## Business Law in the Global Marketplace

**Peter Nayler** 



## Contents

Chapter I	The legal framework for international business	1
	Introduction	1
	So what is 'law'?	5
	Chalk and cheese	6
	Family ties	7
	Civil law and common law	8
	Distinguishing features of civil law	
	and common law	9
	Other legal families	12
	Socialist law	13
	Religious law	14
	Making order out of chaos – the classification of law	15
	The sources of law	24
	Legislation	24
	Case law (judicial precedent)	27
	Academic writing	32
	European community law	32
	Court systems	34
	England and Wales	35
	The House of Lords	35
	The Court of Appeal	35
	The High Court of Justice	36

vi Contents

	The Crown Court	36
	County Court	37
	Magistrates' Court	37
	France	37
	Tribunal d'instance	38
	Tribunal de grande instance	38
	Courts of special jurisdiction	39
	Germany	40
	Amtsgericht (local court)	41
	Landgericht (district court)	41
	Oberlandesgericht (appeal court)	41
	The Bundesgerichtshof (BGH; federal court	
	of appeal)	42
	Specialist federal courts of appeal	42
	International co-operation and the	
	harmonisation of business law	43
	The International Institute for the Unification	
	of Private Law (UNIDROIT)	43
	The United Nations Commission on	4.4
	International Trade Law (UNCITRAL)	44
	The International Chamber of Commerce (ICC)	44 45
	The World Trade Organisation (WTO)	45
	Summary	47
Chapter 2	The formation of business contracts	48
	So what is a contract?	48
	Compliance with any required formality	50
	Offer and acceptance	52
	The offer	52
	Advertisements	53
	Goods on display in a shop	56
	Termination of the offer	58
	Lapse	58
	Revocation	59
	The acceptance	62

Contents vii

	Capacity of the parties	70
	Consideration	71
	Contractual intention	80
	Absence of any factors which might	
	undermine the contract's validity	83
	Mistake and misrepresentation	83
	Duress	86
	Illegality	87
	Summary	88
Chapter 3	The structure and content of business	
-	contracts	91
	The express and implied terms of a contract Certain aspects relating to a contract for	91
	the sale of goods	101
	Ownership	101
	Description	104
	Quality and fitness for purpose	104
	Delivery	107
	'What if?' and standard terms of business	108
	Price	
	Passing of ownership	
	Delivery times	112
	Summary	119
Chapter 4	Non-performance of contractual obligations	121
	Change of circumstances making performance of the contract impossible	121
	Remedies for breach of contract	128
	Specific performance	128
	Rescission	130
	Damages	131
	Liquidated damages and penalties	131
	Unliquidated damages	134
	Summary	137

viii Contents

Chapter 5	Legal forms of business organisation	139
	Introduction The sole proprietorship	139 140
	The general partnership	141
	Under English and American law	142
	Under French law – the société en nom collectif	144
	Under German law — the Offene Handelsgesellschaft (OHG)	145
	Partnerships where some or all of the	1.45
	partners' liability is limited	145
	Under English and American law	146
	Under French law – the société en commandite simple (SCS)	147
	Under German law – the Kommanditgesellschaft (KG)	147
	The company with limited liability	148
	Under English law	149
	Under French law	156
	Under German law	156
	Groups of companies	158
	The management and control of limited companies Summary	162 167
Chapter 6	Legal aspects relation to the international marketing of goods and services	169
	Introduction	169
	Establishing a presence in the export market  The appointment of a self-employed agent	170
	in the export territory	171
	Duties owed by the agent to the principal	174
	Duties owed by the principal to the agent The appointment of a 'sole' or 'exclusive'	176
	distributor	177

Contents ix

	Opening a branch office or forming a subsidiary in the export territory	179
	Establishing a joint venture with a local partner	180
	Licensing and franchising agreements	184
	Promotional and marketing strategies	186
	Product liability	187
	Contract	189
	Tort	190
	Protection of intellectual property	195
	Patents	197
	Novelty	198
	Inventive step	198
	Industrial application	198
	Exclusions	199
	Procedure for obtaining a patent	199
	Copyright	200
	Trade marks	202
	Competition law	207
	Articles 81 and 82 of the Treaty of Rome	208
	Article 81	209
	Article 82	213
	Enforcement	215
	Summary	216
Chaptor 7	Export contracts and good circled	
Chapter 7	Export contracts and associated financing arrangements	218
	Introduction	218
	Forms of export contract	220
	F.o.b. (free on board)	222
	F.a.s. (free alongside ship)	222
	C.i.f. (cost, insurance and freight)	223
	Payment in international sales	227
	Collection arrangements	230

x Contents

	Letters of credit	231
	The revocable and unconfirmed credit	232
	The irrevocable and unconfirmed credit	232
	The irrevocable and confirmed credit	232
	Summary	235
Chapter 8	International business disputes and their resolution	236
	Introduction	236
	Methods of dispute resolution	238
	Mediation and conciliation	238
	Arbitration	239
	Problems associated with international	
	litigation	241
	Jurisdiction	241
	The law governing the contract (the 'proper' law)	244
	Enforcement of court judgments	253
	Summary	255
Index		257