

Qualified Lawyers Transfer Test

Test specification

Education and Training Unit

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Contents

Test specification	2
Head I – Property	3
Head II – Litigation.....	3
Head III – Professional conduct and accounts	3
Head IV – The oral head – principles of common law	3
Head I – Property	4
A. Conveyancing	4
B. Wills, probate and administration.....	5
Head II – Litigation	6
A. General	6
B. Civil Litigation.....	6
C. Criminal litigation	8
Head III – Professional conduct and accounts	10
1. Professional Conduct	10
2. Financial Services	11
3. Money laundering.....	12
4. Solicitors’ accounts.....	12
Head IV – The oral head – principles of the common law	13

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Test specification

The purpose of the test is to identify candidates who have a sound knowledge of the principles of common law and the distinctive features of practice as a solicitor **in England and Wales** relating to the major actions or transactions in common areas of practice.

To pass the test candidates should be able to:

- (a) identify problems arising from factual circumstances presented in question papers and deal appropriately with them
- (b) explain the reasons for their answers and support their reasoning by reference to authorities including statutes, cases and practice rules
- (c) where the test paper contains documents and/or forms, interpret completed documents or forms and discuss their legal and practical applications

The tests are not tests of memory. Candidates should, therefore:

- (a) be permitted to take authorised materials into the test with them
- (b) (except in relation to Head III) be provided with an indication of the broad topic areas in which they are to be tested a reasonable time before the test

The tests are not tests of practical aptitude. Candidates should, therefore, only be required to complete practice or document based tests as a means of testing their ability to identify and solve problems within the distinctive context provided by 'common law' procedures. Where the test requires candidates to extract information from documents and/or forms provided with the examination paper, those documents or forms should be provided to the candidates a reasonable time before the test. The specification provides an indication of the areas of knowledge that may be tested. This indication is not exhaustive and, subject to the overall aims of the test, as set out in this document, questions on topics not listed in the specification may be asked.

The written heads and the oral head should be set or conducted in the English language and must be answered in that language. A candidate who fails to satisfy the test provider that he/she possesses such knowledge of the English language as is necessary for the pursuit of the profession of a solicitor in England and Wales should not pass the test.

There should be no artificial barriers to taking the test. Candidates should not, therefore, be required to pass each Head of the test at one sitting, nor should they be prohibited from retaking the test on future occasions.

A candidate is required to pass each Head which the candidate's certificate of eligibility states are the subjects which that candidate is required to pass. Candidates' performance in any head may not be compensated by their performance in any other head.

Head I – Property

The test should be of three hours duration. An equal number of marks should be allocated to Part A and Part B. Questions in Part A should emphasise section 3. Candidates should be expected to answer questions on both parts of the test.

Head II – Litigation

The test should be of three hours duration. It should be divided into two parts, a civil part and a criminal part. Candidates should be allowed to answer questions in either part. Each part should test both evidence and procedure. No less than 15 per cent of the marks for the criminal part should be attributable to evidence issues.

Head III – Professional conduct and accounts

The test should be of three hours duration. It should be divided into two parts:

Part 1: Accounts (40 per cent of the available marks)

Part 2: Professional conduct, financial services and money laundering (60 per cent of the available marks)

Candidates must pass both parts of the paper. Financial services should carry at least 15 per cent of the available marks.

Candidates must be required to attempt all questions covering each of the four areas.

Head IV – The oral head – principles of common law

The test should be of 30 - 40 minutes duration. It should focus on a topic or topics to be selected in advance and notified to the candidate.

The purposes of the test are to test the candidate's understanding of the principles of the common law and linguistic competence.

