

Technical Award in
Chattels Auctioneering



MOL Sample Workbook



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QUALIFICATIONS

INTRODUCTION TO THE SAMPLE WORKBOOK

This sample workbook is a guide to the learning materials for the Technical Award in Chattels Auctioneering, written and provided by MOL on behalf of the National Federation of Property Professionals Awarding Body (NFOPP AB).

The full range of property qualifications available from MOL/NFOPP AB is as follows.

Award in Introduction to Residential Property Management Practice (Level 2)

This is an introductory qualification offering basic knowledge in the most important subject areas related to residential letting and property management.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management (Level 3)
- Unit 2 Customer Service within the Property Sector
- Unit 3 Introduction to Residential Property Letting Practice
- Unit 4 Introduction to Residential Property Management Practice

Award in Introduction to the Sale of Residential Property (Level 2)

This is an introductory qualification offering basic knowledge in the most important subject areas related to the sale of residential property.

- Unit 1 General Law, Health, Safety and Security in Relation to the Sale of Residential Property
- Unit 2 Customer Service within the Property Sector
- Unit 3 Regulations Relating to the Sale of Residential Property
- Unit 4 Practice Relating to the Sale of Residential Property

Technical Award in Residential Letting and Property Management (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Residential Property Letting Practice
- Unit 4 Residential Property Management Practice

Technical Award in the Sale of Residential Property (Level 3)

The Technical Award in the Sale of Residential Property is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential estate agency or new homes sales.

- Unit 1 General Law, Health, Safety and Security in Relation to the Sale of Residential Property
- Unit 2 Law Relating to Residential Property Sales
- Unit 3 Practice Relating to Residential Property Sales
- Unit 4 Property Appraisal and Basic Building Construction/Defects

Technical Award in Commercial Property Agency (Level 3)

The Technical Award in Commercial Property Agency is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in commercial property agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Commercial Property Agency
- Unit 2 Practice and Law Relating to Commercial Property Agency
- Unit 3 Law Relating to Commercial Property
- Unit 4 Commercial Property and Business Appraisal and Basic Building Construction

Technical Award in Real Property Auctioneering (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in estate agency where auctioneering is an important part of the work of the agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Real Property Auctioneering
- Unit 2 Law Relating to Real Property Auctions
- Unit 3 Real Property Auctioneering Practice and Procedures
- Unit 4 Property Appraisal and the Auction Process

Technical Award in Chattels Auctioneering (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in chattels auctioneering.

- Unit 1 Health and Safety, Security and General Law Relating to Chattels Auctioneering
- Unit 2 Law Relating to Chattels Auctions
- Unit 3 Chattels Auctioneering Practice and Procedures
- Unit 4 Chattels Appraisal and the Auctioneer's Duties and Liabilities

Technical Award in Residential Inventory Management and Practice (Level 3)

This programme covers the law and practice of letting agency and inventory management in England and Wales.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Inventory Management and Practice
- Unit 2 Legal Aspects of Residential Inventory Management and Practice
- Unit 3 Residential Letting and Property Management
- Unit 4 Residential Inventory Management and Practice

Technical Award in Residential Tenancy Deposit Protection and Management (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency and who will be dealing with tenancy deposits.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Handling, Protecting and Processing Residential Tenancy Deposits
- Unit 4 Returning Residential Tenancy Deposits and Dispute Resolution Procedures

Certificate (Level 4)

The Level 4 Certificate programmes are designed for more experienced people working within agency such as senior negotiators, managers and principles. The full certificate has 8 units, but the first two are carried forward from the relevant technical award. There are four additional technical units specific to each pathway, and two common office/people management units.

The common management units are

- Unit 7 Introduction to Office Management
- Unit 8 Advanced Office Management (Level 5)

The two pathways and their technical units are as follows.

