



Richmond College
Advanced Education



Qualification Specification for :

Level 5 Extended Diploma in Law
603/4891/4



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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.

| Equity and Trusts | | | |
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| Unit aims | This unit will equip learners with in-depth knowledge and understanding of the principles governing the law of Equity and Trusts. The unit aims to enable learners to understand and apply equitable rules to fact-based scenarios, to identify and resolve issues that potential clients may face in the context of different types of trusts and equitable remedies. Learners will explore how equity interrelates with other legal topics and how equitable principles apply in domestic and commercial context. | | |
| Unit level | Level 5 | | |
| Unit code | Y/617/7196 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass / Merit / Distinction | | |
| Assessment guidance | Assessment in accordance with awarding organisation guidance | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand historical events leading to the development and nature of Equity. | 1.1 Explain key historical events leading to the development of Equity. 1.2 Examine the relationship between law and equity. 1.3. Explain the meaning of equitable maxims. | | |
| 2. Understand the requirements for the creation of valid trusts. | 2.1 Analyse the features of different types of trusts. | M 2.1 Assess the advantages and disadvantages of adherence to strict requirements of constitutions versus the Re Rose's approach. | D 2.1 Discuss flaws and inconsistencies in judicial reasonings. |

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| | <p>2.2 Apply statutory rules and their case law interpretations in appropriate scenarios.</p> <p>2.3 Analyse the impact of illegality on legal presumptions.</p> | | |
| <p>3. Understand the concept of the beneficiary principle and exceptions.</p> | <p>3.1 Examine the need for a human beneficiary in private express trusts.</p> <p>3.2 Illustrate established exceptions to the beneficiary principle.</p> <p>3.3 Describe the various methods by which gifts to unincorporated associations may be affected.</p> | <p>M 3.1 Explain various constructions of the application of the beneficiary principle.</p> | <p>D 3.1 Evaluate socio-legal and political reasons for the policy choice to adhere to the beneficiary principle.</p> |
| <p>4. Understand equitable remedies</p> | <p>4.1 Evaluate conditions for tracing in law and in equity.</p> <p>4.2 Appraise the application of the change of position defence.</p> <p>4.3 Assess when specific performance or injunction can be granted.</p> | <p>M 4.1 Evaluate the rationale for the fiduciary relationship in equitable tracing</p> | |
| <p>5. Understand trustees' administrative powers and duties.</p> | <p>5.1 Explain when power of advancement and maintenance can be utilised by the trustees.</p> <p>5.2 Differentiate correctly between administrative duties and fiduciary duties.</p> <p>5.3 Evaluate trustees' defences for breach of administrative duties.</p> | | <p>D 5.1 Critique the appropriateness of acceptance of limitation of liability clauses.</p> |

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| Indicative Content | <p>1. Understand historical events leading to the development of Equity</p> <ul style="list-style-type: none"> • Key historical events that led to the creation of equity and common law • The significance of Earl of Oxford's case • The distinction between common law, equity and statutory rules • The administrative fusion of equity and common law (The Judicature Acts) • Equitable maxims: twelve maxims (general principles or rules); their meaning, use and misuse; discretionary nature of maxims <p>2. Understand the requirements for the creation of a valid private express trust</p> <ul style="list-style-type: none"> • Types of trusts and powers – fixed v discretionary trust, bare powers, fiduciary powers, trust powers • Three certainties – certainty of intention (words (precatory v mandatory), conduct, implications); certainty of object – given postulant v complete list test, various interpretation of the given postulant test, conceptual uncertainty, evidential uncertainty, ascertain ability of beneficiaries, administrative unworkability, methods of curing uncertainty; certainty of subject – distinction between tangible and intangible properties, uncertainties, methods of curing; consequences of lack of any of the certainties • Formalities – s.53(1)b and s.53(1)c of the LPA; distinction between declaration and disposition • Constitution – the principle of Milroy v Lord, the application of maxims “equity will not assist a volunteer” and “equity will not perfect an imperfect gift”, exceptions – Re Rose, Choithram v Pagarani, Pennington v Waine; donatio mortis causa, Strong v Birds, proprietary estoppel, Contract (Rights of Third Parties) Act 1999, trust of promise, fortuitous vesting. • Impact of illegality on legal presumptions: circumstances in which resulting trust arises; Patel v Mirza (2016): Lohia v Lohia 2001. <p>Features of different types of trust</p> <p>Equitable principles that govern the creation, validity and failure of public trusts (charities)</p> <ul style="list-style-type: none"> • Meaning and interpretation of charitable purpose (Pemsel's categorisation, new heads under Charities Act 2006, Charities Act 2011) • Meaning and application of public benefit including discussion regarding the Charity Commission's role and its guidance on public benefit • Meaning and application of the clause 'wholly and exclusive charitable' • The doctrine of cy-pres (initial failure and subsequent failure). <p>The concept and application of constructive trust</p> | | |

