

Level 5 Diploma in Adjudication in the Construction Industry

April 2009

Credit Value: 42

Ofqual Qualification Number 500/6066/1

Description:

The *Level 5 Diploma in Adjudication in the Construction Industry* is a qualification consisting of four units. The qualification is based on the National Occupational Standards developed by the Construction Industry Council.

Holders of this qualification will have demonstrated their knowledge and understanding of the considerations relevant to the candidature, selection, appointment and discharge of the role of adjudicator, including the production of an enforceable Decision. The qualification is suitable for persons with experience in dispute resolution procedures, who have an understanding of the general principles of construction adjudication and who wish to progress to practice as an adjudicator.

Unit ONE

The Application of English Law and the Law of Contract, Tort and Evidence to Adjudication in the Construction Industry

Level Five

This unit has a Credit Value of 18

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand the nature of law and its place in society, *by being able to:***
 - Distinguish between the branches of English law
 - Explain how laws are developed from common law, statutes and statutory instruments
 - Describe the processes for enforcement and administration

2. **Understand how the law of contract is applied to the practice of adjudication, *by being able to:***
 - Explain the principles that apply to the formation of contracts
 - Describe the rights and obligations of parties involved in adjudication
 - Outline how terms are incorporated into contracts and the significance of these terms
 - Explain the circumstances which can lead to termination of contracts

3. **Understand how the law of tort is applied to the practice of adjudication, *by being able to:***
 - Summarise the range of torts recognised by law that can be applied to adjudication
 - Describe the effect of negligence in adjudication proceedings
 - Explain the legal defences available for relevant tortious actions.

4. **Understand how the rules of evidence are applied to the practice of adjudication, by being able to:**
- Summarise the underpinning principles of the rules of evidence
 - Apply rules of evidence to contested proceedings

Content:

1. The Nature of Law and its place in Society

Branches of the law: Civil law; criminal law; statutory duty; administrative law, constitutional law.

How laws are developed from common law, statutes and statutory instruments: Common Law; statutes and Statutory Instruments; case law; learned texts.

Processes for enforcement and administration: the court system; hierarchy of courts in civil and criminal cases; court jurisdiction; the courts and Alternative Dispute Resolution (ADR); penalties in criminal cases; remedies in civil cases; damages; court orders and injunctions.

2. How the Law of Contract is Applied to the Practice of Adjudication

The principles that apply to the formation of contracts: contract types (formal, informal, oral; dependent on party status); offer and acceptance; capacity and party identity; juridical relationship (privity); third party rights; certainty; impediments; intention to be legally bound; agency; duration of legal liability.

The rights and obligations of parties involved in adjudication: the obligations taken on by each party; exchange of rights; remedies for non-performance; the roles of participants; administrative features; liquidated and unliquidated damages.

How terms are incorporated into contracts and the significance of these terms: the sources of applicable terms; the attitude of the law; express and implied terms; conditions, warranties and innominate terms; representations; remedies for failure.

Circumstances which can lead to termination of contracts: breach; performance; frustration; agreement; application of contractual terms; consequences of termination.

3. **How the Law of Tort is Applied to the Practice of Adjudication**

The range of torts recognised by law that can be applied to adjudication: the principles of ex-contractual obligations; sources of liability; public and private nuisance; employer's liability; occupier's liability.

The effect of negligence in adjudication proceedings: the historical development of legal negligence; the essential pre-requisites in proving negligence; the burden and standard of proof; multiple claimants; multiple defendants; insurance against liability.

The legal defences available for relevant tortious actions: no duty of care; no breach; no damage; contributory negligence; voluntary assumption of risk.

4. **How the Rules of Evidence are Applied to the Practice of Adjudication**

The underpinning principles of the rules of evidence: applicable statutes; burden and standard of proof; hearsay evidence; competence; the best evidence rule; admissibility; privilege.

Application of the rules of evidence to contested proceedings: types of evidence; competence; relevance; weight; corroboration; criminal allegations in civil cases; similar fact evidence.

