

The Legal Environment of the Business World

R. B. Buchanan, BA (Law) Hons., Barrister

The Legal Environment of the Business World

R. B. Buchanan, BA (Law) Hons., Barrister

Stanley Thornes (Publishers) Ltd

Text © R. B. Buchanan 1982
Illustrations © Stanley Thornes (Publishers) Ltd 1982

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the copyright holders.

First published in 1982 by Stanley Thornes (Publishers) Ltd,
Educa House, Old Station Drive, off Leckhampton Road,
CHELTENHAM, Glos. GL5 3 ODN, England.

British Library Cataloguing in Publication Data

Buchanan, Robert

The legal environment of the business world.

1. Associations, institutions, etc. — Law and
legislation — Great Britain

I. Title

344.106'6 KD2040

ISBN 0-85950-305-4

Typeset by Tech-Set, Unit 3, Brewery Lane, Felling, Gateshead, Tyne and Wear.
Printed and bound in Great Britain at the Pitman, Press, Bath.

Preface

This book provides the basic Law content for the Learning Objectives of the Business Education Council's National Award, Common Core Module 3 and 4, and the Business Law Option.

The subject is presented in such a way that the book will also be suitable for a variety of courses where Law is studied at a *foundation* or *introductory* level. These courses include: GCE 'A' and 'O' level law; BEC General – Law and the Individual/Consumer Law; BEC Higher – Bankers' Conversion, Institute of Legal Executives. It is hoped that the book will also appeal to a general readership.

Where appropriate and convenient, *authorities* (cases/statutes) are listed in selected chapters, so as to facilitate easier reference and use. Many sections (SS or S) in statute laws are also referred to.

The assignments are grouped together on pages 198–209, and may be undertaken on an assessed or non-assessed basis. It is within the discretion of individual lecturers to set assignments at a time which ultimately will be decided by the knowledge and progress of their students.

Every effort has been made by the author and publisher to be as accurate and up to date as possible within the constraints of a text-book of this type. However, no responsibility can be accepted for any inaccuracies or misstatements howsoever caused.

List of Cases

(Page references in bold type denote the main or full reference to an authority.)