- Nature of constructive trusts – remedial v institutional constructive trusts, consequences of classification
- Fiduciary duties – non-conflict and non-profit rules, duty to act without remuneration and exceptions, self-dealing, fair-dealing, corporate opportunity doctrine, equitable principles dealing in the context of bribery, defences to breach of fiduciary duties, equitable remedies for breach of fiduciary duties, distinction between personal and proprietary liability
- Third parties' liabilities – dishonest assistance (conditions for liability, meaning of assistance, meaning of dishonesty (objective, subjective, combined objective & subjective tests, semantic v substantive differences, remedies; receipt based liability (conditions for liability, requirement of mental state, different types of knowledge, meaning of unconscionability in this context, distinction between knowledge and unconscionability, meaning of beneficial receipt; remedies
- Differences between strict and fault-based liabilities.

The concept of resulting trusts

- Circumstances in which resulting trusts apply – failure of trust, presumed intention of the parties, failure to dispose of full beneficial interest, dissolution of unincorporated association
- Presumption of resulting trust
- Presumption of advancement in the context of Equalities Act 2010
- Theories that aim to explain the reasons for why resulting trusts exist as opposed to when it will arise – presumed intention, automatic resulting trust, prosluting trust, lack of intention to benefit third party, Swadling, Penner, Millett and Birk's theories
- The concept of unjust enrichment
- The principles of Quistclose trust and theories explain its compatibility (or lack of it) with orthodox equitable rules.

3. Understand the concept and application of the beneficiary principle and exceptions

- The need for a human beneficiary
- The rule in Saunders v Vautier
- Trusts of imperfect obligations / purpose trust – recognised purposes (animals, monuments / tombs, fox hunting, private masses), perpetuity rule, need for a willing trustee
- Judicial constructions – Re Denley's, Re Osoba / Re Bowes
- Gifts to unincorporated associations – various theories how such gifts can be upheld including contractual theory.

4. Understand equitable remedies

- Distinction between tracing and following
- Common law tracing – conditions for application, issues with mixture of properties, change of position defence
- Equitable tracing – conditions for application (fiduciary duties, beneficial interest, property in traceable form, no inequitable result), various methods of attribution (first in – first out, beneficiary election approach, swollen asset theory, pro-rata principle), meaning of dissipation, principles of subrogation, principles of backwards tracing; defences; change of position (restitution and unjust enrichment).
- Specific performance – conditions that must be met before such remedy can be granted, nature of remedy
- Injunctions – conditions that must be met before injunctions can be issued, reasons for its existence, nature of remedy
- In tracing, students must be able to demonstrate the ability to distinguish scenarios where facts can produce definitive outcome and when facts are insufficient. In the latter case, students need to know when they are permitted to speculate and when they just need to look at alternative angles.

5. Understand trustees' administrative powers and duties

- This learning outcome relates to administrative duties that are distinct from fiduciary duties.
- Power of advancement – conditions and rules governing application
- Power of maintenance – conditions and rules governing application
- Duty of care – meaning and application
- Duty to invest – Trustees Act 2000, principles of rational investments, defense
- Limitation of liability – validity, application, effects.

| EU Law | | | |
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| Unit aims | This unit will equip learners with knowledge of the European Union legal system and the main substantive aspects of the European Union laws. The unit aims to enable learners to understand the history that led to the creation of the union, the political institutions of the EU, the role and the jurisdiction of the Court of Justice. Learners will be introduced to the fundamental rights given to individuals guaranteed by the Union and to the relationship between European and national laws. | | |
| Unit level | Level 5 | | |
| Unit code | D/617/7197 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass / Merit / Distinction | | |
| Assessment guidance | Assessment in accordance with awarding organisation guidance | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the rationale for the European Union's creation. | 1.1 Examine the historical events of the 20 th century leading to the creation of the EU. 1.2. Evaluate the original objectives of the EU. 1.3 Compare and contrast the original objectives of the European Union with its current position. | | |
| 2. Understand the institutions of the European Union. | 2.1. Evaluate the functions and powers of the EU institutions. 2.2. Examine the extent of the jurisdiction of the European Court of Justice. | | 2D1 Analyse the balance of power between the EU and national governments. |

