



## Legal Foundation Programme

### *Full details of the current proposals*

#### OVERVIEW

- The following sections (A-I) contain information on the knowledge domains where all those seeking entry to the Diploma in Legal Practice and solicitor's profession in Scotland must have a basic attainment
- The final section (J) contains the basic skills that are required of all those seeking entry to the Diploma in Legal Practice and solicitors' profession in Scotland
- The sections DO NOT represent either 'courses' or 'exams' – teaching or assessment could validly be constructed in a variety of ways, with providers developing a specific framework from the elements stipulated below
- The knowledge domains are not necessarily equal in terms of the teaching time, assessment value, or SCOTCAT (or equivalent) points allocated – providers and assessors may construct a framework which they consider appropriate (with reference to the detail in each area) and which they can justify to the Society in accreditation
- The knowledge domains are in alphabetical order - providers and assessors may prescribe a specific order within their own frameworks
- Each area must be taught and assessed with reference to the current law, as it stands in Scotland at the time of teaching, and in a manner consistent with preparing students for the latter stages of training and becoming a solicitor in Scotland
- A minimum of 240 SCOCAT points must be allocated to the delivery of the core requirements

#### Knowledge Domains

- A. Commercial Law**
- B. Constitutional Structure, Institutions and Sources of Law**
- C. Criminal Law**
- D. Family Law**
- E. Human Rights and Discrimination Law**
- F. Obligations**
- G. Prescription and Limitation**
- H. Property**
- I. Trusts and Succession**

#### Skills Statement

- J. Key Skills**



## A. COMMERCIAL LAW

Candidates should have a knowledge and understanding of the following areas of commercial law:

- the sale and supply of goods, including the formation of the contract; title to the goods; transfer of property and risk; implied terms as to the description and quality of goods; the buyers remedies; the seller's remedies; delictual liability for defective goods; criminal liability in the context of sale of goods
- insurance, including the purpose and definition of insurance; classification of insurance contracts; the concept of insurable interest; the formation and interpretation of the contract of insurance; good faith, the duty of disclosure and misrepresentation; warranties; and claims
- recovery of debt, including the nature and operation of the diligences of attachment, arrestment (including earnings arrestment, current maintenance arrestment and conjoined arrestment), inhibition and adjudication; the nature and operation of diligence on the dependence; the effect of insolvency on prior diligence
- agency, including the definition of agency; creation of the agency relationship; the agent's authority; the agent's duties; the agent's rights against the principal; the principal's rights and duties; the rights and duties of third parties; termination of the agency relationship
- partnership, including the different types of partnership (partnerships governed by the Partnerships Act 1890, limited partnerships governed by the Limited Partnerships Act 1907 and limited liability partnerships governed by the Limited Liability Partnerships Act 2000); the definition of partnership; the formation of a partnership; the separate legal persona of a partnership; partnership contracts; the liability of partners for partnership debts, negligence and fraud; the rights and duties of partners *inter se*; termination of a partnership
- companies, including corporate personality and responsibility; types and classification of companies; the requirements for incorporation of a company; the company's constitution; the company's capital, including share capital and loan capital; the constitution and operation of a floating charge; contracts made by a company; the management of a company, including the role of the board of directors and the company in general meetings; directors' duties; shareholder remedies
- corporate and non-corporate insolvency, including the concept of insolvency; alternatives to formal insolvency procedures (including debt payment programmes and trust deeds for creditors); the process and effects of sequestration, company voluntary arrangements under Part I of the Insolvency Act 1986, compromises or arrangements under s425 of the Companies Act 1985, receivership, administration, and liquidation



## **B. CONSTITUTIONAL STRUCTURE AND INSTITUTIONS AND SOURCES OF LAW**

Candidates should have a knowledge and understanding of the following areas:

- the concept of a constitution; sources of constitutional law in the UK; the constitutional structure of the UK; basic constitutional principles including the rule of law, separation of powers and supremacy of parliament and the limitations thereon (including membership of the EU)
- the composition, powers and functions of the UK Parliament
- the structure and powers of the Executive, including the royal prerogative
- the operation of devolved government in Scotland, including the Scotland Act 1998 and the composition, powers and functions of the Scottish Parliament and Scottish Executive
- the structure and powers of local government
- the structure of the court system; the role of the courts; sources of law, including approaches to statutory interpretation and the doctrine of precedent; the principles of judicial review
- the tribunal system; inquiries; non-judicial redress of grievances, including the system of ombudsmen
- the constitutional structure and competencies of the EU, including the three pillars of the EU; the scope of the European Community Treaty; the powers of the Community; the allocation of competencies between the Community and Member States
- the Community institutions and the legislative process
- the sources of Community law
- the relationship of Community and national law, including the principle of supremacy of Community law; direct effect; indirect effect; enforceable Community rights; and remedies in UK courts
- the role and jurisdiction of the European Court of Justice and Court of First Instance
- the law of the common internal market, including the general principles governing the free movement of goods, persons, services and capital and competition law



