



Higher National Unit specification

General information

Unit title: Scottish Law for Construction (SCQF level 8)

Unit code: H72C 35

Superclass: EC

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Version: 01

Unit purpose

This Unit is designed to enable learners to gain understanding of Scots Law and the Scottish legal system. It covers aspects of both civil and criminal law. It covers both common law and legislation.

The Unit is suitable for those who want to prepare for a career in the construction industry. It is particularly suitable for those that will manage, supervise and oversee construction projects. This might include learners aiming to work in architecture, building surveying, construction project management or quantity surveying.

The Unit will be useful for those wanting to gain understanding of contracts to help them in a procurement situation — requisitioning of materials or letting of sub-contracts for example.

Learners who have completed this Unit may want to progress to other Units concerning specialist branches of law and contract administration. They may wish to complete an HNC or HND Qualification in a construction discipline. Ultimately they may want to study at higher level and carve for themselves a career in one of the construction professions.

Outcomes

On successful completion of the Unit the learner will be able to:

- 1 Describe the systems and institutions of the law of Scotland with reference to the construction industry.
- 2 Explain the key principles of the law of contract in Scotland.
- 3 Explain the key principles of the law of delict in Scotland.
- 4 Describe the principal rights and duties of employer and employee within employment law and health and safety legislation in Scotland.

Higher National Unit Specification: General information (cont)

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Credit points and level

1 Higher National Unit credit at SCQF level 8: (8 SCQF credit points at SCQF level 8)

Recommended entry to the Unit

Entry to this Unit is at the discretion of the centre.

The Unit is designed in such a way that it may be taken on a stand-alone basis.

It might be useful for learners to have achieved appropriate NC and/or HN Units in the subject areas of construction health and safety, quantity surveying practice or contract administration.

Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes for 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 Assessment Support Pack (ASP) for this Unit provides assessment and marking guidelines that exemplify the national standard for achievement. It is a valid, reliable and practicable assessment. Centres wishing to develop their own assessments should refer to the ASP to ensure a comparable standard. A list of existing ASPs is available to download from SQA's website (<http://www.sqa.org.uk/sqa/46233.2769.html>).

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.

Higher National Unit specification: Statement of standards

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Acceptable performance in this Unit will be the satisfactory achievement of the standards set out in this part of the Unit specification. All sections of the statement of standards are mandatory and cannot be altered without reference to SQA.

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. Learners 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

Describe the systems and institutions of the law of Scotland with reference to the construction industry.

Knowledge and/or Skills

- ◆ Sources of Scots Law
- ◆ The Scottish Court system — function and jurisdiction of the various courts
- ◆ Inquiries — function and jurisdiction within a construction industry context
- ◆ Adjudication in the construction industry — application and practice
- ◆ Arbitration in the construction industry — application and practice

Outcome 2

Explain the key principles of the law of contract in Scotland.

Knowledge and/or Skills

- ◆ Essential features of a valid contract
- ◆ Illegality and error
- ◆ Breach of contract, remedies and termination

Outcome 3

Explain the key principles of the law of delict in Scotland.

Knowledge and/or Skills

- ◆ Definition of delict and general principles of delictual liability
- ◆ Negligence
- ◆ Defences against actions based on delict

Higher National Unit specification: Statement of standards (cont)

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Outcome 4

Describe the principal rights and duties of employer and employee within employment law and health and safety legislation in Scotland.

Knowledge and/or Skills

- ◆ Employee's common law rights and duties
- ◆ Employer's common law rights and duties
- ◆ Employee's statutory rights and duties
- ◆ Employer's statutory rights and duties

Evidence Requirements for this Unit

Learners will need to provide evidence to demonstrate their Knowledge and/or Skills across all Outcomes by showing that they can:

Outcome 1

Describe the systems and institutions of the law of Scotland with reference to the construction industry for *one out of five* of the Knowledge/Skills listed below:

- ◆ Sources of Scots Law
- ◆ The Scottish Court system — function and jurisdiction of the various courts
- ◆ Inquiries — function and jurisdiction within a construction industry context
- ◆ Adjudication in the construction industry — application and practice
- ◆ Arbitration in the construction industry — application and practice

