



Law Society
of Scotland

THE LAW SOCIETY OF SCOTLAND
EXAMINATION GUIDELINES, SYLLABUS
AND READING LIST

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*** These subjects are examined as part of PEAT 1 (the Diploma in Legal Practice course)**

LAW SOCIETY OF SCOTLAND EXAMINATION GUIDELINES

A. GENERAL INFORMATION

In relation to the content of the Society's exams, all candidates should refer to the syllabus and reading list for the relevant subject, as set out in this document. The texts listed form the basis of the study materials for each subject.

For general reading, candidates may find it useful to have to hand a copy of "Learning the Law" by Glanville Williams (15th edn, 2013 - Sweet and Maxwell) and "Studying Scots Law" by Hector MacQueen (4th edn, 2012, reprinted 2015 - Bloomsbury).

Candidates should note that, while the textbooks cited on the reading lists are the latest editions, there are often case or statutory developments subsequent to the publication of a text. Candidates will be expected to be aware of any such developments.

B. ENROLLING FOR EXAMS

Two Law Society examination diets are usually held each year in Edinburgh in **February** and **August**. Exact dates are posted on the Society's website no later than **one month** prior to the date of an exam. The final arrangements regarding timing, location and any other arrangements will be sent to candidates no less than 14 days before the examination.

Enrolment forms may be obtained from the Society or downloaded from our website. Enrolments for an examination should be made no later than **6 weeks** prior to the date of an exam. The appropriate fee of £50 per examination is payable when an enrolment form is submitted. **Late enrolments will not be processed.**

Details of the venue, timetable and any other arrangements for the examination will be sent out to enrolled candidates at least one week before the exam.

Any candidate who enrolls for an exam and either fails to give at least **seven days' notice** that they will not attend, or does not have reasonable cause for non-attendance (see section D), will be treated as having failed the exam.

C. ORDER IN WHICH EXAMINATIONS AND ASSESSMENTS MUST BE ATTEMPTED

A candidate is not permitted to undertake other subjects unless he or she has completed or is enrolled on Scottish Legal System and Legal Method. Aside from this the Society does not generally prescribe the order in which examinations and assessments must be attempted, although candidates should note that some modules may be easier when completed after others. For example, Scots Commercial Law builds on aspects of contract law examined in Law of Obligations. Candidates may find it useful to discuss the order in which they sit the examinations with their supervising solicitor, if applicable.

D. EXEMPTIONS

Exemption applications are considered by the Law Society of Scotland's Head of

Admissions who will grant or refuse the application having taken advice from the appropriate examiner.

Guidance notes for applicants seeking exemptions can be found on our website. Anyone seeking an exemption should read those guidelines first to see if they are eligible. Applicants should consult the checklist at the end of those guidelines for details of the information/documentation required by the Society. Applicants should include information on all of the points mentioned on the checklist.

Applications for exemptions should be made in writing to the Education, Training & Qualifications Department. There is an administrative fee of £30 for each exemption applied for.

Applications for exemption must be submitted when applying for a preliminary Entrance Certificate but will be considered only if and when the certificate has been issued by the Society. Later applications for exemption will only be considered at the discretion of the Head of Admissions where good cause for lateness can be established by the applicant.

Please contact legaleduc@lawscot.org.uk, if you have any queries about this process.

E. EXAMINATION PROCEDURES

Extenuating circumstances, reasonable cause and taking ill on the day of an exam

Candidates should note that if there are any extenuating circumstances affecting their exam performance, of which they wish the examiner to have regard, these should be submitted in writing to the Society's Education, Training & Qualifications Department. Normally the letter should be submitted **in advance** of an examination but exceptionally the Board will consider circumstances existing at, or immediately prior to, the examination where the candidate became aware of these circumstances only at a time immediately before or, at the latest, two weeks after the examination.

In the event of a candidate having failed to attend an examination or examinations as a result of illness or other adverse personal circumstances, the Board is entitled determine whether the failure to attend has been justified by reasonable cause.

If a candidate takes ill on the day of the examination this should be brought to the attention of the Society's Education, Training & Qualifications Department that day. If the candidate takes ill during an examination this should be brought to the attention of the invigilators.

For further information on submitting information in relation to extenuating circumstances affecting performance in examinations, reasonable cause for non-attendance in exams or taking ill on the day of an exam, candidates should refer to the Society's Guidance on Extenuating Circumstances and Reasonable Causes, available on the Society's website.

Permitted materials

Candidates are reminded that no books, notes or other items are allowed in the examination room apart from specific material which is listed under the subject descriptors below as being permitted, or as are formally approved in advance of the

examination by the Society. Where materials are permitted into the exam, only material with no additions made to the published text may be used. Highlighting is permitted, as are place markers, provided that these bear no inscription other than the name of the subject area being marked.

If a candidate wishes to take an alternative book to those provided on the list of materials permitted into the examination hall, a written request will require to be made in advance of the examination for approval – **at least fourteen days ahead of the exam date** to allow time for the Examiner to see the material.

Any candidate found taking any material which is not permitted into the examination hall will be disqualified from the exam.

Other exam considerations

Candidates should answer the required number of questions. Answers should be fully reasoned with appropriate citation of authorities. **No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.**

Candidates are required to write legibly. **If an examiner is unable to read a candidate's handwriting he or she will deduct marks, or may require to fail that candidate.** No extra sittings will be permitted to candidates who fail as a result of illegible handwriting.

F. PAST EXAMINATION QUESTION PAPERS

Past examination question papers can be downloaded from our website. The question papers are provided as an indication to the type of question an Examiner may be asking. Answers are not provided.

Some examinations or assessments have been newly introduced. Where no past papers are available a specimen examination paper or assessment is available to be downloaded from the Society website.

G. PASS MARK

Notes on the Society's Marking Scale and Descriptors are attached at the end of this guidance. Each paper will be graded A to G. Grades A to D are passes.

