

Unit 25: Aspects of Civil Liability Affecting Business

Delivery guidance

Approaching the unit

This unit will probably be learners' first foray into the world of civil liability, comprising as it does elements of both common law (as in the tort of negligence and contract formation) and statute law (as with consumer protection legislation). It is an introductory unit to the subject, and you will wish to have a reasonable amount of informational delivery, as well as in-class tasks, for learners, in order to ensure a basic understanding of the subject.

Following an initial taught session on the various components of civil liability affecting business, learners should be encouraged to research and explore the topics, using some of the resources suggested at the end of this guide, and/or any others you have available.

Learners should look at the fundamentals of business liability – what negligence is in law and the various tests required for a duty of care, together with available remedies if a breach of the duty is proved. Protections available to employees through vicarious liability and their limitations should also be considered. The basic rules for the formation of a contract and the additional protections available to customers via consumer protection legislation are also required content for the unit.

By setting tasks in class and giving formative feedback, you will be able to gauge learners' understanding of these topics. This guide contains some suggested activities for you to consider.

You can use a range of delivery methods in this unit, such as:

- informational delivery (tutor-led instruction), particularly at the beginning of each learning aim
- discussions – class and small group discussions on topics such as who is liable to whom and for what, and the remedies available
- individual or group presentations – for example on problems arising from the sale and supply of goods and services, and the protection of consumers in statute law
- case studies – excellent for illustrating cases in negligence, vicarious liability and occupier's liability and the formation of contracts
- videos – there is some material available online (on video-sharing websites), although it tends to be presented from an insurance point of view. Nevertheless, it can be useful for learners to become aware of the range of products available to meet the various liabilities that employers can be exposed to. There is a link to one of them on the resources page.

Group work is an acceptable form of delivery but you must ensure that learners individually produce evidence that is sufficient for assessment.



You can involve local employers in the delivery of this unit by inviting them as:

- guest speakers
- mentors for learners
- audience members who can give feedback on learner presentations
- providers of business materials as basis for case studies and exemplars
- providing opportunities for work experience for learners.

Delivering the learning aims

For learning aim A, introduce the topic by an initial overview of the unit. This could include, for example, a brief synopsis of the learning aim, followed by a group discussion around key questions – what is the law of tort, the role of the courts in establishing case /common law and the depth of knowledge learners will need to aim for. This should set the scene for some initial research by learners on these topics, perhaps including searching for examples of cases, even if they are not, at this stage, specifically related to the tort of negligence in business. There will inevitably be quite a few questions around such a broad and deep subject, and it might be useful for learners to work in small groups on identifying questions, then pair up with another group to answer them. A guest speaker from a university would help learners to see links between the academic content and the practice of law with businesses.

For learning aim B, the topics of vicarious liability and independent contractors could be linked with *Unit 24: Employment Law* (this will be particularly useful if learners have already been introduced to the nature and types of employment). Occupier's liability can be taught within the context, for example, of public liability and employers' liability insurances, and learners should be encouraged to find out about these products online and make the link to the underpinning law and policy. For all three sub-aims, learners should be encouraged to carry out some research themselves, including talking to friends and family about their own experiences as an employee or independent contractor. Relevant and interesting activities will help to embed learning, and examples are available in the next section of this guide.

The topics for learning aim C could be introduced by means of a group discussion on the nature of a contract, with example contracts (of any kind) passed around for learners to examine and comment on. The point can then be made that all contracts follow similar key characteristics, but that some contracts have additional terms inserted into them by statute, for example to ensure consumer protection. Give an example of how this works, focusing on a specific statute. The law changes and is updated continuously. Centres are always advised to use the most up-to-date law whenever possible, but it is appreciated that sometimes laws change during/after delivery to learners.

The Consumer Rights Act 2015 is not specifically listed in the unit content, as this content was written prior to the implementation of the act in October 2015, but this new statute amends the legislation specified in the C2 content on the sale and supply of goods, services and unfair terms. Details of these amendments are set out in the schedules of the 2015 Act. It applies to contracts for the sale/supply of goods from business to consumer.



