LW4641 Intellectual Property: Theory, Copyright, and Design

SCHOOL OF LAW · CITY UNIVERSITY OF HONG KONG · LEVEL 4

Full guide + ask Sia about LW4641

SIDE 1/2 ISSUE → RULE → APPLICATION → CONCLUSION OPEN-BOOK EXAM SHEET Semester A 2026/27 · **exam roadmap**

01 · Exam map

COURSE DATA

5 | 15 | 10 | 70% final

COMPONENT	WEIGHT
General Participation: contributions to class discussions	5%
Group Presentation	15%
Group research report	10%
Final Exam	**70%**

PERMITTED-MATERIALS TRUTH

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"Final Exam (2 hours, open book)"
(LW4641 Lecture 1 introduction,
Semester A 2026/27)
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The paper contains one issue spotter worth 70% of the paper and one of three policy questions worth 30%. Build the problem answer around parties and acts; build the policy answer around a position, theory, objection and response.

02 · Master route

C6 · PRACTICE

ISSUE	RULE	APPLY	RESULT
party / act	s + case	facts ±	per party

1 SUBSISTENCE
work · original · owner · term

2 INFRINGEMENT
act · substantial part · defendant

3 DEFENCE → REMEDY
only after stages 1–2 pass

Redrawn from the course's section finder: never start with fairness.

GATE	QUESTION THAT EARNS THE MARK
Work	Which closed-list category? If authorial, original?
Owner	Who authored or first owned it; is copyright still running?
Act	Which s22 act; whole work or substantial part?
Route	Primary (no knowledge) or secondary (knowledge)?
Defence	Listed purpose, conditions, then fairness.
Relief	What order or financial remedy fits the stage?

03 · Subsistence gate

C3

AUTHORIAL
must be original
- Literary
- Dramatic
- Musical
- Artistic

MEDIA / INVESTMENT
- Sound recordings
- Films
- Broadcasts
- Cable programmes (HK)
- Typog. arrangement published editions

Source figure redrawn: nine Hong Kong descriptions; four require originality.

03B · Closed-list edges

C3 CASES

AUTHORITY	RULE/APPLICATION
Creation Records v News Group Newspapers	Staged scene failed dramatic work, sculpture, artistic craftsmanship and collage: no category.
Green v Broadcasting Corporation of New Zealand	Television format lacked creativity and unity as dramatic work.
Lucasfilm v Ainsworth	Film props refused protection as sculptures.
Merchandising Corporation of America v Harpbond	Narrow construction of graphic work for face make-up.

APPLY ***Name every plausible category and give a separate factual reason for each pass or failure. A photograph of an unprotected arrangement is a separate work. Write a provisional conclusion after each gate; if subsistence fails, say so.***

04 · Originality & expression

C4

FREE / ABSTRACT

theme
plot / stock scene
specific traits
EXPRESSION

Redrawn from the abstraction steps: protection strengthens with specificity.

Start with independent skill, labour or judgment: *Ladbroke v William Hill* sufficient; *Exxon* one invented word insufficient; *Interlego v Tyco* skill spent merely copying insufficient; *Tai Shing Dairy v Maersk* is the Hong Kong "sweat of the brow" authority. EU intellectual creation is comparator only.

LIMIT	USE
TRIPS Art 9(2)	Ideas, procedures, methods and mathematical concepts in themselves stay free.
Merger	Few ways to express the idea → no monopoly over expression.
Scènes à faire	Stock elements following naturally from theme/setting stay free.
Substantial part	Qualitative; abstract or commonplace material is unlikely enough.

Nichols v Universal Pictures and *Baigent v Random House*: themes too abstract. *Shazam v Only Fools*: original, identifiable scripted character protected. *Brown v Time Warner*: plots, characters, setting and total concept and feel differed. *SAS v World Programming*: software functionality unprotected.

05 · Authorship & AI output

C5 · ss11, 17, 198

HUMAN CONTROL OF THE OUTPUT

PROMPT idea only — **INPUT** if perceptible — **ARRANGE** whole qualifies

less control … more control

Source spectrum redrawn: prompts alone do not determine expression on the US approach.

AUTHORITY	WHAT IT FIXES
Burrow-Giles v Sarony	Photographer authored by posing and arranging despite the camera.
Suryast	Style-transfer image refused: insufficient creative control.
Rose Enigma	Protection limited to perceptible human pictorial elements.
Li v Liu (2023)	Repeated choices of prompts, parameters and layout supported originality.

