

Introduction to Law and to Finance

Unit 1 Introduction to Law

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Unit Overview

This unit is an introduction to law, legal systems and the working method of lawyers. It purports to convey basic legal information and skills that will enable you to understand how legal rules regulate and control our lives, our activities and markets.

Unit 1 starts with the functions of law and the importance of law for financial markets. It then goes on to examine the basic categories or subjects of law, the traditional divisions of countries into groups of legal traditions, the dichotomy between common and civil law and the basic characteristics of the legal method. It concludes with a summary of the basic legal sources, providing assistance in using those sources. You are required to read a few external sources, which provide a full account of the basic legal methodology, the nature of law and the most important legal traditions.

Learning outcomes

When you have completed your study of this unit and its readings, you will be able to:

- discuss the function of law in society and markets
- outline the subjects of law and how they relate to finance
- identify the most important legal traditions on earth and their major differences in how they treat finance
- contrast the method of common law with the method of civil law
- identify the major differences between law and equity
- work with the basic sources of law such as statutes and law reports.



Reading for Unit 1

Holland J & J Webb (2019) Chapters 1 'Understanding the law, 2 'Finding the law' and 3 'Reading the law'. *Learning Legal Rules: A Student's Guide to Legal Method and Reasoning*. 10th Edition. Oxford UK: Oxford University Press.

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1.1 The Functions of Law

Law is everywhere: it provides and maintains order in societies, regulates relationships between individuals, deals with conflicts between individuals, provides opportunities for acquisition and growth. It is a formal mechanism of social control and cannot be ignored with impunity, yet it is also political and ultimately of no use without effective enforcement.

It is much easier to understand, interpret and apply law if you think like a lawyer, but it is also necessary to be aware that law is a product of many forces, principally the society in which it develops or is created. Thus, to view a law outside its social, political and economic context is to divorce it from its meaning.

In dealing with legal concepts, you must always remember that financial law is our servant, not our master. We tell it what to do, how to help financial transactions and serve worthy economic purposes. We also tell it how to do it. It is there for our convenience – to be useful and to satisfy our sense of justice and commercial common sense. It must not chain us down. It must not obstruct sensible business decisions. It must not inhibit the wheel spinning freely and well. But it is necessary to build the wheel and oil it, so it functions well.

Financial markets rely on legal rules. Money (a lot of money) changes hands every day between bankers, investors, businessmen, insurance companies and the like in bank branches, stock exchanges, over-the-counter markets and restaurants. Law and legal enforcement bind those people and ensure that their honest or less honest promises are kept, voluntarily or by way of enforcement. Law and regulation ensure that the market does not suffer from criminals and fraudsters and that the economic and financial policies of governments are duly implemented by the market.

Exercise 1.1

On 9 November 2003, the Asian Business section of CNN International contained the following information:

Sony Music and BMG say they plan to combine their music units in a move that could trigger further consolidation as the industry grapples with weak retail sales, online file-sharing and fierce competition with other forms of entertainment. (<http://edition.cnn.com/2003/BUSINESS/11/06/sony.bmg.reut/>)

This is a typical business bulletin announcing the merger of two corporations and the creation of one single corporate entity engaging in commercial activities in the music industry. Can you think of the aspects of this typical business venture that may relate to law?

A few things may come to mind straight away. Sony and BMG are companies and they are governed by company law, which regulates the separation between the legal person (SONY) and its members (who may die, migrate or sell their shares without destroying the separate legal entity). The merger

may have tax implications governed by tax law and regulation because a new entity will emerge with separate accounts and profits. How about the contracts that SONY has already signed? Will they be performed by the new 'baby', or are they worthless? A larger company means domination in the market. The Competition authorities and the law of competition may have something to say on those plans. How about the copyright that SONY Music owns over its songs? Is it inherited by the new company or is Sony required to sell it to the new entrant? And many other questions which the lawyers will have to address.

