

RSPH Level 5 Diploma in Adjudication in the Construction Industry

January 2020

Guided Learning **102 hours**
Total Qualification Time **445 hours**

Ofqual Qualification Number 600/2438/0

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.

The purpose of this qualification is to enable learners to demonstrate 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.

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Unit ONE

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

Guided Learning: 15 hours
Total Unit Time: 180 hours
Unit Level: 5
Unit reference number: A/502/4879

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 meet the following assessment criteria:**
 - 1.1 Distinguish between the branches of English law
 - 1.2 Explain how laws are developed from common law, statutes and statutory instruments
 - 1.3 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 meet the following assessment criteria:**
 - 2.1 Explain the principles that apply to the formation of contracts
 - 2.2 Describe the rights and obligations of parties involved in adjudication
 - 2.3 Outline how terms are incorporated into contracts and the significance of these terms
 - 2.4 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 meet the following assessment criteria:**
 - 3.1 Summarise the range of torts recognised by law that can be applied to adjudication
 - 3.2 Describe the effect of negligence in adjudication proceedings
 - 3.3 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 meet the following assessment criteria:**
 - 4.1 Summarise the underpinning principles of the rules of evidence
 - 4.2 Apply rules of evidence to contested proceedings

Content:

1. The Nature of Law and its place in Society

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

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

1.3 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

2.1 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.

2.2 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.

2.3 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.

2.4 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

3.1 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.

3.2 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.

3.3 *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**

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

4.2 *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 may be assessed by coursework, task-based controlled assessment, or by a written examination.

In order to be awarded a *Pass*, candidates must be able to recall / apply 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.

UNIT TWO

The Application of the Law of Adjudication in the Construction Industry

Guided Learning: 9 hours
Total Unit Time: 49 hours
Unit Level: 4
Unit reference number: J/503/0264

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand how the law of adjudication is applied within the construction industry, by being able to meet the following assessment criteria:**
 - 1.1 Explain how primary legislation is interpreted with respect to adjudication in the construction industry
 - 1.2 Explain the appointment, role and powers of the adjudicator in the adjudication process
 - 1.3 Explain the essential procedural requirements of adjudication
2. **Be able to apply the law of adjudication to the construction industry, by being able to meet the following assessment criteria:**
 - 2.1 Compare and contrast the scheme for Construction Contracts Regulations with other rules / procedures for adjudication to include one from:

Construction Industry Council
The Technology and Construction Solicitor's Association Rules
Engineering and Construction Contract / New Engineering Contract
 - 2.2 Explain how the principles of natural justice and bias apply to the adjudication process

Content:

1. How the Law of Adjudication is applied

1.1 How primary legislation is interpreted 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.

1.2 The appointment, role and powers 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.

1.3 Procedural requirements of adjudication: detailed analysis of various examples of procedural rules arising out of contract terms or from bespoke publications; 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.

2. Apply the Law of Adjudication

2.1 Compare and contrast the scheme for Construction Contracts Regulations with other rules / procedures for adjudication: outline of rules / procedures for adjudication of the following:

Construction Industry Council
The Technology and Construction Solicitor's Association Rules
Engineering and construction Contract / New Engineering Contract

2.2 How the principles of natural justice and bias apply 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.

Assessment:

Attainment of the Learning Outcomes for this unit may be assessed by coursework, task-based controlled assessment, or by a written examination.

In order to be awarded a *Pass*, candidates must be able to recall / apply 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.