## C. CRIMINAL LAW

Candidates should have a knowledge and understanding of the following areas of criminal law:

- the general principles of criminal liability, including:
  - the definition of a crime
  - the sources of criminal law
  - the *actus reus*
  - the *mens rea*
  - strict liability
  - vicarious and corporate responsibility
  - causation
  - inchoate crimes
  - art and part liability
  
- the general defences of:
  - automatism, insanity, diminished responsibility and intoxication
  - necessity, coercion, superior orders, self-defence and provocation
  
- the following specific crimes:
  - murder, culpable homicide and causing death by dangerous driving
  - assault and real injury
  - sexual offences
  - theft, embezzlement, robbery, extortion, fraud, uttering as genuine, housebreaking and opening lockfast places and reset
  - damage to property – malicious mischief, vandalism and fire-raising breach of the peace
  
- the statutory framework for crimes relating to;
  - misuse of drugs
  - road traffic



## D. FAMILY LAW

Candidates should have a knowledge and understanding of the following areas of family law:

- Marriage and civil partnerships, including:
  - How to get married or register a civil partnership
  - Legal impediments to marriage and civil partnership
  - The legal consequences of marriage and civil partnership. These should include the law on aliment, corporeal moveable property, money and securities.
  - The matrimonial or family home. This should include the law on the statutory right to occupy the matrimonial or family home and the law on common ownership of such property.
  - Divorce and dissolution
  
- Rights and obligations arising from cohabitation
  
- Interdicts
  
- Parent and child, including:
  - Establishing parentage
  - Children's legal capacity and rights. This should include the law of aliment and child maintenance
  - Parental responsibilities and rights
  - Actions in relation to parental responsibilities and rights
  - Adoption
  
- Children in need, including:
  - Powers and duties of local authorities
  - The children's hearings



## **E. HUMAN RIGHTS AND DISCRIMINATION LAW**

Candidates should be aware that human rights and discrimination issues may arise in any area of practice and should have knowledge and understanding of the following areas:

- the European Convention on Human Rights (ECHR), including the rights guaranteed by the ECHR and its Protocols and the machinery for their enforcement
- the Human Rights Act 1998, including the rights it protects and the mechanisms by which they are protected
- the Scotland Act 1998, including its relationship generally with the Human Rights Act 1998 and devolution issues in particular
- the specific civil liberties of freedom of assembly, freedom of expression and freedom of information
- the relationship between human rights and national security
- the circumstances in which the following types of discrimination may arise and the remedies thereof:
  - sex discrimination
  - race discrimination
  - disability discrimination
  - sexual orientation discrimination
  - religion and belief discrimination
  - age discrimination



## F. OBLIGATIONS

Candidates should have a knowledge and understanding of the following:

### **Voluntary Obligations**

- Contract and promise or unilateral obligations, including:
  - Formation and formalities
  - The terms of the contract. This should include implied terms and unfair contract terms
  - Defective contracts – void and voidable contracts. This should include misrepresentation
  - Illegal contracts including contracts in restraint of trade
  - Frustration
  - Remedies for breach of contract: this should include specific implement and interdict, rescission for material breach and the law on contract damages
  
- Title to sue, including:
  - Ius quaesitum tertio
  - Assignation

### **Involuntary obligations arising from wrongs: the law of delict**

- Wrongful interference with property rights, including:
  - Trespass
  - Nuisance
  - Wrongful interference with corporeal moveable property
  
- Wrongful interference with wealth (ie pure economic loss including):
  - Fraud
  - Negligent provision of advice or services resulting in pure economic loss
  
- Reputation, including:
  - Defamation
  - Verbal injury



## **F. OBLIGATIONS (*cont.*)**

### **Involuntary obligations arising from wrongs: the law of delict (*cont.*)**

- Wrongful interference with a person's bodily integrity, including:
  - Assault
  - Wrongful imprisonment
  - Liability for physical and mental harm
  
- General principles of liability for fault or culpa including:
  - Duty of care
  - Breach of duty – negligence
  - Causation
  - Delict damages, including remoteness of damages and contributory negligence
  - Vicarious liability
  