H. ORAL EXAMINATIONS

Candidates may be called for an oral examination on any or all of the papers attempted. The most common reason for calling candidates for an oral examination is in instances where a candidate has failed or been unable to sit the exam but there have been extenuating circumstances or reasonable cause shown. However, the decision to call candidates for oral examination is at the sole discretion of the examiner and the establishment and/or acceptance by the Society of either extenuating circumstances or reasonable cause does not provide an automatic right to a candidate of an oral exam. An examination will be offered only if it is an appropriate means by which to assess the candidate.

An oral examination will ordinarily take place within 30 days of the examination date and full details of the arrangements for oral examinations will be given to candidates if they are called. There is no fee for an oral examination.

Note: Examinations in Scots Criminal Law & Property Law and Conveyancing both have an oral element (presentation). This should not be mistaken for an oral examination set at the discretion of the examiner.

I. INTIMATION OF RESULTS

Candidates are advised in writing of results usually within one month of the exam date, after the results are ratified at the meeting of the Board of Examiners. Candidates will be provided with feedback forms for any failed examinations. Any candidate requiring further guidance should write in the first instance to the Society's Education, Training & Qualifications Department and the enquiry will be directed to the relevant examiner. Any queries regarding course content will be dealt with in a similar way.

J. NUMBER OF ATTEMPTS

No more than four attempts at any one exam will be allowed. Candidates have four years from the date of the first exam in which to pass all the Law Society examinations.

K. MODERATOR/EXTERNAL EXAMINER and RIGHT OF APPEAL

Where it is alleged that the examination process has been defective, the Society will either appoint a suitable person to act as a moderator or will appoint an external examiner. The appointed person will investigate the complaint and report to the Society who may direct the Board of Examiners to take such action as is appropriate in the light of the report.

CANDIDATES SHOULD NOTE THAT THE EXAMINER'S DECISION IS FINAL AND THAT THERE IS NO RIGHT OF APPEAL OTHER THAN ON PROCEDURAL GROUNDS OR IF THE EXAM PROCESS IS DEFECTIVE. Candidates wishing to appeal should do so in writing to the Society's Education, Training & Qualifications Department within 28 days of receiving the exam result. This matter will be considered by the appropriate committee.

SCOTTISH LEGAL SYSTEM AND LEGAL METHOD

ASSESSMENT

- (a) A written exercise where candidates have two weeks to prepare a fully referenced answer to a problem question examining issues of statutory interpretation and/or the use of judicial precedent with a maximum length of 1.500 words. The question will be distributed electronically by the Society and will have to be submitted electronically to the Society by a specified submission date. Late submissions will be penalised. (50% of the overall mark).
- (b) A thirty minute multiple choice examination where the candidate has to answer ten questions based on a case excerpt distributed to candidates two weeks in advance of the examination and twenty questions covering other aspects of the syllabus. (50% of the overall mark)

Candidates must pass both assessments at a single diet in order to achieve a pass in this subject.

SYLLABUS

1. The civil and criminal justice systems of Scotland, including court structure
2. Judicial precedent;
3. Statutory interpretation;
4. Sources of law (including Institutional writers);
5. The branches of the legal profession;
6. Access to justice, including the public funding of access and challenges to them including alternative providers.

READING LIST [Latest editions should always be used]

Essential text

R M White, I D Willock and H L MacQueen, *The Scottish Legal System* (5th ed, 2013)

Recommended texts

- B Clark and G Keegan, *Scottish Legal System Essentials* (Scottish Legal Essentials) (2nd ed, 2012)
- Julian Holland and James Webb, *Learning Legal Rules* (8th ed, 2013).
- William Twining and David Miers, *How to Do Things with Rules* (5th ed, 2010)
- E Finch and S Fafinski, *Legal Skills* (5th ed, 2015)
- Rupert Cross, *Statutory Interpretation* (3rd ed, 1995, ed John Bell & George Engel) (dated but very good)
- D.J. Gifford and John Salter, *How to understand an Act of Parliament* (1996) (out of print)

Familiarity with the Stair Memorial Encyclopaedia titles on “Sources of Law (Formal)” (specifically the material on Judicial Precedent), and “Interpretation of statutes, deeds, and other instruments” is very helpful.

NOTE: NO MATERIALS PERMITTED IN THE EXAM HALL FOR THIS SUBJECT.

PUBLIC LAW

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 out of a total of 6 questions.

SYLLABUS

General

1. Basic concepts: constitution; rule of law; separation of powers; sources of constitutional law; principles of constitutional government; structure of the UK.
2. Sovereignty of parliament; EU membership; devolution
3. Parliament – UK and Scottish, powers, composition and functions
4. The Scotland Act and devolved government: Scottish Parliament – powers, composition and functions; the Scottish Executive.
5. Governments - UK and Scottish, structure and powers (including royal prerogative)

Citizen and the State

1. Human Rights Act and the Scotland Act (including devolution/ compatibility issues).
2. The European Convention on Human Rights: enforcement machinery and substantive guarantees (in particular, Arts 2-3, 5-6, 8-11, and Prot 1 Arts 1-3).
3. Domestic civil liberties: political freedoms (assembly and association; expression; the franchise); freedom of the person; state security.
4. Basic principles of citizenship.

Administrative Law

1. Delegated legislation.
2. Administrative justice: tribunals and inquiries.
3. Judicial control of governmental action: judicial review.
4. Non-judicial redress of grievances via ombudsmen, etc.

READING LIST [Latest editions should always be used]

A standard textbook on UK constitutional and administrative law, e.g.

- Bradley and Ewing, Constitutional and Administrative Law (16th ed, 2014) (Longman)
- Turpin, British Government and the Constitution (7th ed, 2012) (Cambridge University Press)
- Reid, Public Law (3rd ed, 2015)(W Green)
- Himsworth & O'Neill, Scotland's Constitution: Law & Practice (3rd edn, 2015) (Bloomsbury Professional)

On the Scottish dimension of the subject, see also

- Page, Constitutional Law of Scotland (2015) (W Green)
- Reed and Murdoch, A Guide to Human Rights Law in Scotland (3rd ed, 2011) (Bloomsbury Professional)

and

- Stair Memorial Encyclopaedia of the Laws of Scotland: titles on 'Administrative Law', 'Constitutional Law', and 'Human Rights Law' (reissues) (Butterworths)

Essential reading

At least one of Reid, Public Law, Himsworth and O'Neill, Scotland's Constitution: Law and Practice, or Page, Constitutional law of Scotland.