<i>Adams v. Lindsell</i> (1818)	21	<i>Central London Property Trust Ltd v. High Trees House Ltd</i>	6, 22, 24
<i>Algemene Case, The</i> (1978)	126	<i>Chapple v. Cooper</i> (1844)	32, 33
<i>Alidair Ltd v. Taylor</i> (1976)	74, 86	<i>Christie v. Davey</i> (1893)	55
<i>Allen v. Gulf Oil Refining Ltd</i>	212	<i>Congreve v. The Home Office</i> (1976)	12, 180, 182
<i>Aluminium Industrie Vaassen BV v. Romalpa Aluminium Ltd</i> (1976)	114, 126	<i>Consolidated Co. v. Curtiss</i> (1892)	58
<i>Appleson v. Littlewoods Ltd</i> (1939)	5, 25	<i>Cooper v. Wandsworth Board of Works</i> (1863)	183
<i>Arcos Ltd v. Ronaasen & Son</i> (1933)	126-7	<i>Cowern v. Nield</i> (1912)	33, 34
<i>Ashley Case, The J. B.</i> (1979)	127	<i>Cox v. Phillips Industries Ltd</i> (1975)	74, 86
<i>Attorney General v. Fulham Corporation</i> (1921)	183	<i>Crowther v. Shannon Motor Co.</i> (1975)	128
<i>Baker v. T. E. Hopkins & Sons Ltd</i> (1959)	66	<i>Currie v. Misa</i> (1875)	22
<i>Barnett v. Chelsea and Kensington Hospital Management Committee</i> (1969)	52	<i>Czarnikow v. Koufas</i> (1969)	68
<i>Beale v. Taylor</i> (1967)	127	<i>D. and C. Builders Ltd v. Rees</i> (1966)	22, 24
<i>Bell v. Lever Brothers Ltd</i> (1932)	26, 29-30	<i>Davis Contractors Ltd v. Fareham UDC</i> (1956)	46
<i>Bell Houses Ltd v. City Wall Properties Ltd</i> (1966)	143	<i>Dickinson v. Dodds</i> (1876)	21-22
<i>Bettini v. Gye</i> (1876)	40	<i>Donoghue v. Stevenson</i> (1932)	49-51
<i>Bliss v. Hall</i> (1838)	56	<i>Doyle v. White City Stadiums</i> (1935)	32, 34
<i>Bourne (Inspector of Taxes) v. Norwich Crematorium Ltd</i> (1967)	193	<i>Dutton v. Bognor Regis UDC</i> (1972)	52
<i>Bridgeman v. Stockdale</i> (1953)	60	<i>Entick v. Carrington</i> (1765)	56
<i>British Railways Board v. Herrington</i> (1972)	54	<i>Erlanger v. New Sombrero Phosphate Co.</i> (1878)	134
<i>Bromley Council v. GLC</i> (1982)	182	<i>Evans v. Cross</i> (1938)	4-5, 193
<i>Butler Machine Tool Co. v. Ex-Cell-O Corporation</i> (1979)	18, 21	<i>Fisher v. C.H.T. Ltd</i> (1966)	53
<i>Carlill v. Carbolic Smoke Ball Co.</i> (1893)	18, 19-20	<i>Ford Motor Co. v. Armstrong</i> (1915)	69
<i>Cehave N. V. v. Bremer</i> (1976)	127	<i>Foss v. Harbottle</i> (1843)	148
		<i>Fouldes v. Willoughby</i> (1841)	57
		<i>Froom v. Butcher</i> (1976)	67
		<i>Frost v. Aylesbury Dairy Co. Ltd</i>	16, 128

<i>Gibson v. Manchester City Council</i> (1979)	18, 20	<i>London Joint Stock Bank Ltd v. Macmillan</i> (1918)	175
<i>Greenwood v. Martins Bank</i> (1933)	175	<i>Marrison v. Bell</i> (1939)	73, 87
<i>Griffiths v. Peter Conway Ltd</i> (1939)	129	<i>McArdle, Re</i> (1951)	22-23
<i>Godley v. Perry & Others</i> (1960)	128	<i>Meering v. Grabame White Aviation Co.</i> (1919)	57
<i>Grant v. Australian Knitting Mills Ltd</i> (1933)	128-9	<i>Metropolitan District Asylum Board v. Hill</i> (1881)	66
<i>Gregory v. Piper</i> (1829)	57	<i>Metropolitan Properties Ltd v. Lannan</i> (1969)	183
<i>Hadley v. Baxendale</i> (1854)	68	<i>Moorcock, The</i> (1889)	39, 41
<i>Haley v. London Electricity Board</i> (1965)	52	<i>Morris Ltd, Herbert v. Saxelby</i> (1916)	35, 36-7
<i>Halsay v. Esso Petroleum Co. Ltd</i> (1961)	55	<i>Mutual Life & Citizens' Assurance Co. Ltd v. Evatt</i> (1971)	51-2
<i>Hardaker v. Idle District Council</i> (1896)	64	<i>Nash v. Inman</i> (1908)	32, 33
<i>Heron II</i> (1969)	68	<i>Olley v. Marlborough Court Hotel Ltd</i> (1948)	42
<i>Hill v. C. A. Parsons & Co. Ltd</i> (1971)	75, 86-7	<i>Pearce v. Brooks</i> (1866)	35, 36
<i>Holwell Securities v. Hughes</i> (1974)	21	<i>Pepper v. Webb</i> (1969)	74, 87
<i>Hedley Byrne & Co. Ltd v. Heller & Partners Ltd</i> (1963)	51	<i>Performing Rights Society v. Harlequin Record Shops</i> (1979)	164
<i>Home Counties Dairies Ltd v. Skilton</i> (1970)	36, 37	<i>Perry v. Kendricks Transport Ltd</i> (1956)	62
<i>Imperial Chemical Industries v. Shatwell</i> (1965)	65	<i>Phillips v. Brooks Ltd</i> (1919)	26, 29, 118
<i>Jones v. Vernons Pools Co. Ltd</i> (1938)	5, 6, 25	<i>Pharmaceutical Society of Great Britain v. Boots</i> (1953)	18, 19
<i>Joscelyne v. Nissen</i> (1970)	26, 30-1, 70	<i>Pickin v. British Railways Board</i> (1974)	181, 182
<i>Kelner v. Baxter</i> (1866)	134	<i>Pinnel's Case</i> (1602)	22, 23, 24
<i>Koufas v. Czarnikow</i> (1969)	68	<i>Polsue Alfieri Ltd v. Rushmer</i> (1907)	55
<i>L'Estrange v. Gracob</i> (1934)	41	<i>Poussard v. Spiers & Pond</i> (1876)	40, 41
<i>Lewis v. Averay</i> (1971)	29	<i>Priest v. Last</i> (1903)	129
<i>Lewis v. Daily Telegraph Ltd</i> (1964)	59	<i>Raffles v. Wichelhaus</i> (1964)	26, 28
<i>Lister v. Romford Ice and Cold Storage Co. Ltd</i> (1957)	64, 65	<i>Ready Mixed Concrete Ltd v. Ministry of Pensions</i> (1968)	64
<i>Lloyds Bank Ltd v. Bundy</i> (1975)	16, 28, 31	<i>Robinson v. Kilvert</i> (1889)	55-6
		<i>Rose v. Plenty</i> (1975)	64, 72, 192

