

CHAPTER 5: The Legal Environment

Key Revision Points

Introduction

Businesses do not like to operate in environments in which there are no accepted rules of behaviour, because there is no guarantee that their investments will be protected from unauthorised seizure.

We can identify a number of important areas in which the legal environment impinges on the activities of business organisations:

- The nature of the relationship between the organisation and its customers, suppliers and intermediaries is influenced in the prevailing law.
- The relationship that a company has with other members of the general public, not necessarily its customers.
- Employment relationships are covered by increasingly complex legislation which recognises that employees have a proprietary interest in their job.
- The relationship between business enterprises themselves, not only in terms of contracts for transactions between them, but also in the way they relate to each other in a competitive environment.
- The rewards of undertaking new product development are influenced by the law through copyright and patent protection of a firm.
- The production possibilities of an enterprise, and hence, the products that can be offered to consumers may change according to new regulations introduced.

The law of contract

A contract is an agreement between two parties where one party agrees to do something (e.g. supply goods, provide a service, offer employment) in return for which the other party provides some form of payment.

The elements of a contract comprise: offer, acceptance, intention to create legal relations, consideration and capacity.

Non-contractual liability

The law of negligence is founded almost entirely on decided cases, and the approach adopted by the courts is one that affords flexibility in response to the changing patterns of practical problems.

Having established in certain circumstances that a duty of care exists, defendants will be in breach of that duty if they have not acted reasonably. The question is: What standard of care does the law require? The standard of care required is that of an ordinary prudent man in the circumstances pertaining to the case.

With a liability based on fault, the defendant can only be liable for damages caused by him or her. The test adopted is whether the damage is of a type or kind that ought reasonably to have been foreseen.

Legal processes

In England, a number of courts of law operate with distinct functional and hierarchical roles:

- The Magistrates Court deals primarily with criminal matters
- The Crown Court handles the more serious cases that have been committed to it for trial on 'indictment'.
- The High Court is responsible for hearing appeals by way of 'case stated' from the Magistrates Court
- The Court of Appeal deals primarily with appeals from trials on indictment in the Crown Court.
- County Courts are for almost all purposes the courts of first instance in civil matters
- The House of Lords is the ultimate appeal court for both criminal and domestic matters.

Central and local government is increasingly being given power to act as a consumer champion and to bring cases before the courts which are in the interest of consumers. Bodies that pursue actions in this way include:

- Trading Standards Departments
- Environmental Health Departments
- Utility regulators

Legislation affecting the supply of goods and services

In recent years EU directives have been incorporated into UK legislation to provide additional duties for suppliers of goods and services. It should be noted that much of the legislation applies only to business-to-consumer contracts and not business-to-business contracts. In the latter case, legislation has often presumed that parties have equal bargaining power and therefore do not need additional legislative protection.

In this section, we consider the following important pieces of statute law which have an impact on the relationship between an organisation and its customers:

- **Trade Descriptions Act 1968**

The Trade Descriptions Act 1968 makes it an offence for a person to make a false or misleading trade description and creates three principal offences.

- A false trade description to goods
- A false statement of price
- A false trade description of services

- **Sale of Goods Act 1979**

The Sale of Goods Act (SOGA) contains implied terms specifically to protect the consumer.

Section 13 of the Sale of Goods Act 1979 states that 'Where there is a contract for the sale of goods by description there is an implied condition that the goods will correspond with the description'.

Where consumer contracts are concerned, then such clauses that purport to limit or exclude liability are void under s. 6(2) of the Unfair Contract Terms Act 1977.

- **Misrepresentation Act 1967**

The Misrepresentation Act 1967 provides remedies for victims of misrepresentation. For the purpose of the Act, an actionable misrepresentation may be defined as 'a false statement of existing or past fact made by one party to the other before or at the time of making the contract, which is intended to, and does, induce the other party to enter into the contract'.

- **The Consumer Protection Act 1987**

The Consumer Protection Act 1987 came into force in 1988 as a result of the government's obligation to implement an EU directive and provides a remedy in damages for anyone who suffers personal injury or damage to property as a result of a defective product. The effect is to impose a strict (i.e. whereby it is unnecessary to prove negligence) tortious liability on producers of defective goods. The Act supplements the existing law; thus, a consumer may well have a remedy in contract, in the tort of negligence or under the Act.

