graphic symbol</b>”.</li> <li>❖ A design is the <b>appearance</b> of: <ul style="list-style-type: none"> <li>➤ The <b>whole or a part of a “product”</b>;</li> <li>➤ Resulting from the <b>features of the product itself or its</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ Registration gives the registered proprietor the exclusive right to use the design for <b>up to 25 years</b>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ In order to be registered, the design must be: <ul style="list-style-type: none"> <li>➤ “<b>New</b>” (<a href="#">s1B(1)</a>): i.e., it must not have been made available to the public anywhere in the world before the application to register is first filed.</li> <li>➤ Have “<b>individual character</b>” (<a href="#">s1B(1)</a>): i.e., it must give a different overall impression from earlier designs to the “informed user”.</li> </ul> </li> </ul>

Item	Details			
		<p><b>ornamentation</b> (i.e., decorative elements);</p> <ul style="list-style-type: none"> <li>➤ In particular, the lines, contours, colours, shape, texture or materials (<a href="#">s1(1); s1(2) RDA 1949</a>).</li> </ul>		
<p><b>An employment contract created by the businesses' lawyers.</b></p>	<p><b>Rights Which May Subsist</b></p> <p><b>Copyright</b></p>	<p><b>Why is the right available?</b></p> <ul style="list-style-type: none"> <li>❖ Copyright can subsist in a written work as a <b>“literary work”</b>.</li> <li>❖ <a href="#">s1(1)</a> Copyright is a property right which subsists in accordance with this Part in the following descriptions of work... (a) <b>original literary, dramatic, musical or artistic works</b>.</li> <li>❖ Note that the <b>subject matter is irrelevant</b>; the work is capable of protection even if it is mundane e.g., a memorandum or timetable.</li> </ul>	<p><b>Protection provided?</b></p> <ul style="list-style-type: none"> <li>❖ Would protect against people making an identical or similar employment contract for <b>70 years from the death of the author</b>.</li> </ul>	<p><b>Steps Required to Gain Rights</b></p> <ul style="list-style-type: none"> <li>❖ The work must be “original” i.e., the author must have created the work through their own skill, judgment and individual effort and that it is not copied from other works (<a href="#">Ascot Jockey Club Ltd v Simons [1968] 64 WWR 411</a>).</li> <li>❖ <b>Originality</b> is a potential issue with an employment contract, as this has likely been created using a precedent document, however, providing some level of skill, judgment and individual effort has actually gone into its creation, this will likely be sufficient to make it original.</li> <li>❖ <b>Ownership</b> is also a potential issue here; if the work is created by an employee in the course of employment, copyright rests with the employer (<a href="#">s11(2)</a>).</li> </ul>

Item	Details		
			<p>❖ Ownership <b>will not automatically be assigned</b> to a client who has commissioned a work (and so the law firm’s terms and conditions should be checked to see whether copyright is assigned).</p> <p>❖ At common law, this right will arise where:</p> <ul style="list-style-type: none"> <li>➤ <b><u>The information has the necessary quality of confidence:</u></b> <ul style="list-style-type: none"> <li>▪ It must have some element of <b>originality</b>;</li> <li>▪ Be clearly identifiable as an <b>idea of the confider</b> (as opposed to another);</li> <li>▪ Be of potential commercial <b>attractiveness</b>;</li> <li>▪ Be sufficiently well developed to be capable of <b>actual realisation</b>.</li> <li>▪ <a href="#"><i>Fraser and Others v Thames Television Ltd and Others [1984] 1 QB 44</i></a></li> </ul> </li> <li>➤ <b><u>The information was imparted in circumstances importing an obligation of confidence</u></b> (i.e., the recipient knew, or ought to have known, of the</li> </ul>
	<p><b><u>Confidential Information</u></b></p>	<p>❖ The law operates, in certain circumstances, to protect an owner of information which is deemed to be <b>confidential</b>.</p>	<p>❖ If the right arises, the content of the contracts would be <b>secret</b>, and would be <b>disclosed under an obligation of confidence</b> to anyone seeing the contract.</p> <p>❖ Those third parties <b>will not be able to make unauthorised use of the information</b>, and will be obliged to keep the <b>details of the contract secret</b>.</p>



