

Pearson BTEC Level 4 Higher Nationals in Business (RQF)

Unit: 7

Assignment 1: Information Pack

Learning Outcomes 1 to 2

Business Law



INTRODUCTION

The aim of this unit is to enhance students' understanding of how business law is applied to the running of a business organisation. Students will gain knowledge of business law and examine the impact of the law on business operations and decision-making. Throughout the unit students will identify legal solutions available to business owners and assess their suitability.

Their experiences in this unit will help them better understand different areas of law that apply. They will be able to illustrate the impact of the law on normal business operations and when registering a company and inviting shareholders to invest in it. They will gain an understanding of the law in relation to the market abuse and director responsibilities. Students will be able to recognise the application of employment law between employers and employees.

This unit is a prerequisite unit for those students studying the law pathway.

This information pack is designed to give you the information and guidance that you will need to complete your assignments for this unit. This information pack will look at the first 2 learning outcomes which make up assignment 1, these being.

1. *Explain the nature of the legal system.*
2. *Illustrate the potential impact of the law on a business.*

3.

GUIDANCE

This document is prepared to break the unit material down into bite size chunks. You will see the learning outcomes above treated in their own sections. Therein you will encounter the following structures;

Purpose

Explains *why* you need to study the current section of material. Quite often learners are put off by material which does not initially seem to be relevant to a topic or profession. Once you understand the importance of new learning or theory you will embrace the concepts more readily.

Theory

Conveys new material to you in a straightforward fashion. To support the treatments in this section you are strongly advised to follow the given hyperlinks, which may be useful documents or applications on the web.

Example

The examples/worked examples are presented in a knowledge-building order. Make sure you follow them all through. If you are feeling confident then you might like to treat an example as a question, in which case cover it up and have a go yourself. Many of the examples given resemble assignment questions which will come your way, so follow them through diligently.

Question

Questions should not be avoided if you are determined to learn. Please do take the time to tackle each of the given questions, in the order in which they are presented. The order is important, as further knowledge and confidence is built upon previous knowledge and confidence. As an Online Learner it is important that the answers to questions are immediately available to you. Contact your Unit Tutor if you need help.

Challenge

You can really cement your new knowledge by undertaking the challenges. A challenge could be to download software and perform an exercise. An alternative challenge might involve a practical activity or other form of research.

Video

Videos on the web can be very useful supplements to your distance learning efforts. Wherever an online video(s) will help you then it will be hyperlinked at the appropriate point.

Contents

INTRODUCTION.....	2
GUIDANCE.....	3
LO1.....	7
The Legal System.....	7
What Constitutes a Legal System?	7
The British Legal System	7
The Purpose of Law	8
Four Functions of Law	8
The Evolution of Law and different Sources of law	9
Legislation	9
Directives	12
Sources of Law in the UK.....	12
To What Extent Do International Sources of Law Apply.....	14
Divisions and key terminology of the legal system.....	16
England and Wales Court Structure	16
Civil Vs Criminal Law	18
What is Criminal Law?	18
What is Civil Law?.....	18
What are the Differences	19
The Justice System	19
The role of government in law-making and the justice system.....	19
UK Parliament	19
Where Do These Bills Come From?	20
How Bills are Considered by Parliament	20
Agreed Text.....	20
Royal Assent.....	20
Other Types of Bill.....	21
Organisation of the Judiciary In the UK.....	21
LO2.....	23
The Impact of Law	23

Law in Business	23
Contract Law	23
What is a Contract?	23
Elements of a Contract	23
How Can a Contract Be Made?	24
Forming Legally Binding Contracts	25
Principles of Contract Law in Business	25
Freedom of Contract	25
Fairness	26
Competition Law	26
UK Competition Law Case Study	30
Background – Casio Fined £3.7 Million	30
What Casio Did	31
How Casio Broke the Law	31
What Action We Took	31
What the Lessons Are	31
Data Protection	32
Data Protection Case Studies	33
The Tort of Negligence, Consumer Protection, Health and Safety and Product Liability	35
The Tort of Negligence	35
Duties of Employer and Employee	38
Managing Cases of Dismissal, Redundancy, Discrimination, Health and Safety	42
LO3	59
The Nature and Formation of a Company	59
Unincorporated vs Incorporated Legal Structures	59
Different Types of Business Organisation and Legal Structures	61
Classification of Companies	63
Starting up a Business Organisation and Registration Requirements	64
The Management of a Company	67
The Application of Company Law in Forming Different Types of Business Organisations and Companies, Raising Capital and Liquidation.	77
LO4	80
Legal Solutions for Different Types of Dispute Resolution	80

