

Curriculum 2017/18

ICE Civil Engineering Law and Contract Management Examination

1. ICE Certificate Law and Contract Management (CLCM)

1.1 Module 1 Law Examination: 4th June 2018

Module 2 Contract Management Examination: 11th June 2018

1.2 ICE Advanced Certificate in Law and Contract Management (ACLCM)

Module 3 Advanced Contract Management Examination: 11th June 2018

2. Dispute Resolution Examinations

Adjudicator's Qualifying Examination: 29th January 2018

Arbitrator's Endorsement Examination 5th February 2018

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1 Introduction and General Information

ICE Law and Contract Management Examination

Overview

The aim of the ICE Civil Engineering Law and Contract Management Examination and of the ICE Approved courses that prepare candidates for the Examination is to promote a better understanding of contract conditions, the legal framework within which they operate, and the management procedures necessary for the successful completion of projects.

The Engineer and Project Manager and their assistants in civil engineering projects are, by the very structure of the Conditions of Contract and the one-off nature of most projects, very heavily involved in decisions, which can have a profound effect on the satisfactory outcome of the construction contract. It is necessary, therefore, that they have a clear understanding of the constraints within which those decisions must be made.

Similarly, the civil engineer working for a contractor needs to know the rights and obligations of the parties to the contract so that he/she may carry out their functions effectively.

Private study is necessary to prepare for the Examination in addition to attending a course of lectures.

Continuing Professional Development (CPD)

Studying for the Examination will assist applicants for Chartered Professional Review, particularly in developing their 'Commercial Ability'. The completion of an accredited ICE Law and Contract Management Course is likely to be suitable for up to 5 days approved training per Module at the discretion of your Supervising Civil Engineer, Sponsor or Employer.

Structure

The ICE Law and Contract Management Examination consist of three Modules.

- Module 1 - Law
- Module 2 - Contract Management
- Module 3 - Advanced Contract Management

Module 1 - Law

Module 1 is set on Part 1 of the Syllabus. The examination is divided into two sections. Section 1 covers the Law of Contract. Section 2 covers the Law of Tort (Delict in Scotland) and the Law of Evidence. There are no compulsory questions.

Candidates should aim to obtain sufficient legal background to enable them to understand the legal framework within which the Conditions of Contract sit. As a guide, the level of knowledge required is similar to that of the 'A' level examination in law.

Candidates will be expected to analyse problems as well as to write essays, and to show a reasonable grasp of the legal concepts involved. For example, a candidate should not just say 'in this situation X has a claim against Y' but identify the basis of the claim as breach of an express or implied term, or negligence or misrepresentation and so on. Candidates will also be expected to understand the types of evidence used to prove facts and the conditions under which it is admitted.

Candidates are expected to demonstrate some knowledge and application of the provisions of relevant statutes and the legal principles derived from case law. A candidate who has simply learned a set of rules will gain fewer marks than one who demonstrates an understanding of the flexibility and limits of the legal authorities.

Module 2 - Contract Management

Module 2 is set on Part 2 of the Syllabus. It is directed at the graduate engineer with practical experience since graduation. It covers the NEC family of contracts about which many graduates will have had little or no formal instruction. The examination is divided into two sections which cover the same syllabus. There are no compulsory questions.

The preparatory courses aim to give candidates the necessary detailed instruction in the basic principles of the NEC standard form of contracts in order to provide a sound foundation on which they will build their further experience. The examination tests the extent to which candidates have absorbed this instruction and does not expect a high level of practical experience in the application of the principles.

Module 3 – Advanced Contract Management

Module 3 is set on Part 3 of the Syllabus. Candidates are also required to demonstrate knowledge of the topics in the Syllabus' for Module 1 and Module 2.

Module 3 is set at a significantly higher level than Module 2. It is directed at the mid-career chartered engineer who has considerable experience of contractual issues since becoming chartered. It aims to provide a recognised qualification for mid-career chartered engineers; and to test and grade candidates seeking inclusion within the ICE list of Adjudicators.

The Module 3 examination is in two sections which each include a compulsory question. Section 1 covers the NEC3 and NEC4 family of contracts and Section 2 is based on "sample" contractual provisions from familiar non-NEC contracts such as the ICC, FIDIC and JCT.

The Module 3 examination is designed to demonstrate the practical experience that has been gained from solving day-to-day management problems on construction and engineering projects. The factual basis of the compulsory questions in the Module 3 examination will be familiar to the experienced civil

engineer and are therefore designed to test presentation, observation and ability to express thoughts clearly.

The ICE Law and Contract Management courses prepare candidates for the Module 3 examination and promote a better understanding of contractual conditions, the legal framework within which they operate and the management procedures necessary for the successful completion of projects.

Case and Reading Lists

To assist candidates in their preparations for Modules 1, 2 and 3 lists of important cases and of reading references have been provided at the end of this document. Candidates should consult web based resources for leading Court of Appeal cases on adjudication.

Examination under Scots Law

Candidates may elect to answer Modules 1, 2 or 3 with respect to either Scots or English Law and prepare for the examination accordingly. The topics and case lists included in the syllabus are applicable to English Law. Candidates wishing to answer with respect to Scots Law should contact the ICE Dispute Resolution Service (address on page 15).

The Examination

Date & Time

The examinations take place each year in June. Dates for 2018 are:

Module 1 Law Exam	4th June 2018 , 2.00pm – 5.20pm
Module 2 Contract Management Exam	11th June 2018 , 2.00pm – 5.20pm
Module 3 Advanced Contract Management Exam	11th June 2018 , 2.00pm – 6.00pm

Additional time

Candidates may apply in advance of Examination dates for additional time where they have a certified learning difficulty such as dyslexia. The additional allowance is 15 minutes for each hour of the examination time.

Stages of Completion

Candidates take Exams at any stage and in any order but at the times and dates determined by ICE. It is recommended that the Module 2 exams be completed before attempting Module 3.

Reference to documents during the examinations

- **Module 1 Law Exam**

Only unmarked copies of Statutes and Statutory Instruments may be taken in to the Examination.

- **Module 2 Contract Management Exam**

Candidates may consult unmarked copies of the, NEC3 and NEC4 **Engineering and Construction Contract (ECC)**, NEC3 and NEC4 **Engineering and Construction Subcontract (ECS)**, Statutes, **CDM Regulations and CESMM4**.

- **Module 3 Advanced Contract Management Exam**

Candidates may consult unmarked copies of **JCT, FIDIC, ICC Conditions of Contract Measurement version, ICC Conditions of Contract for Design and Construct and ICC Conditions of Contract Target Cost Version August 2011. CECA/FCEC form of Sub-Contract and NEC3 and NEC4 Engineering and Construction Contract (ECC), NEC3 and NEC4 Engineering and Construction Subcontract (ECS), NEC3 and NEC4 Engineering and Construction Short Subcontract (ECSS), Statutes, CDM Regulations and CESMM4**.

- **Dispute Resolution Examinations**

For the Arbitrators' Endorsement Paper and Adjudicators' Qualifying Examination reference may be made to any unmarked document.

Editions of Contract Documents

The relevant versions of Contracts will be those editions current on the 1st August preceding the Examination. Amendments to the NEC3 and NEC4 family of documents are available from the NEC. Exam candidates are to answer Module 2 based on NEC3 and NEC4. Exam candidates will be expected to answer Module 3 questions on both the NEC3 and NEC4 family of contracts and "sample" contractual provisions from familiar non-NEC contracts (ICC, FIDIC and JCT)

Application

Application forms are available on the ICE website or from the Dispute Resolution Service at the ICE. Those attending approved courses can usually obtain application forms from their course tutors. The closing date for receipt of completed application forms to sit Examinations at one of the standard centres in the UK is normally one month before the exam date of Examination.

Approved Courses

The Institution gives particular attention to the content and quality of courses specifically designed for preparation for this Examination and, if satisfied, approves a course. Solicitors and other appropriately qualified professionals who have a working knowledge of the construction industry give lectures on ICE approved courses. Course lectures will relate to the practical problems in contract, tort or delict, and evidence, which the civil engineer may encounter in his work, rather than esoteric discussion on broader principles of law that would be more suitable for law degree students.

Eligibility

Although the Syllabus has been designed with civil engineers in mind, enrolment for the Examination is not restricted to members of the ICE.

Examination Centre's in the UK and Ireland

Universities which run ICE approved courses also act as Examination Centres, except in the London area where the Examination is held at the Institution. (Candidates tick on the application form the centre at which they wish to sit the exam). Those who wish to sit the Exam in one of the ICE regional offices i.e. Glasgow may do so by special arrangement. Contact the ICE for details (see page 15).

UK Examination fee

The examination fee for non-members of the ICE is £150.00 Per Module and £300.00 for 2 Modules. For ICE members the fee is £125.00 per Module and £250.00 for 2 Modules at ICE Exam centres in the UK. The fee is non-refundable.