Certificate in Residential Letting and Property Management

- Unit 3 Legal Aspects Relating to Residential Letting and Management
- Unit 4 Practice Relating to Residential Property Management
- Unit 5 Appraisal and Residential Property Letting Practice
- Unit 6 Applied Law Relating to Residential Letting and Management (Level 5)

Certificate in the Sale of Residential Property

- Unit 3 Legal Aspects Relating to Residential Estate Agency
- Unit 4 Practice Relating to Residential Estate Agency
- Unit 5 Market Appraisal, Value and Inspection Relating to Residential Estate Agency
- Unit 6 Building Design and Defects for Residential Estate Agency (Level 5)

Technical Award in

CHATELS AUCTIONEERING

Unit 2

Law Relating to Chattels Auctions

Produced for



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INTRODUCTION

This unit provides a basic introduction to the legal framework of auctioning chattels (largely civil law, ie private law concerning persons and not involving the state) but also involving some criminal regulation (ie legislation from Parliament).

Section 1 looks at the notices that must be displayed in order to conduct an auction of chattels, and section 2 examines the law of agency as it affects the auctions process. Section 3 is concerned with the potential criminal liability of auctioneers in connection with the sale of goods generally and the sale of particular items specifically. The unit concludes in section 4 with an analysis of the operation of Conditions of Sale as they impact on sellers and buyers.



LEARNING OBJECTIVES

Having completed this unit you will know and understand

- the requirements for the display of notices when conducting an auction
- the law of agency and in particular the pivotal concept of the auctioneer's authority
- how the auctioneer's authority operates if an auctioneer sells below a set reserve
- the effect of a wrongful failure to sell in a 'without reserve' sale
- the auctioneer's authority to provide descriptions of the goods to be sold and the impact of this on both seller and buyer
- the ending of the auctioneer's authority
- liability in criminal law for false trade descriptions
- liability in criminal law in respect of the sale by auction of unsafe goods
- the criminal law regulation of sales of certain prohibited items such as firearms, protected species etc
- the use of Conditions of Sale by the auctioneer to govern the sale process
- the impact of legislation controlling the use of Conditions of Sale and in particular to outlaw unfair or unreasonable terms in auction sale contracts

3.2 SALES OF PROHIBITED ITEMS

The Trade Descriptions Act 1968 and the Consumer Protection from Unfair Trading Regulations 2008 are aimed generally at sales of all goods where the mischief relates to falsely describing them.

There are a number of statutes which are aimed specifically to control and in some cases outlaw the sale of particular goods because of their nature. This may be to do with conservation concerns or because the items are dangerous.

Wild Birds, Animals and Endangered Species

The sale, or the offering or exposing for sale or possessing for sale, of certain live or dead wild birds or part of such or their eggs became a criminal offence under the Wildlife and Countryside Act 1981. The relevant birds are listed in Schedule 3 to the Act. Similarly, under Section 9 it is an offence to sell or to offer or expose for sale or to possess those wild animals, whether live or dead, listed in Schedule 5 to the Act.

It is an offence under Section 1 for any person to **have in their possession or control** any wild bird alive or dead or any part of such or the egg of such a bird (subject to certain exceptions such as showing that the bird died naturally or was sold lawfully).

Under Section 6, there is an offence in relation to the sale of live or dead wild birds as follows.

If any person

- sells, offers or exposes for sale, or has in their possession or transports for the purpose of sale
 - any live wild bird
 - an egg of a wild bird
 - any part of such an egg
- publishes or causes to be published any advertisement likely to be understood as conveying that they buy or sell, or intend to buy or sell any of these things

they will be guilty of an offence.

Whereas it is relatively unlikely that an auctioneer will sell live wild birds, the auctioneer may find themselves selling or possessing for sale stuffed birds. The sale of such is covered by Subsection 2 of Section 6.

However, regarding the **sale** of dead birds (but not merely their possession or control it seems) it is only an offence if the person is not registered in accordance with regulations made by the Secretary of State. These regulations are provided by the Wildlife and Countryside (Registration to Sell etc Certain Dead Wild Birds) (Amendment) Regulations 1991.

If you are asked to sell, say, a stuffed golden eagle and wish to do so, you will need to be registered to avoid committing an offence.



SELF CHECK QUESTION 5

A client asks you to sell and store before sale a stuffed bird in a gilded cage that they have recently acquired from the estate of their great uncle. Are you risking prosecution for an offence?

