

# **EXTRACTS**

## Stage 1 Law Specialization Certificate/Diploma A Vocational & Research Based Course

(You Can Print This Extract Out)

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## **Preface**

**Use these course extracts to help you determine if this course is within your capabilities. And, also to see if it will keep your interest.**

**Do remember that as a distance learning course there are no time constraints for finishing. You can go at your own pace and by e-mail you will always have the support of the help-desk. There you can ask your course advisor for personal assistance when ever you feel you need it.**

**The Extracts below are taken  
from just 2 of the 8 parts of Stage 1**

**An Introduction to English Law  
and  
Law in Practice**

# Extracts: An Introduction To English Law

## 1. THE ENGLISH LEGAL SYSTEM

### 1.1 What is Law?

Rules of conduct imposed by the State upon its members and enforced by courts.

Such rules are the law of the land, the object of which is to enforce certain standards of behaviour among citizens in the interests of peace and good order.

### 1.2 Law can be divided into two main areas:

1.21 **Public Law** - is that part of the law which governs relationships of citizens with the State and of one state with another, eg: Criminal law.

1.22 **Private Law** - is that part of the law of a country which governs relationships of citizens among themselves, eg: Law of Contract.

### 1.3 English and Roman Law

In most parts of Europe and in many other parts of the world, the main systems of law are as follows:

#### 1.31 English Common Law

To the foreign observer, probably the most distinct characteristic of English Law is its antiquity and continuity. Most countries on the continent of Europe have a modern legal system which has emerged over the past 200 years or so.

English Law, on the other hand, has an unbroken history which can be followed right back to Ethelbert who was King of Kent from 560-616.

English Law has absorbed only a few rules of Roman Law and today is applied in most parts of the Commonwealth and the USA.

#### 1.32 Modern Roman Law

Derived from the ancient laws of the Roman Empire, modernised and applied in France, Spain, Italy, South America and Quebec.

Scottish Law is Roman law based.

#### 1.4 **The Accusatorial Procedure**

(Another distinct characteristic in English Law)

### 4. LAW OF CONTRACT

A contract may be defined as an agreement between 2 or more parties that is binding in law, this means that the agreement generates rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, although in some cases the courts may compel performance by the party in default, e.g. pay compensation.

#### 4.1 **ELEMENTS OF LAW OF CONTRACT**

There are three basic elements in the formation of a valid simple contract:

- 1 The parties must have reached agreement (offer and acceptance)
- 2 They must intend to be legally bound
- 3 Both parties must have provided valuable consideration.

In addition, the parties must have the legal capacity to Contract and, in some cases, there must be compliance with certain Formalities

A contract may be invalidated by a mistake, or by illegality and where the contract has been induced by misrepresentation, duress or undue influence, the innocent party may have the right to set it aside. To make the contract valid:

4.14 **Offer and acceptance** - if a contract is a legally binding agreement, the first question to consider is whether 1 party has made an offer which has been accepted by the other so as to conclude a contract.

4.15 **Offer** - an offer may be defined as a statement of willingness to contract on specified terms made with the intention that, if accepted, it shall become a binding contract. A genuine offer must be distinguished from an "Invitation to treat,, i.e. where a party is merely inviting offers which he/she is then free to ace" or reject.

Exceptions to offer

- 1 **Advertisements** of goods for sale are normally construed as invitations to treat (Fisher & Bell 1861).

2     **Invitations to tender** will not normally amount to an offer to contract with the party who submits the most for a viable tender.

3     **Auction sale** - auctioneers' request for bids is an invitation to treat and each bid is an offer

4.16   **Acceptance** - may be defined as an unconditional assent, communicated by the offeree to the offerer, to all terms of the offer, made with the intention of accepting. Whether an acceptance has in fact occurred is ascertained from the behaviour of the parties including any correspondence that has passed between them. The Offeree must accept the exact terms proposed by the offerer unconditionally, i.e. without introducing any new terms which the offerer has not had the opportunity to consider. The introduction of new terms is referred to as a counter-offer and its effect in law is to bring to an end the original offer. (Hyde & Wrench 1W),

Acceptance must be communicated to the offerer by the offeree (or someone authorised by the offeree to do so). If the offerer prescribes a particular method of communicating acceptance and makes it clear that no other method will suffice, there may be no contract if a different method of communication is used by the offeree. Unless accepted, an offer has no legal effect and it may be revoked at any time until it is accepted.

