



Richmond College
Advanced Education



Qualification Specification for :

Level 4 Extended Diploma in Law
603/4890/2



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athe AWARDS FOR
TRAINING AND
HIGHER EDUCATION

Unit Specifications

Unit Format

Each unit in ATHE's suite of qualifications is presented in a standard format. This format provides guidance on the requirements of the unit for learners, tutors, assessors and external verifiers.

Each unit has the following sections:

Unit Title

The unit title reflects the content of the unit. The title of each unit completed will appear on a learner's statement of results.

Unit Aims

The unit aims section summarises the content of the unit.

Unit Code

Each unit is assigned an RQF unit code that appears with the unit title on the Register of Regulated Qualifications.

RQF Level

All units and qualifications in the RQF have a level assigned to them which represents the level of achievement. The level of each unit is informed by the RQF level descriptors. The RQF level descriptors are available on the ATHE website.

Credit Value

The credit value is the number of credits that may be awarded to a learner for the successful achievement of the learning outcomes of a unit.

Guided Learning Hours (GLH)

Guided learning hours is an estimate of the amount of time, on average, that a tutor, trainer, workshop facilitator etc., will work with a learner, to enable the learner to complete the learning outcomes of a unit to the appropriate standard.

Learning Outcomes

The learning outcomes set out what a learner is expected to know, understand or be able to do as the result of the learning process.

Assessment Criteria

The assessment criteria describe the requirements a learner is expected to meet in order to demonstrate that the learning outcome has been achieved. Command verbs reflect the level of the qualification e.g. at level 4 you would see words such as analyse and evaluate

Unit Indicative Content

The unit indicative content section provides details of the range of subject material for the programme of learning for the unit.

| Contract Law | | | |
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| Unit aims | <p>This unit will equip learners with knowledge and understanding of the key principles of contract law, such as: validity of contract; terms of contract; vitiating elements that affect the validity of the contract; the ways in which the contract can come to an end and remedies for breach of contract available.</p> <p>Learners will gain an appreciation to the significance of contract law in commercial, consumer and social contexts.</p> | | |
| Unit level | 4 | | |
| Unit code | F/617/7192 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass/Merit/Distinction | | |
| Assessment guidance | <p>In order to complete this unit, learners will need to demonstrate achievement of the LOs at the standards specified by the assessment criteria. In this unit learners will need to demonstrate a practical understanding of contract law and should be able to apply their knowledge to given contract scenarios. Learners should refer to actual examples, legislation and/or case law to illustrate the points which are made. Suitable scenarios should be provided to learners that allow them to demonstrate knowledge and understanding in all the assessment criteria for pass, merit and distinction grades. All assessments must be in line with awarding organisation guidance.</p> | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the principles of formation of agreements | 1.1 Distinguish between an offer and an invitation to treat 1.2 Identify and explain the legal rules applicable to acceptance of an offer 1.3 Assess the requirements for a valid consideration | 1M1 Critique the significance of practical benefit as consideration | 1D1 Assess the limitations of Williams v Roffey Bros [1991], in relation to a promise to accept less |
| 2. Understand the rules that govern the content of a contract | 2.1 Compare and contrast terms and representations 2.2 Identify the sources of contractual terms 2.3 Distinguish between | | 2D1 Analyse the Court's approach to interpretation and validity of exemption clauses |

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| | conditions, warranties and innominate terms | | |
| 3. Understand the vitiating elements that may affect the validity of a contract | 3.1 Identify the elements of actionable misrepresentation 3.2 Differentiate between fraudulent, negligent and innocent misrepresentation 3.3 Analyse the development of the doctrine of duress | 3M1 Examine the remedies available for fraudulent, negligent and innocent misrepresentation 3M2 Contrast the effects of misrepresentation and mistake on a contract | |
| 4. Understand how a contract can be discharged | 4.1 Explain the different ways in which a contract can come to an end 4.2 Examine the difference between breach of conditions, warranties and innominate terms 4.3 Examine the doctrine of frustration | | |
| 5. Understand the remedies available for breach of contract | 5.1 Distinguish between liquidated and unliquidated damages 5.2 Assess the aim of damages in Contract Law 5.3 Compare and contrast the different measures used for assessing damages | | 5D1 Assess the amount of damages that can be claimed for a specific breach of contract. |

