

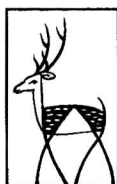
An Introduction To
The Law On Financial Investment

Iain G MacNeil

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AN INTRODUCTION TO THE LAW ON FINANCIAL INVESTMENT

This book provides a wide-ranging overview of the law and regulatory rules applicable to investment in financial instruments.

Part 1 introduces the reader to the basic principles and structure of the law relating to financial investment. It explains the legal nature of financial instruments, the rationale for regulation and the history and development of the system of regulation in the United Kingdom. It includes an analysis of the main principles and regulatory techniques introduced by the Financial Services and Markets Act 2000. Part 2 examines investments and investors. It explains the legal nature and structure of the main forms of financial investment and examines the legal principles and regulatory rules that are relevant to institutional investment and private investors. Part 3 deals with finance and governance. In essence this part aims to explain the legal mechanisms through which investors supply money to companies seeking investment and the governance techniques that have been developed to allow investors to monitor investments and hold company directors accountable for their actions. Part 4 discusses how markets and market participants operate and are regulated. It examines the nature of financial markets, their regulation and the legal rules that promote 'clean' markets. There is also discussion of the role and regulation of the different types of participants who deal in the markets.

PREFACE

The law relating to financial investment comprises many strands drawn from different branches of the law. Some parts are drawn from basic common law principles that would be recognisable to a medieval merchant if he were to experience transmutation into the modern world. Other parts are linked with features of modern markets that would be barely recognisable to a market practitioner from one generation past. Taken together, the different strands present a complex picture of the nature of investment and the process of investing. Definition of the nature of investment is complicated by the presence of a diverse range of investments with fundamental differences in the legal obligations of issuer and investor; and a clear view of the principles of the law relating to the process of investment is obscured by the presence of different markets with their own history and mode of operation and the differing emphasis placed on investor protection and freedom of contract in different circumstances and transactions.

In the past, the law relating to financial investment could have been regarded as comprising mainly private law as contract and trust were the two main pillars of the legal framework that enabled the creation of 'investments'. Both contract and trust remain central to the creation of 'investments' and the process of investing in the modern world, but the growth of regulation during the twentieth century has led it to become the third pillar of the legal framework of investment. Regulation has become an important influence not just for the process of investing, with which it is most commonly associated, but also for the nature of investments and the rights of investors. Underlying the structure and approach of this book is a belief that a rounded view of the law relating to financial investment requires an understanding of the role, function and interplay of each of these three pillars.

As the title of the book suggests, its purpose is to provide an introduction to the legal principles and regulatory rules that are relevant to financial investment. The structure and approach are intended to define and provide an analytical framework for the core legal issues that arise in relation to financial investment. The book is intended to provide a general overview of the law in this field rather than a detailed treatment of all the issues. The reader who requires more will hopefully find that further detail is readily available from

the many valuable research sources on which I relied in writing the book. It follows, of course, that the book is not intended to provide legal or investment advice in respect of particular transactions or circumstances, in respect of which specific advice should always be sought.

Iain MacNeil
Glasgow
2 November 2004

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This book is the result of many years of observation and analysis of the law relating to financial markets, from both an academic and practical perspective. I am grateful to the many people who have assisted, perhaps unwittingly, the development of my understanding and ideas over the years. In particular I should thank Michael Hesketh, my mentor during my early career in the financial markets of the City of London; Angelo Forte and Roderick Paisley at Aberdeen University, who encouraged my endeavours in this field; my colleagues in Glasgow, Fraser Davidson, Jenny Hamilton and Gillian Black, who read and commented on drafts; Richard Hart, for his enthusiastic uptake of my proposal; and last, but not least, my wife Alison and children Roddy and Pippa for their enduring support.

