

IMPORTANT INFORMATION



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THE NEBOSH NATIONAL DIPLOMA IN OCCUPATIONAL HEALTH AND SAFETY

INTRODUCTION

This Supplement has been prepared to augment your study material following recent changes made by NEBOSH to the syllabus for the National Diploma. This additional information may be assessed from the January 2007 Examinations. You should read this Supplement carefully, in conjunction with your existing study material.

UNIT A

Element A7 – Principles of Health and Safety Law

Enforcement of Health and Safety Law

After the above heading, please add the following:

Introduction

The HSE enforcement website (www.hse.gov.uk/enforce/index.htm) is a very useful resource which contains things such as HSE's general enforcement policy and their enforcement guide (enforcement options, types of offences, trial procedures, rules of evidence etc); it also links to the HSE's notices and prosecutions database.

Application of Manslaughter and Corporate Manslaughter to Work Related Incidents

After the above heading, please add the following new section:

In February 2004, four rail workers were killed at Tebay, Cumbria. The four men were struck by a wagon carrying 16 tonnes of steel rail tracks, which came silently out of the darkness and ran into them as they worked on the West Coast Main Line.

The owner of MAC Machinery Services had deliberately disconnected the hydraulic brakes on two wagons because it was cheaper than repairing them. He had driven a low-loader truck with a railway crane and two wagons to Scout Green in Cumbria to lift worn out track from the West Coast Main Line onto the railway wagons. He had disconnected the brakes on the two wagons because the hydraulic systems were in such bad condition that they would not work properly in conjunction with the crane. He had filled the hydraulic brake fluid cables connecting the crane with steel balls, giving an external impression that everything was normal.

On the morning of the incident, the crane driver began using the crane to lift lengths of steel onto the wagons. He was not qualified to operate the crane, and had placed wooden chocks under the wheels of the two wagons because he knew they might move as he unloaded the steel rails. However, as he began loading the second wagon, it began to roll down the track after crushing the chocks. Some distance down the line the maintenance workers were unable to hear its approach due to the noise from an on-site generator.

At Newcastle Crown Court in March 2006, as a result of their gross negligence, the company owner and the crane operator were each found guilty of four counts of manslaughter. The owner was jailed for nine years, having also been found guilty of three counts of breaching health and safety legislation. The crane operator was jailed for two years, in addition to being convicted of a single count of breaching health and safety legislation.

UNIT A

Element A8 – Criminal Law

Please add the following new section after the section on 'ACoPs and Guidance'

Defences Available in Criminal Law

There are standard defences available to an employer in both criminal health and safety and manslaughter cases.

In manslaughter cases, the defendant must demonstrate that his behaviour was neither reckless nor grossly negligent.

There is no requirement for the prosecution to demonstrate intention by the defendant. The prosecution would need to demonstrate that the action of the defendant was not that of a reasonable person, who might otherwise have foreseen that his actions could have resulted in death or serious injury.

Most health and safety prosecutions, however, fit into the category of criminal negligence. This is based on acts or omissions and could simply be failing to do what a reasonable person would do, or failing to do what is required by statute.

In criminal negligence, a defence could be that the accused had done all that was reasonably practicable in the circumstances. Section 40 of the **Health and Safety at Work, etc. Act 1974** reverses the normal burden of proof and puts the onus on the accused to demonstrate their innocence. If they had done all that could reasonably have been done under the circumstances, then this would be deemed an adequate defence to make. This, for example, could be done by complying with an Approved Code of Practice to Health and Safety Regulations. The standard of

proof here is that the defendant must demonstrate their innocence on “**the balance of probabilities**”. This is different from most other criminal cases, which must be demonstrated to the standard of “**beyond all reasonable doubt**”.

The defendant may also of course make the case in his defence that the facts of the case were incorrect. The employer may also seek to prove that the fault lay with someone else. He may demonstrate that he was not guilty due to a technicality such as there being no formal employer/employee status or relationship.

UNIT B

Element B9 – Psycho-Social Agents

Legal Obligations

Please add the following after the case of Sutton v Hatton and Others:

Walker vs Northumberland County Council [1995] IRLR 35

This was first mentioned in Unit A, Element A9 but is also very relevant here. The case involved stress related illness resulting from a heavy workload placed on a social worker. You should refer to the RRC Case Law guide for a summary of the case.

