AWARDS FOR TRAINING AND HIGHER EDUCATION

ATHE qualification specification for:

ATHE Level 5 Extended Diploma in Law

610/5953/5

Specification Version 1.0: Valid from June 2025

Contents

About ATHE

Awards for Training and Higher Education (ATHE) is a global awarding organisation regulated by Ofqual and other United Kingdom and international regulators. We provide centres with a wide variety of qualifications including, but not limited to business and management, accounting, law, computing, health and social care and religious studies.

For the full list please visit our website: www.athe.co.uk

ATHE has also developed a range of bespoke qualifications for clients.

The ATHE mission is to provide outstanding qualifications, customer service and support, enabling centres to thrive and their learners to achieve and progress. We will support this mission by:

- providing qualifications which enable learners to fulfil their potential and make a positive contribution to society both socially and economically
- delivering the highest standards of customer service
- delivering support and guidance which meet the needs of all centres and enable them to improve performance
- upholding and maintaining the quality and standards of qualifications and assessments
- having a commitment to lifelong learning and development

Our Qualifications

Our qualifications are the culmination of expert input from colleges, industry professionals, higher education providers and our qualification development team. We have developed a flexible suite of qualifications that offer progression across many of the RQF levels.

Support for Centres

We are committed to supporting our centres and offer a range of training, support and consultancy services including:

- a comprehensive guide for centres on delivering ATHE qualifications
- qualification guidance, assessor guidance, suggested resources and sample assignments for all units which have been written and verified by experienced practitioners
- verification and guidance with internally devised assignments
- guidance on how to deliver, assess and quality assure the qualifications
- an ATHE centre support officer who guides centres through the recognition process, learner registration and learner results submission
- health check visits to highlight areas of good practice and any areas for development
- an allocated member of our team who can work with centres to support further improvements in the quality of teaching, learning and assessment
- the services of a team of experienced external quality assurers
- opportunities for training and staff development
- access to free webinars to support delivery, assessment and QA processes
- support for business development.

ATHE Qualification at Level 5 in this Specification

This document provides key information on the ATHE Level 5 Extended Diploma in Law, including the rules of combination, the content of all the units and guidance on assessment and curriculum planning. It should be used in conjunction with the ATHE handbook “Delivering ATHE Qualifications”.

Further guidance and supporting documentation on curriculum planning, internal verification and assessment is provided separately in the Delivering ATHE Qualifications Guide and via the ATHE website.

These qualifications are regulated by Ofqual and are listed on Ofqual's Register of Regulated Qualifications. Each qualification has a Qualification Number (QN). This number will appear on the learner's final certification documentation. Each unit within a qualification also has a Unit Reference Number.

The QN number for this qualification is as follows**:**

ATHE Level 5 Extended Diploma in Law	610/5953/5

Regulation Dates

This qualification is regulated from 01/07/2025 and its operational start date in centres is August 2025.

Availability

This qualification is available to learners who are registered at a recognised ATHE centre which is based in England, Wales or internationally, outside of the United Kingdom.

Introduction to the Level 5 Qualification in Law

Aims of the Qualification

This qualification has been developed to conform to the requirements of the RQF, to meet the requirements of higher education and employers and to meet the needs of learners.

Learners looking to achieve a Level 5 qualification should be advised of all the opportunities available at this level (eg Higher Apprenticeships, Higher Technical Qualifications, Undergraduate Degree programmes) and the possible funding (ie loan opportunities) available for these.

The Level 5 Extended Diploma in Law offers learners a flexible approach to the study of key Level 5 law topics. Requiring only one mandatory unit of study (Law of Tort), the qualification permits learners a choice of a further three units from a selection of five units. Building on study at Level 4, the Level 5 offers higher level study based on the internationally significant University of London undergraduate Law syllabus. Key subjects in Law of Tort, Family Law, Land Law, Criminal Law, Equity and Trusts are complemented by the study of underpinning Legal Skills, requiring learners to demonstrate legal drafting, legal analysis and oral presentation skills. Alongside the Level 4 Extended Diploma in Law, the Level 5 Extended Diploma in Law offers learners progression through to a final year of a Law degree. The qualification also contributes to preparation for the Solicitors Qualifying Examination (SQE).

The qualification also focuses on the development of those study and transferable skills necessary for learners to develop and grow both personally and in the working environment. Each unit is signposted to Study Skills and Employability Skills opportunities derived from ATHE's standards. This ensures that learners and tutors have the opportunity to relate aspects of learning to broader study and work-related skills.

The qualification is, therefore, designed to provide a strong base for continued learning and a desire to constantly develop as an individual, further improving knowledge, understanding and skills.
The qualification is suitable for learners to study both in college/classroom settings and as distance learning programmes. Each unit is supported by an ATHE assignment which, requires the learner to

complete a small number of focussed tasks designed to demonstrate relevant applied knowledge and skill.

Entry Requirements

This qualification is designed for learners who are typically aged 19 and above.

ATHE's policy regarding access to our qualifications is that:

- they should be available to everyone who is capable of reaching the required standards
- they should be free from any barriers that restrict access and progression
- there should be equal opportunities for all those wishing to access the qualifications

Centres should review the prior qualifications and experience of each learner and consider whether they provide the necessary foundations to undertake the programme of study at Level 5. If there are exceptional entrants, centres are advised to contact ATHE. For learners with disabilities and other specific needs, this review will need to take account of the support available to the learner during teaching and assessment of the qualification.

The entry profile for learners is likely to include at least one of the following:

- A Level 4 qualification in law or legal studies, such as the ATHE Level 4 Extended Diploma in Law
- Equivalent international qualifications

Mature learners may present a more varied profile of achievement that is likely to include relevant work experience (paid and/or unpaid) with levels of responsibility, participation and/or achievement of relevant professional qualifications. This may be used for recognition of prior learning (RPL). Learners may also hold RQF qualifications which will enable them to claim an exemption from part of the qualification.

Learners must also have an appropriate standard of English to enable them to access relevant resources and complete the unit assignments. For those whom English is not their first language we recommend the following standards of proficiency in English language skills or an approved equivalent for this qualification:

- IELTs 5.5
- Common European Framework of Reference (CEFR) B2
- Cambridge English Advanced (CAE) 162 or above
- Pearson Test of English (PTE) Academic 42-49

Centres are required to recruit learners to qualifications with integrity. Centres must carry out robust initial assessment to ensure that learners, who undertake qualifications have the necessary background knowledge, understanding and skills to undertake the learning and assessment at Level 5. This assessment should take account of any support available to the learner within the centre during the programme of study and any support that may be required to allow the learner to access the assessment for the units within the qualification.

ATHE will review centre recruitment policies as part of the monitoring processes.

Reasonable Adjustments and Special Considerations

ATHE's policy on reasonable adjustments and special consideration aims to enhance access to the qualifications for learners with disabilities and other difficulties (as defined by the Equality Act 2010) without compromising the assessment of skills, knowledge and understanding. Where the learner has been awarded a Reasonable Adjustment or Special Consideration, this must be recorded on the assessment sheet and the learner record. External Quality Assurers will take account of this information at the external quality assurance of learner work. Further details on Reasonable Adjustments and Special Considerations are provided in the policy document, which can be found on our website. Please contact ATHE if you uncertain about adjustments for certain learners.

Progression

On successful completion of the ATHE Level 5 Extended Diploma in Law there are several progression opportunities.

Learners may progress to:

- a higher-level qualification e.g. the final year of an undergraduate degree in Law
- employment in the legal industry
- legal apprenticeship

ATHE Recognition of Prior Learning (RPL)

There will be occasions where learners wish to claim recognition of prior learning that has not been formally assessed and accredited. ATHE has provided detailed guidance on RPL which is available for centres on the ATHE website. Centres may also contact ATHE directly to obtain further clarification or discuss the requirements for RPL.

Resources Required by Centres

ATHE expects centres to provide the right human and physical resources needed to ensure the quality of the learner experience. Centres must ensure that staff have the appropriate level of subject knowledge and are normally qualified to at least a degree standard. It is desirable that staff have a teaching and/or assessing qualification and practical experience of this sector.

The physical resources required will vary depending on the style of delivery. ATHE expects centres to have appropriate learning support materials, infrastructure and technology in place to meet student needs.

This information will be checked by External Quality Assurers on their visits to centres.

Modes of Delivery

Subject to checks by external verifiers centres can deliver this qualification using the following modes of delivery in order to meet the needs of their learners.

This can include:

- full time
- part-time
- blended learning

Qualification Size

The size of a qualification is expressed in **Total Qualification Time (TQT)**

Total Qualification Time – TQT

TQT is the total amount of time, in hours, expected to be spent by a student to achieve a qualification.

TQT is comprised of:

1. Guided Learning Hours (GLH)
2. Additional non-supervised learning

Guided Learning Hours – GLH

This is the amount of time the average student is expected to spend in lectures and other tutor-supervised learning and activities, including induction, face to face training, e-learning with the co-presence of learner and tutor, invigilated exams.

Guided Learning Hours (GLH) are an estimate of the amount of time, on average, that a lecturer, supervisor, tutor or other appropriate provider of education or training, **will immediately guide or supervise** the learner to complete the learning outcomes of a unit to the appropriate standard. GLH are intended to provide guidance for centres on the amount of time required to deliver the programme and support learners.

Additional non-supervised learning

This is an estimate of the number of hours a Learner will reasonably be likely to spend in preparation, study or any other form of participation in education or training, including assessment, which takes place as directed by – but, unlike Guided Learning, not under the Immediate Guidance or Supervision of – a lecturer, supervisor, tutor or other appropriate provider of education or training.

These activities may include webinars, podcasts, research, work-based learning, private and online study, compilation of a portfolio of evidence and non-invigilated assessment.

How TQT is calculated

Values for Total Qualification Time, Guided Learning Hours and Credit, are calculated by considering the different activities that a learner would typically complete in order to achieve the learning outcomes of a qualification at the standards provided.

The needs of individual learners and the differing teaching styles used mean there will be variation in the actual time taken to complete a qualification.

Values for Total Qualification Time, Guided Learning Hours and Credit are estimates.

Credit

Each ATHE qualification has a Credit value. Credit is calculated by dividing the TQT by ten. For example, a qualification with a TQT of 120 hours would have a credit value of 12.

Level

The level is an indication of relative demand, complexity and depth of achievement and autonomy. This qualification has been designed to suit learners working towards a Level 5 qualification. Level descriptors are divided into two categories:

I. Knowledge and understanding
II. Skills

There is a knowledge descriptor and a skills descriptor for each Level within the Regulated Qualifications Framework (RQF). The descriptors set out the generic knowledge and skills associated with the typical holder of a qualification at that Level. The Knowledge and Skills for Level 5 are:

Knowledge descriptor (the holder….)	**Skills descriptor (the holder can….)**
- Has practical, theoretical or technological knowledge and understanding of a subject or field of work to find ways forward in broadly defined, complex contexts. - Can analyse, interpret and evaluate relevant information, concepts and ideas. - Is aware of the nature and scope of the area of study or work. - Understands different perspectives, approaches or schools of thought and the reasoning behind them	- Determine, adapt and use appropriate methods, cognitive and practical skills to address broadly defined, complex problems. - Use relevant research or development to inform actions. - Evaluate actions, methods and results.

Rules of Combination

Learners must achieve mandatory Unit 1 Law of Tort plus any other three units.

Qualification Structure: ATHE Level 5 Extended Diploma in Law

The ATHE Level 5 Extended Diploma in Law is a 120-credit qualification.

Unit Codes	**Unit Title**	**Level**	**Credit**	**GLH**
	Mandatory Units			
K/651/6590	Unit 1 Law of Tort	5	30	120
	Optional units			
L/651/6591	Unit 2 Family Law	5	30	120
M/651/6592	Unit 3 Land Law	5	30	120
R/651/6593	Unit 4 Criminal Law	5	30	120
T/651/6594	Unit 5 Equity and Trusts	5	30	120
Y/651/6595	Unit 6 Legal Skills	5	30	120

Guidance on Assessment and Grading

Assessment

Assessment for each unit is completed based on achievement of the Learning Outcome at the standards set by the Assessment Criteria for that unit. The learner can therefore achieve a Pass, Merit, Distinction or Fail for each unit based on the quality of the work submitted and the assessor's judgements made against the criteria provided.

The assessment of each of Level 5 Law is completed through the submission of internally assessed learner work.

To achieve a pass for a unit, a learner must have successfully achieved the learning outcomes at the pass standard set by the assessment criteria for that unit. To achieve merit or distinction, the learner must demonstrate that they have achieved the criteria set for these grades. Learners cannot omit completing work to meet the pass standard and simply work to the higher grades, as this would put a pass for the unit in jeopardy. Similarly, learners cannot complete work to meet the criteria for distinction in the anticipation that this will also meet the criteria for merit. However, where work for the pass standard is marginal, assessors can take into account any extension work completed as this may support achievement of the pass standard.

ATHE will provide an assignment for each unit which can be used as the assessment for the unit. These assignments have extension activities, which enable the learners to provide additional evidence to show that the criteria for the higher grades have been met. The assessor therefore must judge the grade for the work submitted on the basis of whether the LO has been met at the standard, specified for the pass, merit or distinction grade for that LO. In making their judgements assessors will continue to check whether the command verbs stated in the AC have been delivered. There is no requirement for learners to produce the additional work required for the higher grades and the tutor may advise the learner to work to the pass standard, where this is appropriate.

The assessor should record their judgements on the ATHE template, stating what grade the learner has achieved and providing evidence for the judgements. The internal verifier can also use the ATHE IV template but the feedback to the assessor must show whether the assessor has made valid judgements for all the learner work, including any extension activities which met the standard for merit and distinction grades. Assessment judgements always require care to ensure that they are reliable and that there is sufficient and specific feedback to the learner to show whether he or she has demonstrated achievement of the LO at the specified standard. The additional grades mean that assessors must take even greater care to assure the validity of their judgements.

We would encourage our centres to develop their own assessment strategies, so you can put assignments in a context that is appropriate for your learners. Any assignments that you devise independently will need to be submitted to ATHE for approval before delivery of the programme. Centres can submit assignments for approval using the 'Centre-Devised Assignment' template documentation available on the ATHE centre portal.

An assignment can relate to a single unit, or an integrated assignment can incorporate more than one unit. Any assignment must show which learning outcomes and assessment criteria from which unit(s) are being covered.

Assignment Marking Guidance

Each ATHE assignment has marking guidance produced with it so that assessors can better understand the requirements for the satisfaction of assessment criteria/learning outcomes. For tutors, it is worthwhile reading and understanding this marking guidance before learners are asked to commence an assignment. It is also worthwhile tutors bringing this marking guidance to the attention of learners before they embark on an assignment. As the marking guidance often captures the expected level of detail of a learner response, it contains additional information that can help learners and tutors better understand the kind of response to a task that best meets the requirements.

Key command verbs from the assessment criteria have also been emboldened in the marking guidance so that tutors and learners can clearly understand the level of response that is expected.

Recording Assessment Judgements

Assessors are required to record assessment judgements for each student by unit. ATHE has provided a template for centres to use to record their judgements and this form should be used. The form enables the centre to record any adjustments due to special considerations or reasonable adjustments. Any adjustments following appeals should also be recorded. These records must be retained as they will be checked at external verification visits. All learner work must be retained for a minimum of 4 years after certification has taken place.

Putting an Assessment Strategy in Place

You will need to demonstrate to your External Quality Assurer that you have a clear assessment strategy supported by robust quality assurance to meet the ATHE requirements for registering learners for a qualification. In devising your assessment strategy, you will need to ensure that:

- Learners are well-briefed on the requirements of the unit and what they must do to meet them.
- Assessors are well-trained and familiar with the content of the unit/s they are assessing.
- There is an internal verification process in place to ensure consistency and standardisation of assessment across the qualification.
- Assessment decisions are clearly explained and justified through the provision of feedback to the learner.
- Work submitted can be authenticated as the learner's own work and that there is clear guidance and implementation of the centre's Malpractice Policy.
- There is an assessment plan in place identifying dates for summative assessment of each unit and indicating when external quality assurance will be needed.
- Enough time is included in the assessment planning to allow the learners time for any necessary remedial work that may be needed prior to certification.

