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1982

# 商业财会 学术讨论会文选

全国高等财经院校  
商业财务会计研究会 编



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# Business Law

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# 财 政 与 信 贷

陈永良编著



广东高等教育出版社出版发行

广东龙川县印刷厂印刷

787×1092毫米 32开本13.875印张 插页1 字数350千字

1988年1月第一版 1990年4月第二次印刷

印数5000—8000册

ISBN 7—5361—0087—6 / F·8

定价： 4.95元

## Preface

THE general objective of our research is to study the biological foundations of human language. The investigations presented in this book represent a part of this effort. The research takes place at The Salk Institute for Biological Studies in a setting that includes a focus on the neurosciences: from studies of the structure of the brain to brain and behavior relations. Our laboratory seeks to understand the foundations of human language as a part of man's biological endowment. For the past seven years we have been investigating the human capacity for language through studies of a language that had not previously been systematically explored in depth: American Sign Language (ASL), a language of hand signs that has developed among deaf people in the United States.

When we began these studies we did not envisage any of the research in this book. We started out to study the way in which young deaf children acquire the visual-gestural language of their deaf parents, in order to compare language learning in a visual mode with language learning in an auditory mode. We soon found, however, that very little was known of the structure of what was being acquired by these deaf children; and so we turned our attention to the study of the adult language as well. We are still engaged in a full-scale study of the language acquisition process in young deaf children—but that will form the basis for another book. The present book deals with the questions that we asked ourselves about this hitherto largely unknown communication system and the ways in which we attempted to determine its properties. We are now beginning to see how this language in a different modality may hold remarkably deep and unexpected clues to constraints on the possible form of language. But these issues are addressed in the chapters of the book; here we want to mention some of the problems that faced us when we began our studies.

## Chapter 8: Introduction to the law of contract

The Minors' Contracts Act 1986 which received the Royal Assent on 11 April 1987 implements the recommendations of the Law Commission contained in their 1984 Report. It will allow a minor on reaching 18 to ratify a contract or loan made when he or she was a minor. It will also make any guarantee supporting a loan to a minor enforceable against the adult guarantor (reversing *Coutts & Co v Browne-Lecky* (1946)). A court will be able to order the return of non-necessary goods (or the proceeds of their sale) acquired under a contract later repudiated by the minor.

## Chapter 11: Sale of goods

The High Court in *Bernstein v Pamsons Motors (Golders Green) Ltd* (1986) *The Times* October 25 considered how long a buyer may keep goods without prejudicing his right to reject them for a breach of condition under s.11 of the Sale of Goods Act 1979.

Mr Bernstein bought a new car from Pamsons in January 1985. After three weeks of use (and 142 miles on the clock) the engine seized up. The car was repaired under the warranty but Mr Bernstein refused to take the car back. Rougier J held that Pamsons were in breach of the implied conditions under s.14, but Mr Bernstein was deemed to have accepted the goods under s.35 and thereby had lost his right to treat the contract as repudiated and reject the car.

## Chapter 13: Manufacturer's liability

The *Consumer Safety (Amendment) Act* 1986, which came into force on 8 August 1986 strengthens the powers of customs officers and trading standards officers to deal with the problem of unsafe goods.

The *Consumer Protection Act* 1987 which received the Royal Assent on 15 May 1987 aims to remedy three areas of weakness in consumer protection law: product liability, safety of goods and misleading price indications.

(1) *Product liability*. Part 1 of the Bill implements the European Community's Directive on Product Liability. It will impose strict liability on manufacturers, importers (into the Community) and 'own-branders' in respect of products which are defective or unsafe. Liability is limited to death or personal

injury or loss or damage to property provided the damages would be more than £275. Unprocessed food is exempted and a 'development risks' defence has been included.

(2) *Safety of Goods*. It will be a criminal offence to supply consumer goods which are not reasonably safe having regard to all the circumstances.

(3) *Misleading prices*. Section 11 of the Trade Descriptions Act 1968 and the Price Marking (Bargain Offers) Order 1979 will be repealed and replaced by a new general criminal offence of giving a misleading price indication. The Act will not be brought into force immediately.

In conclusion Sarah Riches extends her thanks to Teri Carrigan who typed her chapters and to her husband Brian McCaughey who was supportive throughout and provided helpful comments and criticisms.

In the preparation of the book the authors and their publishers have received the invaluable assistance of Mary Keenan in terms of the preparation and initial editing of the typescript and proofs, together with the index of statutes and of cases.

