



Higher National Unit specification: general information

Unit title: Applying Scots Property Law

Unit code: H3YL 34

Superclass: EC

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Unit purpose

This Unit is primarily intended for candidates who are already employed in the legal sector, such as paralegals, or candidates who aspire to work in a relevant role as a paralegal in Scotland and who need to have knowledge of the rules which govern the Scots Law of Property.

For candidates who already have relevant work experience in this area, as it will give them a theoretical understanding of the main legal principles which underpin the Scots Law of Property. Candidates will also study the rules and procedures relating to building control, the process to be followed when making a planning application or obtaining consent for alterations, and the importance of the paperwork issued once all approvals are granted.

Candidates will be able to suggest approaches to be taken to ensure legal compliance, ie will be able to suggest legal solutions and explain case law in response to events in given case study scenarios. Because of the emphasis on applying the law in the workplace, candidates undertaking the HNC/D in Legal Services may choose between this Unit and F1A5 34.

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

- 1 Identify and explain the main property classifications in Scots Law.
- 2 Apply the law of land tenure and obligations associated with heritable property.
- 3 Apply the law governing transfer of ownership of moveable property.
- 4 Apply the law governing Building Control Regulations and Planning Legislation.

General information (cont)

Recommended prior knowledge and skills

Access to this Unit is at the discretion of the centre however, candidates would normally be expected to have *Communication Skills* at SCQF level 6. Candidates would also benefit from having completed the HN Units F1A7 34 *Scottish Legal System*, F1B3 34 *Commercial Law* and F19P 34 *Scots Private Law*, and will find the HN Conveyancing Units to be complementary to this Unit.

Credit points and level

1 Higher National Unit credit at SCQF level 7: (8 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.*

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. The Unit is a mandatory Unit in the PDA Domestic Conveyancing at SCQF Level 8 and the PDA Commercial Conveyancing and Leasing at SCQF Level 8.

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.

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

Identify and explain the main property classifications in Scots Law.

Knowledge and/or Skills

- ◆ The importance of ownership/title
- ◆ Possession
- ◆ Heritable and moveable property and differences between; sources of records;
- ◆ Fixtures
- ◆ Corporeal and incorporeal property
- ◆ Fungibles, Non-fungibles
- ◆ Joint and common property
- ◆ Common interest

Evidence Requirements for Outcome 1

Candidates will provide written and/or oral evidence to restricted response questions to demonstrate their ability to identify and explain the main property classifications in Scots Law.

Candidates' answers should:

- ◆ Correctly identify from an estate which parts are heritable property and which parts are moveable, and explain the difference between them
- ◆ Correctly confirm the best sources of records of heritable and moveable property in Scotland
- ◆ Correctly identify at least one example each of corporeal, incorporeal, fungible and non-fungible property
- ◆ Explain the differences between joint and common property and common interest

Evidence should be generated in open-book conditions lasting one hour.

Higher National Unit specification: statement of standards (cont)

Unit title: Applying Scots Property Law

Outcome 2

Apply the law of land tenure and obligations associated with heritable property.

Knowledge and/or Skills

- ◆ Land ownership in Scotland
- ◆ Abolition of the feudal system
- ◆ The Land Register and the Sasines Register
- ◆ Common burdens and servitudes imposed on landowners
- ◆ Crown rights in heritable property
- ◆ Residential and commercial leases and the main differences between the two leases
- ◆ The law of the tenement
- ◆ Occupier's liability
- ◆ Nuisance, trespass, spiteful use of property rights and non-natural use of water

Evidence Requirements for Outcome 2

Candidates will provide written evidence that they can correctly apply the law of land tenure and obligations associated with heritable property by:

- ◆ Completing an application for registration to the Keeper of the Registers for either a transfer of ownership or a lease. The lease should be for a commercial property from a given template
- ◆ Preparing a residential lease and a commercial lease from given templates, clarifying the main points of each lease, and identifying differences between the two. The residential lease might involve a scenario in which an individual seeks to lease a residential property for a period of at least 12 months. The commercial lease might involve a scenario in which a small business seeks to lease a retail unit for a period of five years
- ◆ Completing the necessary statutory forms for the residential lease, explaining the purpose of the forms and the implications for both the tenant and the landlord of not providing these

Candidates should be given pro forma templates of both types of lease and associated forms and also Land Registration forms.