LIST OF CASES

<i>Rylands v. Fletcher</i> (1866)	50, 61-2	<i>Tarry v. Asbton</i> (1876)	54
<i>Salomon v. Salomon & Co. Ltd</i> (1896)	9, 11, 12-13	<i>Tesco Supermarkets Ltd v.</i> <i>Nattrass</i> (1972)	101
<i>Saunders v. Anglia Building</i> <i>Society</i> (1971)	26, 30	<i>Theaker v. Richardson</i> (1962)	59, 60
<i>Sayers v. Harlow UDC</i> (1958)	67	<i>Tweedle v. Atkinson</i> (1861)	24
<i>Scott v. London & St Katherine</i> <i>Dock Co.</i> (1865)	53	<i>Twycross v. Grant</i> (1877)	134
<i>Scottish Co-operative Wholesale</i> <i>Society v. Meyer</i> (1959)	149	<i>Warner Brothers Incorporated v.</i> <i>Nelson</i> (1936)	69
<i>Secretary of State for</i> <i>Employment v. ASLEF</i> (1972)	79, 87	<i>Warren v. Henlys Ltd</i> (1948)	63, 64-5
<i>Sedleigh-Denfield v. O'Callaghan</i> (1940)	55	<i>Watt v. Longsdon</i> (1930)	60
<i>Shipton, Anderson v. Weil Bros.</i> (1912)	127	<i>Watteau v. Fenwick</i> (1893)	47
<i>Simpkins v. Pays</i> (1955)	25	<i>Western Excavating (EEC) Ltd</i> <i>v. Sharp</i> (1977)	75, 88
<i>Smith v. Charles Baker & Sons</i> (1891)	65-6	<i>White v. Bluett</i> (1853)	22, 23
<i>Smith v. Land & House Property</i> <i>Corporation</i> (1884)	26, 31	<i>Wickman Ltd v. Schuler A. G.</i> (1974)	40
<i>Somerville v. Hawkins</i> (1951)	60	<i>Wilsons & Clyde Coal Co. Ltd v.</i> <i>English</i> (1938)	51, 73, 88
<i>Stephens v. Myers</i> (1830)	57	<i>Wright v. Wright</i> (1949)	62
<i>Superflux v. Plaisted</i> (1958)	74, 87-8	<i>Wynes v. Southrepps Hall Farm</i> <i>Ltd</i> (1968)	76, 88
		<i>Yenidje Tobacco Co.,</i> <i>Re</i> (1946)	153
		<i>Youssouppoff v. MGM Pictures</i> <i>Ltd</i> (1934)	59

List of Statutes

(Page references in bold type denote the main or full reference to an authority. S or SS refers to a section or sections of the appropriate Act.)