Indicative Content

1. Understand the Principles of Formation of Agreements

- Distinguishing between an offer (willingness to enter into a contract) and an invitation to treat (supply of information to tempt a person into making an offer). Practical benefit as consideration - the difference between Bilateral v Unilateral agreements.
- Acceptance of offer; definition of acceptance (unconditional assent to all terms of offer communicated to offerer by offeree with intention of acceptance^{65tui7}); acceptance by conduct (Taylor v Allon 1966 and Day Morris Associates v Voyce 2003); postal rule and the receipt rule; termination of offer (by revocation, lapse or death of the offeror)

- Consideration: definition of consideration; Rules of consideration (Consideration must not be past. Sufficient but need not be adequate, must move from the promise, existing public/contractual duty does not amount to valid consideration, part payment of a debt not valid consideration to forego the balance).
- Williams v Roffey Bros 1991 – whether existing duty can amount to consideration and accepting less; Stolck v Myrick (1809) 2 Camp 317.

2. Understand the rules that govern the content of a contract

- Establishing the difference between a 'term' and a 'representation': relative expertise of the parties; importance of statement; timing of statement; Parol Evidence rule.
- Sources of terms: express terms, implied Terms, duties, custom.
- Conditions (major terms, breach can end contract), warranties (minor term, breach may give rise to damages) (and innominate terms (Looks at effect of breach to decide whether contract can be ended, Hong Kong Fir Shipping)
- Exemption clauses: Common Law validity of exemption clauses; Incorporation and Interpretation of a clause, Statutory Validity of Exemption Clauses - UCTA 1977 and Consumer Rights Act 2015

3. Understand the vitiating elements that may affect the validity of a contract

- Elements of misrepresentation: must have been a statement of fact; where damages are claimed must have caused a loss to claimant; claimant must show they were induced by the claim to enter into contract; statement must have been false (fraudulent, negligent or innocent).
- Remedies available: rescission of the contract; excluding or limiting liability; damages; assessment under tort and under the Misrepresentation Act 1967; equitable remedies e.g. specific performance, injunction.
- Differences: fraudulent – statement made knowing it was not true; negligent – statement made carelessly or with no reasonable grounds; innocently – where there was reasonable ground to expect the statement was true.
- Effects of misrepresentation and mistake: mistake (common, mutual, unilateral); effects (rescission, void ab initio, voidable, unenforceable).
- Differences between remedies for mistake and misrepresentation, unequitable results (Lewis v Averay 1972)
- Doctrine of duress: the evolution of the Doctrine of Duress; economic duress; conditions for economic duress; consequences of duress for validity of contract.

4. Understand how a contract can be discharged

- Different methods that a contract can be discharged e.g. *performance, breach and frustration*
- Types of breach: *actual, anticipatory, repudiatory & non-repudiatory; breach of conditions, warranties and terms.*
- Frustration – Ways in which a contract can be frustrated: *impossibility, illegality, radical change in circumstances; limits to frustration; effect of frustration* (Law Reform (Frustrated Contracts) Act 1943).

5. Understand the remedies available for breach of contract

- Liquidated (pre-agreed in contract in case of breach) and Unliquidated damages (payable for breach of contract and not pre-estimated or included in contract).
- Aim of damages – to put injured party in position they would have been had the contract been performed (*Addis v Gramophone* [1909] AC 488); basis for assessment (expectation, reliance and restitution).
- Measures for assessing damages: remoteness, causation, mitigation

| Criminal Law | | | |
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| Unit aims | This unit will equip learners with knowledge of the general foundations of criminal liability and with understanding of the major types of offences and their constituent elements. The unit aims to enable learners to determine whether specific offences have been committed and whether any defences may be applicable. Learner will explore the aims and nature of criminal law and its function as a protector of the State. | | |
| Unit level | 4 | | |
| Unit code | J/617/7193 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass/Merit/Distinction | | |
| Assessment guidance | In order to achieve this unit learners must produce work which demonstrates achievement of the learning outcomes at the standards provided by the assessment criteria. Learners should refer to actual examples, legislation and/or case law to illustrate the points which are made. Learning outcomes 2, 3,4 and 5 can largely be assessed in a practical context and learners should be provided with suitable scenarios to allow them to demonstrate their knowledge and understanding for all the assessment criteria at pass, merit and distinctions levels. All assessments must be in line with awarding organisation guidance. | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand aims and general principles of criminal law. | 1.1 Evaluate the aims of criminalisation of specific acts and the function of criminal punishment. 1.2. Analyse the role of public prosecution and criminal standard of proof. 1.3. Explain capacity to commit a crime. | | |
| 2. Understand the elements of the different offences against a person | 2. 1 Analyse the components of murder. 2.2 Illustrate circumstances giving rise to voluntary and involuntary manslaughter. 2. 3 Assess the nature of non-fatal offences against the person | 2M1 Assess foresight as a mere evidence of intention. | 2D1 Critique the appropriateness of negligence as a form of <i>mens rea</i> . 2D2 Evaluate deficiencies in existing rules and proposals for reform. |