Assessment:

Attainment of the Learning Outcomes for this unit will be assessed by an examination. The examination will consist essay style questions and will be of three hours duration with 15 minutes reading time.

In order to be awarded a *Pass*, candidates must be able to recall relevant knowledge and facts from all parts of the unit specification and demonstrate a satisfactory level of understanding of the principles and concepts used in adjudication within the construction industry such that the candidate will be able to satisfactorily work as a member of a dispute resolution team. Candidates who attain a mark of 55% or greater will be deemed to have achieved the criteria for a *Pass*.

Assignments are provided by RSPH Qualifications.

UNIT TWO:

The Application of the Law of Adjudication to the Construction Industry

Level Four

This unit has a Credit Value of 4

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand the application of the law of adjudication, by being able to:**
 - Explain how the law is interpreted and applied with respect to adjudication
 - Apply procedural rules to the adjudication process
 - Describe the role of the adjudicator
 - Apply the principles of natural justice to adjudication
 - Explain in detail the application of procedural law to the adjudication process and decisions

Content:

1. **The Application of the Law of Adjudication**

How the law is interpreted and applied with respect to adjudication: The interpretation of sections 104-108 of the Housing Grants, Construction and Regeneration Act 1996; the application of case law to the interpretation of each of the above sections; interpretation of each paragraph of the Scheme for Construction Contracts Regulations 1998; the application of case law to the Scheme for Construction Contracts Regulations 1998; the application of the Human Rights Act; the Government review of the Act; the availability of non-statutory adjudication.

Application of procedural rules to the adjudication process: detailed analysis of various examples of procedural rules arising out of contract terms or from bespoke publications.

The Role of the Adjudicator: the practice of adjudication by adjudicators; selection; qualifications; conflicts of interest; disclosure;

standards of performance, training and continuing professional development; the role of Adjudicator Nominating Bodies (ANBs); appointment procedure; jurisdiction and powers, and limitations thereto; the process of Decision writing; weighing evidence; identifying issues and sub-issues; format of the Decision; deciding costs.

Application of the principles of natural justice to adjudication: identification of the rules; practical application of the rules; problem areas – litigants in person, ex-parte proceedings, personal contact with parties; procedural considerations.

Application of procedural law to the adjudication process and decisions: the status of the Decision; future proceedings on the same dispute; the role of the adjudicator in future proceedings; settlement by the parties; inter-party costs; process for enforcement actions; process for challenges.

Assessment:

Attainment of the Learning Outcomes for this unit will be assessed by an examination. The examination will consist of a number of essay style questions and is of three hours duration.

In order to be awarded a *Pass*, candidates must be able to recall relevant knowledge and facts from all parts of the unit specification and demonstrate a satisfactory level of understanding of the principles and concepts used in adjudication within the construction industry such that the candidate will be able to satisfactorily work as a member of a dispute resolution team. Candidates who attain a mark of 55% or greater will be deemed to have achieved the criteria for a *Pass*.

Examinations are provided by RSPH Qualifications.

UNIT THREE:

Practice and Procedure in Adjudication for the Construction Industry

Level Four

This unit has a Credit Value of 8

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand the process of commencing adjudication, *by being able to:***
 - Evaluate factors affecting the decision by referring parties to proceed to adjudication
 - Determine the risks, advantages and disadvantages to a party of selecting adjudication
 - Outline the tactical considerations of the Referring party that will influence the decision to select adjudication.

2. **Understand the process of planning and running an adjudication for the various parties involved, *by being able to:***
 - Identify the key stages involved in submitting a dispute for adjudication
 - Outline the evidential issues that need to be addressed by parties submitting a dispute for adjudication
 - Explain the use of advocates in adjudication hearings

3. **Understand how to Draft submissions for adjudication, *by being able to:***
 - Use appropriate formats for the drafting of submissions
 - Write submissions in an appropriate style and language

Content:

1. The process of commencing adjudication

Factors affecting the decision by referring parties to proceed to adjudication: complexity and scale of dispute; one or more disputes; contract provisions; applicability of the Housing Grants, Construction and Regeneration Act and other relevant statutes; selection of the adjudicator; the need for representation.