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| | 2.3. Explain the voting system of the EU Council. | | |
| 3. Understand how European Union laws are enforced. | 3.1. Evaluate the doctrine of supremacy. 3.2. Compare and contrast Treaties, regulations and directives. 3.3. Assess direct and indirect effect. | 3M1 Compare and contrast infringement proceedings actioned by the Commission with proceedings actioned by a Member State against another Member State. | |
| 4. Understand EU law on the free movements of goods. | 4.1 Explain the meaning of freedom of 'goods' and 'services'. 4.2 Evaluate the prohibition of fiscal and regulatory barriers to free movement. 4.3 Analyse justifiable derogations from the principle of free movement of goods. | 4M1 Evaluate the remedies for infringements of EU law on free movements of goods and services. | |
| 5. Understand EU law on the free movements of persons and the freedom of establishment. | 5.1 Explain the terms 'worker' and 'establishment' in relation to EU law on free movement. 5.2 Examine the rights of workers under the EU law on free movement. 5.3 Analyse the exemptions to the EU law on free movement. | 5M1 Appraise the impact of vertical and horizontal effects on individual rights to free movement. | 5D1 Distinguish between social assistance and social advantage in relation to free movement of persons. 5D2 Evaluate the role of EU citizenship in regulating rights of third parties. |
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| <p>Indicative Content</p> | <p>1. Understand the rationale for creation of the EU</p> <ul style="list-style-type: none"> • The history and developments underpinning the creation of the European Union – the horrors of the World War 1 and 2, the need for innovative approach to international co-operation, commercial pressure in post-war industrial countries; the political willingness towards international co-operations; the original objectives and purpose of the union (a common market); evolution of the objectives to the current position (economic and monetary union, Lisbon Treaty); tension between calls for further integration and re-emergence of nationalistic views. • Key dates in the historical development of the EU – Treaty of Paris 1951 (setting up the European Coal and Steel Community); the Treaties of Rome (European Economic Community and the European Atomic Energy Community); the Stockholm Convention (European Free Trade Association); the first, second and third enlargement; the Single European Act 1986; the Community Charter of the Fundamental Social Rights of Workers; The Treaty of the European Union, the Treaty of Amsterdam, the introduction of the Euro and the eurozone; the Eastern European expansion; the Lisbon Treaty. Criticisms of the fast pace of expansions, especially in the context of the Eastern European States and the problems with the Euro. Issues with ongoing strengthening of integration between states, tensions between commercial, political and social pressures; meaning of a Member State, meaning of a ‘third country’; current and future developments. <p>2. Understand the institutions of the European Union</p> <ul style="list-style-type: none"> • EU Institutions – compositions, functions and powers. The European Parliament – formation, EMPs, maximum size of 751 members, national quotas for each European country, legislative powers, budgetary powers, supervisory powers, elective powers – scope and limitations; The Council of Ministers – composition, internal structure, decision and voting processes; function and powers; The Commission – composition, election, the role of the President, function and powers; the role and function of specific Committees; impact of EU powers on national governments (primacy of EU law). • The Courts of Justice of the European Union – judicial composition, the European court system, jurisdiction and judicial process; the role of Advocate-General and the judges. • Voting systems of the Council – simple majority (rare), qualified majority (the norm), unanimous decision (for measures of constitutional significance). <p>3. Understand how European Union laws are enforced.</p> <ul style="list-style-type: none"> • The doctrine of supremacy and direct effect – how international treaties are enforced in domestic courts – traditional approaches of Monist constitutional traditions and Dualist constitutional traditions, EU as the new legal order – consequences – direct effect of the provision of the Treaties – meaning, extent of application depending on |
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the type of EU law, vertical and horizontal effects – Treaties, directives, regulations, application tests, time limits; indirect effects, the doctrine of consistent interpretation.

