

Unit 22: Aspects of Civil Liability for Business

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| Unit code: | J/502/5453 |
| QCF Level 3: | BTEC National |
| Credit value: | 10 |
| Guided learning hours: | 60 |

● Aim and purpose

The aim of this unit is to introduce learners to the law of tort as it applies to businesses. Learners will do this through application of the law to business situations.

● Unit introduction

This unit considers an area of law (aspects of the law of tort) that affect the day-to-day running of businesses. A tort is a civil wrong where a contract is not needed for there to be liability, although there will be a contract in some cases. A person who commits the wrong is potentially liable in tort, as is that person's employer in some situations. The two main areas of negligence and nuisance, are studied in this unit:

Negligence has a particular legal meaning that learners will explore. In very simple terms, it is carelessness for which the person who has been affected by that carelessness is compensated. Learners will consider the legal rules on negligence, learn to use the appropriate technical terms and understand the impact of this area of law on businesses, employees and those affected by the negligence.

The elements of negligence (duty, breach and damage) are explored in some detail. In particular, different areas of liability are examined. An understanding of occupier's liability is essential for all businesses as it is key to the potential for claims and the management of premises. The distinction between visitors and others on premises is important to establish the different standards of care required of those involved in the management of land and buildings. Similarly, an understanding of the law's reluctance to extend liability for negligence can be seen in the areas of pure economic loss and psychiatric damage.

There are several types of nuisance, but this unit is concerned with private nuisance and the rule in *Rylands versus Fletcher* only. A private nuisance is the unreasonable interference with another person's use of their land, so involves matters such as smell and noise. Learners will consider the legal rules on nuisance, learn to use the appropriate technical terms and understand the impact of this area of law on businesses, employees and those affected by the event.

● Learning outcomes

On completion of this unit a learner should:

- 1 Understand the impact of the law of negligence on businesses, their employees and others
- 2 Know the extent of liability in negligence with respect to occupier's liability, pure economic loss and psychiatric damage
- 3 Understand the impact of the law of nuisance on businesses, their employees and others
- 4 Be able to apply an employer's liability for wrongs committed by their employees (vicarious liability).

Unit content

1 Understand the impact of the law of negligence on businesses, their employees and others

Existence of a duty of care: historical introduction (Donoghue v Stevenson and the neighbour principle); Caparo three-part test

Breach of duty: standard of the reasonable man; factors affecting standard of care – special characteristics of the defendant; special characteristics of the claimant; degree of risk; taking precautions; benefits of taking the risk

Damage: causation, intervening events, remoteness of damage (Wagon Mound), thin skull rule

Remedies: damages – compensatory, pecuniary and non-pecuniary; interim awards and structured settlements; offsets; contributory negligence

2 Know the extent of liability in negligence with respect to occupier's liability, pure economic loss and psychiatric damage

Occupier's liability: liability to visitors; Occupiers' Liability Act 1957; liability to trespassers; Occupiers' Liability Act 1984; children; independent contractors

Economic loss: statements (Hedley Byrne v Heller)

Psychiatric loss: general principles; proximity of relationship

3 Understand the impact of the law of nuisance on businesses, their employees and others

Nuisance: elements of private nuisance – unreasonable behaviour, interference, use/enjoyment of land; who can sue; who can be sued; problems of private nuisance the Rule in Rylands v Fletcher

Defences: statutory authority, prescription

Remedies: injunction, damages, abatement

4 Be able to apply an employer's liability for wrongs committed by their employees (vicarious liability)

Employers and employees: definitions of employees; persons 'in the course of employment'; 'frolics'; express prohibition; criminal acts; employer's indemnity

Independent contractors: position in law; reasons why vicarious liability may be imposed; benefits and drawbacks

Remedies: damages and the methods of their calculation

Assessment and grading criteria

In order to pass this unit, the evidence that the learner presents for assessment needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria for a pass grade describe the level of achievement required to pass this unit.

| Assessment and grading criteria | | |
|--|---|---|
| To achieve a pass grade the evidence must show that the learner is able to: | To achieve a merit grade the evidence must show that, in addition to the pass criteria, the learner is able to: | To achieve a distinction grade the evidence must show that, in addition to the pass and merit criteria, the learner is able to: |
| P1 explain the requirements for liability in the law of negligence [IE] | M1 apply the law of negligence in given situations, involving different areas of negligence and using decided cases [IE] | D1 evaluate the impact of the law of tort on a specific business in given situations. |
| P2 describe how damages are calculated in the law of tort [SM] | | |
| P3 explain the requirements for occupier's liability, economic loss and psychiatric loss | | |
| P4 explain the requirements for liability in the law of nuisance and the remedies available | M2 apply the law of nuisance and the Rule in Rylands versus Fletcher in given situations and explain the appropriate remedies [IE] | |
| P5 apply the requirements for vicarious liability in the law of tort. [IE] | M3 assess the effect of the law of vicarious liability on given business situations. [IE] | |

