

OXFORD

5TH EDITION

INTRODUCTION TO
BUSINESS LAW

LUCY JONES

Introduction to Business Law



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BUSINESS LAW

FIFTH EDITION

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OXFORD
UNIVERSITY PRESS

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Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
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Second Edition 2013

Third Edition 2015

Fourth Edition 2017

Impression: 1

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2019937818

ISBN 978-0-19-882488-6

Printed in Great Britain by
Bell & Bain Ltd., Glasgow

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To Allan, Sophie, Nick, and Rosie and to all the students who have inspired me over the years.

New to this Edition

- Coverage of recent contract law cases relating to consideration, mistake, and implied contractual terms.
- Discussion of European Union (Withdrawal) Act 2018, European Union Law and jurisdiction of the Court of Justice of the EU in the light of the UK's exit from the EU.
- Consideration of Supreme Court cases in relation to duty of care and liability in negligence in the law of torts.
- Coverage of new employment law cases including discussion of the recent Supreme Court's decisions in relating to worker status and discrimination.
- Updated legislation and regulation coverage throughout.

Outline Contents

Guide to the Book	xviii
Guide to the Online Resources	xx
Table of Cases	xxii
Table of Legislation	xxviii

PART 1 The English Legal System

1 The Nature of English Law	3
2 The Court System and Alternative Dispute Resolution	16
3 Sources of English Law	41

PART 2 Contract Law

4 The Nature of the Agreement: Offer and Acceptance	77
5 Intention, Capacity, Consideration, and Privity	105
6 The Terms of a Contract	137
7 Vitiating Factors	167
8 Discharge of Contract and Contractual Remedies	199
9 The Sale of Goods and Supply of Services	229

PART 3 The Law of Agency

10 The Law of Agency	275
----------------------	-----

PART 4 Tort Law

11 The Tort of Negligence	299
12 Product Liability, Defective Premises, Interference with Land, and Defences	335

PART 5 Employment Law

13 The Contract of Employment and its Termination	371
14 Discrimination and Health and Safety	396

PART 6 The Structure & Management of Business

15 Business Organizations	421
16 Company Law I: Formation and Finance	452
17 Company Law II: Company Officers and Liabilities	479
18 Company Law III: Company Meetings, Shareholder Protection, and Liquidation of Companies	507

PART 7	Intellectual Property Law	
19	Intellectual Property Law	535
PART 8	Study Skills & Revision	
20	Study Skills	565
	Index	577

Detailed Contents

Guide to the Book	xviii
Guide to the Online Resources	xx
Table of Cases	xxii
Table of Legislation	xxviii

PART 1 The English Legal System

1	The Nature of English Law	3
1.1	Introduction	3
	Learning Objectives	4
1.2	What is Law?	4
1.3	Nature of English Law	5
1.4	Classification of Different Types of Laws	9
	Basic Terminology	13
	Summary	13
	Questions	14
	Further Reading	15
	Online Resources	15
2	The Court System and Alternative Dispute Resolution	16
2.1	Introduction	16
	Learning Objectives	17
2.2	The English Court System	17
2.3	Civil Disputes	30
2.4	Alternative Dispute Resolution	33
	Basic Terminology	38
	Summary	38
	Questions	39
	Further Reading	40
	Online Resources	40
3	Sources of English Law	41
3.1	Introduction	41
	Learning Objectives	42
3.2	Legislation	43
3.3	Custom	54
3.4	Case Law	54

3.5 European Union Law	61
3.6 Institutions of the EU	62
3.7 The European Convention on Human Rights and Fundamental Freedoms and the Human Rights Act 1998	67
Basic Terminology	72
Summary	72
Questions	74
Further Reading	74
Online Resources	74

PART 2 Contract Law

4 The Nature of the Agreement: Offer and Acceptance	77
4.1 Introduction	77
Learning Objectives	78
4.2 Essentials of a Contract	78
4.3 Issues in Contract Law	80
4.4 The Offer	84
4.5 Acceptance	94
Basic Terminology	101
Summary	102
Questions	103
Further Reading	104
Online Resources	104
5 Intention, Capacity, Consideration, and Privity	105
5.1 Introduction	105
Learning Objectives	106
5.2 Intention to Create Legal Relations	106
5.3 Contractual Capacity	112
5.4 Consideration	117
5.5 Privity of Contract	129
Basic Terminology	133
Summary	133
Questions	134
Further Reading	135
Online Resources	136
6 The Terms of a Contract	137
6.1 Introduction	137
Learning Objectives	137
6.2 Pre-contractual Statements	138
6.3 Contractual Terms	140

6.4	Exemption Clauses	147
6.5	The Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015	154
6.6	Contracts in Restraint of Trade	160
	Basic Terminology	163
	Summary	164
	Questions	165
	Further Reading	166
	Online Resources	166
7	Vitiating Factors	167
7.1	Introduction	167
	Learning Objectives	167
7.2	Misrepresentation	168
7.3	Mistake	178
7.4	Duress and Undue Influence	187
7.5	Illegality	192
	Basic Terminology	195
	Summary	196
	Questions	197
	Further Reading	197
	Online Resources	198
8	Discharge of Contract and Contractual Remedies	199
8.1	Introduction	199
	Learning Objectives	200
8.2	Discharge of a Contract	200
8.3	Remedies for Breach of Contract	216
	Basic Terminology	225
	Summary	226
	Questions	227
	Further Reading	228
	Online Resources	228
9	The Sale of Goods and Supply of Services	229
9.1	Introduction	229
	Learning Objectives	230
9.2	Consumer Contracts and Non-consumer Contracts	230
9.3	Contract for the Sale of Goods/Sales Contracts	231
9.4	Consumer Contracts for the Supply of Goods, Digital Content, or Services	234
9.5	The Supply of Digital Content to a Consumer	240
9.6	Supplying a Service	241
9.7	Non-consumer Contracts for the Sale of Goods	243

9.8	Passing of Property (Title) in Goods from Seller to Buyer	251
9.9	Duties of the Parties of Contract for Sale of Goods	259
9.10	Remedies of the Buyer and Seller for Breach of Contract	262
9.11	Terms Implied into Other Contracts	265
	Basic Terminology	267
	Summary	268
	Questions	270
	Further Reading	271
	Online Resources	271

PART 3 The Law of Agency

10	The Law of Agency	275
10.1	Introduction	275
	Learning Objectives	275
10.2	Definition of Agency	276
10.3	The Creation of Agency	277
10.4	Authority of an Agent	282
10.5	Rights and Duties	283
10.6	Relationship between Agent, Principal, and Third Party	289
10.7	Termination of Agency	291
10.8	Types of Agents	292
	Basic Terminology	293
	Summary	294
	Questions	295
	Further Reading	296
	Online Resources	296

PART 4 Tort Law

11	The Tort of Negligence	299
11.1	Introduction	299
	Learning Objectives	300
11.2	Distinction between the Law of Torts and Criminal Law	300
11.3	Distinction between the Law of Torts and Contract Law	301
11.4	The Tort of Negligence	302
11.5	Element 1: Duty of Care	302
11.6	Element 2: The Defendant Broke his Duty of Care	320
11.7	Element 3: The Claimant Suffered Loss or Damage as a Result of the Defendant's Breach of Duty	327
	Basic Terminology	331
	Summary	332

Questions	333
Further Reading	334
Online Resources	334
12 Product Liability, Defective Premises, Interference with Land, and Defences	335
12.1 Introduction	335
Learning Objectives	336
12.2 Liability for Defective Products	336
12.3 Occupiers' Liability	343
12.4 Trespass to Land	348
12.5 Private Nuisance	350
12.6 Public Nuisance	355
12.7 The Rule in <i>Rylands v Fletcher</i>	355
12.8 General Defences in Tort	357
12.9 Vicarious Liability	361
Basic Terminology	365
Summary	365
Questions	367
Further Reading	368
Online Resources	368
PART 5 Employment Law	
13 The Contract of Employment and its Termination	371
13.1 Introduction	371
Learning Objectives	372
13.2 Issues in Employment Law	372
13.3 Employment Status	373
13.4 Implied Terms	378
13.5 Termination of Contract	380
13.6 Statutory Notice Periods	380
13.7 Types of Dismissal Claim	381
13.8 Redundancy	390
Basic Terminology	392
Summary	393
Questions	394
Further Reading	395
Online Resources	395
14 Discrimination and Health and Safety	396
14.1 Introduction	396
Learning Objectives	397
14.2 Discrimination Law	397

14.3	Protected Characteristics	398
14.4	Prohibited Conduct	404
14.5	Positive Action	411
14.6	Health and Safety	411
	Basic Terminology	416
	Summary	416
	Questions	418
	Further Reading	418
	Online Resources	418

PART 6 The Structure & Management of Business

15	Business Organizations	421
15.1	Introduction	421
	Learning Objectives	421
15.2	Unincorporated and Incorporated Business Organizations	422
15.3	Sole Trader	422
15.4	Partnerships	423
15.5	Limited Partnerships	436
15.6	Limited Liability Partnerships	437
15.7	Companies	440
	Basic Terminology	448
	Summary	448
	Questions	450
	Further Reading	451
	Online Resources	451
16	Company Law I: Formation and Finance	452
16.1	Introduction	452
	Learning Objectives	452
16.2	Setting Up a Company	453
16.3	The Constitutional Documents of a Company under the Companies Act 2006	461
16.4	Financing a Company	467
	Basic Terminology	475
	Summary	476
	Questions	477
	Further Reading	478
	Online Resources	478
17	Company Law II: Company Officers and Liabilities	479
17.1	Introduction	479
	Learning Objectives	480

17.2	Directors	480
17.3	Company Secretary	498
17.4	Company Auditors	500
17.5	Corporate Governance	502
	Basic Terminology	503
	Summary	504
	Questions	505
	Further Reading	506
	Online Resources	506
18	Company Law III: Company Meetings, Shareholder Protection, and Liquidation of Companies	507
18.1	Introduction	507
	Learning Objectives	508
18.2	Company Meetings	508
18.3	Resolutions	513
18.4	Protection of Minority Shareholders	517
18.5	Insider Dealing and Market Abuse	521
18.6	Winding Up a Company	522
	Basic Terminology	528
	Summary	529
	Questions	530
	Further Reading	531
	Online Resources	531
PART 7 Intellectual Property Law		
19	Intellectual Property Law	535
19.1	Introduction	535
	Learning Objectives	536
19.2	Copyright	536
19.3	Patents	542
19.4	Trade Marks	547
19.5	Designs Rights	552
19.6	The Tort of Passing Off	555
19.7	EU and Worldwide Protection of Intellectual Property Rights	557
	Basic Terminology	558
	Summary	558
	Questions	561
	Further Reading	561
	Online Resources	561

PART 8 Study Skills & Revision

20	Study Skills	565
20.1	Introduction	565
	Learning Objectives	565
20.2	Managing and Organizing your Study Time	565
20.3	Lectures and Seminars/Tutorials	566
20.4	Taking Effective Notes	568
20.5	Locating Case Reports and Statutes	568
20.6	How to Approach Assignment Questions	569
20.7	Preparing for Examinations	574
	Online Resources	576
	Index	577

Guide to the Book

Introduction to Business Law is enhanced with a range of features designed to help support and reinforce your learning. This guided tour shows you how to fully utilise your textbook and get the most out of your study.

LEARNING OBJECTIVES

After studying this chapter you should be able to:

- Distinguish between an action for defective products taken in the tort of negligence and an action under the Consumer Protection Act 1987 (section 12.1).
- Identify the elements necessary for a *Fletcher* case.
- Outline liability (section 12.4).
- Describe private law (sections 12.5).
- Outline liability (section 12.6).

