

Postgraduate Diploma in Adjudication

November 2009

The attached document is an abstract from the submission to the Chartered Institute of Arbitrators (November 2009) for reaccreditation of the College of Estate Management Postgraduate Diploma in Adjudication and is equivalent of the College of Estate Management Programme Specification. This applies to students entering in 2012/13

THE COLLEGE OF ESTATE MANAGEMENT

Submission to The Chartered Institute of Arbitrators

for

Reaccreditation of

**The College of Estate Management Postgraduate Diploma in
Adjudication**

VOLUME 1

November 2009

SECTION 3 SYLLABUS

SYLLABUS

ENTRY REQUIREMENTS

Applications will be considered from candidates who:

- are Associates of the Chartered Institute of Arbitrators; OR
- are Members of the Chartered Institute of Arbitrators; OR
- possess a degree from a recognised institution of higher education; OR
- have been admitted as a member (other than a student member) of a recognised professional body; OR
- can demonstrate by age and experience their suitability to undertake the course.

EXEMPTIONS

The following candidates will be granted exemptions from Year 1 Module 1 (Contract, Tort and Evidence).

- Candidates who have been awarded a degree in law recognised as exempting them from the Common Professional Examinations of the Law Society and the Bar Council.
 - Candidates holding a Diploma in Law recognised by the Law Society or the Bar Council.
 - Holders of UK Legal Practice Certificates.
 - Candidates with equivalent qualifications from non-UK jurisdictions will be assessed on an individual basis.
- Candidates who have passed this Module via the arbitration route.

The following candidates will be granted exemption from Year 1 Module 2 (Principles of Adjudication):

- Candidates who have already achieved Membership status of the Chartered Institute of Arbitrators via the Adjudication Pathway.

SYLLABUS FOR THE FIRST YEAR Module 1: Contract, Tort and Evidence

Assessment

Assessment will be made on a combination of assignment and examination results.

Candidates will submit three assignments. These grades will contribute 20% to the final mark.

There will be two final examination papers. The Contract paper will be three hours and will require the candidate to attempt four out of six questions. This paper will contribute 50% to the final mark. The Tort and Evidence paper will be two hours and will require the candidate to attempt three out of four questions. This paper will contribute 30% to the final mark.

To achieve a pass in this module, a candidate must gain an overall mark of at least 50%.

Module Aims

A course of study based on this syllabus should:

- provide a sound understanding of the nature of law;
- provide a sound knowledge of the law of Contract, Tort and Evidence;
- provide an arbitrator with the ability to deal with matters of law in arbitration proceedings;
- provide a knowledge of the sources of law, including statutes and cases, and of how these sources are applied in arbitration;
- develop an analytical and critical approach to the application of legal principles.

Learning Outcomes

Candidates should be able to demonstrate a sufficient understanding and knowledge of the law of contract, tort and evidence to be able to deal with aspects of these subjects which might arise during adjudication proceedings.

Syllabus Content: 1 The Legal System

- The nature of law
 - The principal legal theories
 - Nature and origins of law
 - Legal reasoning and analysis
- The effect of the law on the individual
 - Rights, duties, liabilities and privileges
 - The basis of liability
 - Remedies for maladministration; judicial review; the role of ombudsmen
 - The concept of legal personality and corporate liability
- The sources of law
 - Legislation
 - Precedent, common law and Equity
 - European Community and Union law
- Law enforcement and administration
 - The differences between civil and criminal law
 - Dispute settlement: formal and informal methods; the Courts; tribunals; arbitration; conciliation; mediation; adjudication; expert determination
 - The role of the lay person in the administration of justice; eg magistrates, juries, tribunal members and arbitrators

The Law of Contract

- Formation of contracts
 - Simple contracts
 - Specialty contracts
 - Offer and acceptance
 - Consideration
 - Intention to create legal relations
 - Capacity
 - – Contracts *uberrimae fidei*
- Privity of contract and liabilities
 - Subcontracting
 - Assignment including on death and bankruptcy
 - Novation
- Contents of a contract
 - Representations
 - Conditions and warranties
 - Implied terms
 - Terms implied into contracts for the sales of goods
 - Exclusion clauses
 - Effect of statutory provisions
- Vitiating factors
 - Mistake
 - Misrepresentation
 - Duress
 - Undue influence
 - Illegality
- Amendment of contracts
 - Need for consideration
 - Oral amendment of written contracts
- Interpretation of contracts
 - Intention of the parties
 - Background facts
 - Dealing with inconsistencies
 - Rectification
- Agency
 - Agency
 - Types of agency
 - Creation and termination
 - Agent's rights and duties
 - Warranty of authority
 - Liability of agent
 - Undisclosed principal
- Limitation of actions
 - Statutory limitation
 - Revival of liability
- Restitution
 - Money had and received
 - *Quantum meruit*
- Discharge of a contract
 - Agreement
 - Performance
 - Frustration