Barber vs Somerset County Council (2004)

This is another case of psychiatric injury as a result of work-related stress. Barber took this case to the House of Lords on appeal from the Court of Appeal. The Court of Appeal had allowed an appeal from Barber's employer (Somerset County Council) against an original County Court Judgement, which had been in Barber's favour. The Court of Appeal case was heard at the same time as three others (including the Sutton v Hatton case, described above). Mr Barber was a school teacher who suffered a stress-related mental breakdown, after an earlier period of stress/depression-related absence. Apparently little had been done by his employer to correct the situation prior to the breakdown. The County Court judge had originally concluded that Somerset County Council had not discharged their duty of care to the expected standard. The Appeal Court judges had decided that the County Court Judge had set the standard too high and reversed the original judgement (see the Sutton v Hatton and Others summary). Whilst most of the House of Lords Judges concluded that this case was somewhat borderline (there was one dissenter), they also concluded that the Court of Appeal had insufficient grounds for reversing the original decision. So, Mr Barber's claim was ultimately successful but the House of Lords did in fact reduce the level of the compensation he was originally awarded. You can read the House of Lords judgement at: www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040401/barber-1.htm

UNIT C

Element C4 – The Storage, Handling and Processing of Dangerous Substances

Contribution of Typical Mechanical and Systems Failures to Major Accidents

Please add the following new section:

Buncefield Oil Depot Explosion

In the early hours of Sunday December 11th, 2005, a major incident took place at the Hertfordshire Oil Storage Terminal, known as the Buncefield fuel depot, in Leverstock Green near Hemel Hempstead in Hertfordshire, close to Junction 8 of the M1 motorway.

A series of explosions began which could be heard 50 miles away; 42 people were injured and buildings were damaged over a wide area as flames rose more than 200 feet into the sky. A dense plume of black smoke rose to 3,000 metres and spread for 125 miles downwind, clearly visible on satellite imagery. Around 2,000 people were evacuated from their homes as approximately 16 million litres of fuel burned.

The plant was operated by the French oil company, Total SA, in a joint venture with Total UK, the British subsidiary of Texaco. Buncefield was the fifth largest of some 50 major oil storage facilities in the UK. The Total/Texaco reserves there account for about 5% of the country's oil supply. The plant first opened in 1968 and employs 16 people; it handles some 2.37 million metric tonnes of petrol and other oil products a year, filling 400 tanker lorries per day. The petrol and other products were pumped to the facility by an underground pipeline from the Lindsey Oil Refinery on Humberside. Another pipeline then continues directly from Buncefield carrying aviation fuel to Heathrow.

BP also has a storage facility at the site, which was not damaged in the initial blast. The Buncefield depot stored and distributed several types of fuel, including gasoline, diesel, kerosene and aviation fuel. Out of 27 storage tanks on the site, 20 ignited over several days.

Fire-fighters used foam to stop the blaze spreading across the depot and adjacent industrial park. After 48 hours, fire crews managed to quell 10 out of 20 burning storage tanks, using a foam mixture to suffocate the fire and water cannon to cool and prevent reignition. The fire was finally brought under control in around 60 hours. In total, 650 fire-fighters from 17 services across the country deployed 15 million litres of water and a quarter of a million litres of foam concentrate.

Due to cold conditions and a lack of wind, there was a low level inversion layer of still air lying close to the ground, which caused the smoke to rise straight through into the troposphere, where toxic particles were dispersed over a wide area rather than concentrated locally. There were fears that a change in wind direction and lower combustion temperatures as the fires were brought under control would release more toxic materials in a lower level plume. Local schools were closed as a precaution.

Investigations have so far revealed that the incident was probably caused by the overfilling of a storage tank with petrol. The fill level gauge continued to record an unchanged reading even

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though petrol continued to be pumped into the tank. The tank proceeded to overflow but the protection systems which should have cut off the supply did not operate. The overflowing liquid formed a vapour cloud which eventually ignited. Much is still not understood about the explosions; in particular the explosions were considerably more violent than would be expected of vapour cloud explosions.