Head I – Property

A. Conveyancing

Candidates should be able to demonstrate:

1. an understanding of the basic principles of land law and the manner in which they apply to conveyancing transactions
2. an understanding of the basic principles of contract law and the manner in which they apply to conveyancing transactions
3. a broad knowledge of conveyancing procedures

1. Candidates' knowledge of the basic principles of land law and the manner in which they apply to conveyancing transactions may be tested by questions on:

- (a) the nature of third parties' interests, the rights they generate and the steps that need to be taken to protect purchasers
- (b) the distinction between joint tenancies and tenancies in common and the manner in which co-ownership can be implied
- (c) mortgages
- (d) leases
- (e) easements and restrictive covenants

2. Candidates' knowledge of the basic principles of contract law and the manner in which they apply to conveyancing transactions may be tested by questions on:

- (a) the impact of the Law of Property (Miscellaneous Provisions) Act 1989
- (b) the characteristics of the contract required to effect a change of ownership
- (c) the nature of remedies available for breach of contract in the context of a conveyancing transaction

3. Candidates' knowledge of conveyancing procedure may be tested by questions that require them to demonstrate that they can:

- (a) given a typical range of conveyancing transactions, identify from the documentation:

the extent of the property
in whom the property will vest and in what capacity
the encumbrances which will subsist
any unremedied defects in title or matters affecting
enjoyment of the property

- (b) identify the steps needed to conduct pre-contract and pre-completion searches, identify difficulties arising from the searches and inquiries, including relevant planning considerations, and explain the legal effects of issues identified in the searches and inquiries
- (c) recognise implications of the Land Registry Rules and taxation of transactions including VAT, stamp duty and capital gains tax

B. Wills, probate and administration

The candidate should be able to demonstrate:

1. an understanding of the principles involved in wills and estate planning
2. an understanding of the principles involved in drafting testamentary documents (wills and codicils)
3. a broad understanding of the nature of estates
4. an ability to ascertain the value of estates and liabilities
5. an understanding of how to obtain a grant of representation
6. an understanding of the principles involved in winding-up estates

Candidates' knowledge of wills, probate and administration may be tested by questions that require them to demonstrate that they are able to:

- (a) identify the beneficiaries of a range of testate and intestate estates by applying relevant succession law and the rights of the family and dependants of the deceased under inheritance legislation
- (b) identify the formalities for the creation of, and the effect of the principal provisions in, a will
- (c) identify the powers and duties of personal representatives and possible problems in obtaining a grant of representation and in the administration of the estate
- (d) distinguish between the assets and liabilities to be excluded from (a) the estate, (b) the statement of assets and liabilities, by applying the relevant principles of inheritance tax and succession law
- (e) identify the circumstances in which the submission of an Inland Revenue account will be required and show an understanding of the information to be provided
- (f) describe the methods for transferring assets to beneficiaries and for varying the devolution of assets having regard to the effect of capital gains tax and inheritance tax

Head II – Litigation

A. General

Candidates should be able to demonstrate a working knowledge of the legal system.

Candidates' knowledge of the legal system may be demonstrated by questions on:

- (a) the characteristics and structure of the principal courts
- (b) the process of appeal
- (c) the allocation of business, court procedure and the function of judges and district judges in the county court and high court
- (d) the institution of proceedings, classification of offences, procedure at trial, the function of judges, juries and the powers of district judges and magistrates' courts' clerks

B. Civil Litigation

Candidates should be able to demonstrate:

- 1. a working knowledge of the principal statutes, substantive law and procedural regulations as they apply to selected causes of action
- 2. an understanding of the principles of evidence applicable to civil proceedings
- 3. knowledge of the means available to fund an action, when it would be appropriate to use particular forms of funding, and the consequences attaching to each particular form of funding
- 4. knowledge of the steps that need to be taken in the conduct of a selected range of civil proceedings in the county court and high court
- 5. knowledge of the major court relation documents
- 6. knowledge of the major court orders
- 7. knowledge of the rules that may apply after a hearing

1. Knowledge of selected causes of action may be examined by questions that test candidates' ability to:

- (a) identify and explain the application of the principal statutes and substantive law as they apply to actions in:
 - contract
 - tort
- (b) identify the courts that have jurisdiction in each case

- (c) identify the deadlines that apply in relation to each action, the effect of missing them and the procedures to be followed to extend them

2. Understanding of the principles of evidence applicable to civil proceedings may be demonstrated by questions that test candidates' ability to apply the rules of evidence dealing with:-