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| 3. Understand property offences. | 3.1 Explain the components of property offences. 3.2 Distinguish between lack of honesty under s.2(1) TA 1968 and dishonesty under common law. 3.3 Compare and contrast robbery with burglary. | 3M1 Evaluate the meaning of conditional intent. | |
| 4. Understand the general principles of inchoate offences. | 4.1 Assess the types of inchoate offences. 4.2 Explain the meaning of assisting or encouraging crime. 4.3 Distinguish intention to commit crime from an attempt. | 4M1 Distinguish between accomplices and secondary parties and derivative and inchoate liability. | |
| 5. Understand the nature and application of defences. | 5.1 Examine specific and general defences. 5.2 Illustrate the defence of insanity, duress, mistake and involuntary intoxication. 5.3 Illustrate the application of self-defence rule. | | 5D1 Assess the impact of the Convention on Human Rights on defences. |

Indicative Content

1. Understand the aims and general principles of criminal law

- Aims and criminalisation of specific acts: role and nature of the criminal law; the difference between procedural and substantive criminal law; the meaning of crimes; decision making as to what should or should not be criminalised; the distinction between questions of crimes and questions of morality/immorality/wrongs.
- Function of criminal punishment - incapacitation, retribution, deterrence, rehabilitation.
- The role of public prosecution: role of Crown Prosecution Service to prosecute those charged by police with a criminal offence (decide which cases to prosecute, determine appropriate charges, prepare cases and present at court, provide information and support to victims and prosecution witnesses)
- Standard of proof: burden of proof on prosecution; proof of defendant's guilt beyond all reasonable doubt; burden of proving preliminary facts which affect admissibility of evidence e.g. confession.
- Capacity to commit crimes: who can and who cannot commit a crime; age of criminal responsibility; mental incapacity and criminal liability.

Elements of criminal law

- The meaning and types of *actus reus and mens rea*; the need for coincidence between both elements, meaning of causation, remoteness principles.
- *Actus rea* – requirements (voluntariness), types: action crimes, state of affairs crimes, result crimes; creation of continuous danger, the distinction between causation and omission; omissions crimes: general rule, when omission can suffice for a criminal liability: duty to act, special relationships, voluntary acceptance of responsibility, contractual relationship, statute.
- *Mens rea* – types: intention: direct and indirect/oblique, recklessness, negligence (application and interpretation). Issues with Recklessness: subjective v objective, the history of Caldwell test (now abolished but beneficial in highlighting the subjective nature of current approach), issues of foreseeability in light of the characteristics of the defendant.
- Strict liability offences – is strict liability a type of mens rea or are those offences exempt from the requirement of mens rea? Types of crimes of strict liability, *mala prohibita v mala per se* – appropriateness of the distinction, validity of justifications; strict liability use in regulatory offences. Arguments for and against strict liability.

2. Understand the elements of the different offences against a person

The offence of homicide.

- Murder: the need for a death of a human body caused by another person; meaning of death; legal and factual causation, the ‘think skull’ test; the intervening acts, intention to murder – subjective nature of mens rea - foresight – virtual certainty test (Nedrick) – interpretation and application; special cases of medical decisions and euthanasia; sentences and issues with mandatory life sentence.
- Voluntary manslaughter – The original defence of provocation under s.3 of the Homicide Act, now loss of control defence under s. 54 of Coroners and Justice Act 2009 (interpretation and application – what would be deemed sufficient to trigger loss of control: action, words; fear of violence; timing and possibility of cumulative effect of prolonged conduct; the objectiveness of the test, problems with the objectiveness of the test and the criticism); diminished responsibility – s.2 of the Homicide Act 1957 as amended by s.52 of the Coroners and Justice Act 2009 – meaning of diminished responsibility – medical conditions, impairment to defendant’s cognitive processes – their contribution to the actions; suicide pacts – s.4 of the Homicide Act 1957; criticism of current understanding of voluntary manslaughter, proposals for reforms.
- Involuntary manslaughter – by unlawful and dangerous act (meaning of unlawfulness and danger, gross negligence manslaughter (components, requisite mens rea – interpretation, application, the decision in Adomako case); causing death by dangerous driving, causing death by careless driving under s 3A of the Road Traffic Act 1988, causing death without due care and attention or without reasonable consideration under s.3Z of the Road Traffic Act (interpretation, application, meaning of dangerous, careless, due care, reasonable consideration); causing or allowing the death of a child or vulnerable adult under s.5 of the Domestic Violence, Crime and Victims Act 2004 as amended in 2012. Review of existing laws and recent reforms.

