

# Supply Chain Management: Advanced Law

HIGHER NATIONAL DIPLOMA

## 物流管理中的高阶法律

【英】苏格兰学历管理委员会 (SQA)

英文原版

### Unit Student Guide

SUPPLY CHAIN



SCOTTISH  
QUALIFICATIONS  
AUTHORITY



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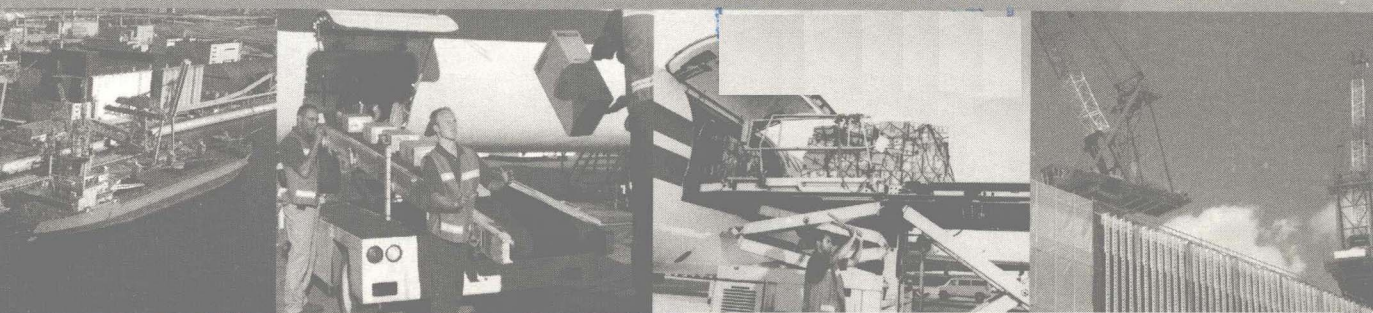
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物流管理中的高阶法律

苏格兰学历管理委员会著

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# 1 Introduction to the Scottish Qualifications Authority

This Unit **Supply Chain Management: Advanced Law** 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](http://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 with, and carry out, the assessment of people taking SQA qualifications

- qualify assured 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

This Unit is designed to introduce you to the specialised and technical legal areas of procurement within the overall context of supply chain management. The Unit will examine the legal aspects of tendering, competition law, intellectual property and the legal aspects of international trade. The Unit is not a coverage of these legal topics in depth but an overview. **You are encouraged to refer to legal textbooks for further information.**

This is a specialist Unit primarily intended for candidates who aspire to take up a management position in any type of organisation where the supply chain plays a major role. It would also be appropriate for those involved in distribution planning and procurement functions

There are four Outcomes in this Unit:

1. Critically evaluate and apply the law as it affects *Tendering*.
2. Critically evaluate and explain *Competition Law*.

3. Critically evaluate and apply the law as it relates to *Intellectual Property*.

4. Evaluate the law as it affects *International Trade*.

2.2  
Learning  
Material  
Required for  
this Unit

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

2.3  
Using the  
Learning  
Resource Pack

The Learning Resource Pack is designed to lead you through a series of learning cases that will allow you to consolidate your understanding on the topic areas included in the pack **Supply Chain Management: Advanced Law**.

The approximate study time that you should allocate for the completion of the unit is 40 hours.

As you work through the Pack there will be considerable scope for discussion and you are encouraged to contribute fully from your own knowledge and experience. When participating in a group activity you should give full and free rein to your imagination concerning different types of supply chain. Knowledge of the operating environment of the company you work for, or a business you have some experience of, will be useful when you participate in

some of the Self-Assessed Question and discussions.

As you work through the Pack you will encounter the following symbol which indicates that you should answer a Self-Assessed Question.



Usually, Self-Assessed Questions are used to improve or consolidate your understanding of the subject in general or a particular feature of it. Where suggested responses to Self-Assessed Questions are provided in the Learning Resource Pack, **students are strongly discouraged from looking at these before attempting the Self-Assessed Question.** The Self-Assessed 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. The Self-Assessed 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?

The assessments for this Unit will be a mixture of open book reports undertaken in your own time and restricted open book assessments held under supervised conditions. Outcomes assessed by extended responses to a set of specific questions will be based on a bank of appropriate case studies.

You are also required to support all assessment evidence by referring to appropriate legislation and case law.

There will be separate assessments for each of the four Outcomes.

### **Outcome 1**

Four questions (one per evidence requirement) with a response of approximately 1,000 words in total. Assessed under restricted open book conditions.

### **Outcome 2**

This will be assessed in two parts. Part one will be research into given case study material and a set of specific extended response questions held under restricted open book conditions. Part two will require a report of approximately 500 words produced in open book conditions.

