



## Higher National Unit Specification

### General information for centres

**Unit title:** Bankruptcy and Diligence

**Unit code:** F51X 35

**Unit purpose:** This Unit is designed to provide candidates with an understanding of the processes and procedures of bankruptcy and diligence in Scotland.

On completion of this Unit the candidate will be able to:

- 1 Apply the law relating to the various forms of diligence against moveable property.
- 2 Apply the law relating to the various forms of diligence and security against heritable property.
- 3 Apply the procedures involved in the law of Bankruptcy.
- 4 Apply the law relating to the enforcement of non Scottish court judgements.

**Credit points and level:** 1 HN credit at SCQF level 8: (8 SCQF credit points at SCQF level 8\*)

*\*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. It is strongly recommended that the HN Unit F1A7 34 *Scottish Legal Systems* has been achieved, or some similar recognised equivalent.

**Core Skills:** There are opportunities to develop the Core Skills of *Problem Solving* and *Numeracy* at SCQF level 6 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 whole of this Unit will be assessed holistically in a maximum of 2.5 hours, with two assessments covering all four Outcomes, requiring the candidate to produce either written/oral evidence. The first assessment will sample knowledge within Outcomes 1, 2 and 3 and may take the form of either a set of restricted response questions or multiple choice questions. A second assessment will be required where the candidate will be provided with case study based stimulus materials with sufficient information being provided to enable the candidate to apply their knowledge of the law by giving advice in particular situations across all four Outcomes.

**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

**Unit title:** Bankruptcy and Diligence

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

Please refer to *Knowledge and/or skills for the Unit* and *Evidence Requirements for the Unit* after the Outcomes.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

### Outcome 1

Apply the law relating to the various forms of diligence against moveable property

#### Knowledge and/or skills

- ◆ Enforcement
  - The role and function of Sheriff officers and messengers-at-arms
  - Register and appointment of Sheriff officers and messengers-at-arms
  - Codes of Practice
  - Publication of information relating to debt collection
  - Wrongful diligence
- ◆ Diligence on the dependence
  - Arrestment and Inhibition
  - Prescription of arrestment
  - Abolition of adjudication in security
- ◆ Factors preventing diligence
  - Debt Arrangement Scheme
  - Bankruptcy
  - Protected Trust Deed
- ◆ Types of Attachment
  - Explanation of competence of interim attachment and list of exclusions
  - General and exceptional attachment
  - Competence of a money attachment
  - Duties in relation to diligence against earnings
  - Competence of an arrestment in execution
  - Proposed residual attachment

## Higher National Unit specification: statement of standards (cont)

**Unit title:** Bankruptcy and Diligence

### Outcome 2

Apply the law relating to the various forms of diligence and securities against heritable property

#### Knowledge and/or skills

- ◆ Floating Charges
  - Function of the Register
  - Creation of a floating charge
  - Explanation of advance notice
  - Ranking of floating charges
  - Discharge
- ◆ Inhibition
  - Registration of inhibition
  - Property affected by inhibition
  - Ranking of inhibition in bankruptcy
  - Discharge of inhibition
- ◆ Land Attachment
  - Current legislation relating to adjudication
  - Debts secured by land attached
  - Warrant to sell proposals
  - Proposals for termination and discharge

### Outcome 3

Apply the procedures involved in the law of Bankruptcy

#### Knowledge and/or skills

- ◆ Current legislation
- ◆ Trust Deeds
  - Protected
  - Unprotected
  - Requirement of creditor to provide debt advice to debtor
- ◆ Bankruptcy procedures
  - Establishing apparent insolvency
  - Court jurisdiction
  - Date of award of sequestration
  - Discharge and effect of restriction orders and undertakings
  - Explanation of offences of debtor
- ◆ Trustee in sequestration
  - Role and functions of the Accountant in Bankruptcy
  - Amalgamation of offices of interim/permanent trustee
  - Role and duties of Trustee in sequestration
  - Grounds for resignation or removal of Trustee
  - Statutory meeting and election of Trustee

