



## Higher National Unit specification: general information

**Unit title:** Commercial Leasing

**Unit code:** FN5R 35

**Superclass:** EC

**Publication date:** July 2011

**Source:** Scottish Qualifications Authority

**Version:** 01

### Unit purpose

This Unit is designed to give candidates a basic knowledge of Commercial Leasing from the point of view of acting for both the Landlord and Tenant, including the differences between acting for an individual leasing commercial premises and a Limited Company. It may also prove useful for those already working in this field as it will give them a more rounded understanding of the basic legal principles of Commercial Leasing. It covers the basic procedures involved in acquiring a lease on behalf of a landlord and a tenant, the documentation required to transfer/create the tenancy and the current procedures for registering the Tenant's title. It will also provide a basic understanding of Stamp Duty Land Tax and how it applies to different scenarios.

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

- 1 Complete a Commercial Lease transaction.
- 2 Complete ancillary documentation and obtain relevant consents.
- 3 Prepare draft management documentation.
- 4 Prepare a valid Stamp Duty Land Tax return for a Commercial Lease transaction.

### 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 Skills at SCQF level 6 or equivalent and should normally have completed Unit F1B2 35 *Conveyancing* and Unit FN5N 34 *Property Law* or have similar qualifications or experience.

## General information (cont)

### Credit points and level

1 Higher National Unit credit(s) 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.*

### Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes of this Unit Specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

### 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 the Unit will be assessed holistically, with a maximum of two case studies covering all four Outcomes, ie one covering a Commercial Lease transaction and one covering the management documentation. In addition, candidates will be asked to provide written or oral evidence of knowledge.

The assessment will be open-book and candidates will have two weeks within which to complete the assessment in their own time.

**Centres will have discretion in designing assessments so that they can assess Outcomes individually or combined Outcomes where they consider it appropriate.**

## Higher National Unit specification: statement of standards

**Unit title:** Commercial Leasing

**Unit code:** FN5R 35

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

Please refer to *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

Complete a Commercial Lease transaction.

#### Knowledge and/or Skills

- ◆ The fundamental differences between Scots Law and English Law
- ◆ What constitutes a Lease
- ◆ Heads of terms, missives and leases
- ◆ The differences between a lease, a licence to occupy and concession agreement
- ◆ Common law in regard to leases
- ◆ Why the common law position is varied and in what way it is normally varied
- ◆ The minimal extent of statutory interference
- ◆ Rent review procedures
- ◆ Acting for a Landlord and a Tenant
- ◆ The differences in procedures when acting for an individual or a Limited Company
- ◆ Preparing draft lease or missives of let
- ◆ Examining title and reporting effectively to the client
- ◆ The settlement of a Commercial Lease transaction
- ◆ Registering the lease or missives of let in the appropriate register

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

**Unit title:** Commercial Leasing

### Outcome 2

Complete ancillary documentation and obtain relevant consents.

#### Knowledge and/or Skills

- ◆ When they are required and how to obtain them
- ◆ Draft the appropriate Standard Security, Discharge, Deed of Restriction, and Ranking Agreement
- ◆ Attending to the registration of a charge at Companies House (emphasis on 21 day deadline and the difference in this deadline when dealing with a Standard Security and Ranking Agreement)
- ◆ The importance of obtaining heritable creditors consent to the granting of any leases any variations of a lease
- ◆ Head Landlord's consent; when and why it is needed

### Outcome 3

Prepare draft management documentation.

#### Knowledge and/or Skills

- ◆ Letter of Consent to Assignment
- ◆ Letter of Consent to Sub-lease
- ◆ Rent Review Memoranda
- ◆ Minutes of Variation
- ◆ Back Letters
- ◆ Rent Deposit Agreement
- ◆ Licence for Works

### Outcome 4

Prepare a valid Stamp Duty Land Tax return for a Commercial Lease transaction.

#### Knowledge and/or Skills

- ◆ An introduction to Stamp Duty Land Tax as it applies to Leases and supplementary management documentation
- ◆ The basic requirements for Stamp Duty Land Tax
- ◆ Notification of transactions
- ◆ Completing a valid Stamp Duty Land Tax return for a basic commercial lease and supplementary management documentation

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

**Unit title:** Commercial Leasing

### Evidence Requirements for the Unit

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and Skills by showing that they can:

- ◆ complete at least one of the following — offer of lease, lease or licence to occupy
- ◆ examine the title to the Property to confirm the owner has the right to let property
- ◆ prepare the appropriate security documentation for the situation, together with obtaining all relevant consents, letters of non-crystallisation as appropriate
- ◆ prepare a statement for settlement
- ◆ prepare a valid Stamp Duty Land Tax return; and
- ◆ register the deeds within the appropriate register(s and within the required deadlines).