Learning Objectives

Each chapter begins with a bulleted outline of the main concepts and ideas you will encounter. These provide a helpful signpost to what you can expect to learn from the chapter.



FIGURE 11.2 TEST FOR ESTABLISHING WHETHER A DUTY OF CARE EXISTS

Tables and Figures

Full colour tables and figures help define complex issues and highlight key points to remember.

HOLLIER v RAMBLER MOTORS LTD (1972)

Facts Over a period of five years, the claimant took his car to the defendant for repair and servicing and on at least two occasions had signed a form excluding liability for damage to cars caused by fire. However, on this occasion the claimant's car was in the garage, and while his car was in the garage, it was damaged in a fire caused by the defendant's negligence.

Decision The claimant was not bound by the exclusion clause as it had no contractual relationship with the defendant. The three or four transactions that took place between the claimant and the defendant did not amount to regular dealings.

Cases

Expanding on the facts and decisions of key cases, these boxes illustrate important precedents set in case law.

BUSINESS INSIGHT

Health and safety at work offences can be found in Acts of Parliament. In 1999, London hotel owners were fined £4,000 by the City of London Magistrates' Court for a lift used by staff at a London hotel sheared, causing the lift to fall and injure a woman between floors. The owners were prosecuted for breach of s 2(1) of the Health and Safety Act 1974 (an Act of Parliament) for failing to provide a safe system of work, and s 9(3)(i)(a) of the Lifting Operations and Lifting Equipment Regulations 1998. The regulations were made by the Secretary of State for the Department of Trade and Industry under the powers to make various Regulations given to him by Parliament.

Business Insights

Situations from the recent past are highlighted and explained to show how the topics in the book relate to real world business scenarios.

Viewpoint Boxes

Throughout the book are accounts from real business people who need to interact with the law as part of their job. Read their stories to see how the law might apply to your career.

VIEWPOINT **TIM ASPINALL** CONSULTANT, DMH STALLARD LLP, SOLICITOR

My work as a lawyer includes giving advice to businesses on intellectual property. I have written a guide to Intellectual Property Success which includes the following:

- Value your IP. Work out how much your IP means to your business. How would you react if you lost it or had to start from scratch? How much damage would you be able to recover if you could access and use your IP without your consent?
- Use a multi-layered approach. Consider securing a number of IP rights to create a package of enforceable rights. Don't just rely on registration.

Key Concepts

Important ideas from within the chapters are distilled into bullet points that can be used as summaries or aids to revision.

KEY CONCEPT

The elements of the tort of negligence are:

- The defendant owed the claimant a duty of care. Reasonably foreseeable
- The defendant breached the duty of care owed. by the breach of

Basic Terminology

A useful reference for all the key words and phrases used within each chapter. A flash-card glossary is available online.

BASIC TERMINOLOGY

Certainty of terms Terms agreed by the parties must not be too vague or incomplete.

Exclusion clause A clause that limits the liability of one party.

Condition A fundamental term that goes to the root of the contract.

Express term Term stated explicitly by one of the parties.

Summaries

The central points and concepts covered in each chapter are collated into end-of-chapter summaries. These reinforce your understanding and can be used for quick revision. All chapter summaries are available for reference online.

SUMMARY

After studying this chapter students should be able to:

EXPLAIN THE DIFFERENCE BETWEEN A TERM OF A CONTRACT AND A REPRESENTATION

- A representation is a pre-contractual statement.
- Whether a statement is a term or a representation depends on the intention of the parties.

APPRECIATE THE NECESSITY FOR CERTAINTY OF CONTRACTUAL TERMS

Questions

Questions at the end of each chapter help you to develop analytical and problem solving skills. Presented in essay and problem style, these questions will give you a chance to consolidate your knowledge and develop your own successful approach to assessments and examinations.

Outline answers are available online.

QUESTIONS

ESSAY QUESTIONS

1. Explain the different methods by which an agency relationship may be created.
2. Discuss the rights and duties of an agent.

PROBLEM QUESTIONS

3. Jenny authorizes Sam, her agent, to sell Jenny's diamond ring for no less than £10,000.

Guide to the Online Resources

The online resources that accompany this book provide students and lecturers with ready-to-use teaching and learning resources to maximise the learning experience.



Home > Law > Introduction to Business Law 5e

Introduction to Business Law 5e Student Resources

Description

Student Resources to accompany *Introduction to Business Law*, 5th edition:

- Self-test Questions
- Suggested Answers to End-of-Chapter Questions
- Chapter Summaries
- Animated Diagrams
- Flashcard Glossary
- Exam Guidance

Resources

- About the book
- Additional material
- Animated diagrams
- Chapter Summaries
- Exam guidance
- Flashcard Glossary

Chapters

Chapter Summaries

- Chapter 1 End of chapter summary documents**
The nature of English law
Tags: Chapter Summaries, Chapter 01, All Downloadable contents
- Chapter 2 End of chapter summary documents**
The court system and alternative dispute resolution
Tags: Chapter Summaries, Chapter 02, All Downloadable contents
- Chapter 3 End of chapter summary documents**
Sources of English law
Tags: Chapter Summaries, Chapter 03, All Downloadable contents



www.oup.com/uk/jonesib15e/

For Students

Accessible to all, with no registration or password required, enabling you to get the most from this textbook.

- [Multiple-choice questions](#) with instant feedback
- [Outline answers](#) to end-of-chapter questions
- [Interactive flashcard glossary](#) of key terms from the book
- [Exam help](#)
- [Chapter summaries](#)

For Lecturers

Password protected to ensure that only lecturers can access these resources. Registering is easy: click on 'Lecturer Resources' and complete a simple registration form that allows you to choose your own username and password, and access will be granted within 48 hours (subject to verification).

Instructors' manual

Includes:

- Assignment questions to accompany each Part of the text
- Research exercises to accompany each chapter
- Group exercises to accompany each chapter

Table of Cases

United Kingdom

- Abouzaid v Mothercare [2000] EWCA Civ 348 . . . 341
- Adams v Lindsell 106 ER 250; (1818) 1 B & Ald 681 (KB) . . . 99
- Adegbola v Marks & Spencer plc [2013] EWCA Civ 1808 . . . 384
- Adler v George [1964] 2 QB 7 (QBD) . . . 51
- Air Studios Limited v Lombard North Central Plc (2012) . . . 94
- Alcock v Chief Constable of South Yorkshire Police [1992] 1 AC 310 . . . 319
- Allcard v Skinner (1887) LR 36 Ch D 145 . . . 190
- Allen v Gulf Oil Refining Ltd [1981] AC 1001 (HL) . . . 354
- AML Global Ltd v Exxonmobil Ltd (2018) . . . 187
- Amnesty International v Ahmed [2009] ICR 1450 . . . 406
- Andrews Bros Ltd v Singer & Co [1934] 1 KB 17 . . . 152
- Armstrong v Jackson [1917] 2 KB 822 (KBD) . . . 286
- Ashton v Turner [1981] QB 137 (QBD) . . . 307, 361
- Associated Japanese Bank v Credit du Nord [1989] 1 WLR 255 . . . 180
- Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 WLR 1 . . . 249
- Ate My Heart Inc v Mind Candy Ltd [2011] EWHC 2741 (Ch) . . . 552
- Atlas Express Ltd v Kafco (Importers and Distributors Ltd) [1989] QB 833 (QBD) . . . 188
- Attwood v Small (1838) 6 Cl & F 232 . . . 173
- Atwal v Rochester [2010] EWHC 2338 (TCC) . . . 206
- Autoclenz Limited v Belcher and others [2011] UKSC 41 . . . 378
- Avery v Bowden (1856) 5 E&B 714 . . . 215
- B v JJB Sports [2007] CLY 4195 . . . 345
- Balfour v Balfour [1919] 2 KB 571 (CA) . . . 107
- Bank of Credit and Commerce International SA v Aboody [1990] 1 QB 923 . . . 190
- Bannerman v White (1861) CB(NS) 844 . . . 139
- Barclays Bank plc v O'Brien [1994] 1 AC 180 (HL) . . . 191
- Barker v Corus plc [2006] UKHL 20 . . . 56
- Barnett v Chelsea & Kensington Hospital Management Committee [1969] 1 QB 428 (QBD) . . . 327
- Barry v Davies [2000] 1 WLR 1962 . . . 88
- Barton v Armstrong [1976] AC 10 (PC) . . . 188
- Bates van Winkelhof v Clyde & Co LLP [2014] 1 WLR 2047 . . . 377
- Beale v Taylor [1967] 1 WLR 1193 (CA) . . . 245
- Bell v Lever Bros [1932] AC 161 (HL) . . . 181
- Bellman v Northampton Recruitment Ltd (2018) . . . 364
- Berezovsky & another v Edmiston & Co Ltd & another [2011] EWCA Civ 431 . . . 288
- Bernstein v Skyviews & General Ltd [1978] 1 QB 479 . . . 349
- Bertram, Armstrong & Co v Godfrey (1830) 1 Knapp 381 . . . 284
- Bettini v Gye (1875–76) LR 1 QBD 183 (QBD) . . . 146
- Bisset v Wilkinson [1927] AC 177 (PC) . . . 171
- Blackpool & Fylde Aero Flying Club Ltd v Blackpool Borough Council [1990] 1 WLR 1195 (CA) . . . 87
- Blisset v Daniel (1853) 10 Hare 493 . . . 431
- Bloom v American Swiss Watch Co (1915) App D 100 SA . . . 90
- Boardman v Phipps [1967] 2 AC 46 . . . 287
- Bolam v Friern Hospital Management Committee [1957] 1 WLR 582 (QBD) . . . 321
- Bolitho v City and Hackney Health Authority [1998] AC 232 (HL) . . . 322
- Bolton v Mahadeva [1972] 1 WLR 1009 (CA) . . . 203
- Bolton v Stone [1951] AC 850 (HL) . . . 323
- Borvigilant (Owners) v Owners of the Romina G [2003] EWCA Civ 935 . . . 281
- Bourne Leisure Ltd v Marsden [2009] EWCA Civ 671 . . . 345
- Bowerman v Association of British Travel Agents Ltd [1996] CLC 451 . . . 90
- BP Exploration Co (Libya Ltd) v Hunt (No 2) [1982] 2 AC 352 (HL) . . . 212
- Brace v Calder [1895] 2 QB 253 (CA) . . . 221
- Brinkibon Ltd v Stahag Stahl [1983] 2 AC 34; [1982] 2 WLR 264 (HL) . . . 97
- British Railways Board v Herrington [1972] AC 877 (HL) . . . 56
- British Telecommunications plc v One in a Million Ltd [1999] 1 WLR 903 (CA) . . . 458
- Brumder v Motornet Service and Repairs Ltd [2013] EWCA Civ 195; [2013] 3 All ER 412 . . . 494
- Bull and Bull v Hall and Preddy [2013] UKSC 73; [2013] WLR 3741 . . . 404
- Bunge SA v Kyla Shipping Company Ltd [2013] EWCA Civ 734 . . . 210
- Burchell v British Home Stores [1980] ICR 303 . . . 384
- Bushell v Faith [1970] AC 1099 (HL) . . . 485
- Butler Machine Tool Ltd v Ex-Cell-O Corp Ltd [1979] 1 WLR 401 (CA) . . . 96
- Byrne v Van Tienhoven (1879–80) LR 5 CPD 344, CPD . . . 91
- Cadbury UK Ltd v Société des Produits Nestlé SA [2013] EWCA Civ 1174; [2014] 1 All ER 1079 . . . 548
- Canary Wharf Ltd v European Medicines Agency (2019) . . . 209
- Caparo Industries v Dickman [1990] 2 AC 605 (HL) . . . 303–4, 312, 501
- Carilliv v Carbollic Smoke Ball Company [1893] 1 QB 256 (CA) . . . 87, 89–90, 99, 573
- Carlos Federspiel & Co SA v Charles Twigg & Co Ltd [1957] 1 Lloyd's Rep 240 . . . 254
- Cavendish Square Holding BV (Appellant) v Talal El Makdessi [2015] UKSC 67 . . . 222
- CBS Songs Ltd v Amstrad Consumer Electrics plc [1988] AC 1013 (HL) . . . 540
- Cehave NV v Bremer Handelsgesellschaft (The Hansa Nord) [1976] QB 44 (CA) . . . 147
- Central London Property Trust v High Trees House Ltd [1947] KB 130 . . . 128
- Centrovincial Estates plc v Merchant Investors Assurance Co Ltd (1983) Com LR 158 (CA) . . . 183
- Century Insurance Co Ltd v Northern Ireland Road Transport Board [1942] AC 509 (HL) . . . 363