Overseas candidates - Examination venues, Examination fee

In addition to Examination Centres in the UK and Ireland, it can usually be arranged for Members of the Institution to sit the Examination overseas, provided they give the ICE Dispute Resolution Services 3 months' notice of their wish to do so. The overseas fee is the same as the UK fees for members and non-members of the ICE. Institution Country Representatives are often able to organise accommodation for the Exam. However, in the event that this is not possible and an alternative is sought (e.g. through the British Council), the candidate is required to pay the additional costs that arise. The fee is non-refundable.

Marking and Results

Results

The results of the Examination are emailed to candidates usually around late September.

Certificates

Candidates who pass both Module 1 and 2 will receive The ICE Certificate in Law and Contract Management (CLCM). Candidates who pass either Module 1 or Module 2 will receive a letter.

Candidates who demonstrate exceptional knowledge in Modules 1 and 2 will have their certificate endorsed “Passed with DISTINCTION” in the appropriate subject.

Marking Structure

For guidance purposes only, the normal pass mark for Module 1 is not less than 40%, for Module 2 not less than 50%, and for Module 3 not less than 65%. A distinction mark for Module 1 is not less than 70%, for Module 2 not less than 75%, and for Module 3 not less than 85%.

Marking and Moderation

The Examiner who has set the questions for a section, marks scripts anonymously. The ICE Law and Contract Management Examination Committee then moderate every script anonymously. The Moderators take particular care to ensure that border line scripts are correctly graded, especially those which have failed marginally, have been correctly marked and moderated, and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail a Module, they will have failed the Examination and will be required to sit the Module again if they wish to obtain a pass.

Past Examination Papers and Examiners’ Reports

Past Examiners’ Reports are available free of charge on the ICE web site. Each Report contains a Moderator’s Report, an Examiner’s Report for each section of the Examination, the Examination Papers for that year, and points for the answer to each question written by the Examiner who set the question.

Qualifications

ICE Registers of Arbitrators, Adjudicators, Conciliators and Construction Mediators and Dispute Resolution Board Members

ICE Dispute Resolution Service maintains separate Registers of Arbitrators, Adjudicators, Conciliators and Construction Mediators, and Dispute Resolution Board Members. The requirements and application procedures for those wishing to be considered for inclusion in these Registers are available from the ICE web site or the ICE Dispute Resolution Service. One of the requirements for inclusion on any of the Registers is a pass in Modules 1 and 3 of the Examination.

2.0 Dispute Resolution Examinations

2.1 The ICE Adjudicator's Qualifying Examination

Overview

Candidates will normally have passed the ICE's Examination in Civil Engineering Law and Contract Management Modules 1 and 3 (or have reached an equivalent standard) and are required to be qualified construction professionals with considerable practical experience in contract management, claims procedures, estimating, costing, and fixing of rates. The Examinations are not restricted to Members of the ICE.

As well as testing candidates' knowledge of their own discipline, the Examination also looks for a sound knowledge of the law and procedure of adjudication, in particular as it applies to references under the ICC Conditions of Contract (formerly known as ICE Conditions of Contract) and their variants, NEC3 and NEC4 Contracts and the ICE Adjudication Procedure.

Guidance is given on the depth to which candidates should study the Syllabus. Candidates are expected to know the basic principles underlying each heading and to be acquainted with the reasoning behind the main leading cases by which the law has been formulated or changed. The details of such cases need not be learned by rote and a candidate will not necessarily be penalised for incorrectly citing the name of a case provided that it is clear which case is intended.

Structure

The ICE Adjudicators' Qualifying Examination consists of two Papers. The first Paper is a three hour open book, examination requiring the writing of an enforceable decision. The second Paper is a 2 hour closed book, procedural examination. Candidates will be required to answer questions on both ICC Conditions of Contract and NEC3 and NEC4 Contracts.

Date and Time

The date of this year Adjudicator's Qualifying Examination is the 29th January 2018.

Reference to Documents during the Examination

Candidates for the Adjudicator's Qualifying Examination may bring any unmarked documents into the first Paper examination room.

Edition of Contract Documents

The relevant editions of Contracts will be those editions of NEC3 and NEC4 current on the 1st August preceding the Examination. ICC Conditions of Contract Measurement Version dated August 2011, the ICC Conditions of Contract – Design and Construct.

Examination under Scots Law

Candidates may elect to answer the Adjudicators' Qualifying Examination with respect to either Scots or English Law and prepare for the examination accordingly. The topics and case lists included in the syllabus are applicable to English Law.

Application

Application forms are available on the ICE website and from the ICE Dispute Resolution Service at the ICE (address on page 15).

The closing date for receipt of application forms to sit the exam at the ICE is normally one month before the exam.

Examination Fee

The examination fee is £200.

Marking and Results

Results

The results of the examination are emailed to all candidates around mid-April.

Certificates

A certificate signed by the Law and Contract Management Examination Committee Chairman will be sent to those successful in passing the Adjudicators Qualifying Exam.

Marking Structure

For guidance purposes the normal pass mark for the Adjudicators' Qualifying Examination is 65%.

Marking and Moderation

Scripts are double marked anonymously by the Examiners who have set the questions. A panel of Moderators then moderates every script anonymously. The Moderators take particular care to ensure that scripts which have not achieved a pass mark, especially those that have failed marginally, have been correctly marked and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail the Examination they will be required to sit the Paper again if they wish to obtain a pass.

Past Exam Papers

Past Papers are available from the ICE Dispute Resolution Service at the ICE (address on page 15)

2.2 The ICE Arbitrator's Endorsement Examination

Qualifications

The ICE Register of Arbitrators is maintained by ICE Dispute Resolution Service. One of the requirements for inclusion in the List of Arbitrators is a pass in the ICE Arbitrators' Endorsement Examination

Overview

This Endorsement Examination Syllabus is intended to supplement the Chartered Institute of Arbitrators syllabus for Domestic Arbitration Modules 1, 2, 3 and 4. Candidates must have passed the Examination in these Modules to be eligible to sit the Endorsement Examination.

Candidates will normally have passed the ICE's examination in Civil Engineering Law and Contract Management Examination Modules 1 and 3 (or have reached an equivalent standard) and are required to be qualified construction professionals with considerable practical experience in contract management, claims procedures, estimating, costing, and fixing of rates. The examinations are not restricted to Members of the ICE.

As well as testing candidates' knowledge, the Examination also looks for a sound knowledge of the law and procedure of arbitration, in particular as it applies to references under the ICC Conditions of Contract (formerly known as the ICE Conditions of Contract) NEC3 and NEC4 Contracts and the ICE Arbitration Procedure.

Guidance is given on the depth to which candidates should study the Syllabus. Candidates are expected to know the basic principles underlying each heading and to be acquainted with the reasoning behind the main leading cases by which the law has been formulated or changed. The details of such cases need not be learned by rote and a candidate will not necessarily be penalised for incorrectly citing the name of a case provided that it is clear which case he means.

Structure

The ICE Arbitrators' Endorsement Examination consists of one Paper of three and a half hours duration. The Paper is divided into three compulsory questions. Question one should be given an hour and a half to complete. The other two questions should be afforded 45 minutes each. The remaining thirty minutes are provided for reading but may also be used as additional time in which to answer questions if the candidate chooses.

Date and Time

The date for this year's Arbitrators' Endorsement Examination is the 5th February 2018

Reference to Documents during the Examination

Candidates for the Endorsement Examination may bring any unmarked documents into the examination room.

Editions of Contract Documents

The relevant editions of Contracts will be those editions of NEC3 and NEC4 current on the 1st August preceding the Examination. ICC Conditions of Contract Measurement Version dated August 2011, the ICC Conditions of Contract – Design and Construct and the Professional Services Contract both dated June 2005 will be used.

Examination under Scots Law

Candidates may elect to answer the Endorsement Examination with respect to either Scots or English Law and prepare for the Examination accordingly. The topics and case lists included in the Syllabus are applicable to English Law.

Application

Application forms are available on the ICE web site and from the ICE Dispute Resolution Services. The closing date for receipt of application forms to sit the Examination at the ICE is one month before the Examination. In certain circumstances an application will be accepted after that date.

Examination Fee

The Examination fee is £200 for all candidates.

Marking and Results

The results of the Examination are posted to all candidates around mid-May

Certificates

A certificate signed by the Law and Contract Management Examination Committee Chairman will be sent to those successful in passing the Endorsement Examination.

Marking Structure

For guidance purposes the normal pass mark for the Endorsement Examination is 65%.

Moderation and Appeals

Scripts are double marked anonymously by the Examiners who set the questions. A panel of Moderators then moderates every script anonymously. The Moderators take particular care to ensure

that scripts which have not achieved a pass, especially those that have failed marginally, have been correctly marked and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail the Examination they will be required to sit the Examination again if they wish to obtain a pass.

Past Exam Papers

Past Papers are available from the ICE Dispute Resolution Service (address on page 15).

Qualifications

The ICE Register of Arbitrators is maintained by ICE Dispute Resolution Service. One of the requirements for inclusion in the List of Arbitrators is a pass in the ICE Arbitrators' Endorsement Examination.