4.17   **Intention to be legally bound** - the courts have recognised that some agreements, by their very nature, are not intended to be legally binding and in others, the parties may expressly indicate that they do not intend to be contractually bound, e.g. social agreements. It is recognised that there is a sphere of social arrangement where contractual relationships are not intended, e.g. to offer a friend a meal is not to court litigation!

In commercial agreements, there is a strong Presumption that the parties intend to be legally bound.

4.18   **Consideration** - in addition to offer and acceptance and contractual intent, consideration is an essential element on the formation of any contract (except by deed).

**End of Extract: An Introduction to English Law**

## Extracts: Law in Practice

### TUTOR'S NOTES

#### Part 3

1. Once again, we would like to welcome you to Module Two Part 3 of the SAS programme. After completing the previous level, you should now feel confident and able to assist Counsel at Court in both civil and criminal hearings. You should, in addition, have an understanding and knowledge of what other duties you may be expected to carry out, such as the issuing of applications, conferences, attending prison visits and also be able to take simple statements from witnesses.

2. The purpose of this Advanced Level One is to equip you with the necessary skills which will enable you to represent a lawyer in hearings at court, unassisted by counsel. Such cases will be of a fairly simple type; ones that are straight forward, requiring more a knowledge of the facts rather than a knowledge of law. These hearings will be before 'District Judges' in the lower courts, such as a County Court.

3. If sent to attend before a District Judge, the responsibility of putting the case across will be yours. 'You', in effect, will become counsel.

4. As a legal clerk going on a hearing before a District Judge, you will be expected to be familiar enough with the case, that you are able to prepare a short presentation of the facts of it and a simple line of reasoning as to why your application should be granted.

5. Whether the case is won or lost usually depends on :-

- a) how well prepared the lawyers instructing you are in drafting their case, and
- b) how well you, as the clerk, present their case in court.

6. As already mentioned, in most cases, whether an application before a District Judge is successful or not is dependent on how well prepared the lawyer's instructing you are in drafting their case. However, it is true to say that, in reality, when lawyers ask a clerk to cover a District Judge's application, they invariably know that the outcome will be one of the following; the Judge will either grant their request; refuse it; grant it but amend it in some way. The role of a clerk is to put across the lawyer's case to the Judge in the best way possible.

7. After collecting your file from the lawyer's office, make sure you know what is required of you. Read your instructions at the office and ask the lawyer instructing you to clarify anything you do not understand. When leaving the office, and before arriving at the courthouse, always make sure you know what the background to the case is. But more importantly, what is being sought after and what directions you should ask the Judge for if he is not minded to grant your initial request. If there is anything you are not sure of while at court, do not hesitate to give your lawyer (or the instructing lawyer) a phone call.

8. Throughout Advance Level One part 1 we will be looking at some typical applications that you, as a clerk, may be called upon to attend to. The course material will take a look at a charging order application, a pre-trial review and a property re-possession. So let us start with a Charging Order.

## **CHARGING ORDER ABSOLUTE**

9. Let us now take a look at our first type of application: Charging Order Absolute.

10. Before we do this we will define what a Charging Order Absolute is and under what circumstances this type of application would arise.

11. Imagine that your client is a bank who has loaned money to Mr X. The money was loaned unsecured. Mr X has been repaying the loan over the past ten months. Mr X finds that he can no longer keep up with the repayments and has fallen three months in arrears.

### **MEANINGS**

Unsecured loan: A loan given without asking for security or a guarantor.

12. The bank now has a problem: Why? Because it was an unsecured loan. So, to recover their money the bank will have to take the matter to court and apply for a County Court Judgement (CCJ) against Mr X. The purpose of the CCJ is to get the court to accept that the debt is owed by Mr X, and to order that he repay it.

13. However, in this instance, Mr X still does not pay anything further towards the debt. What can the bank do to recover their money? They could make Mr X bankrupt but that would not guarantee them their money. If, however, the bank finds that Mr X has a property, they could apply to the courts for the debt to be attached to his property.