- Chadwick v British Rail [1967] 1 WLR 912 (QBD) . . . 317
- Chapelton v Barry Urban District Council [1940] 1 KB 532 (CA) . . . 149
- Chappell v Nestle Co Ltd [1960] AC 87 (HL) . . . 121
- Chaudhry v Prabhakar [1988] 1 WLR 29 (CA) . . . 278, 285, 314
- Clare v Perry [2005] EWCA Civ 39 . . . 344
- Clay v Crump [1964] 1 QB 533 . . . 309
- Clea Shipping Corp v Bulk Oil International Ltd (The Alaskan Trader) (No 2) [1984] 1 All ER 129 (QBD) . . . 215
- Clegg v Andersson [2003] 2 Lloyd's Rep 32 . . . 247
- Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1998] AC 1 (HL) . . . 223
- Collins v Godefroy (1831) 1 B&Ad 950 . . . 121
- Commissioner of Police of the Metropolis v DSD [2018] . . . 308
- Condor v Barron Knights [1966] 1 WLR 87 (Assizes) . . . 205–6
- Cooper v Phibbs (1867) LR 2 HL 149 . . . 181
- Cosmetic Warriors Ltd v Amazon.co.uk Ltd [2014] EWHC 181 (Ch) . . . 552
- Courtaulds Northern Textiles v Andrew [1979] IRLR 84 . . . 379
- Couturier v Hastie (1856) 5 HL Cas 673 QB . . . 179
- Coventry v Lawrence [2014] UKSC 46 . . . 350
- Cox v Ministry of Justice [2016] UKSC10 . . . 362
- Crisp v Apple Retail (UK) Ltd ET/1500258/11 . . . 385
- CTN Cash and Carry v Gallaher [1994] 4 All ER 714 . . . 189
- Cundy v Lindsay [1874–80] All ER Rep 1149 (HL) . . . 183
- Currie v Misa (1875–76) LR 1 App Cas 554 (HL) . . . 117
- Curtis v Chemical Cleaning & Dyeing Co [1951] 1 KB 805 (CA) . . . 149
- Cutter v Powell 101 ER 573; (1795) 6 Term Rep 320 (KB) . . . 202
- D & C Builders v Rees [1966] 2 QB 617 (CA) . . . 129
- Dalmare SpA v Union Maritime Ltd [2012] EWHC 3537 (Comm) . . . 247
- Darnley v Croydon Health Services NHS Trust [2018] UKSC 50 . . . 303
- Davis Contractors Ltd v Fareham UDC [1956] AC 696 (HL) . . . 210
- Davison v Kent Meters Ltd [1975] IRLR 145 . . . 383
- Denny, Mott & Dickson Ltd v James B Fraser & Co Ltd [1944] AC 265 (HL) . . . 208
- Derry v Peek (1889) LR 14 App Cas 337 (HL) . . . 175
- Dick Bentley Productions Ltd v Harold Smith [1965] 1 WLR 623 (CA) . . . 139–40
- Dickinson v Dodds (1875–76) LR 2 Ch D 463 (CA) . . . 92
- Dimmock v Hallett (1866–67) LR 2 Ch App 21 . . . 171
- Don King Productions Inc v Warren [1999] 2 All ER 218 . . . 429
- Donoghue v Stevenson [1932] AC 562 (HL) . . . 302, 305, 311
- Dorchester Finance Co Ltd v Stebbing [1989] BCLC 498 . . . 494
- Doyle v White City Stadium [1935] 1 KB 110 (CA) . . . 113
- Drake v Ipsos Mori UK Ltd (2012) UKEAT/0604/11 . . . 375
- Driver v Dover Roman Painted House Trust [2014] EWHC 1929 (QB) . . . 346
- Dubai Aluminium Co Ltd v Salaam [2003] 2 AC 366 (HL) . . . 434
- Dulieu v White [1901] 2 KB 669 (KB) . . . 316
- Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd [1915] AC 847 (HL) . . . 117, 129
- Dyson Appliances Ltd v Hoover Ltd [2001] RPC 26 . . . 546
- Earl of Oxford's Case (1615) 1 Ch Rep 1 . . . 8
- Eclairs Group Ltd and Glengary Overseas Ltd v JKC Oil & Gas plc [2015] UKSC 71 . . . 492
- Edgington v Fitzmaurice (1885) LR 29 Ch D 459 (CA) . . . 173
- Edwards v Skyways [1964] 1 WLR 349 (CA) . . . 111
- Eley v Positive Life Assurance Co (1875–76) LR 1 Ex D 88 . . . 465
- Entores v Miles Far East Corporation [1955] 2 QB 327; [1955] 3 WLR 48 (CA) . . . 97, 574
- Environment Agency v Donnelly [2013] UKEAT 0194_13_1810 . . . 401
- Errington v Errington and Woods [1952] 1 KB 290 (CA) . . . 92
- Esso Petroleum v Harper's Garage [1968] AC 269 (HL) . . . 163
- Esso Petroleum Ltd v Commissioners of Customs and Excise [1976] 1 WLR 1 (HL) . . . 109
- Esso Petroleum Ltd v Mardon [1976] QB 801 (CA) . . . 172
- Essop v Home Office [2017] UKSC 27 . . . 409
- Evans v Triplex Safety Glass Co Ltd [1936] 1 All ER 283 . . . 305
- Everet v Williams (1725) 9 LQ Rev 197 . . . 193
- Eweida v British Airways [2010] EWCA Civ 80 . . . 408
- Ewing v Buttercup Margarine Co Ltd [1917] 2 Ch 1 (CA) . . . 458
- Ezias v North Glamorgan NHS Trust [2011] IRLR 550 . . . 386
- Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5; [2014] ETMR 26 . . . 557
- Fairchild v Glenhaven Funeral Services Ltd [2002] 1 AC 32 (HL) . . . 56, 328–9
- Farley v Skinner (No 2) [2001] UKHL 49 . . . 221
- Fawcett v Smethurst (1914) 84 LJKB 473 . . . 113
- Felthouse v Bindley (1862) 11 CB NS 869 CCP . . . 98, 574
- Fenty v Arcadia Group Brands Ltd (t/a Topshop) [2013] WLR (D) 310 . . . 556
- FHR European Ventures v Cedar Capital Partners [2014] UKSC 45 . . . 287
- Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32 (HL) . . . 205, 208
- Fisher v Bell [1961] 1 QB 394; [1960] 3 WLR 919 (DC) . . . 12, 51, 86
- Foakes v Beer (1881–85) All ER Rep 106 (HL) . . . 5, 125–6
- Foley v Classique Coaches [1934] 2 KB 1 (CA) . . . 141
- Folkes Group plc v Alexander [2002] EWHC 51 (Ch) . . . 466
- Fordy v Harwood [1999] EWCA Civ J0330-17 . . . 172
- Forster & Sons Ltd v Suggett (1918) 35 TLR 87 . . . 161
- Foss v Harbottle (1843) 2 Hare 461 (Ct Ch) . . . 517
- Freeman & Lockyer v Buckhurst Park Properties Ltd [1964] 2 QB 480 (CA) . . . 280, 283, 489
- Froom v Butcher [1976] QB 286 (CA) . . . 358
- Gamerco SA v ICM/Fair Warning Agency [1995] 1 WLR 1226 . . . 205–6, 212
- General Cleaning Contractors v Christmas [1953] AC 180 (HL) . . . 415
- George v Eagle Air Services Ltd [2009] 1 WLR 2133 (PC) . . . 326
- George Mitchell v Finney Lock Seeds [1983] 2 AC 803 (HL) . . . 156
- Ghaidan v Godin-Mendoza [2004] UKHL 30 . . . 71
- Gibson v Manchester City Council [1979] 1 WLR 294 (HL) . . . 85, 573
- Gilford Motor Co v Horne Ltd [1933] Ch 935 (CA) . . . 446
- Gill v SAS Ground Services UK Limited ET/2705021/09 . . . 385
- Gillingham BC v Medway (Chatham Docks) Co Ltd [1993] QB 343 . . . 351
- Glasbrook Bros v Glamorgan County Council [1925] AC 270 (HL) . . . 122
- Godley v Perry [1960] 1 WLR 9 (QBD) . . . 250
- Goldsoil v Goldman [1915] 1 Ch 292 (CA) . . . 163