3. Non – fatal offences against a person (Assault and battery)

- The offences under the Offences against the Persons Act 1861 (as amended) – the essential components (*actus reus* and *mens rea*) and interpretation of offences under the Offences Against the Persons Act 1861 (as amended) – s.47, s.18, s.20 (battery, assault, actual bodily harm, grievous bodily harm). The distinction between intention and recklessness, the need for malice with intent under s. 20; the issue of psychological harm and emotional harm. Issues of harm caused by intentional spread of infectious disease; aggravating factors – racial and religious motives under Crime and Disorder Act 1998, s.28-29; the issue of consent and extent of valid consent to harm.
- The offences under the Protection from Harassment Act 1997 (as amended in 2012) – harassment, aggravated harassment, stalking, aggravated stalking, requisite mens rea and actus reus; the issue of cyberstalking.
- Difficulties with non – fatal offences in the context of domestic violence and abuse and evaluation of the reforms introduced by the Serious Crime Act 2015, s.76 to overcome some of those difficulties.

4. The nature of sexual offences

- The offence of rape under s.1 of Sexual Offences Act 2003 – components: male defendant, sexual intercourse, absence of consent, capacity to consent, consent obtained by deception, consent upon dishonesty regarding gender, the burden of proof. Mens rea: s.1(2), s.75 – rebuttable presumption of lack of consent; s.76 – irrebuttable presumption of lack of consent, mistake – meaning and application of reasonableness. Social aspects of rape - the difficulties with proving rape, problems with cultural ‘victim blaming’, issues of false accusations etc.
- The offence of assault by penetration – s.2 of the Sexual Offences Act 2003 – components: penetration of sexual nature, lack of consent, meaning of sexual nature – s.78;
- The offence of sexual assault – s.3 of the Sexual Offences Act 2003; components – touching of sexual nature, lack of consent; meaning of touching – s.79(8)
- Sexual offences against children under the age of 16 years old – ss.9-15; rationale for strict application.
- Criticism of current rules, especially in the context of consent, proposal for reforms.

5. Understand property offences.

- The offence of theft – s.1 of the Theft Act – components of theft: dishonest appropriation of property that belong to another with intention to permanently deprive – meaning, interpretation and application of each component; meaning of dishonesty under s.2(2) of the Theft Act and under the common law (*R v Gosh*).
- The offences of robbery and burglary – components of both (*actus reus* and *mens rea*) under s.8 and s.9 of the Theft Act 1968 respectively, what amount to sufficient conduct for robbery in distinction to attempted robbery; distinction between dwelling and non-dwelling and the consequences of the distinction, circumstances giving rise to aggravated burglary (s.10(1)) – consequences.

- Principal offences of fraud under the Fraud Act - fraud by false representation, by failure to disclose information, by abuse of position (components – interpretation and application), *mens rea* – dishonesty, reasons for 2006 change from result offences to conduct offences; frauds online; public perceptions and courts’ attitudes to ‘white collar’ crimes; criticism of the Fraud Act – uncertainties in definitions of terms, complexity of issues for trials by jury; distinction between criminal and civil frauds.

6. Understand the general principles of inchoate offences

- Introduction to general principles of inchoate offences and their deterrent purpose. Overview of attempt, conspiracy (statutory under the Criminal Law Act 1977 and common law based), assisting or encouraging crime.
- Overview of the liability of accomplices, distinction between accomplice / secondary party and principal offender / perpetrator, joint enterprise liability and the recent case of R v Jogee (2016), distinction between derivative and inchoate liability.
- Intention and attempt: definition of attempt being a person with intent commits an act more than merely preparatory to the commission of an offence.