14. This is what is meant by a charging order - attaching a debt to an asset. This means that if ever Mr X sells his property or is forced to sell his property, the bank will have a legal claim to some of the proceeds to cover the debt.

15. A charging order comes in two stages; first, you have what is called a 'charging order Nisi' followed by a 'charging order absolute'. The terms 'Nisi' and 'absolute' are used in the same way as they are in divorce proceedings, (decree Nisi and decree absolute).

16. A 'charging order Nisi' is obtained by merely sending the appropriate documents to court where they will be processed and placed before a Judge who will authorize the 'charging order Nisi'. In such cases there is no need for anyone to attend a hearing. To obtain a 'charging order absolute', however, requires the personal appearance of, at the very least, the claimant and if the defendant wishes to prevent it becoming absolute, then he too should attend.

## MEANINGS

CCJ: County Court Order/Judgement.

Charging Order: Attaching a debt to an asset.

Charging Order Nisi: The debt is attached until the final hearing.

Charging Order Absolute: The debt is attached absolutely.

17. You are now ready to look through your case paperwork, (the file) for the charging order application. The file in this case is made up of pages 2 to 16 of your CM-AL1/1 course material. To help you, page 1 of your CM-AL1/1 contains a brief description of each page in your case file.

## ACTION

Read through page 1 of your CM-AL1/1.

18. The description of page 2 refers to an agent lawyer and a instructing lawyer. These terms are often used by lawyers and you will need to understand their usage.

## MEANINGS

**Instructing lawyer:** The lawyer who has taken on a client's case.

**Agent lawyer:** A lawyer who has been asked to attend a hearing on behalf of the instructing lawyer and to carry out the instructing lawyer's instructions.

## ACTION

Read through page 2 of CM-AL1/1

19. Page 2 of your AL1/1 is a simple instruction letter to the agent lawyer; it states the date of the hearing, the time of the hearing, the court, who the parties are and what is sought.

## MEANINGS

**Instruction letter:** Instructions sent by an Instructing lawyer to an agent lawyer as to what has to be accomplished at the hearing.

20. An agent lawyer is usually appointed for economical reasons; e.g. the hearing is a long way off from the instructing lawyer's office.

## QUESTIONS

Based on the instruction letter:-

- 1) Who is the instructing lawyer?
- 2) Why has an agent lawyer been appointed in this case?
- 3) What is the agent lawyer being asked to seek/obtain?

Write your answers on the Answer sheet.

21. Having understood the first page of your case file you can now proceed to the next page.

## ACTION

Read over page 3 of your AL1/1.

## QUESTIONS

Based on page 3 of your AL1/1:-

- 4) What paperwork has been lodged at court and how will it be used?
- 5) Do you think that you should have copies of the application and the affidavit/statement of truth in your file?
- 6) Why?

Write your answers on the Answer sheet.

22. Having dealt with page 3 you can now proceed to the next page.

## ACTION

Turn to page 4 of your AL1/1 and read through the affidavit/statement of truth of Vivian Richardson.

## MEANINGS

**Sealed:** Court stamped.

**Affidavit/Statement of Truth in Support:** An affidavit/statement of truth that supports an application by giving reasons why the application should be granted.

**Dead Letter Service:** An internal post office dept for letters returned undelivered.

23. Did you notice the expression 'VR1' in the affidavit/statement of truth? Whenever an exhibit is referred to in an affidavit/statement of truth it is identified by the initials of the one swearing it. In this case Vivian Richardson.

## MEANINGS

**Exhibit:** A piece of evidence e.g. a document.

## QUESTIONS

Based on page 4 of your AL1/1:-

- 7) In your own words, what is the affidavit/statement of truth of Vivian Richardson saying?
- 8) What specific documents/items does she refer to?
- 9) Would you expect to have copies of these on your file? Explain.

Write your answers on the Answer sheet.

## ACTION

Read through pages 5-10 of your AL1/1.

24. Pages 6-10 show that the persons named have been notified of the pending hearing and the purpose of the hearing.

## QUESTIONS

10) According to page 6 has Mr T Rogan served notice?

11) Regarding page 7; notice who this letter is addressed to. Does that mean she has been served notice? And does it also mean she is a co-defendant? Explain.

12) Regarding pages 8, 9 and 10; why are the persons named being served notice?

Write your answers on the Answer sheet.