- Goodlife Foods Ltd v Hall Fire Protection Ltd (2018) ... 157
- Grant v Australian Knitting Mills [1936] AC 85 (PC) ... 248
- Great Northern Railway v Swaffield (1874) LR 9 Ex 132 ... 279
- Great Peace Shipping v Tsaviris Salvage [2003] QB 679 (CA) ... 181
- Green v Bannister [2003] EWCA Civ 1819 ... 359
- Greenclose Ltd v National Westminster Bank plc [2014] EWHC 1156 (Ch) ... 101
- Grievous v F T Everard & Sons Ltd [2007] 3 WLR 876 (HL) ... 316
- Griffiths v Peter Conway [1939] 1 All ER 685 (CA) ... 249
- Guthing v Lynn (1831) 2 B Ad 232 ... 573
- H Parsons (Livestock) Ltd v Uttley Ingham [1978] QB 791 (CA) ... 218
- Hadley v Baxendale 156 ER 145; (1854) 9 Exch 341 (Exch Ct) ... 217
- Hadley v Kemp [1999] EMLR 589 (Ch D) ... 107
- Haley v London Electricity Board [1965] AC 778 (HL) ... 324
- Hambrook v Stokes Bros [1925] 1 KB 141 (CA) ... 318
- Harlingdon & Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd [1991] 1 QB 564 (CA) ... 246
- Harris v Sheffield United Football Club Ltd [1988] QB 77 (CA) ... 122
- Harris' Patent [1985] RPC 19 ... 545
- Hart v Burbridge [2014] EWCA Civ 992 ... 191
- Hartley v Ponsonby (1857) 7 E & B 872 ... 123
- Hartog v Colin & Shields [1939] 3 All ER 566 (KBD) ... 182
- Harvey v Facey [1893] AC 552 (PC) ... 88–9
- Hazlewood Grocery Ltd v Lion Foods Ltd [2007] EWHC 1887 (QB) ... 247
- Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 (HL) ... 176, 311–12, 315
- Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549 (CA) ... 282
- Henderson v Connect (South Tyneside) Ltd [2010] IRLR 466 ... 386
- Heneghan v Manchester Dry Docks [2016] EWCA Civ 86 ... 329
- Herne Bay Steam Boat Co v Hutton [1903] 2 KB 683 (CA) ... 205, 207–8
- Heydon's case (1584) 3 Coke Rep 7a ... 52
- Hickman v Kent or Romney Marsh Sheep Breeders Association [1915] 1 Ch 881 ... 464
- Hillas v Arcas (1932) 43 Ll Rep 359; (1932) 147 LT 503 (HL) ... 85, 141
- Hilton v Thomas Burton (Rhodes) Ltd [1961] 1 WLR 705 ... 364
- Hinz v Berry [1970] 2 QB 40 (CA) ... 318
- Hochster v De La Tour 118 ER 922; (1853) 2 El & Bl 678 (QB) ... 214
- Hoenig v Isaacs [1952] 2 All ER 176 (CA) ... 203
- Hollier v Rambler Motors Ltd [1972] 2 QB 71 (CA) ... 55, 152–3
- Hollywood Silver Fox Farm v Emmett [1936] 2 KB 468 ... 352
- Holmes v Ashford [1950] 2 All ER 76 (CA) ... 337
- Holwell Securities v Hughes [1974] 1 WLR 155 (CA) ... 100
- Home Office v Dorset Yacht Co [1970] UKHL 2 ... 306
- Homer v Chief Constable of West Yorkshire [2012] 3 All ER 1287 (SC) ... 399
- Hong Kong Fir Shipping Co Ltd v Kawasaki Kisan Kaisha Ltd [1962] 2 QB 26 (CA) ... 146
- Household Fire and Carriage Accident Insurance Company Ltd v Grant (1878–79) LR 4 Ex D 216 (CA) ... 100
- Howard Marine and Dredging Co Ltd v A Ogden and Sons (Excavations) Ltd [1978] QB 574 ... 175
- HRH Prince of Wales v Associated Newspapers Ltd [2007] 3 WLR 222 ... 538
- Hudgell, Yeates and Co v Watson [1978] QB 451 (CA) ... 435
- Hughes v Lord Advocate [1963] AC 837 (HL) ... 330
- Hunter v Canary Wharf Ltd [1997] AC 655 (HL) ... 353
- Hutton v Warren (1836) 1 M&W 466 ... 142
- Hyde v Wrench (1840) 3 Beav 334 (Ct Ch) ... 93, 573
- ICI v Shatwell [1965] AC 656 (HL) ... 360
- IDA Ltd v University of Southampton [2006] EWCA Civ 145; [2006] RPC 21 ... 544
- IDC v Cooley [1972] 1 WLR 443 ... 495
- Impala v Wanxiang [2015] EWHC 811 (Comm) ... 150
- Ingram v Little [1961] 1 QB 31 (CA) ... 185
- Interphoto Picture Library v Stiletto Visual Programmes [1989] QB 433 (CA) ... 150
- Ipswich Town Football Club Co Ltd v Chief Constable of Suffolk [2016] EWHC 1682 (QB) ... 122
- Isabella Shipowner SA v Shagang Shipping Co Ltd (The Aquafaith) [2012] 2 All ER (Comm) 461 ... 216
- J & H Ritchie Ltd v Lloyd Ltd [2007] UKHL 9 ... 261
- Jackson v Horizon Holidays Ltd [1975] 1 WLR 1468 (CA) ... 130
- Jackson v Murray [2015] UKSC 5 ... 359
- James McNaughton Paper Group Ltd v Hicks Anderson & Co [1991] 2 QB 113 (CA) ... 313
- Jarvis v Swan Tours [1973] QB 233 (CA) ... 220
- Jet2.com Limited v Blackpool Airport Limited [2012] EWCA Civ 417 ... 141
- Jewson Ltd v Kelly [2003] EWCA Civ 1030 ... 250
- JN Hipwell & Son v Szurek [2018] EWCA Civ 674 ... 143
- John Grimes Partnership Ltd v Gubbins [2013] EWCA Civ 37 ... 219
- Jolley v London Borough of Sutton [2000] 1 WLR 1082 (HL) ... 330
- Jones v Lipman [1962] 1 WLR 832 ... 446
- Jones v Padavatton [1969] 1 WLR 328 (CA) ... 107
- Jones v Vernon's Pools [1938] 2 All ER 626 ... 110
- Joyce v Bowman Law Ltd [2010] EWHC 251 (Ch) ... 220
- Kay v ITW [1968] 1 QB 140 (CA) ... 363
- Kelly v Denman [1996] CLY 655 ... 432
- Kelly v GE Healthcare Ltd [2009] EWHC 181 (Pat); [2009] RPC 12 ... 545
- Kelner v Baxter (1866) LR 2 CP 174 ... 281
- Kelsen v Imperial Tobacco Co [1957] 2 QB 334 ... 349
- Keppel v Wheeler [1927] 1 KB 577 (CA) ... 285
- Khan v Miah [2000] 1 WLR 2123 (HL) ... 426
- Killen v Horseworld Ltd and others [2012] EWHC 363 (QB) ... 495
- King's Norton Metal Co Ltd v Edridge, Merrett & Co Ltd (1897) 14 TLR 98 (CA) ... 183
- Kingsway Hall Hotel Ltd v Red Sky IT (Hounslow) Ltd [2010] EWHC 965 (TCC) ... 247
- Kleinwort Benson Ltd v Malaysia Mining Corporation [1989] 1 WLR 379 (CA) ... 111
- Kolmar Group AG v Traxpo Enterprises Pvt Ltd [2011] 1 All ER (Comm) 46 ... 188
- Koufos v C Czarnikow Ltd (The Heron II) [1969] 1 AC 350 (HL) ... 218
- Krell v Henry [1903] 2 KB 740 (CA) ... 205, 207
- Lagden v O'Connor [2003] UKHL 64 ... 330
- Latimer v AEC [1953] AC 643 (HL) ... 324
- Law v Law [1905] 1 Ch 140 (CA) ... 429
- Leaf v International Galleries [1950] 2 KB 86 (CA) ... 181

- Leakey v National Trust [1980] QB 485 (CA) ... 354
- Lee v Ashers Baking Company Ltd [2018] UKSC 49 ... 403
- Leeds United Football Club Ltd v Chief Constable of West Yorkshire [2014] QB 168 (CA) ... 122
- Leeman v Montagu [1936] 2 All ER 1677 (KBD) ... 352
- L'Estrange v Graucob [1934] 2 KB 394 (KBD) ... 149
- Lewis v Averay [1972] 1 QB 198 (CA) ... 184–5
- Lister & Ors v Hlesley Hall Ltd [2001] UKHL 22 ... 363
- Liverpool City Council v Irwin [1977] AC 239 (HL) ... 144
- LMS International Ltd v Styrene Packaging & Insulation Ltd [2005] EWHC 2065 (TCC) ... 356
- London Underground v Edwards [1995] ICR 574 ... 408
- Lucasfilm Ltd v Ainsworth [2012] 1 AC 208 (SC) ... 538
- Luxor (Eastbourne) v Cooper [1941] AC 108 (HL) ... 288
- M Young Legal Associates Ltd v Zahid [2006] 1 WLR 2562 (CA) ... 427
- McArdle, Re [1951] Ch 669 (CA) ... 118
- Macaura v Northern Assurance Co Ltd [1925] AC 619 (HL) ... 445
- McCandless Aircraft v Payne and Eminence Aviation Ltd [2010] EWHC 1835 (QB) ... 263
- McGhee v National Coal Board [1973] 1 WLR 1 (HL) ... 328
- McKew v Holland [1969] 3 All ER 1621 (HL) ... 331
- McKinnon Industries v Walker [1951] UKPC 21 ... 352
- McLoughlin v O'Brian [1983] 1 AC 410 (HL) ... 319
- Mann v Darcy [1968] 1 WLR 893 ... 424
- Margereson v JW Roberts Ltd (1997) 6 Re LR 74 (CA) ... 305
- Maritime National Fish Ltd v Ocean Trawlers Ltd [1935] AC 524 (PC) ... 209
- Marks & Spencer plc v BNP Paribas Securities Services Trust Co Ltd [2015] UKSC 72 ... 143
- Martin v Parkam Foods Limited, ET/1800241 ... 410
- Mercantile Credit v Garrod [1962] 3 All ER 1103 ... 432
- Merritt v Merritt [1970] 1 WLR 1211 (CA) ... 109
- Metropolitan Water Board v Dick Kerr & Co [1918] AC 119 (HL) ... 209
- Michael v Chief Constable of South Wales [2015] UKSC 2 ... 307
- Miller v Jackson [1977] QB 966 (CA) ... 323
- Milner v Carnival plc (t/a Cunard) [2010] EWCA Civ 389 ... 221
- Mirza v Patel [2016] UKSC 42 ... 195
- Mohamad v WM Morrison Supermarkets plc [2016] UKSC 11 ... 364
- Mondial Shipping and Chartering BV v Astarte Shipping Ltd [1995] CLC 1011 ... 97
- Montgomery v Lanarkshire Health Board [2015] UKSC 11 ... 322
- Moorcock, The (1889) LR 14 PD 64; [1886–90] All ER Rep 530 (CA) ... 143
- Morgan Crucible v Hill Samuel Bank [1991] Ch 295 (CA) ... 314
- Morris v Murray [1990] EWCA Civ 10 ... 360
- Morris-Garner v One Step (Support) Ltd (2018) ... 219
- Murphy v Brentwood District Council [1991] 1 AC 398 (HL) ... 310
- Murray v Foyle Meats [2000] 1 AC 51 (HL) ... 390
- Museprime Properties Ltd v Adhill Properties Ltd [1990] EGLR 196 ... 174
- Napier v The National Business Agency [1951] 2 All ER 264 (CA) ... 194
- Nash v Inman [1908] 2 KB 1 (CA) ... 113
- National Employers Mutual General Insurance Association Ltd v Jones [1990] 1 AC 24 (HL) ... 258
- National Westminster Bank plc v Bonas [2003] EWHC 1821 (Ch) ... 5
- National Westminster Bank plc v Spectrum Plus Ltd [2005] UKHL 41 ... 475
- Nettleship v Weston [1971] 2 QB 691 (CA) ... 320
- New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd (The Eurymedon) [1975] AC 154 (PC) ... 122
- Newtons of Wembley Ltd v Williams [1965] 1 QB 560 (CA) ... 258
- Noah v Desrosiers t/a Wedge (13 Jun 2008; ET/2201867/07) ... 408
- Odyssey Entertainment Ltd (In Liquidation) v Kamp & others [2012] EWHC 2316 (Ch) ... 493
- Office of Fair Trading v Abbey National plc [2010] 1 AC 696 (SC) ... 159
- Office of Fair Trading v Ashbourne Management Services Ltd [2011] EWHC 1237 (Ch) ... 159
- Olley v Marlborough Court Ltd [1949] 1 KB 532 (CA) ... 151
- Orchard v Lee [2009] EWCA Civ 295 ... 321
- O'Reilly v BBC (2010), London Central Employment Tribunal, case number 22004223/2010 ... 399
- Oscar Chess Ltd v Williams [1957] 1 WLR 370 (CA) ... 139–40
- Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) [1961] AC 388 (PC) ... 329–30
- Page v Smith [1996] AC 155 (HL) ... 316
- Page One Records v Britton [1967] 3 All ER 822 ... 224
- Panorama Dev v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711 (CA) ... 500
- Pao On v Lau Yiu Long [1980] AC 614 (PC) ... 119
- Pape v Cumbria County Council [1992] 3 All ER 211 ... 415
- Paris v Stepney Borough Council [1951] AC 367 (HL) ... 323
- Parker v Clarke [1960] 1 WLR 286 (Assizes) ... 109
- ParkingEye Ltd v Beavis [2015] UKSC 67 ... 222
- Parkinson v College Ambulance Ltd and Harrison [1925] 2 KB 1 (KBD) ... 194
- Parsons v Bristol Street Fourth Investments Ltd (2008) UKEAT/0581/07/DM ... 379
- Partridge v Crittenden [1968] 1 WLR 1204 (DC) ... 86, 573
- Pender v Lushington (1877) LR 6 Ch D 70 ... 465
- Pepper v Hart [1993] AC 593 (HL) ... 53
- Petrolod Resources Ltd v Prest [2013] UKSC 34 ... 447
- Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401 (CA) ... 86
- Philips Electronics NV v Remington Consumer Products Ltd (No 1) [1999] ETMR 816 (CA) ... 550
- Phillips v Brooks [1919] 2 KB 243 (KBD) ... 184–5
- Phillips v Whiteley Ltd [1938] 1 All ER 566 (KBD) ... 321
- Phonogram Ltd v Lane [1982] QB 938 (CA) ... 454
- Photo Production v Securicor Transport [1980] AC 827 (HL) ... 153
- Pickfords Ltd v Celestica Ltd [2003] EWCA Civ 1741 ... 93–4
- Pilkington v Wood [1953] Ch 770 ... 221
- Pimlico Plumbers Ltd and Another v Smith [2018] UKSC 29 SC ... 377
- Pinnel's Case (1602) 5 Co Rep 117a (QB) ... 5, 125, 129
- Planche v Colburn (1831) 5 C&P 58 ... 204, 225
- Polkey v Dayton [1987] AC 344 (HL) ... 387
- Poole v Smith's Car Sales (Balham) Ltd [1962] 1 WLR 744 (CA) ... 253
- Poussard v Spiers (1875–76) LR 1 QBD 410 (QBD) ... 145
- Powell v Lee (1908) 99 LT 284 ... 97