TABLE OF CASES

AUSTRALIA

<i>Graham Australia Pty Ltd v Corporate West Management Pty Ltd</i> (1990) 1 ACSR 682	118
--	-----

EUROPEAN COURT OF HUMAN RIGHTS

<i>Osman v United Kingdom</i> (2000) 29 EHRR 245	59
--	----

EUROPEAN COURT OF JUSTICE

<i>Commission v Germany</i> (Case 205/84) [1986] ECR 3755.....	46
--	----

UNITED KINGDOM

<i>Aberdeen Railway Company v Blaikie Bros</i> (1854) 1 MacQueen 461 (HL).....	21
<i>Allen v Gold Reefs of West Africa Ltd</i> [1900] 1 Ch 656	260
<i>Archer v Brown</i> [1985] QB 401	330
<i>Armagas Ltd v Mundogas (The Ocean Frost)</i> [1986] AC 717	187
<i>Armitage v Nurse</i> [1998] Ch 241	151
<i>Bankers Trust International plc v PT Dharmala Sakti Sejahtera</i> [1994] CLC 481	317, 329, 331–2
<i>Bartlett v Barclays Bank Trust Co Ltd</i> [1980] 1 All ER 139	147
<i>Beswick v Beswick</i> [1968] AC 58.....	225
<i>Bettini v Gye</i> (1876) 1 QB 183.....	328
<i>Boardman v Phipps</i> [1967] 2 AC 67	333, 341
<i>Borland's Trustee v Steel Bros & Co Ltd</i> [1901] 1 Ch 279	95
<i>Bourgoin SA v Ministry of Agriculture, Fisheries and Food</i> [1985] 3 All ER 585	58
<i>Braithwaite, Re</i> (1852) 21 Ch 121	142
<i>Brightlife Ltd, Re</i> [1987] Ch 200.....	224

<i>Browne v Butter</i> (1857) 24 Beav 159, 53 ER 317	145
<i>Carruthers v Carruthers</i> (1896) 23 R (HL) 55	144
<i>Clayton's Case</i> , see <i>Devaynes v Noble</i>	
<i>Clemens v Clemens Bros Ltd</i> [1976] 2 All ER 268	26
<i>Cleveland Trust plc, Re</i> [1991] BCLC 424	241
<i>Commissioners of Inland Revenue v Crossman</i> [1937] AC 26.....	95
<i>Cowan v Scargill</i> [1984] 2 All ER 750.....	138, 148, 150, 159
<i>Davis v Radcliffe</i> [1990] 2 All ER 536	58
<i>Devaynes v Noble</i> (1816) 1 Mer 572, 35 ER 767	319
<i>Emmanuel v DBS Management plc</i> [1999] Lloyd's Rep PN 593	170
<i>Equitable Life v Hyman</i> [2000] 2 All ER 331; [2002] 1AC 408 (HL).....	127, 159
<i>Foley v Hill</i> (1848) 2 HL Cas 28	27, 94
<i>Forsyth Oil and Gas NL v Livia Pty Ltd</i> [1985] BCLC 378.....	104
<i>Gorham v British Telecommunications plc</i> [2000] 1 WLR 2129	189–190, 200, 332
<i>Greenhalgh v Arderne Cinemas</i> [1950] 2 All ER 1120	261
<i>Harries v The Church Commissioners for England</i> [1992] 1 WLR 1241	150
<i>Harrods Ltd v Lemon</i> [1931] 2 KB 157	341
<i>Hay v Binny</i> (1861) 23 D 594	144
<i>Hazell v Hammersmith & Fulham LBC</i> [1991] 1 All ER 545.....	109
<i>Hedley Byrne & Co Ltd v Heller & Partners</i> [1964] AC 465	22, 330, 334
<i>Houldsworth v City of Glasgow Bank</i> (1880) 5 App Cas 317.....	330
<i>Jarvis v Moy, Davies, Smith, Vandervelt & Co</i> [1936] 1 KB 399	334
<i>Kelly v Cooper</i> [1993] AC 205.....	181, 332, 337
<i>Knox v Mackinnon</i> (1888) 13 AC 753	151
<i>Landau, Re</i> [1988] Ch 223.....	134
<i>Learoyd v Whiteley</i> (1887) 12 App Cas 727	147
<i>Levy v Abercorris Slate and Slab Co</i> (1887) 37 Ch D 260	102
<i>Loosemore v Financial Concepts</i> [2001] 1 Lloyd's Rep PN 235	172
<i>Lowry v Consolidated African Selection Trust Ltd</i> [1940] AC 648.....	218
<i>Mackie v HMA</i> 1994 SCCR 277	301
<i>Manners v Whitehead</i> (1898) 1 Fraser (Court of Session Reports) 171.....	330