Areas of Employment.....	80
Corporate and Commercial Disputes	93
Commercial Property	97
Alternative Dispute Resolution	101
The Role of Alternative Dispute Resolution (ADR)	101
Civil Litigation Procedures and Funding	102
Tribunals	109
The Role of Unions	Error! Bookmark not defined.
Citizens Advice	Error! Bookmark not defined.

Sample

LO1

The Legal System

What Constitutes a Legal System?

The legal system includes rules, procedures, and institutions by which public initiatives and private endeavors can be carried out through legitimate means. In other words, is a system for interpreting and enforcing the laws. It elaborates the rights and responsibilities in a variety of ways. Three major legal systems of the world consist of civil law, common law and religious law. Other legal systems are Jury system is a legal system for determining the facts at issue in a lawsuit. The tax system is a legal system for assessing and collecting taxes. The Electoral system is a legal system for making democratic choices.

Jurisdiction's basis of applying law consists of (1) a constitution, written or oral; (2) primary legislation, statutes, and laws; authorized by constitutionally authorized legislative body; (3) primary legislation approved body enacts subsidiary laws or bylaws; (4) traditional practices upheld by the courts; (5) Civil, common, Roman, or other code of law as source of such principles or practices. (*Law Dictionary: What is a legal system? definition)

Most of us acknowledge the importance of the legal system in our society. As members of a community, we have a social obligation to the people around us to create a safe environment for everyone and make us feel secure walking the streets and dealing fairly with one another. However, though we abide by these laws and rules each day, we are not the ones responsible for their enforcement, whether we choose to break or follow the law, is up to each person and enforcement falls into the hands of the criminal justice system.

The British Legal System

The United Kingdom of Great Britain and Northern Ireland (UK) consists of four countries: England, Wales, Scotland and Northern Ireland.

Some law applies throughout the whole of the UK; some applies in only one, two or three countries. This webpage describes law that applies either to the whole of the UK, or to England and Wales. It does not cover law that applies only to Wales, Scotland or Northern Ireland.

England and Wales have a common law legal system, which has been established by the subject matter heard in earlier cases and so is the law created by judges. It originated during the reign of King Henry II (1154-89), when many local customary laws were replaced by new national ones, which applied to all and were thus "common to all".

Scotland has its own independent and, in parts, clearly different judicial system with its own jurisdiction. The law of Scotland is not a pure common law system, but a mixed system. This law shows many similarities to Roman-Dutch law.

At present, as a result of EU legislation, many modern laws are applicable across the whole United Kingdom of Great Britain and Northern Ireland but there can be differences (for example, in property law where the law of Scotland resembles civil systems more than English law).

The Purpose of Law

Four Functions of Law

1. several important protections. The laws protect individuals from other individuals, from organizations, and even from the government. The First Amendment of the Bill of Rights prohibits the government from making any law that would interfere with an individual's right to free speech. There are some exceptions based on what is considered free speech.
2. Laws provide a framework and rules to help resolve disputes between individuals. Laws create a system where individuals can bring their disputes before an impartial fact-finder, such as a judge or jury. There are also legal alternatives where individuals work together to find a solution, such as by using alternative dispute resolution (ADR). There are courts at every level, from local to federal, to decide who should win in a dispute.
3. Without laws, there would be no way to set standards. It is easy enough to see why murder and theft are crimes, but laws also provide a framework for setting many other kinds of standards. Without the Federal Code of Regulations, it would be difficult for individuals or businesses to transact businesses using banks. Federal regulations provide enforceable rules and protections regarding taxes, commercial transactions, employment laws, insurance, and other important areas.
4. Laws help societies to maintain order. What would society be like without the rule of law? You might need to provide your own protection because there would be no police force or army. Without federal banking protections, you might need to find other ways to get what you couldn't provide for yourself. With the structure and organization of laws come order and predictability. Individuals can feel safe, leading to wider social structures and greater productivity.