HONG KONG ROUTE

```
s11(3): for a computer-generated
literary, dramatic, musical or artistic
work, author = person undertaking
arrangements necessary for creation.
s198(1): computer-generated = no human
author.
s17(6): 50 years from close of year
made.
```

Separate each contribution. Identify the human sketch/input; ask whether it stays perceptible; identify selection, modification and arrangement; then test originality. The government consultation treated AI output as within ss11(3)/198, but the originality paradox and rival arrangers remain.

06 · Dates & treaty layer

C2

1534 · 1710 · 1886 · 1997 · 2008

Stationers · Anne · Berne · Cap 528 · WIPO

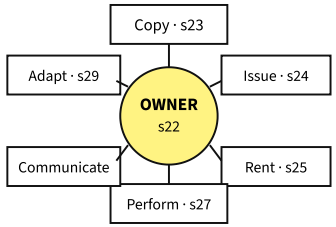
Source timeline compressed; 27 June 1997 is the ownership-law switch.

For work made before 27 June 1997, transitional provisions keep the UK Copyright Act 1956 relevant to first ownership. Cap 528 then took effect. Basic Law Arts 139–140 permit Hong Kong's own science/culture policy and protection of inventors and authors.

INSTRUMENT	EXAM HOOK
Berne 1886	National treatment; no formalities; minimum life + 50.
Rome 1961	Performers, phonogram producers, broadcasters.
TRIPS 1994	Core Berne standards tied to WTO enforcement.

07 · Restricted acts

C6 · ss22–29



Source wheel redrawn. Communication to the public is s28A; ss26 and 28 are repealed.

Primary infringement is doing or authorising an act without licence in relation to the whole work or a substantial part. Copying includes reproduction in any material form. Under s28A, communication covers broadcasting, cable and making available at a chosen time/place; the communicator determines content. Access, receipt or facilities alone are insufficient.

PRIMARY	restricted act + no licence	whole / subst. part
SECOND.	listed dealing + bad copy	knew / reason to believe

Source tracks redrawn: knowledge belongs to secondary infringement only.

SECONDARY ACT	SECTION
Import/export infringing copy	s30
Possess/deal in business	s31
Provide means to make copies	s32
Permit premises for performance	s33
Provide apparatus	s34

REMEDY PREVIEW

RELIEF	THRESHOLD/USE
Damages / account	Compensate loss / strip profit; financial alternatives.
Delivery up / disposal	Remove infringing copies.
Disclosure order	Innocent intermediary identifies wrongdoer; cogent evidence, no fishing.
Search order	Very strong case, very serious damage, real destruction risk.
Final injunction	Prima facie after infringement, subject to discretion: *Morn Creations*.

EXAM MOVE ***Put a section beside each defendant's verb. Never let a seller's knowledge requirement leak into the copier's primary liability.***

Online variant. Since 1 May 2023, s28A is technology-neutral. Ask who determined the communication's content; then analyse authorisation and the separate service-provider safe harbour.

08 · Fair dealing

C7 · ss37–40

1 LISTED PURPOSE? NO → FAIL

2 CONDITIONS MET? release; credit

3 FAIR IN ALL FACTS? 4 factors

4 CONTRACT TERM? s37(1) survives

FIRST FAILED GATE ENDS DEFENCE

Source four-question flow redrawn for one-column use.

Division III creates defences, not user rights. Section 37(1) concerns infringement only and leaves other rights/duties untouched; a licence may therefore restrict a use the Ordinance permits.

PURPOSE	CONDITIONS / AUTHORITY
s38 research or private study	All works; study has ordinary meaning. Copying by another for several people is not fair.
s39 criticism/review; quotation	Prior release + sufficient acknowledgement. *Pro Sieben*: purpose objective, criticism broad. *Time Warner v Channel 4*: criticism of withdrawal accepted.
s39 current events	Older event may remain current. *Hyde Park Residence v Yelland*: current, but use unfair.
s40 incidental inclusion	Casual/background, not deliberately included music; remove-without-losing-impact test.

FOUR FAIRNESS FACTORS

1. Purpose and nature of the dealing.
2. Nature of the work.
3. Amount and substantiality used.
4. Effect on the potential market.

FAST FACTUAL QUESTIONS	DIRECTION
Genuine criticism or market substitute?	Purpose
Published factual work or unreleased creative work?	Nature
Needed extract or expressive heart?	Amount
Lost licensing demand or no displacement?	Market

Hong Kong has no general fair use and no specific text-and-data-mining exception. Do not import US transformative-use doctrine as Hong Kong law.