Compare your answer with the one given at the end of this section.

As regards the import or export of certain species, the Endangered Species (Import and Export) Act 1976, as amended by the Wildlife and Countryside Act 1981, restricts the import and export of certain animals and plants and renders it an offence to sell or offer or expose them for sale to the public unless they have been imported or exported in accordance with the terms of a licence. This is by way of enforcement of the Convention on International Trade in Endangered Species (CITES).

The main difficulty with these offences may lie simply in identification. The average auctioneer may have difficulty in successfully identifying the particular item concerned. It would always be a wise precaution to take expert advice.

Firearms and Other Offensive Weapons

The possession and sale of firearms is largely controlled by the Firearms Act 1968 (as amended). Under Section 1 of the Act, it is an offence to possess certain firearms without a firearms certificate.

Section 3 covers two separate offences as follows

- an auctioneer commits an offence if, by way of trade or business an auctioneer sells, transfers or exposes for sale or transfer or has in their possession for sale or transfer, any firearm or ammunition or a shotgun without being registered under this Act as a firearms dealer or obtaining the requisite permit to do so from the police
- an auctioneer will commit an offence if the auctioneer sells or transfers to any other person in the UK, other than a registered firearms dealer, any firearm or ammunition governed by the Act or a shotgun, **unless that other produces a firearms certificate authorising them to purchase or acquire it or, as the case may be, their shotgun certificate, or shows that they are by virtue of this Act entitled to purchase or acquire it without holding a certificate**

This means that it is an offence to sell any firearm or shotgun without being registered as a dealer. An auctioneer can quite easily guard against commission of this offence by being registered. Moreover, if you are not a regular seller of such chattels, you are protected under Section 9 of the Firearms Act 1968, first as regards **possession** in the ordinary course of business and second as regards **sale** or **exposure for sale** even if not so registered by obtaining the requisite permit.

The real difficulty lies with Section 1(2) of the Firearms Act 1968 in that it is an offence to sell **to** anyone other than a dealer, unless they hold a certificate authorising them to purchase the weapon. The contract of sale will be completed on the fall of the hammer. In the case of sales of firearms and shotguns, it would be expedient to include a contractual provision in the conditions of sale whereby no ownership would pass to the buyer unless and until they produce the requisite certificate. This should prevent there being an offence of selling the item.

Section 3(2) of the Firearms Act 1968 also makes it an offence to **transfer** a firearm, ammunition or a shotgun to anyone who fails to show they are entitled to purchase or acquire it. This is wide enough to make it an offence for an auctioneer to return an unsold firearm to their client who does not have a permit to possess it, for example after an unsuccessful sale. In practice such goods should be retained until a registered dealer willing to acquire them can be found. Alternatively with the consent of the seller, the auctioneer should ensure that the weapon is deactivated before return under Section 8 of the Firearms (Amendment) Act 1988. While you remain in possession of a firearm or ammunition it is an offence to fail to take reasonable care of it, and it is also an offence to fail to report its loss or theft to the police.

The offences are strict. It is no defence to say that you did not know or believe the items to be proscribed, however honest that belief may be.

Antiques

While auctioneers who would otherwise fall foul of these regulations are protected if the weapon in question is an antique and sold as a 'curiosity or ornament' (Section 58), this is not necessarily as helpful as might be thought because there is no satisfactory definition of what amounts to an antique. It is generally believed that an item has to be 100 years old to qualify as an antique. However, there are cases where firearms less than 100 years old were held to be antique. On the other hand, the courts have shown a reluctance to automatically regard a firearm as an antique when it could still be fired.



SELF CHECK QUESTION 6

Among the chattels received for sale in respect of a house clearance is an old pistol. What offences might you commit in auctioning the item?

Compare your answer with the one given at the end of this section.

Other Offensive Weapons

The 1988 Firearms Act details a host of other offensive weapons which it is an offence to

- sell
- hire
- lend
- import, etc

These other offensive weapons are treated separately. The list includes items such as

- swordsticks
- knives
- martial arts weapons
- knuckle-dusters

With these items there is a general defence in relation to antiques, which are simply defined as those over 100 years old at the date of the offence.