NOTE: NO MATERIALS PERMITTED IN THE EXAM HALL FOR THIS SUBJECT.

PROPERTY LAW AND CONVEYANCING

ASSESSMENT

- (a) One exam paper of 2 hours duration with two sections. Section A consists of problem style questions. Section B consists of essay style questions. Each candidate will be required to answer 3 out of 6 questions, including one question from Section A, one question from Section B, and one other from either section.
- (b) An oral presentation of 10 minutes duration. The topic will be issued to a candidate two weeks prior to examination. Material which is included in the presentation will not be included in the examination at the same diet.

Candidates are required to pass both the oral presentation and exam at the same diet in order to achieve a pass in this subject.

SYLLABUS

1. The classification of property – heritable and moveable; corporeal and incorporeal (including intellectual property)
2. Real rights:
 - a) ownership (including joint or common ownership);
 - b) lease - this covers leases as (i) contracts and (ii) real rights and includes clauses in commercial leases, but not the specific statutory rules on agricultural leases or residential tenancies;
 - c) liferent;
 - d) title conditions (real burdens and servitudes); and
 - e) Standard securities and floating charges.
3. Original and derivative modes of acquisition of ownership of different types of property
4. Ranking of real rights
5. Extinction of real rights
6. Human Rights, freedoms and protections
7. Authentication of deeds.
8. Landownership:
 1. boundaries;
 2. separate tenements;
 3. the law of the tenement;
 4. common interest; and
 5. encroachment and trespass.
9. Insofar as not already covered by 3 or 5 positive and negative prescription in relation to real rights in land.

READING LIST [Latest editions should always be used]

Essential text

- G L Gretton & K G C Reid, Conveyancing (4th ed, 2011) (W Green)

Recommended texts

- D A Brand, A J M Steven and S Wortley, Professor McDonald's Conveyancing Manual, (7th ed, 2004) (Tottel)
- K G C Reid, The Law of Property in Scotland, (1996) (Lexis Nexis)
- R Paisley, Land Law, (2000) (W Green)
- T Guthrie, Scottish Property Law, (2nd ed, 2005) (Tottel Publishing)
- Avizandum Statutes on Scots Law of Property, Trusts & Succession, (updated annually) (Avizandum)

The following books might also be referred to:

- D J Cusine and R M Paisley, Servitudes and Rights of Way (1998)(W Green)
- W M Gordon, Scottish Land Law - (3rd ed, Vol 1 2009) + (2nd ed, 1999) (W Green)
- G L Gretton and A J M Steven, Property Trusts & Succession (Tottel, 2009)
- J M Halliday, Conveyancing Law and Practice in Scotland (2nd ed, 2 vols, 1996 & 1997) (W Green)

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on Scots Law of Property, Trusts & Succession, (updated annually) (Avizandum)

LAW OF OBLIGATIONS

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 out of 6 questions. The question paper will be divided into Section A (Contract) and Section B (Delict) and candidates are required to answer one question from Section A, one question from Section B and plus one other from either section.

SYLLABUS

1. Voluntary obligations: unilateral obligations or promise
2. Voluntary obligations: contract formation and formalities, contractual terms, defective and illegal contracts
3. Breach of voluntary obligations: remedies and title to sue
4. Involuntary obligations: breach of statutory duty (such as the Occupiers' Liability (Scotland) Act; Consumer Protection Act; Health and Safety at Work etc Act)
5. Involuntary obligations: rules of liability for fault or culpa at common law
6. Involuntary obligations: delicts involving wrongful interference with property, wealth (pure economic loss), reputation and bodily integrity
7. Involuntary obligations: Liability to relatives of a victim
8. Obligations arising from unjustified enrichment
9. Enforcement of obligations including recovery of debt
10. Extinction of obligations (including negative prescription and limitation)

READING LIST [Latest editions should always be used]

General

- Hogg, *Obligations* (2nd edn, 2006)

Contract

- G Black, *Woolman on Contract* (5th ed, 2014)
- MacQueen and Thomson, *Contract Law in Scotland* (4th ed, 2016)
- McBryde, *The law of Contract in Scotland* (3rd ed, 2007)

Delict

- Thomson, *Delictual Liability* (5th ed, 2014)
- Pillans, *Delict: Law and Policy* (5th ed, 2014)

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on The Scots Law of Obligations

FAMILY LAW

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 out of 6 questions.

SYLLABUS

1. Legal capacity of persons
2. Parentage, parental responsibilities and rights and children's rights
3. Creation, consequence and termination of marriage and civil partnerships
4. Rights and obligations arising from cohabitation

READING LIST [Latest editions should always be used]

- Thomson, Family Law in Scotland (7th ed, 2014) (Bloomsbury)
- Griffiths, Fotheringham and McCarthy, Family Law (4th edn, 2015) (W Green).
- E Sutherland, Child & Family Law (2nd ed 2008) (W Green).
- A Cleland and E Sutherland, Children's Rights in Scotland (3rd ed, 2009) (W Green)
- Clive, Husband and Wife (4th ed, 1997) (W Green).
- Wilkinson and Norrie, Parent and Child (2nd ed, 1999) (W Green).

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on Scots Family Law

TRUSTS AND SUCCESSION

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 out of 6 questions. The question paper will be divided into Section A and Section B. Section A is compulsory and must be attempted. The question in Section A will relate to intestate succession and will involve a calculation.

SYLLABUS

1. Nature and classification of trusts
2. Creation, operation and termination of trusts
3. Intestate succession
4. Testate succession
5. Legal Rights
6. Executors

READING LIST [Latest editions should always be used]

General

- Gretton and Steven, Property Trusts and Succession (2nd ed, 2013)

Succession

- McDonald, An Introduction to the Scots Law of Succession (3rd ed, 2001.)
- Meston, The Succession (Scotland) Act 1964 (5th ed, 2002) (W Green).
- Hiram, The Scots Law of Succession (2nd ed, 2007).
- Stair Memorial Encyclopaedia of the Laws of Scotland: "Wills and Succession" (Vol 25).

