



Higher National Unit specification: general information

Unit title: Bankruptcy and Diligence

Unit code: H490 35

Superclass: EC

Publication date: May 2013

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Unit purpose

This Unit is designed to provide candidates with an understanding of the theoretical and practical processes and procedures of bankruptcy and diligence in Scotland with particular reference to creditor lead debt recovery.

This Unit is intended to be relevant to those already employed in the legal sector who may wish to broaden their expertise and candidates or others who aspire to work in a relevant role in the legal sector.

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

- 1 Apply the law relating to the various forms of diligence against moveable and heritable property.
- 2 Apply the procedures involved in the law of Bankruptcy.
- 3 Apply the law relating to the recognition and enforcement of foreign judgements within Scotland and Scottish Judgements outwith Scotland.

Credit points and level

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

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 at SCQF level 6 or similar qualifications and experience. It is also recommended that candidates should also have knowledge of the HN Units *Scottish Legal Systems* and *Sheriff Court Civil Procedures*.

Higher National Unit Specification: General information (cont)

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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.

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

Apply the law relating to the various forms of diligence against moveable and heritable property.

Knowledge and/or Skills

Apply legislation and procedures relevant to diligence, namely:

(a) Enforcement

- ◆ Charge for Payment of Money
- ◆ The role and function of Sheriff Officers and Messengers-at-Arms
- ◆ Debt Advice Pack
- ◆ Publication of information relating to credit rating
- ◆ Wrongful diligence

(b) Diligence

- ◆ Inhibition:
 - In Execution:
 - Creation, effect, termination, breach, expenses
 - On the Dependence:
 - Creation, hearing, effect, termination, breach, expenses
- ◆ Arrestment:
 - In execution:
 - creation, effect, termination, breach, expenses
 - On the dependence:
 - Creation, hearing, effect, termination, breach, expenses
 - Earnings arrestment:
 - Creation, effect, duties, termination, breach, expenses

Higher National Unit specification: statement of standards (cont)

Unit title: Bankruptcy and Diligence

(c) Types of Attachment

- ◆ General:
 - Exclusions, creation, effect, duties, termination, breach
- ◆ Exceptional attachment:
 - Exclusions, hearing, effect, duties, termination, breach
- ◆ Money attachment:
 - Exclusions, execution, release, termination, expenses
- ◆ Proposed residual attachment
- ◆ Proposed Land Attachment:
 - Current legislation relating to adjudication
 - Application, satisfaction, termination, expenses

(d) Factors preventing diligence

- ◆ Time to pay directions and orders
- ◆ Current personal debt relief:
- ◆ Debt Arrangement Scheme
- ◆ Bankruptcy
- ◆ Protected Trust Deed
- ◆ LILA
- ◆ new debt relief legislation
- ◆ Corporate insolvency

Evidence Requirements for Outcome 1

Candidates should provide written and/or oral evidence to demonstrate their knowledge of the various legal theories which may be applied from a creditor's perspective when enforcing a Scottish decree in execution and applying pre-decree protective measures on the dependence.

Written evidence should be provided by way of short essay answers or 'advice notes' to the creditor based on three separate case studies. The case studies should be sufficiently complex to allow the candidate to problem solve and apply their knowledge in relation to diligence in execution and on the dependence. The assessment will be open book and undertaken in controlled conditions. Candidates will not have access to the case studies prior to the assessment.

The case studies will include individuals and corporate bodies together with background history and facts with details of moveable and heritable property including where the property is located and whether it is in a third party's hands or for sale; income from other sources and employer details allowing the candidates to consider at least three options from sections (a) to (d) to apply in each case.

Higher National Unit specification: statement of standards (cont)

Unit title: Bankruptcy and Diligence

Satisfactory achievement for each of the three case studies will be demonstrated by the candidate's ability to:

- (a) identify the correct law and procedure, citing any relevant precedents or statutory provisions.
- (b) explain the legal rulings in those and apply the theoretical legal position to ascertain from the case studies what options are available to the creditor.
- (c) explain how and when they might be applied.
- (d) explain the possible results and time scales with consideration to the commerciality of the process and
- (e) explain what options the debtor may have in response to those actions. At least three options should be identified for each case study.

