



Business Law (6th edn)

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Abstract

This chapter begins by identifying the reasons that make the study of business law an important aspect in the wider context of business. It identifies strategies and good practice that will help a student with their studies, and provides a sample problem-type question and guidance on how to prepare a law-based answer. Business law is a distinct topic from other modules on accountancy, business, and management courses. A knowledge of the law cannot be bluffed—it is necessary to be aware of the relevant laws and think about business problems from a legal standpoint. This approach will ensure that legal questions are answered with reference to the law, which is crucial to being successful in the business law module.

Keywords: study of law, strategies, good practice, online resources, business law

How would you feel if your company lost a lot of money because you made a mistake negotiating a contract? Or you were prosecuted for failing to meet health and safety standards? Understanding how the law affects business is absolutely essential to ensure those entering the profession can effectively manage the myriad legal implications to which businesses are subject. To be successful in a business career, you must thus have knowledge of the laws most commonly affecting undertakings, and the ability to apply these laws in business situations. Such skills will ensure you can make decisions correctly, quickly, and with certainty, whilst being able to readily identify when expert advice is required. This chapter begins by identifying why it is important to study law and goes on to identify strategies and good practice that will help you be successful in your studies. Business law is a distinct topic from other modules on accountancy, business, and management courses. You need to think about business problems from a legal standpoint and you must know the relevant

laws—you cannot bluff knowledge of the law. This approach will ensure you answer legal questions with reference to the law, which is crucial to being successful in your business law module and, much more significantly, in your future business careers.

Learning Outcomes

- Identify why it is important, and indeed necessary, to study business law for your future business careers (1.2)
- Identify strategies and tactics that will assist you in being successful in your studies (1.3–1.3.3.3)
- Understand the features contained in this text and how they can assist you in your learning and development (1.4).

1.1 Introduction

It should be noted that whilst textbooks aim to provide the guidance and information required to pass courses (in respect of this book, the guidance and information relates to courses with business law as a component), it is your *understanding* of the topic that is essential. This means not just reading the textbook and regurgitating the material in an answer to a question, but thinking about how the law affects a business and how the law is applied in practical business scenarios. By reading and understanding the law, and gaining experience from answering questions in your classes, and those examples provided in this text, you will gain confidence in how to use your legal knowledge to tackle real-life business problems. Remember, regurgitating facts you have learned may be an effective short-term measure that assists in passing examinations, but this approach will likely lead to you making costly professional mistakes once in practice. Lack of knowledge is usually

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found out in business; it will be exploited by the other party, and will generally result in a competitive disadvantage. Your understanding of the law will be demonstrated through the feedback you receive in classes, and it can also be gauged by using the questions included in this text and the online resources (where indicative answers are included for your reference). Be aware that the feedback provided in each of your seminars/tutorials/discussions with tutors and colleagues is instructive, useful, and, if taken positively and engaged with, a significant help in developing your understanding of the law. Please do not think that feedback is limited to written comments following submission of a summative piece of coursework or provided following completion of an examination. You get feedback at every class in which you engage and participate—learn from it and use it in your development.

1.2 Why Study Law?

This is a question many students raise. Students who study business law are often undertaking courses in Accountancy, Business, Engineering, Information Management, Financial Services, and Management (to name but a few). The topic may thus not readily appear relevant to your chosen careers, and this is especially

so when the topic becomes difficult. However, knowledge of the law is absolutely essential when you enter your business career. You will typically be involved in the recruitment of individuals and the termination of contracts of employment (therefore any number of elements of employment law will be applicable); as managers you will often have responsibility for the agreement of contracts that will bind the organization for which you work (contract law is applicable here); you may have responsibility for the health and safety of workers or be involved in situations where the public visit company premises (involving employment law and the law of torts); and for entrepreneurs, the formation of business organizations into sole traders, partnerships, limited liability partnerships, limited companies, and public limited companies requires an awareness of company law, including the performance of regulatory and compliance techniques.

Of course, it is correct to raise at this point that the issues raised above may necessitate the use of, or may be more suitable to consideration by, experts (lawyers). However, whilst legal experts are necessary at various times, there are day-to-day matters where advice from a lawyer may be unnecessary, time-consuming in waiting for a response, and potentially very expensive. It is not uncommon for a solicitor to charge £250 per hour for their time (and up to £700 an hour for a partner of a city firm), and a barrister can charge several thousand pounds per day for appearances in court. A business therefore requires its management personnel or accountants to have an understanding of the law in order to deal with more rudimentary issues, and also to be aware of when expert assistance is required.