Grading

Grading system

The grading algorithms and overall grade thresholds published in any ATHE specification may be subject to change where this is necessary to maintain standards.

This qualification involves assessment using judgements against 'Pass', 'Merit' and 'Distinction' Assessment Criteria to make a decision about whether a learner has met the required standard. Our grading system is straightforward and we do not currently envisage the need to change this. However, should a change become necessary, the change would be published in an updated version of the specification with a clearly revised version number and a new 'valid from' date on the front cover. We will write to all centres in good time to inform them of this change so that plans for any changes can be made to your programme delivery, internal assessment and quality assurance arrangements.

The ATHE grading system where a qualification result can be either Pass, Merit, Distinction or Fail is as currently follows and we plan to maintain this system for the foreseeable future:

- Learner meets all Learning Outcomes at Pass standards stated in the assessment criteria in a unit > Learner gains a Pass for the unit
- Learner meets all Learning Outcomes at Pass standards stated in the assessment criteria, and where available also at Merit standard in a unit > Learner gains a Merit for the unit
- Learner meets all Learning Outcomes at Pass standards, and where available also at Merit and Distinction standards stated in the assessment criteria in a unit > Learner gains a Distinction for the unit
- Learner does not meet all Learning Outcomes at Pass standards stated in the assessment criteria in a unit > Learner gains a Fail for the unit
- Learner meets the rules of combination in a qualification and points for achieving units are added up > points are converted to an overall qualification grade > learner meets minimum number of points required > learner achieves a Pass, Merit or Distinction for the qualification
- Learner does not meet rules of combination > learner achieves a Fail for the qualification but may receive unit credit certification for those units achieving a Pass.

Qualification Grading Structure

Determining the Overall Qualification Grade

Each unit is graded pass, merit or distinction. As well as receiving a grade for each individual unit learners will receive an overall grade for the qualification. Each unit is equally weighted. The formula for establishing the overall grade is as follows.

Points for each 30-credit unit are allocated as follows:

Pass (achieves Learning Outcomes at the standards stated in pass assessment criteria) – **90 points**
Merit (achieves Learning Outcomes at the standards stated in pass and all merit assessment criteria) – **120 points**
Distinction (achieves Learning Outcomes at the standards stated in pass, all merit and all distinction Assessment Criteria) – **150 points**

Total points required for each grade:

Level 4 Extended Diploma in Law (120)
Pass **360-431**
Merit **432-539**
Distinction **540+**

Quality Assurance of Centres

Centres delivering ATHE Qualifications must be committed to ensuring the quality of the units and qualifications they deliver, through effective standardisation of assessors and verification of assessor decisions. ATHE will rigorously monitor the application of quality assurance processes in centres.

ATHE's quality assurance processes will include:

- centre approval for those centres who are not already recognised to deliver ATHE qualifications
- approval to offer ATHE qualifications
- monitoring visits to ensure the centre is continuing to work to the required standards
- moderation of centre-marked work submitted for results.

Centres will be required to undertake training and standardisation activities as agreed with ATHE. Details of ATHE's quality assurance processes are provided in the ATHE Guide: "Delivering ATHE Qualifications" which is available on our website.

Malpractice

Centres must have a robust Malpractice Policy in place, with a clear procedure for implementation. Centres must ensure that any work submitted for verification can be authenticated as the learner's own. Any instance of plagiarism detected by the External Quality Assurer during sampling, will be investigated and could lead to sanctions against the centre.

Centres should refer to the Delivering ATHE Qualifications Guide and the ATHE Malpractice and Maladministration Policy on the ATHE website.

Guidance for Teaching and Learning

Learners normally improve their understanding when they are actively involved in the learning process. We would encourage practitioners delivering our qualifications to use a range of teaching methods and classroom-based activities to ensure learners are engaged in the learning, as this facilitates understanding and progress. Learners should be encouraged to take responsibility for their learning and should be able to demonstrate a high degree of independence in applying the skills of research and evaluation. You can facilitate this by using engaging methods of delivery that involve active learning rather than relying on traditional methods of lecture delivery to impart knowledge.

Your approach to delivery should give the learners sufficient structure and information on which to build without you doing the work for them. In achieving the right balance, you will need to produce well-planned sessions that follow a logical sequence.

Top Tips for Delivery

- Adopt a range of teaching and learning methods, including active learning.
- Plan sessions well to ensure a logical sequence of skills development.
- Include study skills aspects, e.g. how to construct a report or Harvard Referencing.
- Build time into your scheme of work and session plans to integrate study skills teaching.
- Set structured additional reading and homework tasks to be discussed in class.
- Elicit feedback from learners. Get them to identify where the work they've done meets the assessment criteria.
- Contextualise your activities, e.g. using real case studies as a theme through the sessions.
- Take an integrated approach to teaching topics across units, where appropriate, rather than always taking a unit-by-unit approach. In this way, learners will be able to see the links between the content of the different units.

There is further guidance on teaching and learning in the Delivering ATHE Qualifications Guide.

Unit Specifications

Unit Format
Each unit is presented in a standard format. This format provides guidance on the requirements of the unit for learners, tutors, assessors and External Quality Assurers.

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 a unit code that will appear on the qualification certificate

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

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.

Total Qualification Time (TQT)
TQT represents the total time required for a learner to complete a qualification.

Credit Value
The credit value specifies the number of credits that will be awarded to a learner who has achieved the learning outcomes of a unit at the specified 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 6 you would see words such as analyse, evaluate, synthesise.

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

Opportunities for Synoptic Teaching and Learning

This section identifies the links between the unit's learning outcomes and other unit learning outcomes and assessment criteria within the qualification that are thematically related. This enables learners and tutors the opportunity to connect learning across the qualification to ensure that learners have a joined-up experience of each unit.

Opportunities for Synoptic Assessment
This section identifies the way in which a unit's assessment links internally different parts of a unit or links more broadly to other parts of the overall qualification. The inclusion of a Legal Skills unit offers learners an opportunity to undertake practical and generic skills relevant and used throughout all law subjects.

Opportunities for Skills Development

This section contains two important elements of signposting: signposting to ATHE Study Skills and signposting to ATHE Employability Skills. These enable learners and tutors the opportunity to see where each unit's LO/AC link into underpinning Study Skills and Employability Skills categories, eg Digital Skills, Thinking Skills etc, and to promote possible programme/curriculum opportunities for the development of these skills. The ATHE Study Skills and Employability Skills are drawn from the standards documents for each skill. These standards documents are on the ATHE Centre Portal.

Unit 1 Law of Tort			
Unit aims	This unit aims to develop learners' knowledge and understanding of general principles of tort and the associated practice area, including key aspects of professional practice. Learners will focus on the tort of negligence, gaining knowledge and understanding of the elements required to prove a claim in negligence, the unique approach of the courts to claims for psychiatric injuries and availability of damages and defences.		
Unit level	5		
Unit code	K/651/6590		
GLH	120		
Credit value	30		
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.		
Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand general principles of tort and civil litigation	1.1 Explain the role and function of the law of tort 1.2 Explain in outline the different types of tort 1.3 Explain the standard and burden of proof in civil law		
2. Understand fundamental aspects of legal practice	2.1 Outline the court hierarchy, the overriding objective of the underpinning procedure rules and the track allocation system 2.2 Explain in outline the methods available for funding a claim in tort	2M1 Apply understanding of professional ethics to a situation	2D1 Critically evaluate whether the availability of damages-based agreements and conditional fee agreements fuels a culture of litigiousness in society

	2.3 Outline key ethical considerations for a legal professional representing clients in a tortious matter 2.4 Identify the ways in which technology is used in the practice of civil law		
3. Understand the elements of negligence	3.1 Explain the requirement for duty of care to be established between the parties to prove negligence 3.2 Explain the requirement to prove breach of duty and the concept of the 'reasonable person' in tort 3.3 Explain the requirement to prove causation to bring an action in negligence	3M1 Analyse whether the public policy decision not to impose a duty on statutory authorities is fair	3D1 Critically analyse whether the 'thin skull rule' places an unfair burden on the defendant in an action for negligence
4. Understand the legal principles in claims involving psychiatric harm	4.1 Distinguish between pure and consequential psychiatric harm 4.2 Explain the categories of primary and secondary victims 4.3 Explain the controls for claims brought by secondary victims	4M1 Research the facts of the case of *Alcock v Chief Constable of South Yorkshire 1991* and analyse whether the decision created an unfair position for rescuers who sustained psychiatric injuries	
5. Understand the remedies and defences available in a claim for negligence	5.1 Explain the availability and purpose of damages in negligence 5.2 Explain the difference between		

	general and special damages 5.3 Explain the main defences available in an action for negligence and apply your knowledge to a set of facts		

Indicative Content

LO1 Understand general principles of tort and civil litigation

Role and function of the law of tort

- A tort is a 'civil wrong' – harm caused to a victim (claimant) by the *tortfeasor* (defendant) and actionable even though tortfeasor and victim will not necessarily have a prior legal relationship
- Function of the law of tort: three important characteristics:
  - Normative rules of conduct – standards of behaviour
  - Compensation for victims
  - Deterrence

Different types of tort

- Negligence
- Nuisance
- Defamation
- Trespass (to land and to the person i.e. battery, false imprisonment – some crossover with criminal law)

Standard and burden of proof in civil law

- Parties are Defendant and Claimant – burden of proof is on the claimant to prove the elements of their claim
- Standard of proof – on the balance of probabilities; more likely than not (lower than criminal standard)

LO2 Understand fundamental aspects of legal practice

Court hierarchy and the overriding objective

- County Court (for lower value/less complex cases)
- High Court (higher value/more complex cases)
- Appeals from County Court can be heard in the High Court or the Court of Appeal (Civil Division)
- Supreme Court can hear appeals from the Court of Appeal where there are matters of public interest or significant legal principles
- Civil Procedure Rules; a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost

- Overview of track allocation system; small, fast, intermediate, and multi-track

Funding methods in claims brought in tort

- Conditional fee agreements (“no win, no fee”)
- Damages based agreements (25% cap for personal injury)
- After The Event (ATE) and Before The Event (BTE) Legal Expense Insurance
- Impact of LASPO 2013 e.g. on capping fees

Key ethical considerations for a legal professional representing clients in a tortious matter

- Avoiding conflicts of interest (para 6.1-6.2 of the SRA Code)
- Confidentiality (para 6.3 of the SRA Code)
- Specific requirements under the SRA Code relating to dispute resolution and proceedings, e.g. para 1.4 not misleading the Court, para 2.2 of the Code relating to the persuasion of witnesses
- Concept of legal professional privilege and interaction with the duty of disclosure under the Civil Procedure Rules esp PD31

Ways in which technology is used in the practice of civil law

- Claims portals e.g. online submission of, and response to, personal injury claims valued up to £25,000
- Automated processes and AI in case management, bundling, quantum assessment and document review
- Digitisation of medical records and evidence, and social media monitoring as fraud prevention
- Remote hearings, client on boarding and online customer relationship management solutions

LO3 Understand the elements of negligence

Requirement to prove duty of care

- Automatic duty arises in some situations, e.g. doctor/patient, employer/employee, road users
- Outside of these situations, duty can be imposed by the Courts:
  - The *neighbour principle* from *Donoghue v Stevenson 1932* - “persons so closely affected by my actions that I ought reasonably to have them in my contemplation” – an objective test, is the claimant someone who the defendant would have considered to be at risk?
  - Developed further in *Caparo v Dickman 1990* with a three-stage formulation
    1. Was the risk of injury or harm to the Claimant reasonably foreseeable?
    2. Was there sufficient proximity between the parties?
    3. Is it fair, just and reasonable to impose a duty of care?

The role of public policy to ‘manage the floodgates’ and consider unintended consequences of rulings

- Understood that in an overly litigious society, people may be put off certain desirable behaviours out of fear of being sued

- S1 Compensation Act 2006; consideration of whether a ruling will prevent desirable behaviours
- Relevant to the work undertaken by statutory authorities such as the police, social services, ambulances; must not be prevented from functioning effectively through fear of litigation but blanket immunity from litigation would also be undesirable
- 'Floodgates' is another public policy consideration – rulings with potential to encourage a vast number of similar cases

Requirement to prove breach and the concept of the 'reasonable person'

- *Blyth v Birmingham Waterworks Co (1856)* – negligence is "the omission to do something which the reasonable man would do, or doing something which a prudent and reasonable man would not do"
- The concept of the "reasonable man on the Clapham omnibus" – now 'person' rather than man to reflect modern society - a hypothetical ordinary person
- Breach of duty is proved where the Defendant's conduct fell below a required (objective) standard
- Factors determining the standard of care:
  - circumstances: some circumstances call for a fixed standard of care, e.g. driving, and all drivers (learner or experienced) are judged against the standard of a competent driver
  - foreseeability (of the particular damage suffered by the particular claimant, based on what was known at the time)
  - policy considerations including how a decision to impose a standard of care and find breach might affect society as a whole
  - magnitude of harm; the greater the risk, the greater precaution required
  - cost of eliminating risk; courts will not impose a very costly precaution against a minor risk
  - social utility; balancing the risk of injury against the importance of the objective to be achieved by the defendant, including the Social Action, Responsibility and Heroism Act 2015
- Special characteristics of the defendant: children (judged against the standard of similarly aged children), participants in sports (deemed to consent to the risks of normal play)
- Bolam test for skilled professionals (*Bolam v Friern Hospital Management Committee (1957)*) – the Defendant's conduct is compared to that of an ordinary person with the same special skill as the defendant, e.g. doctor, and acting in accordance with a reasonable body of professional opinion in the defendant's circumstances

Requirement to prove causation

- Causation in fact - the claimant must establish a causal link between the defendant's breach of duty and the claimant's damage/loss – the chain of causation – applying the 'but for' test from *Cork v Kirby Maclean (1952)*
- Causation in law - the claimant must also prove that the type of damage was a reasonably foreseeable consequence of the breach; it cannot be too remote ("Wagon Mound" (No.1) (1961))
- The 'thin skull' or 'eggshell skull' rule: a particularly vulnerable claimant will not be prevented from recovering damages, the defendant must take their victim as they find them (*Smith v Leech Brain (1962)*)

LO4 Understand the legal principles in claims involving psychiatric harm

Pure and consequential psychiatric harm

- Psychiatric harm is easily dealt within negligence where there is an accompanying physical injury
- Claims for ‘ pure’ psychiatric damage – where there is no associated physical injury – are more problematic. A claimant must establish that they have a recognisable psychiatric illness, i.e. classification and criteria in DSM VI caused by the defendant’s negligence

Primary and secondary victims

- Primary victims – those directly involved in an accident or in the *zone of danger* (injured, or at risk of being injured), must prove reasonable foreseeability of some harm to recover damages.
- Secondary victims – those not directly involved/not in the *zone of danger* but who suffer psychiatric injury as a result of what they see or hear. Subject to strict criteria to establish duty of care

Controls for claims brought by secondary victims

- *Alcock v Chief Constable South Yorkshire 1992* – case set down policy-driven restrictions on recovery for pure psychiatric harm in ‘passive bystanders’ – secondary victims
- In addition to proving a clinically recognised psychiatric disorder, a claimant must prove
  - Sudden shock – a result of the traumatic experience
  - Foreseeability - psychiatric harm must be reasonably foreseeable in the claimant, in the circumstances
  - A close relationship of love and affection – claimants must prove this relationship with the primary victims (rebuttable presumption for immediate family members e.g. spouse, parents/children.
  - Proximity in time and space – the Claimant must be at the scene or arrive in the immediate aftermath
  - Witnessed with their own senses – claimants who are warned of a situation, or see it on television, cannot recover damages

