ESSENTIALS OF BUSINESS LAW

SIXTH EDITION

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Essentials of **Business Law**

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Essentials of **Business Law**

Sixth Edition

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Preface

My aim in writing this text is to give a clear account of the areas of law which affect businesses. It differs from other texts in that it contains the following distinguishing features.

- Over 90 comprehensive diagrams.
- A detailed study skills section.
- An extensive glossary of terms used.

Before saying a little more about these distinguishing features, I would like to make it plain that they are not intended as alternatives to the main text. The main text could stand alone without these additional features. However, it is hoped that the additional features will reinforce the main text.

I have included over 90 figures, consisting mainly of flowcharts and tables. These figures have been developed from diagrams which I use when teaching. Having started with a few obvious diagrams, I found that my students were frequently asking whether a diagram could recap new material covered. I hope very much that the figures aid comprehension. They are not intended as a substitute for the written text, but to supplement it, either by giving an overview of a topic about to be covered or by recapping one already explained.

I have also included a fairly lengthy study skills section. This runs to several thousand words and concentrates mainly on two matters. First, it explains, in a legal context, the skills which students might be expected to show in their assessments. Then it shows how these skills can be put to use in answering a problem style of question. The problem question used to demonstrate this relates to offer and acceptance of a contract because this is a topic studied early on in most business law courses. For those readers whose course does not cover this topic, or whose course covers it later on, I would recommend reading the relevant pages on offer and acceptance before reading the material on study skills. I hope that the study skills section will help readers to achieve higher grades and also reveal how creatively and interestingly a problem question can be answered. Above all, I hope that the section will dispel the myth that law assessments are about learning vast amounts of law and then reproducing them.

The glossary explains the meaning of some 400 words or phrases. I hope that it will prove useful to readers and enable them quickly to discover the meaning of some of the legal words used in this text.

The opening chapter of this text deals with the legal system and the settlement of legal disputes. The part of this chapter which deals with the sources of English law should help readers to understand the substantive law covered in later chapters. Four chapters on the law of contract come next and these are followed by two chapters on closely related subjects, agency and sale of goods. Two chapters on tort come next. The first of these deals with the tort of negligence and with torts related to negligence. The next chapter deals with torts which are not related to negligence. The following three chapters examine closely the law relating to companies, partnerships and limited liability partnerships. Any business carried on by two or more people must trade in one of these three ways. Two chapters on employment

law come next. The first of these deals with the contract of employment and the rights of a dismissed employee. The second deals with discrimination and health and safety. The next chapter deals with trade descriptions and misleading price indications. The penultimate chapter deals with credit and types of business property, and the final chapter covers the resolution of business disputes.

This new edition deals fully and comprehensively with the Consumer Rights Act 2015.

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Study skills

Get organised from the start

When you start your course, decide how much time you can afford to devote to your study of each subject. Be realistic when doing this. There will be a lot to learn and that is why your time must be managed as effectively as possible. Listen to your lecturers, who will explain what is expected of you. Having made your decision to devote a certain amount of time per week to a particular subject, stick to what you have decided. If it will help, draw up a weekly chart and tick off each period of study when you complete it. You should attend all your lectures and tutorials, and should always read the pages of this text which are recommended by your lecturer. Steady work throughout the year is the key to success.

Take advantage of what your lecturer tells you

Many lecturers set and mark their students' assessments. Even if the assessment is externally set and marked, your lecturer is likely to have experience of past assessments and to know what the examiners are looking for. Take advantage of this. If you are told that something is not in your syllabus, don't waste time on it. If you are told that something is particularly important, make sure you know it well. If you are told to go away and read something up, make sure that you do so, and if you are told to read certain pages of this text, make sure that you read them. You may be told to read this text after you have been taught, so as to reinforce learning. Or you may be told to read it beforehand, so that you can apply what you have read in the classroom. Either way, it is essential that you do the reading.

After the lecture/tutorial

It is tempting to file your notes away until revision time, as soon as the class is over. You probably understood the ground that was covered and therefore assumed that it would easily be remembered later. However, it is an excellent idea to go over what was covered within 24 hours. This need not take too long. You should check that all the points were understood, and if any were not understood you should clear them up with the help of your notes and this text. Make more notes as you do this. Give these notes a separate heading, something like 'Follow up notes'. These additional notes should always indicate which aspects of the class seemed important. They should also condense your notes, to give you an overview of the lecture.