Arbitration Act 1950	193	Defamation Act 1952, S4	59
Arbitration Act 1979	193	Employers' Liability	
Bankruptcy Acts 1914-26	151	(Compulsory Insurance Act	
Bills of Exchange Act		1969)	73, 80
1882	23, 166, 167, 210	Employment Act	
S3(1)	170-1	1980, S6	75-6, 86
S8	172	S17	82
S31	172	Employment Act	
S60	176	1982	79-80, 82-3
Part III	170	Employment Protection Act	
S73	170-1	1975, S1	79, 83
S79	172	Employment Protection	
S80	176	(Consolidation) Act	
S83	173	1978	72, 74, 76, 79
Cheques Act 1957, S1	176	S1	73, 84
S4	176	S29	73, 85
Companies Acts 1948-81		S49	75, 85
9, 11, 132, 135-41, 214-17		S55	75, 85
Companies Act 1948, S75	146	S57	75
S320	154	Schedule IV	76-77
S322	148	Equal Pay Act 1970	74, 80
S332	154	European Communities Act	
S455	145	1972, S9(1)	143
Table A	38, 144	Factories Act 1961	81
Companies Act 1980	148	Fair Trading Act	
Part V	147	1973	91, 95, 97-9
Companies Act 1981	150	Family Law Reform Act	
S42	146	1969	32, 33
Competition Act 1980	111	Fire Precautions Act 1971	162
S11	110	Gaming Act 1845	35
Congenital Disabilities Act		Health and Safety at Work	
1976	8	Act 1974	73, 74, 89-90
Consumer Credit		SS2-8	80-1
Act 1974	91, 102-9, 169	Infants Relief Act 1874	32, 33
S189	112	Interpretation Act 1978, S6	193
Consumer Safety Act		Insolvency Act 1976	151, 154
1978	91, 109-10	Judicature Acts 1873-5	5
Control of Pollution Act 1974	162	Juries Act 1974	85

Landlord and Tenant Act		S8	118, 120
1954	160	S11	123, 126, 127
Law of Property Act 1925	38, 159	SS12-15	39, 114-16, 123-5
S1	159	S16	113, 125
S136	166	S17	113, 125
S205	165	S18, Rules 1-5	113, 125
Law Reform (Contributory		S19	114, 125
Negligence) Act 1945, S1	67	S20	114, 125
Law Reform (Frustrated		S21-5	116-118
Contracts) Act, 1943, SS1-2	46	SS27-37	118-120
Limited Partnership Act 1907	132	SS39, 41, 49, 51-3	120-1
Local Government Act 1974	191	S61	115, 126
Mines and Quarries Act 1954	81	S62(2)	126
Misrepresentation Act 1967	27	Sex Discrimination Act	
Occupiers' Liability Act 1957,		1975	74, 83, 89
S2	53	SS6, 7	83
Offices, Shops and Railway		Supply of Goods and Services	
Premises Act 1963	81	Act 1982	130
Parliamentary Commissioner Act		Part II, SS1-11	130
1967	190	Part III, SS24-28	130-1
Partnership Act 1890	132, 150	Supply of Goods (Implied	
S1	10, 133	Terms) 1973, SS8-11	129
S2	133	Torts (Interference with Goods)	
S5	133	Act 1977	56, 57-8
SS24, 28-30	134	Town and Country Planning	
Patents Act 1977	164	Acts 1947-77	161
Post Office Act 1969, S29	96	Town and Country Planning	
Powers of Criminal Courts Act		Act 1971, S22	161
1973	95	Trade Descriptions	
Race Relations Act		Act 1968	91, 95, 99-101, 191
1976	74, 83-4, 89	Trade Descriptions Act	
S4	84	1972	91, 101
S5	84	Trade Marks Acts 1938	164
Registered Designs Acts		Trade Union and Labour Relations	
1949-61	164	Act 1974, S2	78, 81
Resale Prices Act 1964	36	S13	79, 81-2
Resale Prices Act 1976	35, 36	S14	79, 82
Restrictive Trade Practices Act		S15	82
1956	36, 190	S18	78, 82
Sale of Goods Act 1979	95, 165	S29	78, 82
S2(1)	112, 113, 122	Unfair Contract Terms Act	
S2(5)	113, 123	1977	43-5, 205
S6	113, 123	S1	43-4
S7	113, 123	S2	44