SELF CHECK QUESTION 7

You discover that your seller client does not have permission to possess the firearm they have consigned for sale because they have just inherited it from a lawful holder. In the event that the sale does not take place, what should you do with the weapon?

Compare your answer with the one given at the end of this section.

3.3 SUPPLYING UNSAFE GOODS

There are two possible routes by which an auctioneer can be found criminally liable for supplying unsafe goods. These are as follows

- under specific Safety Regulations made under Section 11 of the Consumer Protection Act 1987, in practice the most comprehensive set of prohibitions
- by contravening the General Product Safety Regulations 2005 which implement the EC Directive on General Product Safety

Specific Safety Regulations

It is an offence to supply goods which contravene these industry-specific individual regulations. The offences are strict liability but are subject to a due diligence defence. Due diligence may involve testing, for example electrical appliances.

Safety regulations cover a wide range of goods, such as

- low voltage electrical appliances
- toys
- ceramics
- upholstered furniture

All of these are chattels commonly consigned to the auction room. There is no exemption under these regulations for used or second-hand goods.

These regulations in particular provide a trap for the unwary general chattels auctioneer. There is a particular risk with a job lot of chattels from, say, a house clearance. There are a few things that can be done, however, including having household electrical items such as vacuum cleaners examined by a qualified electrician.

General Product Safety Regulations 2005

The UK did not succeed in fully implementing the original European Community legislation with regard to product safety and these, the latest regulations, are designed to regularise the position.

It is an offence for a distributor to

- expose or possess for supply or offer or agree to supply, or supply, a product to any person which they know or should have presumed, on the basis of the information in their possession and as a professional, is a dangerous product
- supply goods which contravene individual safety regulations

(A 'distributor' is defined as a professional in the supply chain whose activity does not affect the safety properties of a product and therefore includes an auctioneer of chattels.)

However, these regulations, which apply to all goods distributed, whether old or new, do exclude 'second-hand products supplied as antiques' (see Regulation 30) and auctioneers should be careful in the Conditions of Sale to describe a lot (legitimately) as sold as an antique.



SELF CHECK QUESTION 8

How may an auctioneer be liable for auctioning unsafe goods?

Compare your answer with the one given at the end of this section.



SELF CHECK QUESTION 9

What defences are available to an auctioneer charged with an offence under one of these product-specific regulations? Do they cover only new goods?

Compare your answer with the one given at the end of this section.



SELF CHECK QUESTION 10

Is an auctioneer potentially liable criminally for selling old goods which contravene the General Product Safety Regulations?

Compare your answer with the one given at the end of this section.



ANSWERS TO SELF CHECKS

QUESTION 5

Yes. If it comprises a dead wild bird governed by the Wildlife and Countryside Act 1981 it is an offence to have the bird in your possession and control under Section 1. Furthermore, if you advertise it for sale and/or actually auction it there is a further offence under Section 6, although there is a defence if you are registered under the Act.

QUESTION 6

You would commit an offence under Section 1 of the Firearms Act 1968 if you were not registered as a firearms dealer or obtained a permit from the police for possessing the old pistol. It would also be an offence, even with a permit or being registered, if the pistol was sold to someone who was not a dealer or had a certificate authorising them to purchase.

QUESTION 7

It is an offence to transfer a firearm to anyone not entitled to possess it. You should

- retain it until you can find a dealer willing to buy it (having perhaps for that purpose obtained instructions to sell by private treaty), or
- with your client's consent have the firearm de-activated and then return it to the client, or
- retain it until your client can obtain the necessary permit

QUESTION 8

An auctioneer may be liable for auctioning goods which contravene the specific individual safety regulations made under the Consumer Protection Act 1987. Additionally the auctioneer may be liable more generally as a distributor of unsafe goods under the 2005 General Product Safety Regulations.

QUESTION 9

It is a strict liability offence but subject to a defence of due diligence. They cover used and second-hand goods as well as new ones.

QUESTION 10

Yes, these Regulations cover old and second-hand goods too, but there is a specific exception for goods 'supplied as antiques'.