Trusts

- K McK Norrie and EM Scobbie, Trusts - (1991) (W Green).

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on Scots Property, Trusts and Succession Law

EVIDENCE

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 out of 5 questions.

SYLLABUS

The principles of the law of 'evidence' comprising in particular:

1. Relevance and admissibility
2. Classification of evidence, including oral, real, documentary and opinion evidence.
3. Requirements for proof including onus, standard, presumptions and judicial knowledge.
4. Sufficiency of evidence including corroboration, similar fact evidence, admissions and confessions.
5. Exclusionary rules including hearsay, privilege, character and improperly recovered evidence.
6. Witnesses: their competence, compellability and vulnerability

READING LIST [Latest editions should always be used]

Essential text

- F Raitt, Evidence – Principles, Policy and Practice (2nd ed, 2012) (W Green)

Recommended texts

- F P Davidson, Evidence (2007) (SULI, W Green)
- M Ross and J Chalmers, Walker and Walker: The Law of Evidence in Scotland (4th ed, 2015) (Bloomsbury)
- A N Brown, Criminal Evidence and Procedure : An Introduction (3rd ed, 2010) (Tottel)
- J Chalmers, Evidence Essentials (3rd ed, 2012) (Dundee University Press)

NOTE: As the law is constantly changing, candidates should make use of case and legislation citators to update textbook reading.

NOTE: NO MATERIALS PERMITTED IN THE EXAM HALL FOR THIS SUBJECT.

SCOTS CRIMINAL LAW

ASSESSMENT

- (a) One exam paper of 2 hours duration with two sections. Section A consists of essay style questions. Section B consists of problem style questions. Each candidate will be required to answer 3 out of 6 questions – **at least one question must be answered from section B.**
- (b) An oral presentation of 10 minutes duration with questions at the end. The topic will be issued to a candidate two weeks prior to examination. Material which is included in the presentation will not be included in the examination at the same diet.

Candidates are required to pass both the oral presentation and exam at the same diet in order to achieve a pass in this subject.

Note: In examination answers, candidates are expected to cite relevant authority.

SYLLABUS

General

1. The ECHR and substantive criminal law.
2. *Actus reus* : acts & omissions.
3. Causation.
4. Art and part guilt.
5. Inchoate crimes.
6. *Mens rea* : The mental element.
7. *Mens rea* in statutory offences.
8. Intoxication, automatism, diminished responsibility and mental disorder.
9. Necessity, coercion, provocation, self-defence and superior orders.

Specific crimes and offences

10. Murder and culpable homicide.
11. Assault and causing real injury, reckless endangerment and causing reckless injury
12. Sexual offences.
13. Theft and aggravated thefts.
14. Robbery, fraud and embezzlement.
15. Reset.
16. Damage to property - malicious mischief and vandalism.
17. Public order offences, including breach of the peace, threatening or abusive behaviour, stalking, offensive behaviour at football matches and threatening communications.

Note: Misuse of Drugs and Road Traffic Law are given as examples in the Law Society foundation programme requirements but will NOT be covered in the Scots criminal law exam.

READING LIST [Latest editions should always be used]

Essential texts

One of:

- T H Jones and I Taggart, Criminal Law (6th ed 2015) (W Green)
- P R Ferguson and C McDiarmid, Scots Criminal Law: A Critical Analysis (2nd ed, 2014) (Edinburgh University Press)

Recommended texts

- C H W Gane, C N Stoddart & J Chalmers, A Casebook on Scottish Criminal Law (4th ed, 2009) (W Green)
- A M Cubie, Scots Criminal Law (2010) (Bloomsbury Professional)
- G H Gordon, The Criminal Law of Scotland (3rd ed, M G A Christie (ed)) - Vol 1 General Criminal Law (2000), Vol 2 Specific Crimes (2002), Supplement 1 (2005), The New Law of Sexual Offences in Scotland Supplement 1 to Vol 2 (2010) (J Chalmers). (W. Green)

NOTE: NO MATERIALS PERMITTED IN THE EXAM HALL FOR THIS SUBJECT.

EUROPEAN UNION LAW

ASSESSMENT

One exam paper of 3 hours duration comprising 2 sections. Section A consists of 4 questions. Section B consists of 4 questions. Each candidate will be required to answer 4 out of 8 questions. One question must be answered from Section A and another question from Section B. The 3rd and 4th questions can be answered from anywhere in the paper.

SYLLABUS

Candidates must develop an awareness of the pervasive influence of European Union (EU) law on daily practice. In particular they must develop an understanding that EU law arguments can and have been raised in all kinds of legal proceedings – commercial, administrative, financial, social and in criminal cases.

1. Constitutional structure and competences of the European Union:
 - a) The scope of 'the Treaties': the TEU and the TFEU;
 - b) The EU Charter of Fundamental Rights;
 - c) The powers of the EU, the allocation of competences between the Member States and the EU;
 - d) 'Brexit'.
2. The EU institutions and the legislative process.
3. Sources of EU law.
4. EU Law and national law:
 - a) incorporation of EU law in the United Kingdom; the European Communities Act 1972;
 - b) direct effect and supremacy; 'indirect' effect; 'enforceable EU rights' and remedies in UK courts.
5. Jurisdiction of and actions before the Court of Justice of the European Union (CJEU) and the General Court.
6. The law of the Internal market:
 - a) the free movement of goods, persons, services; harmonisation of legislation.
7. The competition rules:
 - a) restrictive practices; monopolies; oligopolies; mergers; public undertakings; state aids; internal taxation; intellectual property; enforcement.
8. Sex discrimination law.