Our thanks go also to those at Pitmans who were closely involved, in particular David Carpenter, the Managing Editor, who was with us from the beginning, and more recently Simon Lake, Business Management Publisher and, of course, the printers for their assistance in processing a rather complex typescript and the proofs. For the errors and omissions we are, of course, solely responsible.

June 1987

Denis Keenan  
Sarah Riches

## ACKNOWLEDGMENTS

This book is an extension of the article published in the volume that I edited with Stacy Alaimo (*Material Feminisms*, Indiana University Press, 2008). I owe an immense debt to Stacy for introducing me to this literature and, in effect, opening up a whole new world. The intellectual and personal interaction between us on this project was truly extraordinary. Both professionally and personally, Stacy has given me an invaluable gift.

During the writing of this book my husband of twenty-five years, Evan (Buzz) Anders, died. Although he never got to see the end result, this book is his in a profound sense. For the years we were together, he inspired and encouraged me in every way imaginable. I miss him deeply.

Stacy Alaimo and Timothy Luke read and commented on an earlier draft of the manuscript. Many thanks to them for helping me improve it. And, finally, thanks go to my equine companions, Justin and Pepper, who gave me love and laughs when I needed it most.

**x** Index of Statutes

- Magistrates Courts Act 1980 27  
Mental Health Act 1983 72, 143, 171  
Mines and Quarries Act 1954 301  
Misrepresentation Act 1967 105, 173, 196, 197, 207  
Murder (Abolition of the Death Penalty) Act 1965 14
- Occupiers' Liability Act 1957 204, 256, 257  
Occupiers' Liability Act 1984 257  
Offices, Shops, and Railway Premises Act 1964 296,  
298, 299
- Partnership Act 1890 55, 56, 58, 59, 61, 63–74, 77,  
80, 83  
Patents Act 1977 258  
Public Trustee Act 1906 42
- Race Relations Act 1976 59, 300, 311, 313  
Registered Designs Act 1949 258  
Rehabilitation of Offenders Act 1974 284  
Resale Prices Act 1976 175, 176  
Restriction of Offensive Weapons Act 1959 16, 161  
Restriction of Offensive Weapons Act 1961 161  
Restrictive Trade Practices Act 1976 175, 176  
Restrictive Trade Practices Act 1977 175  
Road Traffic Act 1972 285  
Rolls-Royce (Purchase) Act 1971 40
- Sale of Goods Act 1893 159, 197, 200, 206, 209  
Sale of Goods Act 1979 15, 159, 170, 171, 179, 181,  
186, 187, 197, 200, 206, 209, 210, 211–220, 221, 222,  
224, 226, 237  
Servants' Characters Act 1792 284  
Sex Discrimination Act 1975 12, 59, 280, 300, 301,  
303, 311, 313  
Sex Discrimination Act 1986 300, 301, 305  
Social Security Act 1985 275  
Social Security Act 1986 278  
Social Security and Housing Benefit Act 1982 275  
Social Security Pensions Act 1975 275  
Supply of Goods and Services Act 1982 14, 187, 190,  
200, 221, 222, 223  
Supply of Goods (Implied Terms) Act 1973 200, 206,  
207  
Supreme Court Act 1981 126
- Torts (Interference with Goods) Act 1977 8  
Trade Descriptions Act 1968 4, 161, 197  
Trade Descriptions Act 1972 197  
Trade Marks Act 1938 259  
Trade Marks (Amendment) Act 1984 259  
Trade Union and Labour Relations Act 1974 168, 318  
Transport Act 1962 204  
Truck Acts 1831–1940 280
- Unfair Contract Terms Act 1977 192, 201, 204, 205,  
206, 207, 223, 226, 257, 289  
Unsolicited Goods and Services Act 1971 164
- Wages Act 1986 280  
Wildlife and Countryside Act 1981 41

