

Legal Aspects of Commercial Transactions

HIGHER NATIONAL DIPLOMA

商务交易中的法律状况

【英】苏格兰学历管理委员会 (SQA)

英文原版

Unit Student Guide

SUPPLY CHAIN



 中国时代经济出版社

SCOTTISH
QUALIFICATIONS
AUTHORITY



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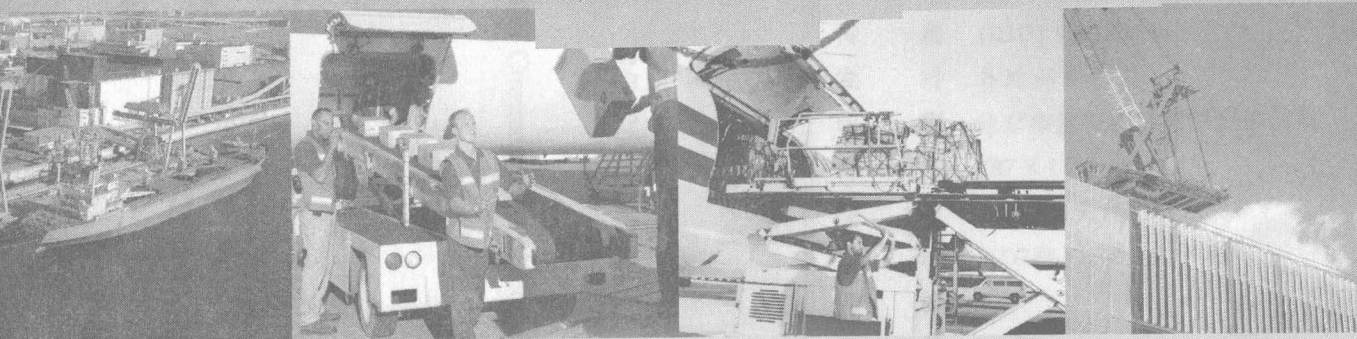
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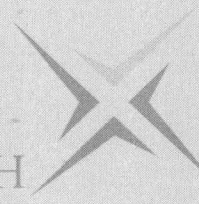
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1

Introduction to the Scottish Qualifications Authority

This Unit **Legal Aspects of Commercial Transactions** has been devised and developed by the Scottish Qualifications Authority (SQA). Here is an explanation of the SQA and its work:

The SQA is the national body in Scotland responsible for the development, accreditation, assessment, and certification of qualifications other than degrees.

Its website can be viewed on: www.sqa.org.uk

SQA's functions are to:

- devise, develop and validate qualifications, and keep them under review
- accredit qualifications
- approve education and training establishments as being suitable for entering people for these qualifications
- arrange for, assist in, and carry out, the

assessment of people taking SQA qualifications

- quality assure education and training establishments which offer SQA qualifications
- issue certificates to candidates.

In order to pass SQA units, students must complete prescribed assessments. These assessments must meet certain standards.

The Unit Specification outlines the four Outcomes that students must complete in order to achieve this unit. The Specification also details the knowledge and/or skills required to achieve the outcome or outcomes. The Evidence Requirements prescribe the type, standard and amount of evidence required for each outcome or outcomes.

2

Introduction to the Learning Resource Pack

2.1 Introduction to the Unit

On completion of this unit, you should be able to demonstrate knowledge of the legal principles and relevant statutes that affect upon the relationship between the supplier of goods and/or service and the customer or consumer.

There are four outcomes for this unit:

Outcome 1

Outcome 1 (Sections 3. 1 – 3. 5) explains the implications of the general principles of the law in Scotland for business transactions, focussing on:

- *an explanation of the law relating to the formation of a contract*
- *an explanation of the law relating to the validity of a contract*
- *an explanation of the law relating to a breach and termination of a contract*
- *the advice given in respect of legal issues identified*

in a particular situation.

Outcome 2

Outcome 2(Sections 3.6 & 3.7) explains the impact of relevant/appropriate statutes on the relationship between supplier, seller and buyer, focussing on:

- an explanation of the law relating to the sale and supply of goods and services
- an explanation of the law relating to the provision of credit facilities for the purchase of goods
- the identification of the appropriate rights and remedies in a particular situation.

Outcome 3

Outcome 3 (Section 3.8) distinguishes between the duties and obligations placed on principal and agent, focussing on:

- an explanation of the formation of the contract of agency
- the classification of commercial agents and their intended authority
- an explanation of the duties owed and the rights available to the agent against the principal

Outcome 4

Outcome 4 (Section 3.9) explains the legal responsibilities placed upon those engaged in a range of business organisations, focussing on:

- a description of the concept of *delict*
- a description of the duty of care imposed at common law and by statute
- the advice given in respect of liability in a particular situation.

The approximate study time that you should allocate for the completion of the learning Guide is 40 hours. Additionally, you will be required to undertake further reading and preparation time to complete each of the four assignments.

2.2 Learning Material Required for this Unit

The Learning Resources in Section 3 provide relevant information to assist you to complete the unit.

You may also find it useful to refer to the following texts:

- *Scots Law — A Student Guide* by Busby, Clark, Mays, Paisley and Spink (published by LexisNexus Butterworths, ISBN 0406957320)
- *Scottish Business Law* by MacMillan and Lambie,

(published by Pitman Publishing, ISBN 0 273 62035 –5).

There are also a number of other texts, which deal with each Outcome, and students and tutors are recommended to access the worldwide web to obtain details.

It is recommended that you access a range of web sites to gain a broader understanding of the legal principles and how they affect contemporary societal issues. Information may be down loaded and students and tutors may subscribe for e-mail updates, which examines recent case law and the impact of the court' s decision.

www.scottishlaw.org.uk

In addition, to the publications and website shown above, tutors are strongly recommended to follow court cases as they are reported in the media and to use these to analyse and discuss the basic legal principles.

