

【国际教育合作项目教辅系列丛书】

International Education Cooperation Programme, Learning Guide Series

【试用版】



《商法导论》 教辅材料

◆万玲 孙益武 顾益民 编



Learning Guide for Business Law : An Introduction



中国时代经济出版社
China Modern Economic Publishing House

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Learning Guide for
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Introduction



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“国际教育合作项目教辅系列丛书”总序

21 世纪已经走过了第一个 10 年。在这 10 年中，特别是在中国加入 WTO 以后，中国教育得到了蓬勃的发展，也更加开放。通过引入优质的国外教育资源，为学习其他国家先进的教育理念与教育模式架设了桥梁，同时为培养具备国际化视角的优秀人才创造了条件。在这样的背景下，中国留学服务中心在国际教育合作领域展开了积极地合作，并于 2003 年，与苏格兰学历管理委员会签订协议，将英国高等教育文凭（CSCSE - SQA HND）项目引进中国。该项目至今已运行 7 年，积累了丰富的项目管理经验，并取得了良好的社会效益。

根据多年国际教育合作项目的教学实践的需要，在各方共同努力之下，《国际教育合作项目教辅系列丛书》应运而生。一方面，丛书本着“以学生为中心”的教育理念，将专业理论与中国的实际情况相结合，采用实际案例与理论讲解相结合的方式，着重培养学生的英语语言水平、沟通技巧、策划协调能力与高技术应用等全方位素质，为学生今后出国留学更好地适应英语国家教育体系与理念打下坚实的基础。另一方面丛书覆盖了商务管理、金融服务、商务会计、市场营销、人力资源与计算机技术等多方面的专业内容，为现代国际教育合作项目的英语教学提供了内容广泛的优质辅助材料。

这套丛书的问世，离不开众多合作者的共同努力：多位有着丰富教学经验的优秀国内教师，将多年的心得与结晶浓缩到丛书的章节中；作为英国高等教育文凭项目教材引进、出版机构，并且荣膺“全国百佳图书出版单位”称号的中国时代经济出版社鼎力支持，为丛书的编辑与出版发挥了至关重要的作用；多所英国高等教育文凭项目院校也在丛书问世过程中出谋划策、添砖加瓦。可以说，正是以上各方坚持不懈的努力才使得这套丛书呈现在读者面前。

衷心希望籍着这套丛书能够为您的学习之路提供有益的指导。

中国留学服务中心

2010 年 7 月

PREFACE

Wan Ling^①

Business law is a compulsory subject for business majors. Particularly under the common law system it is a fairly challenging unit for Chinese students. It seems not so systematic a subject which includes the principle guidelines and specific regulations on both the business enterprises and various types of business behaviors. In UK, business law is built on the abundant judicial precedents and statutes passed by Parliament; in addition, the Supremacy of EU Law has brought a lot of regulatory rules on business behaviors in UK.

From the editor's teaching experience, the Chinese students of SQA HND programme usually have a hard time in clarifying the British legal system. As for business related laws such as law of contract and law of enterprises students can barely appreciate the fundamental theories in a systematic way.

Secondly, it is well known that judicial precedents are of vital importance in the common law. Learners should be able to search for relevant judicial precedents to identify the legal rules developed by judges in court. However, it is not so convenient to do so as the charges for those case law data bases are usually unaffordable for them. As a result, students can only turn to the internet search engine just occasionally to find some skimpy facts of the related cases which are far from enough for learning the case laws.

Last but not least, in the recent years there have been great developments and changes as for the function of Parliament of UK and legislation by UK and EU has made great progress in the business law area. While students are taking the unit of

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business law, it is obvious that the most updated statutes should be provided to catch up the pace of legislation.

To solve the problems mentioned above the editors have made great efforts in compiling this Learning Guide for Business Law which mainly focuses on three sections:

1. The Introduction of the Legal System in UK (Scotland)

To help the learners better understand the sources of laws in UK, some important definitions are introduced in a logical and comparative way such as the common law and equity; statutory law and case law, etc. The editor tries to illustrate that the Scots legal system is somewhat a mixture from the common law system and Roman law system so both statutes and judicial precedents are considered as legal rules. In addition, one remarkable change in the judicial function of the Westminster Parliament is raised; the supreme judicial power had recently transferred to the newly founded Supreme Court of UK. Overall, this section aims to help students build a logical mind to embark on the study of business law.

2. Law of contract

Contract is believed as the most widely studied area in English law. It provides a basic grounding for the study of other legal subjects such as consumer protection law, company law, etc. This section of the learning guide, tries to concentrate on the main points in law of contract such as the formation, the parties involved, the content of contract, the validity, the performance, illegality, misrepresentation, remedies, etc. Abundant case laws are provided for learners' reference to better understand the legal rules developed by courts. Furthermore, Contract Law of the People's Republic of China and Principles of European Contract Law are cited for learners' comparative studies.

3. Law of enterprises

In this section, the editor tries to explore the features for various types of business organizations from the sole trader, partnerships to corporations. The Company Act 2006 as the latest fruit of legislation by Parliament of UK is represented. And also the reform in Company law in China is introduced for learners' background knowledge.