Candidates will be given a set of written instructions from a fictitious client, either an individual or a company, detailing a straightforward letting of commercial premises. These instructions should include the details of the parties involved, whether the letting is of the property as a whole or part, the agreed annual rent, the duration of the lease and the date of entry. The scenario should allow for Heritable Creditors consent and Stamp Duty Land Tax liability.

Satisfactory completion will consist of the candidate completing the above documentation in accordance with the client's instructions for the given scenario.

Candidates should be presented with a second scenario requiring either (a) an application by the tenant for consent to alter, assign or sub-let the premises, or (b) an application by the landlord to document a review of rent. Satisfactory completion will consist of the candidate completing at least two of the following items:

- ◆ Letter of Consent to Assignment
- ◆ Letter of Consent to Sub-lease
- ◆ Rent Review Memoranda
- ◆ Minute of Variation
- ◆ Back Letter
- ◆ Rent Deposit Agreement
- ◆ Licence for Works

in accordance with the terms of the existing lease documentation.

The assessment will be open-book and candidates will have two weeks within which to complete the assessment in their own time.

Written or oral evidence of knowledge which cannot be inferred from the above should be sampled.

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

**Unit title:** Commercial Leasing

### **Assessment Guidelines**

The whole of the Unit will be assessed holistically, with a maximum of two case studies covering all four Outcomes, ie one covering a Commercial Lease transaction and one covering management documentation.

Written and/or oral evidence of knowledge may be obtained by sampling from the Knowledge and Skills for each Outcome where it cannot be inferred from the practical application of the knowledge. This could take the form of either a set of restricted response and/or multiple choice questions, or a small number of short case studies requiring candidates to provide advice appropriate to the given scenario(s).

The candidate should be given access to style documentation used in Commercial Lease transaction to enable them to complete the assessment.

## Higher National Unit specification: support notes

### Unit title: Commercial Leasing

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

This Unit is designed to give candidates a basic knowledge of Commercial Leasing from the point of view of acting for both the Landlord and Tenant, including the differences between acting for an individual leasing commercial premises and a Limited Company. It is designed to cover the basic procedures and processes involved in acquiring a lease on behalf of a landlord and a tenant, the documentation required to transfer/create the tenancy and the current procedures for registering the Tenant's title. It will also provide a basic understanding of the more common lease management documents, as well as Stamp Duty Land Tax and how it applies to different lease scenarios.

The Unit is designed to be of assistance to candidates who hope to take up work in the field of Commercial Leasing or to give others a broad understanding of the procedures and processes involved in Commercial Leasing transactions.

This Unit specifically covers Scots Law but should highlight the differences between Scots Law and English Law as more and more clients have properties in both Countries. It is highly recommended that candidates be reacquainted with the following areas:

- ◆ General Principles of the Law of Contract, in particular the process of offer and acceptance
- ◆ The current system of land tenure in Scotland and the burdens commonly imposed on land
- ◆ The Scottish Legal Profession
- ◆ The Law of Agency as it applies in the Commercial Leasing context

The Unit should demonstrate how legislation has, and is being, developed, the use of case law in settling legal matters and how this affects the rights and obligations of all parties to a commercial leasing contract.

The suggested allocation of teaching time is as follows:

- ◆ Outcome 1 — 40%
- ◆ Outcome 2 — 20%
- ◆ Outcome 3 — 35%
- ◆ Outcome 4 — 5%

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

**Unit title:** Commercial Leasing

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

It is recommended that centres follow the sequence of the Outcomes.

Candidates should be made aware that they will be required to use knowledge gained from the completion of HN Unit *Property Law*; with particular regard to the law of contract, the current system of land tenure in Scotland, the registration of title to land and common burdens and conditions affecting land.

Candidates will, as much as possible, be expected to apply the theoretical legal position to each of the assessments in order to resolve problems within the context of each case study.

It is suggested that a bank of case studies should be prepared to cover the Knowledge and Skills of each Outcome covered by this Unit.

Case studies of relevant situations could be used in the delivery of this Unit. It is recommended that centres make use of current reported cases obtained from law journals, Greens Weekly digest, etc when teaching this Unit.