2.3
Using the
Learning
Resource
Pack

The Learning Resource Pack is designed to lead you through a series of learning activities that will allow you to consolidate your understanding on the topic areas included in the unit **Legal Aspects of Commercial Transactions**.

It is recommended that you spend at least 40 hours working your way through the learning materials in this

Pack.

As you work through the Pack you will encounter the following symbol which indicates that you should carry out an Activity.



Usually, activities are used to improve or consolidate your understanding of the subject in general or a particular feature of it.

As the law is not an exact science, it is not possible therefore to provide definitive answers to the activities. It is suggested that the activities for the basis of group discussions with your tutor and other students the tutors. Use the “what if” scenarios to discuss and analyse the points of law in full.

To help you prepare for the discussions it is recommended that use be made of the website (www.scottishlaw.org.uk)



This symbol indicates a Self-Assessed Question. Using

a Self-Assessed Question helps you check your understanding of the content that you have already covered. The Self-Assessed Questions in this pack will often take the form of a short quiz or activity to measure whether you have taken in and understood content previously covered or to indicate how you might implement knowledge gained.

Answers to the Self-Assessed Questions are to be found at the back of the Learning Resource Pack (Section 5). **Students are strongly discouraged from looking at these responses before they attempt the question.** The questions throughout the Learning Resource Pack will help you to prepare yourself for the formal assessments, and to identify topic areas in which you will require clarification and additional tutor support. The questions will not serve this purpose if you look at the answers before trying them!

2.4
What Do I
Have to Do to
Achieve this
Unit?

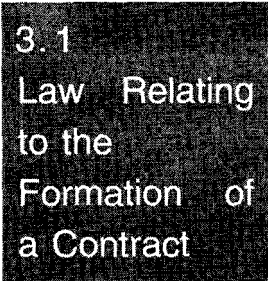
To achieve this unit you must work through the learning materials contained in Section 3 of the Learning Resource Pack.

In order to provide evidence of your competence across the four learning outcomes, assignments have been incorporated into the learning materials.

The completion of these assignments is mandatory and their successful completion is part of the achievement process.

3

Learning Material



3.1
Law Relating
to the
Formation of
a Contract

3.1.1 Introduction to Common Law Sources

A brief introduction to the Sources of Common Law and how these sources impact of the nature of business transactions.

Judicial Precedent

A non-statutory source of power, with decisions being based on the facts of the case as they are presented to the court, whereby the presiding Judge(s) may make a decision which may be seen by some commentators as a *landmark* decision. In these circumstances and providing the Court has the appropriate powers, the decision may have the status of *Precedent*. This means that lower courts must follow the basis of the decision,

especially on the same point of law. A *Precedent* or *Judicial Precedent* is binding on all lower courts.

Decisions made by a Judge will be considered as *Case Law* and in certain circumstances Courts must stand by the decision — *Stare Decisis*. In other circumstances where the decision is not a precedent, they are not binding on lower courts but their arguments may be considered *persuasive* Decisions made in Senior Courts are binding on all Lower Courts.

Judicial precedent applies *in point* where the legal reasoning deals with the same point of law. Judicial Precedents may be set by either the European Court of Justice and therefore the United Kingdom must follow or House of Lords with decisions binding in Scotland. Decisions made on appeal are Precedents. Within the Judicial System in Scotland, and especially the Civil Courts, then either the *Inner House* or *Outer House* makes decisions. Decisions made by the *Inner House* are binding on the *Outer House* and *Sheriff Courts*, whereas the *Outer House* decisions have no status as Precedent, likewise for the Sheriff Courts. Part of the decision, which is binding known as *Ratio Decidendi*, that is the legal decision for the decision. Other parts considered and separate from the Ratio, known as *Obiter Dicta* that is the words and things said during the case and the *Obiter Dicta* may be persuasive in later cases.

The benefits, which accrue from the Doctrine of Judicial Precedent, are:

- Solicitors can advise their clients on the possible implications of their case, and
- They may know the likely outcome and whether or not the case is worth pursuing.

In the 16th/17th century many legal academics attempted to *codify* the law by looking at certain situations and deciding how the case should be conducted and likely outcome for the parties. This arose because there was no statutory provision; no Judicial Precedent and this therefore became an authoritative statement of the law.

Custom

Custom is a rare source of new law, but still made a contribution to common law. It is seen as something that has been practised consistently over time.

Equity

Equity is a law that is based on a set of principles relating to equity, fairness and equality. Special equitable powers are known as *Nobile Officium*.

3.1.2 Nature and Formation of a Contract

Everyday transactions involve the formation of a contract, e.g. buying a newspaper; bus or train tickets; buying goods from a supermarket. In each situation we are buying a product or service for which

there is a pre-set price by the vendor, but at the same time the purchaser is not fully aware of the precise terms and conditions. Another aspect of these transactions is the fact that the offer to buy the product or service is not made in writing.

Suffice to say that not all contracts need to be in writing, although there are some notable exceptions (a point we will cover later in the notes).

3.1.3 What is a Contract?

- A type of agreement: this is not specific enough
- All contracts are agreements, but not all agreements are contracts?

To illustrate this point let us consider the following situation:

You are invited to a friend's home for dinner and you agree, in advance, to visit them in two weeks time. Your friends make all the appropriate arrangements for the meal-buying the food and preparing it, plus they have bought some wines to accompany the meal. Two hours before you are due to visit your friends a family problem arises that must be dealt with immediately and you telephone your friends to say that you will be unable to attend the meal. They are annoyed that they have incurred the expense of the food and wine and threaten to sue you for these costs. In this situation will they succeed in their action?