

Overview

Business Law provides a fundamental grounding in the structure and principles of English Law as it relates to business. It also provides an understanding of EU law and its impact on UK law and principal US Legislation which has an impact on corporates. Legal issues are an integral part of treasury management; consequently the student needs to have a broad understanding of the application of relevant law.

Chapter 1 – Nature and sources of law

Chapter one is intended to give you a broad understanding of the nature of law, the sources of law and the operation of the legal system in England and Wales. It will provide a basis for your further study of Business Law.

Chapter 2 – Company law

Chapter two provides a detailed understanding of the legal status of a company. It examines the statutory requirements relating to the formation and administration of a company as well as the role and duties of company directors and the rules relating to the issue of securities.

Chapter 3 – Company reconstructions, schemes of arrangements and takeovers

Chapter three provides the student with an awareness and understanding of the ways in which companies change their composition in order to suit their circumstances or stage of development.

Chapter 4 – Liquidation, administration and receivership

Chapter four seeks to provide an appreciation of the procedural aspects of corporate insolvency. The duties of several key roles are highlighted: the administrator; the liquidator; the company director; and the insolvency practitioner. The degree of detail contained in this module is considerable given that it is an area of some complexity.

Chapter 5 – Contracts

In all areas of the commercial world, contracts are entered into daily. The student, therefore, needs to have an understanding of the basis of contract law; to be aware of how a contract is entered into, the form it takes and the consequences of breach.

Chapter 6 – Agency and partnership

Agency is a very important feature of modern commercial life. Partnership is a common form of business association. This module gives students an insight into both these methods of structuring business arrangements.

Chapter 7 – Guarantees, warranties and indemnities

Chapter seven provides an understanding of law relating to the contract of guarantee, the implications of guarantees on companies' ability to borrow and on their published financial accounts. The chapter outlines the warranties most frequently used on the sale of a business and the role of indemnities in this process.

Chapter 8 – Banking law

Students should understand the principles of banking law in the context of day-to-day treasury transactions and appreciate how banking law ties in with other areas of law which are studied as part of this course including company law, contract law and compliance.

Chapter 9 – Compliance

Chapter nine seeks to provide students with a general awareness and understanding of the financial services regulatory framework and related legislation. The chapter looks at the role of the Financial Services Authority and recent money laundering regulations.

Chapter 10 – EU and US financial and banking law

The final chapter provides a basic understanding of international law and then aims to provide students with an overview of both EU and US banking law and the interaction of these rules with UK law.

Chapter 1 – Nature and sources of law

1.1 The nature and purpose of law

What is law for?

The rule of law

Distinction between the civil law and criminal law

The UK jurisdictions

The UK constitution and comparison with European legal systems

The UK legal system

1.2 The sources of law

The formal sources of law

The ranking of the sources of law

1.3 Parliamentary legislation

Parliamentary supremacy

The purpose of Acts of Parliament

The Parliamentary legislative stages

1.4 Delegate legislation

What is delegated legislation?

To whom may Parliament delegate its power?

Why do we have delegated legislation?

Control of delegated legislation

1.5 European Union ('EU') Law

Background
Sources of EU law
Direct effect
Status of EU law with the legal systems of Member states
European Union Institutions
Adoption of EU law

1.6 Human rights

The European Convention on Human Rights
The Human Rights Act 1998
Key provisions of the Act

1.7 Application of legislation

What are the problems of applying legislation?
Judicial approach to statutory interpretation
Aids to statutory interpretation

1.8 Judicial precedent

What is meant by judicial precedent?
The type of legal principle
Discovering the *ratio decidendi*
Hierarchy of courts in determining judicial precedent
Avoiding precedent
The advantages and disadvantages of precedent

1.9 The UK court structure

Civil and criminal court system
Jurisdiction
The English civil courts
The Scottish civil courts
The English criminal courts
The Scottish criminal courts

Chapter 2 – Company law

2.1 Companies Act 2006 ('The Act')

2.2 Business associations

Types of business associations
Sole trader
Partnership
Limited liability partnership
Limited liability company
Company or traditional partnership?

2.3 Legal personality

The basic principle
Separate legal personality
Veil of incorporation
Lifting the veil of incorporation

2.4 A company's constitution

The Articles of Association
The company's objects

The contractual effect of the company's constitution
A company's capacity
A company's name
A company's name registered office

2.5 Company formation

Applying for registration
Memorandum
Application for registration
Section 9 documents
Statement of compliance
Registration and its effects

2.6 The administration of companies

Types of meeting
Quorum
Voting
Records of resolutions and meetings
The company secretary
Statutory books and registers
The annual return
Types of resolutions

2.7 Directors

Key definitions
Vacation of office
Removal of a director
Statutory disqualification of directors
Director's duties
A director's general duties
Transactions with directors requiring shareholder approval
Shareholder remedies
Director's personal liability
Insider dealing
Director's service contract

2.8 The company's capital

Terminology
The main features of a share
Classes of share
Variation of class rights
Transfer of shares
Becoming a shareholder
Power of directors
To allot shares
Statutory pre-emption rights
Payment for shares
Private companies
Public companies