- Proactive Sports Management Ltd v Rooney [2012] 2 All ER (Comm) 815 ... 162
- Proform Sports Management Ltd v Proactive Sports Management Ltd & Stretford Reference [2007] 1 All ER 542 ... 114
- Quashie v Stringfellow Restaurants Ltd [2012] EWCA Civ 1735 ... 375
- R v Duncan [1944] KB 713 (CCA) ... 5
- R v Registrar General ex parte Smith [1991] 2 All ER 88 (CA) ... 51
- R v Registrar of Companies ex parte Attorney-General [1991] BCLC 476 ... 457
- R v Swan Hunter [1982] 1 All ER 264 (CA) ... 413
- R (on the application of Steinfield and Keidan) v Secretary of State for International Development [2018] UKSC 32 ... 71
- R (Hodkin) v Registrar General of Births, Deaths and Marriages [2013] UKSC 77 ... 402
- R (Miller) v Secretary of State for Exiting the European Union (2017) ... 27
- R (Rusbridger) v AG [2003] UKHL 38 ... 5
- Racing UK Ltd v Doncaster Racecourse Ltd and Doncaster Metropolitan Borough Council [2005] EWCA Civ 999 ... 283
- Raffles v Wichelhaus (1864) 159 ER 375 (Exch Ct) ... 182
- Ramsgate Victoria Hotel v Montefiore (1865–66) LR 1 Exch 109 (Exch Ct) ... 93
- Ratcliff v McConnell [1999] 1 WLR 670 (HL) ... 347
- Rayfield v Hands [1960] Ch 1 ... 464
- Ready Mixed Concrete (South East) Ltd v MPNI [1968] 2 QB 497 (QBD) ... 362, 376
- Reckitt & Colman Products Ltd v Borden Inc (Jif Lemon case) [1990] 1 WLR 491 (HL) ... 556
- Redgrave v Hurd (1881–82) LR 20 Ch D 1 (CA) ... 173
- Regazzoni v KC Sethia [1958] AC 301 (HL) ... 194
- Regina (Pretty) v Director of Public Prosecutions (Secretary of State for the Home Department Intervening) [2002] 1 AC 800 (HL) ... 70
- Regus (UK) Ltd v Epcot Solutions Ltd [2008] EWCA Civ 361 ... 157
- Reveille Independent LLC v Anotech International (UK) Ltd [2016] EWCA Civ 443 ... 95
- Reville v Newberry [1996] QB 567 (CA) ... 361
- Richardson v LRC Products Ltd [2000] PIQR P164 (QBD) ... 340
- Rigby v CC Northamptonshire [1985] 1 WLR 1242 (QBD) ... 350
- Ritchie v Atkinson (1808) 10 East 95 ... 203
- Robert Addie & Sons (Collieries) Ltd v Dumbreck [1929] AC 358 (HL) ... 56
- Robertson v Anderson [2003] SLT 235 ... 108
- Robinson v Chief Constable of West Yorkshire Police [2018] UKSC 4 ... 307
- Rock Advertising v MWB Business Exchange Centres Ltd [2018] UKSC 24 ... 126–7
- Rodliffe (Simon) v Rodliffe (Guy) and Home & Office Fire Extinguishers Ltd [2012] EWHC 917 (Ch) ... 520
- Roles v Nathan [1963] 1 WLR 1117 (CA) ... 345
- Rose and Frank v Crompton Bros Ltd [1925] AC 445 (HL) ... 110
- Ross v Caunters [1980] Ch 297 (Ch D) ... 310
- Rossetti Marketing Ltd v Diamond Sofa Co Ltd [2012] EWCA Civ 1021 ... 286
- Routledge v Grant (1828) 4 Bing 653 ... 91
- Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44 ... 192–2
- Royscot Trust Ltd v Rogerson [1991] 2 QB 297 (CA) ... 177
- Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344 (HL) ... 220
- Rylands v Fletcher (1865–66) LR 1 Ex 265 (Exch Ct) ... 355–6
- Sachs v Miklos [1948] 2 KB 23 (CA) ... 279
- St Albans City and District Council v International Computers Ltd [1996] 4 All ER 481 (CA) ... 156
- St Helens Smelting Co v Tipping 11 ER 1483; (1865) 11 HL Cas 642 ... 351
- Salomon v Salomon & Co [1897] AC 22 (HL) ... 444
- Saunders v Anglia Building Society [1971] AC 1004 (HL) ... 187
- Sayers v Harlow UDC [1958] 1 WLR 623 (CA) ... 358
- Scammell v Ouston [1941] AC 251 (HL) ... 140
- Scheggia v Gradwell [1963] 1 WLR (CA) ... 288
- Scott v Coulson [1903] 2 Ch 439 ... 180
- Seby v Companies House [2016] EWCA Civ 135 ... 314
- Sedleigh Denfield v O'Callaghan [1940] AC 880 (HL) ... 353
- Seldon v Clarkson Wright and Jakes [2012] UKSC 16 ... 399
- Selectmove Ltd, Re [1995] 1 WLR 474 (CA) ... 126
- Shanklin Pier v Detel Products Ltd [1951] 2 KB 854 (KBD) ... 131
- Shipton, Anderson & Co and Harrison Bros Arbitration, Re [1915] 3 KB 676 ... 205, 208
- Shogun Finance Ltd v Hudson [2004] 1 AC 919 (HL) ... 185–6
- Sidebottom v Kershaw Leese [1920] 1 Ch 154 (CA) ... 466
- Sienkiewicz v Greif [2011] UKSC 10 ... 329
- Simm v Leigh Rugby Football Club [1969] 2 All ER 923 (Assizes) ... 360
- Simpkins v Pays [1955] 1 WLR 975 (Assizes) ... 108
- Smith v Baker [1891] AC 325 (HL) ... 359
- Smith v Eric Bush [1990] 1 AC 831 (HL) ... 315
- Smith v Land & House Property Corporation (1885) LR 28 Ch D 7 (CA) ... 172
- Smith v Leech Brain & Co Ltd [1962] 2 QB 405 ... 330
- Smith New Court Securities v Scrimgeour Vickers [1997] AC 254 (HL) ... 177
- Société des produits Nestlé SA v Mondelez UK Holdings & Services Ltd (2018) ... 549
- Spartan Steel v Martin & Co Contractors Ltd [1973] QB 27 (CA) ... 309
- Spice Girls Ltd v Aprilia World Service BV [2002] EWCA Civ 15 ... 170
- Springer v Great Western Railway [1921] 1 KB 257 (CA) ... 279
- Spurling v Bradshaw [1956] 1 WLR 461 (CA) ... 152
- Stainer v Lee [2010] EWHC 1539 (Ch) ... 519
- Stekel v Ellice [1973] 1 WLR 191 (Ch D) ... 426
- Stevenson v Mclean (1879–80) LR 5 QBD 346 ... 94, 573
- Stevenson v Rogers [1999] 1 All ER 613 (CA) ... 243
- Stewart v Casey (Re Casey's Patents) (1892) 1 Ch 104 (CA) ... 119
- Stilk v Myrick 170 ER 1168; (1809) 2 Camp 317 (KB) ... 123–4
- Sumpter v Hedges [1898] 1 QB 673 (CA) ... 204
- Sykes v Taylor-Rose [2004] All ER 468 (CA) ... 170
- Tate & Lyle v GLC [1983] 2 AC 509 (HL) ... 355
- Taylor v Caldwell (1863) 32 LJQB 164; 3 B&S 826 ... 205, 208
- Tekdata Communications Ltd v Amphenol Ltd [2010] 2 All ER (Comm) 302 (CA) ... 96
- Tetley v Chitty [1986] 1 All ER 663 (QBD) ... 354
- Thomas v Eight Members Club and Killip (2007) (2202603/07) ... 398
- Thomas v Thomas [1842] 2 QB 851 ... 120
- Thompson v LMS Railway [1930] 1 KB 41 (CA) ... 150
- Thornton v Shoe Lane Parking [1971] 2 QB 163 (CA) ... 151

- Three Rivers District Council v Bank of England (No 2) [1996] 2 All ER 363 (QBD) . . . 53
- Tomlinson v Congleton [2003] UKHL 47 . . . 348
- Tool Metal Manufacturing v Tungsten Electric Co Ltd [1955] 1 WLR 761 (HL) . . . 128
- Topp v London Country Bus (South West) Ltd [1993] 1 WLR 976 (CA) . . . 306
- Transco plc v Stockport MBC [2004] 2 AC 1 (HL) . . . 356
- Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas) [2008] UKHL 48 . . . 219
- Tsakiroglou v Nobile Thorl GmbH [1962] AC 93 (HL) . . . 211
- Tweddle v Atkinson (1861) 1 B&S 393 (QB) . . . 120
- Uber BV v Aslam (2018) . . . 378
- Underwood Ltd v Burgh Castle Brick and Cement Syndicate [1922] 1 KB 343 . . . 253
- Valencia v Llupar [2012] EWCA Civ 396 . . . 426
- Vancouver Malt & Sake Brewing Co Ltd v Vancouver Breweries Ltd [1934] AC 181 (PC) . . . 162
- Vento v Chief Constable of West Yorkshire [2003] ICR 318 (CA) . . . 398
- Victoria Laundry v Newman Industries [1949] 2 KB 528 (CA) . . . 218
- Vitol SA v Norelf [1996] AC 800 (HL) . . . 214
- Ward v Tesco Stores [1976] 1 WLR 810 (CA) . . . 326
- Warner Bros v Nelson [1937] 1 KB 209 (KBD) . . . 224
- Warren v Henlys [1948] 2 All ER 935 (KBD) . . . 363
- Watford Electronics Ltd v Sanderson [2001] EWCA Civ 317 . . . 156
- Watt v Hertfordshire County Council [1954] 1 WLR 835 (CA) . . . 324
- Weller v Foot and Mouth Research Institute [1966] 1 QB 569 (QBD) . . . 309
- West Bromwich Albion Football Club Ltd v El-Safty [2006] EWCA Civ 1299 . . . 306
- Western Excavations (ECC) Ltd v Sharp [1978] QB 761 (CA) . . . 390
- Wheat v E Lacon & Co Ltd [1966] AC 552 (HL) . . . 343
- White v Bluett (1853) 23 LJ Ex 36 . . . 121
- White v Chief Constable of South Yorkshire [1999] 2 AC 455 (HL) . . . 317
- White v Jones [1995] 2 AC 207 (HL) . . . 310
- White and Carter Ltd v McGregor [1961] 3 All ER 1178 (HL) . . . 215
- Whiteley v Chappell (1868) LR 4 QB 147 . . . 51
- Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830 (HL) . . . 445
- Williams v Roffey Bros & Nicholls (Contractors) Ltd [1991] 1 QB 1 (CA) . . . 123–6, 134
- Wilsher v Essex Area Health Authority [1988] AC 1074 (HL) . . . 321
- Wilson v Burnett [2007] EWCA Civ 1170 . . . 108
- Wilson and Clyde Coal v English [1938] AC 57 (HL) . . . 414–15
- Winter v Hockley Mint Ltd [2018] EWCA Civ 2480 . . . 291
- With v O’Flanagan [1936] Ch 575 (CA) . . . 170
- Wm Wrigley Jr Co’s Trade Mark Application [1999] ETMR 214 . . . 550
- Wood v TUI Travel plc [2017] EWCA Civ 11, [2018] QB 927 . . . 265
- Yates Building Co Ltd v Pulleyn & Sons (York) Ltd [1975] 237 EG 183 (CA) . . . 98
- Young v Bristol Aeroplane Co Ltd [1944] KB 718 (CA), aff’d [1946] AC 163 (HL) . . . 59
- Zurich Insurance Co plc v Hayward [2016] UKSC 48 . . . 174