7. Understand the nature and application of defences.

- Overview of specific and general defences – types, application, interpretation, conditions for successful claims, partial and full defences.
- In – depth analysis of selected defences (components and application) – insanity, duress, mistake, involuntary intoxication

Application of self – defence: right to prevent crime; reasonably force to prevent crime and arrest suspected offenders; necessity test (force must be necessary and reasonable); impact of Convention of Human Rights on defences e.g. impact of right to life on self-defence.

| Legal Methods | | | |
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| Unit aims | This unit will equip learners with the knowledge and understanding of the identification, interpretation and analysis of legal sources and materials. The acquired skills will enable the learner to apply the law to the facts of problems in any given legal area, to communicate clearly and persuasively and to reach satisfactory solutions to legal disputes. Learners will explore fundamental principles and components of the English Legal System, the judiciary and the civil and criminal process and will gain an appreciation of how the main principles underpin all substantive and procedural areas of law. | | |
| Unit Level | 4 | | |
| Unit Code | L/617/7194 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Pass/Merit/Distinction | Pass/Merit/Distinction | | |
| Assessment guidance | In order to complete this unit, learners will need to demonstrate achievement of the LOs at the standards specified by the assessment criteria. Learners should refer to actual examples, legislation and/or case law to illustrate the points which are made. For the whole of learning outcomes 1, 3 and 4 and for assessment criteria 2.1 and 5.1 learners need to demonstrate their knowledge and understanding through analysis and explanation of UK law and legal methods. Assessment criteria 2.2, 2.3, 2M1, 5.2, 5.3 and 5D1 lend themselves to a more practical application of knowledge and suitable examples and scenarios should be provided for learners to demonstrate knowledge and understanding. All assessments must be in line with awarding organisation guidance. | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the sources of law | 1.1 Distinguish between primary, secondary and delegated legislations. 1.2 Explain the hierarchy within statutory sources and the case law. 1.3 Explain the impact of the Human Rights Act | | 1D1 Analyse the tension between secondary legislations and the principle of separation of power |
| 2. Understand the principles of legal interpretation | 2.1 Explain the doctrine of judicial precedent 2.2 Distinguish between binding, non-binding and persuasive decisions 2.3 Illustrate the operation of literal, golden and purposive rules of statutory interpretation | 2M1 Determine the ratio decidendi and obiter dictum from a given legal case | |

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| 3. Understand the structure of the legal profession, the judiciary, the jury and magistrates | 3.1. Analyse the structure of the criminal and civil courts 3.2 Analyse the role of the judiciary and the judicial appointment process 3.3 Analyse the function of the jury in criminal trials | 3M1 Analyse parliamentary and governmental efforts to widen access to the legal profession | |
| 4. Understand the civil and criminal justice system and the alternative methods of dispute resolution | 4.1 Assess the duty and powers of the police 4.2. Assess the role of the Crown Prosecution Service 4.3 Examine the latest reforms to the civil justice process | 4M1 Compare and contrast the benefits and drawbacks of the different types of alternative dispute resolution | 4D1 Analyse social, political and economic causes of miscarriages of justice |
| 5. Know how to use Legal Writing and Mooting Skills | 5.1 Explain the importance of a bundle in mooting exercises 5.2 Analyse and apply relevant cases and statutory provisions to a given scenario 5.3 Present the arguments for the parties involved in a given mooting scenario | | 5D1 Evaluate the claim and the defence, based on a given scenario. |

Indicative Content

1. Understand the sources of law

- Introduction to the nature and sources of law. Categories of law: hard laws, soft laws, 'softer' laws; sources: primary (laws enacted by parliament), secondary or delegated legislation (law created by ministers under powers given to them in primary legislation); the role of international law: international conventions, laws of the European Unions; tension between secondary and delegated legislation and the principle of separation of power; hierarchy of laws in England – Legislation (primary and secondary), case law rules of common law and equity (from precedent).
- The impact of the Human Rights Act: Gives rights to individuals which apply within legal system; enables individuals to defend those rights in UK courts; compels public organisations to treat people equally and with fairness, dignity and respect; European Convention on Human Rights and the role of the European Courts of Human Rights;

2. Understand the principles of legal interpretation

- The principle of the rule of law, the doctrine of judicial precedents (a decision of the court used as a source for future decision making) : hierarchy and structure of the courts, delimitation of cases that constitute a valid precedent; differences between binding (must be

followed), non-binding (precedents of a lower court are not binding on a higher court) and persuasive decisions (influence but do not bind judges) due to the nature of the court; the structure and function of the Privy Council – the anomaly of the institution and its relationship with the Supreme Court, the impact of Privy Council decisions on cases decided in England and Wales, the decision in *Willers v Joyce*.