Risks, advantages and disadvantages to a party of selecting adjudication: lack of finality; pressure of timescale; quality of the adjudicator; quick Decision; irrecoverable costs; adjudicator charges; need for enforcement; risk of an unenforceable Decision; stepped up and stepped down disputes.

Tactical considerations of the Referring party that will influence the decision to select adjudication: timescales; applying pressure of time; preparation; availability of witnesses; interim or final decision; quality issues.

2. The process of planning and running an adjudication for the various parties involved

Key stages involved in submitting a dispute for adjudication: establishing the parties and their contractual relationship; establishing the terms of the contract and the provisions relevant to the dispute; detailing the matter(s) in dispute and the factual matrix; application of the contract terms and the law generally; establishment of evidential support; stating the remedies sought; financial claims; declaratory relief; interest; costs; offers to settle.

Evidential issues that need to be addressed by parties submitting a dispute for adjudication: relevance; disclosure; privilege; collecting and ordering relevant documentation; taking witness statements; use of experts; use of legal authorities.

Use of advocates in adjudication hearings: self-representation; use of lay representatives; use of legal representatives; format of “hearings”; formality; imbalance of representation; oral submissions; examination of witnesses; understanding the Decision; identification of and notification of slips in the Decision.

3. Draft submissions for adjudication

Appropriate formats for the drafting of submissions: order and form; referencing and cross-referencing; brevity; relevance; clarity; avoidance of repetition; alternative arguments; alternative remedies; costs submissions; document structure.

Appropriate style and language: ensure style and content is appropriate for different readers and their objectives; tone and formality required for Decision writing; need to avoid prejudice, bias, ambiguity and unnecessary repetition; narrative styles; use of plain English with regard to vocabulary, sentence structure and grammar; punctuation.

Assessment:

Attainment of the Learning Outcomes for this unit will be assessed by an assignment. The assignment will consist of a number of tasks to be completed that are based on a presented scenario.

In order to be awarded a *Pass*, candidates must be able to apply relevant knowledge, skills and facts from all parts of the unit specification and demonstrate a satisfactory level of understanding of the principles and concepts used in adjudication within the construction industry such that the candidate will be able to satisfactorily work as a member of a dispute resolution team. Candidates who attain a mark of 55% or greater will be deemed to have achieved the criteria for a *Pass*.

Assignments are provided by RSPH Qualifications.

UNIT FOUR:

Production of an Enforceable Decision by an Adjudicator in the Construction Industry

Level Five

This unit has a Credit Value of 12

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand how to produce an enforceable reasoned Decision, by being able to:**
 - Discuss the role of the adjudicator prior to the production of an enforceable reasoned Decision
 - Produce an enforceable Decision which explains the factors to be considered in arriving at a Decision
 - Produce an enforceable Decision which outlines the components required of a Decision

Content:

1. **Production of an enforceable reasoned Decision**

Role of the adjudicator: factors affecting the decision by an adjudicator to accept or decline an appointment; qualifications and characteristics required by adjudicators; management of the Decision making process with respect to parties, timescales, service of submissions, jurisdictional challenges, rules of natural justice, communications and inspections of work.

Arriving at an enforceable Decision: preparation; management of time; establishing the issues and sub-issues; establishing the applicable law; establishing the relevant contract provisions; understanding the remedies and alternative remedies sought; cross-claims; understanding jurisdiction and limitations upon it; deciding jurisdictional challenges; weighing evidence; deciding between conflicting evidence; questioning witnesses of fact and experts; judicial reasoning; establishing reasons; format of the written Decision; deciding costs; inter-party costs; considering offers to settle; making declaratory decisions; financial orders.

Components of the Decision: format, headings and titles; preambles; narrative of facts; distillation of the issues; recording the remedies

sought; findings of fact; determinations of law; explaining conclusions arrived at; setting out the decisions on the remedies sought; interest, VAT; costs; notification of the Decision; correction of slips.

