

National Unit Specification: general information

UNIT Scottish Legal Framework (Higher)

NUMBER D32B 12

COURSE

SUMMARY

Explaining the sources, key personnel and the principal structures and processes of the Scottish Legal System.

OUTCOMES

1. Explain the formal sources of Scots Law.
2. Explain the roles performed by key legal personnel.
3. Explain the organisation and jurisdiction of the Scottish Civil Courts.
4. Explain the system of criminal prosecution in Scotland.
5. Explain the nature and role of statutory tribunals.

RECOMMENDED ENTRY

Access is at the discretion of the centre but evidence of competence in communication is highly desirable and to be recommended. This may be evidenced by possess of National Certificate Module: 7110045 Communication 3 or equivalent.

CREDIT VALUE

1 Credit.

Administrative Information

Superclass: EC

Publication date: April 2000

Source: Scottish Qualifications Authority 2000

Version: 01

© Scottish Qualifications Authority 2000

This publication may be reproduced in whole or in part for educational purposes provided that no profit is derived from reproduction and that, if reproduced in part, the source is acknowledged.

Additional copies of this unit specification can be purchased from the Scottish Qualifications Authority. The cost for each unit specification is £2.50 (minimum order £5.00).

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).

Administrative Information

Superclass: EC

Publication date: April 2000

Source: Scottish Qualifications Authority 2000

Version: 01

© Scottish Qualifications Authority 2000

This publication may be reproduced in whole or in part for educational purposes provided that no profit is derived from reproduction and that, if reproduced in part, the source is acknowledged.

Additional copies of this unit specification can be purchased from the Scottish Qualifications Authority. The cost for each unit specification is £2.50 (minimum order £5.00).

National Unit Specification: statement of standards

UNIT Scottish Legal Framework

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 the formal sources of Scots Law

Performance criteria

- a) The formal law-making sources of Scots Law are correctly identified.
- b) The nature of statutory law is correctly explained.
- c) The nature of common law is correctly explained.
- d) The relationship between statutory law and common law is clearly and correctly outlined in terms of the differences between them and their relative importance to each other.

Note on range for the outcome

Acts of Parliament: procedure for passing a Public bill.

Delegated legislation.

Impact of EU membership on domestic law.

Common law; judicial precedent and case-law.

Evidence requirements

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

OUTCOME 2

Explain the roles performed by key legal personnel

Performance criteria

- a) The differing roles of legal practitioners are clearly and correctly explained.
- b) The appointment and functions of the judiciary are correctly and clearly explained.
- c) The appointment and functions of the principals law officers of Scotland are clearly and correctly outlined.

National Unit Specification: statement of standards (cont)

UNIT Scottish Legal Framework

Note on range for the outcome

Roles of legal practitioners: solicitors; advocates; solicitor-advocates.

The appointment/functions of the Judiciary, in resolving disputes.

Appointment and functions of the principal law officers: Lord Advocate and Solicitor-General.

Evidence requirements

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

OUTCOME 3

Explain the organisation and jurisdiction of the Scottish Civil Courts

Performance criteria

- a) The difference between civil and criminal law is clearly and correctly explained.
- b) The composition and jurisdiction of the Sheriff Court, the Court of Session and the House of Lords are clearly and correctly explained.
- c) The appeals procedure in the Scottish Civil Courts is correctly outlined.

Note on range for the outcome

Sheriff courts: composition; court of first instance; appellate jurisdiction.

Court of session: composition; as court of first instance; appellate jurisdiction.

House of Lords: composition; appellate jurisdiction.

Evidence requirements

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

OUTCOME 4

Explain the system of criminal prosecution in Scotland

Performance criteria

- a) The role of crown agencies in the prosecution of crime is accurately explained.
- b) The differences between solemn and summary procedures are correctly stated.
- c) The composition, jurisdiction and powers of the Scottish Criminal Courts are correctly explained.

d) The system of criminal appeal in Scotland is correctly outlined.