Figure 1 Functions of Law

The Evolution of Law and different Sources of law

Legislation, directives, case law and treaties relevant to country.

Legislation

'Primary legislation' is the term used to describe the main laws passed by the legislative bodies of the UK e.g. Acts of the UK Parliament, Scottish Parliament, Welsh Parliament and Northern Ireland Assembly. It also includes Acts passed by historical parliaments, other primary legislation for Northern Ireland and Church of England Measures (legislation for the established church in England passed by the General Synod of the Church of England).

These types of legislation are sometimes referred to as 'statutes' and the term 'the statute book' refers to the whole of the statute law currently in force.

Certain legislative instruments made by the Crown and the Privy Council under the royal prerogative (called 'Prerogative Orders') are also referred to as Primary Legislation. Prerogative Orders are called either 'Orders in Council' (when made by the Queen on the advice of the Privy Council) or 'Orders of Council' (when made by the Lords of the Privy Council without any approval by the Queen). Note that such orders may also be made under powers in Statutory Instruments rather than under the prerogative (for example, the Orders in Council containing legislation for Northern Ireland).

'Secondary legislation' (also called 'subordinate legislation') is delegated legislation made by a person or body under authority contained in primary legislation. Typically, powers to make secondary legislation may be conferred on ministers, on the Crown, or on public bodies. For example, the Office of Communications (OFCOM) is given such powers by the Communications Act 2003.

The main types of secondary legislation are Statutory Instruments, Statutory Rules and Orders, Church Instruments.

There are three main types of UK Statutory Instrument: 'Orders', 'Regulations', 'Rules'. However, there is no limit imposed on the descriptions that may be given to Statutory Instruments. Other examples include 'Scheme', 'Direction' and 'Declaration'. Different types of instruments serve different functions, but they all have the same legislative force. Prior to 1948, when the Statutory Instruments Act 1946 came into force, the equivalent instruments were known as 'Statutory Rules and Orders'.

Church instruments are made by the Archbishops of Canterbury and York under authority contained in Church Measures. They are sometimes also referred to in annotations to the revised legislation as 'Archbishops Instruments' and are used almost exclusively for the purpose of bringing Church Measures into force.

Scottish Statutory Instruments are instruments made since 1999 under authority contained in Acts of the Scottish Parliament. As in the case of UK Statutory Instruments, there are three main types of Scottish Statutory Instrument ('Orders', 'Regulations' and 'Rules'). In addition, there are in Scotland rules of court contained in Statutory Instruments called 'Acts of Sederunt' and 'Acts of Adjournment'. There may also be other descriptions of Scottish Statutory Instruments.

Welsh Statutory Instruments are Statutory Instruments relating specifically to Wales. They may be made under authority contained in Acts of the UK Parliament, Measures of the National Assembly for Wales or

Acts of the National Assembly for Wales or Acts of Senedd Cymru. Welsh Statutory Instruments are published in both the English and Welsh languages.

Statutory Rules of Northern Ireland are the equivalent of Statutory Instruments for Northern Ireland. They may be made under authority contained in Acts of the Northern Ireland Assembly. They may also be made under authority contained in Acts of the UK Parliament or in the Orders in Council containing the primary legislation for Northern Ireland during periods of direct rule by the UK government (and which continue to be used for matters that have not been devolved to the Assembly). Despite the name, Statutory Rules occur in the same three main types as Statutory Instruments ('Orders', 'Regulations' and 'Rules'). There may also be other descriptions of Statutory Rules.



Figure 2 How Do Laws Get Passed in the UK?

Byelaws

This is legislation delegated to bodies such as local authorities, operators of transport systems or public utilities. The application of byelaws is usually limited to a local area or the operations of a specific public body. Legislation.gov.uk does not publish byelaws.

