

Applied Business Law

Module outline and aims

The module provides a general framework of the legal principles underpinning business law, as appropriate to the role of the Chartered Secretary.

The aim of this module is to facilitate an understanding of the basic principles and how they should be applied within a commercial framework. For example, you will be required to apply the principles of contract law to specific contracts such as the contract of employment and consumer contracts.

Chartered Secretaries are required to have a sound knowledge and understanding of the legal framework and how it applies in a business context and the overall aim of this module is to facilitate and develop your understanding of business law in the context of the business environment.

Learning outcomes

On successful completion of this module, you will be able to:

- Demonstrate a good understanding of the areas of law which affect businesses.
- Identify the key issues and theoretical debates surrounding the functions and objectives of business law.
- Identify the basic principles of business law as appropriate to the role of the Chartered Secretary.
- Critically analyse the law in the context of the business environment.
- Apply the law to factual situations which may arise in a business setting.
- Offer reasoned solutions and advice to practical problems.

Syllabus content

Commercial contracts – weighting 30%

Candidates will be required to display a sound understanding of what a contract is and the nature, role and purpose of contracts. The syllabus includes:

Concept of freedom of contract/sanctity of contract

Formation of contracts

- Offer: invitation to treat, unilateral contracts
- Acceptance: postal rule, acceptance of unilateral contracts
- Counter offer
- Auctions
- Tenders
- Certainty of agreement
- Offer and acceptance when dealing with machines
- Termination of offers
- Battle of the forms

Intention to be legally bound:

- Agreements made in a business context
- Agreements made in a social context

Requirement of consideration:

- Types of consideration
- Sufficiency of consideration
- Performance of an existing duty
- Part payment of a debt
- Promissory estoppel

Privity of contract

Formalities:

- Contracts required to be in writing
- Contracts required to be evidenced in writing
- Contracts which must be in the form of a deed

Capacity to contract:

- Minors
- Mental disorder and drunkenness
- Corporations

Contents of contracts:

- Distinction between terms and representations
- Express terms
- Conditions, warranties and innominate terms
- Exclusion clauses – Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regulations 1999
- Implied terms – by statute, by the courts, by custom – Sale of Goods Act 1979, Sale of Goods (Implied terms) Act 1973, Supply of Goods and Services act 1982

Vitiating factors:

- Mistake, common and unilateral, mistake as to the nature of the document signed, mistake as to identity
- Misrepresentation – definition, innocent, fraudulent, negligent, remedies

Duress and undue influence

Illegal contracts

Discharge of contract – by performance, breach, frustration

Remedies for breach of contract – damages, equitable remedies

Law of tort – weighting 20%

Candidates will demonstrate their understanding of the nature of a tort and, in particular, the torts of:

Negligence:

- Duty of care
- Standard of care
- Causation
- Foreseeability
- Breach
- Damage
- Economic loss
- Negligent statements
- Nervous shock
- Defences

Occupiers' liability:

- Lawful visitors
- Non lawful visitors

Product liability – the Consumer Protection Act 1987

Nuisance:

- Private nuisance
- Public nuisance
- Remedies
- Defences

Trespass – to land, to the person, to goods

Defamation

Vicarious liability

Commercial law – weighting 20%

This part of the syllabus introduces the concept of an agent and how such an agent can enter into contracts on behalf of another person.

Agency – appointment:

- Express
- Implied
- Necessity
- Ratification

Relationship between principal and agent – duties

Authority of the agent:

- Express
- Implied
- Actual
- Apparent

Termination of agency

Sale of Goods – protecting the consumer:

- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- Sale and Supply of Goods to Consumers Regulations 2002
- Passing of ownership and risk
- Duties of buyer and seller
- Remedies of buyer and seller

Consumer credit:

- Consumer Credit Act 1974
- Hire Purchase

Patents, copyright, trademarks and passing off

Data Protection Act 1998

Competition law:

- Articles 81 and 82 Treaty of Rome
- Competition Act 1998
- Enterprise Act 2002

Insurance contracts:

- Types
- Principles

Financial services regulation:

- Financial Services and Markets Act 2000
- Financial Services Authority
- The Stock Exchange

Employment law – weighting 30%

This section of the syllabus covers how the contract of employment is formed and the provisions of such contracts, along with the rights and duties of employers and employees.

Employees and independent contractors:

- Contract of service and contract for service
- The position of 'agency' workers

The contract of employment:

- Formation of the contract
- Written particulars
- Part-time and fixed-term workers
- Variation to contract

Common law and statutory duties of employer/employee:

- Express terms
- Implied terms
- Employer's duty to persons other than employees
- Vicarious liability
- Duty of disclosure

Wages:

- Unauthorised deductions
- Equal Pay Act 1970
- Guarantee payments
- Medical suspension
- Insolvency
- Pay statements

Maternity rights:

- Maternity leave
- Right to return to work
- Suspension on maternity grounds
- Ante-natal care (parental leave; time off for dependants; adoption leave)

Discrimination:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Employment Equality (Age) Regulations 2006
- Commission for Equality and Human Rights
- Discrimination against part time workers, fixed term workers, persons with criminal records

Termination of contracts of employment

Unfair dismissal:

- Who can claim?
- What is a dismissal?
- When is a dismissal unfair?
- Procedure, remedies

Wrongful dismissal

Constructive dismissal

Redundancy:

- Who can claim?
- Payments

Health and safety at work:

- Health and Safety at Work Act 1974
- Common law health and safety

Dispute resolution:

- Role of ACAS and Compromise Agreements
- Employment Tribunals
- County court
- High court jurisdiction
- Civil procedure

Whistle blowing – Public Interest Disclosure Act 1998

Trade Unions