Any knowledge which cannot be inferred from the case studies should be sampled either orally or in writing using short answer questions.

Outcome 2

Apply the procedures involved in the law of Bankruptcy.

Knowledge and/or Skills

- ◆ Bankruptcy procedures:
 - Insolvency and DAS Registers
 - Establishing apparent insolvency
 - Court jurisdiction
 - Appointment of provisional or interim trustee
 - Warrant to cite and service
 - The hearing
 - Date of award of sequestration
 - Discharge and effect of restriction orders and undertakings
 - Explanation of offences of debtor
 - Account of Expenses
 - Taxation hearing
- ◆ Trustee in sequestration:
 - Role and functions of the Accountant in Bankruptcy
 - Role and duties of Trustee in sequestration
 - Lodging claim and creditors meetings

Higher National Unit specification: statement of standards (cont)

Unit title: Bankruptcy and Diligence

Evidence Requirements for Outcome 2

Candidates will provide oral and/or written evidence to demonstrate their knowledge of the legal procedures which may be applied when a creditor considers sequestration proceedings against a debtor. Candidates will be provided with a case study which will be assessed under open book conditions in controlled conditions.

The case study should be sufficiently detailed to allow candidates to apply their skills and knowledge in order to complete the documentation necessary to present a petition and to demonstrate their knowledge of the correct procedures to follow, taking into account the commerciality of pursuing such action. The case study will include

- (a) name and address of debtor.
- (b) debtor's trade and trade address.
- (c) the debt.
- (d) the debtor's income and assets to include a combination of heritable and moveable property.

Candidates will be required to:

- (i) complete the draft of a creditor's petition for sequestration of a sole trader using a style provided by inserting details of the court, sheriffdom, and parties and drafting the jurisdiction and grounds for the petition. An Inventory of Productions will be drafted and the prescribed Oath by Creditor form will also be completed.
- (ii) provide an advice note on the steps and procedure necessary to bring sequestration proceedings to the first hearing, including an explanation of when you would consider appointment of a provisional trustee, why you would do so and how to seek appointment of a provisional trustee; what may happen at the hearing; it should cover the time scales and possible outcome, including considering offences by the debtor and the commerciality of such a course of action from the creditor's point of view. Finally it should cover the Sheriff's options at the hearing.

Satisfactory achievement will be demonstrated by the candidate, for (i) applying the correct statutory requirements and identifying and detailing within the petition, inventory and oath the correct jurisdiction and court; the basis on which 'apparent insolvency' has been established and the supporting documentation which must be produced; and for the advice note in (ii) the candidate should provide all information requested and identify the correct law, cite any relevant precedents or statutory provisions, explain the legal rulings in those and apply the theoretical legal position as to when and why a sequestration petition may be considered over other diligence options.

Any knowledge which cannot be inferred from the case studies should be sampled in controlled conditions using short answer questions.

Higher National Unit specification: statement of standards (cont)

Unit title: Bankruptcy and Diligence

Outcome 3

Apply the law relating to the recognition and enforcement of foreign judgements within Scotland and Scottish Judgements outwith Scotland.

Knowledge and/or Skills

The reciprocal functions of United Kingdom Courts in relation to recognising civil judgments issued within the United Kingdom.

- ◆ The Civil Jurisdiction and Judgements Act 1982:
 - Scope
 - Affidavit
 - Certificate of Money Provisions
 - Registration for enforcement

The reciprocal functions of the European member states in relation to recognising civil judgements issued by a Scottish Court.