09 · Personal rights

C8

Moral rights belong to individual creators, survive a sale and cannot be assigned. Signed writing may waive them under s98; on death they pass under s106.

MORAL-RIGHTS TRAP ***Sale of copyright does not transfer these personal rights. Test assertion for identification, prejudice for integrity, and any signed s98 waiver before concluding.***

09 · Moral rights

C8 · ss89–106

RIGHT	EXTRA GATE	DURATION
Identify · s89	asserted · s90	copyright
Integrity · s92	prejudice	copyright
False attribution · s96		20 years after death

Source duration chart redrawn: the extra element identifies the right.

RIGHT / CASE	APPLICATION
Identification	Author/director of qualifying works must first assert under s90; specification governs, otherwise reasonable form. *Sawkins v Hyperion*: courtesy thanks did not identify authorship.
False attribution	Express/implied false authorship. *Clark v Associated Newspapers*: reasonable skim-reader; enough readers misled.
Integrity	Addition, deletion, alteration or adaptation; derogatory only if distortion/mutilation or prejudice to honour/reputation. *Pasterfield v Denham*: trivial changes failed. *Confetti Records v Warner Music*: no evidence of prejudice.

10 · Performers & remedies

C9

PERFORMANCE ROUTE	RULE
First fixation / live communication	Needs consent (s202 for fixation); private-use exception.
Unauthorised fixation	Later use/dealing reaches one who knew or had reason to believe; s207 in the course drill.
Authorised fixation	Economic rights: reproduction, distribution, making available, rental; assignable in signed writing.
Moral rights	Identification and integrity for live aural or recorded performances.
Term	50 years from performance, or authorised release within that period.

BEFORE TRIAL

disclosure · URGENT search · £ / profits · FINAL injunct.

Source remedy timeline redrawn: match relief to the dispute stage.

Section 118 criminalises specified making, import/export, business dealing and prejudicial distribution. *HKSAR v Chan Nai Ming:* BitTorrent file sharing was distribution.

LW4641 Worked Problem Drills · Traps · Fast Recall

INTELLECTUAL PROPERTY: THEORY, COPYRIGHT, AND DESIGN · CITYU

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SIDE 2/2 · 4 HYPOTHETICALS · IRAC/ILAC · TIMING · TRAPS · OPEN-BOOK EXAM SHEET · worked to conclusion

11 · Time & answer frame

COURSE DATA

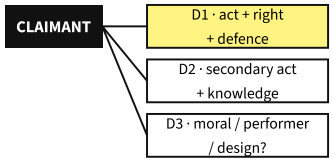
120 MINUTES SPLIT BY PAPER WEIGHT

ISSUE SPOTTER · 84 min | **POLICY · 36**

120 × 70% = 84 120 × 30% = 36

Derived timing aid, not a stated direction: reallocate deliberately if one answer needs more.

MOVE	WHAT TO WRITE
Issue	Question framed by claimant, defendant, work/right and act.
R/Lule/Law	Statute first; authority for contested element; state burden/condition.
Application	Link each material fact to each element; strongest counter-reading.
Conclusion	Short, conditional if needed; repeat per party/claim.



Mini-ILAC per D; keep Ds separate.

Adapted from the course party map: the parties reveal the issues.

TWO-MINUTE PLAN

1. Circle every work/article/performance and creation/marketing date.
2. List claimants and ownership bases; arrow each defendant's verb.
3. Write sections beside verbs; mark P/S for primary/secondary.
4. Put a defence beneath the act it answers, not in a free-floating paragraph.
5. Reserve a conclusion and remedy for every live route.

OPEN-BOOK GAIN *Tab ss11, 17, 22–29, 30–40, 86–98 and Cap 522 s2. Retrieval time should become application time.*

11B · Last-scan traps

C3–11

TRAP	REPAIR
Creativity = protected work	Name a closed-list category first.
Copied idea = infringement	Identify protected expression before substantial part.
Every defendant "copied"	Classify each verb and each liability route.
Fairness before purpose	Purpose → conditions → four factors.
Any alteration violates integrity	Prove treatment plus objective prejudice.

12 · Drill 1 · Lantern beach

C3 WORKED EXAMPLE

Facts. An artist arranges hundreds of paper lanterns, a borrowed sampan and two dancers on a beach at dawn for one morning. A newspaper photographer independently records it. The artist claims copyright in the arrangement.