LO5 Understand the remedies and defences available in a claim for negligence

Availability and purpose of damages in negligence

- Damages: monies ordered to be paid by the defendant to the claimant to compensate the Claimant for losses caused by the Defendant
- Losses are split into two types: pecuniary (monetary loss) and non-pecuniary (non-monetary loss, such as personal injury)
- Types and purpose of damages:
  - Compensatory – to put the injured party back in the position they would have been in, if not for the Defendant’s tort, as far as money can
  - Nominal – where a tort has been committed but the Claimant has suffered minimal or no loss
  - Contemptuous – used to acknowledge that the Claimant has suffered a tort, but the Claimant has wasted the Court’s time in bringing the action. Currently 1p – the lowest coin of the realm

General and special damages

- General damages – those losses that cannot be precisely calculated/quantified at the time of trial
- Special damages - those which can be precisely quantified at the trial, such as expenses incurred
- Claimants are under a duty to mitigate their losses

Main defences available in an action for negligence

- Full and partial defences - a full Defence will defeat the Claimant's claim entirely. A partial defence will only serve to reduce the Defendant's liability
- Once a defence is pleaded, the burden of proof is 'flipped' – it is for the Defendant to prove the elements of the defence on the balance of probabilities
- Limitation Act 1980 – a claimant must bring their claim in time, or risk being statute-barred, i.e. 3 years for a claim in personal injury with extension of time for minors, or those who have a later date of knowledge (s14 LA 1980)
- Contributory negligence – under the Law Reform (Contributory Negligence) Act 1945, where a claimant has failed to take reasonable care for their own safety, the claimant's award for damages is reduced to reflect their 'contribution' to their own injuries
- Volenti non fit injuria – *to a willing person, no injury is done* – a complete defence where the defendant can prove the claimant's voluntary agreement in full knowledge of the facts and circumstances, e.g. *Stermer v Lawson 1977*

Unit 1 Law of Tort - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**
LO2 understand fundamental aspects of legal practice; AC 2.2 funding a claim in tort	L5 Unit 6 Legal Skills; LO1 key principles of legal drafting and legal and regulatory requirements (links to costs information provided in client care letter)
LO2 AC 2.4 identify the ways in which technology is used in the practice of civil law	L5 Unit 6 Legal Skills; LO4 understand how to develop and evaluate legal skills; AC 4.4 how tech and AI is used in legal practice
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Communication skills	**Using sources of information**

Written communication, e.g. appropriate formats, style and tone, spelling, punctuation and grammar (LO1, LO2, LO3, LO4, LO5) **Problem solving** Use both analytical and critical thinking skills (LO2, LO3, LO4, LO5)	Learning where to look for information and how to access it, choosing current, relevant and reliable sources (LO4) **Self-organisation** Thinking through your study approach, being self-organised, think about how you will undertake your studies (LO4)

Resources
Books and other literature Harpwood V.H. (2017). *Modern tort law.* Routledge Sako M. and Parnham R. (2021). *Technology and Innovation in Legal Services*. Solicitors Regulation Authority **Websites** The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research https://www.bailii.org/ Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation. https://www.legislation.gov.uk/ The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services. https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/ The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice. https://www.lawsociety.org.uk/topics/

Unit 2 Family Law			
Unit aims	This unit aims to develop learners' knowledge and understanding of family law and practice in England and Wales, including how adult relationships can be formalised and dissolved and the financial and property orders available on the breakdown of a relationship. Learners will be able to explain and apply key principles of law and private practice in relation to children, explain the orders available in cases of domestic abuse and develop an understanding of funding, key principles of ethical conduct and application of technology in family practice.		
Unit level	5		
Unit code	L/651/6591		
GLH	120		
Credit value	30		
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.		
Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand how adult relationships are formalised and ended	1.1 Explain the requirements for valid marriage and civil partnership and how these relationships can be brought to an end 1.2 Identify the orders available to deal with family property and finances on divorce or dissolution 1.3 Explain the Court's approach to distributing family property and finances on divorce or dissolution	1M1 Analyse the effectiveness of pre-nuptial agreements in reducing disputes between the parties to a marriage on divorce	1D1 Evaluate how the 'yardstick of equality' principle influences judicial approach to the division of family finance and property on divorce

	1.4 Apply your knowledge of the orders available and the Court's approach to division of assets on divorce		
2. Understand the powers of the court to determine the split of assets for cohabiting couples	2.1 Explain the key differences in the orders available to deal with property in cohabitation and marriage 2.2 Explain the nature, purpose and content of a cohabitation contract 2.3 Explain how express, constructive and resulting trusts are created and apply the law to a set of facts		2D1 Research the Cohabitation Rights Bill and critically analyse whether the Bill will bring the rights of cohabitants in line with married and civil partnered couples
3. Understand the orders available to regulate behaviour and property in cases of domestic abuse	3.1 Outline the behaviours and offences that are considered domestic abuse 3.2 Explain who can seek an order for protection from abuse under the Family Law Act 1996 3.3 Explain the purpose, scope and requirements of non-molestation and occupation orders	3M1 Analyse the extent to which occupation orders may infringe on a respondent's Article 1 ECHR right to peaceful enjoyment of their possessions	

4. Understand how disputes involving children are dealt with in private law	4.1 Explain the principles, presumption and welfare checklist from the Children Act 1989 4.2 Explain the meaning of parental responsibility and how it can be acquired 4.3 Identify the orders available in private childcare law to resolve disputes relating to the upbringing of children and who can apply for such orders		4D1 Evaluate how the concept of *Gillick competence* can influence the weight that the court will attach to the wishes and feelings of a child
5. Understand key principles of the practice of family law	5.1 Explain how private family law cases are funded 5.2 Explain the ways in which technology has transformed the family court system 5.3 Identify key professional conduct requirements in family legal practice		5D1 Critically analyse whether the limited availability of legal aid under LASPO 2010 represents a threat to access to justice

Indicative Content

LO1 Understand how adult relationships are formalised and ended

The requirements for valid marriage and civil partnership and how these relationships can be brought to an end

Marriage and civil partnerships must comply with legal requirements to be valid: capacity, formalities, must be entered voluntarily

- Capacity
    - Both same-sex and opposite-sex couples can choose marriage or civil partnership under the Marriage (Same Sex Couples) Act 2013 and the Civil Partnerships, Marriage and Deaths (Registration) Act 2019
    - Parties must have capacity as set out in Marriage Acts 1949 – 1994, Matrimonial Causes Act 1973 and Civil Partnership Act 2004:
        - Parties must not be within prohibited degrees of relationship (consanguinity and affinity)
        - Both must be over 16 (with parental consent) or 18 (without consent)
        - Neither can be already married or in a civil partnership at the time of the ceremony

- Formalities
    - Notice of intention (to marry or form a civil partnership) must be given – either by the 'reading of banns' in a church or at the District Registry Office where they live (at least 28 days before)
    - The ceremony (religious or civil) must comply with statutory formalities and take place in approved premises or a building registered as a meeting place for religious worship (e.g. church, mosque, temple)
    - The marriage or civil partnership must be registered

- Voluntariness
    - Marriage and civil partnership must be entered into voluntarily – distinction between arranged and forced marriage
    - Role of the UKVI in investigating 'sham marriages' in breach of UK immigration law

Marriage and civil partnerships can be ended by nullity, divorce or dissolution

- Nullity - void marriage
    - The marriage or civil partnership is void from the start
    - S11 MCA 1973 and s49 CPA 2004
    - Marriage or civil partnership will be voice where the parties did not have capacity, did not meet the requirements for age, formality or condition (already married)

- Nullity - the marriage or civil partnership is voidable
    - Parties can seek a decree of nullity under S12 MCA 1973 and s50 CPA 2004
    - Non-consummation (distinction between incapacity to consummate and wilful refusal)
    - Lack of consent (due to duress/*overbearance of will*, mistake, unsound mind, suffering from mental disorder)
    - Sexually Transmitted Infection (only available to the spouse without the infection) or Pregnancy by another (only available to the non-pregnant spouse)
    - Acquired gender under the Gender Recognition Act 2004 (where the other spouse did not know of the acquired gender, or a spouse changes gender within 6 months of the marriage or civil partnership)
    - Bars to nullity (s13 MCA 1973 and s1 CPA 2004) – available to heterosexual couples only, conduct (where one spouse has led the other to believe they would not annul), delay in bringing proceedings or prior knowledge of the problem

- Divorce and dissolution – 'no-fault' divorce and dissolution is now available under the Divorce, Dissolution and Separation Act 2020
    - S1(1) MCA 1973 that the marriage has broken down irretrievably
    - S44(1) CPA 2004 that the civil partnership has broken down irretrievably

    - Parties must wait until 1 year has elapsed before seeking to divorce or dissolve, and thereafter can make a sole or joint application
    - Divorce or dissolution cannot be defended

Orders available to deal with family property and finances on divorce or dissolution

The Court has wide powers to redistribute family assets on divorce or dissolution and can make orders relations to money, property and pensions as well as interim orders during proceedings

- Interim orders – one spouse can be ordered to provide the other with financial support for living costs and legal fees during the divorce or dissolution proceedings (s22 and s22ZA MCA 1973)
- Money orders under s23 MCA 1973
    - Periodical payments (secured or unsecured) – end on remarriage, can be varied
    - Lump sum – a cash payment to cover particular expenses, or to be used by the party to rehome themselves
- Property orders under s24 MCA 1973
    - Transfer of property – ownership of a property such as the family home is transferred from one spouse to another (sometimes in return for a lump sum), but can only happen where the receiving spouse can afford the associated upkeep costs
    - Settlement of property – *Mesher* and *Martin* orders – where the property is 'settled' on one spouse for a period of time, e.g. until a child reaches 18 or some other 'trigger event; the property remains as a capital asset in the marriage to be sold and distributed after the trigger event
    - Order for sale of property – the court can order that property, such as the family home, be sold and the proceeds split between the parties usually to allow them to rehouse themselves

- Pension orders under s24 MCA 1973
    - Pension sharing order – a percentage of one spouse's pension is transferred to the other, enabling both spouses to choose when to retire
    - Pension attachment – the court can order that, when one spouse, retires, they pay an amount from their pension to the other; there is a risk that this can be abused by the paying spouse refusing to retire

The Court's approach to distributing family property and finances on divorce or dissolution

When exercising its power and discretion to make financial orders on divorce or dissolution, the court are guided by both statutory and common law factors to achieve fairness

- First consideration to the welfare of any minor child/children of the family
- Whether it is appropriate to make a *clean break* order which severs financial ties between the parties on a 'once and for all' basis
- Must have regard to *all the circumstance of the case* by applying the factors from s25 MCA 1973
- Guided by the principle of the *yardstick of equality* from *White v White 2000*
- Pre or post-nuptial agreements may be considered as part of *all the circumstances* of the case but are subject to control tests to ensure fairness

The s25 factors

- The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each party to the marriage and the duration of the marriage
- Any physical or mental disability of either of the parties to the marriage
- The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family
- The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it
- In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring

The *yardstick of equality* from White v White 2000

- Case set down key principles for sharing marital assets
- Division should be fair and not based solely on need; the parties should ‘share the fruits of the marriage’ and fairness in the division measured against the *yardstick of equality*
- Contributions to the marriage are treated equally; there is no distinction between ‘breadwinner’ and ‘home maker’ when dividing the assets

Pre and post-nuptial agreements

- Agreements are not automatically binding or directly enforceable by law, but are considered as part of the circumstances of the case
- More effective in cases of short marriage but the agreement must still be fair
- Will not be upheld where there are children born after the agreement was signed (and not provided for appropriately)
- *Radmacher v Granatino 2010*: agreements carry decisive weight where they are freely entered, without undue influence or pressure, and both parties have received independent legal advice

LO2 Understand the powers of the court to determine the split of assets for cohabiting couples

The key differences in the orders available to deal with property in cohabitation and marriage

- Cohabitation refers to couples living together without formalising their relationship by marriage or civil partnership
- Range of financial orders available in matrimonial law and wide powers available to the court to redistribute family assets
- For cohabitees, no right to maintenance and no specific legislation to deal with financial disputes following the breakdown of their relationships

- Leaves cohabitants in a potentially vulnerable position, particularly where there has been an uneven distribution of wealth throughout the relationship or where one party has given up work e.g to care for children
- Only existing law of trusts can be used to settle disputes, e.g. Trusts of Land and Appointment of Trustees Act 1996 (ToLATA 1996)
- Planned reform – the Cohabitation Rights Bill (not yet made law) sets out to recreate some of the rights enjoyed by married couples for those who have lived together for a prescribed period of time, or had a child together

The nature, purpose and content of a cohabitation contract

- A contract to regulate parties' property and financial matters during and on the breakdown of a cohabitous relationship, to provide clarity as to the parties' intentions regarding their financial affairs
- Previously void on the grounds of public policy (threat to undermine marriage) but becoming more commonplace
- Distinction must be drawn between a valid cohabitation contract and a "contract for cohabitation" that may be void as in *Sutton v Mischon de Reya & Another 2004*
- Cohabitation contracts usually deal with the family home (where the couple live together), other real property (land and buildings, personal property, shared finances such as money in joint accounts
- Contracts are unlikely to be given any weight unless the following are satisfied:

    - the parties sought legal advice before signing
    - the parties must have intended to create legal relations - difficult in family situations (legal advice element will help to prove this).
    - there can be no duress, coercion or misrepresentation
    - the contract must not 'require' a party to live with another and must be limited to regulating financial and property affairs

How express, constructive and resulting trusts are created and apply the law to a set of facts

- Land can be purchased by one person alone (sole ownership) or by more than one person – legal joint ownership
- Legal owners always hold a property equally, on trust for one another, i.e. there are no 'shares' or unequal holding of property, each is said to 'own the whole'
- Beneficial joint ownership is the term used to describe the true ownership of property, sitting 'behind' the legal title to reflect the reality of ownership
  e.g. A and B own a property together. The legal title reflects A and B as equal owners. However, the beneficial title can reflect an unequal contribution to the purchase by A and B, such as a 90/10, 50/50, 60/40 split
- A valid sale of land must be effected by deed, and this Purchase Deed or a separate Deed of Trust can be used to record how the parties own the land – an express trust.
  e.g. the parties are registered as joint legal owners, but draw up an express trust reflecting how they actually own the property 90/10, 50/50, 60/40 etc
- In the absence of an express trust, or where property is held by one person alone, it is possible for another party to gain a beneficial interest in the land by either a resulting or a constructive trust

e.g. a property is owned by party C. Party D later moves into the property. C and D live together in a cohabiting relationship for several years and raise a family. It is possible that D, who is not a legal owner, can gain a beneficial interest in the property they occupied with C

- Resulting trusts are created at the point of purchase by contribution to the purchase price, by a party who is not named as a legal owner (*Curley v Parkes 2004)* and the value of their interest in the property is calculated as a percentage of the property price paid
- Constructive trusts are created over time, are a more flexible and realistic way to reflect a shared family home (*Stack v Dowden 2007*), and can be created where:
    - There was a common intention between the parties to share the property, and
    - The non-owning party relied on that shared agreement to their detriment

LO3 Understand the orders available to regulate behaviour and property in case of domestic abuse

The behaviours and offences that are considered domestic abuse

- Cross-government guidance on the definition of domestic abuse and violence:
  Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality

  The abuse can encompass but is not limited to:
    - psychological
    - physical
    - sexual
    - financial
    - emotional

  Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour

  Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim

  This definition includes so called ‘honour-based’ violence, female genital mutilation and forced marriage

Who can seek an order for protection from abuse under the Family Law Act 1996 (FLA 1996)

- Orders under the Act are only available to ‘associated persons’
- The list of associated persons is found at s62(3) FLA 1996 and includes (not limited to):
    - Spouses/former spouses
    - Civil partners/former civil partners
    - Cohabitants or former cohabitants
    - Relatives
    - Those who have lived together in the same household
    - Those who have had an intimate personal relationship with one another that is/was for a significant amount of time