European Court of Human Rights

Pretty v UK (2002) 35 EHRR 1 . . . 70

European Court of Justice

Wightman and others v Secretary of State for Exiting the European Union (Case C-621/18) (2018) ECLI:EU:C:2018:999 . . . 62

Australia

McRae v Commonwealth Disposals (1952) 84 CLR 377 . . . 180

Table of Legislation

United Kingdom

Table of Statutes

Administration of Justice Act 1969 ... 28	s 175 ... 493, 495 s 176 ... 495 s 177 ... 496 s 180 ... 496 s 182 ... 498 s 188 ... 498 s 189 ... 498 s 190 ... 498 s 232 ... 497 s 239 ... 492, 494, 518 s 250 ... 482 s 251 ... 483 ss 260–4 ... 517 s 260 ... 518 s 273 ... 499 s 282 ... 514–15 s 283 ... 465, 514–15 s 288 ... 515 s 291 ... 515 s 292 ... 517 s 301 ... 510 s 302 ... 510 s 303 ... 516 s 306 ... 510 s 314 ... 516 s 318 ... 512 s 321 ... 513 s 336 ... 509 s 338 ... 516 s 518 ... 510 s 549 ... 469 s 550 ... 469 s 582 ... 469 s 610 ... 470 s 656 ... 510 s 658 ... 470 s 684 ... 471–2 s 761 ... 442 s 768 ... 468 s 769 ... 468 s 776 ... 468 s 853L ... 499 s 993 ... 526 s 994 ... 518–20 s 996 ... 520 s 1157 ... 497 ss 1200–6 ... 423 s 1200 ... 427	Consumer Credit Act 1974 ... 79 s 75 ... 216
Adoption Act 1976 ... 51	Consumer Protection Act 1987 ... 335–8, 340–1, 357, 365, 367 s 1 ... 339 s 1(2) ... 339 s 2 ... 339 s 2(2)(b) ... 339 s 2(2)(c) ... 339 s 2(3)(a)–(c) ... 339 s 3 ... 340 s 4 ... 342 s 7 ... 338	Consumer Rights Act 2015 ... 77, 80, 137, 142, 154–5, 159–60, 165, 178, 229–35, 239, 248–9, 264–5, 268, 465 Pt II ... 158 s 2 ... 53, 230, 232 s 9 ... 234–5, 237, 251 s 10 ... 234, 236–7 s 11 ... 233, 236–7 s 12 ... 234, 236 s 13 ... 234, 236–7 s 14 ... 234, 237–7 s 17 ... 144, 233, 235, 237 s 20 ... 238 s 22 ... 238 s 23 ... 238 s 24 ... 238 s 25 ... 240 s 26 ... 240 s 28 ... 240 s 29 ... 240 s 31 ... 155 s 34 ... 234, 240 s 35 ... 234, 240 s 36 ... 233, 240 s 41 ... 233 s 43 ... 241 s 44 ... 241 s 49 ... 241 s 50 ... 242 s 51 ... 233, 242 s 52 ... 242 s 55 ... 242 s 56 ... 242 s 62 ... 158 s 64 ... 159 s 65 ... 155 s 67 ... 158 s 68 ... 159 s 69 ... 159 Sch 2 Pt I ... 158
Arbitration Act 1996 ... 34–5	Companies Act 1948 ... 485	Contracts (Rights of Third Parties) Act 1999 ... 120, 130, 132, 134, 455 s 1 ... 132 s 2 ... 132 s 5 ... 132 s 6 ... 132
Bribery Act 2010 ... 12	Companies Act 1985 ... 116, 441, 462 Pt XIV ... 520 s 36C ... 454 s 431 ... 520 s 432 ... 520	Competition Act 1998 ... 81, 192
Civil Aviation Act 1982 s 76 ... 349	Companies Act 2006 ... 6, 47, 116, 427, 441, 444, 447, 452, 460–3, 473, 480–1, 488–9, 499, 501, 504–5, 507, 509, 516 Pt 5 ... 456 s 9 ... 455 s 15(4) ... 456 s 19 ... 462 s 21 ... 465 s 22 ... 466 s 28 ... 462 s 33 ... 464 s 39 ... 463 s 40 ... 463, 489–90, 504 s 41 ... 464, 489 s 51 ... 454 s 53 ... 456 s 54 ... 457 s 58 ... 456 s 59 ... 456 s 69 ... 428, 457 s 78 ... 457 s 79 ... 457 s 113 ... 467 s 154 ... 480 s 162 ... 456 s 167 ... 488 s 168 ... 485 s 170(1) ... 492 s 170(4) ... 491 s 170(5) ... 483 ss 171–7 ... 491, 505 s 171 ... 463 s 172 ... 492, 493 s 173 ... 493 s 174 ... 491, 494	Constitutional Reform Act 2005 ... 27
Civil Evidence Act 1968 s 11 ... 326	Companies (Audit Investigations and Social Enterprises) Act 2004 ... 443	
Civil Liability (Contribution) Act 1978 ... 361, 433	Company Directors Disqualification Act 1986 ... 453, 480–1, 487 s 10 ... 527	
Civil Partnerships Act 2004 ... 71	Compensation Act 2006 ... 325 s 1 ... 325 s 2 ... 325 s 3 ... 56, 328–9	
Civil Procedure Act 1997 ... 30	Competition Act 1998 ... 81, 192	
Companies Act 1948 ... 485	Consumer Credit Act 1974 ... 79 s 75 ... 216	
Companies Act 1985 ... 116, 441, 462 Pt XIV ... 520 s 36C ... 454 s 431 ... 520 s 432 ... 520	Consumer Protection Act 1987 ... 335–8, 340–1, 357, 365, 367 s 1 ... 339 s 1(2) ... 339 s 2 ... 339 s 2(2)(b) ... 339 s 2(2)(c) ... 339 s 2(3)(a)–(c) ... 339 s 3 ... 340 s 4 ... 342 s 7 ... 338	
Companies Act 2006 ... 6, 47, 116, 427, 441, 444, 447, 452, 460–3, 473, 480–1, 488–9, 499, 501, 504–5, 507, 509, 516 Pt 5 ... 456 s 9 ... 455 s 15(4) ... 456 s 19 ... 462 s 21 ... 465 s 22 ... 466 s 28 ... 462 s 33 ... 464 s 39 ... 463 s 40 ... 463, 489–90, 504 s 41 ... 464, 489 s 51 ... 454 s 53 ... 456 s 54 ... 457 s 58 ... 456 s 59 ... 456 s 69 ... 428, 457 s 78 ... 457 s 79 ... 457 s 113 ... 467 s 154 ... 480 s 162 ... 456 s 167 ... 488 s 168 ... 485 s 170(1) ... 492 s 170(4) ... 491 s 170(5) ... 483 ss 171–7 ... 491, 505 s 171 ... 463 s 172 ... 492, 493 s 173 ... 493 s 174 ... 491, 494	Consumer Rights Act 2015 ... 77, 80, 137, 142, 154–5, 159–60, 165, 178, 229–35, 239, 248–9, 264–5, 268, 465 Pt II ... 158 s 2 ... 53, 230, 232 s 9 ... 234–5, 237, 251 s 10 ... 234, 236–7 s 11 ... 233, 236–7 s 12 ... 234, 236 s 13 ... 234, 236–7 s 14 ... 234, 237–7 s 17 ... 144, 233, 235, 237 s 20 ... 238 s 22 ... 238 s 23 ... 238 s 24 ... 238 s 25 ... 240 s 26 ... 240 s 28 ... 240 s 29 ... 240 s 31 ... 155 s 34 ... 234, 240 s 35 ... 234, 240 s 36 ... 233, 240 s 41 ... 233 s 43 ... 241 s 44 ... 241 s 49 ... 241 s 50 ... 242 s 51 ... 233, 242 s 52 ... 242 s 55 ... 242 s 56 ... 242 s 62 ... 158 s 64 ... 159 s 65 ... 155 s 67 ... 158 s 68 ... 159 s 69 ... 159 Sch 2 Pt I ... 158	