Assessment:

Attainment of the Learning Outcomes for this unit will be assessed by a case study. Candidate will be required to produce an enforceable reasoned Decision based on evidence supplied in the case study.

In order to be awarded a *Pass*, candidates must be able to apply relevant knowledge, skills and facts from all parts of the unit specification and demonstrate a satisfactory level of understanding of the principles and concepts used in adjudication within the construction industry such that the candidate will be able to satisfactorily work as a member of a dispute resolution team. Candidates who attain a mark of 55% or greater will be deemed to have achieved the criteria for a *Pass*.

Assignments are provided by RSPH Qualifications.

Guidance:

Essential Reading:

Unit One:

Legal Method 6th Edition (2007) McLeod - Palgrave MacMillan Law Masters
The Law of Contract 12th Edition (2007) – Peel – Sweet & Maxwell

OR

Cheshire, Fiffot and Furmston's Law of Contract 15th Edition (2006)–
Furmston – Oxford University Press
Tort 3rd Edition (2008) – Giliker & Beckwith – Sweet & Maxwell
Cross & Tapper on Evidence 11th Edition (2007) - Tapper – Oxford University
Press

Unit Two:

Construction Adjudication (2007) Coulson – Oxford University Press

Unit Three:

Construction Adjudication (2007) Coulson – Oxford University Press
RICS Practice Statement and Guidance Note for Surveyors acting as
Advocates (2008) – RICS Books

Unit Four:

Construction Adjudication (2007) Coulson – Oxford University Press
RICS Guidance Notes for Surveyors acting as Adjudicators (2nd Edition) 2008
– RICS Books

Recommended Reading:

Unit One:

Nutshells Contract Law 7th Edition (2006) Duxbury – Sweet & Maxwell
Nutcases Contract Law 5th Edition (2008) Ruff – Sweet & Maxwell
Nutshells Tort Edition 8th Edition (2008) Bermingham – Sweet & Maxwell
Nutcases Tort Edition 5th Edition (2008) Bermingham – Sweet & Maxwell

Unit Two:

Construction Adjudication 2nd Edition (2004) – Riches & Dancaster –
Blackwell Publishing

Unit Three:

Construction Adjudication 2nd Edition (2004) – Riches & Dancaster –
Blackwell Publishing
Pleadings Without Tears -A Guide to Legal Drafting Under the Civil Procedure
Rules 7th Edition (2007) – Rose – Oxford University Press

Unit Four:

Construction Adjudication 2nd Edition (2004) – Riches & Dancaster –
Blackwell Publishing

Recommended prior learning:

It is recommended that candidates hold the Level 3 Award in Adjudication in the Construction Industry before commencing courses leading to this qualification. Additionally, RSPH recommends that candidates have experience of working in the built environment and in dispute resolution.

Key Skills:

It is expected that the delivery of this qualification should provide opportunities for the development of the following *key skills*:

Application of Number Level 3
Communication Level 3 and 4
Improving own Learning and Performance Levels 3 and 4
Information and Communications Technology Level 3
Problem Solving Levels 3 and 4
Working with Others Levels 3 and 4

Guidelines for key skills are shown in Appendix 1.

General Higher Level Skills:

It is expected that the delivery of this qualification should provide opportunities for the development of the following *higher level skills*:

Analysis
Evaluation
Integration

Guidelines for higher level skills are shown in Appendix 2.

Other Issues:

The delivery of this qualification could provide opportunities for contributing to an understanding of Ethical, Economic and International issues and an awareness of Legislation, Health and Safety considerations and Equal Opportunities. Possible areas for discussion are shown below.

Ethical Ethical issues can be discussed in the context of contracts and complying with requests from adjudicators and adjudicator Decisions

Economic Economic issues can be raised by discussion of the costs involved in parties seeking adjudication.