- The interpretation of case law – the distinction between ratio and obiter, how to discern ratio from multiple judgments in the same case, the issue of majority decisions and dissenting judgments; the differences between summary of facts and legal interpretations.
- Principles of statutory interpretation: the literal (what the statute actually says e.g. *Duport Steel v Sirs* 1980), golden (where literal rule produces an absurdity, court looks for other meaning of the words – *Grey v Pearson* 1857, *Adler v George* 1964) and purposive (what the court feels parliament was trying to achieve - *Magor and St. Mellons Rural District Council v Newport Corporation* 1950, *Pickstone v Freemans plc* 1998).

3. Understand the civil and criminal justice system and the alternative methods of dispute resolution

- The structure and divisions of the courts: the hierarchy of the civil and criminal courts, courts of appeal, Queen’s Bench, Chancery and Family divisions of High Court: The function of different legal roles; the distinction between barristers, solicitors, legal executives, paralegals, the blurring roles of the profession, the qualification requirements, and their specific rights and duties and forms of practice; the role of judges Quality Assurance Scheme for advocates.
- the role of the judiciary and the appointment process, the diminishing role of the Lord Chancellor; The difference between a judge and a magistrate, the rights and powers of magistrates and judges, the issue of non-judicial roles taken by judges. The issues with judicial appointments processes – issues of fairness, diversity, wider access; issues of independence.
- Function of jury: to decide on guilt based on evidence presented in court.
- Constitutional Reform Act 2005; the Hazel Green Report; the Legal Services Act 2007 and the current LETR review.

4. Understand the civil and criminal justice system and the alternative methods of dispute resolution

The duty and rights of the police – stop and search; powers of arrest, police powers after arrest, the rights of the suspects – rights to remain silent, right to representation; safeguards for suspects (interpretation, application); the nature and meaning of caution

- The role of Crown Prosecution Service; tension between police powers and social injustices; issues of potential discriminatory practices and safeguards.
- The principles of civil justice system – the Woolf’s reform and current process; the meaning of inquisitorial system, the meaning of pre-action protocol, case management; types of track of civil cases: small claims track, fast track, multi – track, benefits and drawbacks of the reforms.
- The appeal process and the meaning and application of leapfrog procedure.

- Alternative dispute resolution; examples of voluntary and compulsory ADR (family cases, employment, immigration), the existence of alternative Tribunals.
- Forms of ADR – arbitration, mediation, reconciliation, settlement – main principles and distinctions.
- Distinct nature of arbitration – reasons for their popularity amongst international commercial parties.
- Advantages and disadvantages of individual methods.
- Miscarriage of justice: wrongful conviction of individuals; impact of current social, political and economic landscape on potential for wrongful conviction; access to justice (financial and other issues).

5. Know how to use Legal Writing and Mooting Skills

- Bundle: folder containing copies of all documents relevant to a case; mooting is oral presentation of a case in a mock hearing; bundle will be provided for judge(s) and usually opponents; allows others to follow argument; should be referenced and referred to when arguing; needs to be easy to follow.
- Analyse and apply relevant cases and statutory instruments: read all material; identify facts of case; read important authorities relied upon on each side of case; analyse relevant cases and statutory provisions identifying how they relate to scenario; choose a main theme for your argument; prepare responses to likely questions; create an outline of argument;
- Evaluate claim and defence: identify relevant facts of claim/defence; consider validity of claim/defence; identify potential outcomes; evaluate possible claims.
- Present arguments: State the issue; state what you intend to cover/where you are going with your argument; present the facts; cover issues; handle questions; sum up; address points made by opponents.