In many cases your lecturer will be setting your exam or coursework. If a particular area or topic is flagged up as important, it is more likely to be assessed than one which was not. Even if your assessment is externally set, your lecturer is likely to know which areas are the most important, and thus most likely to be tested. Fifteen minutes should be plenty to go over a one-hour class. Each 15 minutes spent doing this is likely to be worth far more time than an extra 15 minutes of later revision just before the exam.

Answering questions

What skills are you expected to show?

In 1956 Benjamin Bloom categorised the skills which students are likely to be required to display when being assessed. These skills are shown in the following figure. Each skill in the pyramid builds upon the one beneath it.

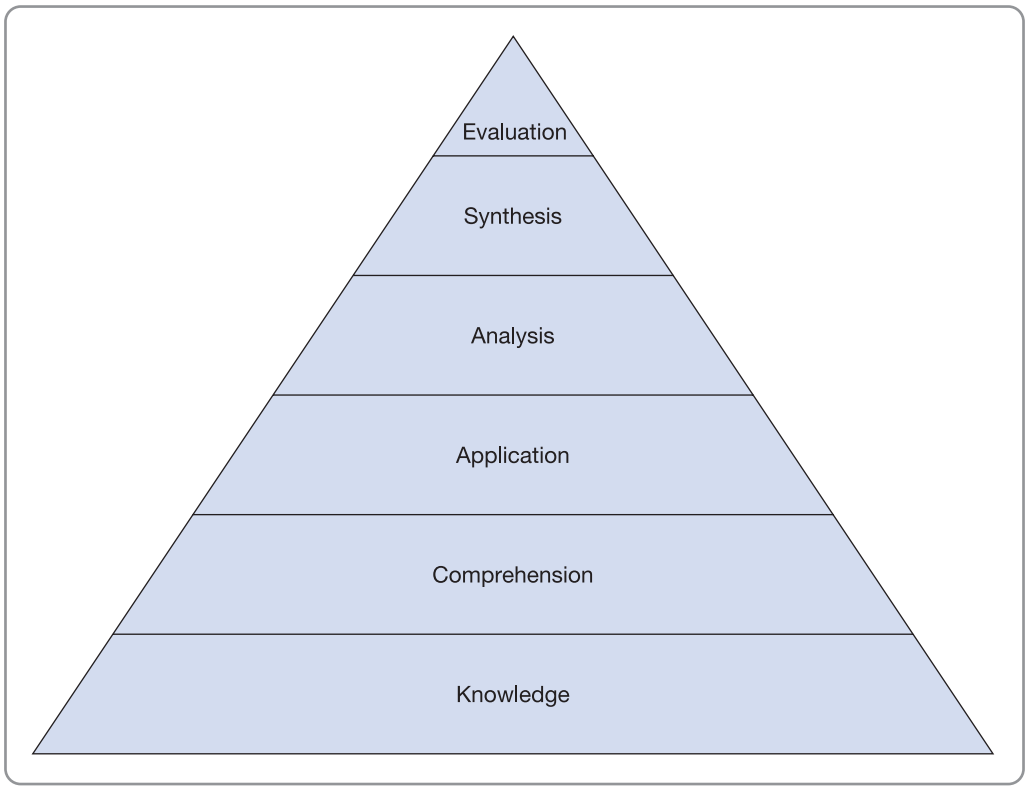

Figure 1 Study skills

Before deciding which skills you might be required to demonstrate, a brief explanation of the skills, in a legal context, needs to be made.

Knowledge, on its own, is not nearly as important as many students think. On the one hand, knowledge is essential because without knowledge none of the other skills are possible. But mere knowledge is unlikely to score highly in a traditional law assessment. Most assessments require comprehension, analysis and application. An exam question ***might*** require mere knowledge by asking something such as, '*List the terms implied by the Sale of Goods Act 1979*'. But not many assessments are so limited. Far more likely is a question such as, '*Describe the terms implied by the Sale of Goods Act 1979 and analyse the extent to which they adequately protect consumers*'. This is a very different question. It requires knowledge, of course, but it also requires the higher level skills. It is these later skills which gain the higher marks. In 'open book' exams especially, mere knowledge is likely to be worth very little.