International	European legislation could be discussed with respect to how EC law affects UK legislation
Legislative	The role of UK legislation in the adjudication process is explicit in this qualification.
Health, Safety and Welfare	The need for health and safety during visits to project works to obtain evidence and interview witnesses should be stressed
Equal Opportunities, Diversity and Respect for People	The importance of effective communication with minority groups and speakers of other languages and awareness of cultural sensibilities could be discussed in relation to obtaining evidence from witnesses. Equal opportunities could be discussed with reference to the roles, rights and obligations of parties and ensuring that access to adjudication is available to all.

National Occupational Standards

The qualification has been mapped to the following National Occupational Standards of the Construction Skills Council:

BEDP5/008.1 Evaluate potential implications for the resolution of disputes
BEDP5/008.2 Evaluate information relevant to a dispute
BEDCL3/O18.1 Gather information relevant to a dispute
BEDCL3/O19.1 Prepare case evidence
BEDCL4/O21.1 Prepare evidence for submission
BEDCL4/O21.2 Present evidence to legally constituted adjudicating bodies
AD2.1 Formalise preliminary actions
AD3.1 Reach the Decision AD3.2 Communicate the Decision and conclude the Adjudication

Restrictions on Candidate Entry:

There are no restrictions on candidate entry. RSPH does, however, recommend that candidates have experience of working in the built environment.

Special Needs:

Centres that have candidates with special needs should consult *The Society's Regulations and Guidance for Candidates with Special Assessment Needs*; this is available from The Society and The Society's web site (www.rsph.org).

Recommended Qualifications and Experience of Tutors:

Tutors should have verifiable relevant current industry experience and knowledge of the adjudication process as used in the construction industry at or above the level being taught. This experience and knowledge must be of sufficient depth to be effective and reliable when discussing problem issues and possible solutions with candidates.

Centres should be registered with The Society

Any enquiries about this qualification should be made to:

The Qualifications Department,
Royal Society for Public Health,
3rd Floor Market Towers
1 Nine Elms Lane
London
SW8 5NQ
Tel 020 3177 1600

Appendix One: Key Skills Guidelines

This qualification provides a number of opportunities for candidates to develop competence in key skills and to produce evidence towards attainment of key skills. Successful completion of the qualification does not in itself imply attainment of the listed key skills; this is dependent on the candidate producing a portfolio of evidence and the teaching and learning methods adopted by the tutor(s) and candidate in the delivery of the qualification.

The specification content, which provides the most appropriate opportunity for key skill development, is signposted below.

Application of Number

Skill	Specification Content
N3.1 Plan an activity and get relevant information from relevant sources.	Graphical, tabular and statistical data can be used to obtain information relating to the number of adjudications per year and the proportion of cases which are settled before the final Decision stages of adjudication.
N3.2 Use this information to carry out multi-stage calculations to do with: a amounts or sizes b scales or proportion c handling statistics d using formulae.	Candidates can use information such as number of people involved in adjudication processes, their professions, time involved, number of meetings, cost of formal hearings etc to estimate the likely cost of a company proceeding with different stages of the adjudication process.
N3.3 Interpret the results of your calculations, present your findings and justify your methods.	

Communication

Skill	Specification Content
C3.1a Take part in a group discussion.	Any part of the content could be used as the basis for a discussion.
C3.2 Read and synthesise information from at least two documents about the same subject. Each document must be a minimum of 1,000 words long.	Any part of the content could be researched from textbooks and specialist journals
C4.1 Develop a strategy for using	Evidence for this key skill at Level

communication skills over an extended period of time

4 could be provided by the Decision produced by candidates for the assessment to Unit 4.

C4.2 Monitor progress and adapt your strategy, as necessary, to achieve the quality of outcomes required in work involving at least: **one** group discussion about a complex subject
one document of 1,000 words or more about a complex subject.

C4.3 Evaluate your overall strategy and present the outcomes from your work, using at least **one** formal oral presentation. Include a variety of verbal, visual and other techniques to illustrate your points.