The purpose, scope and requirements of non-molestation and occupation orders

- Orders are available under the FLA 1996 to associated persons and relevant child/ren
- A non-molestation order prohibits violence, harassment or unwanted behaviour – there is no definition of 'molestation' but must be a sufficient degree of harassment to the court's intervention
- Breach of a non-molestation order is a criminal offence punishable by a custodial sentence of up to five years or a fine, or both.
- Occupation orders regulate use of a shared property (the family home) and can be used to exclude a perpetrator of abuse from a property.
- Occupation orders are available to associated persons who have lived at the property together as their home
- Applications must be brought under the correct section of the Act determined by whether the applicant and/or respondent have any entitlement to occupy the home, e.g. because they are an owner/co-owner, have rights by virtue of marriage etc
- The court has power to regulate the use of the home by the parties, restrict a party's access to the home (even if they are the sole legal owner), exclude a party from the home and an area around it
- These interventions are draconian and the court must balance the rights of the legal owner and the rights of an associated person by application of strict tests before granting an occupation order and a proportionate approach

LO4 Understand how disputes involving children are dealt with in private law

The principles, presumption and welfare checklist from the Children Act 1989

- When making any decision about a child's upbringing the Court will be guided by three principles and one presumption:

  1) Welfare Principle s1(1) CA 1989 (also called the 'paramountcy principle')
     The child's welfare shall be the paramount consideration in all proceedings which affect them
  2) No Order Principle s1(5) CA 1989
     The Court shall not make an order (non-intervention) unless it is satisfied that to do so would be better for the child than making no order at all
  3) No Delay Principle s1(2) CA 1989
     Any delay in determining a question relating to a child's upbringing is likely to prejudice their welfare; the Court will set a timetable for children proceedings and not end a hearing without setting a date for the next one, until resolved
  4) Presumption that the involvement of both parents will benefit a child's welfare unless it is proven otherwise (e.g. due to risk of harm to child) s1(2A) CA 1989

- The Court must also consider the 'welfare checklist'; a list of factors at s1(3) CA 1989.

  a) Wishes and feelings of the child concerned, in the light of his age and understanding
  The older a child, the more likely his views will be considered. Gillick competence will be assessed.

  b) The child's physical, emotional and educational needs
  The child's need for food, housing, stability, affection, health needs, siblings (preferable to keep together) and emotional need for contact with both parents

  c) The likely effect on the child of any change in his circumstances

Must be good reason to move a well settled child: Re S and Others 2008 – transfer of residency because parent was refusing to facilitate contact with non-resident parent for no good reason

d) Any harm which the child has suffered or is at risk of suffering
Physical and emotional abuse and harm, and including the child being exposed to ill-treatment or behaviour of other people in the household

e) The child's age, sex, background and any relevant characteristics
Race, religion and everyday matters. Court will examine the effect of any change in lifestyle (e.g. an unorthodox lifestyle or religion) on the children, focusing on estrangement from other members of the family, access to schooling and medical care

f) The capability of the child's parents, or anyone else that the Court considers relevant, to meet the child's needs
Which of the parties is best able to care for the child; providing a stable home and facilitating contact with the other parent. The parenting abilities of any new partners is also weighed up

g) The range of powers available to the Court under CA 1989 in those particular proceedings
The court can take into account anything of relevance to the child's needs, and make any order it sees fit

The meaning of parental responsibility (PR) and how it can be acquired

- Defined at s3(1) Children Act 1989 "all the rights duties and responsibilities and authority which by law a parent of a child has in relation to the child and it's property" and includes the rights to make decisions about upbringing, the child's surname, religion, medical treatment as well as duties to maintain and care for the child and ensure they are educated

- PR can be challenged:
    - *Gillick v West Norfolk and Wisbech Area Health Authority 1985*; a child of any age with sufficient maturity and understanding of any given situation, enabling them to give valid consent, will be considered to have "Gillick competence". This means that the child will be entitled to make decisions for himself. The gravity of the decision will be considered when determining whether a child has capacity to make it
    - The Court can step in to overrule the parents' decision if it is in the best interest of the child, e.g. for medical treatment as in Re A (a minor)(Blood Transfusion) 1993

- PR can be exercised by one person alone, under S2(7) CA 1989, even if there are two or more people who share PR for a child. Intended for emergency medical situations, not to avoid consulting with the other parent on important matters such as schooling, surname, inoculation or circumcision

- PR can be acquired in several ways:
    - A mother acquires automatic PR for a child she gives birth to
    - A father who is married to the mother at the time of the birth of the child will automatically gain PR
    - A father who marries a mother after the birth of a child automatically gains PR for her child
    - An unmarried father can gain PR in one of 3 ways:
        1) Registering as the father on the birth certificate
        2) Entering into a Parental Responsibility Agreement with the mother

3) Obtaining a Parental Responsibility Order from the Court (s4 CA 1989) by showing commitment and attachment to the child, and good reason for applying

- PR is acquired if the child becomes the subject of a Child Arrangements Order, by the person with whom the child lives as a result of the order for the period of time the child lives with them

The orders available in private childcare law to resolve disputes relating to the upbringing of children and who can apply for such orders

- Under s10 Children and Families Act 2014, before a person can make certain applications to the family court, they must attend a Mediation Information and Assessment Meeting (MIAM) unless one of the following exemptions apply:

  - There is evidence of domestic abuse
  - There are child protection concerns
  - The matter is urgent (e.g., risk of abduction)
  - One party is already in prison or lives too far away for mediation to be feasible

- Under s8 CA 1989 the Court can make three orders in relation to children:
  - Child Arrangements Order (CAO) – sets out where a child should live and who they should have contact with
  - Prohibited Steps Order – prevents someone from taking a step relating to a child, e.g. vaccination, removal to another jurisdiction
  - Specific Issue Order – allows the Court to decide about a specific matter relating to the child's upbringing e.g. schooling, religion, vaccination

- Some people have automatic permission to apply for any s8 order under s10(4) CA 1989:
  - The child's legal parents (including natural fathers without PR)
  - The child's guardian or special guardian
  - A step-parent with PR
  - Anyone named in a Child Arrangements Order as the person with whom the child will live

- Some people may apply for a CAO only under s10(5):
  - Either party to a marriage or civil partnership in respect of a child of the family
  - Anyone with whom the child has lived with for three out of the last five years
  - Anyone who has obtained the consent or those with PR or of everybody named in the CAO as a person with whom the child will live
  - A relative with whom the child has been living for the past year
  - Anybody else (including the child) may apply with permission of the Court

LO5 Understand key principles of the practice of family law

How private family law cases are funded

- Private paying clients
  - Hourly-rate – the lawyer charges their client for the time spent working on their case
  - *Sears Tooth* agreements – deferred payment of fees whereby payment of fees is only required once the case is settled (used where there is limited liquidity in the matrimonial pot, but sufficient capital)
  - Legal Services Order (s22ZA MCA 1973) – an order granted on an interim basis during financial proceedings following divorce/dissolution whereby one party pays the other's fees

    - Unbundling and fixed fees – clients are sometimes offered lower rates or fixed fees when they are willing to do some of the preparation work themselves, such as preparing their financial disclosure

- Legal Aid
    - Only available for specified cases under LASPO 2010
    - Public law children proceedings, e.g. children removed into care of local authority
    - Cases involving protective injunctions such as non-molestation, occupation and forced marriage protection orders
    - Orders preventing the unlawful removal of a child from the UK
    - Generally not available for private children law cases or divorce unless there has been domestic abuse

The ways in which technology has transformed the family court system

- Technological advances within the court system catalysed by covid and the need for hearings to continue:
    - Remote hearings by video conferencing platforms making it easier for all parties to attend and less daunting for a litigant in person (unrepresented party)
    - Online portals and case management for serving documents (e-filing), making applications and tracking cases
    - Faster, safer, more efficient ways of sharing documents with multiple agencies, e.g. information sharing between local authority social worker and safeguarding hub via a secure area
    - AI-powered platforms for communications between co-parents to reduce conflict and foster communication

Key professional conduct requirements in family legal practice

- Key areas for professional conduct compliance and professional ethics
    - Recognising survivors of domestic abuse as vulnerable clients and the need for inclusive practice and avoiding discrimination within a diverse client base (Par 1.1 SRA Code of Conduct)
    - Dealing with litigants in person fairly and in a way that upholds professional standards, ensuring that you do not take advantage of their unrepresented status (Para 1.2 SRA Code of Conduct)
    - Identifying and dealing with conflicts of interest in accordance with Paras 6.1-6.2 SRA Code of Conduct)
    - Recognising the extremely sensitive nature of client data in family law cases and complying with duty of confidentiality under Paras 6.3-6.5 of the SRA Code of Conduct and GDPR

Unit 2 Family Law - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**

LO5 understand the key principles of the practice of family law; AC 5.1 how private family law cases are funded	L5 Unit 6 Legal Skills; LO1 key principles of legal drafting and legal and regulatory requirements (costs information provided in client care letter)
LO5 understand the key principles of the practice of family law; AC 5.2 the ways in which technology has transformed the family court system	L5 Unit 1 Law of Tort; LO2 AC 2.4 identify the ways in which technology is used in the practice of civil law L5 Unit 3 Land Law; LO1 AC 1.3 how technology is used in conveyancing practice to progress transactions and keep clients up to date L5 Unit 6 Legal Skills; LO4 understand how to develop and evaluate legal skills; AC 4.4 how tech and AI is used in legal practice
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Communication skills Written communication, e.g. appropriate formats, style and tone, spelling, punctuation and grammar (LO1, LO2, LO3, LO4, LO5) Drawing logical conclusions and taking the right action with information gathered (LO1, LO2, LO3, LO4, LO5) **Problem solving** Use both analytical and critical thinking skills (LO1, LO2, LO3, LO4, LO5)	**Reading skills** Sufficiently broad and deep reading to effectively understand the subject and use information to achieve your objective (LO1, LO2, LO3, LO4, LO5) **Self-organisation** Thinking through your study approach, being self-organised, think about how you will undertake your studies (LO2) **Using sources of information** Learning where to look for information and how to access it, choosing current, relevant and reliable sources (LO2)

Resources
Textbooks Bird R.C. (2015). *Domestic violence: law and practice*. Bristol: Family Law Bryan D. (2023). *A Straightforward Guide to Family Law*. Straightforward Publishing **Websites** The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research

https://www.bailii.org/

Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation.

https://www.legislation.gov.uk/

The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services.

https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/

The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice.

https://www.lawsociety.org.uk/topics/

The following links are provided to useful web resources to support teaching and learning on this unit.

Home Office (2012). *CROSS-GOVERNMENT DEFINITION OF DOMESTIC VIOLENCE - A CONSULTATION SUMMARY OF RESPONSES*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/157800/domestic-violence-definition.pdf

Saied-Tessier, A. (2024). *AI in the family justice system*. https://www.nuffieldfjo.org.uk/wp-content/uploads/2024/05/NFJO_AI_Briefing_Final.pdf

Unit 3 Land Law	
Unit aims	This unit aims to develop learners' knowledge and understanding of key principles of land law including the concept of registered land, land as property, how title to land is acquired and held by more than one person. Learners will develop understanding of easements as rights over land and key aspects of conveyancing practice, including client due diligence, professional conduct requirements and the application of technology in conveyancing.
Unit level	5
Unit code	M/651/6592
GLH	120
Credit value	30
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.

Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand the key ethical principles, professional duties and regulatory requirements in conveyancing	1.1 Explain the requirements for proof of identify and source of funds at the outset of a conveyancing matter. 1.2 Explain the key professional conduct rules relevant to a conveyancing matter. 1.3 Explain how technology is used in conveyancing practice to progress transactions and keep clients up to date		1D1 Critically analyse whether reporting under anti-money laundering legislation would amount to a breach of confidentiality
2. Understand the concepts of land as a form of property and the system of registered land	2.1 Explain the statutory and common law definitions of land 2.2 Explain the three common law tests for fixtures and fittings		2D1 Undertake research and analyse the benefits of land registration in

	and apply your knowledge to a set of facts 2.3 Identify the statute governing land registration and the ‘triggers for first time registration 2.4 Explain the three principles of land registration		England and Wales
3. Understand the ways in which title to land can be acquired	3.1 Explain the formalities required for a valid transfer of land 3.2 Outline the three stages of a conveyancing transaction 3.3 Explain in outline how title to registered land can be gained through adverse possession	3M1 Analyse the risks to buyer and seller in a conveyancing transaction before the exchange of contracts	3D1 Critically analyse the availability of rights to land by adverse possession and whether this amounts to ‘theft of land’
4. Understand how rights to property can be held by more than one person	4.1 Explain co-ownership and the difference between joint tenancy and tenancy in common 4.2 Explain the rule of survivorship in joint tenancy 4.3 Explain how beneficial joint tenancy can be severed 4.4 Explain how express, constructive and resulting trusts are created	4M1 Critically analyse whether the rule of survivorship in joint tenancy unfairly restricts the rights of landowners to leave property by will	
5. Understand easements as proprietary rights	5.1 Explain the nature of an easement 5.2 Explain the characteristics of an easement		

	5.3 Explain how easements can be created, varied and extinguished		

Indicative Content

LO1 Understand the key ethical principles, professional duties and regulatory requirements in conveyancing

Requirements for proof of identity and source of funds at the outset of a conveyancing matter

- Law firms are at risk of being complicit in money-laundering, wherein solicitor's client accounts are used to 'clean' funds from illicit activities by making the funds appear legitimate
- These risks are managed by law firms through careful Client Due Diligence; verifying client identity, address and more detailed checked for higher-risk individuals
- Source of funds and wealth verified to understand where money to fund a property transaction is coming from and how it was acquired, i.e. earnings, investments, inheritance
- Compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (AMLR 2017, as amended 2022)
- Duty to report suspected money laundering (SAR – Suspicious Activities Report) and the offence of "tipping off" under Proceeds of Crime Act 2002

Key professional conduct rules relevant to a conveyancing matter

- SRA Code of Conduct; Paras 4.2, 6.3, 8.1, 8.6, 8.7
- The Council for Licensed Conveyancers (CLC); the regulatory body for Licensed Conveyancers in England and Wales and the Code of Conduct for Conveyancers made up of six Ethical Principles and associated Outcomes, e.g. Ethical Principle 5, Outcome 5.1 in relation to compliance with AMLR

How technology is used in conveyancing practice to progress transactions and keep clients up to date

- Digital services; HM Land Registry portal (download titles to land), e-filing
- Case Management Software, client portals and document exchange platforms
- Blockchain and Smart Contracting
- Online / mobile banking

LO2 Understand the concepts of land as a form of property and the systems of registered and unregistered land

The statutory and common law definitions of land

- Statutory definition: s205 (1)(ix) Law of Property Act 1925
  - Land of any tenure (freehold or leasehold)
  - Any mines or minerals whether or not held apart from the surface
  - Buildings or parts of buildings
  - Corporeal hereditaments (physical, tangible objects on the land)
  - Incorporeal hereditaments (intangible features such as rights of way)
- Common law presumptions and exceptions:

    - "Everything extending to the heavens and to the depths of the earth" and
    - "That which is attached to the ground becomes part of it"
    - Airspace – rights curtailed by *Bernstein v Sky views Ltd 1978* – only to a height necessary for reasonable enjoyment, and under s76 civil aviation act 1982 no right to sue in trespass for a flight at a reasonable height
    - Underground – coal belongs to the coal authority, oil, natural gas and 'treasure trove' to the crown, infrastructure act 2015 – companies may frack **under** 300m below land (actionable as trespass up to 33m)

The three common law tests for fixtures and fittings

- Fixture - considered part of the land, and must be transferred with the land on sale/transfer
- Fitting - not considered to be part of the land, classed as a personal 'chattel' does not need to be transferred with the land on sale/transfer
- Best practice: seller completes a form to confirm the items to be removed for agreement with the buyer. In absence of agreement, the court will be asked to decide on the status of items by applying the common law tests
- Common law tests:
    - Degree of attachment; the greater degree of attachment to the land, the more likely an object is to be a fixture – *Holland v Hodgson 1872*.
    - Purpose of attachment; examines whether the chattel is present on the land for more convenient use of the land or for the use of the chattel itself - *Leigh v Taylor 1902*
    - Permanence of attachment; examines whether the chattel is a lasting improvement to the land and the ease of removal – *Elitestone Ltd v Morris 1997*
    - Where there is overlap, the Courts take a common-sense approach; each item to be considered on its own merits, in the context of the property