<i>Martin v Britannia Life Ltd</i> [2000] Lloyd's Rep PN 412	187
<i>Martin v City of Edinburgh District Council</i> 1988 SLT 329	150
<i>Melton Medes Ltd v SIB</i> [1995] 3 All ER 880	58
<i>Mills v Brown's Trs</i> (1900) 2 F 1035	144
<i>Morgan Stanley UK Group v Puglisi Consentino</i> [1998] CLC 481	199
<i>Murdoch & Co Ltd v Greig</i> (1889) 16 R 396	328
<i>Mutual Life Insurance Co of New York v Rank Organisation Ltd</i> [1985] BCLC 11	218
<i>Nestlé v National Westminster Bank plc</i> , June 1988, (1996) 10 <i>Trust Law</i> <i>International</i> 112; [1993] 1 WLR 1260 (CA)	149
<i>Newbigging v Adam</i> (1886) 334 Ch 582	330
<i>Northwest Transportation Co v Beatty</i> [1877] 12 AC 589	260
<i>Norwich and Peterborough Building Society v The Financial Services</i> <i>Ombudsman Service</i> [2002] EWHC 2379	196
<i>Oakbank Oil Company Ltd v Crum</i> (1882) 8 App Cas 65 (HL)	242
<i>Ocean Frost</i> , <i>The case</i> , see <i>Armagas Ltd v Mundogas</i>	
<i>Ooregum Gold Mining Co of India Ltd v Roper</i> [1892] AC 125	218
<i>Peczenik's Settlement, Re, Cole and Another v Ingram and Others</i> [1964] 2 All ER 339	143
<i>Peek v Gurney</i> (1873) LR 6 HL 377	332
<i>Percival v Wright</i> [1902] 2 Ch 421	298
<i>Perkins, Re, ex p Mexican Santa Barbera Mining Co</i> [1890] QB 613	160
<i>Permanent Houses (Holdings) Ltd, Re</i> (1989) 5 BCC 151	224
<i>Possfund Custodian Trustee Ltd v Diamond and Others</i> [1996] 2 All ER 774	331–2
<i>Power, Re</i> [1947] Ch 572	142
<i>Precision Dippings Ltd v Precision Dippings Marketing Ltd</i> [1986] Ch 447	241
<i>Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)</i> [1981] Ch 257	262
<i>R v Investors Compensation Scheme Ltd, ex p Bowden</i> [1996] AC 261	203
<i>R v SFA ex p Fleurose</i> [2001] EWHC Admin 1085	302–3
<i>R v SIB ex p IFFA</i> [1995] 2 BCLC 76	59
<i>R v SIB ex p Sun Life Assurances plc</i> [1996] 2 BCLC 150	59
<i>Raes v Meek</i> (1889) 16 R (HL) 31	147, 151
<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22	157
<i>Sharp v Thomson</i> 1997 SLT 636	224

<i>Shuttleworth v Cox Brothers</i> [1927] 2 KB 9.....	261
<i>SIB v Pantell SA (No 2)</i> [1993] 1 All ER 134.....	200
<i>Smith & Fawcett Ltd, Re</i> [1942] Ch 304.....	99
<i>Stafford v Conti Commodity Services Ltd</i> [1981] 1 All ER 691, [1981] 1 Lloyd's Rep 466.....	334
<i>Stoddart v Union Trust Ltd</i> [1912] 1 KB 181	105
<i>Target Holdings v Redferns</i> [1996] 1 AC 421	148
<i>Three Rivers DC v Bank of England (No 3)</i> [2000] 2 WLR 1220	58–9
<i>Thundercrest Ltd, Re</i> [1995] BCLC 117	217
<i>Trevor v Whitworth</i> [1887] 12 AC 409	240, 243
<i>Wakley, Re, Wakley v Vachell</i> [1920] 2 Ch 205.....	242
<i>Westdeutsche Landesbank Girozentrale v Islington LBC</i> [1996] AC 669	332
<i>Wragg, Re</i> [1919] 2 Ch 58.....	142–3
<i>Yuen Kun Yeu v A-G of Hong Kong</i> [1987] 2 All ER 704 (PC)	58

