

Higher National Unit Specification

General information for centres

Unit title: Scottish Law for Construction

Unit code: DW42 35

Unit purpose: This Unit is designed to enable candidates to gain knowledge and understanding of the law applicable to the Construction Industry in Scotland.

On completion of the Unit candidates will be able to:

- 1 Describe the systems and Institutions of the law of Scotland.
- 2 Describe the mechanism and basic principles of Contractual Contracts.
- 3 Describe the law of Delict.
- 4 Describe the provision for Construction Contracts included within the Housing, Grants, Construction and Regeneration Act.

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: It would be an advantage for candidates to have a basic knowledge and understanding of the law applicable to the Construction Industry although this is not essential because the Unit covers all the basic principles. Possession of basic knowledge and understanding may be evidenced by possession of an NQ Unit dealing with building contracts.

Core Skills: There are opportunities to develop the Core Skills of Communication and Problem Solving 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: It is possible to assess candidates either on an individual Outcome basis, combinations of Outcomes or by a single holistic assessment combining all Outcomes. The assessment paper/s should be composed of an appropriate balance of short answer, restricted response and structured questions. Assessment should be conducted under supervised, controlled conditions. A single assessment covering all Outcomes should not exceed three hours in duration. It should be noted that candidates must achieve all the minimum evidence specified for each Outcome in order to pass this Unit.

General information for centres (cont)

An exemplar instrument of assessment and marking guidelines have been produced to provide examples of the type of evidence required to demonstrate achievement of the aims of the Group Award covered by this integrative assessment and to indicate the national standard of achievement at SCQF level 7.

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.

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

Describe the systems and Institutions of the Law of Scotland

Knowledge and/or skills

- ◆ Historical and philosophical sources of Scots Law
- ◆ Formal sources of Scots Law
- ◆ Law of Custom and Equity
- ◆ Functions and jurisdictions of the Law Courts within the Scottish Legal System

Evidence Requirements

Evidence for the knowledge and/or skills in the Outcome will be provided on a sample basis. The evidence may be presented in the response to the specific question. Each candidate will need to demonstrate that she/he can answer correctly questions based on a sample of the items shown above. In any assessment of this Outcome **three out of four** knowledge and/or skills will be sampled and assessed.

In order to ensure that candidates will not be able to foresee what items they will be questioned on, a different sample of three out of four knowledge and/or skills items is required each time the Outcome is assessed. Candidates must provide a satisfactory response to all three items.

Where sampling takes place, a candidate's response can be judged to be satisfactory where evidence provided is sufficient to meet the requirements for each item by showing that the candidate is able to:

- ◆ identify and explain the sources, Institutions and application of Scottish Law

Assessment guidelines

Evidence should be generated through assessment undertaken in controlled, supervised, open-book conditions.

Higher National Unit specification: statement of standards (cont)

Unit title: Scottish Law for Construction

Outcome 2

Describe the mechanism and basic principles of Contractual Contracts

Knowledge and/or skills

- ◆ Mechanism and basic principles of a binding contract
- ◆ Legal relevance of a 'letter of intent' and 'promise'
- ◆ contra Proferentum Rule
- ◆ Contractual Chain
- ◆ Repudiation and Determination

Evidence Requirements

Evidence for the knowledge and/or skills in this Outcome will be provided on a sample basis. The evidence may be presented in responses to specific questions. Each candidate will need to demonstrate that she/he can answer correctly questions based on a sample of the items shown above. In any assessment of this Outcome **three out of five** knowledge and/or skills must be sampled which **must** include "Mechanism and basic principles of a binding contract"

In order to ensure that the candidate will not be able to foresee what items they will be questioned on, a different sample of three out of five knowledge and /or skills items is required each time the Outcome is assessed. Candidates must provide a satisfactory response to all three items sampled.

Where an item is sampled, a candidate 's response can be judged to be satisfactory where the evidence provided is sufficient to meet the requirements for each item by showing that the candidate is able to:

- ◆ explain the mechanism, basic principles and components of Contractual Contracts

Assessment guidelines

Evidence should be generated through assessments undertaken in controlled, supervised, open-book conditions.

