

THE GLOBAL MANAGEMENT SERIES

Commercial Law in a Global Context

Yvonne McLaren and Josephine Bisacre

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To my partner Duncan for his continued love and support and my students past, present and future who make the darker days brighter.

YMcL

To the other authors of this book who have brought an international outlook to the study of Scots law in their writing, and to my long-suffering husband Jim for his listening skills.

JB

Biographies

The editors

Josephine Bisacre is an Associate Professor of Business Law at Heriot-Watt University and is the Director of Undergraduate Studies in the School of Management & Languages at Heriot-Watt University. She formerly worked as a lecturer and senior lecturer at Edinburgh Napier University and as a solicitor in private practice in the field of corporate law. She is the author of various book chapters in the area of business law, which include a chapter on sources of law in Black, G (ed) (2015) *Business Law in Scotland* 3rd edition. Edinburgh: W. Green, a chapter on the European Citizen and Consumer in the second edition of Johnston, D and Turner, C (2015) *European Business*, 3rd edition, Routledge, and wrote two chapters for the second edition of McManus, F and Russell, E., (2011) *Delict: a Comprehensive Guide to the Law of Scotland*, Dundee: Dundee University Press, as well as various contributions on company law. She has experience of teaching and examining on business law courses offered by various professional bodies.

Yvonne McLaren is an Aberdeen University Law School Graduate currently based within the School of Management and Languages at Heriot-Watt University. In addition to the role as director in Safeguard Technical Services Ltd, Yvonne has a variety of roles within the department, including course leader in the Law of International Human Resource Management, Commercial Law, and Marketing and Consumer Law. Pastoral duties include being the Third year co-ordinator and engaging with students in the role of first year super-mentor. Yvonne has previously taught a variety of law subjects at the University of the West of Scotland and Glasgow College of Commerce.

Contributors

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a few years. Her varied educational background has enabled her to relate to different working professionals and she is often invited to talk in panel discussions focusing on legal issues encountered by UAE start ups. In addition, Zeenat has also appeared as a guest writer in a leading women's magazine in the Gulf region.

Bahma Sivasubramaniam is a barrister of the Honourable Society of Lincoln's Inn and was admitted to the Malaysian bar in 1987 as an Advocate and Solicitor. She was in practice for twelve years during which she served as a member of the Kuala Lumpur Bar Committee for three consecutive terms. Her practice was mainly on banking and commercial matters and she did criminal practice on a pro bono basis. She was also a member of the Human Rights, Charity & Welfare and Publications Committees of the Bar Council. She left the bar to do a Ph.D. at the University of Durham under the Chevening Scholarship of the British Council. She then decided to pursue an academic career, and has been teaching at Multimedia University, top private university in Malaysia, for the past ten years. She teaches various subjects including Employment law and industrial relations, Business law, Law for Engineers, and Cyberlaw. When she was in practice, Bahma campaigned for the right for women barristers to wear trousers to court – and succeeded!

Jill Stirling is an Assistant Professor of Business and Consumer Law, in the School of Management and Languages at Heriot-Watt University. With a degree in History, Politics and Philosophy from Edinburgh University, and a postgraduate diploma in Financial Studies from Heriot-Watt, Jill finally decided on law as a career and is admitted to practice as a solicitor in Scotland and Hong Kong. She has worked in private practice in Scotland and Hong Kong, as a government lawyer in Scotland, and in the corporate sector in Hong Kong. She was a Lecturer in Law at the University of Hong Kong for thirteen years, during which time she was also a member of the Hong Kong Inland Revenue Board of Review, hearing tax appeals, and chaired the Hong Kong University Academic Staff Association. Her current interests are all aspects of consumer law, and tax, with particular emphasis on the need for governments to deal with the aggressive tax planning of multi-national companies.

Preface

This book was conceived as part of a series of business management textbooks that would be used when teaching students on international business management programmes, where students might be studying the same programme but in several different locations: some might be in Scotland, while others might be in various other countries dotted around the globe. The important thing was that the course must be equally relevant for everyone regardless of location.

Colleagues writing in most areas of the syllabus of a business management degree should be able to meet this challenge by making sure that appropriate examples from across the globe are used. But for those engaged in globalised legal education the challenge is greater, particularly if the legal system in question is a small one such as Scots law. Students from elsewhere in the world might be studying the subject in Scotland, while students who are taking a degree offered by a Scottish university may study the subject in some distant country. This means that the subject must be taught in a way that is mindful of the fact that there are other families of legal systems that operate in different ways, and while some solutions may be similar between the laws of different countries, others will be different. The topic must be relevant for everyone to study. Fortunately in commercial law, unlike other areas of law, there is much common ground between English law and Scots law.

The core of the book is that of a textbook on certain elements of commercial law namely the law of contract, the law of delict, and the law of agency, and it can be used simply as such. However, the book also attempts to set Scots law in its global context by exploring the place of Scots law in the families of legal systems, and it includes two chapters that focus on the legal systems of the United Arab Emirates and Malaysia, which are examples of the two main legal traditions: civil law and common law. Because for many students this will be the only legal course they will do, the book includes some information in Chapter 1 on how to study law.

The writing team is similarly global: three of us are based in Scotland, and the other two work in Dubai and Malaysia respectively. One of our number has extensive experience lecturing in higher education in Hong Kong. It would be nice some time to be able to meet as a writing team in one place, but instead our discussions generally take place over weak connections on Skype, WhatsApp, and endless emails.

We hope that the result is a book that will provide straightforward explanations of concepts, avoiding jargon, in order to aid student learning. In our view the chapters on the two other legal systems will prove interesting to those who are not based in those countries, as well as to those who are.

Yvonne McLaren and Josephine Bisacre