| Public Law | | | |
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| Unit aims | This unit will equip learners with knowledge of the general foundations of constitutional and administrative law, with a particular focus on the main elements of the United Kingdom's constitution. The unit will enable learners to identify the significance of the separation of power and the sovereignty of Parliament, as well as the importance of human rights norms. Learners will also be introduced to the basic principles of administrative law and judicial review process. | | |
| Unit level | 4 | | |
| Unit code | R/617/7195 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass/Merit/Distinction | | |
| Assessment guidance | In order to complete this unit, learners will need to demonstrate achievement of the LOs at the standards specified by the assessment criteria. Learners should refer to actual examples, legislation and/or case law to illustrate the points which are made. This unit requires learners to demonstrate understanding of the UK constitution and legislature and is unlikely to be unsuitable for a practical application approach to assessment. Suitable assessment is in the form of an essay explaining the concepts and issues identified. All assessments must be in line with awarding organisation guidance. | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the features of the UK constitution. | 1.1 Assess the role of the UK constitution. 1.2 Evaluate the characteristics of the UK constitutional system. 1.3 Explain the history and origins of the UK constitutional system. | 1M1 Assess the significance of constitutional conventions in the UK. | |
| 2. Understand the meaning and consequences of separation of powers. | 2.1. Explain the distinct roles of the legislature, the executive and the judiciary. 2.2. Evaluate reforms to the judicial appointment system. 2.3 Assess the significance of the separation of powers' principle. | | 2D1 Evaluate the extent of the UK constitution's adherence to the separation of powers' principle. |

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| 3. Understand the meaning and consequences of the rule of law and parliamentary sovereignty. | 3.1. Illustrate the impact of the Human Rights Act 1998 on the 'rule of law'. 3.2. Explain the meaning of the 'royal prerogative'. 3.3. Assess the limits of parliamentary sovereignty. | | 3D1 Discuss the 'rule of law' in relation to natural and positive theories of law. |
| 4. Understand the composition and operation of the legislature and the UK governments. | 4.1 Illustrate the passage of an Act of Parliament. 4.2. Explain the structure of the devolved powers in the UK. 4.3. Appraise the extent of devolved powers of the Scottish Parliaments, Welsh Assembly and the Executive Committee of Northern Ireland. | 4M1 Appraise the extent of the parliamentary privilege. | 4D1 Appraise the political advantages and disadvantages of the 'first past the post' system. |
| 5. Understand the nature of and procedures for judicial review. | 5.1. Appraise the scope and limitations of judicial review. 5.2 Evaluate the procedural steps of judicial review. 5.3 Distinguish between substantive breaches and procedural impropriety. | M 5.1 Appraise the boundaries between private and public law. | |

Indicative Content

1. Understand the features of the UK constitution.

- Role of UK Constitution: role of a constitution is to set out the rules and regulations that guide how governments operate; establish the powers and function of state; regulate relations between state institutions; protects legal rights of citizens; defines duties of citizens.
- Characteristics of UK constitutional system: British constitution is uncodified (unwritten) – no one document but evolved over time and derived from a variety of different sources such as statute law and conventions; many other countries have codified constitutions.
- The history and developments that led to the current form of UK constitution: Magna Carta, European Communities Act 1972 Acts of Union (with Scotland 1707, and Ireland 1800), various definitions of a constitution, the superiority of constitution over other laws.
- Constitutional conventions – definitions, nature as a source of the constitution. Constitution as the outcome of people's rights, Dicey's view of constitutional conventions their strengths – legal and political, how they are established and enforced.

2. Understand the meaning and consequence of separation of powers.

- The meaning and consequences of the separation of powers – the origin of the doctrine (Aristotle), Locke's threefold classification of powers, Montesquieu rationale for maintaining the distinction between legislature, executive powers and judiciary. Full v partial separation of powers, limits on separation in the context of UK governance – divergence of views of possibility of adherence to separation of powers, the role and function of the judiciary, the issues of independence of the judiciary, the criticism of judicial appointments, issues of diversity, reflection of the society as a whole etc; the Constitutional Reform Act 2005, the creation of the Supreme Court – rationale, purpose and effect, constitutional role of the judiciary.