- ◆ The European Enforcement Order for Uncontested Claims: Regulation 805/2004:
 - Criteria and application
- ◆ The European Order for Payment: Regulation 1896/2006:
 - Criteria and application
- ◆ The European Small Claims Procedure: Regulation 861/2007:
 - Criteria and application
- ◆ Brussels I Regulation:
 - Criteria and application

The reciprocal functions of the Scottish Courts in relation to foreign civil judgements:

- ◆ Common law
- ◆ The Administration of justice Act 1920:
 - Grounds for recognition and refusal
 - procedure
- ◆ The Foreign Judgements (Reciprocal Enforcement) Act 1933:
 - Grounds for recognition and refusal
 - procedure

Higher National Unit specification: statement of standards (cont)

Unit title: Bankruptcy and Diligence

Evidence Requirements for Outcome 3

Candidates will provide written and/or oral evidence to demonstrate their knowledge and problem solving skills from a creditor's perspective by applying the theoretical legal position relating to the reciprocal functions of various jurisdictions and their recognition of foreign judgements.

Assessment will be conducted in controlled, open book conditions and consist of questions based on case study scenarios requiring candidates to apply their knowledge to problem solve a variety of legal issues. The candidate should be required to consider (a) type of contract, ie consumer or commercial; (b) whether there are exclusions such as fines or forfeiture of proceeds; (c) how they affect wills or the estate of a deceased person; (d) prescription and limitation; (e) whether common law may apply; (f) if there are any remedies, (g) whether the debtor can challenge the judgement and (h) any possible alternative course of action available, the theoretical results of this and the proposed action (if differing), including cost implications and time scales.

Satisfactory achievement will be demonstrated by the candidate correctly citing the relevant legislation, setting out the necessary procedure to be followed including any specific requirements or restrictions and explaining any precedents or statutory provisions which may be applicable.

Higher National Unit specification: support notes

Unit title: Bankruptcy and Diligence

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 part of the Professional Development Award (PDA) in Debt Recovery at SCQF level 8 but could be delivered within other appropriate qualifications as a free-standing Unit. The purpose of this Unit is to provide candidates with an understanding of the processes and procedures of bankruptcy and diligence in Scotland with particular reference to creditor lead debt recovery, protective measures, the prospects of successful recovery, recoverable costs and time scales.

The law in this area is governed by the Bankruptcy (Scotland) Act, 1985, as amended (further legislation is expected in 2013), the Bankruptcy and Diligence etc (Scotland) Act 2007, (some provisions of this Act may never be enacted), Debtors (Scotland) Act 1987, and the Debt Arrangement and Attachment (Scotland) Act 2002. The Enterprise Act 2000 and the Late Payment of Commercial Debts (Interest) Act 1998 and 2002 regulations should also be considered.

It is also beneficial to the candidate if they have a basic understanding of the personnel and legal system in Scotland to give them the background necessary to be able to identify the relevant court in relation to jurisdiction and identify the type of legal entity the debt is to be recovered from.

The PDA in Debt Recovery is a specialist qualification for paralegals and others whether in private practice or in local authority legal teams, or with paralegal responsibilities of this kind in a range of other types of organisation. 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.

Guidance on approaches to delivery of this Unit

Outcome 1 relates to various forms of diligence against moveable and heritable property. Teaching should focus on the suitability of each form of diligence dependent on the type of debtor, type of asset, type of income and when diligence on the dependence should be considered. Knowledge of the role, function, services and costs of Sheriff Officers and Messengers-at-arms is required. Knowledge of how a credit rating may be affected and how it can be amended is required, for example, letter of satisfaction to be lodged with Registry Trust. Knowledge of wrongful diligence and consequences is required, for example, unrecoverable costs to client and delay.

Higher National Unit specification: support notes (cont)

Unit title: Bankruptcy and Diligence

Outcome 2 introduces the candidate to the procedures and legislation, which covers the law of bankruptcy. Emphasis should be on the creditor driven petition, cost and potential results. This should include the preparation of account of expenses and attending taxation hearing.

The focus of Outcome 3 is on the enforcement of non-Scottish judgements. Practical examples could be used here to show the difference between enforcing Scottish judgements in parts of the UK outside Scotland and enforcing judgements within Scotland. The relevant legislation here is the Civil Jurisdiction and Judgements Act 1982 as amended by the Civil Jurisdiction and Judgements Act 1991. Recognition of trade out with the UK is growing and the European legislation governing members seeks to support this by detailing the requirements for service of documents under Regulation (EC) No 1393/2007 and the reciprocal recognition of member judgements under Regulation (EC) No 44/2001 as amended.