The statute governing land registration and the 'triggers' for first time registration

- Land Registration Act 2002
- First registration of unregistered land may be voluntary (s3 LRA 2002) or
- Compulsory due to a trigger event under s4 LRA 2002, e.g.
    - Transfer of unregistered land such as by sale or Court order (e.g. on divorce)
    - Grant of a legal lease with more than 7 years left to run
    - First legal mortgage over the property

The three principles of land registration

- Mirror principle – the register should be an accurate reflection of how land is owned
- Curtain principle – certain interests are kept off the register, i.e. information that has no effect on the purchaser, such as the details behind a trust
- Insurance principle – the register is state guaranteed for accuracy; any mistakes are rectified and compensation awarded to the injured party

LO3 Understand the ways in which title to land can be acquired

Formalities required for a valid transfer of land

- Basic contract law requirements: offer + acceptance + consideration + intention + capacity
- Additional requirements for contracts for the transfer of land under s2 Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A):

    - Must be in writing
    - Must incorporate all terms (whether that be in the contract itself, or by reference to another document)
    - Must be signed by, or on behalf of, the parties
- With a few exceptions, s52 Law of Property Act 1925 provides that all transfers of land must be made by deed

The three stages of a conveyancing transaction

- Sale 'subject to contract' – not legally binding. Any losses incurred during this stage are said to *lie where they fall*
- Exchange of contracts – contract for sale of land is legally binding on the parties, deposit usually held by legal representatives, with a financial penalty if the sale does not complete
- Completion – unregistered land is registered, or the title to registered land updated, to reflect the new owner

How title to registered land can be gained through adverse possession

- Commonly known as 'squatter's rights' – an acquisition of land by virtue of long use without permission of the owner
- A squatter who has been in adverse possession for 10 years may apply to the Land Registry to be registered as the proprietor of the land (Sched 6 LRA 2002), and this generates a Notice served on the landowner with 65 days to defend
- To prove adverse possession, a claimant must show:
    - Factual possession - dealing with the land as a true owner would have done, e.g. Fencing, planting, storage
    - The intention to possess the land - *Powell v McFarlane 1977*, a claimant should "exclude the world at large, including the owner with the paper title" and "make this intention clear to the world"
    - That the possession was adverse (without permission) - no claim for adverse possession where a landowner has granted permission for the occupiers to use the land – *Smart v Lambeth London Borough Council 2013*

LO4 Understand how rights to property can be held by more than one person

Co-ownership and the difference between joint tenancy and tenancy in common

- Arises when there are 'concurrent interests' in the land, more than one person entitled to possess land at the same time
- When land is owned by more than one person, a trust of land automatically arises (s36(1) LPA 1925)
- This creates two layers of ownership; legal and beneficial
- Legal owners always hold a property equally, on trust for one another, known as Joint Tenancy
- There are no notional 'shares' or unequal holding of property in Joint Tenancy, each is said to 'own the whole'
- Beneficial joint ownership is the term used to describe the true ownership of property, sitting 'behind' the legal title to reflect the reality of ownership, i.e. that two or more people may hold unequal, notional 'shares' in land, known as Tenancy in Common

    e.g. A and B own a property together. The legal title reflects A and B as equal owners. However, the beneficial title can reflect an unequal contribution to the purchase by A and B, such as a 90/10, 50/50, 60/40 split

- The beneficial title is more flexible and can reflect the true position of ownership, e.g. two people may hold unequal, notional ‘shares’ in land, known as Tenancy in Common. This is especially useful if two friends are purchasing a property together, and wish for their share in the land to pass to their family on death

The rule of survivorship in joint tenancy

- In Joint Tenancy, the rule of survivorship is absolute and automatic
- On death of one of the joint tenants, their title in the land automatically vests in the surviving co-owner(s), said to occur at the moment of their death
- Notional ‘shares’ or title to land cannot be passed to any other person, even by valid will

How beneficial joint tenancy can be severed

- A joint tenant may wish to convert a joint tenancy to a tenancy in common
- This allows them to hold ‘notional shares’ in the property and act on those shares, such as by leaving their share of the title to someone other than a co-owner
- Most commonly, this will be achieved by sending notice in writing under s36(2) LPA 1925
    - A joint tenant must serve a written notice of severance on the other joint tenants
    - Must intend to be effective immediately
    - Effective as soon as delivered (even if not read) - *Kinch v Bullard 1998*

How express, constructive and resulting trusts are created

- Legal owners always hold a property equally, on trust for one another, i.e. there are no ‘shares’ or unequal holding of property, each is said to ‘own the whole’

- Beneficial joint ownership is the term used to describe the true ownership of property, sitting ‘behind’ the legal title to reflect the reality of ownership

    e.g. A and B own a property together. The legal title reflects A and B as equal owners. However, the beneficial title can reflect an unequal contribution to the purchase by A and B, such as a 90/10, 50/50, 60/40 split

- A valid sale of land must be effected by deed, and this Purchase Deed or a separate Deed of Trust can be used to record how the parties own the land – an express trust

    e.g. the parties are registered as joint legal owners, but draw up an express trust reflecting how they actually own the property 90/10, 50/50, 60/40 etc

- In the absence of an express trust, or where property is held by one person alone, it is possible for another party to gain a beneficial interest in the land by either a resulting or a constructive trust

    e.g. a property is owned by party C. Party D later moves into the property. C and D live together in a cohabiting relationship for several years and raise a family. It is possible that D, who is not a legal owner, can gain a beneficial interest in the property they occupied with C

- Resulting trusts are created at the point of purchase by contribution to the purchase price, by a party who is not named as a legal owner (*Curley v Parkes 2004)* and the value of their interest in the property is calculated as a percentage of the property price paid. Payments made after acquisition do not create a resulting trust, but may prove a constructive trust (see below)

- Constructive trusts are created over time, are a more flexible and realistic way to reflect a shared family home (*Stack v Dowden 2007*), and can be created where:
    - There was a common intention between the parties to share the property, and
    - The non-owning party relied on that shared agreement to their detriment

LO5 Understand easements as proprietary rights

The nature of an easement

- A type of property right over another person's land
- Common examples: rights of way (a right to travel over another person's land), rights of drainage, right to run cables or pipes under land
- Must be two parties who hold titles to land (usually neighbouring land) – the party who benefits from the easement is the dominant owner and the party who bears the burden of the easement is the servient owner

The characteristics of an easement

- From *Re: Ellenborough Park 1956*
    - There must be a dominant and servient tenement (a tenement is a piece of land)
    - The right claimed must benefit the dominant tenement, i.e. not merely benefit the owner personally but benefit the land itself
    - There must be diversity of ownership or occupation: two different people must own or occupy the land
    - The right claimed must be capable of 'forming the subject matter of a grant', i.e. must be similar to existing, commonly found easements and must be sufficiently definite (not vague or too general, such as a general right to a view)
- Must also be no exclusive possession and expenditure imposed on the servient owner: a dominant owner may not exclude a servient owner from their own land, with some exceptions e.g. the right to park a car as seen in Moncrieff v Jamieson 2007

How easements can be created, varied and extinguished

- Easements can be created between the parties (by agreement or 'express grant' between the owners of land) and formalised by deed, or at least in writing
- Easements can be implied – the court will impose an easement on the landowner in various circumstances, including:
    - Necessity - where it is absolutely necessary i.e. landlocked, vehicle access required, no other way other than to cross neighbouring land
    - Common intention - where the parties must clearly have intended it, i.e. where it is obvious that it should be implied such as stairwells in a block of flats
    - The rule in *Wheeldon v Burrows 1879* – applies where a large piece of land is split and sold off in parts
- Easements can be claimed by prescription – where someone has used land in a particular way for a period of time, usually 20 years, e.g. accessing neighbouring land to trim own trees/hedges
- To be valid, the use must have been without force, secrecy or permission of the other landowner
- Easements can be varied or extinguished by agreement between the landowners (express release)

- They will also be extinguished where the easement is intentionally abandoned, or the two parcels of land become owned by one person

Unit 3 Land Law - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**
LO1 AC 1.3 how technology is used in conveyancing practice to progress transactions and keep clients up to date	L5 Unit 1 Law of Tort; LO2 AC 2.4 identify the ways in which technology is used in the practice of civil law L5 Unit 2 Family Law; LO5 AC 5.2 the ways in which technology has transformed the family court system L5 Unit 6 Legal Skills; LO4 understand how to develop and evaluate legal skills (AC 4.4 how tech and AI is used in legal practice)
LO1 AC 1.1 and 1.2	L5 Unit 6 Legal Skills; LO1 AC 1D1 produce a draft document that is compliant with legal and regulatory requirements
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Communication skills Written communication, e.g. appropriate formats, style and tone, spelling, punctuation and grammar (LO1, LO2, LO3, LO4, LO5) Drawing logical conclusions and taking the right action with information gathered (LO1, LO2, LO3, LO4, LO5) **Problem solving** Use both analytical and critical thinking skills (LO1, LO2, LO3, LO4, LO5)	**Reading skills** Sufficiently broad and deep reading to effectively understand the subject and use information to achieve your objective (LO1, LO2, LO3, LO4, LO5) **Writing skills** Understand the purpose of writing and writing styles by writing appropriately for different audiences (LO1, LO2, LO3, LO4, LO5) **Using sources of information** Learning where to look for information and how to access it, choosing current, relevant and reliable sources (LO2)

Resources
Textbooks Cooke E. (2020). *Land law*. Oxford: Oxford University Press Jones E. Ryan F. Thanaraj A. and Wong T. (2021). *Digital Lawyering*. Routledge Smith R.J. (2020). *Property law*. New York: Pearson **Websites** The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research https://www.bailii.org/ Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation. https://www.legislation.gov.uk/ The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services. https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/ The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice. https://www.lawsociety.org.uk/topics/ The Council for Licensed Conveyancers, or the CLC, is the regulatory body for Licensed Conveyancers in England and Wales. The CLC's purpose is to set entry standards and regulate the profession of Licensed Conveyancers effectively in order to secure adequate consumer protection, promote effective competition in the legal services market and provide consumer choice. https://www.clc-uk.org/wp-content/uploads/2024/10/Annex-A-Revised-Code-of-Conduct-V1.pdf

Unit 4 Criminal Law			
Unit aims	This unit aims to develop learners' knowledge and understanding of inchoate offences and the doctrine of joint enterprise, including criticism and reform of the doctrine. Learners will develop their understanding of denials of liability and how these operate as general defences in criminal law. Learners will also develop their understanding of legal professional practice in representing clients at the police station, and specific legal and regulatory issues relevant to dealing with vulnerable clients and witnesses.		
Unit level	5		
Unit code	R/651/6593		
GLH	120		
Credit value	30		
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.		
Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand inchoate offences	1.1 Explain the meaning of the term 'inchoate offence' 1.2 Explain the legal framework governing inchoate offences in England and Wales 1.3 Explain the circumstances in which a charge may be brought for a criminal attempt	1M1 Distinguish between the offences of criminal conspiracy and encouraging or assisting an offence	1D1 Critically evaluate whether the prosecution of criminal attempts is unfair on defendants who do not go on to complete a crime
2. Understand the legal doctrine of joint enterprise crime	2.1 Explain the concept of joint enterprise crime 2.2 Explain the elements required to prove joint enterprise		2D1 Undertake research into joint enterprise crime reforms in the UK and critically analyse whether raising the threshold to 'significant contribution' will alleviate criticism

			about the overuse of joint enterprise
3. Understand denials of liability as general defences in criminal law	3.1 Explain how denials of liability operate as general defences 3.2 Explain the requirements for intoxication to apply as a denial of liability 3.3 Explain the meaning of automatism in criminal law 3.4 Explain the circumstances in which insane and non-insane automatism will apply	3M1 Distinguish between the effects of a successful plea of insane and non-insane automatism	
4. Understand the law and practice relevant to arrest and detention	4.1 Identify and explain the legislation governing the arrest and treatment of detained persons 4.2 Explain the requirements for lawful arrest with and without a warrant 4.3 Explain the rights of a detainee at the police station 4.4 Explain the custody time limits and detention review periods under PACE		4D1 Critically analyse the extent to which PACE 1984 balances the rights of the individual with the powers of the state
5. Understand the role of a legal advisor in dealing with vulnerable clients and witnesses	5.1 Identify key legal and regulatory requirements relating to the representation of vulnerable clients 5.2 Explain the meaning of ‘special measures’ for vulnerable witnesses, and eligibility for those measures 5.3 Explain the role of an ‘appropriate adult’ at the police station	5M1 Apply your knowledge of special measures available for vulnerable witnesses to a scenario	

Indicative Content

LO1 Understand inchoate offences

Explain the meaning of the term 'inchoate offence'

- 'Inchoate' – from Latin meaning incomplete, undeveloped or just begun; actions towards commission of a criminal offence
- Applies in situations where, although a complete offence has not yet been committed, the defendant has taken steps to commit, conspired to commit or encouraged others to commit a crime
- Aims: to deter and prevent crime from taking place, prevent harm, to punish actions that go beyond intention and towards commission of a crime to achieve consistency and encourage moral standards
- Risks; overcriminalisation, punishment of conduct that is not, in itself, criminal, difficulty in establishing test for 'more than merely preparatory'

Explain the legal framework governing inchoate offences in England and Wales

- Legal framework made up of both legislation and common law principles
- Criminal Attempts Act 1981 governs attempts; where someone intends to commit a crime
- Criminal Law Act 1977 and common law principles govern conspiracy, where an agreement is reached between two or more persons to commit an unlawful act
- Serious Crime Act 2007 replaced the common law offence of incitement with encouraging or assisting a crime

Explain the circumstances in which a charge may be brought for a criminal attempt

- Criminal attempts are situations where a defendant has the specific intent to commit the complete offence (the *mens* rea) and takes steps 'more than merely preparatory' to committing the offence (the *actus reus*)
- Only applies to indictable offences and crimes of specific intent (i.e. requires intention, recklessness will not suffice)
- Impossibility is no defence to the offence; it is an offence to attempt to commit a crime even if the circumstances make the commission of the offence impossible
- Case examples: *R v Tosti (1987), R v Whybrow (1951)*

Other inchoate offences; conspiracy and encouraging or assisting an offence

- Conspiracy arises when two or more people agree to commit a criminal offence and have the intent to commit; the agreement itself is the offence, even if the planned crime is never carried out
- Encouraging or assisting; actively and deliberately helping or encouraging someone to commit a crime, e.g. providing resources such as equipment/weapons, advice or other practical support to make it easier for the principal offender to commit a crime. It is sufficient that the person believes that a crime will be committed, even if they themselves do not intend it

LO2 Understand the legal doctrine of joint enterprise crime

Explain the concept of joint enterprise crime

- 'Joint enterprise' – a legal doctrine providing that multiple people can be held responsible for a crime, i.e. treated as if they were the principal offender, even if only one person committed the crime
- Applies where a defendant:
    - joins in with another to commit a crime (joint principals)
    - procures, assists or encourages the principal to offend (secondary party)
    - participates in one crime and, during the course of that crime, their associate commits a second crime (Crime B) which the defendant had foreseen (parasitic liability)
- Doctrine is subject to criticism for its widespread and controversial use, and because it disproportionally affects young people and people of colour, criminalising individuals for crimes that they did not commit
- Joint Enterprise (Significant Contribution) Bill seeks to introduce a higher threshold for conviction by requiring some 'significant contribution' to the crime by the accused

Explain the elements required to prove joint enterprise

- Common purpose – a shared intention or agreement, or shared purpose, to commit an offence, e.g. two people plan to rob a bank
- Foreseeability – it must be established that the accused either knew or should have known and foresaw that the principal offender might commit an act that resulted in the crime, e.g. if the accused knew the principal offender carried a dangerous weapon and accompanied them on the robbery
- Involvement, assistance or encouragement – the accused must have taken part in the offending, or assisted or encouraged the principal to commit the offence

LO3 Understand denials of liability as general defences in criminal law

Explain how denials of liability operate as general defences

- Excusatory defences – apply in situations where the accused could not have committed all elements of a crime due to an absence of *mens rea*