---

# Index of cases

---

- Airey *v* Borham (1861) 69  
Alidair *v* Taylor (1977) 306  
Aluminium Industrie Vaassen BV *v* Romalpa Aluminium Ltd (1976) 214  
Ashbury Railway Carriage & Iron Co *v* Riche (1875) 95, 96, 111
- Baker *v* James Bros and Sons Ltd (1921) 290  
Baldry *v* Marshall (1925) 203  
Barcabe *v* Edwards (1983) 245  
Baring *v* Dix (1786) 73  
Barnes *v* Youngs (1898) 70  
Bartlett *v* Sidney Marcus Ltd (1965) 211  
Beach *v* Reed Corrugated Cases Ltd (1965) 318  
Beale *v* Taylor (1967) 210  
Bell Houses Ltd *v* City Wall Properties Ltd (1966) 95, 96  
Bentley *v* Craven (1853) 70  
Bernstein *v* Skyways and General Ltd (1977) 256  
Bettini *v* Gye (1876) 197  
Bevan *v* Webb (1901) 69  
Bissett *v* Wilkinson (1927) 173  
Blissett *v* Daniel (1853) 70  
Bohun-Mitchell *v* Council of Legal Education (1978) 302  
Bollinger *v* Costa Brava Wine Co Ltd (1959) 260  
Bolton *v* Mahadeva (1972) 176  
Bourne, *re* (1906) 74  
Boyчук *v* H J Symonds (Holdings) Ltd (1977) 306  
Brace *v* Calder (1895) 181, 315, 318  
Britt *v* Galmoye & Nevill (1928) 286  
Brown *v* British Abrasive Wheel Co Ltd (1919) 99, 112  
Bushwall Properties Ltd *v* Vortex Properties Ltd (1976) 195  
Butler Machine Tool Co *v* Ex-Cell-O Corp (England) (1979) 163
- Cakebread *v* Hopping Brothers (Whetstone) Ltd (1947) 291  
Campbell *v* Paddington Borough Council (1911) 289  
Candler *v* Crane, Christmas & Co (1951) 230, 231, 232
- Capital Finance Co Ltd *v* Bray (1964) 246  
Capper Pass *v* Lawton (1976) 281  
Carlill *v* Carbolic Smoke Ball Co (1893) 161, 164, 168, 225, 226  
Carrington Viyella, *re* (1983) 114  
Carroll *v* Bird (1800) 284  
Casey's Patents, Stewart *v* Casey (1892) 165  
Cavendish-Woodhouse Ltd *v* Manley (1984) 210  
Cehave NV *v* Bremer Handelsgesellschaft mbH (*The Hansa Nord*) (1975) 198  
Cellulose Acetate Silk Co Ltd *v* Widnes Foundry Ltd (1933) 180  
Central London Property Trust Ltd *v* High Trees House Ltd (1947) 7, 167  
Century Insurance Co *v* Northern Ireland Road Transport Board (1942) 287  
Chapelton *v* Barry UDC (1940) 201  
Chappell & Co Ltd *v* Nestlé Co Ltd (1959) 166  
Charter *v* Sullivan (1957) 218  
Cheesman *v* Price (1865) 73  
Chida Mines Ltd *v* Anderson (1905) 123  
Churton *v* Douglas (1859) 74  
City Equitable Fire Insurance, *re* (1925) 120  
Clay Cross (Quarry Services) Ltd *v* Fletcher (1979) 282  
Cleadon Trust Ltd, *re* (1939) 123  
Clifton *v* Palumbo (1944) 162  
Close *v* Steel Company of Wales Ltd (1961) 297  
Coleman *v* Skyrail Oceanic Ltd (1981) 301  
Coles *v* White City (Manchester) Greyhound Association Ltd (1929) 105  
Collier *v* Sunday Referee (1940) 282  
Collins *v* Godefroy (1831) 166  
A Company, *re* (1983) 114  
Cook *v* Broderip (1968) 257  
Cook *v* Deeks (1916) 113  
Cope *v* Rowlands (1836) 175  
Cotman *v* Brougham (1918) 95, 96, 119  
Coutts & Co *v* Browne-Lecky (1946) 171  
Couturier *v* Hastie (1856) 172, 177  
Cowern *v* Nield (1912) 170  
Cox *v* Coulson (1916) 56  
Cox *v* Hickman (1860) 57