- (a) the burden, standard and methods of proof
- (b) the admissibility of evidence and the circumstances in which otherwise admissible evidence may be excluded
- (c) hearsay evidence
- (d) evidence of character
- (e) opinion evidence
- (f) examination, cross-examination and re-examination of witnesses

3. Knowledge of the means available to fund an action may be tested by questions that test the candidates' ability to:

- (a) explain the differences between the following types of funding:
 - legal aid
 - insurance
 - conditional fees
- (b) explain when each type of funding would be available and the consequences of adopting one rather than another

4. Knowledge of the steps to be taken in a selected range of civil proceedings in the county court and the high court may be examined by questions that test candidates' ability to:

identify pre action protocols, issue, service and response to appropriate process

5. Knowledge of the major court related documents may be examined by questions that test candidates' ability to identify issues arising from:

- an originating application
- statement of case
- affidavits or witness statements

6. Knowledge of the major court orders may be examined by questions that test candidates' ability to:

explain what is meant by originating application, interim judgements and their aftermath

7. Knowledge of the rules that may apply after a hearing may be examined by questions that test candidates' ability to:

- (a) describe different types of post-judgment orders and state when they would be appropriate
- (b) explain the process of taxation of costs
- (c) describe the rights of appeal, whether leave is necessary and the time scale for appeals

or

C. Criminal litigation

Candidates should be able to demonstrate knowledge and understanding of:

- 1. the key concepts of the criminal law
- 2. the principles of evidence applicable to criminal proceedings
- 3. the key elements of criminal procedure
- 4. the principal provisions of the Police and Criminal Evidence Act 1984 (PACE)

1. Knowledge of the key concepts of the criminal law may be examined by questions that test candidates' ability to:

- (a) identify the components of the following offences, including their specific defences and the elements which the prosecution must prove:
 - theft
 - handling stolen goods
 - taking a motor vehicle
 - assault occasioning actual bodily harm
- (b) explain the meaning of the following terms:
 - actus reus
 - mens rea
- (c) identify the characteristics of defences to the above offences
- (d) describe the modes of participation in crime of sole and joint principal and accomplice

2. Knowledge of the principles of evidence applicable to criminal proceedings may be examined by questions that test candidates' ability to apply the rules of evidence applicable to:-

- (a) the burden, standard and methods of proof
- (b) the admissibility of evidence, the rules regarding the competence and compellability of witnesses in criminal proceedings and the

circumstances in which otherwise admissible evidence may be excluded

- (c) the rule against hearsay and its exceptions
- (d) evidence of character and convictions
- (e) opinion evidence
- (f) corroboration
- (g) examination, cross-examination and re-examination of witnesses

3. Knowledge of the key elements of criminal procedure may be examined by questions that test candidates' ability to:

- (a) distinguish 'arrestable' from 'serious arrestable' offences
- (b) describe the basic sequence of events in criminal cases from the client's arrest/arrival at the police station, to conviction and sentence and the critical factors at each stage
- (c) state the different ways in which crimes may be tried

4. Knowledge of the principal provisions of the Police and Criminal Evidence Act (PACE) may be examined by questions that test candidates' ability to:

- (a) identify the major elements and requirements of PACE
- (b) demonstrate a knowledge of the major requirements of PACE in relation to the treatment of a suspect at the police station

Head III – Professional conduct and accounts

Candidates should be able to demonstrate an understanding of:

1. the fundamental principles of professional conduct, as set out in the Solicitors' Code of Conduct, with particular emphasis on the professional duties set out in rules 1-11 of the Code.
2. the purpose and scope of the financial services regulatory framework in general and its application in particular to solicitors' firms, including the role of the Financial Services Authority (FSA) and The Solicitors Regulation Authority and the requirements relating to financial matters
3. the broad principles of the legislation designed to counter money laundering and the Money Laundering Regulations 2003 (MLR), and the relevance of the money laundering regime for solicitors' firms
4. the Solicitors' Accounts Rules

1. Professional Conduct

Candidates' knowledge and understanding of the requirements of professional conduct may be tested by questions on:

- (a) the core duties of solicitors and other persons regulated by the Solicitors Regulation Authority;
- (b) client relations, including acting only when competent to do so, client care, terms of retainer, costs information and complaints handling;
- (c) conflicts of interests;
- (d) client confidentiality and disclosure, and the distinction between confidentiality and legal professional privilege;
- (e) supervision and management of a practice;
- (f) equality and diversity;
- (g) requirements relating to publicity, fee sharing and referrals of business;
- (h) professional undertakings and relations with third parties, and
- (i) professional conduct duties towards the court.

