6 The Legal Framework

I The nature and role of law

The relationship of private and public rights and duties

In the British system of government the rights of individuals are paramount. This is enshrined in what is known as the 'rule of law'. First, any infringement of individual rights has to be sanctioned by law. This means that the rights and duties of public bodies can be exercised only in so far as there is a law allowing them to do so. For example, the Board of Inland Revenue can only collect income tax at the rates laid down by the current Finance Act. Second, an individual alleged to have broken the law must be brought to trial speedily and, before he can suffer penalties, his guilt must be established in a court of law according to the proper procedure. Nevertheless, as we shall see, administrative tribunals have modified this requirement.

Laws also regulate relationships between persons. For example, the amount which a landlord may charge a tenant for his dwelling is governed by the Rent Act, 1977, and businesses selling goods to customers have to comply with the Sale of Goods Act, 1893 (see p. 129).

Sources of law

The law recognised by the courts comes from a variety of sources:

(1) The common law. Before Parliament passed statutes, the law consisted mainly of accepted customs persisting 'from when the memory of man runneth not to the contrary'. (This idea has been preserved in 'rights of way', e.g. certain footpaths.) In deciding the extent of disputed customary rights the courts established a body of 'common law'.

(2) Rules of equity. As the economy of the country developed during the Middle Ages people began to find that for certain cases the common law did not provide remedies. They therefore applied to the Lord Chancellor for justice. The decisions of the Lord Chancellor tended to be followed by his successors, and so a body of law, known as 'equity', was developed to supplement the common law. Thus today the dissolution of partnerships, the foreclosure of mortgages, and bankruptcy jurisdiction are matters dealt with by the Chancery Division of the High Court.

(3) Statutes. In the course of time both common law and equity
were either inadequate or inappropriate to deal with changed conditions. Hence new laws had to be passed and old laws amended. This was achieved by Acts of Parliament, which are supreme over all other forms of law, thus upholding the principle of parliamentary sovereignty. Today the bulk of law is in statute form, and its volume has increased as the state has added to its responsibilities in our social and economic life. Indeed, many statutes are only in outline form, the details necessary for their implementation being filled in by rules, orders and regulations (officially termed ‘statutory instruments’) made by the responsible Minister.

(4) Case law. If justice is to be certain, it must be consistent. As far as possible, therefore, judges follow the decisions of higher courts on similar points of law. Thus, in interpreting the law, courts are to some extent making law.

(5) European Community law. As a member of the EEC the UK has accepted the Treaty of Rome and other treaties designed to harmonise the policies of the member states. These have the force of law and can override national law, but in order that the Community shall work harmoniously Parliament is expected to respect Community law. Parliamentary sovereignty is preserved by the right to withdraw from membership by repealing the European Communities Act, 1972.

The Council of Ministers and the Commission can make regulations, directives and decisions. Regulations are binding on all member states and have the direct and immediate effect of law. Directives, on the other hand, need Parliament to pass a law or issue a statutory instrument before they take effect. Thus the Second Directive, 1976, requires a company’s name to indicate whether it is private or public, and this is being provided for by a Companies Bill, 1980. Decisions apply only to individual organisations, such as a company.

The European Court of Justice interprets Community law, and its decisions are applied by British courts. Any member state, Community authority, firm or individual can appeal to the Court if it considers there has been a breach of Community law or if aggrieved by the application of the rules.

(6) International law. Firms may occasionally be concerned with international law, e.g. ships must observe the ‘rule of the road’ at sea. This is usually incorporated in the laws of each country and is thus enforceable through the ordinary courts.

II The need for courts of justice

Where a citizen offends against society as a whole, he commits a criminal offence and the state prosecutes in a criminal court,