Item	Details			
				<p>confidentiality attached to that information); and</p> <ul style="list-style-type: none"> <li>➤ <b><u>There was unauthorised use of the information.</u></b></li> <li>➤ <a href="#">Coco v AN Clark (Engineers) Ltd [1969] RPC 41</a></li> </ul>
<p><b><u>A new process for treating the company’s wallpaper so that it does not fade in sunlight.</u></b></p>	<p><b><u>Rights Which May Subsist</u></b></p>	<p><b><u>Why is the right available?</u></b></p>	<p><b><u>Protection provided?</u></b></p>	<p><b><u>Steps Required to Gain Rights</u></b></p>
	<p><b>Patents</b></p>	<ul style="list-style-type: none"> <li>❖ The process for treating the company’s wallpaper could be patented.</li> <li>❖ A patent protects an <b><i>invention</i></b>. This can include products or, in this instance, <i>processes</i> i.e., methods used to perform a certain task.</li> </ul>	<ul style="list-style-type: none"> <li>❖ If granted, this would grant a 20-year monopoly right which allows the inventor to stop anybody else from using the invention for the duration of the patent.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>Registration</b></li> <li>❖ For a patent to be granted, it must:</li> <li>❖ (a) Be <b>new</b> (<a href="#">s1(1)(a) Patents Act 1977 (PA 1977)</a>); <ul style="list-style-type: none"> <li>➤ I.e., it must not form “part of the state of the art”. This means the invention must not have been disclosed to the public before the priority date of the patent.</li> </ul> </li> <li>❖ (b) <b>Constitute an inventive step</b> (<a href="#">s1(1)(b)</a>); <ul style="list-style-type: none"> <li>➤ I.e., the invention must <b>not</b> be: <ul style="list-style-type: none"> <li>▪ Obvious;</li> <li>▪ To a somewhat unimaginative person skilled in the art;</li> </ul> </li> </ul> </li> </ul>

Item	Details		
			<ul style="list-style-type: none"> <li>▪ Taking into account the state of the art at the priority date.</li> <li>▪ <a href="#">Vericore Ltd v Vetrepharm Ltd &amp; Anor [2003] EWHC 1877 (Ch)</a></li> </ul> <p>❖ (c) Be <b>capable of industrial application</b> (<a href="#">s1(1)(c)</a>); and</p> <ul style="list-style-type: none"> <li>➤ I.e., it must be able to be made or used in any kind of industry (<a href="#">s4(1)</a>).</li> </ul> <p>❖ (d) <b>Not be within any of the exclusions in</b> <a href="#">s1(2)</a>.</p>
	<p><b><u>Confidential Information</u></b></p>	<p>❖ The law operates, in certain circumstances, to protect an owner of information which is deemed to be confidential.</p>	<p>❖ If the right arises, the content of the <b>process used to treat the wallpaper would be secret</b>, and would be disclosed under an obligation of confidence to anyone seeing the contract. This will oblige those third parties to keep the details of the process secret.</p> <p>❖ This would allow <b>action to be taken against, for example, an errant employee</b> to stop them from disclosing the information further. An action may be</p> <p>❖ At common law, this right will arise where:</p> <ul style="list-style-type: none"> <li>➤ <b>The information has the necessary quality of confidence:</b> <ul style="list-style-type: none"> <li>▪ It must have some element of <b>originality</b>;</li> <li>▪ Be clearly identifiable as an <b>idea of the confider</b> (as opposed to another);</li> <li>▪ Be of potential commercial <b>attractiveness</b>;</li> </ul> </li> </ul>

Item	Details		
			<p>possible against the recipient of the information too.</p> <ul style="list-style-type: none"> <li>▪ Be sufficiently well developed to be capable of <b>actual realisation</b>.</li> <li>▪ <a href="#">Fraser and Others v Thames Television Ltd and Others [1984] 1 QB 44</a></li> </ul> <p>➤ <b>The information was imparted in circumstances importing an obligation of confidence</b> (i.e., the recipient knew, or ought to have known, of the confidentiality attached to that information); and</p> <p>➤ <b>There was unauthorised use of the information.</b></p> <p>➤ <a href="#">Coco v AN Clark (Engineers) Ltd [1969] RPC 41</a></p>