Exercise 1.2

Now go to the business section of CCN international at www.cnn.com or any other media organisation such as the British Broadcasting Corporation at www.bbc.co.uk/business or one in your own country, and try to identify a similar business deal. Read it and try to identify the elements of that information which may relate to law one way or another. After doing that, try to answer the following questions:

- What branches of law would you expect regularly to appear on the following pages: the front page, the business section, the sports pages, the advertisements and public notices?
- Where possible, identify the national source of the laws being discussed in each piece you have identified – is it English Law, American Law, the law of your own country or the law of any other country?
- Identify the most important social, economic or political problems that the law is trying to address in that business deal. For example, the law of competition purports to ensure that no single entity dominates the market at the expense of fairness and protection of consumers. What else can you say about the business venture that you studied?
- Consider finally what you have learned from doing this exercise. You will probably realise that one single business venture, even the most common and rudimentary, raises many important legal questions on various aspects such as the relation between the government and the market (taxation), the relations between managers and shareholders (company law) or the relations between companies operating in the market (primarily the law of business contracts).

Exercise adapted from Twining and Miers (1999) p. 6.

1.2 Subject Areas of Law

Law is traditionally categorised and sub-categorised by subject. But these categories have no magic to them, and are mainly just convenient labels. The following are the central, or 'core' legal subjects that a law degree would normally comprise in all parts of the world (with the exception of European Union law, which is confined to Europe, and equity and trusts, which are not used outside the Anglo-Saxon legal tradition, at least not in a similar manner). Let us examine them in relation to financial markets.

- *Contract*: the regulation of enforceable agreements between individuals. The law of contracts is the law of agreements and promises between individuals and companies. It is the backbone of financial markets. A bank loan, a bank deposit, an insurance policy are


contracts. They are agreements between at least two parties who undertake mutual obligations by promising to perform something (usually pay money) in exchange of another promise (probably to pay money again, at least in financial markets).

- *Tort*: non-criminal wrongdoing leading to the payment of compensation. The law of torts does not involve agreements. In most cases, it regulates the relations between people in no prior relationship. Those people are involved in some form of wrong or damage such as a car accident, a defamatory statement, the publication of fraudulent accounts or fraud against their own company. Tort regulates civil wrongs: the remedy in most cases is the payment of compensation to the person who suffered damage. But the same set of facts may give rise to criminal liability. A negligent driver is simultaneously liable to pay compensation and face the penalties of the criminal justice system. Torts in financial markets are related to liars, cheats and fraudsters who cause economic loss to investors or companies through false accounts, untrue statements, insider trading and the like.
- *Criminal law*: regulation of individual behaviour by the state in order to protect society, with potential penalties of imprisonment. Criminal penalties are imposed to punish individuals regardless of whether they have compensated the victim. Tort and criminal law are separate processes.
- *Equity and Trusts*: wills, mechanisms of ownership of property and an overarching set of fairness requirements.
- *Land law*: regulation and rights of ownership and transfer of land.
- *Constitutional and Administrative law*: the rules of the state, its functions and its relationship with its citizens. When a bank applies for a licence in order to start business or the regulator punishes the bank for failing to comply with the law, these relationships between the state and the market belong to public and administrative law. Financial markets are severely regulated, as you will be studying in the Regulation of Capital Markets module.
- *European Union law*: the regulation of matters within the scope of the European Union. Although the United Kingdom is due to leave the European Union (“Brexit”) on 31 October 2019, it remains a Member State of the European Union, and all provisions of EU law continue to apply to it, until then. Thereafter, all measures of EU law already in force will continue to be part of the UK’s domestic law unless and until they are repealed.

Other legal subjects have various other labels. We shall be referring to company and commercial law, but in fact these labels encompass many issues and remedies that could equally be classified as tort, crime or equity. What one author calls commercial law may be called business law by another. Financial law is commercial or business law because it deals with commercial activities. We are not concerned with non-commercial finance such as when family members help one another to start a business.