- Breach
- Operation of law
 - Remedies for breach of contract
 - Repudiation or rescission
 - Injunction
 - Specific performance
 - Damages – general and special damages, liquidated and unliquidated damages, penalties
- Assessment of damages
- Mitigation of damages
 - Remoteness
 - Set-off

The Law of Tort

- Essentials of a tort
 - Legal duty
 - Physical or mental damage
- Liability in tort
 - Personal liability
 - Vicarious liability
 - Defences to liability
 - *Volenti non fit injuria*
 - Contributory negligence
 - Limitation
 - Statutory authority
 - Remedies
 - Injunctions
 - Damages
 - causation
 - remoteness
 - mitigation
 - The tort of negligence
 - Duty of care
 - Breach of duty
 - Damage
 - Negligent mis-statement
 - Dangerous premises
 - Occupier's liability
 - Dangerous Premises Act 1972
 - Trespass
 - To land
 - To goods
 - To the person
 - Nuisance
 - Private nuisance
 - The rule in *Rylands v Fletcher*
- **The Law of Evidence**
- Types of evidence
 - Best and inferior evidence
 - Direct and circumstantial evidence
 - Original and hearsay evidence
 - Real evidence
 - Expert evidence
 - Relevance and admissibility
 - Orders for evidence to be preserved
 - Proof
 - The burden of proof
 - Methods of proof
 - Standards of proof
 - Presumptions
 - Judicial notice
 - Similar fact evidence
 - Hearsay evidence
 - Rules for submission of hearsay evidence
 - Expert evidence
 - The role of the expert witness
 - Privilege
 - Absolute privilege
 - Privilege attaching to negotiations and offers of settlement
 - Without prejudice
 - Waiver of privilege

- Examining witnesses
- Advantages and disadvantages of: Oral examination-in-chief; Written proofs of evidence; Expert reports; Cross-examination; Re-examination
- Leading questions – when and when not allowed
- The attendance of witnesses
- Subpoenas – *ad testificandum*; *ad duces tecum*
- Witnesses who are: ill; abroad; dead
- Dealing with conflicts
- The arbitrator's role when faced with conflicts of:
 - Factual evidence
 - Expert opinion
 - Submissions as to the law applicable
- How cases are distinguished

Module 2: Principles of Adjudication

Assessment

Assessment will be made on a combination of assignment and examination results.

Candidates will submit two assignments. These will contribute 20% to the final mark.

The final examination paper will be three hours and will require the candidates to attempt five out of seven questions

The examination grade will contribute 80% to the final mark.

To achieve a pass in this module, a candidate must gain an overall mark of at least 50%.

Module Aims

A course of study based on this syllabus should:

- provide an understanding of the general principles of adjudication law, practice and procedure;
- provide a knowledge of the sources of adjudication law, in particular statutes and cases, and of how these are applied;
- develop an analytical and critical approach to the application of adjudication principles.

Learning Outcomes

Candidates should be able to demonstrate:

- a knowledge of adjudication principles as defined in the syllabus;
- an understanding of principles of good practice and procedure;
- an ability to evaluate the adjudication rules, information and concepts defined in the syllabus;
- an ability to analyse information, select appropriate rules and procedures and to apply these fairly;
- an ability to organise and present information, ideas, descriptions and arguments clearly and logically, using appropriate terminology, taking into account the use of grammar, punctuation and spelling.

Syllabus Content

1. Conflict, disputes and methods of resolution

- Litigation Arbitration Expert determination Adjudication Alternative Dispute Resolution Early neutral evaluation

2. Adjudication as a method of dispute resolution

- Development of construction adjudication The nature of adjudication The adjudicator's obligations The adjudicator's powers The adjudicator's immunity Selection of an adjudicator The notice of adjudication Ambush The referral After the referral Managing the adjudication The reluctant party Reaching and making the decision

3. The courts and adjudication

- Enforcement House of Lords judgments Court of Appeal judgments Technology and Construction Court judgments

4. The United Kingdom Act and Scheme

- Applicability of the Act to construction contracts
- Adjudication provisions in the Act
- Payment provisions in the Act
- Adjudication provisions in the Scheme
- Payment provisions in the Scheme
- Contractual adjudication provisions
- Contractual payment provisions

5. Adjudication and the principles of natural justice

- The rules
- The present state of the law
- Natural justice in adjudication
- The principles of natural justice in adjudication

6. Jurisdiction

- What is a construction contract?
- What is a dispute?
- Two disputes under the same contract
- The appointment procedure
- Ability to introduce new evidence and manage documentation
- Scope of adjudicator's role and authority

SYLLABUS FOR THE SECOND YEAR

Module 3: The Practice and Procedure of Adjudication

Assessment

Assessment will be made on a combination of assignment and examination results.