Outcome 2

Explain the key principles of the law of contract in Scotland for *one out of three* of the Knowledge/Skills listed below:

- ◆ Essential features of a valid contract
- ◆ Illegality and error
- ◆ Breach of contract and remedies for breach of contract

Outcome 3

Explain the key principles of the law of delict in Scotland for *one out of three* of the Knowledge/Skills listed below:

- ◆ Definition of delict and general principles of delictual liability
- ◆ Negligence
- ◆ Defences against actions based on delict

Higher National Unit specification: Statement of standards (cont)

Unit title: Scottish Law for Construction (SCQF level 8)

Outcome 4

Describe the principal rights and duties of employer and employee within employment law and health and safety legislation in Scotland for *two out of four* of the Knowledge/Skills listed below:

- ◆ Employee's common law rights and duties
- ◆ Employer's common law rights and duties
- ◆ Employee's statutory rights and duties
- ◆ Employer's statutory rights and duties

All Outcomes

Evidence should be written and/or oral. Learners' responses should relate to construction industry scenarios where relevant — they should make reference to decided cases where applicable and appropriate.

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. Learners should not know in advance the items on which they will be assessed and a different item or combination of items should be sampled on each assessment occasion.



Higher National Unit Support Notes

Unit title: Scottish Law for Construction (SCQF level 8)

Unit Support Notes are offered as guidance and 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 has been written in order to allow learners to develop knowledge, understanding and skills in the following areas:

- 1 The systems and institutions of the law of Scotland.
- 2 The key principles of the law of contract in Scotland.
- 3 The key principles of the law of delict in Scotland.
- 4 The main rights and duties of employer and employee within employment law in Scotland.

This Unit is designed to enable learners to gain understanding of the basics of the law in Scotland and its application to the construction industry. This Unit caters for learners from the built environment disciplines in the construction industry.

This Unit is set in the context of Scots Law and the legal systems and institutions of Scotland. The learning and assessment should — as far as possible — be in a construction industry context. By this we mean that case law and case study scenarios should be based as much as is appropriate on construction industry situations.

It must be admitted that our legal system — based in part on the principle of judicial precedent — draws much of its precepts from case law *outwith* the construction industry. All the same our learners will be better placed to apply their learning if it comes from a building context.

In the following notes, the writer has suggested a range of topics which might be expected to be covered by lecturers. There is also recommendation as to how much time should be spent on each Outcome. This has been done to help lecturers to decide what depth of treatment to give the topics chosen for each of the Outcomes. While it is not mandatory for a centre to use this specific list of topics it is strongly recommended that it does so. This is because it meets Unit specification requirements and that the Assessment Support Pack (ASP) is based on this list.

Lecturers are advised to study this list of topics in conjunction with the ASP so that they can get a clear indication of the standard of achievement expected of learners in this Unit.

Higher National Unit Support Notes (cont)

Unit title: Scottish Law for Construction (SCQF level 8)

Outcome 1

Outcome 1 covers the systems and institutions of the law of Scotland with reference to the construction industry. Most learners are likely to come to the Unit with some general knowledge about legal systems.

The areas that should be covered in this Outcome are as follows:

- ◆ Sources of Scots Law:
 - Statute:
 - primary legislation
 - secondary legislation
 - Common law:
 - judicial precedent
 - Institutional Writings
 - Custom
 - Equity
 - European Community law:
 - Articles of the Treaties
 - Regulations
 - Directives
- ◆ The Scottish Court system — function and jurisdiction of the various courts:
 - Criminal courts
 - Civil courts
 - Advantages and limitations of litigation
- ◆ Inquiries — function and jurisdiction within a construction industry context:
 - Planning inquiries
- ◆ Adjudication in the construction industry — application and practice:
 - Statutory adjudications
 - Adjudication in contracts
 - Advantages and limitations of adjudication
- ◆ Arbitration in the construction industry — application and practice:
 - Common law aspects
 - Arbitration legislation
 - Advantages and limitations of arbitration

The above lists are not comprehensive. Learners are at liberty to explore other aspects of the sub-topics. This might be particularly important if there are changes to the Scottish legal system in the future.