Evidence should be generated in open-book conditions lasting one hour.

Higher National Unit specification: statement of standards (cont)

Unit title: Applying Scots Property Law

Outcome 3

Apply the law governing transfer of ownership of moveable property.

Knowledge and/or Skills

- ◆ Current legislation in respect of corporeal moveable property
- ◆ Transferring title in corporeal moveable property
- ◆ Specific or ascertained goods, unascertained goods and future goods
- ◆ Transfer of Risk
- ◆ Retention of title
- ◆ Delivery of corporeal moveable goods
- ◆ Intellectual property such as trademarks, copyrights, patents and design rights
- ◆ Transferring ownership of incorporeal property such as shares in a company

Evidence Requirements for Outcome 3

Candidates will provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can apply the law governing transfer of ownership of moveable property.

Candidates will be presented with a set of case study scenarios and will apply their knowledge in order to specify what advice they might give a fictitious client — with the proviso that in the workplace, any advice is subject to approval by a supervising solicitor.

Candidates will cover at least three different scenarios in total, comprising each of the following two scenarios:

- 1 Purchase of goods by credit facilities, and the goods are not of satisfactory quality, and
- 2 goods purchased by an individual break down, and are lost in the post when the individual sends them for repair

In addition, one of the following two optional scenarios covering intellectual property should be completed, either:

- 3 Use of copyright material within a document without express permission,
- or
- 4 Use of logo or other trademark within a document without express permission.

Satisfactory achievement in each of the two mandatory scenarios will consist of:

- ◆ Evidence that candidates understand the meaning of corporeal moveable property and its relevance to consumer protection legislation; and
- ◆ Evidence that candidates can apply the law relating to the Sale of Goods Act and how it affects goods sold by mail order, online or involving hire purchase or other credit arrangement

Higher National Unit specification: statement of standards (cont)

Unit title: Applying Scots Property Law

Satisfactory achievement in the third, optional scenario will consist of:

- ◆ For scenario 3, evidence that candidates can apply the law relating to Copyrights by correctly identifying ownership and duration of the copyrighted works, rights of the owner and conditions of public use of copyrighted material
- or
- ◆ For scenario 4, Patents and Design Rights — evidence of knowledge of the types of works covered and ownership of rights

Knowledge which cannot be inferred from the case study scenarios, including transfer of ownership of incorporeal moveable property such as shares, should be sampled either orally or in writing using restricted response questions.

The evidence should be gathered under supervised open-book conditions during an assessment lasting one hour.

Outcome 4

Apply the law governing Building Control Regulations and Planning Legislation.

Knowledge and/or Skills

- ◆ Current regulations/regulatory bodies governing Building/Planning control
- ◆ Regulations governing residential and commercial property buildings
- ◆ Regulations governing new build properties
- ◆ Regulations covering alterations to Listed Buildings
- ◆ Alterations and extensions to properties
- ◆ Planning consents, ie Building Warrants and Certificates

Evidence Requirements for Outcome 4

Candidates will show that they can apply the law relating to Building Control Regulations and planning legislation by extracting the relevant information from a set of given scenarios in order to:

- ◆ Correctly identify when planning permission would be required and explaining the application process
- ◆ complete the correct application forms to be submitted to the Local Authority
- ◆ explain the relevance of the Building Warrants/Certificates

Evidence of knowledge which cannot be inferred from the above evidence may be sampled either orally or in writing. The assessment will be carried out in open-book conditions lasting no more than one hour.

Higher National Unit specification: support notes

Unit title: Applying Scots Property Law

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

Applying Scots Property Law is part of the Professional Development Award (PDA) in Domestic Conveyancing at SCQF level 8 and the PDA in Commercial Conveyancing and Leasing at SCQF level 8. These are specialist qualifications for paralegals and others working in private law practice, or local authorities. These PDAs were developed in close collaboration with the Scottish Paralegal Association and the Law Society of Scotland. The PDAs provide one route whereby paralegals can qualify for registration as part of the Law Society of Scotland's Registered Paralegal Scheme.