3.0 Addresses

3.1 General

Contact: Carol Brooks

ICE Dispute Resolution Service

The Institution of Civil Engineer

One Great George Street

Westminster, London SW1P 3AA

Direct Line: 020 7665 2116 Email: contractsanddisputes@ice.org.uk or carol.brooks@ice.org.uk

The following documents on the Law and Contract Management Examination and the Endorsement Examination are available from the ICE website: Curriculum, past Examination Papers, Examiners Reports (these include a Moderators' Report, an Examiner's Report for each section of the examination, Examination questions and points for answer written by the Examiner who set the questions). Information and preparatory material regarding answering Module 1 according to Scots Law and application forms for the Examination.

Contact ICE Dispute Resolution Services, on 020 7665 2116/2224 or at the above address for information about the ICE Registers of Arbitrators, Adjudicators, Conciliators and Construction Mediators, and Dispute Resolution Board Members.

Chartered Institute of Arbitrators

International Arbitration Centre

12 Bloomsbury Square

LONDON

WC1A 2LP

Tel: 020 7421 7444

Fax: 020 7404 4023

Email: info@arbitrators.org

3.2 ICE Approved List of Courses

The following is the list of organisations providing approved ICE Law and Contract Management Courses.

ICE West Midlands

Contact: Daniel Stanyard
Regional Coordinator
Institution of Civil Engineers
Birmingham Science Park Aston
Faraday Wharf - Holt Street
Birmingham - B7 4BB
T: +44 (0) 7500 797218
E: daniel.stanyard@ice.org.uk

University of Leeds

Contact: Jenny Carter
CPD, Conference & Events Co-ordinator
CPD, Conference & Events Unit
Engineering Research & Innovation Service
Faculty of Engineering,
School of Civil Engineering, Room 209
University of Leeds
Leeds, LS2 9JT, UK
T: +44 (0)113 343 8104
E: cpd@engineering.leeds.ac.uk

ICE North West

Contact: Janice Parkinson
Regional Coordinator
Institution of Civil Engineers
Floor 2, Suite 2.06
Neo
9 Charlotte Street
Manchester
M1 4ET
T: +44 (0) 7976 313656
E: Janice.Parkinson@ice.org.uk

Quigg Golden Limited Belfast

Contact: David McNeice – Course leader

Course Leader
18-22 Hill Street
Cathedral Quarter
Belfast
BT1 2LA

T: +44 (0)28 90 321022

E: belfast@quigggolden.com

Quigg Golden Limited- Dublin

Contact: David McNeice – Course leader

31 Waterloo Road
Ballsbridge
Dublin 4
DO4 EOE4

T: +353(0)16766744

E: dublin@quigggolden.com

Quigg Golden Limited- Maidstone

Contact: David McNeice – Course leader

1 Tonbridge Road
Maidstone
Kent
ME16 8RL

T: 020 7022 2192

E: london@quigggolden.com

Scotland

Pinsent Masons LLP Edinburgh

Contact: Doug Stewart

Course Leader
Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9AQ

T: +44 (0)131 777 7000

E: Doug.Stewart@pinsentmasons.com

4.0 Syllabus

4.1 Level of knowledge expected for the ICE Law and Contract Management Exam

Module 1 – Law Exam

Candidates are expected to:

- Analyse the rights of parties in a factual matrix
- Make reference to the main legal authorities
- Explore alternative outcomes to demonstrate a depth of understanding of the law
- Draft answers in good English in essay style

Module 2 – Contract Management Exam

Candidates are expected to:

- Demonstrate a knowledge and understanding of pre-tender processes and the general organisations and relationships in the construction industry
- Analyse critically parties' rights in the standard forms of construction contracts in a factual matrix
- Explore alternative outcomes to demonstrate a depth of understanding of construction contracts
- Draft answers in good English in essay style

Module 3 – Advanced Contract Management Exam

Candidates are expected to:

- Demonstrate an understanding of pre-tender processes and the general organisation and relationships in the construction industry
- Analyse critically in depth parties' rights in the standard forms of construction contracts in a factual matrix
- Analyse complex situations where multiple problems impact upon one another.
- Explore alternative outcomes to demonstrate a depth of understanding of construction contracts
- Demonstrate an understanding of general law where it applies to construction
- Use relevant case law to qualify the answers given
- Draft answers in good English in essay or report style
- Candidates are advised to practice completing questions from past Papers prior to the examination to ensure they can complete the Examination requirements to the time allocated.

ICE Civil Engineering Law and Contract Management Examination Syllabus Part 1 - Module 1 – Law

The syllabus for Module 1 refers to topics under the Law of England and Wales. Candidates may elect to sit the Examination under the Law of Scotland in which case the equivalent legal topics will apply.

Items marked with an asterisk* will not be examined in detail although candidates will be expected to have some general understanding of their relevance

<u>PRINCIPLES</u>	
	Statutes and Subordinate Legislation Administrative Structure of the Courts Case Law and the Doctrine of Precedent
<u>THE LAW OF CONTRACT</u>	<i>Section 1 of the case list on pages 35-40 applies</i>
Formation of the Contract	
Offer and acceptance	Invitation to treat, tenders, negotiations, acceptance by conduct and performance, battle of the forms, communication of acceptance, termination of offer.
Consideration	Maxims and rules of consideration, formality of contract and deeds.
Intention to create Legal Relations*	
Terms within a Contract	
Express Terms	Parol evidence rule, and its exceptions, representations, collateral contracts, distinction between conditions and warranties.
Implied Terms	Terms implied by the courts, terms implied by statute.
Exemption Clauses	Incorporation, construction of exemption clauses, contra proferentem rule, Unfair Contract Terms Act 1977. The Consumer Rights Act 2015.
Defects within a Contract	Absence of required formality; contracts required to be under seal, in writing, effect of non-compliance.
Misrepresentation	Definition, nature of statement, inducement, Misrepresentation Act 1967, types of misrepresentation, effect of misrepresentation and remedies.

Mistake*	
Privity of Contract	The doctrine and its effect (Contracts (Rights of Third Parties) Act 1999*).
Assignment	The effect of assignment compared with novation; provisions for assignment in standard form contracts.
Agency	Actual authority, apparent authority, usual authority.
Discharge of Contract	
Performance	Entire contracts, severable contracts, prevention of performance, substantial performance, time of performance, sub-contracting.
Agreement to discharge or vary a contract	Formality, requirement of consideration, waiver.
Frustration*	On impossibility, illegality, self-induced frustration, effects of frustration.
Breach	Actual breach, anticipatory breach, repudiatory breach, breach of warranty.
Bankruptcy or Liquidation*	
Remedies	Damages, general principle, remoteness, quantification, mitigation; set-off and abatement; liquidated damages; interest, *specific performance; *injunctions; unjust enrichment; limitation periods, Limitation Act 1980, payment provisions of the Housing, Grants, Construction and Regeneration Act 1996 as amended 2011.

<u>THE LAW OF TORT</u> (DELICT IN SCOTLAND)	<i>Section 2 of the case list on pages 41-46 applies</i>
The Nature of Tort	
Vicarious Liability	
Breach of Statutory Duty	
Negligence	
Elements of Negligence	Duty of care, breach of duty, causation, remoteness.
Standard of Care	Professional vs homeowner.
Negligent Misstatement	The rule in Hedley Byrne v Heller & Partners.
Defences	Contributory negligence; Law Reform (Contributory Negligence) Act (1945); <i>Novus actus interveniens</i> ; <i>volenti non fit injuria</i> .

Remedies	Injunctions; damages; mitigation of loss; remoteness of damage; policy considerations*; pure economic loss.
Limitation of Actions	Limitation Act 1980; Latent Damage Act 1986.
Nuisance	
Rule in Rylands v Fletcher	
Remedies	
Dangerous Premises	
The Occupiers Liability Acts 1957 and 1984	Who is the Occupier; common duty of care; nature of damage recoverable; defences, contributory negligence, effect of knowledge of danger; lawful visitors, under contract, invitees; persons other than invitees; occupier's liability for independent contractors, trespassers, damages for trespassers.
Employer's Liability	
Employer's Liability to Third Parties	Vicarious liability, its nature, employee distinguished from independent contractor, acts carried out in course of employment.
Employer's Common Law Duties to Employees	Competent staff proper plant, appliances and premises, safe system of work, contributory negligence.
Employer's Liability for Independent Contractors	
Employee's duty to Employer	Duty to take reasonable care.