2.9 Debentures

Raising a capital
What is a debenture?
Debenture holder v shareholder
Types of charges
Debenture holder's remedies

2.10 Maintaining capital

- The payment of dividends
- Purchase of own shares
- Redeemable shares
- Financial assistance

2.11 Raising capital

- Regulation of public issues
- Public offer of listed securities
- Public offer of unlisted securities
- Misleading listing particulars and prospectus

2.12 Establishing an overseas presence

- Representatives abroad
- Overseas agents
- Service company
- Overseas subsidiary

Chapter 3 – Company constructions, schemes of arrangement and takeovers

3.1 Methods of reconstruction

3.2 Schemes of arrangement under Part 26 CA 2006

- When would a scheme of arrangement be used?
- Procedure
- Advantages and disadvantages of a scheme of arrangement

3.3 Reconstruction under section 110 Insolvency Act 1986

- Purpose
- Procedure
- Advantages and disadvantages of a section 110 reconstruction
- Some examples of ways in which section 110 may be used

3.4 Takeover offer

- Introduction
- Compulsory acquisition of shares from dissenting shareholders ("squeeze out") – ss979 - 985

3.5 The City Code on Takeovers and Mergers

- Introduction to the City Code
- The Code's general principles
- The rules

3.6 Monopolies and merger control

- Introduction
- The UK position
- The European dimension
- US antitrust legislation

Chapter 4 – Liquidation, administration and receivership

4.1 Introduction to corporate insolvency

Background to the current legislation
Main forms of corporate insolvency procedure

4.2 Company voluntary arrangement

Procedure
Effect of approval
Implementation of the proposal

4.3 Administration orders

Procedure
What is the court procedure and its effect?
What is the out-of-court procedure and its effect?
The administrator's duties
The administrator's powers
Potential impact of new rules

4.4 Administrative receivership

What is a floating charge?
Pre 15 September 2003 floating charges
Circumstances justifying appointment of Administrative Receiver
Duties of Administrative Receiver
Powers of Administrative Receiver
What is the procedure?
Why has the legislation changed?

4.5 Liquidation

Voluntary liquidation in general
Members' voluntary liquidation (MVL)
Creditors' voluntary liquidation (CVL)
Winding-up by the Court
Liquidator's powers

4.6 Directors

Public examination – court liquidation only
Malpractice
The FA 1985 pool
Company Directors Disqualification Act 1986
Disqualification for unfitness
Participation in wrongful trading
Transactions at undervalue
Preferences
Restriction on use of company name

4.7 Insolvency practitioners

4.8 Employees

4.9 Statement of affairs

Purpose of the statement of affairs (SOA)
Format of the statement of affairs
Completion of the statement of affairs
Secured creditors
Preferential creditors

Floating charge holders
Unsecured creditors
The Prescribed Part

4.10 UK insolvency and the foreign company

European Insolvency Regulation

4.11 Overview of US bankruptcy law

Introduction
Chapter 11 bankruptcy
The debtor
UK insolvency law vs US Chapter 11

Chapter 5 – Contracts

5.1 What is a contract?

Defining a contract
Factors affecting the modern contract
Void and voidable contracts

5.2 The essential elements of a valid contract

What are the essential elements?

5.3 Consensus in idem

What does 'consensus in idem' mean?
The meaning of 'offer'
Invitation to treat v offer
Termination of offer
Acceptance
The postal rule

5.4 Consideration

What is consideration?
Valid consideration
Adequacy and sufficiency of consideration

5.5 Consent – intention to contract

Social and domestic agreements
Commercial agreements
Honour clauses

5.6 Capacity

Minors
Mental incapacity
Intoxication
Companies
Partnership

5.7 Form of a contract

5.8 No legal prohibition

5.9 Privity of contract

5.10 Misrepresentation

What is misrepresentation?
Fraudulent misrepresentation
Negligent misrepresentation
Innocent misrepresentation

5.11 Other factors affecting the validity of a contract

Duress
Undue influence

5.12 The terms of a contract

Express terms
Implied terms
Conditions and warranties

5.13 Exclusion clauses

What is an exclusion clause?
The position at common law
The Unfair Contract Terms Act (UCTA) 1977
The Unfair Terms in Consumer Contracts Regulations (UTCCR) 1999

5.14 Interpreting a contract

Examination of the whole contract
Words to be given their ordinary everyday meaning
Preservation of the contract
Construction *contra proferentem*
The *eiusdem generis* rule
Specification of one excludes the other
Extrinsic evidence

5.15 Discharging a contract

Performance
Agreement
Frustration
Breach of contract

5.16 Remedies for breach of contract

Rescission
Damages
Specific performance and injunction

Chapter 6 – Agency and partnership

6.1 The law of agency

Agency defined
Types of agent

6.2 Creation of agency

Express contract
Implied by law or by the parties' conduct
Ratification
Necessity
Estoppel