This Unit is intended to give candidates an introduction to the most important rules which govern the law of property as it currently exists in Scotland, and its application to a variety of commercial transactions and legal relationships. It is applicable to those candidates who have relevant work experience in this area as it will give them a theoretical and practical understanding of the main legal principles which underpin the Scots Law of Property. The law relating to the ownership and the transfer of title of incorporeal, moveable property can be highly complex. It is recommended that centres focus on a limited number of commercial transactions or legal relationships which involve ownership of incorporeal, moveable property. To achieve this end it may be advantageous to concentrate upon a broad overview of the law relating to ownership of trademarks, copyrights, design rights, patents and shares in limited companies.

The Unit should demonstrate how legislation has been and is being developed, and the use of case law in settling legal matters and how this affects the rights and obligations of all the parties who may be in a legal relationship which involves some aspect of the Law of Property.

Guidance on the delivery of this Unit

The suggested allocation of teaching time when delivering this Unit is as follows:

- ◆ Outcome 1 — 15%
- ◆ Outcome 2 — 35%
- ◆ Outcome 3 — 15%
- ◆ Outcome 4 — 35%

Higher National Unit specification: support notes (cont)

Unit title: Applying Scots Property Law

The Unit can be approached by using relevant case studies which are related to events which require to be acted upon, or explained, in terms of legal solutions or relevant case law. Wherever possible, centres should adopt a proactive approach towards the teaching of this Unit by using reported cases from current law journals and other relevant sources. Likewise, candidates should be encouraged to source all information, eg from internet, professional journals and newspapers. Candidates should also be encouraged to use these articles as discussion topics in the classroom environment.

Centres are recommended to follow the sequence of the Outcomes, which will provide the candidates with a clear understanding of the legal issues that apply to transactions and relationships that involve property in relation to current professional standards.

Automated Registration of Title to Land (ARTL) and the new legislation covering Long Residential Leases can both be introduced in Outcome 2.

Guidance on the assessment of this Unit

This Unit is assessing knowledge of the Scots Law of Property and its practical application, so assessment of knowledge will be in relation to practical scenarios whether in case studies or by restricted response questions. Candidates who are already in employment should be encouraged to take every opportunity to supply evidence from the workplace and this may be in the form of a portfolio of evidence using witness testimony and relevant documentary evidence, supplemented where necessary by oral questioning by the assessor. The total assessment for the Unit is a maximum of 4 hours.

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 on SQA's website www.sqa.org.uk.

Assessment Guidelines

Outcome 1

Candidates could be given a copy of a Land Certificate, a copy of a Will and a copy of a Confirmation, and be asked to prepare a simple offer to purchase the heritable property and to define the parts of the estate which are classed as moveable and those which are fixtures.

Outcome 2

Where practical, candidates could be given the opportunity to search the Land Register and Sasines Register. If not, samples from the Land and Sasines Registers can be used.

Higher National Unit specification: support notes (cont)

Unit title: Applying Scots Property Law

Outcome 3

Practical scenarios should be undertaken by the candidate and should sample the topics covered in this Outcome. The scenario(s) presented to the candidate could include:

- ◆ Purchase of a laptop computer by credit facilities, with the goods subsequently found not to be of satisfactory quality
- ◆ Mobile phone under a contract agreement breaks down, and is lost in the post when sent for repair
- ◆ Use of copyright material within a thesis
- ◆ Use of logo or other trademark within an essay

Outcome 4

Candidates could be given a choice of at least two practical scenarios from which they must complete questions on no more than one. The scenarios presented to the candidate could include:

- ◆ Providing advice to an individual on Building Warrants/Certificates particular to their situation. The scenario could include reference to issues such as replacing fixtures which do not necessarily require a Building Warrant, but which the candidate should be able to identify
- ◆ A fictitious scenario requiring the candidate to complete application forms to be submitted to the Local Authority with the candidate infilling pre-printed templates with the relevant information from the scenario
- ◆ Compiling a report on situations whereby planning permission would be a mandatory requirement. Alternatively the candidate could be required to compile a report on how the application process works including reference to time factors

Online and Distance Learning

This Unit is suitable for online 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. For further information and advice please refer to the SQA guidance on *Assessment and Quality Assurance* which is available on SQA's website www.sqa.org.uk.