ARRANGEMENT: TEST EACH CATEGORY

DRAMATIC	× no story/action
SCULPTURE	× no carving/model
CRAFTSMANSHIP	× no craft process
COLLAGE	× nothing stuck

New problem diagram from the worked facts; the elimination follows *Creation Records*.

ILAC TO THE END

```
I Does copyright subsist in the arrangement?
L Closed list; creativity alone insufficient; Creation Records tests each candidate.
A Static dancers give no story/action; nothing carved or modelled; arranging borrowed objects is not artistic craftsmanship; no lasting stuck composition.
C Arrangement unprotected. Any artist-made photograph is separate, but cannot stop an independently taken photograph of the scene.
```

MARKER-FACING CONTRAST

WEAK	STRONG
"It is creative, so copyright exists."	Names four plausible descriptions and gives a failure reason for each.
Discusses copying first.	Stops at subsistence, then identifies the separate photograph.

13 · Drill 1B · Cookbook idea

C4 WORKED EXAMPLE

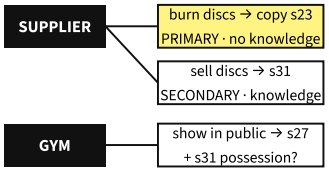
A rival uses different recipes/text but the same week-in-a-family-kitchen structure. The claimant's book is an original literary work, but the rival takes an organising idea close to a stock scene, not protected expression. Following *Designers Guild* and *Baigent*, an abstract simple idea is unlikely a substantial part. Unless distinctive passages or a particular episode sequence were copied: **no infringement**.

ORDER	QUESTION
1	Original claimant work?
2	Is the alleged taking expression at all?
3	If yes, qualitatively a substantial part?

14 · Drill 2 · Gym & discs

C6 WORKED EXAMPLE

Facts. A Hong Kong gym plays a pirated fitness video on screens during classes. A supplier burned the video onto discs and sells them to gyms.



New party map from the worked facts: classify conduct before mental state.

ELEMENT	APPLICATION
Subsistence	Video is a film; producer owns copyright.
Supplier: burn	Reproduction in material form, s23 primary infringement.
Supplier: sell	Business dealing, s31 secondary infringement; knew/reason to believe.
Gym: screen	Public showing under s27: primary infringement.
Gym: keep discs	Possible s31 business possession/dealing; prove knowledge.

CONCLUSION

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The supplier is directly liable for copying and, given its trade in cheap pirated discs, likely secondarily liable for sales. The gym directly infringes by public showing; its secondary exposure depends on what it knew or had reason to believe.
```

COMMUNICATION VARIANT

If facts concern streaming/linking, ask who determined the content under s28A. Merely providing facilities, receiving a transmission or gaining access is not itself communication. Then analyse authorisation and any service-provider safe harbour separately.

TRAP *"Ignorance" cannot answer s23 or s27. It matters only to the secondary route.*

15 · Fast infringement table

C6

FACT VERB	START	KNOWLEDGE?
burn / scan / reproduce	s23	No
issue to public	s24	No
perform/play/show	s27	No
upload/make available	s28A	No
import / sell / stock	ss30–31	Yes
means / premises / apparatus	ss32–34	Yes

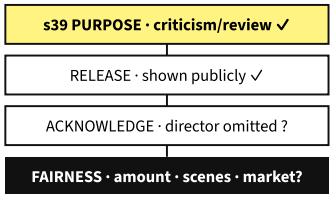
S87 ARITHMETIC CARD

QUESTION	WRITE
Who exploited?	Owner or owner's licensee.
What acts?	Industrial manufacture *and* marketing.
Registered?	Yes: 25 years; no: 15 years.
Defendant's use?	Making articles, or another use retaining full term?

16 · Drill 3 · Film review

C7 WORKED EXAMPLE

Facts. A Hong Kong film blogger publishes a scathing review of a new release, embeds a 90-second clip, names the studio but not the director. The studio sues.



Source s39 two-stage figure expanded with the worked facts.

ISSUE	BOTH-SIDED APPLICATION
Purpose	Scathing review is objectively criticism; *Pro Sieben* reads criticism broadly.
Acknowledgement	Must identify work and author. Studio alone may not tell a reasonably alert viewer who the director is.
Purpose/nature	Genuine criticism helps; a new creative film weighs against extensive taking.
Amount	90 seconds may be considerable; decisive if it contains the expressive heart/key scenes.
Market	Ask whether clip substitutes for viewing or licensing.

CONCLUSION

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Defence arguable but vulnerable on acknowledgement and amount. Credit the director and shorten the clip; if a condition fails, the court never reaches fairness.
```

THREE COMPARISON TRAPS

FACTS	CORRECT MOVE
Security stills report debated event	*Hyde Park*: "current" can pass while fairness fails.
Cartoon figures chosen for nostalgia	Not incidental: removing them destroys intended impact.
Terms of use forbid copying	s37(1) leaves contractual duties untouched.