S2(1)	44	S12	45
S2(2)	44	S14	45
S3	44	Schedule I	45
S5	44	Schedule II	45
S6(1)	44	Unsolicited Goods and Services	
S6(2)	44	Acts 1971 and 1975	91, 102
S7	44-5	Wages Council Act 1979	78, 85
S11	45	Water Act 1973	162

STATUTORY ORDERS

Business Advertisements (Disclosure)		Price Marking (Bargain Offers)	
Order, The, 1977	99	Order, 1979	99
Consumer Credit (Credit Reference		Unfair Dismissal (Variation of	
Agency) Regulations, 1977	109	Qualifying Period) Order, The,	
Consumer Transaction (Restrictions		1979	211
on Statements) Order, 1976	98-9		

Contents

PREFACE	ix
LIST OF CASES	xi
LIST OF STATUTES	xv
ACKNOWLEDGEMENTS	xix
CHAPTER 1	LAW DEFINED 1
	Criminal and Civil Wrongs 1
	Breach of Contract 1
	Torts 2
	Courts of Law 2
	Seeking Legal Advice 3
	Sources and Content of Laws 3
	Discovering Statute Law and the Common Law 6
	Applying Laws to Business Decisions 7
CHAPTER 2	LEGAL PERSONALITY 8
	Business Status 8
	Artificial Persons 8
	Private Enterprise and Status 9
	Public Enterprise and Status 10
CHAPTER 3	CONTRACTUAL OBLIGATION AND TORT DUTY 14
	The Law of Contract 14
	The Contract Obligation 14
	The Negotiation Process 14
	<i>Caveat Emptor</i> 14
	Bargaining Power 15
	The Tort Duty 16
	Duties and Liability 17
	Offer and Acceptance 17
	Consideration 22
	Intention to Create a Legal Relationship 24
	Genuine Consent 25
	Legal Capacity 32
	Lawfulness of Contract 34
	Types of Contract 37
	A Term in a Contract 38

The Legal Effect of Contract Terms	41
Taking Responsibility and Disclaiming Liability	42
The Unfair Contract Terms Act 1977	43
Ending a Contract	45
Contracts and Agency	47
The Law of Torts	49
The Tort of Negligence	49
Occupiers' Liability	53
The Tort of Nuisance	54
The Tort of Trespass	56
The Tort of Defamation	58
Breach of Statutory Duty	60
The Tort of <i>Rylands v. Fletcher</i>	61
The Tort of "Passing Off"	62
The Principle of Vicarious Liability	62
General Defences in Tort	65
Remedies in Contract and Tort	67
Other Remedies for Breach of Contract	69
Damages in Tort	70

CHAPTER 4	THE LAW OF EMPLOYMENT	71
	The Contract of Employment	71
	Terms in an Employment Contract	72
	Duties Arising from an Employment Contract	73
	Rights and Duties on Termination of the Employment Contract	74
	Trade Unions	78
	The Protection of the Employee	88