Explain the requirements for intoxication to apply as a denial of liability

- Meaning: where a defendant's physical or mental control is diminished by the intoxicating effect of drugs or alcohol
- Voluntary intoxication – where the defendant deliberately consumes an intoxicating substance
- Involuntary intoxication – where the defendant becomes intoxicated without their knowledge, i.e. defendant's food or drink is 'spiked' with an intoxicating substance, or accidental ingestion of a substance
- Voluntary intoxication can be used to deny the mens rea for an offence of specific intent (requiring nothing less than intention) but can never be used as a defence for crimes of basic intent (where recklessness will suffice). See: *R v Majewski (1977)*
- However, a drunken intent is still an intent and the defence will not apply where the defendant consumed an intoxicant as 'Dutch courage'. See: *DPP v Beard 1920 and ATG Northern Ireland v Gallagher (1963)*

- Involuntary intoxication can be used as a complete defence for both basic and specific intent crimes where the defendant lacks the mens rea for the offence. See: *R v Hardie (1985)*

Explain the meaning of automatism in criminal law

- A state where a person performs actions without conscious control or awareness, i.e. an involuntary act.
- Examples: sleepwalking, fit/seizure, reflex actions (sneezing, startle reflex)

Explain the circumstances in which insane automatism will apply

- Referred to as 'insanity'
- Criteria for the defence comes from rules established in the case of *M'Naghten (1843):*
  - The defendant laboured under a defect of reason – the bar for this element is set high. A temporary absentmindedness will not suffice
  - Arising from a disease of the mind; this is a legal, not medical, definition. See: *R v Kemp (1957)*
  - So that he did not know the nature and quality of his act – the defendant not being able to recognise what he was physically doing and/or the physical consequences of that
    OR;
  - He did not know that what he was doing was wrong – refers to legally rather than morally wrong
- The effect of a successful plea is a special verdict of not guilty by reason of insanity
- This does not lead to acquittal; the defendant is usually detained under the Mental Health Act 1983 in a secure facility until such time as they are deemed safe for conditional release

Explain the circumstances in which non-insane automatism will apply

- *Bratty v Attorney General for Northern Ireland [1963]*: an act done by the muscles without any control of the mind
- Must arise from an external factor/cause
- A successful plea will lead to the acquittal of a specific intent crime (requiring intention) but for a crime of basic intent (where recklessness is sufficient), the defendant will need to show that they were not reckless in becoming an 'automaton'
- Compare: *R v Bailey (1983)* where the defendant was deemed reckless in not consuming any food and suffering hypoglycemia and R v Hardie (1985) where the defendant consumed drugs known to have a soporific (sleep-inducing) effect but which in fact had the opposite.

LO4 Understand the law and practice relevant to arrest and detention

Identify and explain the legislation governing the arrest and treatment of detained persons

- PACE 1984 – sets out the powers of the Police in relation to arrest, detention and investigation of crime and sets out rights and safeguards for suspects and wider public
- Safeguards include clear procedures for arrest, detention and investigation, the right to legal advice and periodic reviews of detention
- Criticism of PACE include e.g. lengthy period of initial detention for all offences, lack of provision to ensure no disproportionate impact on particular groups (over representation

of black people and ethnic groups in application of ‘stop and search’ provision under PACE*)

Explain the requirements for lawful arrest with and without a warrant

- S24 PACE 1984 (Code G)
- Arrest always subject to test of necessity

Power of arrest: with a warrant

- Warrants are usually issued by a magistrate
- A warrant must specify the person to be arrested and the general nature of the charge
- Warrants can be issued against anyone who has committed or is suspected of committing an offence within that jurisdiction or who is present in that jurisdiction
- A warrant for unspecified persons or crimes is illegal

Lawful arrest without a warrant requires two conditions:

- Reasonable suspicion that the person being arrested has committed an offence, has attempted to do so or is planning to do so
- Grounds for believing the arrest to be necessary

Explain the rights of a detainee at the police station

- On arrival at the police station, the arrested person must be brought before the custody officer as soon as practicable and a custody record must be opened, and the circumstances and reason for arrest recorded
- Whilst held in detention at the police station, a suspect also has the right to:
    - Be informed of the reason for their arrest or detention
    - Legal advice (to consult privately with a solicitor)
    - Have someone (family member or friend) informed of their detention
    - Remain silent i.e. refuse to answer police questions
    - Medical treatment, if required
    - Be treated humanely and with dignity, including provision of food, water and toilet facilities
    - Be released or charge in accordance with prescribed time limits

Explain the custody time limits and detention review periods under PACE

- Detention in custody: time limits (Code C)
    - 24 hours – a person may not be detained for more than 24 hours without charge unless authorised by a senior police officer or magistrate
    - During that period, mandatory reviews must be undertaken to ensure that the reasons for detaining the suspect still apply
    - The first review must take place at 6 hours, and subsequent reviews at 9-hourly intervals throughout the period of detention
    - 36 hours – an officer of superintendent rank or above can authorise an extension up to 36 hours
    - Further extension up to 96 hours, subject to statutory safeguards and authorised by a Magistrate

- Max period without charge 96 hours (except for terrorism offences, extended to 14 days pre-charge detention under the Terrorism Act 2000, with strict judicial oversight and requirements for meaningful scrutiny to balance individual rights with public safety)

LO5 Understand the role of a legal advisor in dealing with vulnerable clients and witnesses

Identify key legal and regulatory requirements relating to the representation of vulnerable clients

- SRA Standards and Regulations Code of Conduct for Solicitors; Para 3.4 You consider and take account of your client's attributes, needs and circumstances
- Awareness of protected characteristics under the Equality Act 2010 and relevance to representing vulnerable clients
- Assessing client competence and capacity to provide instructions and understand advice without a guardian or power of attorney
- Adapting communication methods as necessary

Explain the meaning of 'special measures' for vulnerable witnesses, and eligibility for those measures

- Youth Justice and Criminal Evidence Act 1999 introduced a range of measures to facilitate gathering and giving of evidence by vulnerable and/or intimidated witnesses by alleviating some of the stress of proceedings
- S16 YJCEA 1999 – special measures are available to those under 18 at time of hearing, or to those whose quality of evidence may be diminished due to physical disability, or 'impairment of intelligence and social functioning'
- S17 YJCEA 1999 – special measures also available to 'intimidated witnesses' i.e. those who are in fear or distress about giving evidence for reasons including religious or political beliefs, social or cultural background, the nature and circumstances of the offence (e.g. victims of sexual assault)
- Special measures available include:
    - Use of screens around the witness box (to prevent the witness/victim from being seen by the accused, but they will be seen by judge, jury and advocates)
    - evidence via live video link
    - evidence given in private – in practice, this means that people are excluded from the Court whilst evidence is given. The accused, the accused's legal representatives, any interpreters or court reporters cannot be excluded. Usually only for specific offences e.g. sexual offences, or where witness intimidation is an issue
    - removal of wigs and gown to reduce stress and the witness feeling intimidated by formality of proceedings
    - video recorded evidence in chief (used in cases involving child witnesses and sexual offences)
    - use of communication aids, e.g. electronic communication devices or other media

Explain the role of an 'appropriate adult' at the police station

- In the case of juvenile or vulnerable suspects, an 'appropriate adult' is to be appointed; this can be a parent, carer, social worker, or trusted adult friend (but not a police officer or employed by the police)
- The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons in the following ways:

- support, advise and assist them when they are given or asked to provide information or participate in any procedure
- observe whether the police are acting properly and fairly to respect their rights and entitlements
- assist them to communicate with the police whilst respecting their right to say nothing unless they want to
- help them to understand their rights and ensure that those rights are protected and respected

Unit 4 Criminal Law - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**
LO5 Understand the role of a legal advisor in dealing with vulnerable clients and witnesses	L5 Unit 6 Legal Skills; LO1 ensuring accuracy and clarity of language and developing a suitable style and tone in written communications (i.e. communicating appropriately to meet client needs)
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Problem solving Use both analytical and critical thinking skills (LO1, LO2, LO4, LO5) **Working independently** Work self-sufficiently on assigned tasks (LO1, LO2, LO3, LO4, LO5) **Digital skills** Using digital devices, communications and application to access and manage information (LO2)	**Reading skills** Sufficiently broad and deep reading to effectively understand the subject and use information to achieve your objective (LO2, LO5) **Using sources of information** Learning where to look for information and how to access it, choosing current, relevant and reliable sources (LO2)

Resources
Textbooks Cecil J. (2020). *Practical Guide to Secondary Liability and Joint Enterprise Post-Jogee.* S.L.: Law Brief Publishing Ozin P. Heather N. (2025). *PACE: A practical guide to the Police and Criminal Evidence Act 1984*. Oxford University Press **Websites** The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research https://www.bailii.org/ Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation. https://www.legislation.gov.uk/ The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services. https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/ The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice. https://www.lawsociety.org.uk/topics/ *Dataset from Gov.UK setting out key facts and figures relating to over-representation of ethnic groups in exercise of Stop and Search powers under PACE https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest/ Parliament.UK is a publicly accessible website with regularly updated content relating to the activities of the House of Lords and House of Commons, including publishing proposed Bills and tracking their progress through the lawmaking process. https://bills.parliament.uk/bills/3550

Unit 5 Equity and Trusts			
Unit aims	This unit aims to develop learners' knowledge and understanding of general principles of equity and trusts, the associated practice area, including key aspects of professional practice and the influence of technology in practice. Learners will focus on the creation of trusts, gaining knowledge and understanding of the elements required to create a private express trust, an implied trust, and purpose trust; the role and responsibility of trustees; and the availability of equitable remedies.		
Unit level	5		
Unit code	T/651/6594		
GLH	120		
Credit value	30		
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.		
Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand the elements required to create an express trust	1.1 Explain the elements required for an express trust to be valid and fully constituted: certainties, formalities and constitution 1.2 Outline key professional conduct considerations for a legal professional instructed to create a trust 1.3 Identify the ways technology is used in the practice of trust creation and administration		

2. Understand the elements required for an implied trust to arise	2.1 Identify that an implied trust does not need to be evidenced in writing 2.2 Identify the difference between implied trusts that arise automatically; and those that arise through the intention of the parties 2.3 Explain the elements required to establish a common intention constructive trust 2.4 Explain the elements required to establish a presumed intention resulting trust	2M1 Analyse which type of implied trust a cohabitee is likely to attempt to prove to assert a beneficial interest in the family home	2D1 Evaluate whether the acquisition hurdle for common intention constructive trusts in *Lloyds Bank v Rosset* has been set too high
3. Understand the operation and existence of purpose trusts	3.1 Explain the historical development of charitable purposes 3.2 Explain the elements required to establish public benefit for charitable trusts and apply this to a set of facts 3.3 Explain the beneficiary principle, and the existence of non-charitable purpose trusts 3.4 Explain how to gift to an unincorporated association	3M1 Analyse the importance of the beneficiary principle in the creation of trusts	3D1 Analyse whether non-charitable purposes trusts should be permitted
4. Understand the role and responsibilities of a trustee	4.1 Explain the core duties owed by a trustee: duty of care and fiduciary duty 4.2 Identify where the administrative duties and powers of trustees are provided. 4.3 Explain breach of trust and defences		4D1 Evaluate whether there is flexibility to the strict application of a breach of fiduciary duty

5. Understand equitable remedies	5.1 Explain how misappropriated trust assets can be traced or followed, and their limitations 5.2 Explain the equitable remedy of injunctions 5.3 Outline the equitable remedies of specific performance and an account of profits	5M1 Evaluate when a beneficiary would make a claim against the trustee(s) or a claim to recover misappropriated trust property	

Indicative Content

LO1 Understand the elements required to create a private express trust

Elements to establish private express trust

- This type of trust is deliberately created. It can become effective during a person's lifetime, referred to as an inter-vivos trust; or on their death, known as a testamentary trust. Either way, once the trust becomes effective, the person who created it does not have an interest in the trust assets

- Three certainties:
    - Certainty of intention – the intention by the person creating the trust that they want property to be held for the benefit of another. More than a mere moral obligation
    - Certainty of subject- matter – the property to be held on trust must be identifiable, described with sufficient clarity and the proportion to be held on trust is known. Generally, tangible assets ought to be segregated, whereas intangible assets do not
    - Certainty of object – the person(s) to benefit from the trust must be identifiable. Where the trust specifies who is to benefit and in what proportion (fixed trust) the trustees must be able to compile a complete list (*IRC v Broadway Cottages* [1955] Ch 20) of those who will benefit. Therefore, conceptual certainty and evidential certainty must also be satisfied. Whereas if the trust grants the trustees with discretion of who, from a list, will benefit from the trust and how much they will benefit from (discretionary trust) the trustees will be required to determine if any given person is or is not entitled to receive a benefit (*Re Baden's Deed Trusts (No.1)* [1971] AC 424). In this instance conceptual certainty will need to be satisfied, but not evidential certainty

- Formalities
    - The legal rules to transfer property from one person to the another. In the context of an inter-vivos trust, formalities govern the transfer of the legal title from the settlor to the trustee(s).
    - Personality:
        - Oral declaration of intention is sufficient (*Rowe v Prance* [1999] 2 FLR 787)
        - Shares – s770 Companies Act 2006; Stock Transfer Act 1963, Schd 1 and registration with Company
        - Chattels – definition in s3 Inheritance & Trustees Powers Act 2014; deed of gift (*Jaffa v Taylor Gallery Ltd* (1990) The Times, 21 March); delivery (*Re*

        Cole [1964] 1 Ch 175, *Re Lillingston* [1952] 2 All ER 184, *Thomas v Times Book Company Limited* [1966] 1 WLR 911)

- Realty:
  - Intention must be evidenced in writing (s53(1)(b) Law of Property Act 1925)
  - By Deed (s52(1) Law of Property Act 1925, s1(2)(a) and (b) Law of Property (Miscellaneous Provisions) Act 1989)
  - Registered at Land Registry (s4(1) Land Registration Act 2002 or 27(1) Land Registration Act 2002)
- Transfer will be deemed to have taken place where the settlor has done all that is necessary to effect the transfer (*Milroy v Lord* (1862) 4 De GF&J 264) and it would be unconscionable to deny the transfer (*Pennington v Waine* [2002] 1 WLR 2075)

- Constitution
  - The key case that established the modes of settlement is *Milroy v Lord* (1862) 4 De GF&J 264. It identified that the settlor could ensure that a person has the benefit of assets in one of three ways:
    - actually transferring the property to the person (gift).
    - transferring the property to a trustee (a three way trust)
    - declares themselves as a trustee (two way trust)
  - The mode of settlement dictates which formalities ought to be adhered to for the legal title to be effectively transferred. Once the mode has been established, and the transfer has taken effect, the trust will be fully constituted

Key professional conduct rules relevant to creation of trusts

- Service and competence (para 3.1 of the SRA Code of Conduct)

How technology is used in trust administration

- Assistive software to create Trust Deeds via pre-populated information.
- Digital services; HM Revenue and Customs portal (registration of trusts, submitting trust tax returns)
- Placement of digital assets within a trust, such as cryptocurrency

LO2 Understand how implied trusts arise

Implied trusts do not need to be evidenced in writing

- s53(1)(b) Law of Property Act 1925 states that a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will
- However, s53(2) Law of Property Act 1925 confirms that this is not the case for resulting, implied or constructive trusts

Difference between implied trusts which arise automatically, and those that arise through the intentions of the parties

- Constructive Trusts
  - Institutional constructive trusts – arise independently of the court, such as in a breach of trust. The court recognises that a trust is in existence, rather than declaring that a trust now exists. This type of trust arises automatically