PLTS: This summary references where applicable, in the square brackets, the elements of the personal, learning and thinking skills which are embedded in the assessment of this unit. By achieving the criteria, learners will have demonstrated effective application of the referenced elements of the skills.

| Key | IE – independent enquirers | RL – reflective learners | SM – self-managers |
|-----|----------------------------|--------------------------|------------------------------|
| | CT – creative thinkers | TW – team workers | EP – effective participators |

Essential guidance for tutors

Delivery

This unit is similar to the unit, *Aspects of Contract and Business Law* as it is concerned with civil law and liability. It addresses the areas of negligence and nuisance in some detail. Throughout the unit, learners need to use the technical terminology of the law and apply legal principles to given problems. The skills involved in applying the law to a given situation can be quite challenging. The unit is designed to enable learners to recognise the potential for legal liability in their personal life and at work.

The starting point of the unit is the law of negligence. This is likely to be the famous definition in *Blyth versus Birmingham Waterworks* and the neighbour test from *Donoghue versus Stevenson*. An analysis of duty, breach and damage will then lead to the specific areas of negligence that are to be studied. Each of the areas is explored easily through the use of decided cases. There are many brief summaries of cases available on the internet which will allow learners to discuss the implications of the law for common situations and consider the practical implications of the law. Cases such as *Chittock versus Woodbridge School* and *Ward versus Tesco* are two examples. Some important cases are quite complex but can lead to useful discussion and understanding of the role of the law. For example, *Keown v Coventry Healthcare NHS Trust* which would link well to a discussion on occupier liability.

Remedies are easy to consider in terms of heads of damage for personal injury. It is useful to look at the difficulty of assessing general damages. This does not always seem easy to square with the idea that damages are compensatory. It is not necessary to spend time on exemplary or nominal damages. There are many examples available of likely sums payable, and learners may have examples from their own or immediate family's experience. It is also useful to draw out the viewpoints of both sides in a case and the role of insurance, including public liability insurance in settling claims.

The specific areas of duty of occupier liability, pure economic loss and psychiatric damage all need to be developed. It is probably easiest to deal with occupier liability first, outlining the distinction between a visitor and a non-visitor and the scope of the 1957 and 1984 Acts. The idea of implied permission with respect to semi-public areas of businesses needs to be examined. This could be explored discussing whether a learner is considered a visitor in certain areas of their centre but not in others. This would then lead to specific permission being given and that permission's duration. The position of children (as in *Glasgow Corporation versus Taylor*) can be considered in the context of the 1957 Act, as can that of specialist workers (as in *Ogwo versus Taylor*) and independent contractors (as in *Gwilliam versus West Hertfordshire NHS Trust*). There are numerous cases that could be used, but it is best to concentrate on the standard cases forming the principles and the most recent decisions. It is possible to follow a number of cases for one company or type of business with careful internet research. With respect to the 1984 Act, *Tomlinson v Congleton B C* is worth exploring.

Pure economic loss is best confined to negligent misstatements and the leading case of *Hedley Byrne versus Heller*. This will require a discussion of assumption of responsibility and links to the post-*Caparo* indicators of proximity. There are many recent cases in this area of tort, but many do not greatly advance the law greatly and are difficult to follow. Essentially, the three ideas of assumption of responsibility, special skill of the defendant and the claimant's reliance on the advice need to be understood.

Psychiatric damage again links to proximity. The leading case of *McLoughlin versus O'Brian* has led to refinements, many arising from disasters such as *Hillsborough* and *Piper Alpha*. It is not necessary to go into enormous detail, but it is interesting to discuss where limits should apply. Learners group may have some relatively direct experience in this area which will help to stimulate meaningful discussion.

Nuisance and the rule in Rylands versus Fletcher is a relatively short topic, perhaps taking only 10 hours out of the total number of hours. Despite that, it is important to understand the principles from the point of view of a business and the conflict between completing a job and affecting others in their use of land. Many nuisance cases are quite old but, despite their age, have a great deal of relevance today (for example, St Helen's Smelting versus Tipping). Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it. Lord Lloyd in Hunter versus Canary Wharf stated that private nuisances are of three kinds: (1) nuisance by encroachment on a neighbour's land; (2) nuisance by direct physical injury to a neighbour's land; and (3) nuisance by interference with a neighbour's quiet enjoyment of their land. The relationship of nuisance and the rule in Rylands versus Fletcher needs to be explored. If this can be explained and applied by learners, then pass and merit criteria are on the way to being met and the foundation laid for distinction. There is no need to spend a great deal of time reviewing damages, but the role of abatement and injunctions needs to be understood.