Generally speaking, this learning guide is a suitable reading material for business law learners. The systematic introduction of basic legal theories, the citation of abundant statutes and case laws, and the sufficient updated legislative information would help learners gain an overall appreciation of English business laws.

Acknowledgments

Three editors have worked as a team to compile this learning guide. Wan Ling is in charge of designing the overall layout and finalizing the manuscripts. Specifically, Wan Ling compiles chapters 1 to 3; Sun Yiwu compiles chapters 4 to 6; Gu Yimin compiles chapters 7 to 10.

Many people are owed thanks, first and foremost, to our past and present SQA HND students. By giving us repeated opportunities to explain the theories and asking simple questions they have deepened our understanding and promoted our insight in this subject. Especially, we owe a debt of gratitude to Professor He Li of Fudan Law School who had put great efforts in reviewing our manuscripts and providing valuable comments for the amendments. We wish to thank Xianda College, China Modren Economic Publishing Houses and Yinhong International Ltd. to push forward this book into publication.

Due to the editors' limited capacity, errors are inevitable. We would be deeply indebted to colleagues and students who read this material later and give us many valuable feedbacks for improvement.

Wan Ling
Shanghai, June 2010

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SECTION ONE

**INTRODUCTION TO SCOTTISH
LEGAL SYSTEM**

1.1 Introduction to the British Legal System

AN INTRODUCTION TO LEGAL SYSTEM IN THE UK AND CLASSIFICATION OF LAW

Chapter overview

This chapter is concerned with the basic legal definitions and legal issues for the students taking Business Law. It starts by giving an overall introduction to English legal system then focuses on the classification of law by defining what is meant by public and private law, civil law and criminal law, common law and equity, statute law and case law. This chapter tries to help students build a logical mind to start learning law.

Outcomes

- Know the overall legal system in the UK;
 - Understand the difference between public law and private law;
 - Know the meaning of common law and equity;
 - Understand the meaning of Legislation and statute;
 - Apply the doctrine of judicial precedent.
-

1.1 Introduction to the British Legal System

The United Kingdom of Great Britain and Northern Ireland consists of four countries forming three distinct jurisdictions each having its own court system and legal profession: England & Wales, Scotland, and Northern Ireland.

The United Kingdom was established in 1801 with the union of Great Britain and Ireland, but only achieved its present form in 1922 with part of Ireland and the establishment of the independent Irish Free State.

The UK joined the European Economic Community (now the European Union) in 1973, since when it has been a requirement to incorporate European legislation into UK law, and to recognise the jurisdiction of the European Court of Justice in matters of EU law. There have been significant constitutional reforms since the Labour government came into power in 1997.

The Labour government had brought huge changes to the UK, i. e. devolving certain areas of the UK government to the component countries: a separate Scottish Parliament and a Welsh Assembly were established following referendums in the countries concerned. In the context of these new legislatures the English Parliament is often referred to as “Westminster Parliament”. These devolved governments are dealt with in separate sections.

The UK is a signatory of the European Convention of Human Rights, and this has been incorporated into the UK law since the passing of the Human Rights Act 1998. This allows for the provisions of the Convention to be applied directly by the UK courts.

1.1.1 The Constitutional Law and Constitutional Reform

People often refer to the UK having an “unwritten constitution” but that’s not strictly true. It may not exist in a single text, like in the USA or Germany, but large parts of it are written down, much of it in the laws passed in Parliament—known as statute law. Therefore, the UK constitution is often described as “partly

written and wholly uncodified". (Uncodified means that the UK does not have a single, written constitution.)

The constitutional law of the UK is regarded as consisting of statute law on the one hand and case law on the other, whereby judicial precedent is applied in the courts by judges interpreting statute law.

The Labour government which came into power in 1997, and after three consecutive term of office which is recently replaced by the coalition government (the first Liberal Democrat and Conservative power-sharing deal at Westminster in history) has instituted constitutional reforms in three distinct areas: the reform of the House of Lords, devolution, and the passing of the Human Rights Act 1998.

The Labour government began the long-overdue process of House of Lords reform by abolishing the voting rights of all the hereditary peers apart from ninety-two who remain until the House is fully reformed.

The Human Rights Act was passed in 1998, incorporating into the UK law rights and freedoms guaranteed by the European Convention on Human Rights. Although the UK had been a signatory to the European convention on Human Rights since 1951, the Act provided for the provisions of the Convention to be incorporated into domestic law. This means that a consideration of human rights affects every area of government.

The Ministry of Justice was established in 2007 replacing the Department for Constitutional Affairs (DCA). It is responsible for the courts, prisons, probation, criminal law and sentencing.

1.1.2 Civil Courts

Civil cases at first instance are heard in the County Courts (for minor claims) or the High Court, which is divided into three divisions: Queen's Bench, Family and Chancery. Cases may be appealed to the Court of Appeal (Civil Division). Cases may be appealed from the County Court to the High Court.

The House of Lords is the supreme court of appeal. Its judicial functions are quite separate from its legislative work, and cases are heard by up to 13 senior judges