UNIT THREE

Practice and Procedure for Adjudication for the Construction Industry

Guided Learning: 36 hours

Total Unit Time: 96 hours

Unit Level: 4

Unit reference number: R/503/0266

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand the process for commencing adjudication in the construction industry, by being able to meet the following assessment criteria:**
 - 1.1 Evaluate the factors that may affect the decision by referring parties to proceed to adjudication in the construction industry
 - 1.2 Determine, with the use of suitable examples of each, the risks, advantages and disadvantages to a party of selecting adjudication to settle disputes within the construction industry
 - 1.3 Outline the tactical considerations of the Referring party that will influence the decision to select adjudication as a means for settling disputes.
2. **Understand the process of planning and running an adjudication in the construction industry for the various parties involved, by being able to:**
 - 2.1 Explain the key stages involved in referring a dispute for adjudication
 - 2.2 Explain the procedural stages commonly used in an adjudication following the referral
 - 2.3 Outline, with the use of suitable examples, the evidential issues that need to be addressed by parties involved in an adjudication
 - 2.4 Explain the use and role of advocates and party representatives in adjudication

Content:

1. The process for commencing adjudication

1.1 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.

1.2 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.

1.3 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

2.1 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; drafting submissions.

2.2 Procedural stages commonly used in an adjudication following the referral: challenges to jurisdiction; reply to referral; response to reply; rejoinder; further information; use of experts/advisors; meetings; hearings; investigations; extended timetables.

2.3 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.

2.4 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.

Assessment:

Attainment of the Learning Outcomes for this unit may be assessed by coursework, task-based controlled assessment, or by a written examination.

In order to be awarded a *Pass*, candidates must be able to recall / apply 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.

UNIT FOUR:

Production of an Enforceable Adjudication Decision in the Construction Industry

Guided Learning: 42 hours

Total Unit Time: 120 hours

Unit Level: 5

Unit reference number: D/503/0268

Summary of Outcomes:

To achieve this unit a candidate must:

1. **Understand the factors that should be considered in arriving at an enforceable adjudication Decision in the construction industry, by being able to meet the following assessment criteria:**
 - 1.1 Establish the issues, sub-issues, applicable law and contract provisions that are relevant to a dispute by consideration of documentation submitted by the parties to an adjudication in the construction industry
 - 1.2 Explain and justify the decision reached in relation to the remedies sought by the parties
 - 1.3 Evaluate the evidence presented to arrive at a reasoned decision
 - 1.4 Explain and justify the conclusion reached as to the adjudicator's jurisdiction
2. **Produce an enforceable adjudication Decision that contains all the necessary components of a Decision, by being able to meet the following assessment criteria:**
 - 2.1 Introduce the Decision with a preamble that explains the context of the Decision
 - 2.2 Summarise the issues involved in the dispute
 - 2.3 Record the remedies sought and findings of fact
 - 2.4 Draw conclusions which explain the Decision reached in the adjudication

Content:

1. Factors that should be considered in arriving at an enforceable adjudication Decision

1.1 Establishment of issues, sub-issues, applicable law and contract provisions relevant to the dispute: issues, sub-issues, applicable law and contract provisions are established with reference to the documentation submitted by the parties; use of relevant case law in establishing issues, sub-issues, applicable law and contract provisions.

1.2 Explanation and justification of Decision: Decision made based on issues, sub-issues, applicable law and contract provisions; use of case law to explain the Decision; clear reference to remedies sought by parties; explanation and justification of award of costs and financial orders

1.3 Evaluation of evidence: weighing evidence, deciding between conflicting evidence; use of witnesses of fact and experts; judicial reasoning; reference to case law and law of evidence as appropriate.

1.4 Explanation and justification of conclusion reached as to the adjudicator's jurisdiction: factors affecting adjudicator's jurisdiction; factors affecting the decision by an adjudicator to accept or decline an appointment; qualifications and characteristics; jurisdictional challenges; rules of natural justice.

2. Production of an enforceable adjudication Decision.

2.1 Introduction to the Decision: Decision contains a preamble that explains the context of the Decision; reference to case law, contract law, the law of tort and the law of adjudication as applicable.

2.2 Summary of issues: issues in dispute accurately summarised; appropriate reference made to documentation submitted by parties.

2.3 Record remedies sought and findings of fact: remedies sought and findings of fact appropriately recorded and cross-referenced to documentation submitted by parties, case law, law of adjudication, contract law and the law of tort.

2.4 Draw conclusions: Conclusions drawn and presented that explain the Decision reached by the Adjudicator.

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.