    - Common intention constructive trust – whenever A (being the legal owner) has so conducted himself that it would be inequitable to allow him to deny B a beneficial interest in his land. A will be held to have conducted himself in such a manner if by his words or conduct he has induced B to act to his or her detriment in the reasonable belief that by so acting he or she was acquiring a beneficial interest in land (*Gissing v Gissing* [1970] 1 AC 886). This type of trust arises through the shared intentions of the parties, even when those intentions were not formally documented
- Resulting Trusts
    - Failure of an express trust (*Vandervell v IRC* [1967] 2 AC 291; *Re Ames Settlement* [1946] Ch 217); surplus funds once the purpose of trust has been satisfied (*Re Gillingham Bus Disaster Fund* [1958] Ch 300); and Quistclose trust. These types of events automatically give rise of a resulting trust
    - Contribution to purchase price of an asset; or voluntary transfer of asset to another. This type of trust arises through the presumed intention of the person who has contributed towards the purchase price. This is subject to the presumption of advancement

Elements of a common intention construction trust

- *Lloyds Bank v Rosset* [1990] UKHL 14 sets out two categories of a common intention constructive trust. Category 1 is where there is an express agreement and detrimental reliance. Category 2 is where conduct demonstrates an intention to hold the property on trust and there is detrimental reliance. See below for evidence of express agreement, conduct and detriment. The case suggested that for conduct to amount to an intention it needed to be a direct contribution to the purchase price, or thereafter – such as payment towards the deposit, or the mortgage. The judgment highlighted that it was ‘extremely doubtful whether anything else will do’. Lady Hale in *Stack v Dowden* suggested that the requirement of a direct financial contribution set the bar too high. Subsequent cases such as *Abbott v Abbott* [2007] UKPC53 and *Aspden v Elvy* [2012] EWHC 1387 (Ch) suggest that the courts can take a more flexible approach, but that this is on a case by case basis and the Rosset ‘orthodoxy’ remains (*James v Thomas* [2007] EWCA Civ 1212; *Morris v Morris* [2008] EWCA Civ 257)
- Express agreement – however imperfectly remembered or imprecise the terms (*Eves v Eves* [1975] 1 WLR 1338; *Ungarian v Lesnoff* [1989] 3 WLR 840).
- Conduct demonstrating a shared intention – limited to financial contributions (*Lloyds Bank v Rosset*; *Burns v Burns* [1984] Ch 317)
- Detrimental reliance on agreement or conduct. Where express agreement has been established detriment can be both financial and non-financial (such as taking care of the children, giving up your career etc). However, where conduct has been established, detriment has automatically been demonstrated through financial contributions. (*Grant v Edwards* [1986] Ch 638; *Hammond v Mitchell* [1991] 1 WLR 1127)
- A common intention construction trust is likely to be the most appropriate type of implied trust that is pursued by a cohabitee in relation to the family home. Upon establishing this type of trust, the courts take a broad brush, holistic approach to quantification (*Stack v Dowden* [2007] UKHL 17; *Drake v Whipp* [1996] 1 FLR 826*; Oxley v Hiscock* [2004] EWCA 546*; Jones v Kernott* [2011] UKSC 53)

Elements of a presumed intention resulting trust

- Arises by virtue of payment towards the purchase price of an asset (*Dyer v Dyer* (1788) 2 Eq Cas 92)

- Extent of interest is limited to the contribution at the date of purchase, payments after will not count (*Walker v Hall* [1984] Fam Law 21; *Curley v Parkes* [2004] EWCA Civ 1515)
- This type of trust is more appropriate for those in a commercial relationship, where non-financial contributions will not be as relevant as it is in family relationships where a discussion of what happens on separation does not often take place

LO3 Understand the operation and existence of purpose trusts

Historical development of charitable purposes

- Charitable Uses Act 1601 (also referred to as Statute of Elizabeth) Preamble – provided a list of purposes which complimented poor law. Non-binding list, given that it was not embodied in statute. Analogous cases permitted
- *The Commissions for Special Purposes of the Income Tax Appellants v Pemsel* [1981] AC 531 (The Pemsel categories) – established a list of purposes: relief of poverty, advancement of religion, advancement of education and any other purposes beneficial to the community. Analogous cases still permitted
- Charities Act 2006, s2(1)(a) – (m) created 13 categories of purposes that would be charitable. Also included 'any other purposes' to take into account potential changes in society
- Charities Act 2011, s3(1)(a) – (m) simply renumbered the purposes listed in the 2006 Act
- Definition of charitable purpose contained in s2 Charities Act 2011

Establishing public benefit for charitable trusts

- The definition of charity requires that the purpose is for the public benefit.
- The statute does not provide a definition of public benefit. However, the 2006 Act established the Charity Commission, who are required to promote awareness and understanding of the operation of the public benefit requirement. The Charity Commission are also required to issue guidance on how charity trustees are expected to meet the public benefit requirement, and charity trustees must have regard to the guidance and only detract from it with good reason
- Aspects of the public benefit test issued by the Charity Commission:
  - Benefit Aspect -
    - The benefit must be identifiable – there will be times when the benefit is so obvious no evidence of the benefit needs to be provided. However, where the benefit is not obvious, evidence will be required to demonstrate what the benefit is
    - The benefit must be balanced against any detriment or harm
    - The main purpose cannot be political
    - Indirect benefits permitted but dealt with on a case-by-case basis
  - Public Aspect -
    - Benefit to the public or to a sufficient section of the public.
    - Sufficient section of the public would include (but not limited to) those defined by geographical area; charitable need; or with reference to a 'protected characteristic' under the Equality Act 2010
    - Where the benefit is to a sufficient section of the public:
      - Those benefitting cannot be numerically negligible
      - Unless for the relief of poverty, there cannot be a personal nexus
      - Restrictions imposed must be legitimate, proportionate, rational and justifiable
    - The poor must not be excluded from the opportunity to benefit

- Private benefits received by an individual is permitted, provided the benefit is incidental and is required to further the aims of the charity

Beneficiary Principle

- Once a trust has been created the beneficiary has a proprietary interest in the trust assets
- The requirement that for a valid express trust to be fully constituted there must be a human beneficiary that can enforce the trust
- Without compliance with the beneficiary principle, express trusts for a purpose will be void

Non-charitable purpose trusts

- The case of *Re Endicott* [1960] Ch 232 established instances where an express trust created for a purpose would be valid (often referred to as anomalous cases or trusts of imperfect obligations). These include:
    - Trusts for specific animals
    - Trusts for the erection and maintenance of monuments and graves
    - Trusts for the saying of private mass
- It is questionable whether trusts of imperfect obligations should be permitted for public policy reasons. Provided the perpetuity period is clear, and the trustees are willing to undertake the purpose these types of trusts can be administered. However, where instructions are provided to a legal advisor to create this type of trust, the legal adviser needs to ensure the client is aware of the limitations of this type of trust in relation to administration and enforcement
- In addition to the anomalous cases, there are instances where a trust appears to be for a purpose, but the purpose simply provides the motivation. In those instances, the purpose cannot be enforced, and there is a human beneficiary that can compel the trustees to act within the scope of their role and responsibility
- The case of *Re Denley's Trust Deed* [1969] 1 Ch 373 also established that 'a trust which, though expressed as a purpose, was directly or indirectly for the benefit of an individual or individuals, was valid, provided those individuals were ascertainable at any one time' (at pp383G-384A, 385D of the case)

Gifts to unincorporated associations

- The definition can be found in the case of *Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522. An unincorporated association is defined as two or more persons bound together by one or more common purposes, not being a business purpose, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and on what terms and which can be joined or left at will
- Unincorporated associations do not have a legal personality and as such cannot hold property. They are also not considered as a trust. Gifts to such organisations need to be considered to ensure that monies are held for the benefit of the organisation and not it's individual members per se
- The case of *Neville Estates v Madden* [1962] Ch 823 established three ways in which monies can be held by an unincorporated association:
    - Gift to the members at a specified date/from time to time – assets in the hands of members, on trust to each other. Members have a proprietary interest. However, new members are not accounted for and when a member leaves, they can take their share with them. Interest is held as beneficial joint tenants that pass by

survivorship on death. However, this interest can be severed, and the member can do as they wish with their interest
  - Gift to member as trustee for themselves and future members or for the purpose of the club/society – same approach as above. However, reference to future members/purpose means that there needs to be a perpetuity period
  - Contract-holding theory – gift to member as tenant in common, subject to their respective contractual rights and liabilities that they have towards each other as per the group's constitution. The constitution must specify that the rules can be changed, that the group can be dissolved, and the distribution of assets should the group dissolve. This is the most common method of unincorporated associations holding monies

LO4 Understand the role and responsibility of a trustee

Duty of care and fiduciary duty

- Common law duty of care -
  - Act in the same manner as the ordinary prudent man of business would with his assets (*Speight v Gaunt* (1883) 9 App Case 1).
  - This is an objective test and is applicable regardless of the trustee's knowledge or skill
- Statutory duty of care -
  - Must exercise care and skill as is reasonable in the circumstances, having regard in particular to any special knowledge or experience that the trustee holds himself out as having (a subjective test), and if he acts as a trustee in the course of a business or profession, to any special knowledge or experience that is reasonable to expect of a person acting in the course of that kind of business or profession (an objective test) (s1 Trustee Act 2000)
  - Schedule 1, s2 Trustee Act 2000 specifies when the statutory duty of care will apply. Where the statutory duty does not apply, the common law duty will automatically be applicable
- Fiduciary Duty -
  - The definition of a fiduciary relationship is where 'someone has undertaken to act for or on behalf of another in a particular manner in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty' (*Bristol and West Building Society v Mothew* [1998] Ch 1)
  - Fiduciaries are not entitled to make a profit, and they are not allowed to put themselves in a position where their interest and duty conflict (*Bray v Ford* [1896] AC 44)
  - There are recognised categories of fiduciary relationships, but these are not limited. There are also fact-based fiduciary relationships where the court identifies such a relationship in the interests of justice. Where the relationship does not fall within one of the recognised categories, the relationship itself needs to be considered to ascertain whether the characteristics of a fiduciary relationship exist
  - The duty is often strictly applied to act as a deterrent, (*Keech v Sandford* [1726] EWHC Ch J76 *; Murad v Al-Saraj* [2005] EWCA Civ 959) whether the fiduciary acted in good faith/with honesty is irrelevant, causation is not required, and a loss does not need to have occurred. However, there are instances, both in statute and common law where a fiduciary is entitled to retain profits made. These instances are not common and are determined on a case-by-case basis

Administrative duties and powers

- These can be expressly provided for in the Trust Deed. Any provisions that have been expressly stated, which contradict the statutory administrative powers and duties will take precedence
- Trustees' general powers and duties with regards to the administration of the trust is contained in Trustee Act 1925 (as amended by the Inheritance and Trustees' Powers Act 2014) and Trustee Act 2000. Where there are no express provisions made, the statutory provisions will automatically apply

Breach of Duty and Defences

- A breach of trust can be committed through commission (doing something) or omission (failing to do something) and the breach must cause a loss.
- Liability for a breach is joint and several amongst all trustees.
- A claim that pursues the trustees to make good the loss is referred to as a claim in personum (a claim against the person)
- A causal link between the breach and the loss needs to be established.
- Defences to a breach of trust
  - Civil Liability (Contribution) Act 1978 - ss1(1) and 2(1): any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage. This is subject to the court finding it just and equitable, having regard to the extent of that person's responsibility for the damage in question
  - Indemnity – a person takes on the obligation to pay for any loss or damage that has been or might be incurred by another person
  - Solicitor as a trustee – if the solicitor's professional opinion and expertise has been relied upon and a breach arises, the solicitor would be required to indemnify the other trustees subject to the other trustees not having actively taken part in the breach
  - Beneficiary as a trustee – where the beneficiary has gained from the loss to the trust, they will be required to indemnify the other trustees to the extent of their interest in the trust fund not limited to the gains received
  - Trustee Act 1925 – Section 61: if it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same
  - Limitation Act 1980 – the general limitation period for a breach of trust is six years from the date of breach. However, this period does not apply where the trustees have acted fraudulently, or where a claim is to recover trust property or the proceeds of trust property (s21)
  - Doctrine of laches – equitable doctrine preventing a claim being brought where there is a delay in bringing an action, and it would be inequitable to allow it to proceed. Applicable where there is no statutory limitation period

LO5 Understand equitable remedies

Using tracing or following to identify proprietary interest in misappropriated assets; and the limitations

- Where the beneficiaries wish to reclaim trust property that has been misappropriated, they must first establish a proprietary interest in the property. Methods of asserting a proprietary interest are tracing and following
- This type of claim is referred to as a claim in rem (a claim for property)
- Tracing:
  - Process to identify a new asset as the substitute for the old
  - Common law tracing – the right to trace your own property, provided it has not been mixed with other property
  - Tracing in equity – the right to trace your own property, which has been mixed with funds from either a trustee or an innocent third party Pre-requisite to equitable tracing is that there is a fiduciary relationship, and the claimant had a beneficial interest
  - Various rules apply when the funds have been mixed:
    - *Re Hallets Estate*: where the trustee mixes monies with his own and subsequently withdraws funds it will be deemed that the trustee withdrew his funds first
    - *Re Oatway*: where a trustee uses mixed funds to purchase an asset, then it will be deemed that such asset belongs to the trust
    - *Roscoe v Winder*: the beneficiaries can only claim what is in the account at the time of misappropriation
    - *Claytons Case*: If monies from A are placed in an account followed by monies from B, any monies withdrawn will be that of A's first
    - *Pari passu*: where the application of Clayton's Case would be inequitable, the balance of the funds is distributed between the innocent parties on a proportionate basis
  - Limitations to tracing:
    - equity's darling – bona fide purchaser for value without notice where consideration in money or money's worth has been made. The degree of knowledge ranges from actual to imputed knowledge (sliding scale) and includes where the recipient had constructive notice of the breach
    - assets are destroyed or dissipated
    - inequitable to trace – eg. *Re Diplock* [1948] Ch 465
- Following:
  - Process to identify same asset as it changes hands
  - Can be used where original asset converted into something else on a single occasion. For example, money converted into jewellery

Injunctions

- Injunctions can be granted on an interim or final basis, and they can require an act to be undertaken or prevent a person from acting in a particular way granted if in the interests of justice to do so
- There are various types of injunctions that the court can grant: search injunction, freezing injunction and privacy injunctions are examples. Each type of injunction has its own criteria that needs to be met before the court is able to grant an order
- Where an interim injunction is sought, this can be applied for with or without notice (ex-parte). Part 25 and Practice Direction 25A of the Civil Procedure Rules confirm that the court can grant an injunction on an interim basis. The case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 provides useful guidelines that the claimant will need to follow to apply for an interim injunction. These guidelines are supported by the case of *Series 5 Software Ltd v Clarke* [1996] 1 All ER 853 which confirmed that the strength of each party's case should also be considered

- For privacy injunctions the courts are required to undertake a balance between Article 8 of the European Convention on Human Rights, right to private and family life and article 10, freedom of speech to determine whether the information being released into the public domain is in the public interest

Specific performance and account of profits

- These remedies are often used within the commercial context
- Specific performance – requires compliance with positive obligations and is often awarded in conjunction with damages. It requires a party to a contract to carry out their obligations within the contract. Specific performance will not be granted where the obligation cannot be performed, where the court's supervision is required, where it would result in modern day slavery or the application has been made in expectation of a breach
- Account of profits – this is a monetary remedy where the trustee is required to repay to the trust the monies he gained as profit for wrongdoing. Cannot be granted in conjunction with damages and as such the claimant is able to elect which they wish the court to grant. Often this will be based on the remedy that is most beneficial to the beneficiary

Unit 5 Equity and Trusts - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**
LO2 Understand the elements required for an implied trust to arise	L5 Unit 3 Land Law; LO4 Understand how rights to property can be held by more than one person (AC 4.4 Explain how express, constructive and resulting trusts are created)
LO1 Understand the elements required to create an express trust (AC 1.3 Identify the ways technology is used in the practice of trust creation and administration)	L5 Unit 1 Law of Tort; LO2 AC 2.4 identify the ways in which technology is used in the practice of civil law L5 Unit 3 Land Law; LO1 AC 1.3 explain how technology is used in conveyancing practice to progress transactions and keep clients up to date L5 Unit 2 Family Law; LO5 AC 5.2 explain the ways in which technology has transformed the family court system L5 Unit 6 Legal Skills; LO4 AC 4.4 summarise understanding of how technology and AI is used in modern legal practice
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Communication skills Written communication, e.g. appropriate formats, style and tone, spelling, punctuation and grammar (LO1, LO2, LO3, LO4, LO5) **Problem solving** Use both analytical and critical thinking skills (LO2, LO3, LO4, LO5)	**Using sources of information** Learning where to look for information and how to access it, choosing current, relevant and reliable sources (LO4) **Self-organisation** Thinking through your study approach, being self-organised, think about how you will undertake your studies (LO4)