2. Financial Services

Candidates' knowledge and understanding of the purpose and scope of the financial services regulatory framework in general and its application in particular to solicitors' firms, including the role of the FSA and The Solicitors Regulation Authority, may be tested by questions on:

- (a) the implications of the Financial Services and Markets Act 2000 (FSMA), the Solicitors' Financial Services (Scope) Rules 2001 (Scope Rules) and the Solicitors' Financial Services (Conduct of Business) Rules 2001 (Conduct of Business Rules)
- (b) what is regulated by the FSA, the requirement for FSA authorisation; the consequences of carrying out a regulated activity without FSA authorisation and the method of obtaining such authorisation
- (c) what constitutes a regulated activity and the principal exclusions in the FSMA (Regulated Activities) Order 2001 (RAO)
- (d) the exemption in Part XX of the FSMA for professional firms not conducting "mainstream regulated activities" but carrying on "exempt regulated activities"
- (e) basic conditions which must be satisfied by firms wishing to undertake "exempt regulated activities" (Section 327 FSMA and FSMA (Non-Exempt Activities) Order 2001)
- (f) what constitutes a financial promotion and the principal exemptions in the FSMA (Financial Promotion) Order 2001
- (g) the type of regulated activities which may be undertaken under the Scope Rules and the consequences of a breach of the Scope Rules
- (h) the steps needed to comply with the Scope Rules, the Conduct of Business Rules and the practice rules relevant to regulated activities under the FSMA
- (i) the role of the solicitor in the financial services industry and the implications of the solicitors independence; the inter-relationship of financial services work with other areas of work in the firm
- (j) the steps needed to comply with the Conduct of Business Rules for exempt regulated activities
- (k) the need to maintain the required records and follow the firm's complaints procedure
- (l) how the receipts of commission should be dealt with under Rule 2.06 and the Scope Rules and the significance of the receipt of commission in connection with some of the exclusions in the RAO
- (m) when an activity "arises out of or is complementary to" a particular professional service to a particular client
- (n) how to identify the appropriate authorised person for use in any particular situation

3. Money laundering

Candidates' knowledge and understanding relevance of the money laundering regime for solicitors' firms may be tested by questions on:

- (a) the process of money laundering
- (b) the primary offences created by the legislation
- (c) the key requirements imposed upon solicitors by the Money Laundering Regulations
- (d) the recognition of circumstances in which solicitors might be assisting money laundering

4. Solicitors' accounts

Candidates understanding of the Solicitors' Accounts Rules may be tested by questions on:

- (a) the need to maintain separate office and client accounts
- (b) the need to pay interest to clients where appropriate
- (c) the obligations to make payments into the client's account and of the restrictions on making payments into a client's account
- (d) the way in which payments may be split for the purpose of payment into a client's account
- (e) what can be drawn from the client's account
- (f) the obligation to prepare accounts which show all dealings with the client's money and any other money dealt with through a client account
- (g) the powers of the Solicitors Regulation Authority to secure compliance with the Solicitors' Accounts Rules

Head IV – The oral head – principles of the common law

Candidates should be able to demonstrate:

1. knowledge and understanding of the principles of the common law
2. competence in the English language
1. **Candidates' knowledge and understanding of the principles of the common law may be tested by questions on:**
 - (a) candidates' understanding of the basic principles of land law and the manner in which they apply to conveyancing transactions
 - (b) candidates' understanding of the basic principles of contract law and the manner in which they apply to conveyancing transactions
 - (c) a working knowledge of the legal system
 - (d) a working knowledge of the principal statutes and substantive law as they apply to actions in:
 - contract
 - tort
2. **In answering the questions put by the examiners of the oral head, candidates will be expected to demonstrate the ability to use English appropriately, coherently, precisely and clearly.**