1.3 How to be Successful in Your Studies

An effective strategy to your studies must be adopted from the outset. Having purchased this text, you are on your way! Ensure that you attend your lectures and make notes wherever appropriate (I think this should be done after the lecture so you can concentrate on what the lecturer is saying, but this is a matter of personal preference). Where possible, prior to the lecture, read the relevant chapter(s) in the textbook. Finally, use the notes and the textbook to prepare answers for your seminar/tutorial questions and in-class debates. The seminars are where your learning can be greatly advanced, as you will be able to discuss the law and engage in legal arguments with your tutor and class colleagues.

p. 5 1.3.1 How to Answer 'Law' Questions

I am often approached by students concerned that, as non-law students, they do not know how to answer a 'law' question. It is a necessary truth that few areas of law are 'black and white' in which an answer is guaranteed to be right or wrong, but by 'grounding' your answer with use of **case law** or statutory materials, you will be ensuring that your answer is based on a legal principle or **doctrine**, and the lecturer can identify how you have arrived at your conclusion. This text includes some of the most important case law and statutory materials that are necessary for your understanding of the topics included. There is a description of the law, and then an attempt to place this into context and explain how the law is used and why it is important to be aware of it. There are references to the actual case law contained in the **law reports**, and interested readers can find these 'primary' materials themselves. However, the value of a textbook is that the case summaries, and commentary regarding its importance and/or the point of law established, will save you the

time in finding, reading, and interpreting these primary sources. Primary materials include sources of law such as cases and statutes before they have undergone some form of analysis or commentary. Textbooks and articles written in journals, for example, are known as 'secondary' materials.

In the following sections we discuss what lecturers will be looking out for when they mark assessments. We also include some tips about how to reference and cite sources successfully.

At 1.4 we introduce our technique for answering law questions and provide an example question and sample answer so you can see our method in practice.

1.3.2 What a Lecturer is Looking for in Assessments

There are certain generic characteristics that will be tested in most learning outcomes. You will need to adopt different styles for problem-based (scenario) questions, where a situation is outlined and you are asked to advise the parties as to their legal position, and essay-type questions, which require an analysis of a legal position or statement, but the following are useful guides for the collection of appropriate materials and their presentation:

- *The quality of research materials:* It is always good practice to demonstrate that you have found the appropriate case law and statutory materials, and incorporate these in a table to identify to the lecturer that the relevant law is included.
- *Use the legal materials:* **Statutes** and case law are widely available and are identified in this text, with commentary provided. Having identified the area of law being questioned, ensure you use the appropriate materials to assist you in providing a full and complete response. Your assessor will be looking for relevant references to statutes and case law (where appropriate) in your answer, but also the use of these materials—such as citing case law to 'ground' the legal point you are making. Remember, laws do not just appear. They are derived from case law, statutes, customs or treaties, and so on, so when a point of law is made (e.g. where an individual will be defined as an employee or an independent contractor), cite the law that proves your assertion.
- *Reference to literature:* In an essay-type question, it is important to utilize resources such as books, research reports, and journal articles to identify and analyse authors' comments on legal issues. In order to respond to these you will need to refer to the relevant literature to demonstrate that you have researched and understood the contribution that has already been provided on the topic by others; and this enables you to make a considered and meaningful response.

p. 6 ↩ In problem questions reference to literature refers to citing and using the correct case law and statutory materials in your answer. An assessor will be looking for evidence that you can identify the area of law that is being examined, the relevant case law and statutory materials, and that you have applied the law to the problem in your advice to the parties. This ensures you demonstrate awareness of the relevant sources of law, and also that you can prioritize the most relevant facts from minor issues.

- *Presentation of sources:* When preparing answers for written assessments, the names of cases (case law) should be presented either as underlined or (as is used in this text) in *italics*. This immediately identifies when a case is being referred to and it is easier for the assessor to detect those cases used in an answer.