<u>HEALTH AND SAFETY</u>	
Factories Act 1961 as amended	Purpose, method of implementation, the Construction Regulations.
Health and Safety at Work etc. Act 1974 as amended	Objectives, Health and Safety Regulations, Codes of Practice, Company Safety Policies, safety officers, representatives and committees. Health and Safety Inspectorate, Inspectors' Powers, Prohibition and Improvement Notices.
Construction (Design and Management) Regulations 2016	

<u>THE LAW OF EVIDENCE</u>	
Types of Evidence	Physical, documents, oral
Witness	Fact and opinion; competence under oath or affirmation; legal fitness to give testimony
Admissibility	Whether a tribunal is bound to receive the evidence
Relevance	Probative value related to the matter in question
Weight	Balance or preponderance of evidence; hearsay
Proof	Civil Standard and Legal and Evidential burden

<u>STATUTES</u>	Relevant Statutes as included elsewhere above
Unfair Contract Terms Act 1977, The Consumer Rights Act 2015	
Misrepresentation Act 1967	
The Occupiers Liability Acts 1957 and 1984	
Law Reform (Contributory Negligence) Act (1945)	
Factories Act 1961	
Health and Safety at Work etc. Act 1974	
Limitation Act 1980	
Latent Damage Act 1986	
Housing, Grants, Construction and Regeneration Act 1996 Part II as amended by the Local Democracy, Economic Development and Construction Act 2009 The Scheme for Construction Contracts	
Construction (Design and Management) Regulations 2015	
Contracts (Rights of Third Parties) Act 1999	
The Late Payment of Commercial Debt (Interest) Act 1998 as amended	

ICE Civil Engineering Law and Contract Management Examination

Syllabus Part 2 - Module 2 – Contract Management NEC3

A candidate’s understanding and application of topics in the Syllabus will be tested against the following standards:		
Standard	Level of Knowledge	How the Standard is reflected in the Examination Paper
1	Detail	A sound grasp of the detail is required. A whole question may be devoted to the topic.
2	General	A good general knowledge of the topic is required. Half a question, at most, will be devoted to the topic.
Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract		

Subject	Standard
Law - as Syllabus for Module 1 - Contract and Tort	1
Promotion, Tendering Procedure and Documentation	
Authority for the Project; client and project manager’s investigations	2
Bills of Quantities, Methods of Measurement CESMM4	2
Alternative tenders and the Assessment of tenders	2
Acceptance of tenders and Notification of results	2
Miscellaneous	
Letters of intent; Cash flow	2
NEC 3 Contracts	
General Matters	
Main Options A to F – main features and respective advantages	1
Secondary Options ‘X’ and ‘Y’	2
Works Information	1
Site Information	2
Contract Data: Part 1	1
Contract Data: Part 2	1
Duties and responsibilities of the Project Manager	1
Organisation of the Project Manager’s site staff	2
Duties and responsibilities of the Supervisor	2

Subject	Standard
Organisation of the Contractor's site staff	2
Section 1 – General	2
Clause 16 Early Warning:	1
Section 2 – The Contractor's main responsibilities	2
Clauses 21, 22 Contractor's Design	1
Clause 26 Subcontracting	1
Section 3 – Time	2
Clause 30 Starting, Completion, Take Over and Key Dates	1
Clauses 31, 32 Programme and Revisions	1
Section 4 – Testing and Defects	1
Clause 43.3 Defects Certificate	2
Section 5 – Payment (Main Options A to F)	1
Section 6 – Compensation Events	1
Section 7 - Title	2
Section 8 – Risk and Insurance	2
Section 9 – Termination	2
Dispute Resolution – W1 and W2	2
Schedule of Costs Components	2
Shorter Schedule of Contract Components	2
Other NEC3 Contracts	
Engineering and Construction Sub-contract	2
Engineering and Construction Short Contract	2
Engineering and Construction Short Sub-contract	2
Professional Services Contract	2
Term Service Contract	2

Subject	Standard
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Syllabus Part 2 - Module 2 – Contract Management NEC4

NEC 4 Contracts	
General Matters	
Main Options A to F – main features and respective advantages	1
Secondary Options 'W', 'X' and 'Y'	1
W1, W2, W3	2
X1, 2, 3 X4 X5-7 X8, 9 X10 X11 X12 X13,14, 16, 17 X15 X 18 X20 X21 X22	1
Y(UK)1, Y(UK)2, Y(UK)3	1
Scope	1
Site Information	2
Contract Data: Part 1	1
Contract Data: Part 2	1
Duties and responsibilities of the Project Manager	1
Organisation of the Project Manager's site staff	2
Duties and responsibilities of the Supervisor	2
Organisation of the Contractor's site staff	2
Duties and responsibilities of the Contractor and its staff	2
Section 1 – General	2
Clause 11 Identified and Defined Terms	
Clause 13 Communications	1
Clause 15 Early Warning	1
Clause 16 Contractor's Proposals	1
Clause 17 Requirements for instructions	1
Section 2 – The Contractor's main responsibilities	2
Clauses 21, 22 Contractor's Design	1
Clause 24 People	2
Clause 26 Subcontracting	1
Section 3 – Time	1
Clause 30 Starting, Completion, Take Over and Key Dates	1
Clauses 31, 32 Programme and Revisions	1
Clauses 33 – 35 Access, Instructions to stop/not start, Take	1

Over	
Section 4 – Testing and Defects	1
Clause 40 Quality management system	1
Clauses 41, 42 Tests and inspections	2
Clauses 44, 45 Correcting and Accepting defects	1
Clause 46 Uncorrected Defects	1
Section 5 – Payment (Main Options A to F)	1
Clause 50 Assessing the amount due	1
Clause 51 Payment	1
Clause 52 Defined Cost	1
Clause 53 Final assessment	1
Section 6 – Compensation Events	1
Clause 60 Compensation events	1
Clause 61 Notifying compensation events	1
Clause 62 Quotations for compensation events	1
Clauses 63, 64 Assessment	1
Clauses 65, 66 Proposed instructions, implementing	1
Section 7 - Title	2
Section 8 – Risk and Insurance	2
Clauses 80, 81 Client and Contractor liabilities	2
Clauses 83 – 86 Insurances	2
Section 9 – Termination	2
Dispute Resolution – W1, W2 and W3	2
Schedule of Costs Components	2
Shorter Schedule of Contract Components	2
Other NEC4 Contracts	
Engineering and Construction Sub-contract	2
Engineering and Construction Short Contract	2
Engineering and Construction Short Sub-contract	2
Professional Services Contract (and short)	2
Term Service Contract (and short)	2

ICE Civil Engineering Law and Contract Management Examination

Syllabus Part 3 - Module 3 – Advanced Contract Management NEC3

A candidate’s understanding and application of topics in the Syllabus will be tested against the following standards:

Standard	Level of Knowledge	How the Standard is reflected in the Examination Paper
1	Detail	A sound grasp of the detail is required. A whole question may be devoted to the topic.
2	General	A good general knowledge of the topic is required. Half a question, at most, will be devoted to the topic.

Candidates are also be required to demonstrate knowledge of the topics in the Syllabus’ for Module 1 and Module 2

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract

Subject	Standard
<u>GENERAL</u>	
Promotion, Tendering Procedure and Documentation	
Authority for the Project; client and project manager’s investigations	1
Entering and creating a contract	1
Miscellaneous (Key Contract Principles)	
Equitable Estoppel	1
Collateral Warranties	1
Remoteness	1
Mitigation	1
Subject	
Quantum merit	2
Contracts (Rights of Third Parties Act) 1999	2
Conflict of laws	2
Late Payment of Commercial Debt (Interests) Act 1998	1
Termination at Common Law as well as in contract termination provisions.	1
Miscellaneous (Ancillary Contract Principles)	

Subject	Standard
Contra Proferentum	1
Misrepresentation	1
Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy Economic Development and Construction Act 2009)	2
Construction Contract Concepts	
Completion date control	1
Payment mechanisms	<ul style="list-style-type: none"> • Bills of Quantities 1
Varying the Works	<ul style="list-style-type: none"> • Instructing & controlling change • Valuing change 1
Control of Quality of Work	1
Miscellaneous performance obligations	<ul style="list-style-type: none"> • Programming • Control of constraints 1
Employer claims	<ul style="list-style-type: none"> • Delay Damages • Cross-setoff 1
Design and Build	<ul style="list-style-type: none"> • Fit for Purpose • Reasonable Skill and Care 1
NEC 3 Engineering and Construction Contract	
Main Options A-F – main features and respective advantages	1
Secondary Options X1 – X7, X12 – X18, X20, Y (UK) 2, Y (UK) 3, Z	2
Works Information	1
Site Information	1
Contract Data: Part 1	2
Contract Data: Part 2	2
Section 1 – General	1
Clause 11.2 Definitions	2
Clause 13 – comms. 13.1, 13.2, 13.7	
Clause 14(2) Delegation of responsibilities	2
Clause 16 Early Warning	1
Section 2 – The Contractor's main responsibilities – 20.1	1
Clause 23, 11.2(7) Design of Equipment	2
Clauses 23, 27 Responsibility for design and safety	2
Section 3 – Time	1
Clause 30 Starting, Completion and Key Dates	1