National Unit Specification: statement of standards (cont)

UNIT Scottish Legal Framework

Note on range for the outcome

Crown agencies – prosecution service, police.

Scottish Criminal Courts: District court; Sheriff summary; Sheriff solemn; High Court of Justiciary.

The system of criminal appeal.

Evidence requirements

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

OUTCOME 5

Explain the nature and role of statutory tribunals

Performance criteria

- a) Explain the nature and role of statutory tribunals.

Note on range for the outcome

- a) The reasons for instituting statutory tribunals are accurately explained.
- b) The functions of the Council on Tribunals are clearly and correctly explained.
- c) The composition, role and powers of a tribunal are accurately explained.

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 Scottish Legal Framework

EVIDENCE REQUIREMENTS FOR THE UNIT

Outcome 1

For pc(a), both formal law-making sources of Scots law should be identified; for pc(b), a minimum of one of the three types of legislative assembly should be explained correctly. For pc(c) the source of common law should be identified and explained correctly. For pc(d) the candidate should outline correctly which laws take precedent on a minimum of one occasion.

Outcome 2

Written or oral evidence of the ability to explain the roles performed by key legal personnel as specified in the performance criteria and the range statement.

Satisfactory achievement will be demonstrated by the candidate, for pc(a), explaining at least two roles of a solicitor, two of an advocate and one for a solicitor/advocate; for pc(b) explaining, at least one method of appointment and one function of a member of the judiciary in Scotland; for pc(c), outlining at least one method of appointment of the Lord Advocate and Solicitor General and at least two of their roles.

Outcome 3

Written or oral evidence of the ability to explain the composition and jurisdiction of the Scottish Civil Courts.

Satisfactory achievement will be demonstrated by the candidate, for pc(a) explaining the essential difference between civil and criminal law; for pc(b), identifying who presides over each of the three courts and giving at least one example of the type of case dealt with in each court; for pc(c) the steps in the appeals procedure should be accurately outlined.

Outcome 4

Written or oral evidence of the ability to explain the processes of criminal prosecution in Scotland.

With regard to pc(a) the role of at least two agencies should be explained. With regard to pc(b) two differences are to be stated. For pc(c), the candidate should explain who presides over each of the five Criminal Courts, along with a minimum of one example of the powers of each and one example of the type of case dealt with in each. For pc (d), an accurate outline of the criminal appeals system should be given on at least one occasion.

Outcome 5

Written or oral evidence of the ability to explain the nature and role of the statutory tribunals.

Satisfactory achievement will be demonstrated by the candidate for pc(a) explaining at least 2 reasons; for pc(b), explaining at least 2 functions. For pc(c) at least one type of tribunal should be covered.

National Unit Specification: support notes

UNIT Scottish Legal Framework

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 designed to provide candidates with a basic understanding in to how the Scottish Legal System operates by examining where the law comes from, the various forums through which the law is enforced, and the various roles carried out by legal practitioners and the judiciary.

Outcome 1

Acts of parliament: Public/Private; legislative process in Parliament.

(Note-given the uncertainty regarding the legislative jurisdiction and processes of the new Scottish Parliament, it is not intended that this should be assessed at this stage-assessment should be confined to the U.K. Parliament.)

European Union membership: significance for Parliamentary supremacy (outline only).

Delegated Legislation: byelaws and statutory instruments; enabling Acts; ultra vires doctrine.

Common Law: nature; impact on particular areas of law .g. criminal law/contract law; judicial precedent – nature of, and significance for court hierarchy.

Outcome 2

Solicitors, solicitor-advocates, advocates: qualifications; roles played by Law Society of Scotland/Faculty of Advocates; respective roles e.g. solicitors as “general practitioners” of the law; solicitor-advocates as solicitors with “extended rights of audience” to the superior courts, and advocates as legal specialists e.g. giving Opinions and court pleaders.

