

Business law

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MGM412

Lecture 9



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Chapter 9 :Credit transactions and intellectual property rights:

The most important main themes of the lecture:

- 1- Credit transactions.
- 2- Business property.
- 3-Trade marks.

1-Credit transactions:

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- When a loan is made, one person lends money to another. The person who has taken the loan is known as a debtor because he is in debt and must repay the debt. The person who has given the loan has provided credit and is therefore known as a creditor. Credit is given not only when a loan is made, but whenever the payment of a debt is agreed to be postponed.
 - We have considered the essential nature of a loan but now we need to consider loans in more detail, as well as other ways in which businesses might be granted credit.

1-Loans:

- A loan is the most fundamental form of credit. If a loan is made a creditor lends money to a debtor so that the debtor can buy goods or services. The debtor agrees to repay the money, with interest, over a period of time.
- The creditor is generally not connected with the transaction he is financing. A bank, for example, may lend money to enable a business to buy new machinery. The contract between the business and the supplier of the machinery is nothing to do with the bank. The bank merely lends the money.
- Creditors are, however, likely to want security for the money they lend. In this context, security means something given, or promised, to ensure that the debt is repaid. If the debtor is a company or an LLP, the creditor will probably register a charge over the company's assets.

1-Loans:

- Essentially a charge is a mortgage over some of the company's property. If the charge is a floating charge (see p. 320) the company will be free to continue to use the property but if it does not repay the debt as agreed, the bank can order the sale of the assets over which it has a charge and take what it is owed. To preserve the rights granted, a charge holder should register the charge with the Registrar of Companies.
- If the debtor is a partnership or a sole trader, the creditor may take a mortgage of property. The property mortgaged does not need to be business property; it might well be the house of the sole trader or of one of the partners. If the loan is not repaid, the creditor will be able to repossess the property (sell it and take the amount still owed). Where an individual or a partnership gives goods as security for a loan, but retains possession of the goods, the security interest must be registered under the Bills of Sale Act 1878.

1-Loans:

- If the documents relating to the security interest are not attested and registered, within seven days, the security becomes unenforceable. Registration requires a detailed inventory of the goods given as security. For this reason individuals and partnerships cannot grant the equivalent of a floating charge where a class of assets, both present and future, are given as security for a loan.
- Future rights can be given as security. David Bowie famously gave future earnings from all of his songs as security for a very large loan.

2-Hire-purchase:

- Under a hire-purchase agreement a creditor hires goods for a fixed period, and has an option to buy the goods for a token sum at the end of that period.
- A person who takes goods on hire-purchase has been given credit. The credit consists of the difference between what the customer would have had to pay to buy the goods, and the amount he actually paid by way of deposit.
- Usually, a third party finances the deal, although the customer might not be aware of this. If the finance is provided by a third party, the hire-purchase agreement takes the form of a triangular transaction as shown below.
 - (i) The dealer sells the goods to the finance company.
 - (ii) The finance company makes the hire-purchase agreement with the customer.
 - (iii) The dealer may be regarded as the agent of the finance company, as explained below.

2-Hire-purchase:

-Hire-purchase presents difficulties when the goods do not match the description given to them by the dealer. It would seem that the customer has no rights. His contract was not with the dealer but with the finance company, which did not make the description. However, as long as the hire-purchase agreement is a regulated agreement, s. 56 of the Consumer Credit Act will make the dealer the agent of the finance company. This agency relates only to misrepresentations and breach of descriptive terms made by the dealer before the hire-purchase agreement was made. The effect of this will be that the finance company is liable for any misrepresentation or breach of term as to description even though these were made by the dealer.

3-Conditional sales:

- A conditional sale is an agreement to sell under which ownership of the goods stays with the seller until the buyer has paid the full price for the goods. The buyer usually takes immediate possession of the goods.
- Conditional sales often involve a triangular transaction. So, in our example, the garage might sell the car to a finance company and the finance company then make a conditional sale to the florist.
- Where the goods are to be paid for by instalments, a conditional sale is very similar to hire-purchase. The essential difference is that in hire-purchase the buyer does not commit himself to completing the payments.

4-Credit sales:

- Under a credit sale, ownership of the goods passes to the buyer immediately, and the seller extends credit to the buyer.
- Credit sales are commonly used where the goods supplied have a low second-hand value, there being no point in the seller retaining ownership if the goods are worth very little.
- The Sale of Goods Act applies to credit sales. The Consumer Credit Act will apply to credit sales if the agreement is a regulated agreement.

5- Hire and rental agreements:

- A person who rents goods to another gives possession of the goods in return for regular payments. He does not sell or agree to sell the goods. Hire is very similar, but is usually for a shorter period. SGA 1979 does not apply to rental agreements, but SGSA 1982 does. The Consumer Credit Act applies to both hire and rental agreements if the agreement is a regulated agreement.