The cases should also include the full references (year and where reported)—its ‘citation’ (see 1.3.3.2 for examples). Full citations for each case mentioned in this book are included in the table of cases. Books and journal articles that are used (mainly in essay-type answers) should include all the important referencing materials that would assist another reader in finding these resources (see 1.3.4.1 for examples). This text includes references to books and journal articles to enable you to undertake further research into particular topics and these may be used as a template for presentation in essays or other written work. Remember to include all your sources or you may find yourself accused of plagiarism. In examinations, the case name is usually sufficient (rather than the full citation) and the year of the case (although it is wise to ask your tutor as to the level of citation expected in any piece of assessed work).

- *Answer the question:* Any form of assessment will ask the candidate to do something—analyse a statement, advise parties, and so on. I am unaware of any form of assessment that has asked the candidate to state everything they know about a particular topic/area of law. Therefore, if you are asked to advise parties, having described the relevant law and discussed its application to the given facts, *advise* the parties. In the same way, if an essay question asks for an analysis of the usefulness of a particular statute, then conclude with this answer.

1.3.3 Presentation of Written Answers/Essays

This author does not presuppose to identify how each module/course leader/convenor for business law will want written work to be presented or the content that is required. However, by practising with the questions included in this book, and by preparing for your classes, you will gain the experience of how to produce answers to ‘law’ questions. Further, there are common features regarding the presentation of answers that may be indicative of good practice:

- Use formal language and avoid slang unless this is part of a direct quotation.
- Use correct grammar and punctuation, and make use of the spell check facility available in word processing packages.
- The assessed work should begin with an introduction that identifies what is included in the answer, and the main conclusions to be drawn.
- It should be presented in the third person (use ‘the author’ or ‘it is contended’ rather than ‘I think’) and the tense used should remain constant.
- Do not repeat the question in either an essay or examination answer. This merely gives the impression that you have nothing else to write, and it will not improve your grade.
- Always include a conclusion to your answer that summarizes your main arguments and answers the question set.

p. 7 ↩ Following such simple guidelines makes assessed written work much easier to read and understand. The arguments are more likely to flow when you use a logical structure and this will certainly improve the presentation of your work. However, as always, content is more important than style—research the topic, be

prepared, and do not attend examinations thinking your wit will help you pass. You either know case law and statutes or you do not, and law modules require the law to be used, so a lack of knowledge will severely damage your opportunities for success.

1.3.3.1 Include a bibliography

The bibliography contains the full list and references to books, journal articles, research reports, Parliamentary papers and proceedings, government publications, online resources, newspaper articles, and so on that have influenced the production of the assessed work (usually an essay or presentation that requires the submission of a paper copy). This is typically presented after the main body of work and, whilst there are various methods on how to present a bibliography or references list, the style adopted in this text is as follows:

- *Books*: Author Name(s); Year of Publication; Title (in quotation marks); Edition (if applicable); Publisher: City.

Steele, J. (2017) 'Tort Law: Text, Cases, and Materials' (3rd Edition) Oxford University Press: Oxford.

- *Journal articles*: Author Name(s); Year of Publication; Title (in quotation marks); Journal Title (in *italics*); Volume Number; Edition Number/Season; Page Number.

Craig, P. (2000) 'The Fall and Renewal of the Commission: Accountability, Contract and Administrative Organisation' *European Law Journal*, Vol. 6, No. 2, p. 98.

- *Chapters in edited works*: Author Name(s); Year of Publication; Title (in quotation marks); Author Name of Main Book; Year of Publication; Title (in *italics*); Publisher: City.

Prechal, S. (1997) 'EC Requirements for an Effective Remedy' in Lonbay, J. and Biondi, A. (Eds.) (1997) *Remedies for Breach of EC Law* John Wiley and Sons: Chichester, New York, Brisbane, Toronto, Singapore.

- *Parliamentary papers* (these may be used to discuss (for example) the meaning given to, or underlying purpose of, legislation when it was in the form of a Bill): The Speaker's Name; Volume of Hansard (since 1909 the House of Lords (HL) or House of Commons (HC)); Column Number(s); Date (in parentheses).

Lord Hailsham LC, 338 HL Debs, Col. 398–9 (29 January 1983).

- *Other materials* (such as government papers): Organization Name; Title (in *italics*); Date; Reference Number.
- Department of Health and Social Security, *Reform of the Supplementary Benefits Scheme* (1970) Cmnd 7773.
- *The bibliography*: This should be structured in alphabetical order, and then in reverse chronological order (the latest publication by the author listed first).