Learning aim	Key content areas	Recommended assessment approach
A Examine the elements of negligence in order to establish liability	A1 Elements of the tort of negligence A2 Remedies in the event of liability	A presentation applying the principles of negligence in given case scenarios to conclude on liability. Also to include the potential amounts of damages, both pecuniary and non-pecuniary.
B Examine the elements of vicarious and occupiers' liability in order to establish liability	B1 Vicarious liability B2 Independent contractors B3 Occupiers' liability	A briefing sheet for a new business on rights and duties in vicarious liability and occupiers' liability. A fully justified report, or brief, providing advice on the impact of negligence in given situations, for both businesses and individuals.
C Explore the responsibilities that a business has for the products and services it provides	C1 Formation of contracts C2 Sale of goods and supply of goods C3 Consumer protection and the safety of products	Presentation advising on liability in contract, sale and supply of goods scenarios. Leaflet on consumer protection issues. Leaflet on advisory bodies. A fully justified report, or brief, on the effectiveness of the law in protecting consumers from faulty products, contract formation, or sale and supply of goods disputes.

Assessment guidance

This unit is internally assessed through a maximum of two summative assignments, one for learning aims A and B, and one for learning aim C. Summative assignments can each include a number of tasks, although each task should be related directly to the assignment as a whole. It is important that learners are given a realistic and achievable number of tasks for each assignment.

BTEC assessors should complete observation records, while people such as work colleagues can complete witness statements. Observation records alone are not sufficient sources of learner evidence; the original learner-generated evidence must support them.

All learners must independently generate individual evidence that can be authenticated. The main sources of evidence for this unit are likely to be written reports, briefs or leaflets. Learners should incorporate in-depth research that is corroborated by a fully referenced bibliography.

Learners could also produce presentations. Suitable forms of evidence for a presentation are, for example, slides, preparation notes, scripts or cue cards.



Getting started

This gives you a starting place for one way of delivering the unit, based around the recommended assessment approach in the specification.

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Introduction

Begin by introducing the unit to learners through a group discussion exploring what learners understand by liability – seek examples, including, for example, hypothetical ones around liability for faulty products sold to consumers, or negligent driving of a bus on the way to class. Explore who is liable and for what, and what sorts of remedies might be available in law – this sets the scene for some initial instruction on the legal status of businesses and the liabilities in law of its owner or director, and the limits on the liability of employees. Conclude by a group discussion on the content of the three learning aims, and the requirements for assessment.

Learning aim A – Examine the elements of negligence in order to establish liability

- Begin by explaining the concept of negligence in law, and how it differs from people's common understanding of the word. A good case to explore is *Donoghue v Stevenson* [1932] AC 562 *House of Lords*, not least, as it established the tort, and centres on the liability of a business for the quality of its goods. Learners can look this case up online – there are many reliable sources – and the class can discuss the tests and remedies flowing from it.
- Ask learners to consider, discuss and research the following key terms in negligence: duty of care (including acts and omissions, and proximity), breach of duty, causation and foreseeability. A basic text of tort will give definitions to all these terms, as will an online research session. *Donoghue v Stevenson* (1932) will be helpful for learners here.
- Using the definitions of the various components of the tort of negligence they have found, learners now form a small group to consider situations involving businesses where the tort of negligence might apply. The results of this activity could be presented by each group via an illustrated flip chart (or PowerPoint) presentation.
- Conclude by explaining remedies available to the courts, including pecuniary and non-pecuniary damages, and how these – as compensation – differ from punishments such as fines. Ask learners to consider how these sums may be arrived at.

Learning aim B – Examine the elements of vicarious and occupiers' liability in order to establish liability

- Ask learners to discuss, in small groups, what they think the word 'employee' actually means, perhaps using their own examples, and then to go on to consider the amount of control an employee has in what they do in their employment (you could also introduce some discussion around independent contractors at this point). This leads onto an explanation of vicarious liability, perhaps using a decided case such as *Lister v Helsey Hall Ltd* [2001] UKHL 22.
- Lead a group discussion around occupiers' liability, starting with an explanation of who an occupier might be, and how this might apply to business. Give learners two decided cases to explore online – *Wheat v E Lacon & Co Ltd* [1966] AC 552 and *Harris v Birkenhead Corp* [1976] 1 WLR 279. Both cases are available to read online in summary form. Ask groups to give a succinct synopsis of the facts and judgment

of each case, explaining how it might apply to other forms of businesses (i.e. those with premises at which business activities are carried out, and those owned by the business but not actively used).