**Reading 1.1**

You should first read Chapter 1 of Holland and Webb (2019) *Learning Legal Rules*.

 Try to keep notes of the most important points concentrating on the functions of law and the categories of legal subjects.

- Can you place different aspects of business transactions into different legal categories?
- Which legal concept is best suited to regulate commercial agreements?

It is the law of contracts that defines the rights and obligations of the parties.

- Now go through the text and try to shortlist the most basic legal concepts.

Holland & Webb (2019)
Chapter 1
'Understanding the law'
in *Learning Legal Rules*.
pp. 1–30.

**Reading 1.2**

Next read the following stimulating article by Lon Fuller (1949), 'The Case of the Speluncean Explorers'. This futuristic piece tells the story of a group of spelunkers (cave-explorers) in the Commonwealth of Newgarth, trapped in a cave by a landslide. As they approach the point of starvation, they make radio contact with the rescue team. Engineers on the team estimate that the rescue will take another 10 days. The men describe their physical condition to physicians at the rescue camp and ask whether they can survive another 10 days without food. The physicians think this very unlikely. Then the spelunkers ask whether they could survive another 10 days if they killed and ate a member of their party. The physicians reluctantly answer that they would. Finally, the men ask whether they ought to hold a lottery to determine whom to kill and eat. No one at the rescue camp is willing to answer this question. The men turn off their radio, and sometime later hold a lottery, kill the loser, and eat him. When they are rescued, they are prosecuted for murder, which in Newgarth carries a mandatory death penalty.

- Are they guilty?
- Should they be executed?

Fuller wrote five Supreme Court opinions on the case, exploring the facts from the perspectives of profoundly different legal principles. The result is a focused and concrete illustration of the range of Anglo-American legal philosophy at mid-century. This article introduces you to important philosophical questions with which law is concerned.

Fuller (1949) 'The case
of the speluncean
explorers'. *Harvard Law
Review*.

You may now be wondering whether financial law is too technical and mundane to raise philosophical questions, but it would be wise to think again. Financial law poses fundamental questions about the best way to allocate finance. Those questions are informed by different philosophical positions about the prevalent economic model and the value of money. If you give it a bit of thought, you will no doubt appreciate that financial law is not identical in free market economies and Marxist or centrally planned economies. Legal rules and principles are informed by social consensus as to the best economic model. But even countries of the same economic tradition have different views about the values that financial law and financial regulation should promote.

It suffices at this point to give you one short example: bank supervision. All countries in the world supervise banks. They want to keep the banking

system safe from scandals or failures. But it is not easy to reconcile the aim to keep the banking system safe with the primary aim to foster and promote innovation, spread finance and create opportunities.

Consider bank loans: giving loans to businesses entails risks. The borrowers may fail and then the bank will fail. Too much lending to small businesses is 'unsafe' but this is the essence of finance in the pursuit of growth and development. The choice is not easy and it is in many respects a 'philosophical' one. To keep the system safe, the authorities may prohibit lending to businesses and impose an obligation on banks to finance only the government by investing in government bonds, which are safe. You can see that safety here comes at a heavy price: it advantages governments but it disadvantages individuals with bright ideas but no finance. How to strike the balance between safety and healthy risk-taking is no easy business. It is also dealt with differently by different countries, even countries with similar economic traditions.

1.3 Jurisdictions of the World and 'Legal Families'

It is common to divide the legal jurisdictions of the world into 'families' grouped by similarities between them. Any such division is of limited value due to the sheer complexity of each system and the obvious differences between even the most similar jurisdictions. Further, there has been much cross-pollination between legal systems through trade, invasion and adoption, but at this stage some comment on 'legal families' may be an aid to comparison and comprehension.

Comparative law – that is, the study of different legal systems adopted by different countries – is of unquestionable importance. Contracts and legal relationships in international financial markets span borders and involve banks, corporations, regulators, stock exchanges and investors in many parts of the world. It is important to know the world's jurisdictions in order to anticipate what might lie ahead. Remember different countries may have different views on similar issues and the amounts at stake in international financial markets do not leave scope for complacency on the law side.

