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INTELLECTUAL PROPERTY LAW

知识产权法学 (第3版)

DAVID BAINBRIDGE AND CLAIRE HOWELL

王梓 注释 孙新强 审校



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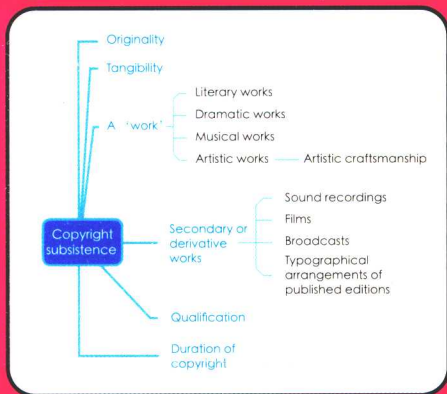
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KEY CASE

Interlego AG v Tyco Industries Inc. [1989] 1 All ER 181
Concerning: whether small modifications made gave rise to a fresh copyright

Facts

The original Lego bricks had been patented and

关键词图例

图例指引，将关键词重点表示出来，帮助读者便于在整个章节中理清知识脉络。

本书所提供的**精选资源**可以帮助读者加深对课本内容的理解及扩展法学知识。

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Clark, S. (2009) 'Lucasfilm Ltd and Others v Ainsworth and Another: the force of copyright protection for three-dimensional designs as sculptures or works of artistic craftsmanship', 31(7) EIPR 384.

Fields, D. (2011) 'Come and have a go ... if you think you are smart enough', 22(2) *Entertainment Law Review*, 61

KEY DEFINITION: Original

A work is original for copyright purposes if it has originated from the author and has not been copied from another work. For computer programs and copyright databases, a work is original if it is the author's own intellectual creation.

借助**Key Definition**确保读者理解重要的法学术语！

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著名法学家江平教授、许章润教授为

《西方法学经典教材系列》题词

教材所收皆为精品，精准阐释了英美法制的专门领域，而篇幅适中，书写畅达，值得一读。

——中国政法大学终身教授 江 平

采撷异域法意，以接济和光弘本土法律精神，助推中国转型，进而建政立制，本套教材正当时也！

——清华大学法学院教授 许章润

华中法学出版学术顾问

(按姓氏笔画为序)

方流芳 刘春田 张 军 郭寿康

《知识产权法学》导读

由英国 PEARSON 出版社授权华中科技大学出版社出版的《法学初阶——西方法学经典教材系列·影印双语注释本》已经与读者见面了。该系列涵盖了国内法学本科生必修的法学课程内容，是一套非常适合中国法学院校本科生系统了解与学习英美法系课程内容的经典教材，同时该教材兼顾法律英语的学习目的。

《法学初阶——西方法学经典教材系列·影印双语注释本》，通过中英文双语注释的方式，把原汁原味的英国各类部门法的内容介绍给读者，这是该系列教材与以往出版的影印版法学书籍最大的不同之处。注释者依据国内法学院校教授英美法系课程内容和法律英语教学的特点，在参考《布莱克法律字典》、《元照英美法词典》、《牛津法律大辞典》等多部权威字典基础上，采取中英文双语注释的方式，将教材中重要的法律词汇一一做出解释。这样，便于大家学习英美法系课程内容，同时也能够更快地掌握法律英语。

《法学初阶——西方法学经典教材系列·影印双语注释本》的出版，旨在将英美法系中（英国各部门法）的法律内容介绍给中国法学院校的老师与同学们，大家可以借助中英文注释这一桥梁，便捷、准确地了解英国法律。

出版者希望采用该系列教材的法学院校师生们，喜欢我们这样的编排方式，并从中受益，也期待师生们对其提出宝贵意见！

下面是对这套法学经典教材之一《知识产权法学》的介绍。

知识产权法，是民商法学科中非常重要的部门法之一，随着科技的进步及社会现代化的发展，知识产权法在实践中的运用变得十分普遍。在这本教材中，作者采用简明易懂的语言将其重点知识，如知识产权保护的权利（商标权、著