Subject	Standard
Clauses 31, 32 Programme and Revisions	1
Clauses 30.2, 35 Certification and Take Over	1
Section 4 – Testing and Defects	1
Clause 43.3 Defects Certificate	2
Section 5 – Payment (Main Options A to F) – PWDD, SCC, SSCC etc. Audit regime – 52.2	1
Clauses 50.5, 51 Payment Certificates	1
Section 6 – Compensation Events	1
Clause 60 Compensation Events (notifying, assessment)	1
Clause 61 Notifying compensation events	1
Clause 62 Quotations for compensation events	1
Clauses 63, 64 Assessing compensation events	1
Schedule of Costs Components	1
Other NEC3 Contracts	
Engineering and Construction Sub-contract	2
Engineering and Construction Short Contract	2
Engineering and Construction Short Sub-contract	2
Professional Services Contract	2
Term Service Contract	2

Syllabus Part 3 - Module 3 – Advanced Contract Management –NEC4

Termination at Common Law as well as in contract termination provisions.	1	
Miscellaneous (Ancillary Contract Principles)		
Contra Proferentum	1	
Misrepresentation	1	
Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy Economic Development and Construction Act 2009)	2	
Construction Contract Concepts		
Completion date control	1	
Payment mechanisms	<ul style="list-style-type: none"> • Bills of Quantities 	1
Varying the Works	<ul style="list-style-type: none"> • Instructing & controlling change 	1

	<ul style="list-style-type: none"> Valuing change 	
Control of Quality of Work		1
Miscellaneous performance obligations	<ul style="list-style-type: none"> Programming Control of constraints 	1
Client claims	<ul style="list-style-type: none"> Delay Damages Cross-setoff 	1
Design and Build	<ul style="list-style-type: none"> Fit for Purpose Reasonable Skill and Care 	1
NEC4 Engineering and Construction Contract		
Main Options A-F – main features and respective advantages		1
Secondary Options X1 – X7, X12 – X8, X9, X10, X18, X20, X21, X22, Y(UK)1, Y (UK) 2, Y (UK) 3, Z		2
Scope		1
Site Information		1
Contract Data: Part 1		2
Contract Data: Part 2		2
Section 1 – General		1
Clause 11.2 Definitions		2
Clause 13 – comms. 13.1, 13.2, 13.7		
Clause 14.2 Delegation of responsibilities		2
Clause 15 Early Warning		1
Section 2 – The Contractor’s main responsibilities – 20.1		1
Clause 23, 11.2(9) Design of Equipment		2
Clauses 23 and 27 Responsibility for design and safety		2
Section 3 – Time		1
Clause 30 Starting, Completion and Key Dates		1
Clauses 31, 32 Programme and Revisions		1
Clauses 30.2, 35 Certification and Take Over		1
Section 4 – Testing and Defects		1
Clause 43.3 Defects Certificate		2
Section 5 – Payment (Main Options A to F) – PWDD, SCC, SSCC etc. Audit regime – 52.2		1
Section 6 – Compensation Events		1
Clause 60 Compensation Events		1
Clause 61 Notifying compensation events		1
Clause 62 Quotations for compensation events		1

Clauses 63, 64 Assessing compensation events	1
Clause 65 Proposed instruction	1
Clause 66 Implementing compensation events	1
Schedule of Costs Components	1
Other NEC4 Contracts	
Engineering and Construction Sub-contract	2
Engineering and Construction Short Contract	2
Engineering and Construction Short Sub-contract	2
Professional Services Contract (and short)	2
Term Service Contract (and short)	2

4.2 ICE Dispute Resolution Examinations

Syllabus for ICE Adjudicators' Qualifying Examination

Candidates are expected to have a 'Working Knowledge' of the topics in the Syllabus demonstrated by competence in the application of the principles involved.

A question may be devoted to a single topic in the Syllabus.

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract and Procedures

Subject	
Syllabuses for Modules 1, 2 and 3	
Dispute Resolution Framework	
Housing, Grants, Construction and Regeneration Act 1996 Part II as amended by the Local Democracy, Economic Development and Construction Act 2009	
Scheme for Construction Contracts Regulations 1998 as amended 2011	
Exclusion Orders	
Leading cases on Adjudication	
ICE Adjudication Procedure 2011	
Enforcement of Adjudicator's Decision	
NEC3 and NEC4 Adjudicator's Contract	
Understanding of the Practice of Adjudication	
Identifying the contract, written and oral	
Identifying the dispute and dealing with multiple disputes	
Fairness, impartiality, natural justice and efficiency	
Practical constraints and difficulties	
Dealing with challenges to jurisdiction	
Setting the timetable, rights of reply and new evidence	
Dealing with evidence, meeting, experts, own knowledge	
Fees, Adjudicator's contract, payment and lien	
Methods of assessment	
Implications of leading cases	
Decision Writing	
Ability to write a concise, clear, reasoned, severable and enforceable Decision	

4.3 ICE Dispute Resolution Examinations

Syllabus for ICE Arbitrators' Endorsement Examination

Candidates are expected to have a 'Working Knowledge' of the topics in the Syllabus demonstrated by competence in the application of the principles involved.

A question may be devoted to a single topic in the Syllabus.

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract.

Subject	
<u>GENERAL</u>	
Promotion, Tendering Procedure and Documentation	
Authority for the Project; client and project manager's investigations	
Bills of Quantities, Methods of Measurement CESMM4	
Tender Pricing Methods	
Alternative tenders and the Assessment of tenders	
Acceptance of tenders and Notification of results	
Formalities and forming the Contract	
Miscellaneous	
Construction (Design and Management) Regulations 2015 (CDM)	
Letters of intent, Cash flow, Collateral warranties, Working Rule Agreement	
Disputes	
Housing Grants Construction and Regeneration Act 1996 (amended 2011)	
Scheme for Construction Contracts Regulations 1998 (amended 2011)	
Exclusion Orders	
Arbitration Act 1996	
Leading cases on Arbitration	
Leading cases on Adjudication	
ICE Arbitration Procedure 2012	
ICE Adjudication Procedure 2011	
ICE Mediation / Conciliation Procedure 2011	
Enforcement of Adjudication Decision	
Enforcement of Arbitrator's Award	
<u>CONDITIONS OF CONTRACT</u>	
Candidates are expected to have a 'Working Knowledge' of the topics in the principal Conditions of Contract as required for Module 3, namely	
ICC Conditions of Contract Measurement Version	
NEC3 and NEC4 Engineering and Construction Contract	

Candidates are expected to be familiar with the topics in the other Conditions of Contract as required for Module 3, namely	
ICC Model Conditions of Contract – Other Forms	
ICC Design and Construct	
ICC Conditions of Contract Design and Construct	
ICC Conditions of Contract Minor Works	
ICC Conditions of Contract Term Version	
ICC Conditions of Contract Target Cost Version	
CECA Form of Sub-contract (Blue Form)	
NEC3 and NEC4 Contracts – Other Forms	
Engineering and Construction Sub-contract	
Engineering and Construction Short Contract	
Engineering and Construction Short Sub-contract	
Professional Services Contract	
Term Service Contract	
Adjudicator’s Contract	

4.4 Case lists	
Section 1: The Law of Contract	
Module 1 and 2	
<u>Formation of the Contract</u>	
Offer and Acceptance	
Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Limited (1953, C.A.)	Display on shelf not an offer
Carlill v Carbolic Smoke Ball Co. (1893, C.A.)	Advert for reward amounted to an offer
Brogden v Metropolitan Railway (1877, HL)	Acceptance by performance
Jones v Daniel (1894)	Acceptance must exactly fit offer
Butler Machine Tool Co. Ltd. v Ex-Cell-o Corporation (England) Ltd. (1979, C.A.)	Battle of the forms
Tekdata Interconnections Ltd v Amphenol Ltd [2009] EWCACiv1209 (CA)	
Adams v Lindsell (1818)	Acceptance by post on posting
Felthouse v Bindley (1862)	Acceptance must be communicated
G Percy Trentham v Archital Luxfer Ltd (1992, C.A.)	Acceptance by conduct – The test of necessity
Entores v Miles Far East Corp [1955] 2 QB 327; [1995] 2 All ER 493	Postal rule does not apply to ‘instantaneous communications’ such as telex.
The Brimnes [1975] QB 929; [1974] 3 All ER 88	Withdrawal effective on receipt of telex not when read
Brinkibon Ltd v Stahag Stahl GmbH [1983] 2 AC 34; [1982] 1 All ER 293	Communication
Hyde v Wrench (1840)	Counter offer destroys offer
Dickinson v Dodds (1876)	Revocation
Quenerduaine v Cole (1883)	Lapse of Time
Scammell v Ouston (1941, H.L.)	No Contract because of uncertainty – Essential terms
Harvela Investments Ltd v. Royal Trust Co. of Canada [1986] AC 207.	Tender
Blackpool and Fylde Aero Club v. Blackpool BC [1990] 3 All ER 25.	Tender
L’Estrange v F Graucob Limited [1934] 2 KB 394 Autoclenz Ltd v Belcher [2011] UKSC 41 (SC)	Totally written terms.