Citation and numbering

Primary legislation (e.g. Acts) are numbered chronologically within the year in which they are enacted. The numbering re-starts each year. For UK Public General Acts (UKPGA) the number is referred to as a 'Chapter'. Acts are therefore, usually cited by their type, year and chapter number e.g. The Data Protection Act 2018 is cited as '2018 c.12'. Acts of the Assembly of Northern Ireland also use chapter numbers, but are numbered separately so are cited on this website as '2018 c.3 (N.I)'. Acts of the Scottish Parliament have their own numbering system that works in the same way. The number is referred to as 'ASP' (standing for Act of the Scottish Parliament) e.g. Wild Animals in Travelling Circuses (Scotland) Act 2018 is cited as '2018 asp.3'. Acts

of the National Assembly for Wales are numbered using 'anaw' (Act of the National Assembly for Wales) as the prefix for the number. Acts of Senedd Cymru are numbered 'asc' (Act of Senedd Cymru) as the prefix for the number.

UK Statutory Instruments are numbered sequentially each year. Welsh Statutory Instruments and the Orders in Council made under the Northern Ireland Acts are included in the same numbering sequence as UK Statutory Instruments. They are distinguished within that sequence by a subsidiary number in brackets after the S.I. number (e.g. '(W. 22)', '(N.I. 15)', etc.). There are also UK Statutory Instruments relating exclusively to Scotland which are included in the UK numbering sequence and distinguished by a subsidiary number (e.g. '(S. 27)'). These are not to be confused with Scottish Statutory Instruments which have their own 'SSI' numbering sequence, as do Statutory Rules of Northern Ireland which have their own 'SR' numbering sequence separate from the UK 'SI' sequence.

How legislation can extend and apply to different parts of the UK

The term 'Geographical Extent' is used to describe the geographical area within the UK to which a piece of legislation (or part/section of a piece of legislation) applies.

The term 'extent' when used in legislation refers to the jurisdiction(s) for which it is law. Thus, the extent may be the whole of the UK or one or more of the three jurisdictions within the UK: England and Wales; Scotland; and Northern Ireland. Note that England and Wales are not separate jurisdictions. The term 'extent' is currently used more loosely on legislation.gov.uk for searching purposes, to help users find legislation relevant to each of the four geographical parts of the UK. For this reason, it may denote a limited territorial application within a wider technical extent. For example, the extent of the legislation may be 'England and Wales' but it only applies to Wales. In due course, changes will be made to the way in which 'extent' information is presented on legislation.gov.uk so that information about extent and limited territorial application within a wider extent will be displayed separately.

Currently, each 'extent' is represented by one of, or a combination of, England (E), Wales (W), Scotland (S) and Northern Ireland (NI). Thus, a UK extent is E+W+S+NI and a GB extent is E+W+S. This information can be displayed within revised legislation when it is being viewed by selecting 'show geographical extent' in the left-hand column.

Every version of every provision (e.g. section of an act) and every higher level of division within a piece of legislation (whole legislation or part level) is assigned its own extent. In the case of higher levels of divisions (at whole legislation level or part level) the extent will be set wide enough to include the extent of all the provisions (e.g. sections) within it.

In some limited cases there may be multiple versions created to represent differing geographical extents. Two or more versions of a provision (or other level of division of legislation) are created where a substitution of text (or of the whole provision etc.) affects only part of the original geographical extent of the provision. Such versions have the same start date and continue to run alongside one another.

For instance, if there is a substitution of text in a provision that extends to the whole of the UK, but the substitution affects Wales only, two versions result: one for the provision in its unamended state to cover England, Scotland and Northern Ireland, and one for the provision as amended to cover Wales.

How legislation comes into force and is amended

An Act of Parliament creates a new law or changes an existing law. An Act is a Bill that has been approved by both the House of Commons and the House of Lords and been given Royal Assent by the Monarch. Taken together, Acts of Parliament make up what is known as Statute Law in the UK.

An Act may come into force immediately, on a specific future date, or in stages. You can find out when an Act is due to come into force by looking at a section of the Act itself, headed 'Commencement' – this is among the very last sections of an Act.