- Give out short case studies on vicarious liability, and occupiers' liability, asking that learners consider responses and potential remedies in each case.

Learning aim C – Explore the responsibilities that a business has for the products and services it provides

- You could begin by asking learners to think about occasions where they have returned goods or complained about services. What was the response, and was the learner satisfied? What do they think their rights in law might be, and where might these rights come from? Lead a discussion by first considering what constitutes a contract (agreement, intention to create legal relations and valuable consideration). Ask learners what contracts they can think of, first generally and then in relation to businesses selling goods or supplying services.
- Follow this activity up by explaining that some contracts have additional terms and conditions inserted into them by legislation, and that a prime example of this is for contracts involving a business and a consumer.
- Ask learners, in the light of what they have learned so far, to work in small groups and produce a briefing sheet (one per group) on the protection available to consumers for (1) faulty goods bought in a shop (2) goods bought online and (3) services (e.g. plumber or car mechanic) bought and supplied, when the customer is dissatisfied with the quality of the service. At the end of the briefing sheet, learners should give examples of where consumers can get advice on these matters.
- You could conclude this learning aim by bringing together this topic with the previous one on negligence, explaining the importance of redress where products are found to be unsafe, and the role of the courts in enforcing the Consumer Protection Act 1987, which is concerned with defective / unsafe consumer products.



Details of links to other BTEC units and qualifications, and to other relevant units/qualifications

Pearson BTEC Level 3 Nationals in Business (NQF):

- Unit 23: The English Legal System.
- Unit 24: Employment Law.
- Unit 26: Aspects of Criminal Law Impacting on Business and Individuals.

Chartered Institute of Legal Executives Level 3 Diploma:

- Unit 2: Contract Law.
- Unit 5: The Law of Tort.

Institute of Leadership and Management Level 3 Diploma:

- Unit 335: Understand How to Manage Contracts and Contractors in the Workplace.
- Unit 206: Working within Organisational and Legal Guidelines.

Resources

In addition to the resources listed below, publishers are likely to produce Pearson endorsed textbooks that support this unit of the BTEC Nationals in Business. Check the Pearson website (<http://qualifications.pearson.com/endorsed-resources>) for more information as titles achieve endorsement.

Journals

- *The Economist* (Economist Group)
The Economist print edition is a weekly economics and business journal that has regular articles and features about issues related to employment-related matters, including occasional reports on high profile court cases. It has an extensive archive of relevant materials. An online subscription (www.economist.com) is also available which contains an archive of articles about the UK economy.
- *The New Law Journal* (LexisNexis)
Available for reference at many publicly accessible university law libraries, the New Law Journal covers all possible areas of law, and regularly features articles and cases on contract law and the law of tort.
- *The Times Law* (The Times)
This supplement to *The Times* newspaper, contains a wide range of articles on law, including contract and tort law, and publishes law reports on a regular basis.

Videos

- www.youtube.com/watch?v=kuwVFiq-D2U
This is a guide by the insurance company Hiscox to the various types of insurance available to small businesses, which can give learners an understanding of the types of liabilities employers can be exposed to.

Websites

- www.citizensadvice.org.uk/consumer
General access advice site with information on a wide variety of consumer protections.
- www.gov.uk
The government portal for government departments and policies.
- www.gov.uk/browse/business/sale-goods-services-data
Search page from the government on the sale of goods and services, written for businesses. Includes basic information on unfair terms in contracts.
- www.gov.uk/browse/business/setting-up
Search page from the government on setting up a business, including material on liabilities and on the legal structures of various types of business.
- www.legislation.gov.uk
The official home of UK legislation, including associated regulations. All Acts of Parliament mentioned in either the unit specifications or this guide can be found here.