

## National Unit Specification: general information

**UNIT** Introduction to the Law of Contract (Higher)

**NUMBER** D32C 12

### COURSE

### SUMMARY

The candidate will be able to explain how contracts become legally binding, how their validity and enforceability can be affected, the effect of termination and the consequences of breach.

### OUTCOMES

- 1 Explain how a contract is formed.
- 2 Explain the law relating to written contracts.
- 3 Explain the factors which can affect the validity of a contract.
- 4 Apply the statutory provisions relating to exclusion clauses.
- 5 Explain the ways by which contracts are commonly terminated and the remedies available for a breach of contract.

### RECOMMENDED ENTRY

At the discretion of the centre but achievement of National Certificate Module 7110045 Communication 3 or equivalent is recommended.

### CREDIT VALUE

1 Credit.

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### Administrative Information

**Superclass:** EC

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## **CORE SKILLS**

Information on the automatic certification of any core skills in this unit is published in *Automatic Certification of Core Skills in National Qualifications* (SQA, 1999).

## National Unit Specification: statement of standards

### UNIT Introduction to the Law of Contract

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 the Scottish Qualifications Authority.

#### OUTCOME 1

Explain how a contract is formed.

##### Performance criteria

- a) The legal nature of a contract is correctly explained.
- b) Offers and acceptances are correctly distinguished from invitations to treat and conditional acceptances.
- c) Rules in respect of communication or revocation of offers and acceptances are clearly and correctly stated.

##### Note on range for the outcome

The range is fully expressed in the performance criteria.

##### Evidence requirements

Please refer to *Evidence requirements for the unit* at the end of the Statement of Standards.

#### OUTCOME 2

Explain the law relating to written contracts.

##### Performance criteria

- a) The advantages of written contracts are clearly explained.
- b) Circumstances where writing is required by law in order for transactions to be legally enforceable are correctly identified.
- c) The current requirements for documents to be classed as “self evidencing” are correctly outlined.
- d) The consequences of *rei interventus* are clearly explained.

##### Note on range for the outcome

Main provisions of Requirements of Writing (Scotland) Act 1955.

##### Evidence requirements

Please refer to *Evidence requirements for the unit* at the end of the Statement of Standards.

## National Unit Specification: statement of standards (cont)

**UNIT** Introduction to The Law of Contract

### **OUTCOME 3**

Explain the factors which can affect the validity of a contract.

#### **Performance criteria**

- a) The difference between a void agreement and a voidable contract is clearly explained.
- b) Factors which may affect contractual capacity are correctly explained.
- c) The effects of error and misrepresentation on an agreement are correctly explained.
- d) The effects of illegality and unenforceability on an agreement are clearly and correctly explained.

#### **Note on range for the outcome**

Age of Legal Capacity (Scotland) Act 1991.

Restrictive covenants.

#### **Evidence requirements**

Please refer to *Evidence requirements for the unit* at the end of the Statement of Standards.

### **OUTCOME 4**

Apply the statutory provisions relating to exclusion clauses.

#### **Performance criteria**

- a) The main provisions of the Unfair Contract Terms Act 1977, as amended, are correctly outlined.
- b) The main provisions of the Unfair Contract Terms Act 1977 are correctly applied to a practical example.

#### **Note on range for the outcome**

The range is fully expressed in the performance criteria.

#### **Evidence requirements**

Please refer to *Evidence requirements for the unit* at the end of the Statement of Standards.

## National Unit Specification: statement of standards (cont)

**UNIT** Introduction to The Law of Contract

### **OUTCOME 5**

Explain the ways by which contracts are commonly terminated and the remedies available for a breach of contract.

#### **Performance criteria**

- a) The explanation of the ways by which contracts are commonly terminated is clear and correct.
- b) The distinction between a material breach and non material breach is correctly explained.
- c) Appropriate remedies for breaches of contract are explained clearly.

#### **Note on range for the outcome**

Performance; impossibility; frustration; breach of contract - material; non-material.

#### **Evidence requirements**

Please refer to *Evidence requirements for the unit* at the end of the Statement of Standards.

### **EVIDENCE REQUIREMENTS FOR THE UNIT**

#### **Outcome 1**

Written or oral evidence of the ability to explain how a contract is formed.

Candidates should provide:

For PC (a) an explanation of the difference between a legally binding agreement and an agreement which is not legally binding;

For PC (b), an explanation of the difference between an offer and an invitation to treat and an acceptance from a conditional acceptance on a minimum of one occasion;

For PC (c), a statement of one rule relating to either communication or revocation of an offer and one rule relating to either the communication or revocation of an acceptance.

#### **Outcome 2**

Written or oral evidence of the ability to explain the law relating to written contracts.