Outcome 3

Describe the law of Delict

Knowledge and/or skills

- ◆ Delict
- ◆ defences of a Delictual Act
- ◆ Delictual Act and Contractual Liability

Higher National Unit specification: statement of standards (cont)

Unit title: Scottish Law for Construction

Evidence Requirements

Evidence for the knowledge and/or skills in this Outcome will be provided on a sample basis. The evidence may be presented in a response to specific questions. Each candidate will need to demonstrate that she/he can answer correctly questions based on a sample of the item shown above. In any assessment of this Outcome **two out of three** knowledge and/or skills must be sampled.

In order to ensure that the candidate will not be able to foresee what items they will be questioned on, a different sample of two out of three knowledge and/or skills items is required each time the Outcome is assessed. Candidates must provide a satisfactory response to both items sampled.

Where an item is sampled, a candidate 's response can be judged to be satisfactory where the evidence provided is sufficient to meet the requirements for each item by showing that the candidate is able to:

-

- ◆ explain the basis and possible implications of the Law of Delict

Assessment guidelines

Evidence should be generated through assessments undertaken in controlled, supervised, open-book conditions.

Outcome 4

Describe the provision for Construction contracts included within the Housing, Grants, Construction and Regeneration Act

Knowledge and/or skills

- ◆ Remedies available for disputed claims
- ◆ Payment provision
- ◆ Lack of Contractual Conditions

Evidence Requirements

Evidence for the knowledge and/or skills in this Outcome will be provided on a sample basis. The evidence may be presented in responses to specific questions. Each candidate will demonstrate that she/he can answer correctly questions based on a sample of the items shown above. In any assessment of the Outcomes **two out of the three** knowledge and/or skills items should be sampled.

In order to ensure that candidates will not be able to foresee what items they will be questioned on, a different sample of two out of the three knowledge and/or skills items is required each time the Outcome is assessed. Candidates must provide a satisfactory response to the two items sampled.

Higher National Unit specification: statement of standards (cont)

Unit title: Scottish Law for Construction

Where an item is sampled, a candidate's response can be judged to be satisfactory where the evidence provided is sufficient to meet the requirements for each item by showing that the candidate is able to:

- ◆ identify and explain the provision for Construction contracts included within the Housing, Grants, Construction and Regeneration Act

Assessment guidelines

Evidence should be generated through assessments undertaken in controlled, supervised open-book conditions.

Administrative Information

Unit code:	DW42 35
Unit title:	Scottish Law for Construction
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Higher National Unit specification: support notes

Unit title: Scottish Law for Construction

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 has been written in order to allow candidates to develop knowledge, understanding and skills in the following areas:

- ◆ Describe the systems and Institutions of the law of Scotland
- ◆ Describe the mechanism and basic principles of Contractual Contracts
- ◆ Describe the law of Delict
- ◆ Describe the provision for Construction Contracts included within the Housing, Grants, Construction and Regeneration Act

In designing this Unit the Unit writer has identified a range of topics that is expected to be covered by lecturers. The writer has also given recommendations as to how much time should be spent on each Outcome. This has been done to help lecturers to decide what depth of treatment should be given to the topics attached to each of the Outcomes. Whilst it is not mandatory for a centre to use this list of topics it is strongly recommended that it do so to ensure continuity of teaching and learning.

The list of topics is given below. Lecturers are advised to study this list of topics so that they can get a clear indication of the standard of achievement expected of candidates in this Unit.

1 Describe the systems and Institutions of the Law of Scotland. (6 hours)

- ◆ Consider distinction between the Civil and Criminal Law of Scotland in relation to Construction matters:
 - eg. Health and Safety
 - Breach of contract
 - Negligence

Some cases are purely civil actions, others relate only to criminal proceedings, whilst some may result in both civil and criminal action.

- ◆ Sources of Scots Law stem from history, philosophy, custom, equity along with UK and European legislation.
- ◆ Candidates must be clear as to the jurisdiction of each court both in terms of geographical jurisdiction and in terms of jurisdiction about subject matter.

Routes of appeal in the Scottish legal system should be considered along with highlighting appropriate routes of appeal to European courts.

Higher National Unit specification: support notes (cont)

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2 Describe the mechanism and basic principles of Contractual Contracts. (12 hours)

- ◆ Candidates must be able to explain what constitutes in Scots Law a Binding Contract enforceable by the courts by explaining such terms as Consensus in idem

Candidates must be able to explain the relevance of a counter offer and what affect it has on the original offer.