Where two or more works from the same author(s) are entered for the same year then the prefix of a, b, c, and so on should be used next to the year of publication.

p. 8 ↩ Ellis, E. (1994a) 'The Definition of Discrimination in European Community Sex Equality Law' *European Law Review*, December, p. 563.

Ellis, E. (1994b) 'Recent Case Law of the ECJ on the Equal Treatment of Women and Men' *Common Market Law Review*, Vol. 31, p. 43.

1.3.3.2 Table of cases

Following the bibliography, a table with a list of all the cases cited in the assessed work, and their full references, should be included. These are presented in alphabetical order.

Chapelton v Barry UDC [1940] 1 KB 532.

Olley v Marlborough Court Ltd [1949] 1 KB 532.

R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland) [2019] UKSC 41.

Thornton v Shoe Lane Parking Ltd [1971] 2 QB 163.

1.3.3.3 Table of statutes

The table of statutes identifies each of the statutes that have been cited. These are presented in alphabetical order with the title and year.

Consumer Rights Act 2015

Equality Act 2010

European Union (Withdrawal) Act 2018

1.4 Examples of answering law questions

We advise our students to adopt a three-step approach when answering law questions (see Figure 1.1). At the end of each chapter in this book you will find example essay and problem questions that you can use to practice, and we include an example answer for every question (which employ the three-step approach) with the online resources. To help you visualize how it works we have included an example problem question and answer in this chapter.



Figure 1.1 How to answer 'law' questions

1.4.1 Sample Question

Carl is a director of MediInternet plc and wishes to sell his 20 per cent shareholding in the company. His fellow director, Niall, would like to purchase them but does not have enough money, so Niall arranged a private bank loan, which is guaranteed by MediInternet plc, to obtain the shares. Additionally, MediInternet plc were provided marketing services by Ahmad, so they allotted him 20,000 shares in the company (of £1 nominal value) for this work. Ahmad then transferred all these shares to his new girlfriend, Isabelle. Another director of MediInternet plc, Nicole, is unsure as to the validity and implications of the transactions involving Niall and Ahmad respectively.

Using relevant legal authority, advise on the company law issues raised by the scenario.

1.4.2 Applying the Three-Step Process

In order to apply the three-step approach to this question we first have to identify the area of law that is most applicable to the problem. In this case it is company law, specifically maintenance of capital for corporations (see **Chapter 16**). Directors have great power in companies and changes they may propose to shares and their allotment are very carefully regulated—often leading to breaches and impacting on minority shareholders.

Once we have identified the area of law that applies, the answer should describe the most relevant statutes and case law. The most relevant statute that applies to this question is the Companies Act 2006 (CA 2006). As you will see in the example answer, there are a number of key cases that can be drawn on to answer the question.

Finally, to attain higher marks we must either apply the law (to answer a problem question) or analyse the law (to answer an essay question). The question we are answering is a problem question. We know this because we are asked to advise about the scenario rather than analyse or examine the law.

1.4.3 Example Answer

For the purposes of this question the following are the main laws relating to the scenario, a brief description of that law, and how they would apply to the individuals involved.

MediInternet plc's guarantee of Niall's loan to purchase shares

In a public company (denoted through the use of 'plc') it is unlawful for that company (or its subsidiary) to give financial assistance directly or indirectly for the purpose of the acquisition of its shares—CA 2006, s. 678(1).

p. 10 ← Does the above situation amount to financial assistance as provided for under CA 2006, s. 677? That is, a gift, guarantee, security or indemnity, loan, or other agreement (here a guarantee under CA 2006, s. 677(1)(b)). Assistance must be for the purpose of the acquisition or to reduce or discharge a liability—see *Dymont v Boyden* [2004] EWCA Civ 1586. Niall is purchasing shares in MediInternet plc, so the financial assistance is given directly for the purpose of the purchase—therefore it is unlawful. However, exceptions do exist. Under CA 2006, s. 678(2):

- If the company's principal purpose is not share acquisition (a) or it is an incidental part of a larger purpose (b) and assistance is given in good faith.

Therefore, Niall must convince a court that the guarantee is given in good faith, it is in the company's interests, and the principal purpose of the guarantee is not the share purchase, or is only incidental to it.

In *Brady v Brady* [1998] the House of Lords interpreted 'principal purpose' narrowly, distinguishing between a purpose and the reason why a purpose was formed.

