## Table of Contents

Ta	ble	of Ca	ises	XV
Ta	ble	of Les	gislation	XXV
Li	st o	f Abbi	reviations	XXXV
	3			
1.	D	efinit	ions and Intellectual Property Subject Matter	1
		Definitions and Intellectual Property Subject Matter		1
			ific Definitional Aims and Methods	4
		2.1	An Indicative (Nominal Word: Thing Definitional) Exercise	4
		2.2	An Explicative and Reconstructive (Conceptual Definitional) Exercise	5
		2.3	An Analytic and Synthetic (Definitional) Exercise that Proceeds in	,
			Three Stages	7
			2.3.1 An Overview of the Nature, Aims, and Values of Intellectual	,
			Property Rights and Systems	7
			2.3.2 A Theoretical Framework for Thinking about Intellectual	,
			Property and Related Definitional Questions	8
			2.3.3 Defining the Terms in Question	11
	3.	Defi	nitions of 'Invention', 'Authorial Work', 'Trade Mark', and	
		'Design', etc		
		3.1	'Invention': An Idea for a Product or Process that Is Technical (Europe)	12
		J.1	or Technically Inventive (UK), and that May (But Need Not) be	
			Intended for a Specific Purpose	12
		3.2	'Plant Variety': A Type of Invention in the European Conception	13
		3.3	'Authorial Work': An Expressive Object that Has a Certain Expressive	13
		0.0	Form and History of Production (Conceived Differently by European	
			and UK Legal Officials)	13
		3.4	'Trade Mark': An Expressive Object Intended and Suitable for Use to	13
			Distinguish Goods or Services	14
		3.5	'Designation of Origin' and 'Geographical Indication': A Trade Mark	15
		3.6	'Goodwill': An 'Attractive Force Which Brings in Custom'	15
		3.7	'Design': A Type of Authorial Work that (in the Conception of	
			Unregistered UK Design Law) Has a Different History of Production	16
		3.8	The Method by which Each Subject Matter Is Individuated within	
			Intellectual Property	17
		3.9	The Relationship between Each Subject Matter and Its Tokens	20
		3.10	Establishing the Existence of Each Subject Matter and	
			Its Tokens	21
	4.	Cond	clusions	2.2

2. An Overview of Intellectual Property Rights and Systems	25
1. Introduction	25
	25
2. Intellectual Property Law in England and France before the 1880s	25
Deontological alle Instrumentalist Argumenta	
101 Intellectual Property	29
4. The Great (Paris and Berne) Conventions of the 1880.	0.1
5. Intellectual Property Law in Europe and the United Kingdom Today	31
5.1 Constitutional Values and Intellectual Property	
5.1.1 Europe	34
5.1.2 The United Kingdom	34
5.2 European Commission Policies and Intellectual Property	36
5.3 Intellectual Property Legislation	38
5.3.1 Copyright and Related Rights	41
5.3.2 Industrial Property Rights	41
5.3.2.1 Patents	45
5.3.2.2 Trade Marks	45
	49
5.3.2.3 Designs, Plant Variety Rights, and Trade Secrets 5.4 Conclusion	52
	55
6. Distinctions of Importance to Intellectual Property Rights	55
on the Distinction between Industrial, Authorial and Other Species	
of intercetual Property	55
6.2 The Distinction between Registered and Unregistered Intellectual	
rioperty rights	59
6.3 The Distinction between Intellectual Property Rights and Legislation	
of The Distinction between Intellectual Property Rights and Subject Management	60
7. Conclusion	60
3 A Framework C 71 . 1.	00
3. A Framework for Thinking about Intellectual Property Subject Matter	63
1. Introduction	
2. Intellectual Property Subject Matter as Artifacts	63
2.1 Intellectual Property Subject Matter as Intangible Objects	65
2.2 Intellectual Property Subject Matter as Intellectual Creations	65
3. Intellectual Property Subject Matter as Types	66
4. Categories of Intellectual Property Subject Matter as Types	72
o a street could be to b	81
<ul><li>5. Properties of Intellectual Property Subject Matter</li><li>6. Conclusion</li></ul>	88
o. Conclusion	95
4 The Invention and DI V.	7,5
4. The Invention and Plant Variety	97
1. Patents for Inventions and Dlane V	,
1. Patents for Inventions, and Plant Variety Rights for Plant Varieties	97
- Inventions in Europe: Subject Matter that Solves a Technical Dealism	
Conig rarticular recunical Means	99
2.1 Patents for Products	103
2.2 The statutory Categories of Non-inventions	105
2.2.1 Discoveries, Scientific Theories and Mathematical Methods	
Schemes, Rules and Methods for Performing Mental Acts	
and Presentations of Information as Such	105
2.2.2 Aesthetic Creations as Such	108
	100