Comprehension cannot be shown without knowledge. Some questions do require just knowledge and comprehension, for example, '*Explain the effect of the Contracts (Rights of*

Third Parties) Act 1999'. However, you should make sure that this is all the question requires. For example, if the question had said, '*Consider the extent to which the Contracts (Rights of Third Parties) Act 1999 has changed the law relating to privity of contract',* most of the marks would be gained for application, for showing how the Act would have changed the pre-Act cases such as **Tweddle *v* Atkinson (1831)** (Chapter 2).

Application of the law is very commonly required by a legal question. There is little point in knowing and understanding the law if you cannot apply it. The typical legal problem question, which sets out some facts and then asks you to advise the parties, always requires application of the law. It is not enough to show that you understand the relevant area of law, although some credit is likely to be given for this; you must then apply the law to advise the parties. These problem questions frequently also allow you to demonstrate analysis, synthesis and evaluation, as we shall see below when we consider how to answer such a question. However, this is not always true. When there is only one relevant case, and where it is obviously applicable, mere application of that case is all that is required.

Analysis of the law occurs when you recognise patterns and hidden meanings. You break the law down into component parts, differentiating and distinguishing ideas. For example, you might explain how one case (**Adams *v* Lindsell (1818)** in Chapter 2) introduced the postal rule on acceptance of contracts, and how another case (**Holwell Securities Ltd *v* Hughes (1974)**, Chapter 2) limited its application. Having made such an analysis of the law, you could apply it to a problem question.

Synthesis is the gathering of knowledge from several areas to generalise, predict and draw conclusions. Precisely the skill required to deal with the more complex problem questions!

Evaluation of the law requires you to compare ideas and make choices. It is a useful skill in answering problem questions. For example, in a problem question on offer and acceptance, you might need to evaluate the applicability of **Adams *v* Lindsell** and **Holwell Securities Ltd *v* Hughes**. Evaluation is often asked for in essays, for example, '*Consider the extent to which the Consumer Rights Act 2015 has improved the protection given to consumers who buy defective goods and services from traders. Do you consider consumers now to be adequately protected?*'. When you evaluate you are giving your own opinion, realising that there are no absolutely right and wrong answers. However, it is not pure opinion which is required. You must demonstrate the lower level skills described above in order to give some justification for your opinion.

So when you look at past assessments, try to work out which skills are required. Then make sure that you demonstrate these skills. Do not introduce the higher level skills if they are not expected of you in a particular question. For example, the very simple question '*List the terms implied by the Sale of Goods Act 1979*' is looking only for knowledge. No extra marks will be gained for evaluating the effectiveness of the terms. It must be said that such a question would be more suitable to a test than to an exam. The point here is that you should see what skills the question requires and then make sure that you demonstrate those skills.

Answering problem questions

Almost all law exams have some problem questions, such as the Practice Questions in this text. These questions require application of the law rather than mere reproduction of legal principles.

You should always make a plan before you answer a problem question. Read the question thoroughly a couple of times, perhaps underlining important words or phrases. Problem questions can be lengthy, but the examiner will have taken this into account and allowed

time for thorough reading of the question. So don't panic or read through too hurriedly. Next, see what the question asks you to do. (This is usually spelt out in the first or the last sentence of the question.) Then identify the legal issues which the question raises. Finally, apply the relevant cases to the issues and reach a conclusion.

Chapter 2 Practice Question 2, reproduced here, can be used as an example.