- ◆ The candidate must be able to elaborate on what the principle variation is between Promise (unilateral obligation) and a Contract (bilateral obligation), by giving examples of both e.g. Contract of Employment.
- ◆ The candidate must be able to explain the purpose of a Letter of Intent in a contractual Contract and how it varies to an Acceptance. Courts have been faced with situations where no contract was finally concluded but work had commenced on the basis of the Letter of Intent.
- ◆ The candidate must be able to explain the term ‘Contra Proferentum Rule’ and why such rules of interpretation very often may be interpreted against the party relying upon it.
- ◆ The candidate must be able to explain what is meant by The Contractual Chain by further elaborating on chain liability, which relies on all links in the chain remaining intact.
- ◆ The candidate must be able to explain the differences between Repudiation at Common Law and Determination in Contractual Law along with the legal consequences of such in a Construction Contract.

3 Describe the Law of Delict. (8 hours)

- ◆ The candidate must be able to describe the Law of Delict and further explain the statement ‘Delict is a legal wrong’.
- ◆ The candidate will list and briefly explain the various defences to a delictual action which may be based on a point of law or fact.
- ◆ The candidate will explain the relationship between ‘duty and delictual liability’ and ‘performance of contractual liability’. She/he will be able to explain the difference between both liabilities.

4 Describe the provisions for Construction Contracts included within the Housing, Grants, Construction and Regulation Act 1996. (11 Hours)

- ◆ The candidate must explain the remedies to the parties to a building Contract where a dispute exists. One such example of a remedy is the provision to give notice to suspend works if monies are withheld.

Higher National Unit specification: support notes (cont)

Unit title: Scottish Law for Construction

- ◆ The candidate must be able to explain the provisions incorporated into the Act to compensate for any lack of structured payment schemes to ensure parties to building project receive stage payments for works done and materials incorporated.
- ◆ The candidate must be able to explain the provision which exists within the Act (Scotland only) where no formal Contractual Contracts exists between parties to a contract. The candidate will also need to explain exemptions to this rule (ie when such provisions do not apply).

Guidance on the delivery and assessment of this Unit

As this Unit provides basic understanding to the Scottish legal systems and what constitutes a binding contract which underpins much of the studies undertaken in Standard Forms, it is recommended that the Unit be delivered towards the start of the relevant HN award.

Details on approaches to assessment are given under Evidence Requirements and Assessment guidelines under each Outcome in the Higher National Unit specification: statement of standards section. It is recommended that these sections be read carefully before proceeding with assessment of candidates.

Opportunities for developing Core Skills

The following grid provides a general guide to opportunities for the development of Core Skills in this Unit. Opportunities for the development of Core Skills at the output level are more fully identified in the Core Skills Signposting Guide.

Core Skill	Outcome 1	Outcome 2	Outcome 3	Outcome 4	Outcome 5
1 Communication					
Reading	✓	✓	✓		
Writing	✓	✓	✓		
Oral					
2 Numeracy					
Using Number					
Using Graphical Information					
3 IT					
Using Information Technology					
4 Problem Solving					
Critical Thinking	✓	✓	✓		
Planning and Organising					
Reviewing and Evaluating					
5 Working with Others					

Higher National Unit specification: support notes (cont)

Unit title: Scottish Law for Construction

Open learning

This Unit could be delivered by distance learning, which may incorporate some degree of on-line support. However, with regard to assessment, planning would be required by the centre concerned to ensure the sufficiency and authenticity of candidate evidence. Arrangement would be required to be put in place to ensure that the assessment, which is required to be at a single event, was conducted under controlled, supervised conditions.

For information on normal open learning arrangements, please refer to the SQA guide *Assessment and Quality Assurance of Open Learning* (SQA 2000).

Candidates with additional support needs

This Unit specification is intended to ensure that there are no artificial barriers to learning or assessment. The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments or considering alternative Outcomes for Units. For information on these, please refer to the SQA document *Guidance on Alternative Assessment Arrangements for Candidates with Disabilities and/or Additional Support Needs*, which is available on SQA's website: www.sqa.org.uk.

General information for candidates

Unit title: Scottish Law for Construction

This Unit has been designed to allow you to develop knowledge, understanding and skills in Construction Law including:

- ◆ the systems and Institutions of the law of Scotland
- ◆ the mechanism and basic principles of Contractual Contracts
- ◆ Law of Delict
- ◆ the provision for Construction Contracts included within the Housing, Grants, Construction and Regeneration Act