3. Understand the meaning and consequences of the 'rule of law' and the parliamentary sovereignty.

- Human rights and rule of law: The meaning and characteristics of the 'rule of law' (rule of law based on human rights and protects fundamental human rights of citizens); Theories of the 'rule of law' – Raz, Dworkin, Hart.
- Main principles of the rule of law – laws to be prospective, open, clear; relatively stable; should be guided by open, stable, clear and general rules; judiciary must be guaranteed independence; natural justice must be observed, existence of judicial review, accessibility of courts, crime enforcement to comply with general principles of law; Allan's summary – principles of procedural fairness and legality, equality and proportionality – meaning, practical application in relevant case law.
- Dicey's three elements of the 'rule of law' – no man should be punishable except for breach of law established in the normal manner before the ordinary courts of the land; no man should be above the law; general principles of constitution determined by the judiciary – meaning, practical examples from case law, criticisms.
- The royal prerogative – meaning, examples of prerogative powers – appointment and removal of ministers, appointment of the PM, the power to dismiss the government, the power to summon and prorogue Parliament, assent to legislation, the power to legislate under the prerogative by Order of the Council – meaning and extent of the powers – real v symbolic.
- The legislative supremacy of the Parliament; Dicey's understanding of parliamentary sovereignty, historical developments that led to the supremacy (Magna Carta, Dr Bronham's Case, The Glorious Revolution 1688), present position – no official limits on the legislative powers, tension between theory and practice, social and political understanding of the principle, 'the manner and form arguments, the impact on and limits of judicial decisions; the Parliaments Acts 1911 and 1949 – limitation of the House of Lords' powers.
- The doctrine of implied repeal and limits to the principle of entrenchment.
- The issues of legislative supremacy and the impact of the European Union; legislative supremacy and the Human Rights Act – judicial interpretation, declaration of incompatibility, retrospectivity.

4. Understand the composition and operation of the legislature and UK governments

- The electoral system – ‘first past the post’ – meaning, advantages and disadvantages, reasons for disqualification from election as an MP (holders of specific offices such as judges, civil servant, armed and police forces, members of foreign parliaments, membership of other offices such as Commission for Equality and Human Rights etc), proposals for and obstacles to reforms of the electoral system.
- The structure and composition of the Parliament – House of Lords: membership of the House of Lords – hereditary peers, life peers, spiritual peers, the speaker; role of the House of Lords, the Parliamentary Acts, criticism of the upper house; reforms of the House of Lords; House of Commons – officers (the speaker, the whips, the father of house).
- Legislative process – sittings, planning of deliberations, schedule of sessions; Committees – select committee, domestic committee, departmental select committees; the legislative process – first/second reading, committees’ stages, final reading; voting processes.
- Parliamentary privilege – immunity from potential litigation in respect of things said, freedom of speech; extent and limits to the parliamentary privilege, Parliamentary Standards Act 2009.
- Primary and secondary legislation – Acts of Parliaments, delegated legislation, statutory instruments, regulatory bodies.
- The structure of the United Kingdom – historical development that led to the current set up, conquest of Wales, resistance from Scotland until crown unification by James VI, English and then British influence over Ireland, the Government of Ireland Act, the Northern Ireland Act 1998, Belfast agreement.
- Devolution – meaning, structure, extent. The Welsh Assembly and the Welsh government – law making powers, role, limitations; the Scottish Parliament – law-making powers, roles, limitations; the Northern Ireland Executive – roles, powers, limitations.
- Political tensions between the states, Scottish calls for independence, Brexit referendum as highlighter of disparities between different States; the issue of ‘English question’ due to England not having its own Parliament, memorandum of understanding of co-operation between the four nations.

5. Understand the nature of the judicial review process.

- Nature of judicial review – purpose, reasons for existence, restraints on uncontrollable discretion. Distinction between judicial review and the appeal process. 1977 procedural reforms, the rule in *O’Reilly v Mackman* – does it still exist in light of the decision in *Mercury Communication Ltd v Director General of Telecommunication*; the distinction between public and private matters – boundaries, issue with identifications, criticisms; collateral challenges.
- Possibility of excluding the right to judicial review – ouster clauses, time limit clauses.

6. Procedures and grounds for judicial review.

- Judicial review process – pre-action protocol, permission stage, time limits, the right to initiate judicial review – locus standi, reform of judicial review nature and process.

- Grounds for review – Wednesbury and GCHQ cases – illegality, relevant / irrelevant considerations, the issue of fiduciary duties, improper purposes, bad faith, irrationality, procedural impropriety – meaning, scope, practical application with reference to relevant cases; distinction between substantive breaches and procedural breaches; the issues of proportionality, natural justice and legitimate expectations; the rule against bias – meaning of actual and perceived bias, the right to fair hearing.
- Judicial review remedies – a quashing order, a prohibiting order, a mandatory order, declaration, injunction, interim declaration, substitutionary remedy – meaning, scope, application.
- Boundaries between private/public law: judicial review may only be brought against a public or governmental body; distinction therefore important to determine whether public law must be complied with.