- Enforcement actions – Art 19(1) – allocation of responsibility and enforcement powers; two primary enforcement methods – infringement proceedings by the European Commission against a Member State (art 258), action by a Member State against another Member States – formal steps, procedures, potential outcomes, limitations.
- Preliminary rulings and annulment actions proceedings – scope, case law application, case law examples.
- International law of the Treaties; creation of secondary European laws – seven stage procedure (art 294 (5 steps), art 297 (additional two steps), impact of information trilogues, general and special legislative powers.
- The principle of subsidiarity – meaning, scope and consequences (political safeguard, judicial safeguards).
- General and Specific competencies of the Union – The Harmonization Competence (art 114), the Residual Competence (art 352), implied powers – meaning and extent.
- Specific competencies – exclusive competencies (art 3), shared competencies (art 4), coordinating competencies (art 5), complementary competencies (art 6) – meaning, scope, application within the EU context.
- The development and origins of EU fundamental rights, the formal recognition of the rights, freedoms and principles set out in the Fundamental Charter of Fundamental rights of the EU, willingness towards accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the draft EU – ECHR agreement, opinions of the ECJ on ECHR accession; calls for written Bill of Rights, creation of Bill of Rights – content, legal status, hard and soft principles; the European standard on human rights, limitations – internal to EU and external to EU.
- General principles of EU law identified primarily by the European Courts of Justice – human rights, transparency, equality, subsidiarity, principles of administrative justice.

4. Understand EU law on the free movements of goods

- Fundamental freedom 1 – general principles for free movements of goods (art 28-30, 34- 35, 36, 110), meaning of goods, meaning of services – examples, ECJ’s interpretation.
- Prohibition on fiscal barriers – custom duties or charges of equivalent effect; meaning and nature of charges having equivalent effect, examples of custom equivalent changes; ECJ’s interpretations; discriminatory internal taxation – direct and indirect imposition of taxation against ‘similar’ or ‘competing’ foreign goods, issues of objective justification, issues when no comparable goods exists in domestic markets, proportionality principles.
- Prohibition of regulatory barriers – quantitative restriction on imports (art 34) and quantitative restrictions on exports (art 35) or measures having similar effect – meaning, scope, application, Dassonville formula.

- Possibility for restrictions on freedoms of goods – justification of public morality, public policy or security, the protection of health and life of human, animals or plants, the protection of national treasures ... or the protection of industrial or commercial property – meaning, scope, application, limitations, ECJ interpretation in case law; possibility of restriction of freedom of services – public policy, public security, public health. Additional possibility as long as measure non-discriminatory – consumer protection, preventing fraud and other crimes, public order etc – meaning, application.
- Remedies – repayment of illegal charges, equalisation, state liability.

5. Understand EU law on the free movements of persons and freedom of establishment

- Fundamental freedom 2 – general principles for free movements of workers (art 45).
- The meaning of a ‘worker’ – union legal concept, defined by the case law of ECJ, not the Treaty itself, broad definition from Lawrie – Blum case 66/85, others – Levin case 53/81, what is included – e.g., Case 196/87 Steymann, C-456/02 – Trojani, what is excluded – e.g., Case 344/87 Bettray, etc; the right of those seeking work – Case 292/89 Antonissen, Case C-138/02 Collins, limitations.
- The meaning of establishment – e.g., Case C-55/94 Gebhard; issue of self-employment, mutual recognition of qualifications, establishment of companies (art 54).
- Rights of workers – equal treatment, prohibition of direct and indirect discrimination – scope, case law interpretation; issues of rights to social advantages v social assistance or social welfare – meaning, EU v internal issues.
- Impact of vertical and horizontal effect on direct rights and claims by workers, procedures for challenges.
- Derogation from free movements of person and from freedom of establishment – reasons, interpretation, the concept of objective public interest.
- What is EU citizenship – origin (art 20), constitutional significance, rights granted by the EU citizenship concept – collective enumeration of rights (art 20), right to move and reside freely within any EU member state (art 21), right to participate in municipal and EP elections (Art 22), rights to diplomatic protection (art 23), right to participate in the democratic life of the Union (Art 9-11), right to complain (Art 24); to whom it applies – Case C-650/13 Delvigne, direct v indirect rights; impact of EU citizenship on statelessness.
- The relationship between national, EU and Public International Law; specific issues regarding students and EU citizenship, rights of those not in employment; those with dual nationality and issues of third parties’ nationals and right to family unification; the Citizens Rights Directive.