For the underpinning knowledge to remain valid and current it is essential that institutions review and update the content of the Unit on a regular basis. The candidate should be encouraged to keep their knowledge up to date by reference to the appropriate sources of law.

Guidance on approaches to assessment of this Unit

Assessment will be conducted in controlled, open book conditions and consist of questions based on case study scenarios requiring candidates to apply their knowledge to problem solve a variety of legal issues.

Assessment will focus on the practical application of the relevant legislation to different situations in the form of case study scenarios which a paralegal is likely to face in the course of their work. For those candidates already in employment, workplace evidence may be used along with witness testimony of underpinning knowledge where appropriate.

Any knowledge which cannot be inferred from the case studies should be sampled in controlled conditions using short answer questions.

Centres are reminded that prior verification of centre devised assessments would help to ensure that the national standard is being met. 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.

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.

Higher National Unit specification: support notes (cont)

Unit title: Bankruptcy and Diligence

Opportunities for developing Core and other essential skills

The Unit should provide candidates with an opportunity to develop the following Core Skills/Core Skill components at SCQF level 6, 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* — Critical Thinking, Planning, Organising, Reviewing and Evaluating — will be naturally developed as candidates analyse case studies. They must identify correct laws and procedures, applying the theoretical legal position as to when and why a sequestration petition may be considered over other diligence options. Formative group work could involve discussion of current cases, examining significant factors such as precedent and options available to creditor and debtor. Candidates could be encouraged to consider various options available and justify decisions with detailed references to law and/or practice.

Candidates need to research, analyse and critically evaluate complex legal information before presenting accurate and professional written and oral responses. Awareness of the need to establish the nature and scope of goals, roles and responsibilities while working with others will be essential; practical methods to overcome potential barriers and assure the most positive outcomes could be examined and discussed. The specific written and oral communication skills needed to build and maintain working relationships with creditors and debtors should be emphasised. In depth understanding will be further enhanced through directed personal study. Group discussion and evaluation of case studies during formative work will also provide opportunities to develop talking and listening skills in a workplace context.

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Bankruptcy and Diligence

This Unit is designed to provide you with an understanding of the theoretical and practical processes and procedures of bankruptcy and diligence in Scotland with particular reference to creditor lead debt recovery, protective measures, the prospects of successful recovery, recoverable costs and time scales.

The Unit is aimed at those who work as Debt Recovery paralegals and intend to become a Law Society of Scotland Registered Paralegal; those already employed in the legal sector who may wish to broaden their expertise; and candidates or others who aspire to the paralegal role.

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

- 1 Apply the law relating to the various forms of diligence against moveable and heritable property.
- 2 Apply the procedures involved in the law of Bankruptcy.
- 3 Apply the law relating to the recognition and enforcement of foreign judgements within Scotland and Scottish Judgements outwith Scotland.

The law in this area is governed by the Bankruptcy (Scotland) Act, 1985, as amended (further legislation is expected in 2013), the Bankruptcy and Diligence etc (Scotland) Act 2007, (some provisions of this Act may never be enacted), Debtors (Scotland) Act 1987, and the Debt Arrangement and Attachment (Scotland) Act 2002. The Enterprise Act 2000 and the Late Payment of Commercial Debts (Interest) Act 1998 and 2002 regulations should also be considered.

Before beginning this Unit, you would benefit from a basic understanding of the personnel and legal system in Scotland. This would provide you with the background necessary to be able to identify the relevant court in relation to jurisdiction and identify the type of legal entity the debt is to be recovered from.

Assessment will focus on the practical application of the relevant legislation to different situations in the form of case study scenarios which a paralegal is likely to face in the course of their work. For those candidates already in employment, workplace evidence may be used along with witness testimony of underpinning knowledge where appropriate.