> Acme Supastore advertised its 'price promise' heavily in the Nottown Evening News. This promise stated that Acme was the cheapest retailer in the city of Nottown and that it would guarantee that this was true. The advertisement stated, 'We are so confident that we are the cheapest in the area that we guarantee that you cannot buy a television anywhere in Nottown cheaper than from us. We also guarantee that if you buy any television from us and give us notice in writing that you could have bought it cheaper at any other retailer within five miles of our Supastore on the same day we will refund twice the difference in price. Offer to remain open for the month of December. Any claim to be received in writing within five days of purchase.' Belinda saw the advertisement and was persuaded by it to buy a television from Acme Supastore for £299. The contract was made on Monday 3 December. On Saturday 8 December Belinda found that a neighbouring shop was selling an identical model of television for £289 and had been selling at this price for the past six months. Belinda immediately telephoned Acme Supastore to say that she was claiming her money back. She also posted a letter claiming her money back. The letter arrived on Monday 10 December. Acme Supastore are refusing to refund any of the purchase price. Advise Belinda as to whether or not any contract has been made.

The final sentence of the question tells you what you are required to do – advise Belinda as to whether or not a contract has been made. You should remember from your study of contract law that the requirements of a contract are an offer, an acceptance, an intention to create legal relations and consideration. So if these are all present a contract will exist. Notice that all the question asks you is whether or not a contract exists. It did not ask what remedies might be available if such a contract did exist and was breached. It might have done this, but it did not. So make sure you answer the question asked.

The first legal issue is whether the advertisement is an offer. So first define an offer as a proposal of a set of terms, made with the intention that both parties will be contractually bound if the proposed terms are accepted. Then you apply your legal knowledge in depth. The advertisement might be an invitation to treat. **Partridge *v* Crittenden (1968)** (see Chapter 2) established that most advertisements are not offers. If advertisements were classed as offers, problems with multiple acceptances and limited stock of goods would soon arise. The advertisement here, like the one in **Partridge *v* Crittenden**, uses the word 'offer'. However, this advertisement can be distinguished because it shows a much more definite willingness to be bound. Nor would possible multiple acceptances cause a problem here. There would be no need for Acme to hold unlimited stock. If many people accepted, Acme would need only to make multiple price refunds, which would probably be small. So the multiple acceptance issue would not indicate a lack of intention to make an offer.

You then compare the advertisement in the question to the one in Carlill *v* The Carbolic Smoke Ball Company (1893) (see Chapter 2), noting similarities and differences. (Analysis, evaluation and synthesis will be shown in a really good answer.) There is no need to reproduce all the facts of **Carlill's case**. You might point out that the advertisement in the question said that it was guaranteeing that what it said was true, and that this is similar to the Smoke Ball Company's advertisement, which said that money had been deposited in the bank to show that they meant what they said. You would explain that whether or not there is an intention to create legal relations is an objective test, and that in this commercial context it would be presumed that there was an intention unless there was evidence to suggest otherwise. Again, a comparison could be made with **Carlill's case**, where, as in the question, the advertisement was

made in a commercial context. You might explain that, as in **Carlill's case**, the advertisement set out what action was required to accept the offer and that acceptance could be made only by performing the requested act. In both the question and **Carlill's case**, a valid acceptance could not be made by merely promising to perform the requested act. It is a feature of unilateral offers that acceptance can be made only by performing the act requested.

Next, you would consider whether the offer had been accepted within the deadline, noting that the terms of the offer ruled out the acceptance by telephone. The letter would have been within the deadline only if the postal rule applied. The rule should be explained and analysed, along with the limitations put upon it by **Holwell Securities Ltd *v* Hughes** (see Chapter 2). An analysis of this case would probably lead you to conclude that the postal rule would not apply, particularly as the advertisement in the question said that the acceptance had to be received before the deadline. In **Holwell Securities Ltd *v* Hughes** the Court of Appeal refused to apply the postal rule because the offer said that the acceptance had to be received to be effective.

Finally, we would explain that there could have been consideration from both parties. Acme's consideration would have been their promise to give the refund. Belinda's consideration would have been performing the act requested. You might think it a waste of time to mention consideration. It would be a waste of time to consider it at length. However, consideration is a requirement of a contract and you were asked to advise whether or not a contract existed. If you were absolutely certain that there was no valid acceptance, it might be all right to say that there was therefore no need to consider consideration. However, whether or not the postal rule would apply is not a matter of certainty. You might be wrong to say that it would not apply. If this was the case, consideration would be a part of the answer. If you reach a conclusion before the end of a question, which makes further investigation of the question unnecessary, you should conduct that further investigation anyway. It is most unlikely that a question has been set where the first line gives the answer and the rest of the question is irrelevant. For example, you might have decided that Acme's advertisement was definitely an invitation to treat. If this were true, then there could have been no contract. (Belinda would have made an offer which was not accepted.) So if you did decide that the advertisement was an invitation to treat, by all means say so. However, you should then explain that it might possibly have been an offer and go on to consider the rest of the question.