Sometimes a specific date is not given, and the timing is left to the discretion of the Secretary of State for the relevant government department. An act can therefore come into force by way of a Statutory Instrument called a 'Commencement Order' or 'Commencement Regulation'.

Future changes to the law happen through the passing of another Act or delegated legislation (e.g. secondary legislation such as Statutory Instruments). The change, or amendment, can itself be subject to coming into force immediately, on a specific future date, or in stages. An Act can also be repealed so that its provisions are no longer in force.

On legislation.gov.uk we provide details about complex in force scenarios by way of I-note annotations on our revised versions. Please note that our enacted versions do not provide any information about in force/commencement.

Directives

Directives are the most common form of EU legal act. In contrast to a regulation, a directive does not apply directly at the national level.

Instead, an EU directive sets out an objective to be achieved, and it is then left to the individual countries to achieve this objective however they best see fit.

This takes place through a process called 'transposition', which essentially translates an EU directive into national legislation; each directive has a deadline for its transposition. Once a directive has been transposed into national legislation, individual rights may be asserted with respect to third parties and enforced in national courts.

For example, the 2010 Directive on Parental Leave was transposed into UK law through the Parental Leave (EU Directive) Regulations, which came into force on 8 March 2013. Individuals have recourse to national courts if these standards are not met.

Sources of Law in the UK

The main sources of domestic law are set out below.

Acts of Parliament

Although the UK has an unwritten constitution, many important elements of it are found in statutes that have been enacted by Parliament. The following are of most importance to the constitution and civil liberties:

- **Magna Carta 1215.** This embodies the principle that government must be conducted according to the law and with the consent of the governed.

- **Bill of Rights 1689.** This imposed limitations on the powers of the monarch and provided that Parliament should meet on a regular basis.
- **Act of Settlement 1701.** This prohibited Catholics from succeeding to the throne and gave precedence to male heirs. It also established the constitutional independence of the judiciary.
- **Acts of Union 1706-07.** These united England and Scotland under a single Parliament of Great Britain (that is, the Westminster Parliament).
- **Parliament Acts 1911 and 1949.** These ensured that the will of the elected House of Commons would prevail over that of the unelected House of Lords by enabling legislation to be enacted without the consent of the House of Lords.
- **European Communities Act 1972.** This incorporated EU law and EU legal systems into domestic law
- **Police and Criminal Evidence Act 1984.** This provides the police with wide powers of arrest, search and detention as well as accompanying safeguards to ensure that the police do not abuse such powers.
- **Public Order Act 1986.** This allows limitations to be placed on the rights of citizens to hold meetings and demonstrations in public places.
- **Human Rights Act 1998.** This incorporates the European Convention on Human Rights into domestic law and allows citizens to raise alleged breaches of their human rights before the domestic courts.
- **Acts of devolution (for example, Scotland Act 1998).** These created a devolved system of government in parts of the UK, establishing a Scottish Parliament and assemblies in Wales and Northern Ireland.
- **Constitutional Reform Act 2005.** This reformed the office of Lord Chancellor by transferring his powers as head of the judiciary to the Lord Chief Justice. It also created the Supreme Court and a new Judicial Appointments Committee.

Case law

The common law is an important source of key legal principles, particularly in relation to the preservation of the rights of the individual against the state and the rule of law.

Although most laws are enacted by Parliament in the form of legislation, in a common law system such as ours the courts can also develop the law. By deciding a disputed point of law, a senior court (known as a court of record) can change or clarify the law, thereby setting a precedent which other courts are bound to follow or apply in later cases.

By publishing and indexing law reports, ICLR ensures that people can easily find and learn about the cases that have changed or clarified the law over the years, how they have affected earlier cases or interpreted legislation, and whether they have been overtaken by later cases on the same topic.

To What Extent Do International Sources of Law Apply

European Union law

EU legal order. The legal order of the European Union (formerly the European Community) is based on the European treaties. Those that are of continuing relevance are (reflecting renaming):

- The Treaty on European Union 1957.
- The Single European Act 1986.
- The Treaty on European Union (Maastricht Treaty).
- The Treaty of Amsterdam 1997.
- The Treaty of Nice 2001.
- The Treaty of Lisbon 2009.