UNITED STATES OF AMERICA

<i>Cady Roberts case</i>	299
<i>Chiarella case</i>	299
<i>O'Hagan case</i>	299
<i>Texas Gulf Sulphur case</i>	299
<i>Withers v Teachers' Retirement System of the City of New York</i> 447 F Supp 1248 (1978)	150

TABLE OF LEGISLATION

EUROPEAN UNION

European Community (EC) Treaty	45, 48, 60–61
Art 14(2)	45
Art 43.....	45
Art 49.....	45
Art 50.....	46
Art 56.....	45
Art 57(2)	45
Arts 81- 82.....	292
European Convention on Human Rights (ECHR)	58, 83, 195, 304
Art 6	83–85
(1)	59
(3)(c)	85
European Economic Community (EEC) Treaty 1958	45
Treaty on European Union (Maastricht Treaty)	45

Directives

Dir 77/91/EEC Second Company Law Directive [1977] OJ L26/1	215–16
Art 17(1)	215
Dir 77/780/EEC First Banking Directive [1977] OJ L386	
Dir 79/279/EEC Admissions Directive [1979] OJ L66/21	229
Dir 80/390/EEC Listing Particulars Directive [1980] OJ L100/1	229
Dir 85/611/EEC on the Co-ordination of Laws, Regulations and Administrative Provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS Directive) [1985] OJ L375/1	114, 118, 120

Dir 88/361 on the principle of free movement between the Member States [1988] OJ L178/5	45
Dir 88/627/EC on Major Shareholdings [1988] OJ L348/62.....	297
Dir 89/298/EC Public Offers Directive (POD) [1989] OJ L124/8	234, 237–8
Art 21.....	238
Dir 89/592/EC on insider dealing [1989] OJ L334/30.....	299–300
Preamble	299
Dir 93/6/EC Capital Adequacy Directive (CAD) [1993] OJ L141/1	48, 308, 326
Dir 93/22/EC Investment Services Directive (ISD) [1993] OJ L141/27.....	47–50, 171, 287, 294, 296, 326 Annex, Section A 326
Art 14(3)	48
Arts 20–21	296
Dir 94/19/EC Deposit Guarantee Directive [1994] OJ L135/5	201
Dir 97/7/EC Distance Selling Directive [1997] OJ L144/19	175
Dir 97/9/EC Investor Compensation Directive [1997] OJ L84/22.....	201
Dir 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems [1998] OJ L166/45	311
Arts 4–5	312
Art 10.....	312
Dir 2000/31/EC Electronic Commerce Directive [2000] OJ L178/1	61
Art 3(1)	61
Dir 2001/34/EC Consolidated Admissions and Reporting Directive (CARD) [2001] OJ L184/1	228–31, 237
Art 23(4)	237
Art 39.....	237
Art 40(2)	237
Dir 2001/108/EC Product Directive [2002] OJ L41/35	115
Dir 2002/47/EC on Financial Collateral Arrangements [2002] OJ L168/43	312
Dir 2002/65/EC Distance Marketing Directive [2002] OJ L271/16	69, 175
Dir 2002/83/EC Consolidated Life Assurance Directive [2002] OJ L345/1	184
Art 34.....	172