- Croft v Day* (1843) 60  
*Cundy v Lindsay* (1878) 172, 215  
*Curtis v Chemical Cleaning and Dyeing Co* (1951) 201  
*Cutler v United Dairies (London) Ltd* (1923) 289  
*Cutter v Powell* (1795) 176, 177  
*Cyclists Touring Club, re* (1901) 96, 97
- D & C Builders Ltd v Rees* (1965) 167  
*Daimler Co Ltd v Continental Tyre and Rubber Co Ltd* (1916) 123  
*Daniels v Daniels* (1978) 113  
*Davies v R Bolton & Co* (1894) 122  
*Davis v Davis* (1894) 66  
*De Beers Abrasive Products Ltd v International General Electric Co of New York Ltd* (1975) 260  
*D'Eyncourt v Gregory* (1866) 253  
*Deyong v Shenburn* (1946) 282  
*Dickinson v Dodds* (1876) 162, 163  
*Donoghue v Stevenson* (1932) 226, 227, 228, 230  
*Dorchester Finance v Stebbing* (1977) 120  
*Dorman Long (Steel) v Bell* (1964) 298  
*Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* (1915) 180
- Eastern Distributors v Goldring* (1957) 214  
*Ebrahimi v Westbourne Galleries* (1972) 69, 114  
*Edwards v West Herts Group Hospital Management Committee* (1957) 283  
*Eley v The Positive Government Security Life Assurance Co Ltd* (1876) 98  
*Elphick v Barnes* (1880) 213  
*Essell v Hayward* (1860) 72  
*Eso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* (1967) 175, 266  
*Eso Petroleum Co Ltd v Mardon* (1976) 8  
*Evans (J) & Sons (Portsmouth) Ltd v Andrea Merzario Ltd* (1976) 203
- Famatina Development Corporation Ltd, re* (1974) 283  
*Felthouse v Bindley* (1862) 163, 164  
*Fibrosa Case* (1943) 178  
*Fisher v Bell* (1961) 16  
*Foakes v Beer* (1884) 167  
*Foley v Classique Coaches Ltd* (1934) 195  
*Ford Motor Co v Armstrong* (1915) 180  
*Forster & Sons Ltd v Suggett* (1918) 285  
*Foss v Harbottle* (1843) 111, 112, 115  
*Foster v Charles* (1830) 284  
*Foster v Driscoll* (1929) 174  
*Freeman & Lockyer v Buckhurst Park Properties Ltd* (1964) 122  
*Fuller v Stephanie Bowman* (1977) 312
- Gardiner v Sevenoaks RDC* (1950) 16  
*Garner v Murray* (1904) 75  
*Garwood's Trusts, Garwood v Paynter, re* (1903) 68  
*German Date Coffee Co, re* (1882) 126  
*Gilford Motor Co Ltd v Horne* (1933) 41  
*Glasbrook Bros Ltd v Glamorgan CC* (1925) 166  
*Glasgow Corporation v Taylor* (1922) 257  
*Godley v Perry* (1960) 212, 224  
*Goldberg v Jenkins* (1889) 61  
*Grant v Australian Knitting Mills Ltd* (1936) 8, 211  
*Great Eastern Electric Co Ltd, re* (1941) 124  
*Greenaway v Greenaway* (1940) 70  
*Gregory v Ford* (1951) 285  
*Griffiths v Peter Conway Ltd* (1939) 211  
*Griffiths v Secretary of State for Social Services* (1973) 129, 316  
*Grist v Bailey* (1966) 172
- Hadley v Baxendale* (1854) 181  
*Handyside v Campbell* (1901) 73  
*Hare v Murphy Bros* (1974) 178, 310, 315  
*Harling v Eddy* (1951) 198  
*Harmer (H R), re* (1959) 114  
*Harrison v Tennant* (1856) 73  
*Hartley v Ponsonby* (1857) 166  
*Haughton v Olau Line (UK) Ltd* (1986) 301  
*Hayward v Cammell Laird Shipbuilders Ltd* (1986) 282  
*Healy v Howlett & Sons* (1917) 213  
*Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1963) 106, 231, 232, 284  
*Helby v Matthews* (1895) 236  
*Hendon v Adelman* (1973) 94  
*Heydon's Case* (1584) 16  
*Heyman v European Central Rail Co* (1868) 105  
*Hickman v Kent or Romney Marsh Sheepbreeders' Association* (1915) 98  
*Higgins v Beauchamp* (1914) 62  
*High Trees Case* (1947) 7, 167  
*Hillas & Co Ltd v Arcos Ltd* (1932) 196  
*Hochster v De la Tour* (1853) 179  
*Hoenig v Isaacs* (1952) 177  
*Hollier v Rambler Motors (AMC) Ltd* (1972) 202  
*Holling v Yorkshire Traction Co Ltd* (1948) 256  
*Holwell Securities Ltd v Hughes* (1973) 164  
*Home Office v Dorset Yacht Co Ltd* (1970) 8  
*Household Fire Insurance Co v Grant* (1879) 164  
*Hudgell Yeates & Co v Watson* (1978) 59, 72  
*Hutton v Warren* (1836) 199  
*Hyde v Wrench* (1840) 162, 163
- Industrial Development Consultants Ltd v Cooley* (1972) 119

- International Sales and Agencies *v* Marcus (1982) 96,  
 122  
 Irvine *v* Union Bank of Australia (1877) 122  
  