Higher National Unit specification: support notes (cont)

Unit title: Applying Scots Property Law

Opportunities for developing Core Skills

The Unit should provide candidates with an opportunity to develop the following Core Skills/Core Skill components in this Unit, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Communication*
- ◆ *Working with Others*

All elements of the Core Skill of *Problem Solving*, that is: Critical Thinking, Planning, Organising, Reviewing and Evaluating will be developed and enhanced as candidates undertake the Unit. By analysing relevant case studies, candidates identify and assess factors impacting on property transactions. Taking account of legal rulings in relevant precedents or statutory provisions they use a high level of critical thinking to apply the law. Case studies used will require an understanding of the rights and obligations of all the parties who may be in a legal relationship involving aspects of the Law of Property. Group discussion of ways to overcome barriers and negotiate positive outcomes could enhance practical skills in Working Co-operatively with Others although candidates must be independently able to apply knowledge and give correct advice in different situations.

The Unit will develop skills in accessing and evaluating complex information and ideas as candidates analyse and apply theoretical knowledge, checking the currency, relevance and accuracy of specialist sources used. The ability to present accurate, coherent written and oral information with attention to detail will be essential.

Equality and inclusion

This Unit specification has been designed to ensure that there are no unnecessary barriers to learning or assessment. The individual needs of learners should be taken into account when planning learning experiences, selecting assessment methods or considering alternative evidence.

Further advice can be found on our website www.sqa.org.uk/assessmentarrangements.

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Applying Scots Property Law

This Unit is designed to introduce you to the basic concepts which govern the ownership of various types of property in Scotland.

The Unit is aimed at those already employed in the legal sector, such as Paralegals, who may wish to broaden their expertise and students or others who aspire to work in a relevant role in the legal sector.

Particular emphasis will be placed on the different ways in which an item of property can be classified. You will have to demonstrate that you can satisfactorily describe an item of property by applying the correct classification used in Scotland. The Unit will also focus on how land is owned in Scotland and the various obligations or duties which are imposed on a landowner including those rules and regulations applicable to leased properties, both residential and commercial, and relating to both tenant and landlord/owner. From your study of this area, you will learn to appreciate that a landowner is simply not entitled to do anything he or she pleases in relation to property, and the rights of his or her neighbours must be given due consideration. Additionally, you will study the most important rules governing the transfer and delivery of moveable property. You will be expected to apply the various legal rules which govern the ownership and delivery of the most common types of corporeal and incorporeal property. Finally, you will study the rules and procedures relating to building control, the process to be followed when making a planning application or obtaining consent for alterations and the importance of the paperwork issued once all approvals are granted.

You will develop and enhance your Core Skills in *Problem Solving*: critical thinking at a high level, planning, organising, reviewing and evaluating. You may also have opportunities to develop your skills in working with others, and your communication skills.

There are four Outcomes in this Unit. On completion of the Unit you should be able to:

- 1 Identify and explain the main property classifications in Scots Law.
- 2 Apply the law of land tenure and obligations associated with heritable property.
- 3 Apply the law governing transfer of ownership of moveable property.
- 4 Apply the law governing Building Control Regulations and Planning Legislation

To develop these competences you will cover:

- ◆ The main property classifications employed in Scotland
- ◆ Simple ownership of land
- ◆ Burdens and servitudes imposed on land
- ◆ Basic features of residential and commercial leases and how they differ from each other
- ◆ The law of the tenement
- ◆ Common delicts associated with land
- ◆ When ownership of corporeal, moveable property is transferred
- ◆ When ownership of incorporeal, moveable property is transferred
- ◆ How planning and building control affects property

Assessment will be by means of practical case study scenarios, some involving the completion of supplied templates for appropriate legal documentation and other open-book assessments which will be used to sample knowledge not evidenced through the case studies.