	Table of Contents		
		2.2.3 Schemes, Rules, and Methods for Playing Games and Doing	
		Business, and Programs for Computers as Such	108
		2.3 Public Policy Exclusions from Patentability	109
		2.3.1 Plant and Animal Varieties, and Essentially Biological Processes	100
		for the Production of Plants and Animals	109
		2.3.2 Inventions the Commercial Exploitation of which Would	
		be Contrary to <i>Ordre Public</i> or Morality, and Medical and Veterinarian Methods	112
		2.4 Conclusion	115
	3. Inventions in the United Kingdom: Subject Matter that Make		11)
		a Technical Contribution to the Art	116
	4.	Plant Varieties in Europe (Including the United Kingdom)	123
		4.1 Introduction	123
		4.2 The Nature of the Plant Variety	124
	5.	Entitlement	125
		5.1 Patents are for Inventors	125
		5.2 Plant Variety Rights are also for Inventors (Referred to as 'Breeders')	129
	6.	Conclusions	131
		6.1 Introduction	131
		6.2 Inventions as Artifact Types Having Certain Properties and Arranged	122
		in Categories that Express and Reflect those Properties	132
		6.3 Plant Varieties as Artifact Types Having Certain Properties and Arranged in Categories that Express and Reflect those Properties	136
		and ruranged in Categories that Express and reflect those Properties	130
5.	Th	ne Authorial Work	141
	1.	Copyright Protects Authorial Works and Related Rights Protect	
		Other Expressive Productions	141
		1.1 Copyright Protects Authorial Works	141
		1.2 Related Rights Protect Other Expressive Productions	142
	2.	Authorial Works in Europe: Works that Express an Author's Own	
		(Literary or Artistic) Intellectual Creation	143
		2.1 Introduction	143
		2.2 Authorial Works Have a Certain Expressive Form	144
		2.3 Authorial Works Have a Certain History of Production	147
		2.3.1 Authorial Works are of a Type that Leaves Scope for Creative Freedom in their Production	148
		2.3.2 Authorial Works Reflect their Creators' Exploitation of the Scope	140
		they Leave for Creative Freedom in their Production	150
		2.4 Conclusion	151
	3.	Authorial Works in the United Kingdom: Works Created by the	
		Exercise of Independent (Literary, Dramatic, Musical, or Artistic)	
		Skill and Labour	151
		3.1 Introduction	151
		3.2 Authorial Works Have a Certain Expressive Form	153
		3.2.1 LDMA Works and Ideas—The Idea/Expression Distinction	156
		3.2.2 LDM Works and their Material Fixations	157
		3.2.2.1 LDM Works Must Be Recorded to Be Protected	15-
		by Copyright	157