- Copyright, Designs and Patents Act
1988 ... 535–6, 543, 559
Pt III ... 553
s 1 ... 537
s 3 ... 537
s 4 ... 538
ss 9–11 ... 539
ss 12–15 ... 539
s 16 ... 540
ss 17–21 ... 540
ss 22–6 ... 541
ss 77–9 ... 542
s 84 ... 542
ss 154–8 ... 539
s 213 ... 553
s 215 ... 553
s 216 ... 553
s 222 ... 553
- Corporate Manslaughter and Corporate
Homicide Act 2007 ... 23, 445
- Countryside and Rights of Way Act
2000 ... 349
- Criminal Justice Act 1993 ... 521
s 52 ... 521
- Criminal Justice Act 2003 ... 23
- Electronic Communications
Act 2000 ... 101
- Employers' Liability (Compulsory
Insurance) Act 1969 ... 329
- Employment Rights Act 1996 ... 46,
372, 390, 394
s 86 ... 380
s 98 ... 382
s 108 ... 382
- Enterprise Act 2002 ... 527
- Equality Act 2010 ... 396–400, 404,
406–7, 410–11, 416, 418
s 4 ... 398
s 5 ... 398
s 6 ... 400, 404
s 7 ... 401
s 8 ... 401
s 9 ... 402
s 10 ... 402
s 11 ... 403
s 12 ... 403
ss 17–18 ... 402
s 26 ... 409
s 27 ... 410
s 40 ... 409
- European Communities Act
1972 ... 43, 61, 65
- European Union (Withdrawal) Act
2018 ... 41, 43, 65
- Factors Act 1889 ... 256, 293
- Growth and Infrastructure Act
2013 ... 373
- Health and Safety at Work Act
1974 ... 48, 412
s 2(1) ... 48
- House of Lords Act 1999 ... 43
- Human Rights Act 1998 ... 41–3, 54,
67–9, 73, 300, 308
s 2 ... 61, 70
s 3 ... 70
s 4 ... 71
s 6 ... 70
- s 10 ... 46, 71
s 19 ... 71
- Hunting Act 2004 ... 46
- Insolvency Act 1986 ... 447, 480,
523, 527
s 122 ... 518
s 124A ... 520
s 195 ... 523
s 213 ... 526–7
s 238 ... 526
- Intellectual Property Act 2014 ... 535,
543
- Judicature Acts 1893–95 ... 8
- Law Reform (Contributory Negligence)
Act 1945
s 1(1) ... 357
- Law Reform (Frustrated Contracts) Act
1943 ... 211–12
s 1(2) ... 211
s 1(3) ... 211
- Legal Aid, sentencing and Punishment
of Offenders Act 2012 ... 348
- Limitation Act 1980 ... 342
- Limited Liability Partnerships Act
2000 ... 424, 437–8, 449
s 4 ... 439
s 6 ... 439
- Limited Partnerships Act 1907 ... 424,
430, 436
- Mental Capacity Act 2005 ... 115, 292
s 7 ... 116
- Minors' Contracts Act 1987 ... 112
s 2 ... 115
s 3 ... 114
- Misrepresentation Act 1967 ... 138,
175–6
s 2 ... 175
s 2(1) ... 175, 177
s 2(2) ... 177–8
s 3 ... 178
- National Minimum Wages Act
1998 ... 380
- Occupiers' Liability Act 1957 ... 325,
343–7, 366–7
s 2(6) ... 343
- Occupiers' Liability Act 1984 ... 56, 325,
343, 346–8, 366–7
s 1(3) ... 347
- Official Secrets Act 1920 ... 51
- Parliament Acts 1911 & 1949 ... 45–6
- Partnership Act 1890 ... 47, 423, 425,
431, 435, 439, 449
s 1 ... 424
s 4 ... 427
s 5 ... 428, 432
s 10 ... 434
s 14 ... 434
s 17 ... 434
s 19 ... 432
s 24 ... 425, 429
s 24(1) ... 429
s 24(2) ... 429–30
s 24(3) ... 430
s 24(4) ... 430
s 24(5) ... 430
s 24(6) ... 430
s 24(7) ... 430
- s 24(8) ... 430
s 25 ... 431
s 28 ... 428
s 28(9) ... 431
s 29 ... 429
s 30 ... 429
ss 32–4 ... 435
s 35 ... 435
- Patents Act 1977 ... 535, 543
s 1(1) ... 543
s 1(2) ... 543
s 13 ... 545
s 39 ... 544
s 40 ... 545
s 60 ... 546
- Patents Act 2004 ... 543
- Pharmacy and Poisons Act 1933 ... 86
- Police Act 1996 ... 122
- Police and Criminal Evidence Act
1984 ... 349
- Protection of Birds Act 1954 ... 86
- Registered Designs Act 1949 ... 535,
554, 560–1
s 1(2) ... 554
s 1(3) ... 554
s 1B ... 554
s 7 ... 555
s 35ZA ... 555
- Rent Act 1977 ... 71
- Restriction of Offensive weapons Act
1959
s 1 ... 86
- Road Traffic Act 1988 ... 132, 329, 360
- Sale of Goods Act 1893 ... 6, 47
- Sale of Goods Act 1979 ... 47, 113,
229–35, 243–4, 247, 251, 265,
267, 270
s 3 ... 115
s 6 ... 179
s 8 ... 141, 233
s 12 ... 144, 233–4, 243–4
ss 13–15 ... 264
s 13 ... 233, 243–5
s 14 ... 243, 245, 249, 251
s 14(2) ... 234, 243, 246–8
s 14(2A) ... 246
s 14(2B) ... 246
s 14(2C) ... 248
s 14(3) ... 234, 243, 247, 249
s 15 ... 234, 243, 250
s 15A ... 245, 264
s 16 ... 252, 254
s 17 ... 252, 254
s 18 ... 252–4, 269
s 19 ... 256
s 20 ... 251
s 20A ... 254
s 21 ... 257
s 24 ... 258
s 25 ... 258
s 27 ... 259–60
s 28 ... 259
s 30 ... 260
s 31 ... 260
s 35 ... 261, 264
ss 41–3 ... 263
s 44 ... 263

s 45 ... 263
 s 48 ... 263–4
 s 50 ... 263
 s 51 ... 264
 s 52 ... 265
 s 53 ... 264
 s 54 ... 264
 s 61(1) ... 232
 Small Business, Enterprise and
 Employment Act 2015 ... 460, 480
 Supply of Goods and Services Act
 1982 ... 229, 265, 270
 s 2 ... 265–6
 s 3 ... 265–6
 s 4 ... 266
 s 4(2) ... 265
 s 4(5) ... 265
 s 5 ... 265–6
 s 7 ... 266
 s 8 ... 266
 s 9(2) ... 266
 s 9(5) ... 266
 s 10 ... 266
 s 13 ... 266
 s 14 ... 266
 s 15 ... 266
 Supply of Goods (Implied Terms) Act
 1973 ... 229, 267, 270
 s 8 ... 267
 s 9 ... 267
 s 10(1) ... 267
 s 10(3) ... 267
 s 11 ... 267
 Trade Marks Act 1994 ... 535, 547, 554,
 557, 559
 s 1 ... 549
 s 1(1) ... 547
 s 2 ... 551
 s 3 ... 549
 s 4 ... 550
 s 5 ... 550
 s 10 ... 551
 s 42 ... 551
 Treason Act 1351 ... 5
 Tribunals, Courts and Enforcement Act
 2007 ... 36, 39
 Unfair Contract Terms Act 1977 ... 79,
 137, 148, 150, 153–5, 157, 165, 178,
 267, 315, 346
 s 2 ... 155
 s 2(2) ... 155
 s 3 ... 155
 Sch 2 ... 157
 Witchcraft Act 1735 ... 5

Table of Statutory Instruments

Agency Workers Regulations 2010 (SI
2010/93) ... 377

Civil Procedure Rules 1998 (SI
1998/3132) ... 30–2
 Commercial Agents (Council
Directive) Regulations 1993
(SI 1993/3053) ... 293
 Company, Limited Liability Partnership
and Business (Sensitive Words and
Expressions) Regulations 2014 (SI
2014/2140) ... 457
 Consumer Contracts (Information,
Cancellation and Additional
Charges) Regulations 2013
(SI 2013/3134) ... 153, 200, 236
 Consumer Protection
(Amendment) Regulations 2014
(SI 2014/870) ... 178
 Consumer Protection from Unfair
Trading Regulations 2008 (SI
2008/1277) ... 86, 178
 Electronic Commerce (EC
Directive) Regulations 2002 (SI
2002/2013) ... 100
 Lifting Operations and Lifting
Equipment Regulations 1998
(SI 1998/2307)
reg 9(3)(i)(a) ... 48
 Limited Liability Partnerships
(Application of Companies
Act 2006) Regulations 2009
(SI 2009/1804) ... 437–9
 Management of Health and Safety
at Work Regulations 1999 (SI
1999/3242) ... 413
 Unfair Terms in Consumer
Contracts Regulations 1994
(SI 1994/3159) ... 66
 Unfair Terms in Consumer
Contracts Regulations 1999
(SI 1999/2083) ... 159
 Working Time Regulations 1998
(SI 1998/1833) ... 380

Table of European Legislation

Table of Treaties, Charters and Conventions

Single European Act 1987 ... 66
 Treaty of Accession 1973 (United
Kingdom) ... 61
 Treaty of Amsterdam 1997 ... 61, 66
 Treaty on European Union
1992 ... 61, 66
 Art 50 ... 41, 62
 Treaty on the Functioning of the
European Union ... 62
 Art 267 ... 65
 Treaty of Lisbon 2007 ... 61, 66

Treaty of Nice 2001 ... 66
 Treaty of Rome 1957 ... 61, 66

Table of Directives and Regulations

Directive 93/13/EEC (Unfair Terms in
Consumer Contracts) ... 66
 Directive 85/374/EEC (Consumer
Protection) ... 337

Table of International Instruments

European Convention on Human
Rights and Fundamental Freedoms
1950 ... 29–30, 41, 43, 46, 67–8, 71,
300, 308
 Art 2 ... 30, 68, 70
 Art 3 ... 29, 68, 308
 Art 4 ... 68
 Art 5 ... 68
 Art 6 ... 68
 Art 7 ... 68
 Art 8 ... 68, 71
 Art 9 ... 69
 Art 10 ... 69
 Art 11 ... 69
 Art 12 ... 69
 Art 14 ... 69, 71
 Art 15 ... 69
 Protocol No. 1 ... 69
 European Patent Convention ... 558

PART 1

The English Legal System

- 1 The Nature of English Law
- 2 The Court System and Alternative Dispute Resolution
- 3 Sources of English Law

The Nature of English Law

1.1 Introduction

All legitimate businesses need to operate within the framework of the law. It is essential for persons working within the business world to have an understanding of how law works and affects their businesses; for example a contract will only be of value to a business if it is legally enforceable. The law sets down rules for the setting up and administration of certain types of business and governs areas of employment of staff. Although specialist legal advice is usually obtained on specific legal issues, it is essential to understand the core principles of business law and to know when to seek legal advice.

The United Kingdom of Great Britain and Northern Ireland (UK) has three distinct legal systems and sets of laws: those relating to England and Wales, those relating to Scotland, and those relating to Northern Ireland. Although there are many similarities between them, this book is concerned with the laws of England and Wales. References in this book to Acts of Parliament refer to Acts made by Parliament sitting in Westminster, London, which is the supreme law-making authority in the UK and can pass laws relating to the whole of the UK. However, students should be aware that the Scottish Parliament sitting in Edinburgh, the Welsh Assembly sitting in Cardiff, and the Northern Ireland Assembly sitting in Belfast have power to pass Acts relating to their individual countries.

The UK joined the European Union (EU) on 1 January 1973 and as a member of the EU agreed to be bound by EU law. Each of the EU Member States has its own domestic laws in addition to being bound by EU law. In June 2016 the UK voted in a referendum to leave the EU and is expected to leave in 2019. Once the UK is no longer a member of the EU it will be up to the UK Parliament to decide which EU laws remain part of UK law. The UK is also a signatory to the human rights treaty, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, which was incorporated into English law by the Human Rights Act 1998.

LEARNING OBJECTIVES

After studying this chapter you should be able to:

- Explain what is meant by law (section 1.2).
- Outline the historical development and characteristics of English law (section 1.3).
- Understand the difference between Public and Private Law and the difference between Civil and Criminal Law (section 1.4).

1.2 What is Law?

All societies or groups require rules in order to regulate the behaviour of their members. Although people in society have a right to freedoms, those freedoms cannot be absolute because one person's use of freedom may adversely affect another person's freedom or rights. Usually one looks for justice and fairness in laws; however, justice and fairness are subjective; for example, in looking at the tax burden one might ask how far the employed hardworking person should support the poor unemployed.

Laws are rules and regulations which govern the activities of persons within a country. They provide necessary rules, and balance the various interests of different members of the community. Both natural persons (human beings) and legal persons (companies) are bound by laws of the country they reside in. From these laws they can ascertain what they are permitted to do and what they are not permitted to do. Some laws prohibit certain actions, such as theft and murder, while other laws state that persons must fulfil conditions before commencing certain activities or must comply with specified regulations. For example, a special licence must be obtained prior to legally running a riding school, and a company must have a registered office. Laws are not the same in every country around the world, although often countries will have similar laws. The law of each country is only binding within its territory.

VIEWPOINT ALEXEY PETROV, ACCOUNTS MANAGER, GOOGLE

The knowledge of law is very important in a modern business environment—it allows for a better planning ahead and predicting consequences of any decisions made. It also structures the approach to any sort of business project—and I can say this confidently having done an industrial placement in Intel in the UK and being an Account Manager at Google in Ireland straight after graduation. However, legal knowledge can come in handy in a variety of personal situations. Having just completed my second year of a Degree at the University of Brighton, I was unfortunate enough to be involved in a motorcycle accident which wasn't my fault. I had to pursue the claim myself from the other party's insurer, which resulted in the County Court action, preparing the claim form and witness statements. I won the action, despite representing myself against a major legal company representing the insurer. Hearing 'the claimant won his case' from the District Judge was the best possible reward for the effort.