You should reach a conclusion when answering a problem question. However, your conclusion might be that it is uncertain how the cases would apply and that therefore there might or might not be a valid contract. Do not be afraid of such an answer. Often it is the only correct answer. If lawyers were always certain as to how the law applied, cases would never go to court.

Take care not to be on Belinda's side just because you have been asked to advise her. Belinda wants an objective view of the law. A lawyer who tells his or her client what they want to hear does the client no favours at all. The client may well take the case to court, lose the case when the judge gives an impartial decision, and then be saddled with huge costs. If the news is bad for Belinda, as it probably is, then tell her so.

Try to practise past problem questions, but make sure that these are from your exam, and that there is no indication that future questions will be different. It can be very helpful to do this with a friend, or maybe a couple of friends, and to make a bit of a game of it. Find some old questions and give yourselves about 10 minutes to make a plan of your answer. Then go through the questions together, awarding points for applying relevant cases or for making good points. It is probably best to keep this light-hearted but perhaps to gently criticise each other (and yourself!) if you are missing things out.

Finally, a great technique is to get together a group of friends who all set a problem question for each other. First, you have to define the subject you are considering, perhaps

formation of a contract. Then go over all the past questions. Then each try and set a similar question, along with a 'marking plan' showing how you would allocate a set number of marks (maybe 20). In the marking plan make sure that you list the skills which should be shown, analysis, application etc. This will get you thinking like the examiner. It is hoped that it will show you that all of the questions have great similarities and that the same things tend to be important in most answers. Lecturers who set a lot of exams know that most questions on a particular topic are looking for the same issues, that the same cases tend to be important, and that it is very difficult to invent wholly original questions. By the time you have set each other questions in this way, the real exam questions should look a lot easier.

Using cases and statutes

Whenever you can, you should use cases and legislation as authority for statements of law. In the section above, on answering problem questions, we saw how **Carlill's case** might be used. Notice how different that use was from writing **Carlill's case** out at great length and then saying that the advertisement in the question is just the same and so **Carlill's case** will be applied. To do that not only wastes a lot of words but, worse, it also shows little application of the law. You have recognised that the case might apply, but you have not applied it convincingly. To apply the case well you will need to analyse it, and to evaluate arguments and ideas. As we have seen, these are the skills which score the highest marks.

If a Sale of Goods Act satisfactory quality question concerned a car sold by a taxi driver, you would want to apply Stevenson *v* Rogers (1999) (see Chapter 3). There would be no point in writing out all of the facts. You might say that **Stevenson *v* Rogers** established that, whenever a business sells anything, it does so in the course of a business for the purposes of s. 14(2) SGA. Better still, you might say that the taxi driver will have sold the car in the course of a business for the purposes of s. 14(2) SGA, because this is essentially the same as the fisherman in **Stevenson *v* Rogers** selling his boat. In each case what was sold was not what the business was in business to sell, but a business asset which allowed the business to be carried on.

As for sections of statutes, there is usually little point in reproducing them in full if you can briefly state their effect. They might be worth reproducing in full, however, if you are going to spend a lot of time analysing them. For example, if a large part of a question was concerned with whether or not a car was of satisfactory quality, you might reproduce the statutory definition of satisfactory quality in full, or at least fairly fully. You would do this only because you would then go on to analyse the various phrases in it, perhaps devoting a brief paragraph to each relevant phrase. Reproducing a statute is particularly likely to be a bad idea if you can take a statute book into the exam with you.

In this study skills section, I have concentrated on how to answer legal questions. I hope that this will be useful to you. I also hope that you enjoy the subject and enjoy reading this text. Above all, I hope that you appreciate that the study of law is not a dry matter of learning facts and reproducing them. Some learning is necessary, but the true fascination of the subject lies in the endlessly different ways in which legal principles might apply to any given situation.