READING LIST [Latest editions should always be used]

Essential reading

- Edward and Lane on European Union Law, Edward Elgar, hardback (2013), paperback (2014)

Optional additional reading (as there are several editions of some of the texts below, it is recommended that you consult the most recent edition)

- Woods and Watson, Steiner and Woods' EU Law
- Schütze, European Union Law
- Craig and de Búrca, EU Law: Text, Cases and Materials

- Chalmers et al, European Union Law
- Mathijsen and Dryberg, Mathijsen's Guide to European Union Law
- Kaczorowska, European Union Law

MATERIALS PERMITTED IN THE EXAM HALL

Any one of (they each contain essentially the same material):

- Foster (ed), Blackstone's EU Treaties and Legislation (OUP)
- Schütze (ed), EU Treaties and Legislation (CUP)
- Smith (ed), Core EU Legislation (Palgrave)
- Kenner (ed), European Union Legislation (Routledge)

SCOTS COMMERCIAL LAW

ASSESSMENT

One exam paper of 2 hours duration. Each candidate will be required to answer 3 questions from a selection of at least 6. Questions will be a mix of problem and essay questions.

SYLLABUS

1. Insurance
2. Diligence
3. Commercial Paper
4. Real and Personal Rights in Security (with the exception of standard securities)
5. Sale of Goods
6. Personal Insolvency.

READING LIST [Latest editions should always be used]

Essential texts

- Davidson and Macgregor et al, Commercial Law in Scotland (5th ed, 2018) (W Green) – *This text gives good general coverage of most of the areas covered by the syllabus and is the latest edition.*
- MacNeil (ed), Scots Commercial Law (2014) (Avizandum) – *A very helpful text giving good coverage of the syllabus.*

Generally, if the candidate has access to the Laws of Scotland Stair Memorial Encyclopaedia consideration of the relevant titles therein will be valuable.

There have been important developments in the law since the books were published and attention is drawn to the general guidelines which state that candidates will be expected to be aware of such developments.

Additional recommended reading

The undernoted texts give more detailed coverage of particular areas of the syllabus by way of reference. Candidates may particularly wish to refer to them where they are more up to date than the general text, although the general guidelines referred to above still apply. Out of print books may be available in libraries.

General

- Gloag and Henderson, Introduction to the Law of Scotland (14th ed, 2017) (W Green/Sweet & Maxwell)

Insurance

- J Birds, Birds' Modern Insurance Law (10th ed, 2016) (Sweet & Maxwell)
- J Lowry, P J Rawlings and R Merkin, Insurance Law: Doctrines and Principles (3rd ed, 2011) (Hart)

Rights in Security over Moveables

- D L Carey Miller, Corporeal Moveables in Scots Law, (2nd ed, 2005) (W Green), ch 11
- A J M Steven, Pledge and Lien (2008) (Edinburgh Legal Educational Trust)

Sale of Goods

- C Twigg-Flesner, R Canavan and H MacQueen, Atiyah's Sale of Goods (13th ed, 2016) (Pearson)

Debt Enforcement (including Diligence)

- S Cowan, Scottish Debt Recovery: A Practical Guide (2nd ed, 2018) (W Green/Sweet & Maxwell)

Personal Insolvency

- D W McKenzie Skene, Bankruptcy (2017) (W Green/Sweet & Maxwell)
 - D W McKenzie-Skene, Insolvency Law in Scotland (1999) (Tottel)
 - W A Wilson, The Scottish Law of Debt (2nd ed, 1991) (W Green/Sweet & Maxwell)
- Out of Print**

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on Scots Commercial and Consumer Law
- Blackstone's Statutes on Company Law
- Blackstone's Statutes on Commercial and Consumer Law
- Butterworth's Commercial and Consumer Law Handbook
- Butterworth's Company Law Handbook
- Butterworth's Insolvency Law Handbook
- The Parliament House Book
- Sweet and Maxwell's Commercial Law Statutes

BUSINESS ORGANISATIONS

ASSESSMENT

One paper of 2 hours duration. Candidates will be required to answer 3 questions from a choice of at least 6. Questions include a mix of problem and essay questions.

SYLLABUS

1. Agency
2. Partnership (including limited partnership and limited liability partnership)
3. Companies (including company charges)
4. Corporate Insolvency

READING LIST [Latest editions should always be used]

Essential reading

- Davidson & Macgregor, Commercial Law in Scotland (3rd edn, 2014) (W Green) – *This gives good general coverage of the law of agency and partnership.*
- N Grier, Company Law (4th edn, 2014) (W Green) – *This has a good general discussion of company law including company charges and corporate insolvency law from a Scottish perspective.*
- MacNeil, Scots commercial law (2014) (Avizandum) – *good consideration of partnership, agency, and insolvency*

There have been important developments in the law since the books were published and attention is drawn to the general guidelines which state that candidates will be expected to be aware of such developments.

More advanced recommended reading

Generally, if the candidate has access to the Laws of Scotland: Stair Memorial Encyclopaedia consideration of the relevant titles therein will be valuable.

Agency

- L MacGregor, The Law of Agency in Scotland (2013) (W Green, SULI)

Partnership

- J B Miller, The Law of Partnership in Scotland (2nd ed, 1994) (W Green)
- David A Bennett, An Introduction to the Law of Partnership in Scotland (1995) (W. Green) **Out of Print**
- G Morse, Partnership and LLP Law (8th ed, 2015) (OUP)

Company Law

- P L Davies, Introduction to Company Law (2nd ed, 2010)
- P L Davies and S Worthington, Gower and Davies' Principles of Company Law (9th ed, 2012) (Sweet & Maxwell)

- A Dignam, Hicks and Goo's Cases and materials on Company Law (7th ed, 2011)
- J Dine and M Koutsias, Company Law (7th ed, 2010) (Palgrave) (Law Masters Series)
- L S Seally and S Worthington, Sealy's cases and materials in Company law (10th ed, 2013) (OUP)

Corporate Insolvency Law

- D W McKenzie Skene, Insolvency Law in Scotland (1999) (Tottel)
- J B St Clair and Lord Drummond Young, The Law of Corporate Insolvency in Scotland (4th ed, 2011) (W Green)
- R M Goode, Principles of Corporate Insolvency law (4th ed, 2011 – student edition) (Sweet and Maxwell) – *English law but very helpful on general law of liquidation and administration.*
- D W McKenzie Skene, "Corporate Insolvency" (reissue) in *Laws of Scotland: Stair Memorial Encyclopaedia*

MATERIALS PERMITTED IN THE EXAM HALL

- Avizandum Statutes on Scots Commercial and Consumer Law
- Blackstone's Statutes on Company Law
- Blackstone's Statutes on Commercial and Consumer Law
- Butterworth's Commercial and Consumer Law Handbook
- Butterworth's Company Law Handbook
- Butterworth's Insolvency Law Handbook
- The Parliament House Book
- Sweet and Maxwell's Commercial Law Statutes

WORK BASED MODULE

All candidates are required to complete a work-based learning module where the candidate should prepare a log book or diary of work experiences approved by the candidate's supervising solicitor. This log book will show the candidate's general communication skills and the ability to contribute to group work. The log books will be approved by the candidate's supervising solicitor during the Pre PEAT 1 training contract and will be reviewed by a member of the board of examiners.