The producer will be liable if the consumer can establish that a product is defective and that it caused a loss.

- **The Consumer Credit Act 1974**

This is a consumer protection measure to protect the public from, among other things, extortionate credit agreements and high-pressure selling off trade premises. The Act became fully operational in 1985, and much of the protection afforded to hire purchase transactions is extended to those obtaining goods and services through consumer credit transactions.

The Act covers hire purchase agreements (s. 189), which are agreements under which goods are hired in return for periodical payments by the person to whom they are hired and where the property in the goods will pass to that person if the terms of the agreement are complied with. In addition to hire purchase agreements, also within the scope of the Act are conditional sale agreements for the sale of goods or land, in respect of which the price is payable by instalments and the property (i.e. ownership) remains with the seller until any conditions set out in the contract are fulfilled, and credit sale agreements, where the property (ownership) passes to the buyer when the sale is effected.

Codes of Practice

Codes of practice do not in themselves have the force of law. They can, however, be of great importance to businesses. In the first place, they can help to raise the standards of an industry by imposing a discipline on their members not to indulge in dubious marketing practices, which - although legal - act against the long-term interests of the industry and its customers. Secondly, voluntary codes of practice can offer a cheaper and quicker means of resolving grievances between the two parties compared with more formal legal channels.

Controls on advertising

There are a number of laws that influence the content of advertisements in Britain. In the UK, the codes for advertising are the responsibility of the advertising industry through two Committees of Advertising Practice: CAP (Broadcast) and CAP (Non-broadcast). CAP (Broadcast) is responsible for the TV and radio advertising codes and CAP (Non-broadcast) is responsible for non-broadcast advertisements, sales promotions and direct marketing. Both are administered by the Advertising Standards Authority (ASA). The Office of Communications (Ofcom) is the statutory regulator for broadcast advertising in the UK and has delegated its powers to the ASA, which deals with all complaints about such advertising.

The ASA codes are subscribed to by most organisations involved in advertising, including the Advertising Association, the Institute of Practitioners in Advertising and the associations representing publishers of newspapers and magazines, the outdoor advertising industry and direct marketing.

The Code of Advertising Practice (Non-broadcast) requires that all advertisements appearing in members' publications should be legal, honest, decent and truthful.

The Control of Misleading Advertisements Regulations 1988 (as amended) provides the legislative back-up to the self-regulatory system in respect of advertisements which mislead.

Statutory legislation on employment

Employment law is essentially based on the principles of law previously discussed. The relationship between an employer and its employees is governed by the law of contract, while the employer owes a duty of care to its employees and can be sued for negligence where this duty of care is broken. Employers are vicariously liable for the actions of their employees.

The common law principles of contract and negligence have for a long time been supplemented with statutory intervention. Society has recognised that a contract of employment is quite different from a contract to buy consumer goods, because the personal investment of the employee in their job can be very considerable.

- **When does an employment contract occur?**

It is not always obvious whether a contract of employment exists between an organisation and individuals providing services for it. Many individuals working for organisations in fact provide their services as a self-employed sub-contractor, rather than as an employee. The distinction between the two is important, because a self-employed contractor does not benefit from the legislation which only protects employees.

- **Flexibility of contract**

Organisations are increasingly seeking a more flexible workforce to help them respond more rapidly to changes in their external environment.

Short-term employment contracts are becoming increasingly significant in a number of European countries, partly due to the existence of labour market regulations that make it difficult for employers to recruit and dismiss permanent staff. The spread of short-term contracts is most apparent among young workers employed in insecure and highly mobile areas of the labour market such as the retail, distribution,

communication and information technology sectors.

The percentage of people working part-time increased persistently in the last decade. The European Union and most member state governments have been keen to ensure that workers on short-term contracts enjoy similar legal rights as those in full-time, permanent employment.

Despite imposing additional burdens, many European governments have encouraged the greater use of short-term contracts as a way of improving the flexibility of their national economies

- **Terms of the contract of employment**

Under the Employment Rights Act 1996, it is required that an employer must issue its employees within 13 weeks of the date they start work the written terms and conditions of their employment in detail. The details can, however, be placed on a staff notice board at point where every member of the workforce concerned can read them.

The terms of contract cannot be altered until both parties have discussed and agreed the new conditions.

- **Minimum acceptable contract terms**

Legislators have recognised that employee and employer often possess unequal bargaining power in the process of forming a contract of employment. Legislation therefore protects the interests of the weaker party – generally the employee – against the use of their power by unscrupulous employers.