Judiciary: appointment and functions of Justices of the Peace, Sheriffs and Sheriffs Principal;, Senators of the College of Justice, Lords of Appeal in Ordinary.

Lord Advocate and Solicitor General: political appointments, overall responsibility for criminal prosecution in Scotland; representing the Government in civil/criminal cases; drafting Scottish Legislation; assistance of Crown Office.

Outcome 3

Differences between civil and criminal law: nature of disputes, terminology; outcome of hearings etc.

Civil Courts:

Sheriff Court: jurisdiction (subject matter and geographical), small claims procedure, summary causes, ordinary procedure, appellate jurisdiction of Sheriff Principal.

National Unit Specification: support notes (cont)

UNIT Scottish Legal Framework

Court of Session: respective roles of Outer and inner Houses.

House of Lords: composition and jurisdiction.

Outcome 4

The investigate role of the Police should be differentiated from the prosecuting roles of the Lord Advocate and procurators fiscal.

Summary Procedure – District Court and Sheriff (Summary) Court – complaints, no jury.

District Court; Sheriff (summary) Court; Sheriff (solemn) Court; High Court of Justiciary (including appeals).

Appals – not necessary at this stage to differentiate between summary appeals and solemn appeals – all go to the High Court of Justiciary as the appeal court.

Appeals against conviction, or sentence, or both.

Outcome 5

Reasons for tribunals: growth of government administration, advantages over courts-informality, expertise, time and expense.

Functions of Council on Tribunals: advisory and consultative; to keep under review the functioning of tribunals; to recommended to Secretary of State; advise on procedures at tribunals.

GUIDANCE ON LEARNING AND TEACHING APPROACHES FOR THIS UNIT

Most students attempting this unit will be studying law for the first time and so the unit has been designed with this in mind. It is not intended to go into too much detail and this should be borne in mind when teaching and assessing. Should students wish to continue with this study of law, then they will be free to advance to more specific units where a greater depth of knowledge can be achieved.

With regard to teaching input, a varied delivery to straightforward lectures is to be encouraged. Law is very much a “living” thing and it should not be too difficult to refer to national or local newspapers in order to illustrate that what is being taught throughout the five outcomes is very much going on around us all the time.

For instance, with Outcome 1 in mind, videos are available for both legislative procedure for the passing of public bill, and case law (e.g. Negligence on Video, which details the case of Donoghue v Stevenson 1932).

National Unit Specification: support notes (cont)

UNIT Scottish Legal Framework

As for Outcome 2, it may be possible to invite a solicitor along for an hour or so (as part of their Continuous Professional Development) to talk about his/her legal education, traineeship and practice, and referring to those circumstances where it may be necessary to refer matter to advocates.

As for Outcomes 3, 4 and 5, an opportunity to see both the civil and criminal court in action is not to be missed although this may not always be possible for a variety of reasons. Equally, if an employment tribunal is the chosen option for Outcome 5, a visit the local office is to be recommended even if it is just to see where such hearings are dealt with and to see the list of forthcoming hearings normally advertised in the reception area.

GUIDANCE ON APPROACHES TO ASSESSMENT FOR THIS UNIT

With regard to Outcome 3, pc(c), and Outcome 4, pc(d) accurate completion of flow charts or box diagrams may constitute sufficient evidence of performance.

For Outcome 5, the selection of either a Children's hearing or an Employment Tribunal could be based on its relevance to the course, depending on the context in which this unit is delivered. In certain circumstances another tribunal may be selected (for example, Lands Tribunal or Copyright Tribunal) where this is relevant to the course or the individual candidate's requirements. Where one of the above examples is used, evidence should be provided as follows:

- i) Children's Hearing: composition; 3 examples of grounds of referral; role of Reporter; s42 reference; disposal options.
- ii) Employment Tribunal: legal and lay members; 3 examples of jurisdiction; remedies; sketched outline of appeal route.
- iii) Any other statutory tribunal where appropriate provided evidence of performance is given in respect of its chief purpose, composition and jurisdiction.

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).