



Higher National Unit specification

General information for centres

Unit title: Commercial Law

Unit code: F1B3 34

Unit purpose: This Unit is designed to provide candidates with an understanding of the principles of the law of contract in Scotland, as well as the significance of contract law in certain business relationships such as agency and partnership.

On completion of the Unit the candidate should be able to:

- 1 Explain and apply the rules on contract formation in Scotland.
- 2 Explain factors which can affect the validity of contracts and agreements in Scotland.
- 3 Explain and apply the law relating to termination of contracts, including breach of contract.
- 4 Explain and apply the law of agency in Scotland.
- 5 Explain and apply the law of sole traders, partnership and limited companies in Scotland.

Credit points and level: 2 HN credits at SCQF level 7: (16 SCQF credit points at SCQF level 7*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Recommended prior knowledge and skills: Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have competence in Communication at SCQF level 6 or similar qualifications and experience.

Core Skills: There may be opportunities to gather evidence towards Core Skills in this Unit, although there is no automatic certification of Core Skills or Core Skills components.

Context for delivery: If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment: The assessment will be in two parts: part one will assess the application of the general principles of contract law, to particular situations; part two will assess the application of the law relating to agency and partnership. Both assessments will take place in controlled open-book conditions. Lecturers will have discretion in designing the case studies so that they can assess Outcomes individually or combine Outcomes where appropriate, depending upon the time available to them.

Centres will have discretion in designing assessments so that they can assess outcomes individually or combine outcomes where they consider it appropriate.

Higher National Unit specification: statement of standards

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Outcome 1

Explain and apply the rules on contract formation in Scotland

Knowledge and/or Skills

- ◆ Agreements and contracts
- ◆ Offer and Acceptance (including withdrawal)
- ◆ Written contracts
- ◆ Statutory Rei Interventus

Outcome 2

Explain the various factors which can affect the validity of contracts and agreements in Scotland

Knowledge and/or Skills

- ◆ Contractual incapacity
- ◆ Error
- ◆ Misrepresentation
- ◆ Illegal/Unenforceable agreements
- ◆ Void agreements and voidable contracts

Outcome 3

Explain and apply the law relating to termination of contracts, including breach of contract

Knowledge and/or Skills

- ◆ Performance
- ◆ Agreement
- ◆ Confusion
- ◆ Compensation
- ◆ Prescription
- ◆ Impossibility (including frustration)
- ◆ Breach of Contract
- ◆ Remedies for Breach

Higher National Unit specification: statement of standards (cont)

Unit title: Commercial Law

Outcome 4

Explain and apply the principles of the law of agency in Scotland

Knowledge and/or Skills

- ◆ Constitution of agency
- ◆ Types of authority exercised by an agent
- ◆ Rights and duties of an agent
- ◆ Ways by which an agency will terminate

Outcome 5

Explain and apply the law of sole traders, partnership and limited companies in Scotland

Knowledge and/or Skills

- ◆ Advantages and disadvantages of sole traders, partnerships, limited liability partnerships and limited companies
- ◆ Current legislation relating to business names
- ◆ Partnership formation (partnership agreements)
- ◆ Partnership Act 1890 (as amended)
- ◆ Powers of partners; joint and several liability; liability of partners
- ◆ Dissolution of partnership

Evidence Requirements for the Unit

Candidates will be required to provide written/oral evidence to demonstrate their knowledge and understanding of the principles of the law of contract in Scotland, in particular in relation to business relationships such as agency and partnership. Candidates will provide clear and accurate explanations of the relevant law and then apply the law in a variety of situations through a number of given scenarios.

The assessment will be in two parts, each carried out in controlled open-book conditions. The first part will assess the application of knowledge to case studies; for Outcomes 1–3 the law of contract. The second part will assess the application of knowledge to case studies for Outcomes 4 and 5, the law relating to agency and business organisations.

The written/oral evidence produced by the first assessment should show candidates can:

- (a) explain the elements which affect the validity of a contract, and apply their understanding to the given situation to advise whether the contract is valid or not
- (b) apply the law relating to termination of contracts and explain whether in the given situation there is a breach of contract, and what the available remedies may be

Higher National Unit specification: statement of standards (cont)

Unit title: Commercial Law

The written/oral evidence for the second assessment should show candidates can:

- (a) explain the roles of agents and the formation of businesses as sole traders, partnerships, limited liability partnerships or limited companies, clearly highlighting the advantages, disadvantages and obligations of each
- (b) apply the law relating to sole traders, partnerships, limited liability partnerships or limited companies to the given situation, clearly stating which type the case study is dealing with and their rights and obligations in the given situation
- (c) cite relevant statutory and case law in the practical application of the law in (a) – (d) above

Written/oral evidence should be produced for at least one item from Knowledge and Skills in each Outcome.