Candidates should:

For PC (a), provide a clear explanation of a minimum of two advantages;

For PC (b), identify a minimum of one circumstance;

For PC (c), mention should be made of the two requirements for documents to be 'self evidencing';

For PC (d), the consequences should be explained on at least one occasion.

## **National Unit Specification: statement of standards (cont)**

**UNIT** Introduction to The Law of Contract

### **Outcome 3**

Written or oral evidence of the ability to explain the factors which can affect the validity of a contract.

Candidates should provide:

For PC (a), an explanation of the difference between a void agreement and a voidable contract on a minimum of one occasion;

For PC (b), an explanation of at least two factors affecting contractual capacity;

For PCs (c) and (d), the explanation should cover at least one example for each of the effects of error, misrepresentation, illegality and unenforceability on an agreement.

### **Outcome 4**

Written or oral evidence is required of the ability to apply the statutory regulation of exclusion clauses relating to personal injury, loss and damage to property.

Candidates could be given a brief case study for example, a sign in a cloakroom.

For PCs (a) and (b), the main provisions should cover liability with regard to personal injury, loss and liability for loss or damage to property on at least one occasion.

### **Outcome 5**

Written or oral evidence is required of the ability to identify the ways by which contracts are commonly terminated and to determine appropriate remedies for selected breaches of contract.

For PC (a), the explanation should cover at least three ways;

For PC (b), the explanation should cover at least one material and one non material breach;

For PC (c), appropriate remedies for at least three breaches of contract should be explained.

## National Unit Specification: support notes

### UNIT Introduction to The Law of Contract

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**

Entering into contracts is something most individuals do every day and this fact should assist lecturers in the delivery of this module. Unlike the study of other subjects which may be purely theoretical, it should not be difficult in a class of any size to find candidates who have had personal experience of a variety of contractual situations, eg. as a customer in a shop (invitation to treat/offer), the buyer of a car which has had its odometer turned back (misrepresentation), or where they have been supplied with faulty goods. In all of these circumstances, candidates would probably have a rough idea as to what their rights were – the aim of this module is to focus their minds on the legal principles behind these everyday situations.

This module will also highlight the respective roles of the two main sources of Scots law – the bulk of contract law comes from case law but statute has intervened here and there (eg. Age of Legal Capacity (Scotland) Act 1991 and Unfair Contract Terms Act 1977). Bearing this in mind, it is suggested that lecturers refer to case law wherever appropriate and that case studies form the basis of assessments.

With regard to outcome 1, candidates should be able to point out that what distinguishes contracts from other (eg. social, betting) agreements is the fact that they are legally enforceable through court action.

Offers should be differentiated from “invitations to treat” along with any other aspects considered relevant, eg. manner, scope of offer. As for acceptances, what actually constitutes an acceptance? Position with counter offers (conditional acceptances); no imposition without agreement; communication; time limits. Rules relating to the withdrawal of offer/acceptance.

As mentioned above, case law should be referred to wherever possible (both here and elsewhere relevant) in order to demonstrate:

- i) the factual situations which brought about a court’s decision;
- ii) the fact that such a decision has become part of the law of contract; and
- iii) that reference to relevant judicial authority can only enhance a candidate’s answer.

As for outcome 2, advantages of written contract should be obvious – proof of existence; evidence of terms and conditions etc. Writing (offer and acceptance) required for transfer of heritable property etc. is provided by the ’95 Act: provisions for self evidencing, and statutory *rei interventus*.

Outcome 3 is likely to take longest to deliver and is likely to cause problems for candidates for this very reason. Lecturing staff should feel free to decide into how much depth each of the factors should be examined but it is suggested that the selected case studies should be relatively straightforward.

## National Unit Specification: support notes (cont)

### UNIT Introduction to The Law of Contract

As with other aspects of the law of contract, greater depth may be gone into where candidates progress on to Higher National units.

Capacity might cover the position of those under 16/18, insane persons, enemy aliens, limited companies.

In outcome 4, input should be restricted to the statutory contracts so as not to confuse candidates with the previous common law position (this could be looked at elsewhere). 1977 Act amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 - S. 68 extended the 1977 Act's provisions to non-contractual notices.

Finally, in outcome 5, less common means of terminating contracts have been deliberately omitted leaving performance impossibility (including frustration) and breach. Remedies should cover specific implement decree of interdict, rescission, retention/lien, and damages, although it is not necessary to assess all of these.

### SPECIAL NEEDS

This unit specification is intended to ensure that there are no artificial barriers to learning or assessment. Special needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments or considering special alternative outcomes for units. For information on these, please refer to the SQA document *Guidance on Special Assessment and Certification Arrangements for Candidates with Special Needs/Candidates whose First Language is not English* (SQA, 1998).