REVIEW EXERCISE

You are an auctioneer and it is your first sale. Lot 15 is an oak fire screen. Your seller instructs you that it is Edwardian and that is how it is described in the catalogue. At the entrance to your auction rooms is a small notice giving the following information.

'All lots are sold as seen. Any description offered is an expression of opinion only and potential buyers should satisfy themselves as to the age and condition of any lot.'

It transpires that the fire screen is a modern copy and the local trading standards department is threatening criminal proceedings.

What is your position? What potential offence has been committed and is there any defence on these facts?

Suggested Answer



TO REVIEW EXERCISE

SECTION 3

The probable offence is of supplying or offering to supply goods to which a false trade description has been applied. There may be a defence constituted by the disclaimer since you did not supply your description but merely applied that given by your seller client. However to negate the false description it must be as bold and compelling as the description itself and the notice at the entrance may not achieve this.

There is also a possible defence of mistake in relying on the seller's description but there would have to be evidence that the reliance was not blind. Among the relevant considerations might be whether the seller was a dealer or private seller, whether the seller was a regular customer whose reliability in these matters was well established and so on.

Glossary

agency

agency is a legal concept under which a person is given, both expressly by agreement and also to an extent by the law, authority to act on behalf of a principal to transact business

authority

authority is the content of the agency. An agent's authority defines what the agent can and cannot do and, therefore, governs the extent to which the agent can bind their principal

bona fide

good faith

collateral contract

a contract which is separate from but connected with the main contract and frequently arises in the making of the main contract

commission bid

a bid undertaken by the auctioneer for a potential buyer who is not attending the auction. Where an auctioneer agrees to act for a bidder in this way they become agents of that bidder

consignment agreement

this is the contract between an auctioneer and their seller. It sets out the instructions concerning the sale. It may be called other things in different firms such as entry conditions, terms of business, etc

course of dealing

a technical expression which connotes the idea that by virtue of previous activities of a similar kind one is taken to know something

functus officio

a Latin phrase meaning that the authorised tasks have been completed

jointly and severally

a person can be liable on their own or jointly with another person. If two or more people are jointly liable they may be only liable together as a joint entity. But if any one of those people can be made liable on their own for the whole of the loss, even though someone else is partly to blame too, they are **severally** liable

mischief

in legal terms this relates to an injury, harm or wrong and the legal definition of this term relates to 'mischief of a statute', which is the wrong for which it is intended to provide a remedy

property in goods

a technical expression meaning ownership of goods or, more or less, title to them

rescission

a contract is said to be rescinded when a party is allowed to undo it

void

a contract is void when it automatically by operation of law has no validity and no legal effect

voidable

a contract is voidable when it is not automatically void and of no effect but where one party is entitled at their option to treat it as void. Classically this would arise where a buyer was induced to buy some chattel by fraud

warranty

a representation or contractual promise usually as to some fact which becomes a term of the contract. It is a lesser term than a condition in that the remedy for the breach is damages but the contract subsists. Where a condition is broken, the innocent party is entitled to treat the contract as at an end

warranty of authority

agents' claims by word or conduct as to the authority they have. If they do not have the authority claimed, they will be liable in damages to the person who suffers loss as a result

Reading List

For those of you who want to study further any sections of this unit, the following reading and reference list is suggested. This is not an exhaustive list and you will find other books, articles and references on the same topics.

When looking through books, articles and references, and when searching on the web, take care to check the date the material was created. This is particularly important for legal references where the law may change from time to time, but also applies to other areas.

Auctions Law and Practice, B W Harvey and F Meisel, Oxford University Press, Oxford, 2006 (especially chapters 1 to 6 and chapter 8)

Halsbury's Laws of England, Lord Mackay of Clashfern, LexisNexis, London 2003

Professional Negligence and Liability, Mark Simpson, LLP Professional Publishing, London 2007 (see chapter 17, 'Auctioneers')

Property Professional magazine

Useful Websites

legislation.gov.uk – for government legislation

rics.org – Royal Institution of Chartered Surveyors

sofaa.org – Society of Fine Art Auctioneers and Valuers

nava.co.uk – National Association of Valuers and Auctioneers



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