Dir 2002/92/EC Insurance Mediation Directive [2003] OJ L9/3	69
Art 2(3)	69
Preamble, para 19	69
Dir 2003/6/EC Market Abuse Directive (MAD) [2003]	
OJ L96/16	299, 305, 344
Art 6(5)	344
Preamble	299
Dir 2003/41/EC Occupational Pensions Directive [2003] OJ L235/10.....	159
Dir 2003/71/EC Prospectus Directive [2003] OJ L345/64.....	237
Dir 2003/124/EC on the Definition and Disclosure of Inside Information	
[2003] OJ L339/70	305
Dir 2003/125/EC on the Fair Presentation of Investment Recommendations	
[2003] OJ L339/73	305, 344
Dir 2004/25/EC on takeovers [2004] OJ L142/12.....	280
Art 9.....	281
Art 11.....	281
Dir 2004/39/EC Markets in Financial Instruments Directive (MiFID)	
[2004] OJ L145/1	42, 47–9, 325, 344
Art 18.....	344
Art 19.....	49
(10)	49
Art 21.....	325
Arts 32–33	49
Art 42(5)	49
Art 46.....	49
Dir 2004/109/EC Transparency Obligations Directive [2004] OJ L390	229

Regulations

Reg 4064/89/EC Merger Regulation [1990] OJ L257/14	279
Reg 1606/2002 [2002] OJ L243/1.....	44
Reg 2273/2003 on Exemptions for Buy-back Programmes and Stabilisation	
of Financial Instruments	305
Reg 139/2004/EC Merger Control Regulation [2004] OJ L24/1	279

INTERNATIONAL

IASC International Accounting Standards.....	44
--	----

United Kingdom

Act regulating trading in financial securities 1697	35
Bank of England Act 1998.....	41, 56
Banking Act 1987.....	34, 62, 72, 94
Bills of Exchange Act 1882	103
s 29.....	106
s 54.....	340
s 83.....	103, 106
s 89(1).....	106
Blank Bonds and Trusts Act 1696	319
Building Societies Act 1986	62
Sch 12, Pt II, para 4c.....	196
Companies Act 1844.....	35, 289
Companies Act 1862	
s 16.....	95
Companies Act 1980.....	298
Companies Act 1985	32, 57, 98, 105, 120, 210, 223, 228, 235, 241, 243, 253, 264, 275, 289
Pt VI	297
Pt VII	246, 312
Pt XI, Ch IV	210
Pt XIII A.....	235
s 1(3).....	211
s 2(5)(a).....	212
s 9.....	262
s 11.....	211
s 14.....	8, 23, 95
(1)	96
s 22.....	95, 98, 145
s 25.....	211
s 80.....	214, 216
(4)	213
s 80A.....	214

s 89.....	99, 215, 216
(1)	216
(4)	215
s 90.....	99, 215
s 91.....	99, 215–16
s 92.....	99, 215, 217
s 93.....	99, 215
s 94.....	99, 215
(2)	215
(5)	215
s 95.....	99, 215–16
(5)	216
s 96.....	215
s 100(2).....	217
s 111A.....	330
s 112(1).....	217
(3)	217
s 118.....	211
s 121.....	213
s 130(2).....	220
s 143.....	243
s 159(3).....	244, 246
s 160(3).....	246
s 162.....	243, 245
(3)	244
s 162A.....	66
s 164.....	244
s 165(1)–(2)	244
s 166.....	244
s 170(1).....	246
(4)	220, 246
ss 171–181	245
s 182(2).....	98
s 186.....	14, 98
s 192(1).....	102, 151
s 193.....	102
s 198.....	297
s 199(2A)	297
s 212.....	297
s 226.....	277
s 232.....	276
s 233.....	277

s 235.....	277
s 258.....	246
ss 263–264	241
s 266.....	113, 121
(2)–(2A)	121–122
s 270.....	241
s 277.....	241
s 280(2).....	220
s 282.....	270
s 303.....	274
(1)	252
s 309.....	255, 257
s 310.....	19
s 312.....	274
s 316(3).....	274
ss 318–319	273
ss 324–329	298
s 352.....	95, 98
s 359.....	217
s 360.....	14, 161, 260, 336
s 361.....	98
s 370(1)–(2)	160
(6)	96, 259
s 372.....	152
s 379A.....	214
s 395.....	223
s 410.....	223
s 425.....	247, 249–50
(2)	247
s 428(1).....	246
s 459.....	214, 262
s 463(1).....	224
s 735.....	120
s 736.....	246
s 737.....	213
s 744.....	95
Sch 6	276
Pt I	276
Sch 7A.....	276
Companies Act 1989.....	40, 311
Pt VII.....	310–11
s 155.....	310