## **Higher National Unit specification: statement of standards (cont)**

**Unit title:** Bankruptcy and Diligence

### **Outcome 4**

Apply the law relating to the enforcement of non Scottish court judgements

#### **Knowledge and/or skills**

- ◆ The reciprocal functions of the Scottish courts in relation to United Kingdom civil judgements
- ◆ The reciprocal functions of the Scottish courts in relation to foreign civil judgements

#### **Evidence Requirements for the Unit**

Candidates will require to provide written or oral evidence of knowledge of the law by:

- ◆ answering questions sampling across Outcomes 1, 2 and 3 to show that they can understand and explain the law of bankruptcy
- ◆ written or oral evidence of being able to identify the area of law, citing any relevant precedents or statutory provisions, explaining the legal rulings in those precedents or statutory provisions, applying the law and giving correct advice in different situations, also on a sample basis across all four Outcomes

For the sampling of knowledge required in the first assessment, one topic from any one of the topics listed in the knowledge and skills in each of Outcomes 1, 2, and 3 should be sampled. This assessment should be carried out under supervision, with the candidate being allowed both sides of an A4 sheet of notes, to be completed within a period of approximately 1 hour. One error will be allowed over all three Outcomes. This assessment should be approximately 600 words in length, or equivalent.

In the second part of the assessment covering the application of the law, the candidate should give correct advice in response to at least three different scenarios. The three scenarios will be sampled from i) two topics taken from any of the topics listed in the knowledge and skills across Outcomes 1, 2 and 3 and ii) one topic from any one of the two topics listed in the knowledge and skills in Outcome 4. These practical scenarios should sample a different range of topics from the knowledge sampled in the first assessment. Precedents and/or statutory provisions should be used to justify the advice given. The candidate will be given the case studies seven to ten days prior to the assessment event, but are not allowed access to the questions they will be asked prior to assessment. This second part will be open-book, carried out under controlled conditions and should be completed within a period of approximately 1.5 hours.

#### **Assessment guidelines for the Unit**

The second part of the assessment will require the candidate to apply their knowledge to a number of different scenarios by providing advice appropriate to the given scenario. The candidate will be provided with case study based stimulus materials with sufficient information being provided to enable the candidate to give advice in different situations. As these questions are merely sampling the candidate's skill and/or knowledge, all of the topics do not require to be assessed in each assessment opportunity. Should re-assessment be necessary, a different sampling will be required for each assessment.

## Administrative Information

<b>Unit code:</b>	F51X 35
<b>Unit title:</b>	Bankruptcy and Diligence
<b>Superclass category:</b>	EC
<b>Original date of publication:</b>	November 2008
<b>Version:</b>	02 (September 09)

### History of Changes:

Version	Description of change	Date
	This Unit replaces Unit F19V 35 which is due to finish on 31/07/2010	09/12/08
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**

### **Unit title: Bankruptcy and Diligence**

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 40 hours.

### **Guidance on the content and context for this Unit**

The purpose of this Unit is to provide the students with an understanding of the processes and procedures of bankruptcy and diligence in Scotland.

The law in this area is governed by the Bankruptcy (Scotland) Act, 1985, as amended by the 1993 Act. Further legislation to be taken into consideration should be the Bankruptcy and Diligence etc (Scotland) Act 2007, (some provisions of this Act will not be finalised and in force until October 2008 and April 2009), Debtors (Scotland) Act 1987, Debt Arrangement and Attachment (Scotland) Act 2002. The Enterprise Act 2000 and the Late Payment of Commercial Debts (Interest) Act 1998 and 2002 regulations could also be considered.

It is also beneficial to the student if they have a basic understanding of the personnel and legal system in Scotland to give them the background necessary to be able to identify the relevant court in relation to jurisdiction.

Outcome 1 relates to various forms of diligence against moveable property. Teaching should focus on the role of and function of Sheriff officers and Messengers-at-arms in the context of each mode of diligence. There are also changes to diligence on the dependence and new attachment orders and teaching could focus on the comparisons and benefits.

Outcome 2 relates to various forms of diligence against heritable property. The focus should be on inhibition and current legislation relating to adjudication and land attachment.