Improving own Learning and Performance

Skill	Specification Content
LP3.1 Set targets using information from appropriate people and plan how these will be met.	The manner in which candidates plan and carry out their programme of learning for this qualification, in consultation with their tutors/trainers, could provide evidence for this key skill or some elements of this key skill.
LP3.2 Take responsibility for your learning, using your plan to help meet targets and improve your performance.	
LP3.3 Review progress and establish evidence of your achievements.	
LP4.1 Develop a strategy for improving your own learning and performance.	
LP4.2 Monitor progress and adapt your strategy to improve your performance.	
LP4.3 Evaluate your strategy and present the outcomes of your learning.	

Information and Communications Technology

Skill	Specification Content
ICT3.1 Search for information, using different sources, and multiple search criteria in at least one case.	Information about any part of the content could be obtained from web-sites dealing with food safety. Books and articles can be accessed by on-line searches.
ICT3.2 Enter and develop the information and derive new information.	Candidates can obtain information about a specified part of the content and present this to their peers using packages such as Power Point or other AV techniques.
ICT3.3 Present combined information such as text with image, text with number, image with number.	Candidates can use word-processing packages to produce draft submissions for adjudication (unit 3) or their Decision (unit 4).

Problem Solving

Skill

Specification Content

- PS3.1** Explore a problem and identify different ways of tackling it.
- PS3.2** Plan and implement at least one way of solving the problem.
- PS4.2** Develop a strategy for Problem solving.
- PS4.2** Monitor progress and adapt your strategy for solving the problem.
- PS4.2** Evaluate your strategy and present the outcomes of your problem solving skills.

A number of areas within the specification can be delivered by using a problem-based approach to teaching and learning.

For example:

The application of the law of contract, law of tort and rules of evidence to the practice of adjudication (unit 1): This can be covered by the use of realistic scenarios or actual cases which candidates have to solve.

Candidates can use mini scenarios to determine what advice would be given to clients concerning whether or not to proceed to adjudication, and highlight any risks involved or strategies to consider (unit 4).

Working with Others

Skill

Specification Content

- WO3.1** Plan work with others.
- WO3.2** Seek to develop co-operation and check progress towards your agreed objectives.
- WO3.3** Review work with others and agree ways of improving collaborative work in the future.
- WO4.1** Develop a strategy for working with others.
- WO4.2** Monitor progress and adapt your strategy to achieve agreed objectives.

The manner in which candidates work with others in carrying out their programme of learning for this qualification, in consultation with their tutors and trainers, could provide evidence for this key skill or some elements of this key skill.

WO4.3 Evaluate your strategy and present the outcomes from your work with others.

Appendix Two: Higher Level Skills Guidelines

This qualification provides a number of opportunities to promote the development of general higher level skills and abilities. Successful completion of the qualification does not in itself imply attainment of the listed skills. Promotion of the skills is dependent on the teaching and learning methods adopted by the tutor(s) and candidate in the delivery of the qualification.

The specification content, which provides the most appropriate opportunity for higher level skill development, is signposted below.

Analysis

	Content providing opportunity for skill development
A central theme of the qualification is the development and presentation of a case for adjudication. This requires the analysis of evidence and case law and determining if there is a case for negligence. Analysis of examples of procedural rules from contract terms or from bespoke publications will also be required	<p>Understand how the law of contract is applied to the practice of adjudication</p> <p>Understand how the law of tort is applied to the practice of adjudication</p> <p>Understand the application of the law of adjudication</p>

Evaluation

	Content providing opportunity for skill development
Candidates will need to evaluate factors that may affect the decision of a party to proceed to adjudication. The strength of the party's case with regards to evidence and the admissibility of evidence will also require evaluation	<p>Understand the process of commencing adjudication</p> <p>Understand the process of planning and running an adjudication for the various parties involved</p> <p>Understand how the law of contract is applied to the practice of adjudication</p> <p>Understand how the law of tort is applied to the practice of adjudication</p> <p>Understand the application of the law of adjudication</p>

Integration

	Content providing opportunity for skill development
Candidates will need to integrate their analysis and evaluation of the evidence into a submission for adjudication.	Submissions for adjudication will require integration of all of the content for the qualification.