 James *v* Kent & Co Ltd (1950) 116  
 Jarvis *v* Swan's Tours (1973) 180  
 JEB Fasteners Ltd *v* Marks, Bloom & Co (1981) 232  
 Jennings *v* Baddeley (1856) 73  
 Johnson *v* Timber Tailors (Midlands) (1978) 301  
 Jones *v* Lloyd (1874) 71  
 Jowett (Angus) & Co *v* NUTWG (1985) 271  
 Junior Books Ltd *v* Veitchi Co Ltd (1982) 227, 228  
  
 Ketley (A) Ltd *v* Scott (1981) 245  
 Kreglinger *v* New Patagonia Meat & Cold Storage Co Ltd  
 (1914) 266  
 Krell *v* Henry (1903) 178  
  
 Lally and Weller *v* George Bird (1980) 207  
 Latimer *v* AEC Ltd (1953) 298  
 Law *v* Law (1905) 70  
 Leaf *v* International Galleries (1950) 171  
 Lee *v* Butler (1893) 236  
 Leesh River Tea Co *v* British India Steam Navigation Co  
 (1966) 288  
 Leigh *v* Taylor (1902) 253  
 L'Estrange *v* Graucob (1934) 201  
 Lewis *v* Averay (1971) 172, 215  
 Limpus *v* London General Omnibus Co (1862) 287  
 Lister *v* Romford Ice and Cold Storage Co Ltd  
 (1957) 120, 283  
 Lloyd *v* Grace, Smith & Co (1912) 288  
 London Pressed Hinge Co Ltd, *re* (1905) 126  
 London School of Electronics, *re* (1985) 114, 115  
 Lonergan, *ex parte* Sheil, *re* (1877) 58  
 Loscombe *v* Russell (1830) 73  
 Lovell and Christmas *v* Beauchamp (1894) 60  
 Lovell *v* Blundells and Crompton & Co Ltd (1944) 290  
  
 Macarthy's *v* Smith (1980) 20, 281  
 Mahoney *v* East Holyford Mining Co (1875) 122  
 Mair *v* Wood (1948) 63  
 Manley *v* Sartori (1927) 74  
 Maple Flock Co Ltd *v* Universal Furniture Products  
 (Wembley) Ltd (1933) 217  
 Massey *v* Crown Life Insurance Co (1978) 304  
 McArdle, *re* (1951) 165  
 Meikle *v* McPhail (Charleston Arms) (1983) 309, 314  
 Mercantile Credit Co Ltd *v* Garrod (1962) 61, 65  
 Merritt *v* Merritt (1969) 169  
 Mersey Docks and Harbour Board *v* Coggins & Griffiths  
 (Liverpool) Ltd (1946) 270  
 Miles *v* Clarke (1953) 66  
  
 Moorcock, *The* (1889) 199  
 Moore & Co and Landauer & Co, *re* (1921) 210  
 Morris *v* C W Martin & Son Ltd (1965) 288  
 Moss *v* Elphick (1910) 71  
  
 Nash *v* Inman (1908) 170  
 National Coal Board *v* Galley (1958) 318  
 Navy, Army and Airforce Institute *v* Varley (1977) 281  
 Newtons of Wembley Ltd *v* Williams (1964) 215, 216  
 New Zealand Shipping Co Ltd *v* A M Satterthwaite &  
 Co Ltd (1974) 202  
 Nicolene Ltd *v* Simmonds (1953) 196  
 Noakes and Co Ltd *v* Rice (1902) 266  
 North East Coast Ship Repairers *v* Secretary of State for  
 Employment (1978) 312  
  
 Olley *v* Marlborough Court Ltd (1949) 201  
  
 Panesar *v* Nestlé Co Ltd (1980) 302  
 Panorama Developments *v* Fidelis Furnishing Fabrics  
 (1971) 123  
 Paradine *v* Jane (1647) 177  
 Pavlides *v* Jensen (1956) 113  
 Pearce *v* Brooks (1866) 174  
 Pender *v* Lushington (1877) 98, 110, 112  
 Peyton *v* Mindham (1972) 71, 72  
 Phonogram Ltd *v* Lane (1981) 90  
 Photo Productions Ltd *v* Securicor Transport Ltd  
 (1980) 203, 204  
 Pilling *v* Pilling (1865) 65  
 Planché *v* Colburn (1831) 176  
 Post Office *v* Union of Post Office Workers (1974) 283  
 Potter *v* Jackson (1880) 74  
 Poulton *v* London & South Western Railway Co  
 (1867) 289  
 Poussard *v* Spiers (1876) 197  
 Pratt *v* Strick (1932) 57  
 Price *v* The Civil Service Commission (1977) 302  
 Printers & Finishers *v* Holloway (No 2) (1964) 285  
 Prudential Assurance Co Ltd *v* Newman Industries Ltd  
 (No 2) (1982) 120  
  