Resources

Textbooks

Haley M. and McMurty L. (2023). *Equity & Trusts*. 7th edn, Sweet & Maxwell

Virgo G. (2020). *The Principles of Equity & Trusts*. 4th edn, OUP

Websites

The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research

https://www.bailii.org/

Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation.

https://www.legislation.gov.uk/

The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services.

https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/

The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice.

https://www.lawsociety.org.uk/topics/

Unit 6 Legal Skills			
Unit aims	This unit aims to develop learners' key legal skills including drafting, case analysis, oral presentation and self-evaluation. Learners will develop their understanding of the key principles of drafting, including the importance of suitable language, style and tone and observing legal formalities. Learners will develop and apply the skills needed to deliver an effective oral presentation, learn to reflect critically on their strengths and weaknesses, and set SMART goals for further development.		
Unit level	5		
Unit code	Y/651/6595		
GLH	120		
Credit value	30		
Unit grading structure	Pass, Merit and 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 use relevant case law and statute to support their explanations, application and conclusions, ensuring currency of law and accurate citation.		
Learning outcomes **The learner will demonstrate that they:**	**Assessment criteria** **The learner can:**		
	Pass	**Merit**	**Distinction**
1. Understand and demonstrate key principles of legal drafting	1.1 Demonstrate use of a template to support legal drafting 1.2 Ensure accuracy and clarity of language in written communications 1.3 Develop a suitable style and tone in written communications 1.4 Collate all relevant information to produce accurate written communications		1D1 Produce a draft document that is compliant with legal and regulatory requirements

2. Understand how to analyse a legal case	2.1 Collate information to understand the scope of your instructions 2.2 Develop a clear picture of a client's needs and risks 2.3 Summarise facts and law 2.4 Apply relevant law/procedure to a case	2M1 Synthesise facts and law/procedure to provide a conclusion and make a recommendation on a legal matter	
3. Understand how to deliver successful oral presentations	3.1 Prepare appropriately for oral presentation 3.2 Apply the key features of a successful oral presentation 3.3 Explain how oral presentation skills are relevant to legal practice	3M1 Demonstrate oral presentation skills	3D1 Critically reflect on the delivery of oral presentation
4. Understand how to evaluate and develop legal and professional skills	4.1 Explain the meaning of the term 'Continuous Professional Development' ('CPD') 4.2 Explain how undertaking CPD demonstrates compliance with professional conduct requirements 4.3 Outline the skills and areas of knowledge developed during the period of study 4.4 Summarise understanding of how technology and AI is used in modern legal practice	4M1 Evaluate the strengths and weaknesses in their legal and study skills and set objectives for improvement	4D1 Critically analyse the risks associated with use of AI in legal practice

Indicative Content

LO1 Understand and demonstrate key principles of legal drafting

Use of templates in legal drafting

- Template documents or ‘precedents’ are routinely used in legal practice; many law firms have a ‘library’ of precedents stored on their Case Management Systems for staff to use
- A precedent is a document that has been drafted previously and is used as a template or model document on future similar cases
- Examples of precedent documents include client care letters, where lots of information needs to be provided in a consistent way, and court documents such as Particulars of Claim where structure and format must meet procedural requirements
- Documents can be adapted and amended to reflect the facts of the client’s matter
- They are also an effective way for lawyers to chase their knowledge and practical skills, e.g. if a case is successfully pleaded, the documents used in the case may be useful to other lawyers dealing with similar cases in the future
- Proofreading is a key skill in all written communications, and especially when using precedents; take care that the document has been amended correctly and reflects the client’s case accurately
- There are a number of risks and benefits associated with the use of precedents:
    - Efficiency – drafting using precedents is quicker and easier, as most of the information needed is already included within the document
    - Quality – use of precedents helps ensure documents are produced to a consistent standard, leaving less room for error and helps to maintain professional standards and ‘house style’
    - Commerciality – use of precedents means that less time is spent drafting the document, so document and letter production is more profitable
    - Risk of outdated law – precedent must be kept up to date to ensure that they refer to the most up to date law and practice
    - Drafting errors and poor client care – precedents must be amended and proofread carefully to ensure that they include only information relevant to the current client’s case
- Awareness of legal and regulatory compliance in drafting, e.g. sending a client care letter in compliance with SRACC Para 8.7, inclusion of data protection information and compliance with GDPR, requests for ID in compliance with AMLR

Accuracy and clarity of language in written communications

- Accuracy, precision and clarity of language are important features in all forms of legal drafting
- Some legal documents have precise language requirements, such as wills, contracts and statutory declarations, as these are underpinned by statutory requirements such as the Wills Act 1837, Unfair Contract Terms Act 1977, Statutory Declarations Act 1835
- Words with similar meanings can be interpreted differently, which becomes problematic in legal drafting. E.g. lack of precision and clarity in a contract can lead to parties being unclear about their rights and obligations – compare

“Payment must be made promptly upon delivery” - this is unclear and ambiguous
“Payment must be made within 2 working days of delivery” – this is clear and unambiguous

- Aside from prescribed forms of language, legal professionals must ensure their language is accurate, clear and suitable for the intended audience, and avoid using complex legal terminology when writing to lay people, such as clients and unrepresented parties
- Using complex legal terminology when writing to clients or unrepresented parties could be seen as an attempt to take advantage and abuse your position, and could be a breach of Para 1.2 of the SRA Code of Conduct
- Using clear, suitable language and ensuring your communications are accurate helps to build trust and reflects well on you and your firm

Suitable style and tone in written communications

- Some documents used in legal practice, such as Court forms, pleadings and letters of negotiation must be drafted using a formal style and professional tone
- Many firms encourage a less formal style of writing when communicating with clients, but a professional tone should always be used
- Use of the third person, e.g. *"It is noted that payment is now overdue"* is impersonal, detached and professional, and is best used in situations where an authoritative stance is required
- Use of the first person, e.g. *"I have received your instructions and take this opportunity to confirm the work I will undertake on your behalf"* is a more relaxed, personable style and can be used to build rapport and trust with clients, whilst maintaining professionalism
- Stye and tone are particularly important in contentious legal matters, i.e. where there is a dispute and potential for litigation, to avoid miscommunication and maintain neutral, professional relations between the parties/their representatives

Collate all relevant information to produce accurate written communications

- Your written communications should reflect your understanding of a matter or issue, and include all relevant information to avoid misunderstanding and unnecessary further communications
- Attention to detail and analysis are key skills in ensuring that all relevant information is included, whilst ensuring your communications are concise and focused on the issues; take care to ensure that only the most relevant, important information is included in your written communications
- When explaining legal principles, ensure that the information you present is suitably detailed for the audience, i.e. you do not need to present your in-depth research findings, but it may be important to include some key points from your research to explain your advice

LO2 Understand how to analyse a legal case

Collate information to understand the scope of instructions

- Gathering relevant information from all available sources; this may include your client's direct instructions, documents provided and any legal research undertaken
- Ensure you have all information needed and identify any gaps in your knowledge of law, practice or facts
- Take further instructions from your client if necessary, using open and closed questions, active listening and critical analysis to ensure you have correctly understood the facts of the case
- Identify any information needed from other sources, the importance of this information and whether it can be obtained without undue delay to the case

Develop a clear picture of a client's needs and risks

- Draft a detailed attendance note setting out your analysis of the information provided in a logical and structured manner; breaking down the issue or problem into smaller, manageable components
- Identify relevant law and practice; ensure that further research is undertaken, if required, to understand the client's legal position
- Identify your client's objectives, their needs and any risks or threats to achieving their objectives; your considerations may include e.g. urgency/time threats, financial or commercial pressures, limitations of the law or client's unrealistic expectations

Summarise facts and law

- Identify legally relevant facts; ensure you understand the context and legal issues or problems to be addressed and have a clear understanding of the facts
- Determine the most relevant law and practice to be applied to deal with the issue(s) that you have identified
- Consider currency, relevance and jurisdiction, also being mindful of the professional conduct requirements of the SRA Code of Conduct

Apply relevant law/procedure to a case to provide a conclusion and make a recommendation

- Analyse the facts of your case and apply relevant legal principles to form an informed view of the legal position
- Use reasoning to justify why the law you have applied is relevant, explain how you have interpreted the principles
- Ensure a balanced approach to identify both strengths and weaknesses in the client's case
- Bring together your application of law to the facts of the matter to synthesise information and reach a decision
- Provide a clear, reasoned conclusion and recommendation supported by your analysis

LO3 Understand how to deliver successful oral presentations

Prepare appropriately for oral presentation

- Consider the purpose of your presentation and your audience; this will help you to plan an appropriate level of detail in your presentation media and speaker notes
- Ensure you have a clear understanding of the purpose of your presentation; what information do you need to cover
- Consider how long you have to deliver your presentation and plan your content realistically to ensure you can deliver within the time allowed
- Create suitable supporting materials, such as visual aids/presentation slides/handouts, as well as your own speaker notes
- Practice delivering your presentation, speaking clearly and confidently and using your slides/handouts/visual aids; if possible, ask a family member or friend to listen to your presentation and provide you with feedback

Apply the key features of a successful oral presentation

- Prepare to deliver an oral presentation using these skills

Explain how oral presentation skills are relevant to legal practice

- Oral advocacy is a key skill for all modern lawyers; whilst not all lawyers will present their client's cases at hearings, there are lots of ways in which lawyers will use oral communication skills in practice, e.g.
    - Client meetings; being well-prepared, speaking with confidence, composure, clarity and persuasiveness are key when communicating with clients, as well as being able to break down legal jargon to build trust and rapport and to provide advice that your client can understand
    - Witness preparation; as part of trial preparations, it may be necessary for you to conduct mock cross-examination of witnesses, give clear feedback and answer questions about Court procedure clearly and articulately
    - Negotiations and 'round table' discussions; being confident, assertive and professional in your communication with other legal professionals, using legal terms confidently, being persuasive and firm to robustly represent your client's position
    - Presentations and public speaking; many lawyers will be asked to present to their colleagues and undertake public speaking such as at networking events or when pitching for new business – confidence and experience in delivering presentations is key to ensuring that you are ready to present information to fellow legal professionals and can contribute to business development and achieving commercial objectives of law firms

LO4 Understand how to evaluate and develop legal and professional skills

Explain the meaning of the term 'Continuous Professional Development"

- Ongoing learning and development of knowledge and professional skills
- CPD activities may be informal such as wider reading or legal research or more formal and structured such as attending training courses, webinars or formal education opportunities

Explain how undertaking CPD demonstrates compliance with professional conduct requirements

- Qualified legal professionals (Solicitors, Barristers, Chartered Legal Executives) are required to undertake CPD and submit a record each year to maintain their practicing rights
- All legal staff working in SRA regulated firms must comply with SRA Code of Conduct, Paras 3.2 and 3.3:
    - *You ensure that the service you provide to clients is competent and delivered in a timely manner*
    - *You maintain your competence to carry out your role and keep your professional knowledge and skills up to date*

Outline the skills and areas of knowledge developed during the period of study and setting objectives

- Self-evaluation is a key skill for modern lawyers; being able to reflect critically on strengths and weaknesses in your skills and knowledge, identifying skills/knowledge gaps and setting objectives for further development
- It can be useful to develop your own or use an existing structured framework to focus your CPD activities, e.g. the ATHE Study and Employability Skills Frameworks
- Learn to set SMART goals:
    - Specific
    - Measurable
    - Achievable
    - Relevant

    - Time-bound

How technology and AI is used in modern legal practice and the risks associated with its use

- Understand the practical technological development and adoption of AI applications in legal practice, e.g.
    - Advanced Case Management and Customer Relationship Management Systems
    - Increased automation in e.g. document review, contract negotiations and drafting
    - Predictive analytics for e.g. case outcomes and crime prevention
    - Online solutions for compliance and due diligence
    - Time recording, billing and financial reporting
- Use of technology and AI in legal practice provides clients with greater efficiency, accuracy, and cost effectiveness in their legal matters and firms benefit from improved risk management and streamlined processes
- It is crucial to understand the risks associated with innovation, e.g. over-reliance, in-built biases and issues around data protection

Unit 6 Legal Skills - Supporting information	
Opportunities for Synoptic Teaching and Learning	
Learners and tutors will have the opportunity to link the learning from this unit with the content of other units.	
Learning Outcome	**Teaching and learning links to other unit LO/AC**
LO1 Understand and demonstrate key principles of legal drafting and legal and regulatory requirements	L5 Unit 1 Law of Tort; LO2 understand fundamental aspects of legal practice; AC 2.2 funding a claim in tort (links to costs information provided in client care letter) L5 Unit 2 Family Law; LO5 understand the key principles of the practice of family law; AC 5.1 how private family law cases are funded (links to costs information provided in client care letter) and AC 5.3 key professional conduct requirements in family legal practice L5 Unit 4 Criminal Law; LO5 understand the role of a legal advisor in dealing with vulnerable clients and witnesses (suitable written communications to meet the needs of clients e.g. vulnerable clients)
LO4 understand how to develop and evaluate legal skills (AC 4.4 how tech and AI is used in legal practice)	L5 Unit 1 Law of Tort; LO2 AC 2.4 identify the ways in which technology is used in the practice of civil law L5 Unit 3 Land Law; LO1 AC 1.3 how technology is used in conveyancing practice to progress transactions and keep clients up to date L5 Unit 2 Family Law; LO5 AC 5.2 the ways in which technology has transformed the family court system
Opportunities for Synoptic Assessment	
Whilst L5 Unit 6 Legal Skills is not a synoptic unit as such, it does facilitate the development of practical and generic skills relevant to the successful use of all law subjects.	

Opportunities for Skills Development within this unit	
Employability Skills	**Study Skills**
Working independently The ability to work self-sufficiently on assigned tasks (LO1, LO2, LO3, LO4) **Communication skills** Use communication skills when giving and receiving different kinds of information (LO1, LO2, LO3, LO4) **Digital skills** The skills needed to use digital devices, communications applications, and networks to access and manage information (LO3) **Leadership** Directing workers and colleagues with a strategy to meet the organisation's needs; confidence, planning, having an open and welcoming communication style (LO3)	**Time Management** Ensuring that larger study activities are broken down into more manageable bite-size tasks (LO3) **Self-organisation** Thinking through your approach to study (LO1, LO2, LO3, LO4) **Writing skills** A variety of writing styles and forms of writing that you need to understand and practice (LO1, LO2)

Resources
Textbooks Jones E. Ryan F. Thanaraj A. and Wong T. (2021a). *Digital Lawyering*. Routledge **Websites** The British and Irish Legal Information Institute (BAILII) is a free, searchable database of legal materials that is used for legal research https://www.bailii.org/ Legislation.gov.uk is the official government website for accessing UK legislation. Its primary purpose is to provide the public, legal professionals, and researchers with free access to the full text of UK laws, including Acts of Parliament, statutory instruments, and other forms of legislation. https://www.legislation.gov.uk/ The Solicitors Regulation Authority (SRA) regulates solicitors in England and Wales. The SRA Code of Conduct describes the standards of professionalism expected of individuals authorised to provide legal services. The SRA also provides guidance about Client Care Letters. https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/ https://www.sra.org.uk/solicitors/guidance/client-care-letters/

The Law Society is an independent professional body for solicitors in England and Wales, offering advice and support to practicing lawyers on matters including conflict of interests, equality and diversity, working with vulnerable clients and anti-money laundering as relevant to legal practice. There is also a specific practice note relating to Client Care Letters.

https://www.lawsociety.org.uk/topics/ client-care/client-information-requirements