作权等)、Design law、网络软件权利等内容一一作了介绍与阐释。教材每一章节之始,作者为其内容的重点知识词汇编制了知识网络图,这种最为直观的方式,可以使学生在学习前就对其有一个完整及初步的了解。同时,每一章节还配有相关的案例以及分析,这样可以帮助学生理解相关知识并熟悉司法实践过程,提高运用能力。再有,每一章节还附有部分内容的知识图表,便于学生对所学的知识能够得到及时的总结和梳理。

《知识产权法学》这本教材语言简明易懂,便于老师和学生在短时间内,掌握知识产权法学的主要内容,并了解英国法是从怎样的角度和思路介绍知识产权法内容的。教材附录部分的重点词汇,可以使学生很快地理解重点词汇的含义,以扫清阅读和学习障碍。

为了保证本教材中英文注释的准确性,出版社邀请了北京航空航天大学法学院教授法学博士孙新强担任专业审校,确保该教材注释内容的专业精准和学术权威。

Acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.

Introduction

Intellectual property law is a demanding but rewarding and enjoyable subject. It covers a range of diverse rights, some of which have little in common with others. Students should keep in mind that, although some rights may be quite different from others, a number of rights may exist in respect of the same subject matter. For example, a new design of plastic bottle for tomato ketchup may be protected by design law (registered and unregistered), trade mark law and the law of passing off. The label attached to the bottle may be protected by artistic and literary copyright. Students are likely to get extra marks if they can demonstrate that they understand the overlap between the different intellectual property rights.

This book is a revision guide. It is intended to help focus students on the key areas in which they are likely to be examined. It also acts as an aide memoire, picking out key cases and statutes. It is no substitute for textbooks and other materials with which students should be familiar. Students should also be aware that this revision guide cannot cover all the ground which may be covered in a module on intellectual property. For example, it has not been possible to cover areas such as rights in performances.

Students should frequently check the syllabus of the module they are taking and refer to lecture notes, handouts and virtual learning materials provided by their lecturer and module leader. As intellectual property is such a big subject, most lecturers are likely to concentrate on some parts of the subject and deal with others in less detail. By reviewing the content of the course as taught or given as directed learning, students will have a much better idea of the areas they are likely to be examined on. Past examination papers also provide a rich form of guidance but students must be aware that, in a fast-moving subject like intellectual property, older examination questions may have been overtaken by recent developments. Questions in past examination papers should be attempted, provided they have current relevance. Ideally, students should attempt past examination questions after getting to grips with the subject area. Allow the time permitted in the examination and go through your answers critically, seeing how they could be improved (the You be the marker section on the companion website gives guidance on this).

Inevitably, during the teaching of a module, there will be legislative changes to and/or important cases on intellectual property law. Examiners are impressed with students who

show that they have taken the trouble to look up and understand the latest developments. Students should also be reminded that it is well worth reading the judgments in important Supreme Court (formerly House of Lords), Court of Appeal and Patents Court cases and rulings of the Court of Justice of the European Union (CJEU). Read and discuss other materials you are directed to by your lecturer, such as articles from specialised intellectual property journals.

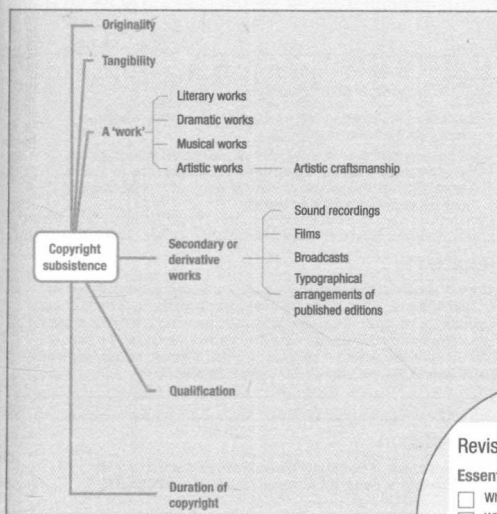
REVISION NOTE

Things to bear in mind when revising intellectual property law:

- Problem questions can be quite complex and it might be worthwhile drawing a 'mind map' or making a list of relevant dates before attempting the question. Spend a little time ensuring that you understand the question.
- Essay questions often require students to consider policy issues or unsatisfactory areas such as patents for computer-implemented inventions.
- Exam questions are not an excuse to write down everything you know about a particular area – answer what the question asks, not what you wished it had asked.
- Make full use of the recommended textbooks and other materials your lecturer suggests. Do not rely on this revision guide to learn the subject.
- Make sure you understand the main legislative provisions dealing with matters such as subsistence, requirements for registration and exceptions, authors, designers, inventors, ownership and entitlement, duration, infringement and defences.
- Seek advice from your lecturer about what you should revise. Most lecturers are very happy to give advice, guidance and feedback.
- Do not 'cherry-pick', only revising part of the syllabus. Questions on intellectual property often cover a wide range and may include a number of different and disparate intellectual property rights. Only omit revising a particular part of the syllabus if your lecturer has expressly confirmed that it will not be examined.
- Attempt past exam questions and review how your answer could be improved. Some lecturers are happy to look at your attempts and give you feedback. But make sure you do not waste time attempting past examination questions that are no longer relevant because of changes in the law.

Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.

Guided tour



Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your own revision notes.

Revision checklists – How well do you know each topic? Use these to identify essential points you should know for your exams. But

don't panic if you don't know them all – the chapters will help you revise each point to ensure you are fully prepared. Print the checklists off the companion website and track your revision progress!

Revision checklist

Essential points you should know:

- ☐ What amounts to originality
- ☐ What constitutes fixation
- ☐ What amounts to a copyright work
- ☐ What are secondary or derivative works
- ☐ The qualification requirements
- ☐ The duration of the copyright term

Sample questions with Answer guidelines

– Practice makes perfect! Read the question at the start of each chapter and consider how you would answer it. Guidance on structuring strong answers is provided at the end of the chapter. Try out additional sample questions online.

Assessment advice – Not sure how best to tackle a problem or essay question? Wondering what you may be asked? Use the assessment advice to identify the ways in which a subject may be examined and how to apply your knowledge effectively.

Sample question

Could you answer this question? Overleaf is a typical essay question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample problem question and guidance on tackling it can be found on the companion website.

ASSESSMENT ADVICE

Essay questions

A possible essay question may ask you to discuss the difficulty in establishing a work as one of artistic craftsmanship. Keep in mind any other forms of intellectual property protection such as design right that could be available as an alternative to copyright protection. Another essay question could relate to the gap in protection for creative ideas seen in the *Norowzian* case and the split between the idea and the expression of a work.

Problem questions

A problem question could include a scenario where a work is put into tangible form by another, where there is a trivial or *de minimis* work or a work with no artistic merit. There may also be an issue raised relating to sound recordings including qualification and duration issues on both derivative and original works.

Key definitions – Make sure you understand essential legal terms. Use the flashcards online to test your recall!

KEY DEFINITION: Original

A work is original for copyright purposes if it has originated from the author and has not been copied from another work. For computer programs and copyright databases, a work is original if it is the author's own intellectual creation.

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1

Copyright subsistence

Revision checklist

Essential points you should know:

- ☐ What amounts to originality
- ☐ What constitutes fixation
- ☐ What amounts to a copyright work
- ☐ What are secondary or derivative works
- ☐ The qualification requirements
- ☐ The duration of the copyright term

第一章注释

序号	页	表格	行	词汇	中文注释	English
1	4	1		Copyright	版权(著作权)	A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work.
2				Literary Works	文学作品	A work, other than an audiovisual work, that is expressed in words, numbers, or other symbols, regardless of the medium that embodies it.
3				Dramatic Works	戏剧作品	Copyright. A literary work setting forth a story, incident, or scene intended to be performed by actors, often with a musical accompaniment.
4				Musical Works	音乐作品	
5				Artistic Works	美术作品	
6				Tangibility	有形性	
7				Derivative Works	演绎作品	Copyright. A copyrightable creation that is based on a preexisting product, such as a translation, musical arrangement, fictionalization, motion-picture version, abridgment, or any other recast or adapted form, and that only the holder of the copyright on the original form can produce or give permission to another to produce.