Vicarious liability is closely linked to aspects of employment law that are also covered in Unit 14: Aspects of Employment Law. The key aspects are the distinction between employees and independent contractors, and the issue of loaned employees, and employees working on another site. While some more recent cases can have some difficulties (for example Lister versus Heselley Hall, Fairchild versus Glenhaven Funeral Services and Viasystems (Tyneside) versus Thermal Transfer (Northern)) it is essential that their underlying principles are explored and understood.

Throughout this specification the law has been set out at the time of writing. Given the dynamic nature of law, tutors need to ensure that the up-to-date equivalent is being considered. Usually a 12-month time lag is allowable.

Outline learning plan

The outline learning plan has been included in this unit as guidance and can be used in conjunction with the programme of suggested assignments.

The outline learning plan demonstrates one way in planning the delivery and assessment of this unit.

| Topic and suggested assignments/activities and/assessment |
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| Introduction to unit content |
| Basic legal terminology |
| Remedies in tort and their application |
| Getting information on the law of tort |
| Attempting to understand the meaning of the underlying concepts and the relationship between statute law and the continuing judicial creativity with respect to tort law |
| Duty of care |
| Breach of duty |
| Resulting damage |
| Research, group work and application to problem situations |
| Assignment 1 – Negligence |
| Occupier's liability |
| Psychiatric harm |
| Economic loss |
| Application to problem situations |
| Assignment 2 – Special Negligence Cases |
| Nuisance |

| Topic and suggested assignments/activities and/assessment |
|--|
| The Rule in Rylands versus Fletcher |
| Group work and research |
| Assignment 3 – Nuisance |
| Application to problem situations |
| Evaluation of effectiveness of the law of tort and vicarious liability |
| Assignment 4 – Vicarious Liability |
| Supervised assignment time |
| Non-supervised study time and completion of assignments |

Assessment

Assessment can be carried out by completing one assignment that can be broken into tasks that help assessors decide on achievement of the individual criteria. Deadlines can be set for completion of the different tasks that will reflect the order of delivery. Each of the pass criteria requires a description of the law. These must be made in the learner's own words and explain all technical terms and set out the legal principles by reference to appropriate decided cases or Acts of Parliament. As P5 can be fairly straightforward, a more interesting way might be to produce a series of leaflets aimed at a non-lawyer audience. This could then form the background to more detailed case studies that would be relevant to individual small businesses. Groups could then provide tailored material for a range of local businesses (for example a plumber, mechanic, landscape gardener, fast-food outlet).

P1 will be achieved by explaining the basic concepts of duty, breach and damage with reference to the leading cases. For duty, the Caparo three-part test will be described and each part illustrated by reference to a decided case. The test of proximity will therefore be stated in the context of closeness of time, space or relationship. There should be reference to a case such as Bourhill versus Young and an example such as witnessing the accident personally, not just hearing about it later. For breach learners need to describe the reasonable person doing the task by reference to a case such as Nettleship versus Weston. Damage requires a description of the principles of causation and remoteness of damage with reference to cases such as Barnett versus Chelsea and Kensington HMC and Wagon Mound. These descriptions will demonstrate the learner's understanding.

P2 requires a description of how the court would work out the amount to be paid to someone who has suffered negligence. It is not mathematical, but is a description of the losses that would be taken into account and the principles used. A personal injuries claim would include a sum for pain and suffering, loss of amenity, past and present medical care, past and present lost earnings etc. Each of these should be exemplified in the description. Other remedies, such as an injunction, do not need to be described.

For P3, the explanation of each part needs to refer to leading cases. Occupier liability is likely to be more detailed than economic loss or psychiatric loss. In both of these, the specification restricts the breadth of knowledge required and, for pass, is an understanding of the concept of economic loss and statements as to the principles of assumption of responsibility, special skill and reliance. Psychiatric loss requires some description of the ideas of proximity and the policy behind exemplified cases, for example following the Hillsborough football stadium disaster.

For P4, learners need to examine the underlying principles so that their description sets out clearly the key areas of private nuisance. This will require a description and exemplification of unreasonable behaviour (which should incorporate the defences) and the key idea of the use of land.