## Table of Contents

		5.2.5	Artistic works and their Material Fixations	158
		3.2.4	Records of LDMA Works	159
			3.2.4.1 Walter v Lane and the Question of Literary Copyright	
			in Literary Transcripts	159
			3.2.4.2 Walter v Lane Today	160
		3.3 Autho	orial Works Have a Certain History of Production	
				161
		3.3.1	Authorial Works are Intended by their Creator and/or Regarded	
			by Society to Exist as Such	161
			3.3.1.1 Not Every Collection of Letters is a Literary Work	162
			3.3.1.2 Not Every Scribble, Painted Surface, or Handmade	
			Three-dimensional Object is an Artistic Work	162
			3.3.1.3 Not Every Collection of Sounds or Movements is a	
			Musical or Dramatic Work	166
			3.3.1.4 Words and Short Phrases, and Other Trivial Subject	
			Matter: The <i>De Minimis</i> Principle	166
			3.3.1.5 Conclusion	167
		227		10/
		3.3.2	Authorial Works are Original, ie the Product of Independent	1.00
			Skill and Labour	168
			3.3.2.1 The Applicability of the Common Law and EU Law	
			Tests of Originality	168
			3.3.2.2 The Common Law Test of Originality: The	
			Requirement for Independent Labour and Skill in the	
			Creation of a Work	170
		3.4 Concl	lusion	177
	4.		ent: Copyright Is for Authors	178
				1/0
	٦.		ons: Authorial Works as Artifact Types Having Certain	
			s and Arranged in Categories that Express and Reflect	
		those Proj	perties	179
6.	Th	ie Trade M	lark, Other Product Designations, and Goodwill	187
	1.	Registered	d Protection for Trade Marks and Other Product	
		Designation	ons, and Unregistered Protection for Goodwill	187
			ered and Unregistered Protection for Trade Marks	187
			ered Protection for Other Product Designations	190
	2		rks and Other Product Designations in Europe (Including	170
			d Kingdom): Purpose-limited Signs the Protection of	
		which Do	es Not Undermine Other Intellectual Property Regimes	192
		2.1 Trade		192
		2.1.1	Introduction	192
		2.1.2	Trade Marks are Signs	193
		2.1.3	That are Capable of Distinguishing and Intended for Use	
			to Distinguish Certain Goods or Services	195
			That are Capable of Representation	201
			That are Not Comprised Exclusively of Functional,	201
			Technical, or Aesthetic Characteristics of Goods	209
			Conclusion	
		2.1.0	Conclusion	212

	Table of Contents	
	2.2 Other Marks of Origin	213
	2.2.1 Introduction	213
3.	2.2.2 Designations of Origin and Geographical Indications Goodwill in England and Wales: 'The Attractive Force Which	216
	Brings in Custom'	218
4.	Entitlement	220
	4.1 Registered Trade Mark Protection is for Registrants	220
	4.2 Passing Off Protection is for those who Develop Goodwill	222
5.	Conclusions	224
	5.1 Trade Marks as Artifact Types Having Certain Properties and Arranged	
	in Categories that Express and Reflect those Properties	224
	5.2 Goodwill as an Extrinsic Property of a Person	231
7. Th	ne Design	233
1.	Registered and Unregistered Protection for Designs	233
	The Registered and Unregistered Design in Europe, and	
	the Registered Design in the United Kingdom: An Original	
	Appearance of the Whole or Part of a Product	238
	2.1 A Design Is the Appearance of the Whole or Part of a Product	238
	2.2 Excluding Any Features Dictated Solely by Technical Function	
	or Interoperability Requirements	242
	2.3 To the Extent that It Has Individual Character	246
2	2.4 Conclusion	251
3.	The Unregistered Design in the United Kingdom: An Original	252
	Appearance of the Whole or Part of an Article	252
	<ul><li>3.1 Introduction</li><li>3.2 A Design Is the Shape or Configuration (whether Internal or External)</li></ul>	252
	of the Whole or Part of an Article	254
	3.3 Excluding any Method or Principle of Construction, Must-fit or	
	Must-match Features of Shape or Configuration, and Surface	
	Decoration	257
	3.4 That Is Original, Including Not Commonplace	259
	3.5 Conclusion	261
4.	Entitlement: Registered and Unregistered Design Rights are	
	for Designers (ie for Authors)	262
5.	Conclusions: Registered and Unregistered Designs as Artifact Types	
	Having Certain Properties and Arranged in Categories that Express	
	and Reflect those Properties	263
т. 1		071
Index		271