CHAPTER 5	CONSUMER PROTECTION	91
	Government Responsibility	91
	Legislation and Consumer Protection	91
	Legal Redress	95
	Consumer Information, Advice and Help	96
	Nationalised Industries and the Consumer	96
	Consumers and Competition Laws	97
	Consumer Protection Laws	97
	Definition of a "Consumer"	97
	Monopolies, Mergers and Anti-Competitive Practices	110
	Competition Laws in the European Community	111
	Contracts for the Sale of Goods	111
	Transfer of Property	112
	Terms Implied by Statute in Contract for the Sale of Goods	114

“No Fault” Liability	116
Transfer of Title: Selling “Property” Without Ownership	116
Remedies for Breach of a Sale of Goods Contract	120
A Manufacturer’s Liability to a Consumer	121
Terms Implied by Statute in a Hire-Purchase Agreement	129
The Supply of Goods and Services Act 1982	130

CHAPTER 6

COMPANY LAW	132
The Private Enterprise Business Company	132
Partnership Firms	132
Promoting a Company	134
Registration of a Limited Company	134
The Memorandum of Association	142
The Articles of Association	144
The Legal Effect of the Memorandum and Articles	145
Publicity	145
A Company and its Contracts	145
The Prospectus	145
Capital	146
Share Capital	146
Shareholders	146
Loan Capital and Charges	147
Meetings	148
Majority Rule and Minority Protection	148
Directors	149
The Duties of a Company Director	149
Accounts and Reports	150
Dividend	150
Company Takeovers: Reconstruction and Merger	150
Ending a Company	150
The Liquidator	153

CHAPTER 7

THE LAW OF PROPERTY	156
Introduction	156
The Right of Ownership	158
Legal and Equitable Ownership	158
Ownership Compared with Possession	158
Land	159
Business Premises	160
Rights and Restrictions Upon Business Tenants	160
Statutory Controls on Land	161
Other Restrictions on Land	162
Restrictions by Tort	163
Intangible Property	163

Transfer of Ownership Rights in Property	165
Mortgage Security	168
Mortgage Obligations	169
Types of Mortgage	169
The Law Relating to Cheques	170
Bankers and Customers	174
Transferring Money and Bankers' Protection	175

CHAPTER 8	CONSTITUTIONAL LAW 178
	Executive Power 180
	Legislative Power 181
	Judicial Power 182
CHAPTER 9	THE COURTS OF LAW AND THE LEGAL PROCESS 185
	Civil Courts 186
	Criminal Courts 187
	Courts of Appeal 189
	Other Courts 190
	The Parliamentary Commissioner for Administration:
	"The Ombudsman" 190
	Local Commissioners for Administration: "Local
	Ombudsmen" 191
	Civil Laws 191
	Criminal Laws 192
	The Interpretation of Statutes 192
	Arbitration 193
	Legal Advice and Legal Action 194
	The Litigation Decision 194

ASSIGNMENTS	1. "So You Think <i>You've</i> Got Problems" 198
	2. "Fair Deal" 199
	3. "Roger's Dilemma" 200
	4. "Tanned for Life" 201
	5. "Upholding Standards" 202
	6. "Star Trek" 203
	7. "Memo from the MD" 204
	8. "A Matter of Access" 205
	9. "Thinking Big" 206
	10. "The Money Game" 207
	11. "The Writing is on the Wall" 209

APPENDICES

INDEX

1

Law Defined

CRIMINAL AND CIVIL WRONGS

Law can be defined as a set of rules **regulating** the conduct and behaviour of a person in society.

These rules are divided into two types:

1. Rules regulating the conduct of **persons as a whole**, i.e. criminal laws: anyone who breaks these **rules** commits a *crime* and is *prosecuted* by the people in the **name** of the *Queen*. The rule-breaker, if found guilty, is **punished**, for example, by a fine or imprisonment.
2. Rules regulating the conduct of **persons to each other**, i.e. civil laws: anyone who breaks these **rules** commits a *civil wrong* and can be *sued* by the other party. If the **rule-breaker** is found *liable*, he will be made to pay compensation **known as damages**.