A copy of the model guide and logbook can be found on the Society's [website](#).

ACCOUNTING

THOSE TAKING THE DIPLOMA IN LEGAL PRACTICE COURSE **DO NOT** REQUIRE THIS SUBJECT. Candidates requiring to take this examination are asked to notify the Society as quickly as possible as an examination will not automatically be prepared in this subject.

Two exam papers each of 3 hours duration.

Paper One consists of 7 questions. Candidates will be required to answer all questions in Section A and 3 questions in Section B.

Paper Two consists of 6 questions. Candidates are required to answer all questions in Section A and 3 questions in Section B.

SYLLABUS

1. General principles of bookkeeping.
2. The preparation of profit and loss accounts and balance sheets.
3. The analysis and interpretation of accounts of limited companies, including accounting principles and ratios.
4. Solicitors' Accounts Rules.
5. Trust and executry accounts and schemes of division.
6. Financial management of solicitors' practices.

RECOMMENDED BOOKS

Prescribed Texts

- Professor Michael Morley, Accounting for Scottish Executries and Trusts (Law Society of Scotland) **Now out of print** – please contact the Society if experiencing problems in obtaining.
- Watson & Watson, Business Accounting for Solicitors (Tottel/Law Society of Scotland)
- J R Dyson, Accounting for Non-Accounting Students (latest edition) (Pitman Publishing)
- Rule B6 (Accounts, Accounts Certificates, Professional Practice & Guarantee Fund) of the Law Society of Scotland Practice Rules 2011.
- Guidance related to Rule B6 (Accounts, Accounts Certificates, Professional Practice & Guarantee Fund) of the Law Society of Scotland Practice Rules 2011 (Law Society of Scotland)

Recommended Texts

- Geoffrey Holmes & Alan Sugden, Interpreting Company Reports and Accounts (Latest edition) (Woodhead Faulkner)
- Guidance on Capital Adequacy

Access to:

Statements of Standard Accounting Practice (SSAPs) (Institute of Chartered Accountants of Scotland)

Financial Reporting Standards (FRS) (Institute of Chartered Accountants of Scotland)

J Wardhaugh, Trust Law and Accounts (1951) (W Green) **Now out of print.**

PROCEDURE

THOSE TAKING THE DIPLOMA IN LEGAL PRACTICE COURSE **DO NOT** REQUIRE THIS SUBJECT. Candidates requiring to take this examination are asked to notify the Society as quickly as possible as an examination will not automatically be prepared in this subject.

One exam paper of 2 hours duration.

Each candidate will be required to answer 5 out of 6 questions.

SYLLABUS

Candidates should be able to demonstrate knowledge and understanding of:-

A. CIVIL PROCEDURE

- The courts in which proceedings are brought and the procedural rules which apply to them, including jurisdiction
- The remedies and orders which may be sought
- The steps which must be taken in the conduct of common types of action including relevant time-limits
- The major court related documents including initial writs, summonses, petitions, defences, answers, motions, minutes and interlocutors
- Common ancillary procedures such as amendment, default, summary decree, tenders and extra-judicial settlement
- The award of expenses and their taxation
- Rights of appeal and the need for leave to appeal
- Enforcement of court orders
- Legal aid and other methods of funding litigation

B. CRIMINAL PROCEDURE

- The courts in which proceedings are brought
- The legislation and procedural rules covering basic sequence of events in criminal cases, both summary and on indictment, from the accused's arrest/arrival at the police station to conviction and sentence, including all relevant time limits
- Bail
- Rights of appeal and appeal procedure
- Legal aid

RECOMMENDED BOOKS

ESSENTIAL READING

I D Macphail, Sheriff Court Practice, (3rd ed, 2006) (W Green)*

Greens Annotated Rules of the Court of Session (Reprinted from The Parliament House Book) (latest edition) (W Green)

Greens Sheriff Court Rules (Reprinted from The Parliament House Book) (latest edition) (W Green)

Criminal Procedure (Scotland) Act 1995 (latest edition) (W Green) with annotations
Renton & Brown, Criminal Procedure (6th ed) * and updates

* These volumes are also available via Westlaw

RECOMMENDED READING

Hennessy, Civil Procedure and Practice, (3rd ed, 2010) (W Green)
Brown, Criminal Evidence and Procedure, (3rd ed, 2010) (Avizandum)
Anton and Beaumont, Civil Jurisdiction in Scotland (2nd ed, 1995) (W Green)
G Maher and D J Cusine, The Law and Practice of Diligence (1990) (Butterworths/LSS)
I H B Carmichael, Sudden Deaths and Fatal Accident Inquiries (3rd ed, 2005)(W Green)
R Black, An Introduction to Written Pleading (Law Society of Scotland) **Now out of print**
(but may be available in libraries)
Stair Memorial Encyclopaedia – Vol 17 – Procedure-pp.145-636 (Butterworths/Law
Society of Scotland)

PROFESSIONAL RESPONSIBILITY

THOSE TAKING THE DIPLOMA IN LEGAL PRACTICE COURSE **DO NOT** REQUIRE THIS SUBJECT. Candidates requiring to take this examination are asked to notify the Society as quickly as possible as an examination will not automatically be prepared in this subject.