The assessment will be carried out in controlled, open-book conditions. Candidates may take textbooks, course handouts and materials into the assessment with them.

Assessment Guidelines for the Unit

It is recommended that the total time assessing the Unit is a maximum of 4 hours, 2 hours for each of the two parts, but this is at the discretion of individual lecturers and may be increased to up to 5 hours, depending on the time available to them. Centres may wish to produce case studies which combine Outcomes, eg a case study involving a firm and partners (acting as agents) could cover partnership elements in agency and help candidates to appreciate the links between partners and agents. Textbooks and handouts will be permitted where relevant.

Administrative Information

Unit code: F1B3 34
Unit title: Commercial Law
Superclass category: EC
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Version: 02 (September 2009)

History of changes:

Version	Description of change	Date
02	Assessment guidelines amended to allow centres greater discretion in designing assessments.	26/08/09
	Wording revised relating to guidance for candidates with additional support needs.	

Source: SQA

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Higher National Unit specification: support notes

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This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 80 hours.

Guidance on the content and context for this Unit

The Unit is designed to provide candidates with an understanding of specific legal aspects of business life and to provide them with the skills to apply this understanding to particular situations.

The law of contract is a fundamental part of how people and organisations in the commercial and private world deal with each other. An understanding of its general principles will be of significant benefit both to legal practitioners, individuals and those more directly involved in the world of business. The legal principles relating to agency, sole traders and partnerships will be covered giving candidates the opportunity to appreciate the advantages and disadvantages of each.

The Unit will also provide a basis for progression on to more subject specific Units such as Consumer Law and Employment Law.

Outcome 1

Nature of a contract; rules relating to offer and acceptance (including withdrawal); the provisions of the Requirements of Writing (Scotland) Act 1995 regarding formal written contracts; and attestation; statutory *Rei Interventus*.

Outcome 2

Void agreements and voidable contracts; contractual capacity eg children (*Age of Legal Capacity* (Scotland) Act 1991), insane persons, aliens, corporate bodies.

Error and misrepresentation. Illegality under common law and statute; unenforceable agreements (eg *solus* agreements/*sponsiones ludicrae*); unfair contract terms; restrictive covenants.

Outcome 3

Ways of terminating contractual obligations — performance, agreement, confusion, compensation, prescription, impossibility (including frustration). Breach of contract (material/not material). Remedies for breach — specific implement, interdict, rescission, retention/*lien*, damages.

Outcome 4

Reasons for existence of agent — principal relationship.
Constitution – express, implied, holding out, ratification, necessity.

Actual/express authority compared to implied/ostensible authority.
Rights — remuneration, re-imburement of expenses, relief, *lien*.

Higher National Unit specification: support notes (cont)

Unit title: Commercial Law

Duties — act at all times in principal's interest, obey instructions; exercise due care; keep proper accounts.

Liabilities — to principal, to third parties.

Termination through act of the parties eg mutual agreement/operation of law – death, insanity, bankruptcy etc.

Outcome 5

Comparison of the main features of each of sole traders, partnerships and limited companies; statutory control of business names.

Partnership formation (partnership agreements); Partnership Act 1890 (as amended); powers of partners; joint and several liability; liability of retired/new partners. Dissolution of partnership.

Limited liability partnerships.

Concept of limited liability, brief outline of company formation.

Guidance on the delivery and assessment of this Unit

The content of this Unit, particularly Outcomes 1 to 3, is such that it lends itself easily to the delivery of theoretical legal principles being illustrated along with practical, easy to understand examples from everyday life eg the particular aspects of contract formation, capacity, exclusion clauses, and breach of contract.

It is important that the candidates are familiar with both case law and statutory law and any recent changes.

Candidates could be encouraged to participate in class with instances from their own/friends' experiences. Where possible it would be useful to use examples from the media and, in particular, contract issues which may be of interest to the class eg the sporting, music, retail or film business.