| Land Law | | | |
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| Unit aims | This unit will equip learners with an in-depth knowledge and understanding of the principles governing land law. The unit aims to enable learners to appreciate the scope of estates and interests in land and their method of protection. Learners will explore the meaning of real property, the types of legal and equitable interests in land, the principles of registration and its purpose and the rules behind the operation of selected proprietary rights. | | |
| Unit level | Level 5 | | |
| Unit code | H/617/7198 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass / Merit / Distinction | | |
| Assessment guidance | Assessment in accordance with awarding organization guidance | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the nature of interests in real property. | 1.1 Compare and contrast between legal and equitable interests in land. 1.2 Differentiate between personal and proprietary interests. 1.3 Explain different types of licences and ownership. | 1M1 Analyse how licence differs from lease. | 1D1 Assess the rationale for specific protection afforded to real property. |
| 2. Understand the concept and application of proprietary estoppel. | 2.1 Explain the meaning of proprietary estoppel. 2.2 Analyse the conditions for its creation. | 2M1 Examine presumption of reliance. | |

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| | 2.3 Examine available remedies. | | |
| 3. Understand the nature and purpose of easements. | 3.1 Explain the rules for creation and acquisition of legal and equitable easements. 3.2 Distinguish between negative and positive easements. 3.3 Explain how easements are extinguished. | | 3D1 Evaluate the extent of non-traditional types of easements. |
| 4. Understand the nature and purpose of freehold covenants. | 4.1 Distinguish between positive and restrictive covenants. 4.2 Explain how the benefit and burden run in law and in equity. 4.3 Explain how freehold covenants are discharged or modified. | 4M1 Evaluate the extent of enforceability of positive covenants against third party. | |
| 5. Understand the application of adverse possession. | 5.1 Explain how adverse possession is established. 5.2 Illustrate registered owners' protection against adverse possession under the LRA 2002. 5.3 Illustrate the advantages of registered | | 5D1 Critique the justification for acquiring land under adverse possession. |

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| | <p>proprietor in the context of adverse possession.</p> | | |
| <p>Indicative Content</p> | <p>1. Understand the nature of interests in real property.</p> <ul style="list-style-type: none"> • Distinction between legal (enforceable as right) and equitable interests (discretion of courts) in land, distinction between personal rights (a right to use the land for a specific purpose that is personal to the owner and cannot bind future purchasers of the land) and proprietary rights (control over the land which may be through a lease or ownership, for example). • Rationale and justifications behind the special protection given to real property in contrast with the majority of personal property; peaceful enjoyment of property. • Licences – nature, distinction from leases, types of licences: bare licence, licence coupled with an interest or ‘grant’, contractual licence; obligations of licensees and licensors. More analysis needed for contractual licence and whether / when they can bind third parties: Lloyd v Dugdale, Chaudhary v Yavuz. <p>The principles of registration of land.</p> <ul style="list-style-type: none"> • Land Registration Act 2002 – when interests come into existence, when they need to be protected, what are the consequences/effect of registration / lack of registration, the rationale and justification of land registration, the difference between <i>validatem</i> and <i>ad probationem</i> registration. • The three principles and the structure of the land register (mirror principle, curtain principle, insurance principle) & (the property register, the proprietorship register, the charges register) • Types and classification of interests and registration of them – estates (interests protected by main registration: fee simple, terms of years absolute in possession – essential features), grades of title (absolute title, good leasehold title: possessory title, qualified title); registered charges, minor interests protected by notice and restrictions (essential features); basic priority rule and special priority rule. • Overriding interests – conditions for operation (proprietary rights coupled with actual occupation of land discoverable upon a reasonable inspection of the land); meaning of actual occupation (Williams Glyn’s Bank v Boland; Thompson v Foy, Link Lending v Bustard etc), meaning of reasonable inspection (meaning of notice, types of notice, variations in interpretations), actual, presumed and imputed notices, required timing (Abbey National Building Society v Cann), waiver of overriding interests • Alterations of register (mistakes, out of date corrections, removal of superfluous entries, giving effect to rights exempted from registration); rectification and indemnity (conditions for application and interpretations). | | |

Co-ownership and trusts of land.