One exam paper of 3 hours plus an additional 15 minutes for reading time
Each candidate will be required to answer 4 out of 6 questions – where one question is in several parts, candidates must answer all parts.

SYLLABUS

1. Professionalism, the Law Society and forms of practice.
2. Standards, Complaints, Discipline and the Scottish Legal Services Ombudsman. Professional entry requirements; requirements for practice; competence; professional negligence and professional misconduct; inadequate professional services; complaints and disciplinary procedures. Indemnity insurance and the Guarantee Fund.
3. The Client/Lawyer Relationship - Ethical Aspects. Initial overtures (directories, advertising and marketing); establishing the relationship (retainers); the extent of a lawyer's authority; confidentiality/professional privilege; conflicts of interest; client property; fees, charging and taxation; termination of the relationship.
4. Obligations to others - Duties to the Court; duties to witnesses; duties to professional colleagues (including the obligation to pay counsel's fees); duties to staff; duties to third parties in general.

RECOMMENDED BOOKS AND MATERIALS

- Paterson & Ritchie, Law Practice & Conduct for Solicitors (2006) (W. Green)
- J H Webster, Professional Ethics & Practice for Scottish solicitors (4th ed, 2004)(Avizandum Press)
- Codes of Conduct (2002) (Law Society of Scotland)
- Standards of Conduct 2008 (2008) (Law Society of Scotland)
- Standards of Service 2008 (2008) (Law Society of Scotland)
- Solicitors' Professional Handbook (W Green) (latest edition)
- J Ryder, Professional Conduct for Scottish Solicitors (1995) (Tottel)
- I Smith & J Barton, Procedures and Decisions of the Scottish Solicitors Discipline Tribunal (1995) (T & T Clark) **Out of Print**

MATERIALS PERMITTED IN EXAMINATION HALL

Candidates are permitted to take only the following published versions of statutory materials (only annotations which form part of the text or the printed materials are permitted) into the examination hall for the following exams:

Property Law & Conveyancing	<ul style="list-style-type: none"> • Avizandum Statutes on Scots Law of Property, Trusts & Succession (updated annually)
Law of Obligations	<ul style="list-style-type: none"> • Avizandum Statutes on the Scots Law of Obligations
Family Law	<ul style="list-style-type: none"> • Avizandum Statutes on Scots Family Law
Trusts & Succession	<ul style="list-style-type: none"> • Avizandum Statutes on Scots Property, Trusts & Succession
European Union Law	<p>Any one of the following:</p> <ul style="list-style-type: none"> • Foster (ed), <u>Blackstone's EU Treaties and Legislation</u> (OUP) • Schütze (ed), <u>EU Treaties and Legislation</u> (CUP) • Smith (ed), <u>Core EU Legislation</u> (Palgrave) • Kenner (ed), <u>European Union Legislation</u> (Routledge)
Scots Commercial Law	<ul style="list-style-type: none"> • Avizandum Statutes on Scots Commercial and Consumer Law • Blackstone's Statutes on Company Law • Blackstone's Statutes on Commercial and Consumer Law • Butterworth's Commercial and Consumer Law Handbook • Butterworth's Company Law Handbook • Butterworth's Insolvency Law Handbook • The Parliament House Book • Sweet and Maxwell's Commercial Law Statutes
Business Organisations	<ul style="list-style-type: none"> • Avizandum Statutes on Scots Commercial and Consumer Law • Blackstone's Statutes on Company Law • Blackstone's Statutes on Commercial and Consumer Law • Butterworth's Commercial and Consumer Law Handbook • Butterworth's Company Law Handbook • Butterworth's Insolvency Law Handbook • The Parliament House Book • Sweet and Maxwell's Commercial Law Statutes

PLEASE NOTE:

- Where materials are permitted they cannot be annotated or marked by the candidate in any way, except by highlighting, underlining or post-it notes.
- Candidates own material will **not** be permitted.
- Downloaded materials will **not** be permitted.
- Candidates are **not permitted to take material into the exam hall in the following subjects:**
 - Scottish Legal System & Legal Method;
 - Public Law;
 - Scots Criminal Law;
 - Evidence.

Candidates for open book examinations are advised that direct copying of materials into the exam script (other than brief parts of primary sources where precise technical wording is required) is likely to attract no marks and may amount to plagiarism. Candidates are required to demonstrate, through their written answers, their understanding of the material under examination. Answers should be expressed in candidates' own words.

LAW SOCIETY OF SCOTLAND

Marking Scale and Descriptors

Grades A-D are pass grades.

GRADE	BAND	SCORE	DESCRIPTOR
A	A1	20	Answers at this level will show a very full knowledge and understanding of the material and of relevant interpretative and critical points. They will be well constructed with clear conclusions, supported by sound arguments. Where relevant the candidate will show to a high degree the ability to apply legal principles to the solution of problems, and there will be good use of sources and proper reference to authority.
	A2	19	
	A3	18	
B	B1	17	Answers at this level will show a full knowledge and understanding of the material and of relevant critical and interpretative points. They will be generally well constructed with clear conclusions supported by sound arguments. There may be some errors or misunderstandings in relatively unimportant details. Where relevant the candidate will show substantial ability to apply legal principles to the solution of problems. There will be substantial use of sources and proper reference to authority.
	B2	16	
	B3	15	
C	C1	14	Answers will show a generally sound knowledge and understanding of the material and of relevant critical and interpretative points. Answers will be less clearly organised than those in the higher bands and there may be some significant errors, omissions or misunderstandings. Where relevant the candidate will show some ability to apply legal principles to the solution of problems. There should be some use of sources and reference to authority.
	C2	13	
	C3	12	
D	D1	11	Answers will show an adequate level of knowledge and understanding of the material, but they are likely to be lacking in detail and to include significant errors, omissions and misunderstandings. The grasp shown of critical and interpretative points may be insecure and the organisation of the answer may be weak. The candidate should show awareness of the need to refer to authority and limited ability to apply legal principles to the solution of problems.
	D2	10	
	D3	9	
E	E1	8	Answers at this level will show knowledge and understanding of some of the relevant material but there will be serious deficiencies. Understanding of critical and interpretative points may be poor. The answer may be badly organised and difficult to follow. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority.
	E2	7	
	E3	6	
F	F1	5	Answers at this level will show knowledge and understanding of very little of the relevant material. Understanding of critical and interpretative points will be poor. The answer may be badly organised and difficult to follow. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority.
	F2	4	
	F3	3	
G	G1	2	Answers at this level will show very serious weaknesses. Very little knowledge will be shown of the relevant material and what is known will have been seriously misunderstood. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority.
	G2	1	
H		0	Answers at this level will show no (or virtually no) evidence of knowledge or understanding. The candidate may have entirely failed to understand the question, or the answer is significantly incomplete.