A company may borrow from a syndicate of 10 or 15 different banks located in different countries. It may offer commercial property as collateral, buildings, offices and estates spread in even more jurisdictions. The most essential and rudimentary commercial law may involve the laws of different jurisdictions. Those laws may adopt different or conflicting solutions for the same set of questions. This is frustrating in terms of legal certainty and distracts financiers and borrowers from the thrust of financial deals but it is reality nonetheless. International financial transactions are subject to a labyrinth of legal rules, often incompatible among themselves, which create enormous legal risks and inhibit the growth of the market. This is how the game is played and this game is hardly new. Voltaire's comment is as true now as it was in pre-revolutionary France:

Is it not absurd and terrible thing that that which is true in one village is false in another? What kind of barbarism is it that citizens must live under different laws? When you travel in this kingdom you change legal systems as often as you change horses

Source: Voltaire (1838) p. 5.

One may attempt a broad classification of financial law of jurisdictions into families of the law on the basis of loose criteria as to how legal rules are produced, how liberal (pro-finance) or strict (pro-debtor) a legal system is, whether legislation is codified or contained in legal cases and precedents, how much emphasis is attached to formality or substance, how much emphasis is attached to predictability and certainty of solutions or fairness and 'case-by-case' examination of legal values. The classification does not denote moral values or ethics but some limited notions of certainty and knowledge of what to expect. Subject to wide qualifications, the following classification of financial laws of the world (based on the model developed by Philip Wood in the seminal treatise *Comparative Financial Law*) makes some sense.

- *Traditional English jurisdictions* sharing the English common law tradition such as England and Wales (of course – but note, not Scotland – see below), New Zealand, Australia and Canada, Bangladesh, the West Indies, Burma, Ghana, Gambia, Hong Kong, India, Israel, Ireland, Pakistan, Singapore and others. They all share the common law heritage of English law. In terms of finance, they are generally pro-creditor as they avoid imposing onerous consumer and borrower protection requirements. They rely on commercial freedom and legal liberalism at the expense of formalities and rigidity.
- *American common law* jurisdictions, that is all States of the Union (except Louisiana) as well as US Federal law. They share the common law tradition but they should be placed in a different category from English law for a number of reasons: first, the development of New York law as the most important antagonist of English law in international financial markets; second, a great appetite for legal formalism and regulation; and third, the highly litigious nature of the American market (it is estimated that one in four adults is involved in litigation at any given point of time).
- *Mixed jurisdictions*, which share characteristics of both the common English law and the European civil law traditions, such as Japan and Korea, South Africa, Scotland, Sri Lanka and others.
- *Germanic and Scandinavian jurisdictions*, which share the civil law approach developed on the European continent, such as Germany, Switzerland, the Scandinavian countries, Indonesia, Poland, Netherlands, Taiwan and others. This group is largely liberal and pro-creditor but less liberal than English law.
- *Mixed Germanic and Franco-Latin* jurisdictions, such as Austria, Italy, US Louisiana, Panama and Philippines, which are largely pro-debtor and stricter towards financiers, bankers and other types of creditors in

favour of borrowers. But they are influenced by the German tradition in many respects.

- *Traditional Franco-Latin jurisdictions* like France, Algeria, Brazil, Argentina, Belgium, Cameroon, Egypt, Greece, Jordan, Syria, Mexico and many others, which are predominantly pro-borrower, with strict and stringent consumer and borrower protection rules. They are very formalistic in their solutions and look at financial markets with more suspicion than English, American or Germanic jurisdictions.
- *Emerging jurisdictions* like the former members of Soviet Union, perhaps China (rapidly moving into the pro-market group), the Balkans (except Greece which is historically on the western block), Vietnam and Mongolia, which are rapidly reforming their systems but it is too early to classify them elsewhere.
- *Islamic jurisdictions* like the Gulf States, Saudi Arabia and others, which have their own approach to finance and commercial lending, often termed Islamic banking.
- *Others with little or no commercial system or financial markets* like North Korea, Eritrea, Laos, Nepal and Cambodia.



