

## Unit 2: Common Law II

Learning hours: 60 hours

Unit level : H1 (H1 or H2 for BTEC Higher Nationals only)

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### Unit description

The aim of this unit is to build on the knowledge of contract and tort acquired in *Unit 5: Common Law I*, with a particular focus on business organisations. The learner is encouraged to investigate key concepts and principles in relation to specific forms of tortious liability. Additionally, the unit develops an awareness of possible defences against tortious action, and the remedies available in relation to various forms of loss. This unit also develops the learner's knowledge of contract by looking at factors which can initiate contracts, ways contracts can be discharged and remedies available.

### Summary of learning outcomes

To achieve this unit a learner must:

- 1 Examine the **vitiating factors** that could impact on an otherwise legally binding business agreement
- 2 Explore the practical situations which could lead to the **discharge of a business contract** and evaluate the relative importance of the **remedies** available
- 3 Analyse **specific torts** other than negligence **which impact on business activities**
- 4 Examine and evaluate the **possible defences against actions in tort** and the **remedies** available for different forms of loss.

## Content

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### 1 Vitiating factors

*Identification of key vitiating factors:* mistake, misrepresentation, duress, undue influence, restraint of trade, illegality

### 2 Discharge of a business contract and remedies

*Forms of discharge:* agreement, frustration, performance, breach

*Remedies:* damages (liquidated and unliquidated), specific performance, injunctions, restitution, rescission, remoteness, mitigation

### 3 Specific torts which impact on business activities

*The nature and scope of particular torts:* trespass to persons, land and goods; nuisance, public and private, defamation — slander, libel; business and economic torts, right to sue and who may be sued, rule in *Rylands v Fletcher*, liability for fire

### 4 Defences against actions in tort and remedies

*General defences:* volenti non fit injuria, statutory authority, necessity, Act of God, special defences against specific torts, contributory negligence

*Remedies:* compensatory and non-compensatory

*The calculation of damages and different forms of loss*

*Damages:* calculation of, and different forms of loss

## Learning outcomes and assessment criteria

Learning outcomes	Assessment criteria for pass  To achieve each outcome a learner must demonstrate the ability to:
1 Examine the <b>vitiating factors</b> that could impact on an otherwise legally binding business agreement	<ul style="list-style-type: none"> <li>• explain the legal concepts of misrepresentation and mistake</li> <li>• discuss the legal concepts of duress (including economic duress) and undue influence</li> </ul>
2 Explore the practical situations which could lead to the <b>discharge of a business contract</b> and evaluate the relative importance of the <b>remedies</b> available	<ul style="list-style-type: none"> <li>• examine the legal consequences of discharge</li> <li>• examine the various remedies, evaluating their appropriateness in given situations</li> </ul>
3 Analyse <b>specific torts</b> other than negligence <b>which impact on business activities</b>	<ul style="list-style-type: none"> <li>• explain and apply nuisance, trespass, defamation and the specific business economic torts</li> <li>• evaluate the scope of these torts in terms of right to sue and who may be sued</li> <li>• apply the rule in Rylands v Fletcher</li> <li>• evaluate liability for fire</li> </ul>
4 Examine and evaluate the <b>possible defences against actions in tort</b> and the <b>remedies</b> available for different forms of loss	<ul style="list-style-type: none"> <li>• distinguish and evaluate general defences from other defences relevant to specific torts</li> <li>• identify the particular types and classifications of remedies</li> <li>• understand the basis of the calculation of potential damages in particular situations</li> <li>• evaluate the effectiveness of particular remedies when applied to different forms of loss</li> </ul>

## Guidance on delivery and assessment

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### Delivery

This unit can be delivered in a variety of ways. Group work and other active methods of learning can be employed to enhance learners' experience and promote the required understanding. The use of case studies and specimen documentation is to be particularly encouraged, both as a means of assessment and as part of the normal learning process.

### Assessment

Evidence of outcomes may be in the form of:

- case studies to assess differing approaches to tortious liability
- group work to examine critically particular elements of negligence
- group role play to simulate situations where various forms of tortious liability apply
- time-constrained assessment analysing practical issues facing a client, including defences and remedies in tortious actions.

### Links

It is desirable to have completed *Unit 5: Common Law I* and *Unit 25: English Legal System* prior to commencing this unit, as they lay down the foundations for contract and tort and the English legal systems and procedures.

This unit provides for the development of a solid understanding of the law of tort and contract.

### Resources

Learners need access to a library with the key texts and to case studies. The use of texts should be supported by reference to broadsheet newspapers, relevant journals and technology-based databases.

### Support materials

#### Textbooks

Sufficient library resources should be available to enable learners to achieve this unit. Particularly relevant texts are:

Atiyah P S — *Introduction to the Law of Contract* (Clarendon Press, 1995) ISBN: 0198259530

Beale, Bishop and Furmston — *Contract — Cases and Materials* (Butterworth, 2001) ISBN: 040692404X

Cheshire, Fifoot and Furmston — *Law of Contract* (Butterworth, 2001) ISBN: 0406930589

Cooke J — *Law of Tort* (Prentice Hall, 1997) ISBN: 0273627104

Elliott and Quinn — *Contract Law* (Longman, 2002) ISBN: 0582473306

Elliot and Quinn — *Tort Law* (Longman, 1997) ISBN: 058243811X

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