Guidance:

Essential Reading:

Unit One:

1. Legal Method 9th Edition (2013) McLeod - Palgrave MacMillan Law Masters

ISBN-10: 1137027681

ISBN-13: 978-1137027689

2. Cheshire, Fiffoot and Furmstons Law of Contract 17th Edition (2017)– Furmston – Oxford University Press

ISBN-10: 0198747381

ISBN-13: 978-0198747383

3. Tort 6th Edition (2017) – Giliker

ISBN-10: 0414060687

ISBN-13: 978-0414060685

4. The Modern Law of Evidence – Adrian Keane 12th Edition (2018)

ISBN-10: 978-0198811855

ISBN-13: 978-0198811855

For Revision only (obtain the latest editions)

Contract

Nutshells 10th Edition 2015 Duxbury

Nutcases 7th Edition 2014 Ruff

Tort

Nutshells 10th Edition 2014 Bermingham

Nutcases 6th Edition 2011 Bermingham

Evidence

Nutshells 6th Edition 2011 Stockdale

Nutcases 1st Edition 2007 Stockdale

Cross & Tapper on Evidence 13th Edition 2018 Colin Tapper Oxford University Press

Unit Two:

Construction Adjudication 2nd Edition (2011) Coulson – Oxford University Press

Construction Adjudication & Payments Handbook by Dominique Rawley QC, Kate Williams, Merissa Martinez and Peter Land

RICS Guidance Note: Surveyors Acting as Adjudicators – 2nd Edition

Unit Three:

Essential

- Construction Adjudication 4th Edition, Coulson – Oxford University Press.
- RICS Practice Statement and Guidance Note for Surveyors acting as Advocates current editions
- RICS Guidance Notes for Surveyors acting as Adjudicators current edition.
- RICS Guidance Note: Conflicts of Interest, current edition.

Recommended

- Construction Adjudication 2nd Edition (2004) – Riches & Dancaster – Blackwell Publishing.
- Pleadings Without Tears - A Guide to Legal Drafting Under the Civil Procedure Rules 9th Edition– Rose & Eastman – Oxford University Press.
- Construction Adjudication and Payments Handbook – Rawley et al (2013) Oxford University Press.
- Arbitration Awards – a practical approach – Turner (2005) Blackwell Publishing.

Unit Four:

Essential

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

Coulson on Construction Adjudication 4th Edition (2018) Peter Coulson Oxford University Press

Guidance Notes for Surveyors acting as Adjudicators (3rd Edition) 2008 – RICS Books

Recommended

Construction Adjudication (2011) Coulson – Oxford University Press

Construction Adjudication and Payments Handbook – Dominique Rawley QC, Kate Williams, Merrissa Martinez, Peter Land – Oxford University Press

Recommended prior learning:

It is recommended that candidates hold the Level 3 Award in Adjudication in the Construction Industry or equivalent before commencing courses leading to this qualification. Additionally, RSPH recommends that candidates have experience of working in the built environment and are familiar with the types of dispute that may occur during construction projects.

Progression

Learners who achieve this qualification will be better qualified to represent parties in adjudication or progress to practice as an adjudicator.

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

Special Assessment Needs:

Centres that have candidates with special assessment needs should consult The Society's Reasonable Adjustments and Special Consideration Policy; this is available from RSPH and the RSPH web site (www.rsph.org.uk).

How to apply to offer this qualification:

To become a centre approved to offer this qualification, please complete the 'Centre Application Form' which can be found on our website in the Qualifications and Training section. If you are already an approved centre, please complete the 'Add an additional qualification form' in the Centre area on the website. Please ensure that you include details of your quality assurance procedures. You will need to attach a CV to this application. Please contact the Qualifications Department at centreapproval@rsph.org.uk if you need any assistance.

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.

Other Information:

All RSPH specifications are subject to review. Any changes to the assessment or learning outcomes will be notified to Centres in advance of their introduction. To check the currency of this version of the specification, please contact the Qualifications Department or consult the RSPH website.

Centres must be registered with RSPH.

Any enquiries about this qualification should be made to:

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