



Postgraduate Diploma in Arbitration

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 Arbitration 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 Arbitration**

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.

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

- Candidates who have already achieved Membership status of the Chartered Institute of Arbitrators via the Domestic Arbitration 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 arbitration 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

2 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
- 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

3. 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*

4. 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: Law of Arbitration Assessment

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

Candidates will submit three 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 arbitration law, practice and procedure;
- provide a knowledge of the sources of arbitration law, in particular statutes and cases, and of how these are applied;
- develop an analytical and critical approach to the application of arbitral principles.

Learning Outcomes

Candidates should be able to demonstrate:

- a knowledge of arbitral principles as defined in the syllabus;
- an understanding of principles of good practice and procedure;
- an ability to evaluate the arbitral 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 Arbitration in the context of alternative methods of Dispute Resolution

- Arbitration
- Mediation
- Conciliation
- Adjudication
- Ombudsman

Arbitration Law

- The Arbitration Agreement
 - The Arbitration Act 1996
 - Forms of agreement
 - Arbitration by order of court
 - Statutory arbitration
 - Parties to an agreement

- Execution, amendment, enforcement, revocation
 - Terms of agreement
- Subject matter
- Agreement before dispute arises
- Agreement after dispute arises
- Administered and *ad hoc* arbitrations
- Exclusion agreements (45, 69, 87)
- Consumer agreements (89–91)
 - Appointment of arbitrators
- By parties (16, 17)
- By appointing authority (14(5))
- By Court (18)
- Sole arbitrator
- Chairman (20)
- Umpire (16(6), 21)
- Remuneration (28)
- Revocation of authority (18, 23)
- Removal (24)
- Replacement (27)
- Immunity (29)
 - Powers and duties of arbitrators
- Jurisdiction (30, 31)
- General duty (33)
- Statutory powers (34, 37, 38, 39, 41, 49)
- Difference between valuer and arbitrator
- Consolidation and concurrent hearings (35)
- Termination of authority (*functus officio*)
- Resignation (25)
 - Powers of the courts
- Definition of court (105)
- Stay of legal proceedings (9) – Ss 85–87 not brought into effect
- Extensions of time to begin (12)
- Making and revoking appointments (17, 18, 19)
- Removing arbitrator (24)
- Peremptory orders (42)
- Attendance of witnesses (43)
- Orders and injunctions (44)
- Preliminary point of law (45)
- Costs (63)
- Arbitrator's fees (64)
- Enforcement of award (66)
- Challenging the award (67, 68, 70)
- Appeal on point of law (69, 70)

Arbitration Practice and Procedure

- Practical case management
- Rules of Court
- Preliminary meetings
- Managing the proceedings
- Directions
- Interlocutory hearings and applications
- Provisional Orders (39)
- Statements of Case
- Disclosure and production of documents
- Agreement of facts and figures
- Time and place of hearing
 - The hearing
- Conduct of proceedings
- Preliminary issues
- Representation of parties
- Examination of witnesses
- Evidence on oath or affirmation
- Amendment of pleadings
- Experts, legal advisers, assessors (37)
- Costs (59-65)
- Offers to settle
- *Ex parte* proceedings (41)
 - Proceedings after the hearing
- Time for making the award (5)

- Form of award (52, 53, 54)
- Essentials of an enforceable award
- Rules applicable to substance of dispute (46)
- Awards on different issue (partial awards) (47)
- Agreed awards (57)
- Reasoned awards (52(4))
- Interest (49)
- Arbitrator's fees (64)
- Notification of award (55)
- Arbitrator's lien (56)
- Correction of award (57)
- Enforcement of award (66)
- Remission/setting aside of award (67, 68, 69)
 - Arbitrations on documents only
- Administered Arbitrations and Arbitration Rules
- The UNCITRAL Model Law

SYLLABUS FOR THE SECOND YEAR Module 3: The Law and Practice of Arbitration

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 of arbitration;
- develop a sound knowledge and understanding of the principles of the practice and procedure of arbitration;
- 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 arbitrator with all aspects of dispute proceedings.

Learning Outcomes

Candidates are required to demonstrate:

- a knowledge of the law of arbitration as defined in the syllabus;
- an understanding of the concepts of arbitration 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 arbitration practice.

Syllabus Content

- Arbitration in the context of all forms of Dispute Resolution
 - The appointment
 - Requirements for a valid appointment
 - Method of appointment
 - Challenge of validity of appointment
 - Immunity
 - Arbitral institutions
 - Preliminary proceedings
 - Civil Procedure Rules
 - Handling preliminary meetings
 - Ordering directions

- Hearing interlocutories and applications
- Pleadings
- Provisional Orders (39)
- Conditions imposable upon leave for amendment of pleadings
- Ordering discovery and inspection of documents
- Agreement of facts and figures
- Fixing time and place of hearing
- Conditions of leave for expert witnesses
 - Preliminary issues
 - The arbitrator’s role in determining: points of law; issues of fact
 - Costs
 - Costs generally
 - Capping of recoverable costs
 - Security for costs
 - Determining liability for costs
 - * what considerations are relevant
 - Assessing recoverable costs
 - Controlling the hearing
- How to conduct the proceedings
- The arbitrator’s role in: examination of witnesses; evidence on oath or affirmation
- Issues involved in the appointment of experts (tribunal and party appointed), legal advisers, assessors (37)
- When to order *ex parte* proceedings (41)
 - The Award
 - Time for making the award (50)
 - Status of awards issued later
 - Form of award (52, 53, 54)
 - Essentials of an enforceable award
 - When to issue awards on different issues (partial awards) (47)
 - Agreed awards (52)
 - Reasoned awards (52(4))
 - Interest (49)
 - Costs (59-65)
 - Arbitrator’s fees (64) Notification of award (55)
 - Arbitrator’s lien (56) Correction of award (57)
 - Enforcement of award (66 & 101(2))
 - Confidentiality
 - Challenging the Award
 - Appealing the Award

Module 4: Drafting and Award 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 Award 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%.

Module 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 arbitrator 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 award.

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 arbitration proceedings and organise decisions on the facts and the law;
- 3 to write an enforceable, reasoned award 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 in 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 award 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.