- The nature of co-ownership and the relationship between co-owners.
- Joint tenancy and tenancy in common. Essential characteristics (joint tenancy: survivorship, four unities of possession, interest, title and time; tenancy in common: undivided share in land; only unity of possession needed; no right of survivorship)
- Concept and method of severance of joint tenancy: statutory notice under s. 36(2) LPA 1925; common law severance under *Williams v Hensman* (1861): under an act operating on own share, by mutual conduct or course of dealing; effect and timing of severance.
- Principles of overreaching – which rights are capable of being overreached, statutory conditions for overreaching, effects of overreaching, effects of failing to overreach, the need for consent.
- Resolution of co-ownership disputes – s.14 and s.15 of TOLATA – rights between beneficiaries, rights between beneficiaries and third parties, court orders of sale – conditions, circumstances that would give rise to sale, tension between family rights and creditors' rights; special instances in cases of bankruptcy. Advantages and disadvantages of using trusts as a regulatory mechanism in co-ownership disputes; tension with family laws and the protection of children.

2. Understand the concept and application of proprietary estoppel

- Meaning and conditions of proprietary estoppel: representation/assurance, reliance on that assurance, detriment. Presumption of reliance in specific circumstances.
- The extent to which unconscionability is or is not required in the context of proprietary estoppel, distinctions between commercial and domestic settings, distinction between different types of assurances.
- Remedies – difference between remedies based on reliance cost and remedies based on fulfilment of expectations.

3. Understand the nature and purpose of easements

- Meaning, purpose and characteristics of easements, *Re Ellenborough Park*: dominant and servient tenement, easements must accommodate the dominant land, easements must be owned and used by different people, an easement must be capable of forming the subject matter of the grant (there must be capable grantor and capable grantee, an easement must be capable of reasonably exact definition, the easement must be within the general categories of established easements; an easement must not involve any expenditure by the servient owner, an easement must not be so extensive as to deprive the servient owner of possession) – meaning, scope and application

of each part; distinction between positive and negative covenants, easement of light and how other, non-traditional categories of easements may be created, the extent to which novel easements may be created.

- Creation of legal and equitable easements – grant v reservation, express and implied grants or reservation, need for registration.
- Implied grants – necessity, common intention, the rule in *Wheeldon v Burrows*, s.62 LPA 1925
- Easements acquired by prescriptions – common law prescriptions, the legal fiction of the lost modern grant, the Prescription Act 1862, the meaning, scope and application of *nec vi, nec clam* and *nec precario* – without force, without secrecy and without permission.
- Extinguishing easements – express release, abandonment, change in the dominant land's nature.

4. Understand the nature and purpose of freehold covenants

- The meaning of freehold covenants, distinction between positive and restrictive covenants, purpose of covenants.
- Enforceability against the original parties, enforceability against third parties.
- Passing of the benefit of positive and negative covenants at law and in equity, passing of burden in equity (methods, conditions, application, effect), exceptional circumstances when positive covenants may be enforced (chain of covenants, mutual benefit and mutual burden: *Hallzall v Brizell*, others), unsuccessful attempts to use s.79 LPA 1925 for the purpose of enforcing positive covenants.
- The equitable nature of restrictive covenant as a remedy, need for registration, discharge and modification of restrictive covenants (S84 Law of Property Act 1925).

Nature and purpose of mortgages

- Meaning and interpretation of mortgages, legal v equitable mortgages, requirement of registration
- Protection for mortgagee (security for the loan, remedies); protection for mortgagor (the legal right to redeem, the equitable right to redeem, right to claim only the amount of money owed).
- Mortgagees' remedies for default: taking possessions of the mortgaged property, sale of the mortgaged property, appointing a receiver, action on the mortgagor's covenant to repay, foreclosure; duties of the mortgagees when exercising remedies for default, effects of the sale under the power to sell, mortgagors' defences and delaying tactics, how courts take decisions (in theory and in practice)
- Undue influence – the concept, scope and consequences, mortgagees' methods to protect themselves from claims of undue influence, effects of successful claims of undue influence.