 Raffles *v* Wichelhaus (1864) 171  
 Ramsgate Victoria Hotel Co *v* Montefiore (1866) 163  
 Rand (Joseph) Ltd *v* Craig (1919) 287  
 Rayfield *v* Hands (1958) 98  
 Rayner *v* Mitchell (1877) 287  
 Reardon Smith Line *v* Yngvar Hanson-Tangen  
 (1976) 210  
 Reid *v* Commissioner of Police of the Metropolis  
 (1973) 215  
 Robb *v* Green (1895) 260, 285  
 Roberts *v* Gray (1913) 170

- Robinson *v* Graves (1935) 187  
 Roles *v* Nathan (1963) 257  
 Rolled Steel Products (Holdings) Ltd *v* British Steel Corporation (1985) 119  
 Romalpa case (1976) 214  
 Rondel *v* Worsley (1967) 231  
 Rose *v* Plenty (1976) 287  
 Rose and Frank Co *v* Crompton (J R) & Brothers Ltd (1925) 168  
 Ross *v* Caunters (1980) 231  
 Rowland *v* Divall (1923) 210  
 Royal British Bank *v* Turquand (1856) 121, 122  
  
 Saggars *v* British Railways Board (1977) 307, 309  
 Saif Ali *v* Sydney Mitchell & Co (1978) 231  
 Salomon *v* Salomon & Co (1897) 41  
 Scruttons Ltd *v* Midland Silicones Ltd (1962) 202  
 Shanklin Pier Ltd *v* Detel Products Ltd (1951) 225  
 Shipton, Anderson & Co Ltd *v* Weil Bros & Co Ltd (1912) 217  
 Sidebottom *v* Kershaw Lees & Co Ltd (1920) 99, 112  
 Sigsworth, *re* (1935) 16  
 Simpkins *v* Pays (1955) 168  
 Simpson *v* London and North Western Rail Co (1876) 181  
 Sisley *v* Britannia Security Systems (1983) 300  
 Smith *v* Baker & Sons (1891) 291  
 Smith *v* Chesterfield & District Co-operative Society Ltd (1953) 297  
 Smith *v* Mawhood (1895) 176  
 Snow *v* Milford (1898) 70, 73  
 Société Anonyme des Anciens Établissements Panhard et Lavassor *v* Levassor Motor Co Ltd (1901) 93  
 Southern Foundries Ltd *v* Shirlaw (1940) 99  
 Spicer (Keith) Ltd *v* Mansell (1970) 55, 56  
 Spurling, J *v* Bradshaw (1956) 202  
 State of Wyoming Syndicate, *re* (1901) 123  
 Steer *v* Durable Rubber Manufacturing Co Ltd (1958) 227  
 Stekel *v* Ellice (1973) 58, 59  
 Stennet *v* Hancock and Peters (1939) 227  
 Stevenson *v* McLean (1880) 162  
 Stevenson & Sons Ltd *v* AK für Cartonnagen Industrie (1918) 72  
 Stevenson, Jordan & Harrison Ltd *v* Macdonald & Evans Ltd (1952) 270  
 Stilk *v* Myrick (1809) 166  
 Stocks *v* Magna Merchants Ltd (1973) 318  
 Suisse case (1966) 203  
 Summers (John) & Sons Ltd *v* Frost (1955) 297  
  
 Tarling *v* Baxter (1827) 212  
 Taylor *v* Caldwell (1863) 177, 178  
 Taylor *v* Liverpool Corporation (1939) 256  
 Thomas *v* Thomas (1842) 166  
 Thompson (W L) Ltd *v* Robinson (Gunmakers) Ltd (1955) 218  
 Tower Cabinet *v* Ingram (1949) 59, 65  
 Trego *v* Hunt (1896) 74  
 Tsakiroglou & Co Ltd *v* Noble and Thorl GmbH (1961) 178  
 Turquand's case (1856) 121, 122  
 Tweddle *v* Atkinson (1861) 166  
  