Consideration	
Currie v Misa (1875)	Consideration must be valuable
Tweddle v Atkinson (1861)	Consideration must move from Plaintiff
Roscorla v Thomas (1842)	Past consideration is no consideration
Lampleigh v Brathwait (1615)	Service done at request of promisor
Stilk v Myrick (1809)	No new consideration
Hartley v Ponsonby (1957)	Consideration provided under new contract
Williams v Roffey Bros & Nicholls (Contractors) Limited (1991) 1 QB1; (1990) 2WLR 764	Performance of contractual duty
Pinnel's Case (1602)	Payment of a lesser sum cannot be in satisfaction for a larger debt
Foakes v Beer (1884, H.L.)	Payment of a lesser sum cannot be in satisfaction for a larger debt
D & C Builders Ltd. V Rees (1966, C.A.)	Payment of a lesser sum cannot be in satisfaction for a larger debt
Hughes v Metropolitan Railway Co. (1877 H.L.)	Equitable Estoppel
Intention to Create Legal Relations	
Balfour v Balfour (1919, C.A.)	Agreement between husband and wife not a contract
Rose and Frank Co. v Crompton (1925, H.L.)	Express term providing that arrangement not a legal agreement
<u>Contract Terms</u>	
Express Terms	
Edwards v Aberayron Mutual Ship Insurance Society Limited (1876)	Incorporation of referred document
Henderson v Arthur (1907, C.A.) Shogun Finance Ltd v Hudson [2003] UKHL 62 (HL)	Parol evidence rule
Joscelyne v Nissen (1970, C.A.)	Parol evidence rule does not apply to rectification
Pym v Campbell (1856)	Parol evidence rule does not apply to show contract does not yet operate or has ceased to operate
Hutton v Warren (1836)	Parol evidence rule does not apply re evidence of custom
Malpas v London & S.W. Rail Co. (1866)	Parol evidence rule does not apply re incompleteness

Hutton v Watling (1948, C.A.)	Parol evidence rule does not apply re incompleteness
Schawel v Reade (1913, H.L.)	Representation compared to contractual terms, strength of Statement
Bannerman v White (1861)	Representation compared to contractual terms, Importance of Statement
Dick Bentley Productions Limited v Harold Smith Motors Limited (1965, C.A.)	Representation compared to contractual terms, relative degrees of knowledge
De Lassalle v Guildford (1901, C.A.)	Collateral contract
Shanklin Pier Ltd. V Detel Products Ltd. (1951)	Collateral contract with 3 rd Party
Hong Kong Fir Shipping Co. Ltd. V Kawasaki Kisen Kaisha Limited (1962, C.A.)	Conditions, Warranties – consider result of breach
The Mihalis Angelos (1971, C.A.)	
The Hansa Nord (1976, C.A.)	Intermediate terms
Implied terms	
The Moorcock (1889, C.A.)	
Shirlaw v Southern Foundries (1926) Ltd, (1939,C.A.)	Officious bystander test
Hutton v Warren (1836)	Terms implied by custom
Exemption Clauses	
Edwards v Aberayron Mutual Ship Insurance Society Limited (1876)	Incorporation of referred document
Parker v South Eastern Railway (1877, C.A.)	Notice
British Crane Hire Corporation Ltd. V Ipswich Plant Hire (1975, C.A.) Limited (1975, C.A.)	Clauses common in the business
Baldry v Marshall (1925, C.A.)	Contra Proferentem Rule
Photo Production Ltd. V Securicor Transport Ltd. (1980, H.L.)	
Curtis v Chemical Cleaning and Dyeing Co. (1951, C.A.)	Misrepresentation
Evans (J.) & Son (Portsmouth) Ltd. V Andrea Merzario Ltd. (1976, C.A.)	Overriding oral undertaking
Andrews v Hopkinson (1957)	Collateral Contract
Scruttons Ltd. V Midland Silicones Ltd. (1962, H.L.)	Third parties and exemption clauses
<u>Defects within a Contract</u>	
Misrepresentation	
Bisset v Wilkinson (1927, P.C.)	Must be of fact not opinion

Edgington v Fitzmaurice (1885, C.A.)	Fact not intention
Fletcher v Krell (1873)	Generally silence is not misrepresentation
Derry v Peek (1889, H.L.)	Narrow meaning of fraud
Hedley Byrne & Co. Ltd. V Heller & Partners Ltd. (1964, H.L.)	Negligent misrepresentation in tort
Mistake	
Shogun Finance Ltd v Hudson [2003] UKHL 62 (HL)	Mistaken Identity
Great Peace Shipping Ltd. v Tsavlis (International) Ltd [2002] EWCA Civ 1407 (CA)	Mutual Mistake
Food Corporation of India v Antclizo Shipping Corporation (The Antclizo) [1987] (CA)	Mutual Misunderstanding
Bell v Lever Bros. (1932, H.L.)	As to quality
<u>Privity of Contract</u>	
Dunlop v Selfridge (1915, H.L.)	
<u>Discharge of Contract</u>	
Performance	
Cutter v Powell (1795)	Entire contracts
Ritchie v Atkinson (1808)	Severable contract
Planché v Colburn (1831)	Prevention of performance
Hoenig v Isaacs (1952, C.A.)	Substantial performance
Bolton v Mahadeva (1972, C.A.)	Substantial performance
Startup v Macdonald (1843)	Tender of performance
Rickards (Charles) Ltd. V Oppenheim (1950, C.A.)	Time of the essence
British Waggon Co. v Lea (1880)	Vicarious performance
Southway Group Ltd. V Wolff (1991, C.A.)	Personal performance/sub-contracting
Agreement to discharge or vary a contract	
Berry v Berry (1929)	Formality of variation
Frustration	
Taylor v Caldwell (1863)	Subject matter destroyed
Davis Contractors Ltd. V Fareham UDC (1956, H.L.)	Contract radically different
Breach	
Johnson v Agnew (1980, H.L.)	
Photo Production Ltd. V Securicor Transport Ltd. (1980)	
Frost v Knight (1872)	Anticipatory breach
White and Carter (Councils) Ltd. V McGregor (1962, H.L.)	Anticipatory breach

Remedies	
Hadley v Baxendale (1854)	Remoteness of Damage
Diamond v Campbell-Jones (1961)	Remoteness of Damage
Cottrill v Steyning and Littlehampton Building Society (1966)	Remoteness of Damage
Jackson v Royal Bank of Scotland [2005] UKHL 3; [2005] 2 All ER 71	Remoteness of Damage
W.L. Thompson Ltd. V Robinson Gunmakers Ltd. (1955)	Quantification
Charter v Sullivan (1957, Q.B.)	Quantification
Chaplin v Hicks (1911, C.A.)	Speculative Damages
British Westinghouse Co. v Underground Electric Rys. Co. of London (1912)	Mitigation
Pilkington v Wood (1953)	Mitigation
Alfred McAlpine Capital Projects v Tile Box Ltd (2005)	Penalty Clauses
Parking Eye v Beavis [2015] UKSC	
Davis Contractors Ltd. V Fareham U.D.C. (1956, H.L.)	Quantum meruit
Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344; [1995] 3 All ER 268	Recovery of non-pecuniary losses (loss of amenity).
Farley v Skinner [2001] UKHL 49; [2002] 2 AC 732	Recovery of non-pecuniary losses for breach of contract (loss of amenity/enjoyment).

Section 2: The Law of Tort	
Modules 1, 2 and 3	
<u>The Nature of Tort</u>	
Breach of Statutory Duty	
<u>Negligence</u>	
The Elements of Negligence: Duty of care, breach of duty, damage, causation, foreseeability	
Donoghue v Stevenson (1932 AC 562)	Neighbourly principle outlined – Principles as per Lord Atkin
Home Office v Dorset Yacht Co (1970, H.L.)	
Best v Samuel Fox & Co Ltd (1952)	No damage without violating a right.
Electrochrome Ltd v Welsh Plastics Ltd (1968)	A person cannot receive compensation on the basis of damage suffered by someone else.
Proximity	
Sutherland Shire Council v Heyman (1985) 60 ALR1	Proximity involves a notion of nearness or closeness between the persons or directness of causal connection to the loss
Caparo Industries plc v Dickman [1990] 2 AC 60	In addition to the need for foreseeability there should exist a relationship of proximity such that a court will consider it fair & reasonable to impose a duty of care
Foreseeability	
Roe v Minister of Health (1954)	Was the injury foreseeable?
Wagon Mound (2)	
Causation	
Barnett v Chelsea Hospital Management Committee (1969)	Defendant's breach must cause damage
McWilliams v Arrol (1962)	'But for' test.
Kuwait Airways Corp v Iraq Airways Co [2002] 2 AC 883	'But for' test need not be satisfied in cases involving multiple wrongdoers
Standard of Care	

Wells v Cooper (1958)	This case provides the opposite contention, ie a householder carrying out repairs has been held to have to conform to the standards of a reasonable tradesman
Bolam v Friern Hospital Management Committee (1957)	Defendant does not have to be best in field but must follow established practices. . A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art
Trustees of Ampleforth Abbey Trust v Turner & Townsend [2012] EWHC 2137	Re-state Bolam test but apply to anyone
Bolton v Stone (1951)	Greater the risk greater the care required. . * no liability where it was reasonable to ignore a small risk
Glasgow Corporation v Taylor (1922)	More care may be needed to protect children.
Watt v Hertfordshire CC (1952)	Sometimes necessity may justify taking what otherwise would be an unnecessary risk.
Thompson v Home Office [2001] EWCA Civ 331	The risk has to be weighed against the benefit arising from the action
Negligent Misstatement	The rule in Hedley Byrne v Heller & Partners
Hedley Byrne v Heller & Partners (1964)	Liability for careless statement causing economic loss. Special relationship upon which reliance is placed.
<u>Defences</u>	
Contributory Negligence	
Law Reform (Contributory Negligence) Act (1945)	Liability is proportioned between Plaintiff & Defendant
Froom v Butcher (1976)	Failure to wear a seat belt.
O'Connel v Jackson (1971)	Motor cyclist failing to wear crash helmet is contributory negligence.
Sayers v Harlow UDC (1958)	Plaintiff injured when trying to climb out of a public toilet.
Jones v Boyce (1816)	Plaintiff does not contribute if he makes a reasonable decision in the agony of the moment.

