

Unit 24: Aspects of Criminal Law Relating to Business

Unit code:	R/502/5455
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 operation of the criminal law as it applies to businesses. Learners will apply the law to business situations.

● Unit introduction

This unit considers aspects of criminal law which affect businesses and employees. The general principles of a guilty act (*actus reus*) and guilty mind (*mens rea*) are needed for many crimes, but there are numerous offences of strict liability that are committed without any mental element. These crimes, being of strict or absolute liability, are often regulatory in nature and some see there to be little real blame. However, they can have a significant effect on a business, not just as a result of fines and other sanctions but also in the negative publicity that convictions bring.

Specific offences are included in this unit relating to property offences and corporate manslaughter. Both these areas require learners to understand the basic principles of common property offences and homicide. The focus is on the impact these crimes have on a business in terms of corporate liability and as a victim, such as cases of employee theft. This is a substantial part of the unit and allows evaluation of the law as it stands. There have been several high-profile corporate manslaughter cases that do not always appear to have had a satisfactory conclusion, and regrettably there may be more.

Criminal offences are usually investigated by the police and prosecutions are brought through the Crown Prosecution Service. However, many other inspectors and authorities have powers of entry, search and seizure of property which can affect a business. Learners need to be aware of the main authorities that can do this and the limits on their powers.

● Learning outcomes

On completion of this unit a learner should:

- 1 Understand the elements of a crime
- 2 Understand specific offences
- 3 Be able to apply the law on corporate manslaughter
- 4 Know the powers of arrest, enter, search and seize.

Unit content

1 Understand the elements of a crime

The actus reus of a crime: acts and omissions; causation; examples

The mens rea of a crime: intention; subjective recklessness; gross negligence; examples

Crimes of strict liability: strict liability; absolute liability; examples

Liability for crime: the liability of business organisations in relation to crimes; liability of individuals within the organisation; examples of crime

2 Understand specific offences

The elements of offences against property: actus reus and mens rea of theft; actus reus and mens rea of obtaining property by deception; deception offences under the Fraud Act 2006; actus reus and mens rea of obtaining services by deception; actus reus and mens rea of making off without payment; examples of each in a business context

3 Be able to apply the law on corporate manslaughter

The elements of corporate manslaughter: distinction between murder, voluntary and involuntary manslaughter; corporate responsibility; corporate manslaughter

4 Know the powers of arrest, enter, search and seize

Searching an arrested person and premises: the rights of police to search a person when arrested; powers to enter premises without a warrant; search warrants; seizing of goods; investigate powers of other government agencies; codes of practice; remedies available for those affected by unlawful entry and searches

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 describe the elements of a crime	M1 apply the law relating to the commission of property offences	D1 evaluate the effectiveness of the law relating to property offences in protecting a business
P2 describe the liability of business organisations and their employees for crimes [SM]		
P3 explain the elements of theft and fraud offences		
P4 apply the elements of liability for corporate manslaughter	M2 apply the law relating to the commission of corporate manslaughter	D2 evaluate the need for, and effectiveness of, a separate crime of corporate manslaughter.
P5 describe the powers of the authorities to arrest search and seize property in relation to a business. [IE]	M3 assess the impact of the authorities' rights to search the premises of a business.	

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 CT – creative thinkers	RL – reflective learners TW – team workers	SM – self-managers EP – effective participators

Essential guidance for tutors

Delivery

This unit gives learners the opportunity to understand the impact of some aspects of criminal law on business. The aim is to make learners aware of how criminal law operates and the law's impact on a business and its employees. It is essential that learners understand the principles of actus reus and mens rea that underpin criminal liability. Technical terms should be used accurately and in context so that learners understand their use in a business context.

There will be many day-to-day cases reported that will give a flavour of the impact of criminal law on business. General defences to crimes are not part of this unit, but it is likely that some aspects of defences will be raised by learners. Where this arises, it is useful to explore the issues and may help their evaluation of the application of the law, but it is not essential for assessment.