The growing importance of Information Technology in modern legal practice should also be raised. It is highly recommended that candidates are provided with, or have access to, computer templates and/or hard copies of styles of legal correspondence and documents used in commercial leasing transactions.

### Open learning

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

### Opportunities for the use of e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or e-checklists. Centres which wish to use e-assessment must ensure that the national standard is applied to all candidate evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. Further advice is available in *SQA Guidelines on Online Assessment for Further Education (AA1641, March 2003)*, *SQA Guidelines on e-assessment for Schools (BD2625, June 2005)*.

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

**Unit title:** Commercial Leasing

### Opportunities for developing Core Skills

Paralegals have to build and maintain effective written and oral communication with a range of others, including the Supervising Solicitor, clients and colleagues. As the Unit is undertaken there should be a focus on enhancing the additional or specific communication skills relevant to the particular Legal Domain. Strengthening awareness of communication options and ways to select media, style and format appropriate to the recipient will support professional competences. The use of technology in sourcing and presenting legal information will be routine. This will allow practice in accessing, using and storing electronic data with a focus on accepted professional practice and etiquette.

All elements of the Core Skill of *Problem Solving*, that is Critical Thinking, Planning, Organising, Reviewing and Evaluating, will be naturally developed and enhanced as practical tasks are undertaken. The analysis of case studies relating to the letting of commercial premises will require applying legal concepts after consideration of a range of financial and practical matters while taking into account the duties and liabilities of all parties involved. Group and individual discussions with the tutor will offer opportunities to reinforce critical evaluation of issues and solutions.

Accuracy and attention to detail is essential in applying and presenting figures required in documenting the letting of commercial premises. Candidates may benefit from formative opportunities to enhance skills in the interpretation, calculation and presentation of financial and numerical data using examples from current practice. The emphasis should be on *Numeracy* as a tool to be applied efficiently in practical contexts.

### 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: Commercial Leasing

This Unit is designed to introduce you to the basic procedures necessary to allow you to acquire commercial premises on behalf of a client by way of a commercial letting. You will be introduced to the documentation that is required to transfer/create the tenancy of the premises. You will have to demonstrate the knowledge and understanding you have gained from the Unit that will allow you to (1) explain a contract of lease, (2) produce required drafts, (3) deal with settlement, and (4) draft/prepare any associated management and/or security documentation. You will gain an insight into the differences in acting on behalf of a Landlord and a Tenant. You will also have to demonstrate your understanding of the current procedures for registering the Tenant's title. You will have to show that you have a basic understanding of Stamp Duty Land Tax and how it applies to different leasing scenarios.

The Unit covers four Outcomes. All Knowledge and Skills covered will be sampled over a maximum of two assessments. Case studies will be used to test your knowledge and understanding. The assessment(s) will take the form of either an open-book exercise where, insofar as possible, you will be permitted to use text books and class hand-outs. In this Unit you will cover:

- ◆ The fundamental differences between Scots Law and English Law
- ◆ What is a Lease?
- ◆ What constitutes a Lease?
- ◆ Heads of terms, missives and leases
- ◆ Concession agreement to licence
- ◆ Common law in regard to leases
- ◆ Why the common law position is varied and in what way it is normally varied
- ◆ The minimal extent of statutory interference
- ◆ Rent review procedures
- ◆ Acting for a Landlord and a Tenant
- ◆ The differences in procedures when acting for an individual or a Limited Company
- ◆ Preparing a draft lease/missives of let
- ◆ Examining title and effectively reporting to the client
- ◆ The settlement of a Commercial Lease transaction
- ◆ Registering deeds in the appropriate register
- ◆ What is a Standard Security, Discharge, Deed of Restriction, and Ranking Agreement; when they are required and how to obtain them?
- ◆ Drafting the appropriate security documentation
- ◆ Attending to the registration of a charge at Companies House (emphasis on 21 day deadline and the difference in this deadline when dealing with a Standard Security and Ranking Agreement)
- ◆ The importance of obtaining heritable creditors consent to any variations of a lease
- ◆ Head Landlord's consent; when and why it is needed
- ◆ Management Documentation
- ◆ An introduction to Stamp Duty Land Tax as it applies to Leases and supplementary management documentation
- ◆ The basic requirements for Stamp Duty Land Tax
- ◆ Notification of transactions
- ◆ Completing a valid Stamp Duty Land Tax return for a basic commercial lease and supplementary management documentation