- The Concept of Breach of Statutory Duty, including:
  - Occupiers' Liability (Scotland) Act 1960; Animals (Scotland) Act 1987; Consumer Protection Act 1987, Part 1
  
- Liability to the relatives of a victim, including:
  - The Damages (Scotland) Act 1976

### **Obligations arising from unjustified enrichment**

- The nature of enrichment
- Enrichment at the expense of the claimant
- When an enrichment is unjustified
- Change of position defence
- The conditiones
- Restitution, repetition and recompense



## G. PRESCRIPTION AND LIMITATION

Candidates should have a knowledge and understanding of the effect of the passage of time on legal rights and duties.

- The Negative Prescriptions, including:
  - The beginning and end of the prescriptive periods
  - Interruptions of the prescriptive periods
  - The five year prescription in respect of obligations
  - The twenty years prescription
  - Imprescriptible rights and obligations
  
- The three year limitation period in respect of actions in relation to personal injury
  
- Positive prescription (though this will usually be studied alongside property)



## H. PROPERTY

### Real and Personal Rights

- The classification of property – heritable and moveable: corporeal and incorporeal
- Real rights including:
  - Ownership
  - Leases. This should include the formation of a lease of land, termination of a lease of land and assignation of leases. (This does not include statutory Housing Law)
  - Servitudes
  - Rights in Security. This should include the constitution and operation of security over corporeal moveables and incorporeal moveables; assignation of leases in security; and standard securities. (Floating charges and reservation of title could be included either here or in commercial law)
- Ranking of priorities when there is more than one real right in relation to the same property, including:
  - The "off-side goals" rule
  - Common property and joint ownership
  - Acquisition of ownership
  - Original acquisition including:
    - Occupation, accession, specification, commixtion and confusion
    - Positive prescription
    - Registration of a real right in land in the land register (some background knowledge of the Register of Sasines?)
    - Creation of incorporeal moveable property
- Derivative acquisition of ownership, including:
  - The nemo dat principle
  - The transfer of ownership including the sale and conveyance of the title to land and the conveyance of corporeal moveables and gifts
- The extinction of real rights



## I. TRUSTS AND SUCCESSION

Candidates should have a knowledge and understanding of the following: -

- The law of trusts including:
  - The kinds of trust: public and private, inter vivos and mortis causa, liferent and fee, discretionary trusts and charities
  - The constitution of a trust: truster, trustee and beneficiary; the declaration of a trust and the transfer of the trust assets; constructive and resulting trusts
  - The trust purposes
  - Legality including the prohibition of successive liferents and accumulation of income
  - Trustees powers and duties including auctor in rem suam
  - The protection of the beneficiary's rights
  - Variation of trusts
  - Termination of the trust
  
- The law of succession, including:
  - Definition of death
  - Presumption of death
  - Legal rights
  - Intestate succession
  - Making a will: formal and essential validity
  - Revocation
  - Legacies – specific, general and residuary legacies
  - Vesting
  - The role of the executor



## J. Key Skills

It is to be expected that all the following skills are acquired within the context of the study of law:

### 1. **Knowledge**

An applicant should have a fundamental knowledge and understanding of the principal features of the Scottish legal system and law of Scotland. For this purpose “the principal features” are to be understood by reference to the Core Areas of Knowledge listed in the in this document.

### 2. **Values**

An applicant should have a well-informed knowledge and understanding of the social, economic, moral and ethical contexts in which law operates.

### 3. **Identification and Use of Sources**

An applicant should be able to use appropriately primary and secondary sources (and to understand the difference), and to identify and retrieve up-to-date legal information using paper and electronic sources.

### 4. **Research**

An applicant should have the ability to undertake independent research (both paper-based and electronic) in areas of law which he or she has not previously studied.

### 5. **Judgment**

An applicant should have the ability to recognise, analyse and rank items in terms of relevance and importance; to apply knowledge and analysis creatively to complex situations in order to provide arguable solutions to concrete problems; to present reasoned choices between alternative solutions; and to make critical judgments on the relative and absolute merits of particular arguments and solutions.

### 6. **Communication**

Both orally and in writing (and, where appropriate, by the use of electronic means), an applicant should have the ability to use the English language accurately and proficiently in relation to legal matters; to communicate information, ideas, advice and choices in an effective manner appropriate to the context; and to read, digest and discuss technical and complex legal materials and communicate their content in a manner understandable by the intelligent lay-person.