Outcome 3 introduces the candidate to the procedures and legislation, which covers the law of bankruptcy. It also explains the set up of Trust Deeds and how these can be protected or unprotected. It also gives an overview of the procedures and the personnel involved in sequestration.

The focus of Outcome 4 is on the enforcement of non-Scottish judgements. Practical examples could be used here to show the difference between enforcing Scottish judgements in parts of the UK outside Scotland and enforcing judgements within Scotland. The relevant legislation here is the Civil Jurisdiction and Judgements Act 1982 as amended by the Civil Jurisdiction and Judgements Act 1991.

For the underpinning knowledge to remain valid and current it is essential that institutions review and update the content of the Unit on a regular basis. The student should be encouraged to keep their knowledge up to date by reference to the appropriate sources of law.

## **Higher National Unit specification: support notes (cont)**

**Unit title:** Bankruptcy and Diligence

### **Guidance on the delivery and assessment of this Unit**

This is an optional Unit within the HNC/D Legal Services Group Award but could also be taught as a stand-alone Unit.

When taught as part of the Group Award it is recommended that it be taught after the F1A7 34 *Scottish Legal System* and F1A5 34 *Property Law*.

The subject should be taught on a practical basis. Wherever possible links should be drawn which will enable the candidates to understand the connection between knowledge and its application in the context of familiar situations eg where credit is given with ease in today's society without any thought to the ability to repay. Scenarios can also be discussed, for example, a sole trader whose business is thriving and due to circumstances outwith his/her control, eg the owner falling ill, debts cannot be paid and he/she can find themselves badly in debt.

Use of flow charts or time lines may be helpful in contextualising procedures that may otherwise seem confusing.

#### ***Opportunities for developing Core Skills***

Elements of the Core Skill of *Problem Solving*, that is, Planning and Organising, Critical Thinking, and Reviewing and Evaluating, will be naturally developed and enhanced in the Unit, which requires the application of knowledge of the law to a complex practical task. Candidates have to consider all factors impacting on situations involving bankruptcy identify the appropriate area of law, and consider, cite and explain any relevant precedents or statutory provisions. To prepare advice on a range of actions, which will include the enforcement of both Scottish non Scottish judgements will involve a high level of analytical and strategic thinking. Demonstrating efficiency and effectiveness in the various required stages of these activities will involve advanced problem solving skills as well as a detailed understanding of the law. Although candidates should be independently able to determine, produce and present evidence of competence, group and individual discussions of case studies in formative work would offer opportunities to reinforce skills in evaluating all stages of the process.

Accuracy in interpreting, calculating, applying and presenting complex financial information underpins the competencies developed in the Unit. Candidates should have formative opportunities to enhance skills in accessing, interpreting and presenting financial data with an emphasis on Numeracy as a tool to be applied efficiently and critically in practical contexts.

### **Open learning**

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in this specification must still be applied if this method of delivery is chosen.

### **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](http://www.sqa.org.uk/assessmentarrangements)

## **General information for candidates**

### **Unit title: Bankruptcy and Diligence**

This Unit is designed to give you basic knowledge and an understanding of the law of bankruptcy and diligence.

In this Unit you will learn about the law relating to diligence against moveable property such as money attachments and diligence against earnings and residual attachment. You will also be able to distinguish these types of diligence from diligences against heritable property, which concerns land and buildings. The types of diligences against heritable property include inhibition, adjudication and the proposed land attachment.

Bankruptcy deals with the procedures involved in sequestrating a debtor. It includes the formal procedures that require to be carried out to declare a debtor bankrupt and the powers of the trustee to ingather and distribute the bankrupt's estate to his/her creditors.

Understanding the law of bankruptcy and diligence is important to candidates wishing to work in areas of debt recovery or conveyancing in a legal office. This knowledge could make a difference in your understanding of, for example, conveyancing to ensure a prospective house purchaser obtains a good title to their property. It could also lead to avoidance of bad debtors and maximise the chances of successful debt recovery.

Before commencing this Unit, it would be beneficial if you have an understanding of the Scottish civil court structure and Scots property law, either by having completed HN Unit F1A7 34 *Scottish Legal Systems* or have relevant experience.