Examples of Crimes

Murder
Burglary
Theft
Assault

Examples of Civil Wrongs

A **food supplier's** failing to deliver goods **to a shop** as promised (a breach of contract).
Doing **harm** to someone by carrying out a **job carelessly** (a tort).
Dismissing a person unfairly from his **employment** (a breach of contract).
A **motorist** injuring a pedestrian by **driving badly** (a tort).

All civil wrongs can be classified **as either** breaches of contract or torts.

BREACH OF CONTRACT

A contract is a legally enforceable **agreement**. Most persons make contracts every day: for example, **buying goods** from a shop, travelling

on a bus or train, or taking a job. Many contracts are made in writing but most contracts do not need to be; they can be created orally or by conduct.

Every contract creates express or implied rights (known as terms) between the parties to the contract. For example, in a contract for the sale of a car, the parties may *expressly* agree that the buyer will pay for the car by instalments. The law would *imply* that the car is road-worthy.

TORTS

Torts are wrongs established by law. Torts create duties owed by persons to others without the need for any contractual agreement between them. For example, a surgeon who carries out an operation carelessly causing injury to a patient commits the tort of negligence; a person going on someone's land without permission commits the tort of trespass. There are only a specified number of torts (the main ones being negligence, nuisance, trespass and defamation), and unless an injured party can bring a claim for compensation within one or more of the existing torts he will be unsuccessful in his action.

COURTS OF LAW

Separate courts of law decide, by way of a trial, whether a crime or a civil wrong has been committed, namely:

<i>Criminal Courts</i>	and	<i>Civil Courts</i>
Magistrates' Courts		County Courts
Crown Courts		The High Court
The Court of Appeal (Criminal Division)		The Court of Appeal (Civil Division)
The House of Lords		The House of Lords

See page 185.

Sometimes, the rule-breaker by his conduct commits both a crime and a civil wrong.

E.g.: A taxi-driver called John Smith may carelessly crash his vehicle injuring a passenger, Bill Brown.

1. Smith commits the crime of reckless driving and will be punished in a criminal court; society prosecutes Smith. *R. v. Smith*.

2. Smith commits a civil wrong against Brown (both a breach of contract and a tort) and will be sued for compensation in a civil court by Brown: *Brown v. Smith*.

In most cases the actual decision of the court (as to the guilt of the accused or the liability of the defendant) can be challenged by way of appeal to a higher court (see page 189), the exception being in criminal cases where the prosecution cannot challenge a jury's "not guilty" verdict.

SEEKING LEGAL ADVICE

When a person wants help on the lawfulness of some conduct, he will often consult a lawyer. Lawyers are either solicitors or barristers. Their job is to advise and assist clients on legal problems, and if necessary to represent them in court. When consulted on a legal problem a lawyer will obtain the *facts* of the case, then apply the *law* (the rules of conduct) to those facts when giving advice. Lawyers are trained to discover where the precise laws upon any particular problem can be found.

SOURCES AND CONTENT OF LAWS

Acts of Parliament

Acts of Parliament contain the rights and duties of persons within the community. The process by which an Act becomes law is by way of a bill being introduced into Parliament (House of Commons or House of Lords). If a majority of Members of Parliament are in favour of the bill becoming law, it passes through various stages before being given the Royal Assent by the Queen, at which time the bill becomes an Act.

So much new legislation is needed annually that Parliament gives to others (government ministers, public bodies, local authorities) powers to create rules, regulations and orders (e.g. statutory instruments) to enable an Act of Parliament to be workable. "Delegated legislation" is the phrase used to describe law-making power sanctioned by an Act of Parliament.

Note: In international trade and "company laws" the institutions of the European Economic Community (EEC) issue "regulations" and "directives" which can bind member states. If a conflict arises between English domestic law and EEC law, the latter takes precedence.