For P5, the central theme is the distinction between an employee and an independent contractor. Learners need to be able to describe each referring to decided cases and then describe typical examples of each in the context of business. This might be a shop assistant as employee of the shop and the shop's window cleaner as an independent contractor. This will then lead to a description and application of the types of activity that are within the scope of vicarious liability.

To achieve the merit criteria learners need to analyse the application of the law to a number of situations. M1 requires an appropriate scenario or scenarios to be considered. One of these could be used to incorporate M3. M2 is likely to be separate. This could be developed easily to address real or hypothetical situations related to the individual small business chosen for the pass criteria. The scenario(s) could be presented so that learners get the opportunity to practise their skill of using legal terminology verbally. Back-up evidence and witness statements would be needed in this case.

M1 will be achieved by taking the facts and analysing the elements of negligence to conclude whether there has been negligence. This would require a detailed explanation of, for example, why the Caparo three-part test was met. Learners can refer to their description for the pass criteria as the emphasis here is on application of the law to the facts disclosed. This application will then be used for the elements of breach and damage, although further work is not needed on damages.

M2 requires a detailed explanation of how the law of nuisance applies to at least two situations. Learners will need to take the rules described in P4 and use them to conclude whether there has been liability for nuisance. At least one of the given situations should lead to a conclusion that there is nuisance. Learners then consider the nature of each of the potential remedies and come to a reasoned conclusion as to which remedy is most appropriate and why.

M3 requires application of the law described in P5. The distinction between employees and independent contractors will be identified and the rules then applied to conclude on liability. This may also be incorporated in M1.

D1 would best follow from the approach of using individual businesses.

D1 requires a detailed evaluation of how the selected business is affected by negligence and nuisance and the concept of vicarious liability. The detail given will depend on the business chosen so that a nightclub would be concerned with noise nuisance and a chemical factory about odours. Whatever business is chosen, the impact can be evaluated through the size of the risk, the way in which risk can be minimised through training and other actions, and the ability to insure.

Programme of suggested assignments

The table below shows a programme of suggested assignments that cover the pass, merit and distinction criteria in the grading grid. This is for guidance and it is recommended that centres either write their own assignments or adapt any Edexcel assignments to meet local needs and resources.

| Criteria covered | Assignment title | Scenario | Assessment method |
|------------------------------|--|---|-------------------|
| P1, P2, M1 (part), D1 (part) | Negligence – or the incident of the snail in the ginger beer | Negligence scenario(s) | Case study |
| P3, M1 (part), D1 (part) | Special Negligence Cases | Scenarios around, psychiatric injury/ economic loss | Case study |
| P4, M2, D1 (part) | Nuisance and its remedies | Nuisance scenarios | Case study |
| P5, M3, D1 (part) | Vicarious Liability | Scenarios | Case study |

Links to National Occupational Standards, other BTEC units, other BTEC qualifications and other relevant units and qualifications

This unit forms part of the BTEC Business sector suite. This unit has particular links with the following unit titles in the Business suite:

| Level 2 | Level 3 |
|-----------------|--|
| Consumer Rights | Aspects of the Legal System and Law Making Process |
| | Aspects of Contract and Business Law |

This unit links to the Level 3 National Occupational Standards for Legal Advice, particularly Unit LA18.

Essential resources

For this unit learners should have access to a suitable business teaching environment with access to the internet to carry out research. Tutors may consider building a bank of resource materials to ensure there is a sufficient supply of real and relevant information across a range of business types and sectors. Learners should have access to a learning resource centre with a good range of legal texts and case books. Additional resources include statutes and law reports.

Learners can generate evidence from a work placement or work experience. Other learners may have access to information from family owned and run businesses.

Employer engagement and vocational contexts

Centres should develop links with local businesses. Many businesses and chambers of commerce want to promote local business and are often willing to provide work placements, visit opportunities, information about businesses and the local business context and visiting speakers. Useful websites include:

- Work Experience/Workplace learning frameworks – Centre for Education and Industry (University of Warwick) www.warwick.ac.uk/wie/cei/
- Learning and Skills Network – www.vocationallearning.org.uk
- Network for Science, Technology, Engineering and Maths Network Ambassadors Scheme – www.stemnet.org.uk
- National Education and Business Partnership Network – www.nebpn.org
- Local, regional Business links – www.businesslink.gov.uk
- Work-based learning guidance – www.aimhighersw.ac.uk

Indicative reading for learners

Textbooks

Harpwood V – *Modern Tort Law, 6th Edition* (Cavendish Publishing Ltd, 2005) ISBN 1859419763