Anderson v Newham College of Further Education [2002] EWCA Civ 505	If the evidence shows 100% liability lies with the Claimant, no liability falls on the defendant. If not, the court will consider the extent of the Claimant's responsibility
Novus actus interveniens	
McKew v Holland, Hannen and Cubitts (1969)	Employee injured at work made injury worse when descending stairs at his house. Defendant not liable for further damage.
Barings plc (in liquidation) v Coopers Lybrand [2003] EWHC 1319	Where there are two causes of loss, one reckless the other negligent, the reckless will ordinarily be treated as the sole cause of loss
Volenti non fit injuria	
Simms v Leigh Rugby Football Club (1969)	Injuries obtained in dangerous sport not actionable. this case applies more closely to liability under Occupiers Liability *
Cutler v United Dairies (1933 2KB 297)	The danger had passed and the claimant was held to have accepted the risk involved in the rescue
Letang v Ottawa Electric Rly Co [1926] AC 725	To succeed the defendant must show the claimant freely and voluntarily with full knowledge of the nature & extent of the risk, impliedly agreed to incur it
Nettleship v Weston [1971] 2 QB 691	Nothing will suffice short of an agreement to waive any claim for negligence
Others	
Bradford Corp. v Pickles (1895)	No liability if no tort committed.
Stephens v Anglian Water Authority [1987] 1 WLR 1381	No liability when the Defendant had an unqualified right to extract water
<u>Remedies</u>	
Injunctions	
Damages	
Mitigation of loss	
Remoteness of damage	
The Wagon Mound (Nr. 1) (1961)	Defendant only liable for type of damage, which was reasonably foreseeable.

The Wagon Mound (No.2) [1967] 1 AC 617	However once foreseeability is established, liability is established irrespective of the likelihood of the damage occurring
Hughes v Lord Advocate (1963)	Only type of damage needs to be reasonably foreseen. Nature and extent do not.
Jolley v Sutton LBC [2000] 1 WLR 1082	As above
Vacwell Engineering v BDH Chemicals (1961)	Extent of damage not foreseen but not too remote.
Smith v Leech Brain (1962)	The defendant must take the victim as he finds him (Eggshell rule).
Greater Nottingham Co-Op v Cementation Foundation & Engineering Co. (1989)	Liability in Tort no greater than that in Contract.
Policy considerations*	
Economic loss	
Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd (1972)	Compensation for melt in progress but not those stopped.
Murphy v Brentwood DC (1990)	Not normally recoverable.
Hedley Byrne v Heller & Partners	Recoverable when reliance on special relationship.
D& F Estates Ltd v Church Commissioners [1989] AC 177	No recovery for pure economic loss
Nitrogin Eireann Teoranta v Inco Alloys Ltd [1992] 1 WLR 498	No liability for repair costs
Limitation of Actions	Limitation Act 1980; Latent Damage Act 1986; When cause of action arises; Limitation periods
Exemption	
Smith v South Wales Switchgear (1978) 1 All ER 18, HL	Terms were incorporated but were inapt to exclude liability for Def's own negligence
Nuisance	
Rule in Rylands v Fletcher	
Rylands v Fletcher (1868) 3HL 330	Strict liability. Where a person keeps anything on his land likely to cause mischief if it escapes
Charing Cross Electricity Supply Co v Hydraulic Power Co (1914)	Does not depend on ownership of land but plaintiff must have some interest in it.

Cambridge Water Co Ltd v Eastern Counties Leather plc [1994] 22 AC 264	No liability for damage of a type which could not reasonably be foreseen
Private Nuisance	
Robinson v Kilvert (1889) 41 ChD	An interference, which alone causes harm to something of abnormal sensitiveness, does not of itself constitute a nuisance.
Fay v Prentice (1845) 1 CB 828	A right to commit a private nuisance may in certain circumstances be acquired by prescription as an easement.
Campbell v Paddington BC (1911)	Tort only actionable if individual suffered damages over and above public as a whole.
Attorney General v Gostonia Coaches (1976)	
Jan de Nul (UK) v NV Royal Belge [2000] 2 LLR 700	See above
Halsey v Esso Petroleum (1961)	Individual may sue for personal injury when there was an excess of noise, smell and fumes from a business.
Hunter v Canary Wharf Ltd [1997] AC 655	Upholds test that interest in land is necessary to found case in nuisance
Milller v Jackson [1977] QB 966	Nuisance is actionable even where the claimant comes to the nuisance
Christie v Davey (1893)	Acts done deliberately to annoy will be a nuisance
Defences	
Law Reform (Contributory Negligence) Act (1945)	
Nichols v Marslands (1876)	Act of God. ** note this is the only case where Act of God provides a defence – may rely on the judgment of a jury - see Greenock below
Greenock Corp v Caledonian Rly [1917] AC 556	Nichols doubted
Rickards v Lothian (1913)	Escape due to wrongful act of a stranger.
Peters v Prince of Wales Theatre (Birmingham) Ltd (1943)	Damage caused by artificial works done for common benefit of plaintiff and defendant. No liability where a party consents to a dangerous thing being brought to a place where it might cause harm if it escapes unless he can show negligence

Goldman v Hargrave [1967] 1 AC 645	PC held landowner liable to abate a fire started naturally by lightning
Leakey v National Trust [1980] QB 485	As above, liable for collapse of slip of hill
Davey v Harrow Corp. (1957)	Nuisance will lie where tree branches or roots extend to other's land
Public Nuisance	Is a criminal offence
Attorney General v Gastonia Coaches (1976 The Times)	Coaches parked on highway inevitably interfered with free passage of traffic.
Wringe v Cohen (1940)	Dangerous property near highways. Liability whether he knew or ought to have known of the danger
Defences	
Bradford Corp. v Pickles (1895)	Nuisance arose from lawful use of land.
Allen v Gulf Oil Refining Oil [1981] AC 1001	By necessary implication the Act authorising purchase of the land for the refinery authorised its operation
Bliss v Hall (1838)	Plaintiff does not imply consent when coming to premises knowing of the nuisance.
Statutory Nuisance	
<u>Dangerous Premises</u>	
The Position at Common Law	
Cook v Broderip (1968)	Occupier not liable for contractor's negligence under OLA 1957 s2(4)(b)
O'Connor v Swan Edgar Ltd (1963) 107 SJ	Occupier not liable for injuries caused by contractor
Phipps v Rochester Corp (1955)	Volenti available to occupier. Special care needed for children.
British Railways Board v Harrington (1972) 1All ER 749	
Gough v National Coal Board	Not necessary to prop that part of the coal face being excavated [Mines & Quarries Act 1957]
Billings (AC) & Sons Ltd v Riden (1958)	Duty can be discharged by erecting notices, fences or guards.