Higher National Unit Support Notes (cont)

Unit title: Scottish Law for Construction (SCQF level 8)

Outcome 2

The areas that should be covered in Outcome 2 are as follows **(12 hours)**:

- ◆ Essential features of a valid contract:
 - Agreement
 - Offer and acceptance
 - generally
 - tenders for construction works
 - lapse of offer
 - electronic communications including e-tendering
 - Counter-offer
 - Obligation
 - Consent
 - Capacity
 - Formality
 - Use of standard forms of contract
 - Legality
 - Enforceability
- ◆ Illegality and error
 - Flawed contracts — void and voidable
 - Pacta illicita
 - Error and misrepresentation — causes and consequences
 - Failure to disclose material facts
 - Undue influence
 - Force and fear
 - Third party rights
- ◆ Breach of contract and remedies for breach of contract:
 - Breach:
 - anticipatory breach
 - failure to perform the contract
 - delay
 - unsatisfactory performance
 - Remedies for breach of contract:
 - rescission
 - damages and liquidate damages
 - retention and lien
 - court orders

Higher National Unit Support Notes (cont)

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Outcome 3

Outcome 3 asks learners to explain the key principles of the law of delict in Scotland. The areas that should be covered in this Outcome are as follows **(8 hours)**:

- ◆ Definition of delict and general principles of delictual liability:
 - Definition of delict:
 - blame
 - compare and contrast with crime
 - compare and contrast with contractual liability
 - Damnum injuria datum
 - Delict and vicarious liability
- ◆ Negligence:
 - Duty of care
 - Foreseeability
 - Misstatements
 - Professional reports, eg property condition and valuation reports
 - Liability
 - Burden of proof
 - Causation
 - Remoteness of damage
- ◆ Defences against actions based on delict:
 - Contributory negligence
 - Consent
 - Volenti non fit injuria
 - Damnum fatale
 - Immunity
 - Prescription and limitation

Higher National Unit Support Notes (cont)

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Outcome 4

Outcome 4 asks learners to describe the rights and duties of employer and employee within employment law in Scotland. This includes health and safety legislation. Employment law is an enormous subject and we can only focus on a few of the main aspects of it in this Outcome.

The areas that should be covered in this Outcome are as follows **(12 hours)**:

- ◆ Employee's common law rights and duties:
 - rendering of personal service
 - obedience and co-operation
 - competence and care
 - good faith
- ◆ Employer's common law duties:
 - payment of wages or salary
 - indemnity against losses and liabilities
 - respect
 - references
 - safety
- ◆ Employee's statutory rights and duties:
 - contracts of employment and written particulars
 - time off work – with or without pay
 - trade union activities
 - notice
 - redundancy
 - discrimination
- ◆ Employer's statutory rights and duties:
 - contracts of employment and written particulars
 - safety
 - various details regarding information on and payment of wages or salary
 - dismissal
 - redundancy
 - discrimination

Again the above lists are not exhaustive — and neither should they be taken as a checklist in that each and every item on the list needs to be covered in assessment responses.

Higher National Unit Support Notes (cont)

Unit title: Scottish Law for Construction (SCQF level 8)

Guidance on approaches to delivery of this Unit

This Unit provides the learner with knowledge and understanding of the systems and institutions of the law in Scotland and their application generally and in relation to the construction industry. The structure of this specification is tailored towards a sequential delivery pattern commencing with the origins of Scots Law and continuing with exploration of elements of law that are significant in procurement processes and contractual relationships. This is followed by a review of employment law and health and safety legislation.

Scots Law and its relevance to the construction industry are likely to be difficult subjects for learners at the start of any of the Built Environment awards: it is therefore suggested that the Unit is accommodated in the second half of the programme, but prior to or in support of the appropriate *Graded Unit*.

It is recommended that the Outcomes are delivered in the order that they are presented in this Unit Specification. The learner will then benefit from knowledge and understanding of the fundamental principles of Scottish Law prior to exploring the detailed elements contained in Outcomes 2, 3 and 4.