LAW SOCIETY OF SCOTLAND
Feedback Form for Examinations

CANDIDATE NUMBER :

Exam Subject :

This feedback form is designed to provide guidance on your performance in examinations, hinting at how your learning and understanding may be demonstrated, and the characteristics that tend to distinguish work at different grades. **Grades A – D are pass grades.**

Your grades

Question number	Grade awarded

Grade A

Answers at this level (**excellent**) will show a very full knowledge and understanding of the material and of relevant interpretative and critical points. They will be well constructed with clear conclusions, supported by sound arguments. Where relevant the candidate will show to a high degree the ability to apply legal principles to the solution of problems, and there will be good use of sources and proper reference to authority. Performance is likely to be characterised by several of the following:

- the question is answered clearly, comprehensively and with appropriate focus
- excellent organisation and structure of answer
- reasoned arguments developing logical conclusions, if relevant
- integration of new information, if relevant
- citation of relevant source material (e.g. cases, statutes)
- evidence of wide reading, if relevant
- application of learning to problem solve, if relevant
- accuracy and absence of errors

Some of these factors were evident in the following answers:

Question number	Comments

Grade B

Answers at this level (**very good**) will show a full knowledge and understanding of the material and of relevant critical and interpretative points. They will be generally well constructed with clear conclusions supported by sound arguments. There may be some errors or misunderstandings in relatively unimportant details. Where relevant the candidate will show substantial ability to apply legal principles to the solution of problems. There will be substantial use of sources and proper reference to authority. Performance is likely to be characterised by some, at least, of the following:

- the question is answered clearly and fully
- good organisation and structure of answer
- reasoned arguments developing logical conclusions
- very good understanding of the subject
- clear evidence of awareness of relevant sources
- application of learning to problem solve, if relevant
- accuracy and absence of significant errors although, distinguishing it from an excellent performance, it might be faulted on grounds of a less comprehensive presentation, solution or answer

Some of these factors were evident in the following answers:

Question number	Comments

Grade C

Answers at this level (**good**) will show a generally sound knowledge and understanding of the material and of relevant critical and interpretative points. Answers will be less clearly organised than those in the higher bands and there may be some significant errors, omissions or misunderstandings. Where relevant the candidate will show some ability to apply legal principles to the solution of problems. There should be some use of sources and reference to authority. Performance is likely to be characterised by some, at least, of the following:

- attempt made to answer the question set
- ability to solve some of the problem set, if relevant
- basic to good understanding of the subject

- evidence of some awareness of relevant sources
- inclusion of some relevant examples although, distinguishing it from a very good performance, it might be faulted on grounds of lacking sufficiently well-structured argument, not offering sufficient sources or evidence to justify assertions, and containing some errors

Some of these factors were evident in the following answers:

Question number	Comments

Grade D

Answers at this level (**satisfactory**) will show an adequate level of knowledge and understanding of the material, but they are likely to be lacking in detail and to include significant errors, omissions and misunderstandings. The grasp shown of critical and interpretative points may be insecure and the organisation of the answer may be weak. The candidate should show awareness of the need to refer to authority and limited ability to apply legal principles to the solution of problems. Performance is likely to be characterised by some, at least, of the following:

- attempts made to answer the question set
- ability to solve some of the problem set, if relevant
- modest evidence of understanding of the subject
- modest evidence of relevant sources or reading
- distinguishing it from a good performance, it might contain more errors, present arguments which are less well structured or offer fewer sources by way of authority

Some of these factors were evident in the following answers:

Question number	Comments

Grade E

Answers at this level (**weak**) will show knowledge and understanding of some of the relevant material but there will be serious deficiencies. Understanding of critical and interpretative points may be poor. The answer may be badly organised and difficult to follow. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority. Performance is likely to be characterised by some, at least, of the following:

- failure to answer the question set though an answer to a similar question may be offered
- partial solutions to problems set
- little evidence of understanding of the subject
- little evidence of relevant reading or research
- inclusion of very few relevant ideas
- absence of structured argument
- little evidence to justify assertions
- few relevant examples
- several significant errors

Some of these factors were evident in the following answers:

Question number	Comments

Grade F

Answers at this level (**poor**) will show knowledge and understanding of very little of the relevant material. Understanding of critical and interpretative points will be poor. The answer may be badly organised and difficult to follow. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority. Performance is likely to be characterised by some, at least, of the following:

- failure to answer the question set though an answer to a question within the same topic area may be offered
- very little evidence of understanding of the subject or of sources
- absence of structured argument
- very little evidence to justify assertions
- many significant errors

Some of these factors were evident in the following answers:

Question number	Comments

Grade G

Answers at this level (**very poor**) will show very serious weaknesses. Very little knowledge will be shown of the relevant material and what is known will have been seriously misunderstood. The candidate may be unable to apply legal principles to the solution of problems. The candidate may not show awareness of the need to refer to authority. Performance is likely to be characterised by some of the following (but is distinguished from a Grade ‘H’ performance by the fact that not all of these characteristics will be present):

- failure to answer the question set
- no evidence of understanding of the subject
- no evidence of relevant sources
- absence of structured argument
- many significant errors

Some of these factors were evident in the following answers:

Question number	Comments

Grade H

Answers at this level (**absence of positive qualities**) will show no (or virtually no) evidence of knowledge or understanding. The candidate may have entirely failed to understand the question, or the answer is significantly incomplete.

This was evident in the following answers:

Question number	Comments