To understand the elements of a crime learners need to explore the concepts of actus reus and mens rea. Learners will need to identify these elements in relation to specific offences. For actus reus, the distinction between acts and omissions needs to be explored, and learners should consider the limited number of omissions that can give rise to criminal liability. The concepts of factual and legal causation should be explored because of their relevance to corporate manslaughter. For mens rea, learners need to understand the rules relating to direct and oblique intent, and should examine the historical developments of the test for oblique intent. Other aspects of mens rea need to be explored in the context of the crimes, so it is unlikely that a discussion of objective recklessness will be needed.

Strict liability is very important in a business context, and is best explored 'briefly' in theory and then in the context of a particular business. Exploration of offences relating to pollution, for example, is particularly appropriate and interesting. Trade descriptions and health and safety at work are central to other units, but the principles can be used as illustrations in this unit. Participation in crime only requires consideration of corporate liability and individual responsibility. The key is understanding the different types of business organisation and, for example, the need for limited companies and/or their directors and other officers and employees to be prosecuted for offences.

When exploring offences against property, learners must identify the elements of actus reus and mens rea for each offence. For instance, in the case of theft, learners should consider each element with examples such as that for dishonesty by reference to common examples. The concept of appropriation has some difficult cases, so the basic principle should be sufficient. With respect to the deception offences (including making off without payment), the common elements of the crimes can be identified and then each offence can be considered in the context of a business which might be a victim.

Corporate manslaughter requires an understanding of the law on homicide, particularly murder and involuntary manslaughter. Voluntary manslaughter is only needed in outline so as to contextualise the blameworthiness of, and evaluate the law on, corporate manslaughter. An examination of the publicity surrounding cases where corporate manslaughter has not been prosecuted is instructive, particularly when considering what alternative charges were brought and the sentence on conviction. Fining a large corporation £10 million, following deaths in a rail crash may be seen not to reflect the true level of blameworthiness. It is the shareholders that ultimately suffer the punishment, rather than individuals who could be said to have allowed the failures to occur.

Powers of arrest, entry, search and seizure are usually associated with the police. These powers only need to be considered in outline, given the extensive nature of the regulations. From a business perspective, it is the extent of cooperation that is important as it can be very time consuming assisting an investigation or being investigated.

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
Introduction to unit content
Basic legal terminology
Tutor Input on Actus reus and Mens rea
Tutor Input on Strict liability
Tutor Input on Participation in crime
Research and group work
Tutor Input on Theft
Tutor Input on Deception offences under the Fraud Act 2006
Tutor Input on Making off without payment
Research, group work and application to problem scenarios
Assignment 1 – Offences Against Property and Elements of Crime
Distinction between murder and manslaughter
Distinction between voluntary and involuntary manslaughter
Corporate manslaughter
Examination of cases past and present on corporate manslaughter
Research, group work and application to problem scenarios
Assignment 2 – Corporate Manslaughter
Searches – powers and remedies
Application to problem scenarios
Evaluation of effectiveness of criminal law and assignment work
Assignment 3 – Arrest, Search and Seizing Property
Supervised assignment time
Non-supervised study time and completion of assignments

Assessment

This unit can best be assessed by completing one assignment that can be broken into tasks to 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.

Some of the pass criteria require a description of the law. These must be made in the learner's own words which will explain all technical terms and set out the legal principles by reference to appropriate decided cases, codes of practice or acts of Parliament. P3 and P5 will be unlikely to have much such authority. As this can be fairly straightforward, a more interesting way might be to produce a series of scenarios based on a business that are aimed at the merit criteria but will allow for development to distinction level and incorporate the pass level criteria. It is easiest to use one real business that the individual learner is familiar with, although for some aspects simulated scenarios may be more appropriate.

P1 clearly requires a description of the legal principles of actus reus and mens rea with some basic cases that illustrate understanding of the underlying concepts. Much of this may be found in the evidence for P3 and P4. Strict liability can be best explained by reference to relevant examples for a business used to contextualise the assignment tasks.

P2 will also best be dealt with through a business scenario, illustrating the difference between corporate and individual liability. Again, much of this may be incorporated in P4 or D2.

P3 requires identification of the mens rea and actus reus of the offences stated in the unit content. Scenarios involving these crimes can be set as tasks, and are straightforward to carry out in the context of a business that is a victim of these crimes. There is no need to consider the details in more than a short statement. Again, much of this will be incorporated in M1 which requires application of the law to relevant scenarios.