1.3 Nature of English Law

In England and Wales, laws are composed of three main elements: legislation which is created through Parliament; common law; and, whilst a member of the EU, directly enforceable EU law. An **Act of Parliament**, sometimes referred to as a **statute**, is the highest form of UK law. Some of the characteristics of English law differ from the domestic law of other European countries; however, English law does share some similarities with that of countries such as New Zealand, the United States of America, and Australia, which have a historical connection with the UK.

1.3.1 The Characteristics of English Law

1.3.1.1 Continuity

English law has developed over many centuries and its origins can be traced back to the Norman era in the 11th century. There have been numerous important developments and changes in the law but these have been brought into effect in a piecemeal fashion through **case law** and legislation. English laws do not become inoperative due to old age and even statutes (laws made by Parliament) dating back to the 14th century may still be effective today. The Treason Act 1351 was cited in a case decided in 2003, *R (on the application of Rusbridger) v AG* (2003).

A criminal offence set out in a statute was used two hundred years later in *R v Duncan* (1944). In the 1940s Helen Duncan was convicted of fortune telling under the Witchcraft Act 1735 despite the fact that there had not been any prosecutions under the Act for over a hundred years. The Witchcraft Act 1735 had not been repealed and was still effective. (Note, the Witchcraft Act 1735 has now been repealed.)

It is not only statutes that remain good law until they are repealed; cases (decided by judges) may be referred to and followed in later cases even though they may date back centuries. The rule in *Pinne's Case* (1602) was cited and followed in *Foakes v Beer* (1884), which in turn was cited and applied in *National Westminster Bank plc v Bonas* (2003). These cases all concerned promises made by creditors to debtors to accept a smaller sum of money than was actually owed in settlement of a debt. Following the law set out in the old cases, the debtors could not enforce the creditors' promises, and were bound to pay off the full amount of the debt.

1.3.1.2 Absence of a legal code

English law is uncodified. This means that, unlike other European countries, the laws have not been systemized into codes. A Code is a systematic collection of laws designed to deal with main areas of law, for example a Code of Commerce, a Civil Code, a Criminal Code.

A codified system of laws should not be confused with codification of the law into a statute, which does happen in English law. Codification into a statute is where English law has

been developed by judges through the medium of case law and is then collected together and restated in a statute. The common law relating to the sale of goods was originally codified in the Sale of Goods Act 1893. The principal duties of company directors, previously found in case law, have been codified in the Companies Act 2006.

1.3.1.3 Law-making role of judges

Although the traditional view is that the role of English judges is to decide cases according to existing laws, it is accepted that judges do make and change the law. Judges make law when deciding both criminal and civil cases in two main ways:

(a) *Interpreting statutes*

On occasions the meaning of a statute will be unclear and a judge will be called upon in a case to interpret it. There are various rules and presumptions that judges use when interpreting statutes (see Chapter 2). Such interpretation is often, arguably, tantamount to law-making.

(b) *Developing the common law*

There are significant areas of Civil Law, for example early contract law, and the law of torts, where the courts have developed the law through decisions in cases. Criminal Law has also developed in part through decisions in cases. Murder is a common law crime and there is no definition of what constitutes murder in a statute. However, if Parliament chooses to legislate in an area which is already covered by case law, the provisions of the statute will take precedence over the case law.

1.3.1.4 Doctrine of binding precedent

The doctrine of binding **precedent** means that in deciding a case an English judge does not just look at earlier decisions of judges in similar cases for guidance, but is actually bound to apply the law decided by those earlier cases, if the earlier cases were heard in a court of superior status (and sometimes one of equal status) and have involved similar facts in that area of the law. In other European countries, judges are guided as opposed to being bound by previous cases. The doctrine of judicial precedent is also known as '*stare decisis*', meaning to stand by decisions. The earlier decisions of previous courts which are relied upon are known as precedents.

1.3.1.5 Adversarial system of trial

The usual type of procedure in English courts is described as adversarial. In both civil and criminal cases each side presents their case to the judge, who supervises the proceedings. The judge remains neutral and decides the case on the evidence presented to him by the parties or their lawyers. Where courts use an inquisitorial procedure a judge plays a more active role in the proceedings, which may involve cross-examining the defendant and questioning witnesses himself (see Figure 1.1).

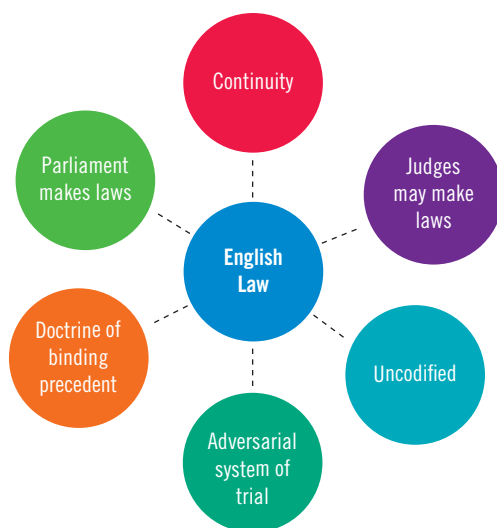


FIGURE 1.1 CHARACTERISTICS OF THE ENGLISH LAW

KEY CONCEPT

The doctrine of binding precedent is part of English law which means that judges must apply the law as set out in relevant decisions of previous superior courts and sometimes courts of the same status. This is different from other European countries where judges are guided rather than bound by previous cases.

1.3.2 The Historical Development of Common Law and Equity

Prior to the Norman conquest of England in 1066 there was no national legal system, and the laws, administered through local courts, were based on what appears to have been the local custom of particular regions of the country. When William the Conqueror (1066–87) came to the throne in England he began a process of centralization, by imposing national government over the country. Later Norman monarchs recognized that in order to achieve strong national government there was a need to have a system of national law.

Henry II (1154–89) began the process of applying the same law to the whole country. Royal Commissions, who later became known as circuit judges, travelled from London to all parts of the country hearing cases, checking on the procedure of the local courts, and applying the same laws to each region. This national law became known as common law as it was common to all parts of the country, as opposed to the local customs which applied to the different regions. Over a period of time the decisions of circuit judges were recorded and followed in subsequent cases.

Originally the King's courts were part of the King's Council, *Curia Regis*, but in time the courts developed into three distinct courts: the Courts of Exchequer, Common Pleas, and King's Bench. The rules of evidence and procedures of these courts became very rigid and formalistic. There were limited types of claims and if there was no appropriate claim

for the type of action a citizen wanted to commence, then no action could be started. If an action was successful the only remedy available was payment of damages (monetary compensation).

Citizens unable to gain access to the Common Law Courts or a suitable remedy in the courts sought to petition the King. The Lord Chancellor, as the King's most senior clergyman, dealt with the petitions. Clergymen were trained in church law which was based on the ideals of conscience, morality, and justice. There were no complex rules of procedure and the Chancellor could dispense justice in accordance with what he considered to be fair in the circumstances. As the number of petitions increased, the Lord Chancellor set up a specific court, the Court of Chancery, to deal directly with the petitions and administer justice on principles of equity (fairness). Decisions of the Court of Chancery became as important as the decisions of the Common Law Courts and a body of equitable laws developed. Equity did not provide a complete system of laws. It only covered certain areas, and it was intended to supplement the common law where the common law was inadequate. It gave new rights in areas where the common law had provided no right, and did not have the strict time limits that applied to common law claims. There were additional remedies provided under the law of equity, other than the common law remedy of damages (compensation) that could be awarded to a successful party. But these equitable remedies were not available to a party as a right even if they won their case. Judges in a Court of Equity had discretion to award a remedy, such as specific performance (forcing a party to carry out their part of a contract), if they considered the winning party had acted fairly and it was just in all the circumstances. However, there were areas of overlap and conflict between common law and equity. In the *Earl of Oxford's Case* (1615) it was decided that in a conflict between equity and common law, then equity would prevail and be used in preference to common law.

The two court systems ran alongside each other for several hundred years, until eventually the two systems were merged in the Judicature Acts 1893–95 which created one court system but provided that all courts had the power to decide cases in accordance with both common law and equity. Today the two systems co-exist, and a court may, at the judge's discretion, use principles of equity where common law principles or remedies cause injustice. Both the rules from common law and equity are known as case law today, although they are often referred to under the one term of 'common law'.

1.3.2.1 Meanings of the term 'common law'

The term '**common law**' has several different meanings. It is usually used to mean the law that is not the result of legislation but is the law created by the decisions of the judges. When common law is given this meaning it encompasses cases that have used both, or either, equity and common law.

An alternative meaning of the term common law is when it is used to distinguish common law from equity, and refers to case law that has been developed through the old Common Law Courts as opposed to the old Chancery Courts.

An archaic meaning of the term common law is law that is common to the whole of England as opposed to local law. However, this is no longer the usual meaning of the term.

Finally, the term may mean the law that is not foreign law; in other words, the law of England, or of other countries (such as America) that have adopted English law as a starting point. In this sense it may be contrasted with Roman, Islamic, or French law, and here it includes the whole of English law, even local customs, legislation, and equity.

1.4 Classification of Different Types of Laws

Laws can be classified in different ways, for example they can be classified into Private and Public Law, or into Civil and Criminal Law. Civil Law may be either Public or Private Law. Criminal Law is part of Public Law. Sometimes it is important to know whether a civil matter is a Public Law issue as opposed to a Private Law issue, as there are different court procedures for civil Public Law issues.

1.4.1 Public and Private Law

Public Law involves the relationship between individuals and the state and is concerned with the decisions by, and control of, government bodies. Public Law is made up of Criminal Law, Constitutional Law, and Administrative Law (see Figure 1.2). Criminal Law makes certain types of behaviour against the law and gives the state power to prosecute persons who disobey the law. The term 'person' refers to both individuals (human beings) and legal persons such as companies. A legal person is an organization that has a separate legal identity from the persons running or owning the organization. Constitutional Laws are the laws relating to the British Constitution. An example of a Constitutional Law is the Fixed-term Parliaments Act 2011, which provides fixed days for parliamentary general elections.

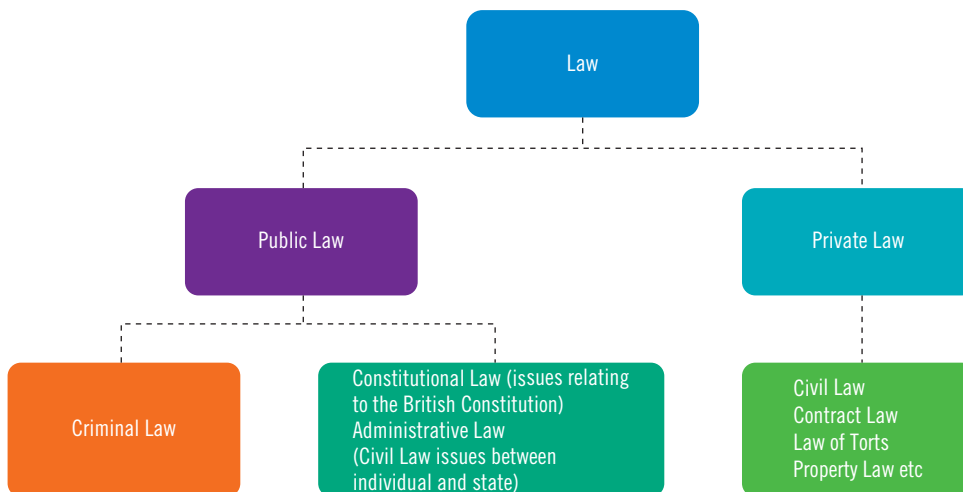


FIGURE 1.2 CLASSIFICATION OF LAW INTO PUBLIC AND PRIVATE LAW