Study Note 1.1

You are advised that international financial transactions such as bond issues and international loans are primarily governed by either English or New York law. English law particularly is the dominant choice of borrowers and lenders in international financial markets even if no particular connection with England exists. It is not unheard of that bank loans agreed between German companies and Japanese or French banks in Italy are governed by English law with the consent of all parties regardless of the absence of any relationship of the contract with England. This is explained by the commercial attitude and sophistication of English law in business transactions, the importance of English as an international language and the significance of London as (perhaps) the most important international financial centre. With the exception of the module on Regulation of Capital Markets, where an international approach will be taken, the legal modules of this programme will deal with English law for that reason.

One of the most important distinctions of legal traditions, which go well beyond the intricacies of financial law, is the distinction between ‘common law’ which applies in England and Wales, related countries and America, and ‘civil law’ which applies predominantly in the Franco-Latin and Germanic jurisdictions of continental Europe.

We will look in more detail at the common law in England in the next unit, but first a few basic (and very general) distinctions should be understood. One of the key differences is that civil legal systems operate on the basis of codification and written law with a core set of documents containing almost all of the basic legal rules. The German Civil Code, for example, a single piece of legislation, contains 2385 Articles and runs into 500 densely printed pages. It regulates every aspect of the law of contracts, property rights and family law in every possible detail.

How different that is from English law where no such text exists and the same affairs are regulated by rules which are developed by judges and are found in many legal cases, but placed in no single text. Moves towards codification do occur and are pressing in the field of English criminal law, for example, but the tendency with codifying legislation in a common law jurisdiction is to restate existing principles while clarifying or amending problem areas without a comprehensive attempt to think again from first principles.

A final basic difference is that the role of judges differs according to legal family affiliation. Judges in civil law courts interpret and apply the rules stated in the codified written law; generally, they cannot develop new rules outside the limited discretion they have to fill in the gaps in their Codes. Judges in common law courts both interpret legislation (where it exists), filling in any gaps, and are the guardians and re-builders of a separate body of law developed by centuries of judges before them: the case law. In practice, the differences may be less than they appear, but it must be recognised that in the English legal system cases bear a very great significance. They do not simply state or explain the law; they *are* the law, and in many fields statutes play only a secondary role to the law developed by judges in authoritative cases.



Reading 1.3 and 1.4

Now read Lawson (1982)'s article, 'The family affinities of common law and civil law legal systems', followed by the paper by Levitsky (1994), 'The Europeanization of the British Legal Style'.

Draw a list of bullet points with the differences between common and civil law traditions. Try to make it as concise as possible. Having a list of differences and similarities will help you better understand the inner properties of English financial law on which you will need to concentrate your attention in this module.

Lawson (1982) 'The family affinities of common law and civil law legal systems';

Levitsky (1994) 'The Europeanization of the British legal style'.

1.4 Legal Method and Legal Reasoning

In order to understand and apply legal rules, it is necessary first to think about the reasoning and methodology used by lawyers. This unit looks shorter than the others but it is no less important. You should spend time ensuring that you are able to perform all of the tasks set here well, since they are the fundamental building blocks upon which later units will be constructed. This is such a practical field that pages of description would be of little value. Read the two chapters listed below and carry out the exercises within them. From this reading and thinking you should be able to identify the basic tools for legal method and the basic differences between legal thinking and ordinary logic. Note also the differences in legal thinking in common law systems and civil law systems highlighted in Chapter 11.



Reading 1.5

Now read Chapters 5 and 12 from the 9th edition of *Learning Legal Rules* by Holland and Webb (2016). As you read those chapters, you should make sure that your notes cover the following issues:

- the distinction and relationship between law and fact
- the basic questions of proof (*ie* how the litigating parties prove the facts on which they rely)
- the importance of language in making and interpreting law
- the basic elements of legal reasoning.