Hodge S – *Tort Law, 3rd Edition* (Willan Publishing, 2004) ISBN 1843920980

Martin J – *AS Law* (Hodder Arnold, 2008) ISBN 0340965134

Quinn F and Elliott C – *Tort Law* (Longman, 2005) ISBN 1405807113

Turner C – *Tort Law (Key facts), 2nd Edition* (Hodder Arnold, 2005) ISBN 0340889489

Wortley R et al – *AS Law* (Nelson Thornes, 2008) ISBN 074879865X

Wortley R et al – *A2 Law* (Nelson Thornes, 2009) ISBN 0748798668

Journals

New Law Journal (Butterworths/LexisNexis Direct/Reed Elsevier (UK) Limited)

Student Law Review (Cavendish)

Newspapers

The Times – especially *Law Times* on Tuesdays

Websites

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| www.baillii.org | British and Irish Legal Information Institute. Access to freely available British and Irish public legal information |
| www.braininjury.co.uk | Information regarding personal injury claims |
| www.city.londonmet.ac.uk | One of a number of academic websites that have publicly accessible and up to date legal resources and links |
| www.lawcosts-uk.com/library | Sample case report |
| www.lawreports.co.uk | The Incorporated Council of Law Reporting for England and Wales |
| www.lawteacher.net/TortPages | Free lecture notes, case notes, statutes and web resources |
| www.swarb.co.uk | One of a number of firms of solicitors and barristers chambers that have publicly accessible and up-to-date legal resources and links |

Delivery of personal, learning and thinking skills

The table below identifies the opportunities for personal, learning and thinking skills (PLTS) that have been included within the pass assessment criteria of this unit.

| Skill | When learners are ... |
|------------------------------|--|
| Independent enquirers | researching the law applying the law to problem scenarios |
| Self-managers | researching the law and finding appropriate materials. |

Although PLTS are identified within this unit as an inherent part of the assessment criteria, there are further opportunities to develop a range of PLTS through various approaches to teaching and learning.

| Skill | When learners are ... |
|--------------------------------|---|
| Independent enquirers | planning and carrying out research into law |
| Creative thinkers | looking at the law |
| Reflective learners | setting goals, with success criteria, for researching business and the law inviting feedback on their own work and dealing positively with praise, setbacks and criticism evaluating their experiences and learning to inform future progress |
| Team workers | working in groups to discuss issues managing activities to reach agreements and achieve results |
| Self-managers | seeking out challenges or new responsibilities and showing flexibility when priorities change dealing with competing pressures, including personal and work-related demands responding positively to change, seeking advice and support when needed |
| Effective participators | making justified recommendations for improvement. |

● Functional skills – Level 2

| Skill | When learners are ... |
|--|---|
| ICT – Use ICT systems | |
| Select, interact with and use ICT systems independently for a complex task to meet a variety of needs | researching law |
| Use ICT to effectively plan work and evaluate the effectiveness of the ICT system they have used | tabulating information about law |
| ICT – Find and select information | |
| Select and use a variety of sources of information independently for a complex task | finding illustrative materials for presentations and tabulations creating diagrams, presentations and tabulations for information presentation |
| Access, search for, select and use ICT-based information and evaluate its fitness for purpose | exploring, extracting and assessing the relevance of information from websites about law |
| ICT – Develop, present and communicate information | |
| Enter, develop and format information independently to suit its meaning and purpose including: <ul style="list-style-type: none"> • text and tables • images • numbers • records | bringing together a variety of materials gathered through research preparing information to present about law |
| Bring together information to suit content and purpose | |
| Present information in ways that are fit for purpose and audience | |
| Evaluate the selection and use of ICT tools and facilities used to present information | |
| Select and use ICT to communicate and exchange information safely, responsibly and effectively including storage of messages and contact lists | communicating with other members of a group |

| Skill | When learners are ... |
|---|--|
| Mathematics | |
| Understand routine and non-routine problems in a wide range of familiar and unfamiliar contexts and situations | using numerical data in relation to business information |
| Identify the situation or problem and the mathematical methods needed to tackle it | |
| Select and apply a range of skills to find solutions | |
| Use appropriate checking procedures and evaluate their effectiveness at each stage | |
| Interpret and communicate solutions to practical problems in familiar and unfamiliar routine contexts and situations | |
| Draw conclusions and provide mathematical justifications | |
| English | |
| Speaking and listening – make a range of contributions to discussions and make effective presentations in a wide range of contexts | carrying out group work investigating the law making presentations about law |
| Reading – compare, select, read and understand texts and use them to gather information, ideas, arguments and opinions | reading about law |
| Writing – write documents, including extended writing pieces, communicating information, ideas and opinions, effectively and persuasively | writing reports to provide information about law producing labelled charts and diagrams showing business information about law. |