### **Outcome 3**

Four questions (one per evidence requirement) with a response of approximately 1,000 words in total. Assessed under supervised restricted open book conditions.

### **Outcome 4**

Four questions (one per evidence requirement) with a response of approximately 1,000 words in total. Assessed under supervised restricted open book conditions.



# 3

## Learning Material

### 3.1 Outsourcing

The nature of business usually does not allow a concern to provide all its own goods and services they will have to find a source.

This covers not only the private sector but also the public sector.

When outsourcing the purchaser will look for reliability and value for money.

Value for money does not only include cost but also other factors should be considered; quality, after sales service, and how well has the specification been covered.

The criterion for selection for local authorities is best value.

Outsourcing through the method of best value in certain areas is obligatory for local authorities.

Bids are invited from local authorities' in-house teams, voluntary organisations and commercial contractors.

The local authority no longer has a monopoly.

There is active competition through tendering to achieve an improvement in the quality of service and hopefully reducing costs.

### **3.1.1 Tenders**

#### **The Basis of Tendering**

Tenders can be sought on the basis of either:

- *Selective Tendering* where only firms selected by the authority may tender
- *Open Tendering* where anyone who wishes to tender may do so.

*Selective Tendering* is the more generally used method though the other form is permissible.

#### **The Three Forms of Selective Tendering**

Tenders are invited from a number of contractors from a standing list kept by the LA of firms of repute who have applied after an advert, and have been approved by the LA for inclusion on the list. When a contract is of a specified nature, and the standing list may not be adequate, an advert can be placed inviting firms who are interested in tendering to apply for consideration. A

selection is then made among those who apply and tenders are invited. A particular firm may be selected to carry out a particular contract and the contract is then negotiated with that firm. There is a general indication to contractors at tender stage that the authority reserves the right to accept the lowest tender, accept part of the tender or not to accept the tender at all.

### Monopoly

If a contractor has a monopoly there cannot be competitive tendering. There should be a mechanism under the council's standing orders for a committee to approve such a contract. This should occur for the purchasing of articles where one company only supplies it.

### Decision Making Factors

Activity	Factors
<b>Decide the factors for the award</b>	Must be either: <ul style="list-style-type: none"> <li>• Lowest price only</li> <li>• Most economically advantageous</li> </ul>
<b>Can the supplier be excluded?</b>	Only if: <ul style="list-style-type: none"> <li>• Bankrupt</li> <li>• Being wound-up</li> <li>• Suspended from trading</li> <li>• Criminal unprofessional conduct</li> <li>• Information is misrepresentation</li> </ul>

<b>Activity</b>	<b>Factors</b>
<b>Contractor's Financial Worthiness</b>	<ul style="list-style-type: none"><li>• Proof from bankers</li><li>• Balance sheet</li><li>• Turnover statement</li><li>• Professional and trade qualifications</li></ul>
<b>Contractors' Technical Capacity</b>	<ul style="list-style-type: none"><li>• Sample products</li><li>• Quality controls IO2000</li><li>• Certificates of good quality</li></ul>

Table 1: Decision-Making Factors

Tenders are contractual offers, which can be accepted or rejected. There is an obligation to consider all the tenders but you are not obliged to accept the lowest tender or any tender at all.

### **Collateral Obligations**

In the tendering process there are collateral obligations. These include the contract is to be awarded to the lowest bidder. If the contract is not awarded to the lowest bidder, the lowest bidder can raise an action to enforce the acceptance of the tender or to receive damages. Another example is where there is a time period (usually 90 days) in which the tenders are assessed as to which to accept there is an implied obligation that the tender cannot then be withdrawn within that time period.

***Blackpool & Fylde Aero Club Ltd Blackpool Borough Council (1990)***

Blackpool Borough Council asked for tenders for pleasure flights from the local airport. Tenders had to be submitted by 12 noon on the stated day. The plaintiff's tender arrived at 11am on the stated day but due to an administrative error the tender was not considered.

Held: The council were in breach of contract by not considering the tender.

***Spencer v Harding (1870)***

The defendants had been instructed to offer for sale by tendering a wholesale and a stock-in-trade business. Spencer offered the highest bid and assumed it would be accepted. It was not accepted.

Held: They were not bound to accept the highest offer, as it was not explicit in the offer. It was only an invitation to treat and they would not have to accept any tender.

The wording is very important to decide whether it is an invitation to treat or a clear obligation to accept the highest or lowest offer.

Once the tender is accepted there are post-tender negotiations. If you negotiate with one of the bidders