Outcomes 4 and 5, which consider the role of agency, sole trading and partnership can again be made more interesting and relevant by looking at local/national companies and businesses.

Higher National Unit specification: support notes (cont)

Unit title: Commercial Law

Opportunities for developing Core Skills

All elements of the Core Skill of Problem Solving, that is planning and organising, critical thinking, and reviewing and evaluating, will be developed and enhanced as candidates undertake the Unit. Candidates undertake identification and assessment of all factors involved in business contracts using one or more case studies. Application of the law to a range of contract issues will involve a high level of critical and creative thinking. On-going review and adjustment to meet client needs effectively will be integral to achievement. An in depth understanding of the roles of agents, sole traders and partnerships and the advantages, disadvantages and obligations of each will enhance co-operative working skills. Group discussion of the practical applications of statutory and case law during formative work may be useful to reinforce such skills.

The Unit will develop skills in accessing and evaluating complex information and ideas as candidates analyse and apply theoretical knowledge, checking the currency, authority and accuracy of specialist sources used. Communication skills are not discretely assessed but the ability to present accurate, coherent written and oral information will be integral to achievement.

Open learning

This Unit is suitable for open and distance learning. The assessment strategy and guidelines described in this Unit specification must still be applied if this method of delivery is chosen. For further information and advice please refer to the SQA document *Assessment and Quality Assurance for Open and Distance Learning* on SQA's website www.org.uk.

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements

General information for candidates

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The purpose of this Unit is to provide you with a basic understanding of the law of contract in Scotland as well as to show how the law of contract provides the basis for a number of commercial relationships.

An understanding of this area of the law can only be of benefit to you as you go about your daily lives.

Studying the law of contract should not be daunting to you, if you were to sit back and think of the number of times in the course of a day that we enter into a contract, then you would soon appreciate the benefit of knowing contract law and using it where necessary.

In **Outcome 1**, you will look at how a contract comes about, some people have the idea that contracts are bits of paper, rolled up in red ribbon and gathering dust in a solicitor's office. Some contracts do take this form, but by far the most common type of contract is the verbal contract — the kind of thing you enter into many times in a single day. In this Outcome then, you will look at the legal significance of entering into a contract and how mere agreements will differ from contracts.

In **Outcome 2**, you will look at the various factors which can prevent the formation of a contract eg does a child have the same capacity to enter into a contract as an adult?; what if someone enters into a contract in error as to an aspect of that contract? These are the kind of matters you will deal with in Outcome 2, as well as finding out what the law is on these points.

In **Outcome 3** you will look at how contracts are brought to an end, contracts can last for differing lengths of time eg a football manager's contract with his club might be for 5 years, compare this with buying a newspaper in a shop, as long as there's nothing wrong with the newspaper, that contract is ended once you've bought it. In this Outcome you will consider some common ways by which contracts can be terminated, along with other less common ways. More importantly, you will find out what you can do if you end up in a situation where somebody breaks a contract as there are various remedies for a breach of contract.

In **Outcome 4** you will cover the law of agency which is very much a part of our commercial world. An agent is someone who acts on behalf of someone else, common examples would be a solicitor or accountant, travel agent, estate agent and so on. When you enter into contracts on your own account, you're liable; but what if someone else enters into a contract on your behalf — are you liable then? You will look at how agents are appointed, their relationship with their principal and how an agency may be terminated. An agency is brought about by a contract, therefore, Outcome 4 builds on to the knowledge acquired in Outcomes 1 2 and 3.

Outcome 5 is an extension of the principles of agency, as all partners are agents for their partnerships (but not all agents are partners!). When businesses are formed there are various options, the main ones being sole trader, partner or limited company. In this Outcome you will compare the advantages and disadvantages of each form of business enterprise, then you will look specifically at the operation of a partnership in Scotland, how a partnership comes about, the relationship between partners, the authority of partners to act on behalf of their firm, and how partnerships are brought to an end.

You will see from the various Outcomes that not only will you have to be able to explain the law in given situations, you will also have to be able to apply that law in particular situations. This means that you will be assessed on your ability to answer a set of questions and work through case studies on specific areas of the law.

General information for candidates (cont)

Unit title: Commercial Law

Assessments

There will be an assessment in two parts for this Unit covering all Outcomes. You will be expected to demonstrate knowledge, understanding and practical application of all the elements covered. The assessment will be a combination of extended response questions based on an analysis of a case study or case studies.