Ashdown v Samuel Williams & Son Ltd [1957] 1 QB 409	Liability can be excluded liability by erecting notice in common law case
White v Blackmore [1972] 2 QB 651	For distinction between excluding a duty and satisfying it by a warning
The Occupiers Liability Act 1957	Who is the Occupier; common duty of care; nature of damage recoverable; defences: contributory negligence, effect of knowledge of danger; lawful visitors. Under contract, invitees; persons other than invitees; occupier's liability for independent contractors, trespassers.
The Occupiers Liability Act 1984	Damages for trespassers Occupier liable if (a) he knows or has reasonable grounds to believe of the existence of danger on his land (b) he knows or has reasonable grounds to believe the trespasser is in vicinity of the danger or is likely to come to it and (c) the risk is one which in all the circumstances, he may reasonably be expected to offer some protection
White v St Albans CC (1990)	No liability if reasonable knowledge of trespassers.
Swain v Puri [1996] PIQR P442	Claimant has to show D had actual knowledge of facts which would lead reasonable person to the requisite conclusions
<u>Employer's Liability</u>	
Employer's Liability to Third Parties	
Vicarious Liability	Vicarious liability, its nature, employee distinguished from independent contractor, acts carried out in course of employment.
Limpus v London General Omnibus Co (1862)	An employer is vicariously liable for torts of employees committed in course of employment.
Kay v ITW Ltd [1968] 1 QB 140	Even if the act is unauthorised cf <i>Beard</i> below

Beard v London General Omnibus Co (1990)	But not if not during course of employment.
Rose v Plenty (1976)	Liable if employee acts in course of employment even if contrary to instructions.
Twine v Bean's Express (1946)	But not if instruction forbids certain types of duty.
Hilton v Thomas Burton (Rhodes) Ltd (1961)	Not if employee "on a frolic"
Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd (1947)	Employer who is responsible for workers will be vicariously liable.
Kealey v Heard (1983)	Owner can be liable if he does not supervise independent contractors properly.
Employer's Common Law duties to Employees	Competent staff of man, proper plant, appliances and premises, safe system of work, contributory negligence.
Jones v Lee & Another (1980) ICR 310	Wrongful dismissal occurs when insufficient notice is given.
Addis v Gramophone Co (1909) AC 488	Damages not affected by motive of Employer Motive is a relevant in assessment of damages in tort but not in contract
Employee's duties to Employer	Duty to take reasonable care
Liverpool CC v Irwin (1977) AC 239	LL has a duty to take reasonable care to maintain means of access in reasonable repair, tenants have responsibilities of a reasonable set of tenants
Laws v London Chronicle (1959) 1WLR 698	One act of disobedience can justify summary dismissal.
Employer's Liability for Independent Contractors	
Kealey v Heard (1983)	Owner liable for tort of independent contractor due to lack of providing supervision.

Case List for Module 3	
General Principle	
Wells v Army and Navy Co-operative Society (1902) 86 LT 764	
Incorporation of Method Statement	
Yorkshire Water Authority -v- Sir Alfred McAlpine & Son (Northern) Limited (1985) 32 BLR 114.	

<p>Provision of Information to contractor - enabling contractor to complete in accordance with its programme</p> <p>Neodox Limited -v- The Mayor Alderman & Burgesses of the Borough of Swinton and Pendlebury (1958) 5 BLR 38.</p> <p>Glenlion Construction Limited -v- The Guinness Trust (1988) 39 BLR 89.</p>	
<p>Implied Terms</p> <p>London Borough of Merton -v- Stanley Hugh Leach (1985) 32 BLR 51.</p>	
<p>Engineer - Agent or Independent Certifier - Power of Court to Review</p> <p>Balfour Beatty Civil Engineering Limited -v- Docklands Light Railway (1996) 78 BLR 42.</p> <p>Tarmac Construction Limited -v- Esso Petroleum Limited (1996) 51 Con LR187.</p> <p>John Barker Construction Limited -v- London Portman Hotel Limited (1996) 50 Con LR43.</p> <p>Lubenham Fidelities & Investment Co Ltd -v- South Pembrokeshire District Council and Another (1986) 33 BLR 39.</p> <p>Pacific Associates -v- Baxter (1988) 44 BLR 33.</p>	
<p>Liquidated Damages and Extensions of Time</p> <p>Peak Construction (Liverpool) Ltd -v- McKinney Foundations Ltd (1970) 69 L.G.R. 1.</p> <p>Balfour Beatty Building Ltd -v- Chestermount Properties Ltd (1993) 62 BLR 1.</p> <p>Phillips - v - Attorney General of Hong Kong</p> <p>Alfred McAlpine Capital Projects v Tilebox Ltd, Part 5 (2005) BLR 271.</p> <p>Parking Eye v Beavis [2015] UKSC</p>	
<p>Global Claims</p> <p>Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd (1999) 70 ConLR 32 (TCC)</p> <p>City Inn Limited v Shepherd Construction Limited [2006] CSOH 94</p> <p>Adyard Abu Dhabi v SD Marine Services [2011] EWHC 848 Comm</p> <p>Walter Lilly & Co Ltd v Mackay [2012] EWHC 1773 (TCC), [2012] All ER (D) 213 (Jul).</p>	
<p>Quantum Meruit</p> <p>British Steel Corporation -v- Cleveland Bridge and Engineering Co Limited (1983) 24 BLR 94.</p> <p>Costain Civil Engineering v. Zanen Dredging and Contracting Company Ltd (1996) 85 BLR 85.</p> <p>ERDC Group v Brunel University. CILL 2348 (2006).</p>	
<p>Variations</p> <p>Amec Building Limited -v- Cadmus Investments Co Limited (1996) 51 Con LR105.</p> <p>English Industrial Estates Corp -v- Kier Construction (1991) 56 BLR 93.</p> <p>Henry Boot Construction Ltd v. Alstom Combined Cycles Ltd Part 6 (2000) BLR 274 CA</p>	
<p>Frustration</p>	

Davis Contractors Ltd -v- Fareham Urban District Council [1956] A.C. 696.	
Clause 12 of the ICC Conditions of Contract	
Humber Oil Terminals Trustee Ltd -v- Harbour and General Works (Stevin) Ltd (1991) 7 Const LJ 333.	
Physical Impossibility	
Turriff Ltd -v- Welsh National Water Development Authority (1979) 32 BLR 117.	
Implication of a Term of Fitness for Purpose in Construction Contracts	
Rotherham Metropolitan Borough Council -v- Frank Haslam Milan & Co Limited and M J Gleeson (Northern) Limited (1996) 78 BLR 1.	
(now CECA Form of Sub-Contract)	
Mooney -v- Henry Boot Construction Limited and Balfour Beatty Construction Limited -v- Kelston Sparkes Contractors Limited (1996) 80 BLR 66.	
Existence of a Dispute	
Cruden Construction Ltd v Commission for New Towns (1994). 75 BLR 134	
Amec Civil Eng. Ltd v Secretary of State for Transport (CoA) Part 5 (2005) BLR 227	
Adjudication	
Macob Civil Engineering v. Morrison Construction Ltd. (1999) BLR 93, TCC	
Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd [2000] BLR 49, [2000] BLR 522.	
Aveat Heating Ltd v Jerram Falkus Construction Limited [2007] EWHC 131 (TCC), 113 Con LR 13 [2007].	

4.5 Recommended Reading List

Law		
Title	Author	Publisher
Cheshire Fifoot & Furmston Law of Contract	Furmston M.P.	Butterworth
Torts	A Mullis, K Oliphant	Palgrave McMullen
Construction Law	John Uff QC	Sweet and Maxwell
Davies on Contract	F R Davies	Sweet and Maxwell
ICE Manual of Construction Law	Ramsey, Minogue, Baster, O'Reilly	Thomas Telford Limited ISBN 978-0-7277-4087-8
More Detailed Reading		
Design Liability in the Construction Industry	D L Cornes	Blackwell Scientific Publications
Salmond and Heuston on Law of Tort	Salmond and Heuston	Sweet and Maxwell
Keating on Building Contracts	A May D Keating	Sweet & Maxwell
Health and Safety in Construction: Guidance on the Duties of Construction Professionals	John Barber	Thomas Telford Ltd
Contract Management		
Civil Engineering Procedure	ICE	Thomas Telford Ltd
Keating on Construction Contracts	Furst, Ramsey et al	Sweet and Maxwell ISBN 978-0-41404-792-1
Keating on NEC3	Thomas	Sweet and Maxwell ISBN 978-1-84703-331-4
A practical guide to the NEC3 Engineering and Construction	Rowlinson	Wiley-Blackwell ISBN 978-1-4443-3688-7

Law		
Title	Author	Publisher
Contract		
The NEC3 Engineering and Construction Contract. A commentary.	Eggleston	Wiley-Blackwell ISBN 978-0-632-05386-5
Liquidated damages and extensions of time	Eggleston	Wiley-Blackwell ISBN 978-1-4051-1815-6
The CESMM4 Handbook	Dr M Barnes	Thomas Telford Ltd
CESMM4 Examples	Dr M Barnes	Thomas Telford Ltd
Successful Contract Administration	T Boyce	Thomas Telford Ltd
Engineering and Construction Risks: A Guide to Project Risk Analysis and Management – Implications for Project Clients and Project Managers	Thompson P Perry J	Thomas Telford
Contractual Procedures in the Construction Industry	A Ashworth	Longman
Guidance Notes – ICC, Design & Construct and Minor Works	(ACE/CECA)	
Tendering for civil engineering contracts in the UK	(ACE/CECA)	
Guidance Notes to the NEC3 Engineering and Construction Contract	ICE	Thomas Telford
NEC4 User Guides (Vol 2 and Vol 4, June 2017)	ICE	Thomas Telford
The NEC3 Engineering and Construction Contract: A User's Guide	J Broome	Thomas Telford
NEC - Managing Reality Books 1 to 5	Bronwyn Mitchell and Barry Trebes	Thomas Telford
Chitty on Contracts Volumes 1&2	Beele H	Sweet and Maxwell
Keating on NEC3	Thomas, David	Sweet and Maxwell