Last, I wish you good luck with your assessments. In doing so, I would like to remind you of the famous reply of Gary Player, the champion golfer, when he was accused of winning tournaments because he was lucky. He admitted that he was lucky, but said that the more he practised the luckier he seemed to get. So practise your study skills, put in the work and make yourself lucky!

1

The legal system

Introduction

An English trial is a peculiar process. The achievement of justice is not the main aim of the lawyers or of the judge. The lawyers are adversaries, arguing with every means at their disposal to win the case for the client they represent. If they exchanged clients, they would argue the opposing case with equal enthusiasm. The judge is not an inquisitor searching for truth and justice. He is there to apply the law, regardless of whether or not this leads to the fairest outcome. His job is to obey the rules and see that everyone else does the same.

Despite its adversarial nature, the English legal system seems to achieve justice as effectively as any other. Indeed, English business law, the subject of this text, is one of the United Kingdom's invisible exports. When two foreign businesses make a contract with each other, perhaps a German company buys goods from a Japanese company, it is common for a term of the contract to state that, in the event of a dispute, English law should apply.

Most people have little idea of how a lawyer argues a case. It is commonly assumed that the strongest argument in a lawyer's armoury is that a decision in favour of his or her client would be the fairest outcome to the case. In English law this is far from true.

Once the facts of a civil case have been established (and in many cases they are not even in dispute), the lawyers will try to persuade the judge that he or she is bound to decide in favour of their client, whether this is fair or not. The judge is, of course, in a superior position to the lawyers, being in charge of the proceedings. What is often not realised, however, is that judges are bound by very definite legal rules and that it is their duty to apply these rules, no matter how much they might wish not to do so.

These legal rules might well be contained in a statute, an Act of Parliament. Alternatively, they might be found in the growing body of EU law. However, the heart of English law is the system of judicial precedent. As we shall see, the courts are arranged in a hierarchical structure and the system of precedent holds that judges in lower courts are bound to follow legal principles which were previously laid down in higher courts.

Most of the law examined in this text was made by judicial precedent rather than by statute. This is the case even though some of the areas of law have a strong statutory framework. Amongst other subjects, this text examines company law, partnership law and sale of goods law. The Companies Act 2006 provides the framework for company law, the Partnership Act 1890 for partnership law and the Sale of Goods Act 1979 for sale of goods law. These statutes are the basis of the law in the areas of law concerned. But, when studying company law, partnership law and sale of goods law, it is soon seen that the framework laid down by the various statutes is constantly refined by the process of judicial precedent. The higher-ranking courts make decisions as to how these statutes should be interpreted, and these decisions immediately become binding upon lower courts. In this way the law remains alive, constantly being refined and updated.

So, having seen that courts must follow legal rules, this chapter begins by considering where those rules are to be found.

Sources of law

Legislation

Legislation is the name given to law made by Parliament. It can either take the form of an Act of Parliament, such as the Sale of Goods Act 1979, or take the form of delegated legislation, such as the Unfair Terms in Consumer Contracts Regulations 1999. The difference lies in the way the legislation was created. To become a statute, a draft proposal of the legislation, known as a Bill, must pass through both Houses of Parliament and then gain the Royal Assent. Many Bills achieve this without significant alteration. Others have to be amended to gain parliamentary approval, and some Bills fail to become statutes at all. Once the Bill has received the Royal Assent, it becomes a statute which the courts must enforce.

Delegated legislation is passed in an abbreviated version of the procedure needed to pass a statute. Once delegated legislation has been passed, it ranks alongside a statute as a source of law which is superior to any precedent. The courts cannot declare a statute void, but they do have the power to declare delegated legislation void. However, this can be done only on the grounds that the delegated legislation tries to exercise powers greater than those conferred by the Act of Parliament which authorised the delegated legislation to be created.

Effect of legislation

A statute is the ultimate source of law. The theory of parliamentary sovereignty holds that the UK Parliament can pass any law which it wishes to pass and that no Parliament can bind later Parliaments in such a way as to limit their powers to legislate. In order to secure the UK's entry into what is now the European Union, Parliament had to pass the European Communities Act 1972. This statute accepted that in certain areas the United Kingdom had surrendered the right to legislate in a way which conflicted with European law. (European law is examined later in this chapter.) While the European Communities Act 1972 remains in force, Parliament is therefore no longer truly sovereign. However, parliamentary sovereignty is preserved, because the United Kingdom can leave the EU and repeal the ECA 1972, as the European Union (Withdrawal) Bill proposes.