D1 requires an analysis of the extent of protection for a business as the law stands, and recommendations for improvement, not just for the law but for the business systems. For example exploration of the issues for a petrol filling station will illustrate the difficulties around making off without payment and the potential solutions for the business.

P4 requires an explanation of the actus reus and mens rea of corporate manslaughter and of the distinction between that crime and others in the context of learning outcome 3. More detailed explanation is required than for P3 and again much will be incorporated into M2 and D2. Achievement does not require a detailed understanding of cases, but does require up-to-date definitions. Thus the mens rea may be explained in the context of the case of Woollin. M2, like M1, will best be illustrated in the context of a recent prosecution or potential prosecution. This will then be evaluated with a well argued conclusion for D2.

P5 and M3 are linked. P5 requires a description, which goes beyond basic police powers, identifying powers of appropriate inspectors for a business. These might be VAT inspectors or local government officials or others considering aspects of noise or other pollution. M3 requires some analysis of the effects on a business of a search, which will include disruption and possible bad publicity. The effect will vary from business to business and needs to be contextualised for a chosen business.

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, P3, M1, D1	Property Offences and Elements of Crime	A number of incidents where the learner has to decide whether certain offences have been committed.	Case study.
P4, M2, D2	Corporate Manslaughter	A death occurs in the workplace.	Case study.
P5, M3	Arrest, Search and Seizing Property	Incidents occur and learner has to state what actions can be taken and why.	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, and a learning resource centre with a good range of legal texts and case books. Additional resources include statutes and law reports. Tutors may consider building a bank of resource materials to ensure there is a sufficient supply of relevant information on the subjects of the legal system and law-making process. Learners can generate evidence from a work placement or from work experience.

Employer engagement and vocational contexts

Centres should develop links with local businesses. Many businesses are often willing to provide work placements, visit opportunities, information about businesses and provide visiting speakers. Websites include:

- Work-based learning guidance – www.aimhighersw.ac.uk
- Local, regional Business links – www.businesslink.gov.uk
- National Education and Business Partnership Network – www.nebpn.org
- 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

Indicative reading for learners

Textbooks

Card R – *Card, Cross and Jones Criminal Law, 17th Edition* (Oxford University Press, 2006) ISBN 0199286663

Elliott C and Quinn F – *Criminal Law* (Longman, 2006) ISBN 1405835281

Heaton R – *Criminal Law Textbook* (Oxford University Press, 2006) ISBN 0199287058

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

Martin J – *Criminal Law (Key Facts)* (Hodder Arnold, 2005) ISBN 0340886056

Molan M T (editor) – *Criminal Law Textbook, 4th Edition* (Old Bailey Press, 2003) ISBN 1858364914

Molan M T (editor) – *Criminal Law: 150 Leading Cases, 2nd Edition* (Old Bailey Press, 2002) ISBN 1858364493

Other books are useful for reference such as:

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

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

Journals

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

Student Law Review (Cavendish)

Newspapers

The Times – especially *Law Times* on Tuesdays

Websites

www.baillii.org	British and Irish Legal Information Institute. Access to freely available British and Irish public legal information
www.city.londonmet.ac.uk/~shlane	One of a number of academic websites that have publicly accessible and up-to-date legal resources and links
www.lawreports.co.uk	The Incorporated Council of Law Reporting for England and Wales
www.lawteacher.net	Free lecture notes, case notes, statutes and web resources. Good links to other websites
www.swarb.co.uk/index.shtml	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
Creative thinkers	developing skills as circumstances change
Reflective learners	setting goals, with success criteria, for research 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 a group to discuss ideas and prepare materials for presentations taking responsibility for their own role 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	planning and carrying out research into the different areas of law.

● 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 information
Use ICT to effectively plan work and evaluate the effectiveness of the ICT system they have used	tabulating information
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 about criminal law 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 criminal law relating to business
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 criminal law relating to business
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 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 crime making presentations about law
Reading – compare, select, read and understand texts and use them to gather information, ideas, arguments and opinions	reading about criminal law relating to business
Writing – write documents, including extended writing pieces, communicating information, ideas and opinions, effectively and persuasively	writing reports to provide information on criminal law producing labelled charts and diagrams.