25. The exhibit of Vivian Richardson comprised of copy sealed Charging Order Nisi, Affidavit/Statement of Truth in Support and covering letters (letters of service). You have read through the covering letters now move on.

## ACTION

Read through page 11 of your AL1/1.

## QUESTIONS

Regarding the Charging Order Nisi that you have just read:

13) If it was granted on 1 Sept 92 what took place on 12 April 91? Was it:

a/ The day the Charging order Nisi was first applied for?

b/ The day the claimant got a county court judgement against the defendant?

14) Is this Charging Order Nisi also an application? Explain.

Write your answers on the Answer sheet.

26. The Charging Order Nisi mentioned the affidavit/statement of truth of Mr S Kershaw. At first you may have wondered what role does it play. The next page should answer the question.

## **ACTION**

Read through pages 12-16 of your AL1/1.

## **QUESTIONS**

Having read through the Affidavit/Statement of Truth of Mr S Kershaw:

- 15) Is it an affidavit/statement of truth in support? Explain.
- 16) What makes up the exhibit SK1.
- 17) What does Mr Kershaw say the exhibit shows?

Write your answers on the Answer sheet.

27. You have now gone through every page in your case file. You should now understand each page and its relationship to each other page. Your next question should be what happens next?

## **ON ARRIVAL SCRIPT**

28. On arriving at court, it is important that you immediately let the usher know that you have arrived. On page 16 you will find a typical "on arrival script" outlining the information the usher will need to obtain from you.

## **ACTION**

Turn to the arrival script on page 17 of your AL1/1.

Ask a friend/family member to rehearse the script with you. Assume the role of 'you' with your friend as the 'usher'.

## QUESTIONS

Based on the arrival script:-

- 18) If the defendant turns up at court, would you feel it okay to introduce yourself or would you avoid him?
- 19) Would you discuss the case with him? Give your reasons.

Write your answers on the Answer sheet.

## CHARGING ORDER SCRIPT

29. Pages 18 and 19 of your AL1/1 contain a fairly typical script representing the conversation that could take place between you and a District Judge in such a hearing.

## ACTION

Read over the script on pages 18 and 19 of your AL1/1. Then, with the help of two friends, assume the role of 'you' and have your friends assume the roles of 'the Judge' and 'the defendant' Mr Rogan, respectively.

## QUESTIONS

- 20) Do you think this type of hearing would be beyond your capabilities?
- 21) What were your general observations on the role playing.

Write your answers on the Answer sheet.

## PRE-TRIAL REVIEW/DIRECTION HEARING

30. We will now consider a second type of District Judge's application. That of a pre-trial review. But before you read through your paperwork we will define what is meant by a pre-trial review.

31. A pre-trial review - now more often known as a directions hearing - allows a Judge to give directions as to how the preparation for a hearing/trial should be conducted together with time limits for various stages in the preparation.

**The SAS Law In Practice Course**

**COURSE MATERIAL**

**Part 3**

**District Judge's Applications  
in  
Chambers**

# CHARGING ORDER ABSOLUTE

## Situation

**You have received the paperwork for your case. First thing you always do is read it through and make sure you know what is required of you.**

**Let us take a look at an example.**

Page

2. Instruction letter to Agent (lawyer) appointed to represent instructing lawyer's client.
3. Instructing lawyer's letter showing what has been lodged at court.
- 4,5. Affidavit/Statement of Truth from authorised representative of the instructing lawyer. Detailing under oath the actions taken that are relevant to the application/case.
- 6-10 Copy letters sent by instructing lawyer to persons who have a legal entitlement to know about the application/case.
11. A copy of the Charging Order Nisi.
- 12-14. A copy of the affidavit/statement of truth sworn by a duly authorised member of the Bank detailing why an application for a Charging Order Nisi should be granted.
- 15,16. Office copy of Land Registry Property Register showing details of a property, such as who owns it and who has a monetary interest in it.