Judges may not consider the validity of statutes, and they are compelled to apply them. In **British Railways Board *v* Pickin (1974)**, for example, a person whose land had been compulsorily purchased under the British Railways Act 1968 tried to argue that the statute was invalid, on the grounds that Parliament had been fraudulently misled into passing it. The House of Lords, now the Supreme Court, ruled that such an argument could not be raised in any court.

Furthermore, statutes remain in force indefinitely or until they are repealed. A statute loses none of its authority merely because it lies dormant for many years. In **R *v* Duncan (1944)**, for example, a defendant was convicted of fortune-telling under the Witchcraft Act 1735, even though the statute had long since fallen into disuse.

A judge, then, must apply a statute, and in the vast majority of cases he or she will find no difficulty in doing so. However, some statutes are ambiguous. When faced with an ambiguous statute a judge must decide which of the two or more possible interpretations to apply.

Rules of statutory interpretation

Literal rule of statutory interpretation

The literal rule of statutory interpretation says that words in a statute should be given their ordinary, literal meaning, no matter how absurd the result. An example of this rule can be seen in **IRC *v* Hinchy (1960)**, in which the House of Lords was considering the effect of the Income Tax Act 1952. Section 25 of the ITA stated that any tax avoider should pay a £20 fine and 'treble the tax which he ought to be charged under this Act'. Hinchy's lawyers argued that this meant a £20 fine and treble the amount of tax which had been avoided. Unfortunately for Hinchy, the House of Lords decided that the literal meaning of 'treble the tax which he ought to be charged under this Act' was that a tax avoider should pay a £20 fine and treble his whole tax bill for the year. The outcome of the case was that Hinchy had to pay £438, even though the amount he had avoided was only £14.

It is almost certain that the meaning applied by the House of Lords was not what Parliament had in mind when the Income Tax Act 1952 was passed. The statute was badly worded. The blame for this must lie with the parliamentary draftsmen. At the same time, however, it must be realised that they have a near impossible task. Skilled lawyers though these draftsmen are, they cannot possibly foresee every interpretation of the statutes they prepare. Once the statute has become law, every lawyer in the land might be looking for an interpretation which would suit his or her client. In **Hinchy's case** the Revenue lawyers, with typical ingenuity, spotted a literal meaning that had not been apparent before. They then managed to persuade the House of Lords judges that it was their duty to apply this meaning.

Judges who adhere to the literal rule approach do so in the belief that less harm is done by allowing a statute to operate in a way in which Parliament had not intended for a short time, until Parliament has time to pass another amending statute, than would be done by allowing the judges to take over the law-making role altogether, as they would be in danger of doing if they interpreted statutes in any way they saw fit.

The golden rule (or purposive approach)

Other judges, though, perhaps the majority, adopt the purposive approach to statutory interpretation. Using this approach, the judges give the words in a statute their ordinary, literal meaning as far as possible, but only to the extent that this would not produce an absurd result.

In **R *v* Allen (1872)**, for example, the defendant's lawyers argued that although Allen had married two different women he could not be guilty of bigamy because the crime, as described in the Offences Against the Person Act 1861, was impossible to commit. Section 57 of the Act provides that 'whosoever, being married, shall marry any other person during the life of the former husband or wife', shall be guilty of bigamy. Allen's lawyers argued that this crime was impossible to commit because one of the qualifications for getting married is that you are not already married. Therefore, 'whosoever, being married, shall marry . . .' has already defined the impossible. They contended that the section should have read, 'whosoever, being married, shall *go through a ceremony of marriage* during the life of the former husband or wife' shall be guilty of bigamy.

If the judges in this case had used the literal rule they might well have acquitted. Unfortunately for Allen, they used the purposive approach and convicted him. They decided that the literal approach would have produced an absurd result, that they had not the slightest doubt as to what Parliament had meant when it passed the statute, and that Allen was therefore plainly guilty.