Here it seems likely a court would say this is financial assistance as that is the primary purpose—so under CA 2006, s. 680(1)(a) and (b) this is a criminal offence by the company and every officer in default. They are liable to a fine and/or imprisonment (for a person) for a maximum of 12 months (ss. (2)).

Any director (especially Niall) who has authorized the financial assistance could be in breach of their duties under CA 2006, s. 171—the duty to act within powers (*Howard Smith Ltd v Ampol Petroleum Ltd* [1974]); CA 2006, s. 172—the duty to promote the success of the company (*Re Smith & Fawcett* [1942]); and possibly CA 2006, s. 175—the duty to avoid a conflict of interest (*Aberdeen Railway Co v Blaikie Bros* [1854]). If so, they are liable to account for the full amount of the improper financial assistance (*JJ Harrison (Properties) Ltd v Harrison* [2001]).

Ahmad's allotment of shares

Under CA 2006, s. 580(1) shares must not be issued at a discount, but can be paid up in money or money's worth (including goodwill and know-how); CA 2006, s. 582(1).

There is a risk that shares paid for by non-cash consideration may be undervalued but at common law this is unlikely to be challenged unless it is illusory or manifestly inadequate—*Re Wragg* (1897).

However, whilst that may apply in private companies, a plc is subject to greater restrictions. First, it must not allot a share unless paid up to one quarter of its nominal value (and whole of any premium)—CA 2006, s. 586(1). Also, it must not allot shares otherwise than in cash unless it meets the conditions in CA 2006, s. 593(1), that is: (a) the consideration (here Ahmad's services) has been independently valued; (b) a valuer's report has been made during six months prior to the share allotment; and (c) a copy of the report has been sent to the allottee (Ahmad).

That valuation report must also be filed with the registrar of companies—CA 2006, s. 597(1).

There is no evidence this has been done so the company and every officer in default are guilty of an offence and liable to a fine—CA 2006, s. 607.

For Ahmad (the allottee) if he did not receive a valuer's report or knew/ought to have known some contravention of CA 2006, ss. 593 or 596 then he is liable to pay the company the nominal value of the shares and any interest—CA 2006, s. 593(3).

Furthermore, subsequent holders of the shares are jointly and severally liable (unless they are a purchaser for value without notice)—CA 2006, s. 605(1)(b). This would apply to Isabelle, who now owns the shares.

p. 11 ↩ A court can grant relief from liability—CA 2006, s. 606(1)—if it considers it is just and equitable to do so having regard to all the factors in CA 2006, s. 606(2). The purpose of CA 2006, s. 593 is to ensure the company receives its capital. In CA 2006, s. 606(4) the overriding principle is that the company should receive money or money's worth equivalent to the nominal value (plus premium) of the shares. In *Re Bradford Investments (No. 2)* [1991], the company law regulations were not complied with and thus the court refused relief as it was not satisfied the business had any value when it was transferred. This may be compared with *Re Ossory Estates Plc* [1988] where relief was granted as there was clear evidence that the company received property equal to (and probably exceeding) the value of the shares. Ahmad has gained £20k effectively for his services, so only if he can show that the value of his work was at least this would he be granted relief.

Conclusion

This chapter has identified how to effectively study the law and what techniques may be incorporated to prepare for and present answers in seminars and assessed work. If you incorporate these elements into your study pattern, you may gain more from your studies and achieve greater success for your efforts. You need to work hard in order to be successful, especially when you are studying so many legal jurisdictions, but spend your time reflecting on what you have read, ask yourself 'Why was it important that I read the case/statute?', and use the seminars and self-test questions in this text to assess your own understanding and develop your skills in responding to legal problems.

We wish you success in your studies and your future business careers.

Further reading

The following may be useful for reference and expansion on the points raised in this chapter:

Finch, E. and Fafinski, S. (2019) 'Legal Skills' (7th Edition) Oxford University Press: Oxford.

Law, J. (2018) 'A Dictionary of Law (Oxford Quick Reference)' (9th Edition) Oxford University Press: Oxford.

Strong, S. I. (2018) 'How to Write Law Essays and Exams' (5th Edition) Oxford University Press: Oxford.

Wacks, R. (2015) 'Law: A Very Short Introduction' (2nd Edition) Oxford University Press: Oxford.

Online Resources

Visit the online resources https://oup-arc.com/access/marson6e-student-resources#tag_chapter-01 for further resources relating to this chapter, including self-test questions, an interactive glossary, and key case flashcards.

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