## **AGENCY INSTRUCTION SHEET/LETTER**

From

Haley Handforth LLB (Hons) LAWYER  
46 Peterloo Street, Manchester M1 4LX  
Tel 061 211 7123 Fax 061 211 8945

Court: Kingston-Upon-Thames

Case No: 1010495

Date of Hearing: 26 October 92

Time of Hearing: 12.00

Parties: Barclays Bank PLC v Mr Thomas Rogan

Our Client: Barclays Bank

Client attending?: No

Type of Hearing: Charging Order Absolute

Enclosures?: See file

Specific Instructions: Obtain Charging Order; Obtain Costs £134

Haley Handforth LLB (Hons) LAWYER  
46 Peterloo Street, Manchester M1 4LX  
Tel 061 2211 7123 Fax 061 2211 8945

The District Judge  
Kingston-Upon-Thames  
County Court

Our reference: 9382/564

Your Reference:

Date: 19 Oct 92

Dear Sir

BARCLAYS BANK PLC V Mr T Rogan  
CASE NUMBER 1010495  
REFERENCE NUMBER

Please find enclosed our Application and Affidavit/Statement of Truth in Support

. Please seal and endorse (with a hearing date) and return one copy to ourselves and serve one copy on the/each defendant.

Please find enclosed our Application and Affidavit/Statement of Truth in Support upon which we intend to rely at the hearing listed for

**26 October 92 at 12 noon.**

Please seal and return a copy to us. The Defendant(s) has/have already been served with an unsealed copy.

Yours faithfully

Haley Handforth  
(Lawyer)

# IN THE KINGSTON UPON THAMES COUNTY COURT

Case Number 1010495

BETWEEN

BARCLAYS BANK PLC  
Claimant

AND

MR THOMAS ROGAN  
Defendant

I, Vivienne Richardson, of 46 Peterloo Street, Manchester M1 4LX, MAKE OATH and say as follows:-

1. I am a Legal Clerk working for Haley Handforth and I am duly authorised to make this affidavit/statement of truth and do so from facts within my own knowledge.
2. I did on 23 and 24 September and 02 October 2002 send sealed Charging Order Nisi and Affidavit/Statement of Truth in support by first class post in a pre-paid envelope to the parties listed below. There is now produced and shown to me marked 'VR1' a true copy of the Charging Order Nisi, Affidavit/Statement of Truth in support and covering letters showing the addresses to which each letter was sent:-

MR T ROGAN  
MRS D ROGAN  
WOOLWICH BUILDING SOCIETY  
NATIONAL WESTMINSTER BANK PLC  
MASTERLOAN

3. In my opinion the said documents posted to each of the parties will have come to their knowledge within seven days after the date of posting. The said documents have not been returned by the Post Office through the Dead Letter Service.

Sworn by the above named VIVIENNE RICHARDSON  
At County Court, Manchester this    day of

BEFORE ME:

Officer of the Court appointed by the Judge to take Affidavit/Statement of Truths.

IN THE KINGSTON UPON THAMES COUNTY COURT

Case Number 1010495

BETWEEN

BARCLAYS BANK PLC

PLAINTIFF

AND

MR THOMAS ROGAN

DEFENDANT

This is the Exhibit marked 'VR 1' referred to in the Affidavit/Statement of Truth of Vivienne Richardson sworn before me this      day of  
2002.

BEFORE ME:

Officer of the court appointed by the Judge to take Affidavit/Statement of Truths.

Haley Handforth LLB (Hons) LAWYER  
46 Peterloo Street, Manchester M1 4LX  
Tel 061 2211 7123 Fax 061 2211 8945

Mr T Rogan  
567 St Peter's Avenue  
Worcester Park  
Surrey  
KT4

Our reference 207/CO/SW/7002535

Your reference

24 September 2002

Dear Sir

BARCLAYS BANK PLC V YOURSELF  
COUNTY COURT KINGSTON UPON THAMES  
CASE NUMBER 1010495

We enclose by way of service upon you documents relating to our clients' application for a Charging Order Absolute in respect of the property addressed as above, which has been listed for a Hearing in the Kingston Upon Thames County Court on 26 October 2002 at 12.00 noon.

Yours faithfully

H Handforth  
(Lawyer)

Enclosure

Haley Handforth LLB (Hons) LAWYER  
46 Peterloo Street, Manchester M1 4LX

Mrs D Rogan  
St Peter's Avenue  
Worcester Avenue  
Surrey  
KT4

Our reference: SF3/C/O/802535

Your reference

23 September 2002

Dear Madam

BARCLAYS BANK PLC V MR THOMAS ROGAN  
CASE NUMBER 1010495

We act on behalf of Barclays Bank PLC in the above claim. Our clients wish to enforce the Judgement obtained against the Defendant by means of a Charging Order.