 Victoria Laundry (Windsor) Ltd *v* Newman Industries Ltd (1949) 181  
  
 Wakeham *v* Mackenzie (1968) 169  
 Waldron-Kelly *v* British Railways Board (1981) 207  
 Warner Brothers *v* Nelson (1936) 318  
 Waterer *v* Waterer (1873) 66  
 Wheatley *v* Smithers (1906) 62  
 White *v* John Warwick & Co Ltd (1953) 203  
 Whitmore *v* Mason (1861) 72  
 Whitwell *v* Arthur (1865) 72  
 Williams *v* Compair Maxam (1982) 309, 313  
 Wilsons and Clyde Coal Co *v* English (1938) 290  
 Winsor *v* Schroeder (1979) 71  
 Woodworth *v* Conroy (1976) 264  
  
 Yates Building Co Ltd *v* R J Pulleyn & Sons (York) Ltd (1975) 164  
 Yenidje Tobacco Co Ltd, *re* (1916) 73  
 Yianni *v* Edwin Evans & Sons (1981) 232



# 現代家庭

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## 目錄

4

偷得浮生半日閒，  
也應歇歇  
胡天蘭

27

黃石坡下斜陽道  
木屋翠圍好人家  
胡天蘭

54

人生得意須盡歡，  
莫使金樽空對月  
胡天蘭

9

平實之中見真章  
一一體貼細心·盡人如人意  
丘慧薇

31

風格的建立  
周菊

60

臨床·設計·X光  
本刊

14

傢俱車廂①  
班馬家飾提供

36

設計與創意  
本刊

65

興安國宅之抽樣設計  
加特設計

17

秀外慧中進而表裡如一  
胡天蘭

40

理想的餐廳設計  
口的滿足·心的寄託  
專題

70

自己動手做  
重新糊裝  
本刊

21

知性  
與感性間的張力平衡  
丘慧薇

50

登峯造極，無遠弗界  
希爾頓酒店  
胡天蘭

73

餐桌椅介紹  
本刊

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出版者：現代家庭出版社 香港

發行者：陳賀記 香港上環

承印者：啓德印刷廠 香港柴灣安業街八號

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~四五五五〇三

~五七一〇二八

2.60



## TABLE OF CONTENTS (continued)

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
1.4.1	Program 1	1-19
1.4.2	Program 2	1-20
1.4.3	Program 3	1-20
1.4.4	Program 4	1-21
1.5	Customer Furnished Data	1-21
1.5.1	Program 1	1-21
1.5.2	Program 2	1-22
1.5.3	Program 3	1-22
1.5.4	Program 4	1-23
1.6	Furnished Support Software	1-23
1.7	Local and Remote Data Processing	1-24
1.8	Delivered Items	1-25
1.9	Major Contract Milestones Schedule	1-27
1.10	Manpower Schedules	1-27
1.11	Program Personnel	1-27
Section 2	Top Down Program Development (Task 2.1)	2-1
2.0	INTRODUCTION	2-1
2.1	Methodology for Top Down Program Development	2-2
2.2	Program 3 and 4 Top Down Development	2-5
2.3	Top Down Development Techniques	2-10
2.3.1	Executive Program Constraints	2-12
2.3.2	Program Language Elements	2-14
2.3.3	Top Down Documentation	2-15
2.3.4	Top Down Rules	2-21
2.3.5	Top Down Production	2-22
2.3.6	Top Down Testing	2-25
2.4	Summary	2-27
2.5	Conclusion	2-28

**17 Securities for business resources 262**

Generally · Charges · Guarantees · Liens ·  
Pledge · Mortgages · Mortgages of personal  
property · Mortgages of choses in action ·  
Questions/activities

**18 Employing labour 269**

Employer and employee · Independent  
contractors – self-employment · The contract

of employment · Rights and duties of the  
parties to the contract · Example of a written  
statement · Health and safety at  
work · Discrimination on grounds of sex,  
marital status or race · Termination of the  
contract of employment · Rights and remedies  
on dismissal · Questions/activities

**Index 320**

**Major Stages of Economic Growth**  
**Basic Economic Processes**  
**Industrial Enterprise**  
**Controls in a Mixed Economy**  
**Trends**

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## AMERICAN INDUSTRY



From its very beginning the United States has been engaged in a continuous social, technological, and scientific revolution. It has moved from water power to steam to electric to nuclear power; from handicraft to mechanical to automated mass production; through mineral, chemical, metallurgical, and electronic revolutions; and the effects have spread over land, under the seas, in the air, and to the outer spaces of the world. Despite the technological gains of other industrial nations, especially the U.S.S.R. and Japan, the United States still stands foremost in the volume of production, in the general application of science and technology to production, and in the wide distribution of goods and services among its people, whose material standard of living is the highest in the world.<sup>1</sup> How and why has this come about? What factors and influences shaped the American economy? How is the American economy organized and controlled? Where do we stand today, and what trends are indicated for the future?