Holland & Webb (2016) Chapters 5 'Law, fact, and language' and 12 'Exploiting legal reasoning' in *Learning Legal Rules*.

1.5 The Relationship between Law and Equity

We will return to look at equity in much more detail in a separate unit on property law, since one of its creations, the trust, is extremely important in financial law and it has had a significant effect upon many rules of English property ownership. At this stage, however, it is time to reveal that there is not really one English legal system but two – law and equity – although their systems (but not their rules) have been fused together since the Judicature Acts 1876–1878.

Equity is a separate body of legal principles, which developed on a case-by-case basis in the Courts of Chancery to mitigate the harshness of the rule-bound common law, looking at the facts of each case and doing what is right for the individuals involved in it. Over time, equity has arguably become as inflexible and rule-bound as the common law, but it does still regularly provide a remedy where the common law would not, flexibility where the common law would be harsh, and exceptions where the common law has none. Rather than having tightly defined rules, equity operates via maxims and statements of principle. A definition that still holds remarkably true comes from Lord Cowper in the 1705 case of *Dudley v. Dudley*:

Now equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness, and edge of the law, and is a universal truth; it does also assist the law where it is defective and weak in the constitution (which is the life of the law) and defends the law from crafty evasions, delusions, and new subtleties, invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless; and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of the law. Equity therefore does not destroy the law, nor create it, but assists it.

The difference between law and equity is fundamental for English law. If you want a quick definition and distinction between the two you should remember the following:

- *law* is concerned with certainty of rights and obligations
- *equity* is concerned with fairness at the expense of certainty.

What does this mean? Consider the following example, which is from a real case.

Two poor and ignorant men, with no experience of the market and without taking legal advice, were convinced by a canny individual to sell their only property at considerably below the real value. They were led to believe that the price was fair and the transaction a reasonable one, whereas in fact they were misled.

Remember what you were told. Law is concerned with certainty. It looks into people's behaviour and clarifies the property rights of individuals. Law will tell us who owns what. In the foregoing example, law is concerned with the formalities of the sale. If there was an agreement between the sellers and the buyer and that agreement was registered in accordance with the formalities prescribed by law, the sale was valid in the eyes of the law.

Of course, we know that there was an inherent flaw in that sale. The sellers were misled. The buyer took advantage of their inexperience and achieved an unfair result. To rectify this unsatisfactory result, English law has developed the equitable remedy of unconscionable (unfair and oppressive) bargains. It is equitable because it goes beyond the formalities of the agreement and the agreement itself and looks into the circumstances that led to this agreement. It promotes fairness at the expense of certainty because it may help the two people take back their property (fairness) but it will destroy a legal situation that had already been achieved. It will unsettle the legal rights of the buyers.

At this stage it suffices that you understand the difference: law deals with certainty in the rights and obligations. Equity goes beyond the surface and looks into the overall circumstances that led to those rights and obligations being created.

 **Exercise 1.3**

Try to identify what sort of actions will be dealt with equitable principles and what sort of actions will be dealt with by law in the following set of facts:

Megabank, a bank incorporated in London, had a substantial loan portfolio. One of its major borrowers, *Grand Company plc*, had recently taken a loan from *Megabank* worth \$100m. The bank was delighted to have granted the loan and was earning a high interest but the local supervisory authorities were concerned that *Megabank* had offered too many loans and was at risk of collapse if more than one of its corporate borrowers were to stop paying its loans back. Hence the local authorities ordered *Megabank* to 'sell' the recent \$100m loan to another bank and take it out of its books.