We believe that you have an interest in the property which is the subject of the Charging Order application. We therefore enclose by way of service upon you a copy of the Charging Order Nisi containing the Hearing date for the Charging Order Absolute, together with the affidavit/statement of truth in support. Please acknowledge receipt.

Yours faithfully

H Handforth  
(Lawyer)

Enclosure

**Haley Handforth LLB (Hons) LAWYER**  
46 Peterloo Street, Manchester M1 4LX  
Tel 061 2211 7123 Fax 061 2211 8945

The Manager  
Woolwich Building Society  
Corporate Headquarters  
Watling Street  
Bexleyheath  
Kent  
DA6 7RR

Our reference: SF9/C/S/02535

Your reference:

23 September 2002

Dear Sir

BARCLAYS BANK PLC V MR THOMAS ROGAN  
CASE NUMBER 1010495

We act on behalf of Barclays Bank PLC in their claim against the above named in the County Court. Our clients have applied to enforce the Judgement obtained by way of a Charging Order.

We believe from our enquiries that you are a creditor of the above. We have been instructed by the Court to serve you with notification of our forthcoming application. We therefore enclose a copy of the Charging Order Nisi endorsed with the hearing date together with the Affidavit/Statement of Truth in support. Kindly acknowledge safe receipt.

Yours faithfully

H Handforth  
(Lawyer)

Enclosure

## OFFICE COPY

ISSUED BY THE CROYDON DISTRICT LAND REGISTRY SHOWING THE SUBSISTING ENTRIES ON THE REGISTER ON 11 JUNE 2002 UNDER S.113 OF THE 1925 ACT. THIS COPY IS ADMISSIBLE EVIDENCE TO THE SAME EXTENT AS THE ORIGINAL.

TITLE NUMBER: SY3601

EDITION date : 1 May 2002

Entry No.	A. PROPERTY REGISTER
1	THIS SECTION WILL CONTAIN DETAILS OF : THE BOROUGH WITH IN WHICH THE PROPERTY IS LOCATED.
2	THE BOUNDARIES OF THE PROPERTY
3	THE PARTICULARS OF THE LEASE(S) OR UNDER-LEASE(S)
4	THE LESSOR'S TITLE REGISTERED

Entry No.	B. PROPRIETORSHIP REGISTER TITLE ABSOLUTE
1	THIS SECTION WILL CONTAIN DETAILS OF : THE NAMES OF THOSE WHO HOLD TITLE TO THE PROPERTY E.G. <b>Mr Thomas D. Rogan and Mavis Rogan his wife, both of St Philips Avenue, Surrey</b>
2	THE NAMES IN FAVOUR OF ANY CAUTION THAT MAY EXIST e.g.. Barclays Bank

Entry No.	C. CHARGES REGISTER
1	THIS SECTION WILL CONTAIN DETAILS OF : COVENANT DETAILS AFFECTING THE PROPERTY <p style="text-align: right;">Cont.</p>

ISSUED BY THE CROYDON DISTRICT LAND REGISTRY SHOWING THE SUBSISTING ENTRIES ON THE REGISTER ON 11 JUNE 2002 UNDER S.113 OF THE 1925 ACT. THIS COPY IS ADMISSIBLE EVIDENCE TO THE SAME EXTENT AS THE ORIGINAL.

TITLE NUMBER: SY3601

Entry No.	C. CHARGES REGISTER cont.
	THIS SECTION WILL ALSO CONTAIN DETAILS OF :
2	STIPULATIONS BINDING ON THE PURCHASER
3	STIPULATIONS BINDING ON THE VENDOR AND PURCHASER
4	CHARGES ON THE PROPERTY - WHICH MAY NUMBER SEVERAL  E.G. (3 December 1990) REGISTERED CHARGE dated 5 November 1990 to secure the moneys including the further Advances therein mentioned.

\*\*\*\*\* END OF REGISTER\*\*\*\*\*

NOTE : A date at the beginning of an entry is the date on which the entry was made in the Register.

End of Extract: Law in Practice