### MAJOR STAGES OF ECONOMIC GROWTH

The American economy passed through several major stages in its development from the early colonial settlements of the seventeenth century to current times.

<sup>1</sup> The year 1960 saw the gross national product of goods and services pass the half-trillion-dollar mark, and the year 1970 saw that total almost double to approach the trillion-dollar-a-year level. In 1969 the GNP was \$932 billion, an increase of \$67 billion over the previous year. This rate of increase of about 7.8 per cent was marred by a 4.8 per cent increase in the price level, which reduced the real growth to 3 per cent. Over the last fifty years the average rate of growth has approximated 3 per cent, sometimes higher, sometimes lower, depending upon events and conditions.

**Oxford University Press**  
Walton Street, Oxford OX2 6DP

London Glasgow New York Toronto  
Delhi Bombay Calcutta Madras Karachi  
Kuala Lumpur Singapore Hong Kong Tokyo  
Nairobi Dar es Salaam Cape Town  
Melbourne Auckland

and associate companies in  
Beirut Berlin Ibadan Mexico City

ISBN 0 19 431633 5

Material reprinted from *Teacher Talk*, © Glyn S. Hughes  
and Kustannusosakeyhtiö Otava, Helsinki 1978.  
Typography, adaptation and additions © Oxford University  
Press 1981.

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Oxford University Press.

Printed in Great Britain  
at the University Press, Oxford  
by Eric Buckley  
Printer to the University



# The nature of law

The law affects every aspect of our lives; it governs our conduct from the cradle to the grave and its influence even extends from before our birth to after our death. We live in a society which has developed a complex body of rules to control the activities of its members. There are laws which govern working conditions (e.g. by laying down minimum standards of health and safety), laws which regulate leisure pursuits (e.g. by banning the sale of alcohol at football matches), and laws which control personal relationships (e.g. by prohibiting marriage between close relatives).

In this book we are concerned with one specific area of law: the rules which affect the business world. We shall consider such matters as the requirements that must be observed to start a business venture, the rights and duties which arise from business transactions and the consequences of business failure. In order to understand the legal implications of business activities, it is first necessary to examine some basic features of our English legal system. It is important to remember that English law refers to the law as it applies to England and Wales. Scotland and Northern Ireland have their own distinct legal systems.

## Classification of law

There are a number of ways in which the law may be classified; the most important are as follows –

(1) *Public and private law*. The distinction between public and private law is illustrated in Fig. 1.1.

(a) *Public law*. Public law is concerned with the relationship between the State and its citizens. This comprises several specialist areas such as –

(i) *Constitutional law*. Constitutional law is concerned with the workings of the British constitution. It covers such matters as the position of the Crown, the composition and procedures of Parliament, the functioning of central and local government, citizenship and the civil liberties of individual citizens.

(ii) *Administrative law*. There has been a dramatic increase in the activities of government during the last hundred years. Schemes have been introduced to help ensure a minimum standard of living for everybody. Government agencies are involved,

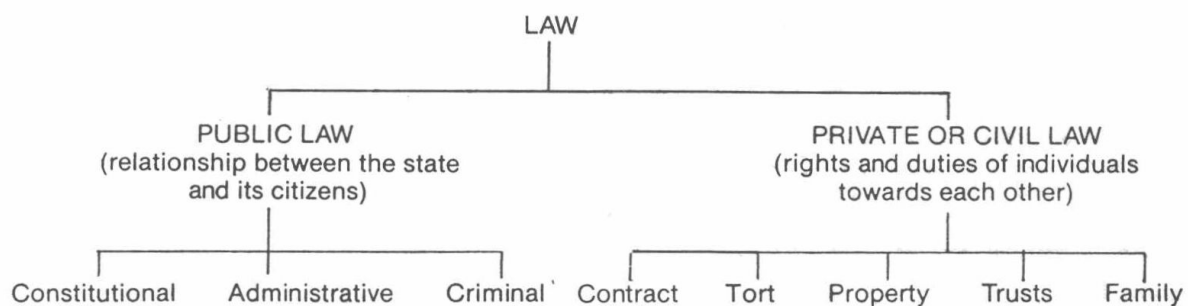


Fig. 1.1 The distinction between public and private law.