The managers of *Megabank* went out to their fellow managers in other local banks and arranged for the transfer of the loan to four different institutions. In doing so they convinced the other bankers that the borrower (*Grand Company plc*) was a very strong company, with very healthy accounts and annual profits and that the risk was a very good one indeed. The loan was transferred in accordance with all formalities but four months later *Grand Company plc* collapsed after accusations of fraud and misrepresented accounts and books. The four banks to which that loan was transferred are now consider-

ing action against the seller of the loan (*Megabank*) on grounds that it promised something which was not true: that the borrower was a strong and profitable enterprise.

- Can you identify the application of law and equity in that case?
- What sort of equitable principle would the buyers invoke to defeat the legal argument that the transfer of the loan was in accordance with the law and all legal formalities and now they have to bear the cost of collapse?
- What sort of market would that be in which formality and legal certainty are permitted to let banks and other players misrepresent facts and figures?

1.6 Finding Law

Legal rules are found in sources of law: legislation, court judgments, regulation of government departments, customs and sources of international law such as the United Nations, the European Union, the World Trade Organization and others. The sources of financial law are many and important but legislation, regulations issued by the Ministry of Finance or the Central Bank, court rulings and international law are the most common.

In this section, you are introduced to the basic functions of WESTLAW, the electronic service where you will invariably find the legislation and court cases that you will need. This brief section is not intended to be a full user's guide to WESTLAW. It simply aims to help you identify cases, materials and legislation as a necessary part of the learning process. You will of course get access to WESTLAW and full information on how to use it as part of MSc Programme.

1.6.1 Finding legislation

Legislation, also known as statutory law as distinguished from case-law made by judges, is made by Parliament. There is a full section in WESTLAW where legislation can be retrieved. In the first domain that you will see as soon as you enter the password (the Welcome domain), there is a separate database on English legislation and statutory instruments. Acts of Parliaments or other statutes have the following format: Financial Services and Markets Act 2000. The numerical indicator is the year during which the Act received royal assent. The short title of the Act normally indicates what this legislation is about. In that example, the Financial Services and Markets Act 2000 (FISMA 2000) obviously deals with financial services and financial markets!



Reading 1.6

Now read Chapters 2 and 3 (Section 3.1 only) from the 10th edition of *Learning Legal Rules* by Holland and Webb (2019). You will then be able to recognise and use statutes and legislation.



For a bit of practice, go to the University of London Online Library and find the following instruments of legislation and identify the long title. Summarise in your own words what these pieces of legislation regulate in real life:

Holland & Webb (2019)
Chapter 2 'Finding the law' and Chapter 3,
Section 3.1 of 'Reading the legislation' in
Learning Legal Rules. pp.
35–66; 68–75.

- Financial Services and Markets Act 2000
 - Consumer Credit Act 1974
 - Consumer Protection Act 1987.
-

1.6.2 Courts and case-law

Not all legal rules are laid down by Parliament. A number of fundamental rules are found in the statements of judges made in the course of deciding real-life cases of litigation. Case-law is particularly important in English law. It is one of the elements that distinguish English law from other jurisdictions. WESTLAW is an invaluable resource for all cases decided in England and Wales, the US, Australia and the Commonwealth since the late 18th century.



Reading 1.7

Now read the next section of Chapter 3 (Section 3.2) of Holland and Webb (2019). To practice finding cases on legal databases such as WESTLAW and to read those cases effectively, please try to find this important case in English financial law: *Barclays Bank plc v. O'Brien* [1994] 1 AC 180.



In WESTLAW, enter the names of the parties in the available boxes. Now try to identify the case and make a bullet-point list of the basic elements of that important banking law case:

- What happened?
- What did the parties argue?
- What did the court decide?

Holland & Webb (2019)
Chapter 3, Section 3.2
'Reading cases' in
Learning Legal Rules.
pp. 75–91.

1.7 Summary

In this unit you were introduced to:

- the concept of law and the importance of law in financial markets
- the main subjects of law
- the main legal traditions and families of law in the world
- the distinction between common and civil law, and the importance of English law for financial transactions
- the distinction between law and equity
- the basic principles of legal reasoning
- the most important legal sources, namely case-law and legislation, and how to work with them.

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