TRAP *Do not write four-factor "fair use" first. Hong Kong fair dealing is purpose-limited.*

17 · Defence sentence stems

C7

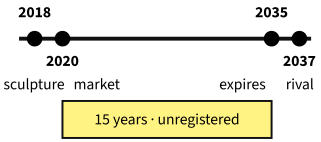
```
"The dealing is for ___ under s__, judged objectively because ___."
"The condition of ___ is / is not met because ___."
"Although ___ favours fairness, ___ weighs against it; especially, the use does / does not displace ___."
```

18 · Drill 4 · Figurine clocks

C10 WORKED EXAMPLE

Facts. Sculptor makes a clay figurine in 2018. A licensee mass-produces resin copies, first marketed in 2020 without design registration. In 2037 a rival makes identical resin figurines; a printer reproduces a photograph of the original.

s86 DESIGN → s87 ARTICLE TERM



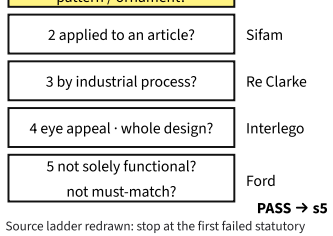
Source term bars redrawn as the worked arithmetic: end of 2020 + 15 = end of 2035.

ILAC TO THE END

```
Work: clay figurine = sculpture/artistic work.
s86: resin figurine would copy it → corresponding design.
s87 triggers: owner's licensee manufactured industrially and marketed from 2020.
Term: unregistered → 15 years from end of 2020 → expired end 2035.
Conclusion: rival's 2037 articles do not infringe. Poster copies in something other than an article made to the design, so normal copyright remains enforceable.
```

19 · Registrability ladder

C11 · CAP 522 S2

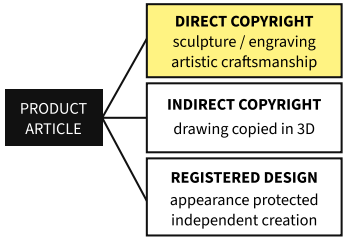


Source ladder redrawn: stop at the first failed statutory element.

Article: manufactured thing; a component must be made and sold separately. *Ford* asks whether it trades in its own right. **Eye appeal:** prospective customer's eye, whole design. **Function:** excluded only where solely dictated; *Interlego* permits a whole shape unless all is functional. **Must-match:** no design freedom because part completes another article's appearance.

20 · Design overlap matrix

C10–11

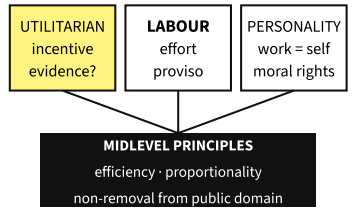


Source three-route fan redrawn: plead routes separately before applying ss86–87.

ROUTE	AUTHORITY / DISTINCTION
Engraving	*Wham-O v Lincoln Industries*: disc/mould accepted; *Greenfield Products*: mower part refused.
Sculpture	*Breville v Thorn EMI*: sandwich-maker moulds accepted.
Artistic craftsmanship	*Hensher v Restawhile*: prototype chair failed.
Graphic work	Drawing protected regardless of artistic quality; article may copy it in 3D.
Registered design	Independent creation can infringe; copyright requires copying.

21 · Policy answer engine

C1



Source justification map redrawn: theory supplies reasons, not an automatic answer.

36-MINUTE POLICY FRAME IF SPLIT PROPORTIONALLY

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1. Thesis + scope of controversy.
2. Best utilitarian reason + what evidence would test it.
3. Labour/personality reason + Lockean or public-domain limit.
4. Strongest rival objection, answered rather than listed.
5. Midlevel principle translating theory into a workable rule.
6. Firm, qualified conclusion.
```

MOVE	SENTENCE STEM
Claim	"The better rule is ___ because ___."
Evidence	"The incentive claim depends on whether ___."
Objection	"The strongest objection is ___; however ___."
Design	"Proportionality limits the right by ___."

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Shared by _____

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OPEN-BOOK EXAM SHEET · SIDE 2

v2 · 2026-10-16

Semester A examination period, 7–19 December 2026 (check your personal exam timetable).