The following are examples of statutory intervention that protect employees' rights:

- **Health and safety legislation**

There is a wide range of regulations governing employers' duty to provide a safe working environment. Most health and safety legislation is based on the Health and Safety at Work Act 1974 which provides a general duty to provide a safe working environment.

The following are some recent examples of regulations:

- the Control of Major Accident Hazards Regulations 1999
- the Control of Substances Hazardous to Health Regulations 1999
- the Lifts Regulations 1997
- the Railway Safety (Miscellaneous Provisions) Regulations 1997.

The Health and Safety Executive oversees enforcement of these regulations.

- **Minimum wage legislation**

The national minimum wage came into force in the UK in 1999, implementing an earlier EU directive.

- **Working hours**

The EU's Working Time Directive of 1993 was implemented in the UK by the Working Time Regulations of 2000.

Discrimination at work

Legislation seeks to protect disadvantaged groups who may be discriminated against simply out of employers' ignorance. The Sex Discrimination Act 1975 (SDA) prohibits discrimination against women, and men, on the grounds of sex or of being married. The Equal Pay Act 1970 requires that a woman is entitled to the same pay (and other contractual conditions) as a man working for the same employer, provided they are doing similar work or work of equal value.

The legislation dealing with race discrimination derives from the Race Relations Act 1976 (RRA).

Termination of contract

The proprietary interest of employees in their jobs is recognised by legislation which restricts the ability of an employer to terminate an employee's contract of employment.

Termination may come about because an individual's position is no longer required and the individual is declared redundant. The Employment Rights Act 1996 defines the circumstances in which redundancy takes effect and a sliding scale of payments which an employee is entitled to if they are made redundant by their employer.

In circumstances other than redundancy, employers may not terminate a contract in a way which constitutes unfair dismissal. Under the Employment Relations Act 1999, employees are not entitled to claim unfair dismissal until they have accumulated one year's service.

Rights to workers' representation

Traditionally, Labour governments have sought to advance the cause of organised labour, while Conservative governments have taken a more individualist approach to relationships between employers and employees.

The Employment Relations Act 1999 amends a number of provisions of the previous legislation. For trade unions, the key element of the Act is a statutory procedure through which independent unions will be able to seek recognition for collective bargaining from employers with more than 20 employees.

The Human Rights Act

The Human Rights Act came into force in the UK in 2000 and has presented a number of new legal challenges for business organisations.

Many of the wider rights enshrined in the Human Rights Act are already protected by the UK's domestic legislation e.g. Sex Discrimination Act 1975. From 2000, courts in the UK have been able to issue injunctions to prevent violations of rights.

Protection of a company's intangible property rights

To protect a company from imitators the benefits of this investment but bearing none of its cost, a number of legal protections are available. The most commonly used methods are patents and trade marks, which are described below. Intellectual property can also be protected through copyright.

- **Patents**

A patent is a right given to an inventor which allows him or her exclusively to reap the benefits from the invention over a specified period. To obtain a patent, application must be made to the Patent Office in accordance with the procedure set out in the Patents Act 1977.

- **Trade marks**

The Trade Marks Act 1994 provides protection for trade marks (they are also protected under the common law of passing off). A trade mark is defined as any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.

- **Law and the Internet**

The development of the Internet does not change the basic principles of law, but the law has on occasions become ambiguous in the light of technological developments.

In addition to copyright issues, the international nature of communications on the Internet makes it essential not to overlook questions such as where is the contract concluded, when is it concluded, what law governs it and where will any subsequent dispute be resolved?

The Law and Production Processes

Increasing levels of legislation constrain the activities of firms in meeting buyers' needs. Some of the more important constraints that affect business decisions are:

- Pollution of the natural environment is an external cost which governments seek to limit through legislation such as the Environmental Protection Act 1995, the Environment Act 1990 and the Water Resources Act 1991.
- The rights of employees to enjoy safe working conditions has become increasingly enshrined in law as a country develops.

Legislation to Protect the Competitiveness of Markets

Because of the presumed superiority of competitive markets, the law of most developed countries has been used to try and remove market imperfections where these are deemed to be against the public interest. In Chapter 12 it is noted that the common law of England has developed the principle of restraint of trade through which anti-competitive practices have been curbed.