Centres are asked to consider imaginative ways in which to contextualise learning when delivering this Unit and of supporting the learner in developing an embedded understanding of the law of Scotland. The aim should be to encourage the use of learning and teaching approaches that are varied and appropriate to the aims of the Unit. This might be facilitated by utilising appropriate and/ or topical case study examples or by carrying out structured internet-based investigation into specific aspects of contract and employment law. There are also possible opportunities to integrate or develop knowledge within other components of the HN programme such as in Standard Forms of Construction Contracts, Architectural Procedures or when generating evidence within an appropriate *Graded Unit*.

In order to engage learners still further it is important to put the learner at the centre of the learning process. This might be achieved by getting learners into small discussion groups. It would also be helped by getting learners to give individual or group presentations on case law and various aspects of the Scottish legal system such as the function and jurisdiction of the different courts.

Guidance on approaches to assessment of this Unit

Evidence can be generated using different types of assessment. The following are suggestions only - there may be other methods that would be more suitable to learners.

It is recommended that the Outcomes be completed in the sequence presented. It is recommended that assessment is for each Outcome separately and in order. It follows that the assessment regime should follow this approach. This does not preclude integration of the diverse subject matter during teaching and tutorials.

This Unit lends itself to the production of written and/or oral evidence because most of it is about explaining legal concepts and systems.

Higher National Unit Support Notes (cont)

Unit title: Scottish Law for Construction (SCQF level 8)

Where learners experience a range of assessment methods, this helps them to develop different skills that should be transferable to work or further and higher education. In this Unit the use of case law and case study scenarios as well as more traditional tasks and questions can be used to illicit suitable responses from learners.

It is recommended that assessment in this Unit should be carried out by means of four separate tasks. Each task will cover one of the four Outcomes in order. Each of the assessment tasks should be allocated a time limit of 45 minutes — this makes a total of three hours of assessment for the Unit.

If, however, an assessment is devised to cover all four Outcomes in an integrated instrument of assessment then the time allocation should not exceed two hours.

If centres devise their own assessment instruments they are advised that prior verification will help to ensure that the national standard is being met.

Assessment of all Outcomes should be in controlled, supervised conditions: learners should carry out their own work. Assessment should be in closed-book conditions. As such learners are not allowed to refer to notes, textbooks, the internet or any other source during the assessment.

Opportunities for 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 social software. Centres which wish to use e-assessment must ensure that the national standard is applied to all learner evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. The most up-to-date guidance on the use of e-assessment to support SQA's qualifications is available at www.sqa.org.uk/e-assessment.

Opportunities for developing Core and other essential skills

In this Unit learners will be able to develop skills in *Communication* — both Written and Verbal. They will learn about relatively complex ideas of a legal nature and have to explain these clearly.

Communication is an important employability skill. In this Unit learners will develop broad transferable communication skills. In addition they will gain understanding that will be beneficial in a construction-specific situation.

History of changes to Unit

Version	Description of change	Date

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General information for learners

Unit title: Scottish Law for Construction (SCQF level 8)

This section will help you decide whether this is the Unit for you by explaining what the Unit is about, what you should know or be able to do before you start, what you will need to do during the Unit and opportunities for further learning and employment.

You will be interested in taking this Unit if you want a career in one of the construction professions: architecture; quantity surveying; building surveying or construction management for example.

The Unit is about the law in Scotland — its principles and institutions. The Unit covers the laws of contract and delict as well as the law of employment. It covers the systems and institutions of Scots Law including the court system.

How you will be assessed

You will be assessed in your ability to recall and explain the basic principles and systems of the law in Scotland. You will be assessed — in part — in your ability to explain how these apply to the construction industry.

Assessment will be closed-book.

Core Skills you will develop, how they will be developed and whether they will be certificated

In this Unit you will develop skills in *Communication*: both Oral and Written Communication skills.

You will read case law and learn about the principle of judicial precedent. What's more you will have to explain the application of this concept and the application of specific cases to the construction industry. These are significant skills and this will take your communication skills to a higher level. This will add significantly to your employability skills in preparation for future job applications and interviews.

Other skills development in enterprise, employability, sustainable development, citizenship

In this Unit you will enhance your employability skills in the construction industry as you develop understanding of contracts, duties of care and other legal duties. You will gain skills in understanding complex inter-related ideas. Potential employers in any industry may appreciate your ability to grasp relatively complex legal concepts.