There are also secondary sources of EU law comprising:

- Regulations, which are binding and directly applicable to all member states, including the UK. This means that they do not have to be transposed into national legislation and are binding as soon as they are passed throughout every member state.
- Directives, which set down certain results that must be achieved in every member state and establish a time limit for their implementation in domestic law. Member states need to pass implementing measures to bring their laws into line with the requirements of the Directive.
- Decisions of the Court of Justice of the European Union (Court of Justice), which are binding on the parties to whom they are addressed, whether member states or individuals. The Court of Justice accepts that EU law overrides any subsequent national legislation that is incompatible with the provisions of EU law (*Case 6/64, Costa v ENEL*).
- Recommendations and opinions, which have no binding force but state the view of the institution issuing them.

UK membership of the EU and incorporation of EU law into domestic law. The UK formally joined the European Community (now the European Union) on 1 January 1973. European law was incorporated into UK law by the European Communities Act 1972. Since then, EU law has been a binding and valid source of UK law. The European Communities Act:

- Recognises that EU law can be "directly applicable" and gives legal effect in the UK to "directly effective" EU law (*section 2(1)*). It covers provisions contained in the EU treaties and regulations, even if the UK has enacted legislation giving effect to them, provided that they have direct effect according to EU law.
- Enables the UK Government to make delegated legislation to implement EU law within the UK (for example, to implement directives) (*section 2(2)*).
- Requires any enactment passed or to be passed to be construed and have effect subject to EU law (*section 2(4)*).

- Requires the UK courts to apply EU law in accordance with the principles laid down by the Court of Justice (*section 3(1)*).

On 29 March 2017, the UK Prime Minister served notice of the UK's intention to withdraw from the European Union pursuant to Article 50 of the Treaty on European Union, officially triggering a process known as Brexit. The date for the UK's withdrawal from the EU (and from which all existing EU Treaty obligations would cease to apply to the UK (exit day)) is not certain at the time of writing. Until then, the UK remains subject to its EU law obligations.

While the Article 50 mechanism prescribes the procedure for the UK's withdrawal from the EU, it does not deal with the form of the UK's future relationship with the EU, or the timeframe over which that would be determined. It is beyond the scope of this article to consider the different options in detail. However, there are a number of models for relationships between the EU and third countries which are being considered as a basis or starting point for the UK's relationship with the EU post-Brexit. These include:

- **Norway model.** The UK might join the European Free Trade Association (EFTA) and the European Economic Area (EEA). The UK would be part of the single market (except the Common Agricultural Policy and the Common Fisheries Policy). The UK would be subject to the four freedoms. It would not be subject to the jurisdiction of the Court of Justice but would be subject to the jurisdiction of the EFTA Court. The UK would have no decision-making power or veto rights over future EU legislation.
- **Swiss model.** While Switzerland is a member of EFTA, it is not part of the EEA and its relationship with the EU is governed by a number of bilateral agreements which give it some access to the single market. It is subject to the free movement of people but not services and capital. The EU has expressed reservations about the sustainability of the Swiss model.
- **Turkish model (customs union).** Turkey is part of a customs union with the EU which gives it tariff-free access to the single market for goods but not services. It does not have to make a contribution to the EU budget but has to harmonise its laws with EU laws in some areas (for example, consumer protection, competition and intellectual property).
- **Canadian model (Free Trade Agreement) (FTA).** Canada is one of few countries which have negotiated FTAs with the EU. In Canada's case, this took over a decade.
- **World Trade Organisation (WTO) model.** The UK is already a member of the WTO. If this were to be the basis of its trading with the EU post-Brexit, the UK would not be subject to EU law, including the four freedoms. It would not have to contribute to the EU budget. However, it would be subject to trade tariffs and EU standards when trading with the EU.

This resource has a law-stated date of 1 December 2019 and was written before the UK left the EU on 31 January 2020.

International law

The UK is subject to international law obligations and is a signatory to numerous international treaties and conventions, notably the European Convention on Human Rights. However, the mere fact that the UK Government accepts treaty obligations does not of itself have any effect on Parliamentary supremacy, as treaties are made by the Government and so do not change the law.