6.3 Duties of an agent

To carry out the principal's instructions

To act in person
To exercise skill and care
To account to his principal
To act in good faith and to allow the principal the full benefit of all transactions

6.4 Rights of an agent

Remuneration
Reimbursement of expenses and indemnity
Lieu

6.5 Authority of an agent

Express authority
Implied authority
Ostensible or apparent authority

6.6 Disclosed and undisclosed agency

6.7 Termination of agency

6.8 The law of partnership

6.9 Partnership defined

Carrying on a business
In common
A view of profit

6.10 Formation of partnership

6.11 The mutual rights and duties of partners

The duty to inform
The duty not to make a private profit
The duty not to compete
Sharing of partnership property
The right to indemnity
The right to participate in management
Expulsion of a partner

6.12 Partners' authority

6.13 Partners' liability

6.14 Dissolution of partnership

6.15 Limited liability partnerships

6.16 Limited partnerships

Limited partnership defined
Creation of limited partnership
Participation in management
Changes in the limited partnership

6.17 Agency and partnerships – the international dimension

The Contracts (Applicable Law) Act 1990
The proper law
Joint ventures and consortia
Partnership
GIE and GmbH & Co

Chapter 7 – Guarantees, warranties and indemnities

7.1 The obligation of guarantee

What is a guarantee?

Constitution and form of a guarantee

7.2 Extent of guarantor's liability

Continuing and non-continuing guarantees

Limited and unlimited guarantees

Interpreting the terms of the guarantee

7.3 The rights of a guarantor

Against the creditor

Against the principal debtor

Against the co-guarantor

7.4 Terminating the contract of guarantee

Extinction of principal obligation

Other methods of termination

7.5 Implications of guarantees on the borrowing by companies

7.6 Letters of comfort

7.7 Warranties and disclosures

What is a warranty?

Purpose of a warranty

Effect of a breach of warranty

Periods of limitation

Maximum and minimum levels of liability

A disclosure and its purpose

Deliberate non-disclosure

7.8 Indemnities

What is an indemnity?

Common indemnities

Warranty compared to indemnity

Chapter 8 – Banking law

8.1 UK banking regulation

The Bank of England (BoE)

The Financial Services and Markets Act 2000 ('FSMA')

Financial Services Compensation Scheme

The Banking Code 2005

8.2 Negotiable instruments

Legislation – UK and International

What is a 'negotiable instrument'?

Transfer of non-negotiable debt instruments

Transfer of negotiable instruments

8.3 Promissory notes

8.4 Bills of exchange

A 'bill of exchange' defined
Holder in due course
Negotiation of a bill

8.5 Presentment

8.6 Dishonour

Notice of dishonour
Protest Liability of the parties

8.7 Avals and forfeiting

8.8 Forgery

8.9 Business usage of negotiable instruments

Commercial paper
Letters of credit
The Uncertification on Securities (Amendment) (Eligible Debt Securities)
Regulation 2003

8.10 Cheques

Introduction
Provisions relating to cheques
Non-transferable cheques
Cheque cards
Mandates

8.11 Electronic Fund Transfers ('EFT')

What is meant by 'electronic fund transfers'?
UK and EC regulation of EFT

8.12 Uniform Commercial Code and EFT

Introduction
UCC Article 4A
What does Article 4A say?

8.13 Lien

Common law liens
Statutory liens
Equitable liens
Maritime liens

8.14 Appropriation and set-off

Appropriation
The rule in *Clayton's Case*
Set-off

Chapter 9 – Compliance

9.1 The London Stock Exchange

Introduction
The pros and cons of a listing

- UKLA's requirements for listing
- The different roles of the UKLA and the Exchange in the listing
- Different methods of flotation
- Public trading of shares
- The advisers and their role in the listing process
- Prospectus
- Corporate governance
- The role of non-executive directors

9.2 The Alternative Investment Market (AIM)

- What is the AIM?
- AIM designated markets
- Why join the AIM?
- The main differences between the main market and the AIM

9.3 Regulation of the financial services industry

- Introduction
- The Financial Services Authority and the FSMA
- The four main aims of the FSA
- FSA regulatory approach
- FSA principles for businesses
- FSA principles for individuals

9.4 Financial crimes

- Insider dealing
- 'Market abuse'
- Money laundering
- Stages of money laundering
- Requirements for relevant firms relating to money laundering

Chapter 10 – EU and US financial and banking law

10.1 International law

- Public international law
- Who creates public international law?
- Application of public international law
- Private international law
- Jurisdiction
- Choice of law

10.2 European capital duties

- Introduction
- The chosen way forward – the single market
- The single licence
- Establishment of a branch
- Own funds
- Solvency ratio
- Large exposures
- The Basel Capital Accord
- The Capital Adequacy Directives

10.3 Money laundering – the international dimension

- The Basel Statement of Principles
- The EU position

10.4 The US Securities framework

Background

The Securities and Exchange Commission (SEC)

The laws that govern the securities industry

10.5 Offshore havens

Introduction

Characteristics of an offshore haven

Tax havens

Bank secrecy