5. Understand the application of adverse possession

- Rules for the establishment of adverse possession for registered land; protection of registered proprietor under Land Registration Act 2002; factual possession and intention to possess; counter notices and conditions; occupation up to 13th October 2003; old and new regimes.
- Justification behind the existence of adverse possession – economic, political and social.

| Law of Tort | | | |
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| Unit aims | This unit will equip learners with in-depth knowledge and understanding of the principles governing the law of tort. The unit aims to enable learners to understand the foundations of tortious liability, remedies and defences. It further aims to enable learners to apply rules governing a variety of specific torts to fact-based scenarios and to identify and resolve issues that claimants and defendants may face. Learners will explore how tort interrelates with criminal law and how social and political decisions impact on the understanding of negligence. | | |
| Unit level | Level 5 | | |
| Unit code | K/617/7199 | | |
| GLH | 120 | | |
| TQT | 300 | | |
| Credit value | 30 | | |
| Unit grading structure | Pass / Merit / Distinction | | |
| Assessment guidance | Assessment in accordance with awarding organisation guidance | | |
| Learning outcomes. The learner will: | Assessment criteria. The learner can: | | |
| | Pass | Merit | Distinction |
| 1. Understand the nature and purpose of liability in tort. | 1.1 Analyse the aims of tortious liability. 1.2 Analyse main examples of torts, their essential components, defences and remedies. 1.3 Appraise the rules for prevention of harassment and intentional harms. | | |

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| <p>2. Understand the duty of care for the purposes of establishing liability in tort.</p> | <p>2.1 Assess when a duty of care will be imposed.</p> <p>2.2 Assess the consequences of third parties' interventions.</p> <p>2.3 Illustrate circumstances when psychiatric harm can be compensated.</p> | <p>2M1 Analyse the factors that may render damages 'too remote'.</p> <p>2M2 Analyse the policy reasons behind limitations of recovery for psychiatric harms.</p> | <p>2D1 Assess the application of public policy in limiting the scope of duty of care.</p> <p>2D2 Analyse the prohibition of recovery for pure economic loss.</p> |
| <p>3. Understand the nature of employers' and occupiers' liability.</p> | <p>3.1. Distinguish between primary and vicarious liability.</p> <p>3.2 Explain employers' duties to provide safe system and place of work.</p> <p>3.3 Examine occupiers' duties to visitors and non-visitors.</p> | | |
| <p>4. Understand the principles of nuisance claims.</p> | <p>4.1 Distinguish between private and public nuisance claims.</p> <p>4.2 Compare and contrast effective and ineffective defences.</p> <p>4.3 Appraise the rule in Rylands v Fletcher.</p> | <p>4M1 Assess the meaning and need of 'fault' in nuisance claims.</p> | |

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| <p>5. Understand the principles of defamation.</p> | <p>5.1 Define libel and slander.</p> <p>5.2 Assess the conditions for a claim in defamation.</p> <p>5.3 Evaluate the utility of available remedies.</p> | | <p>5D1 Examine the tension between freedom of speech and protection of reputation.</p> |
| <p>Indicative Content</p> | <ul style="list-style-type: none"> • Nature and purpose of liability in tort • Nature and development of tort law. Purpose of imposition of tortious liability: to rectify issues and solve conflicts arising in the absence of contract; appeasement, justice, deterrence and compensation. Distinction between tort law and criminal law, distinction between primary purpose of compensation from primary purpose of punishment. • Distinction between intentional and unintentional torts; examples of intentional torts: assault, battery, false imprisonment, principles, scope and application of the Protection of Harassment Act 1997, their overlap and difference with criminal law. • Defences - consent, lawfulness, self-defence, contributory negligence, necessity. <p>Defences and remedies for negligence</p> <ul style="list-style-type: none"> • The defences to negligence claims: consent, illegality, contributory negligence – Law Reform (Contributory Negligence) Act 1945 • Remedies – different types of damages and their availability: compensatory, restitutionary, exemplary/punitive, aggravated, nominal and contemptuous; what can the claimant claim for: types and extent of non-pecuniary and pecuniary losses that can be claimed; nature and forms of injunctions, availability and extent of self-help remedies, abatement. <ul style="list-style-type: none"> • Duty of care • Duty of care - the historical significance of the decision in Donoghue v Stevenson as a landmark for the development of liability in negligence; the historical introduction of the two – stage test pronounced by Lord Wilberforce and its eventual expansion to the three – prong test. Three – prong test from Caparo v Dickman – reasonable foreseeability of harm, proximity, is it fair, just and reasonable to impose a duty of care in the given circumstances. Developments and current interpretations. Duty of care imposed on public authorities and impact of Human Rights Act 1998 on the existence or | | |

lack of it of duty of care. Public policy implications in this context. Special cases regarding the extent of duty of care of police, ambulance services and fire brigades, educational and care bodies - scopes and limitations, interpretation and application.