Candidates will submit two assignments. These grades will contribute 20% to the final mark.

The final examination paper will be 3 hours and will require candidates to attempt four out of six questions.

The examination grade will contribute 80% to the final mark.

To achieve a pass in this module, a candidate must gain an overall mark of at least 50%.

Module Aims

A course of study based on this syllabus should:

- provide an in-depth knowledge and understanding of the law relevant to adjudication;
- develop a sound knowledge and understanding of the principles of the practice and procedure of adjudication;
- develop an ability to analyse information, select appropriate rules and procedures and apply these in a reasoned manner;
- consider the importance of good management and inter-personal skills;
- develop the ability to define issues, draft directions and interlocutory orders;
- equip a candidate with a standard of good practice so as to be able to deal as adjudicator with all aspects of dispute proceedings.

Learning Outcomes

Candidates are required to demonstrate:

- a knowledge of the law relevant to adjudication as defined in the syllabus;
- an understanding of the concepts of adjudication as defined in the syllabus;
- an ability to define the issues and draft directions and interlocutory orders;
- an ability to deal with all aspects of adjudication practice.

Syllabus Content

Construction Law

- General issues:
- formation of a contract and letters of intent
- oral contracts Principles of:
 - variations;
 - extensions, including status/importance of notices. Damages. Look at provisions in different contracts:
 - JCT
 - NEC
 - ICE
 - FIAIC
 - ACA
 - Icemen

- GC Works which cover:
 - time
 - change

- money/payment Pitfalls of *ad hoc* contracts.

2. The Courts and adjudication

- Enforcement House of Lords judgments Court of Appeal judgments Technology and Construction Court judgments

3. Managing the Process

- Appointment and fees. Dealing with initial submissions. Further information – documentary or oral? Dealing with delays to the process. Conducting meetings.

4. Enforcement

Module 4: Drafting and Decision Writing Assessment

Assessment will be made on a combination of assignment and examination results.

Candidates will submit four assignments. These grades will contribute 10% to the final mark.

There will be two final examination papers.

The Drafting paper will be two hours and will require the candidate to attempt two out of three questions. This paper will contribute 30% to the final mark.

The Decision Writing Paper will be four hours and consist of one compulsory question. This paper will contribute 60% to the final mark.

To achieve a pass in this module, a candidate must gain an overall mark of at least 70%.

Course Aims

A course of study based on this syllabus should:

- consider the importance of good management and inter-personal skills;
- develop the ability to define issues, draft directions and interlocutory orders;
- equip a candidate with a standard of good practice so as to be able to deal as adjudicator with all aspects of dispute proceedings;
- develop a logical, analytical approach to decision making;
- develop a logical, analytical approach to legal reasoning;
- promote the importance of making decisions in accordance with legal principles;
- demonstrate method in deciding facts;
- develop an ability to write an enforceable, reasoned decision.

Learning Outcomes

Candidates should be able to demonstrate an ability:

- 1 to define the issues and draft directions and interlocutory orders;
- 2 to analyse the facts and documents in adjudication proceedings and organise them with a view to making decisions on the facts and the law;
- 3 to write an enforceable, reasoned decision which deals with matters in dispute in a clear and logical manner, using appropriate terminology, and taking into account the use of grammar, punctuation and spelling. The standard will be that required to render the award enforceable by a court.

Syllabus Content

- Defining the issues
 - Drafting directions
 - Drafting interlocutory orders
 - Analysing all the documents in a dispute
 - Deciding on the law
 - Deciding on the facts
- writing an enforceable, reasoned decision dealing with all matters.

SECTION 4 ASSESSMENT STRATEGY

ASSESSMENT STRATEGY

MODULE 1: Contract, Tort and Evidence:

4 assignments	20%
1 exam: Contract (3 hours, 5 questions from 8)	50%
1 exam: Tort and Evidence (2 hours, 3 questions from 4)	30%

Module pass mark: 50%

MODULE 2: The Law of Arbitration:

2 assignments	20%
1 exam (3 hours, 5 questions from 7)	80%

Module pass mark: 50%

MODULE 3: The Law and Practice of Arbitration

2 assignments	20%
1 exam (3 hours, 4 questions from 6)	80%

Module pass mark 50%

MODULE 4: Drafting and Award Writing

4 assignments	10%
1 exam: Drafting (2 hours, 2 questions from 3)	30%
1 exam: Award Writing (4 hours)	60%

Module pass mark 70%

To bring the assessment of this course in line with College standard procedures, with effect from March 2010, the number of attempts at examinations will be three. Students already enrolled will not be disadvantaged.