- The principle of 'floodgate' prevention – concept, application, consequences.

Breach of duty

- Breach of duty – the objective nature of the standard required for the assessment of breach of duty. Features that contribute to the considerations of whether there has been a breach of duty or not: what was reasonable in the circumstances, was the harm foreseeable, the level and extent of potential risks, the availability and practicality of possible precautions, mitigating factors; enhanced standard of care for persons professing to have specific skills; proof of breach of duty; the doctrine of *res ipsa loquitur*;
- Causation and remoteness – the 'but for' test; intervening acts of third parties, intervening acts of the claimants, principles of remoteness, analysis of the tests, exceptions to the rules (McGhee/Fairchild principle), appropriateness and criticism of both tests.
- Applicable rules from the Compensation Act 2006

Liability for psychiatric harm and pure economic loss

- Meaning of pure economic loss, general rule against recovery of such loss, exception to the main rule: *Hedley v Byrne* rule – voluntary assumption of responsibility by the defendants – reasons and consequences of the respondents' statements, types and nature of statements that may lead to assumption of responsibility, reasonableness of claimant's reliance. The rule of *Hedley v Byrne* as interpreted and refined in subsequent cases – interpretation, application and criticism.
- Definition and meaning of psychiatric harm (*McLoughlin v O'Brien*), distinction between pure nervous shock and psychiatric harm coupled with physical damages, courts' scepticism towards proper recognition of pure psychiatric harm, reasons behind such scepticism, social policy and economic implications. Extent of duty of care: primary and secondary victims, proximity, need for harm to arise out of seeing or hearing the leading event, relationship to a specific event.
- The relationship between *Hedley v Byrne* principles the *Caparo v Dickman* test; the policy reasons for limitations of recovery for psychiatric harm and pure economic loss, assessment of the validity of the reasons, criticisms.

- **Employers' and occupiers' liability**

- Meaning of employers and occupiers (scope, interpretation and application).
- Employers liability – primary to take reasonable care of their staff, to hire competent staff, provide safe system or work, provide safe place of work (scope and application); defences. Secondary – nature and application of vicarious liability for employees, people in relationship akin to employment, need for course of employment, defences. Extent, relationship with employment law – e.g., consideration of whether employer can dismiss an employee for their own good
- Principles of statutory duty under the Health and Safety at Work Act 1974, difference between the statutory rules and common law principles.
- Occupiers' liability – Occupiers Liability Act 1957, meaning of occupier, meaning of premises, nature of duty, general principles applicable to all (common duty of care) standards of duty based of different types of visitors: children, visitors on duty (with special expertise), independent contractors. Occupiers' duty to non-visitors – Occupiers Liability Act 1984
- Effects of warning messages, defences, causation and remoteness.

- **Principles of nuisance claims**

- Private nuisance – definition, elements: types of interference, the meaning of reasonable user: locality, sensitivity, duration, public benefit, malicious intent; difference in 'fault' requirements depending on whether nuisance created by the respondent, by third parties or by acts of nature, who has locus standi to sue, who can be potential respondents.
- Public nuisance – definition, main examples; the rule in Rylands v Fletcher, leakage of dangerous goods (interpretation of dangerous, accumulation, non-natural use and escape, difference with other forms of negligence claims, strict liability issues), who has locus standi to sue, who can be sued.
- Defences and remedies for nuisance claims, public issues of protection, tension between public and private rights.

- **Defamation**

- Meaning, scope and purpose of defamation rules – protection of injury to reputation. Application of the Defamation Act 2013
- Difference between libel (written defamatory statement) and slander (oral defamatory statement); conditions for claims: defamatory statement of sufficient seriousness, issues of innuendos, reference to the claimant, publication rules including publication on the internet and multiple publication rules.
- Defences – truth, honest opinion, absolute and qualified privilege, public interest, apology; statutory defence – Defamation Act 1996 – innocent publication.
- Remedies – damages, injunction, remedies under Defamation Act 2013.

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| | <ul style="list-style-type: none">• Appropriateness of the rules, impact of the Human Rights Act, remedy only for the wealthy or privileged? tension between free speech and the need to protect reputation of individuals. |
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