6- Pledge:

- Goods are pledged when possession of them is given to a lender as security for a loan. When the debtor repays the loan, he is given the goods back. If the debtor does not repay, the creditor can eventually sell the goods and take what he is owed from the proceeds. Easily transportable goods of high value are suitable to pledge, often to a pawnbroker.

2-Business property:

1-Legal concepts of property:

- The common law categorises all property as either real property or personal property. Real property is made up of all freehold interests in land. Personal property is made up of all other property, including leases of land. Although leases of land are classed as personal property rather than as real property, the reasons for this are historical. Most businesses would regard freehold and leasehold interests in land as much the same type of property.
- Personal property is classed as either chattels real or chattels personal. Chattels real consist of leases of land. Chattels personal consist of all the remaining types of personal property. Chattels personal are divided into things in possession, things in action and intellectual property rights. Things in possession are movable things of which physical possession can be taken, for example machines or books.

2-Business property:

1-Legal concepts of property:

-Things in action are intangible rights which can be enforced only by taking legal action, for example debts. Intellectual property rights, such as copyright or patents, are a separate class of intangible property rights.

2-Copyright:

The law relating to copyright is governed by the Copyright, Designs and Patents Act 1988.

Section 1(1) CDPA 1988 defines copyright as a property right in either:

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes; or
- (c) the typographical arrangements of published editions.

2-Business property:

- **Typography is the art of planning and setting out type** so that a work can be printed. Most readers of a book would recognize that the author or publisher had copyright in the words.
- However, they might not realise that copyright also exists in the typographical arrangement of the book, that is to say in the way in which the words appear on the page.
- **Copyright protects the way in which ideas are expressed, rather than the ideas themselves.**
- **In University of London Press Ltd v University Tutorial Press Ltd (1916)** it was decided that mathematics exams which drew on the stock of knowledge common to mathematicians were literary works. The ideas were not new, but the precise way in which they were expressed was new.

2-Business property:

- **It is not essential that the work must have taken a long time to complete**, but very small numbers of words will not be governed by copyright.
- **A street directory has been held to be a literary work**, because it presented information in an original way. It is therefore plain that a literary work does not have to be what most people would regard as a work of literature.
- **A musical work is defined as a work consisting of music**, exclusive of any words or action intended to be sung, spoken or performed with the music. A dramatic work is not defined, but includes a work of dance or mime as well as the more obvious example of a script for a play.

2-Business property:

3-Acquiring copyright:

Section 3(2) CDPA 1988 provides that copyright does not exist in a literary, dramatic or musical work until it is recorded, in writing or otherwise. As soon as it is recorded, it does exist without the need for any formal application process. The recording of the work does not need to be done by the author or with the author's permission.

4-Authorship and ownership of copyright:

The Act defines the author of a work as the person who created it. However, where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, the employer is the first owner of any copyright in the work subject to any agreement to the contrary.

2-Business property:

5-Duration of copyright:

-Copyright exists for different lengths of time, depending upon the type of work concerned. As regards the copyright in literary, dramatic, musical or artistic works, the copyright finishes at the end of 70 years from the end of the calendar year in which the author dies.

-Copyright in a sound recording finishes 50 years from the end of the calendar year in which it is released. Pop stars of the 1950s and 1960s have indicated that they intend to challenge this 50-year time period to see if they can get it lengthened. If a sound recording is not released, it expires 50 years from the end of the calendar year in which it was made.

2-Business property:

5-Duration of copyright:

- The copyright in films expires 70 years from the end of the calendar year in which the death occurs of the last to die of:
 - (i) the principal director;
 - (ii) the author of the screenplay;
 - (iii) the author of the dialogue; or
 - (iv) the composer of music specially created for and used in the film.
- Copyright in broadcast or cable programmes expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.
- Copyright in typographical arrangements of published editions expires at the end of 25 years from the end of the calendar year in which the edition was first published.

2-Business property:

6-Rights of copyright owners:

-Section 16(1) CDPA 1988 gives the copyright owner the exclusive right to:

- (a) copy the work; (b) issue copies of the work to the public;
- (c) rent or lend the work to the public; (d) perform, show or play the work in public;
- (e) broadcast the work or include it in a cable programme service;
- (f) make an adaptation of the work or do any of the above in relation to an adaptation.

-If any person does any of the acts listed above, without the permission of the copyright holder, or authorises anyone else to do this, copyright in the work is infringed. It is important to remember that what is protected is not an idea, but the way in which an idea is expressed. It is also important to realise that infringement does not need to be intentional and can be committed unknowingly.

2-Business property:

6-Rights of copyright owners:

- Copying the work can be done by storing the work electronically, for example by downloading material onto a computer. Making a video recording of a film would infringe copyright. Copyright can be infringed by renting the work for commercial gain. Lending of the work to the public can also infringe copyright, even if no commercial advantage is gained.
- Secondary infringement is committed not by copying the work, but by exploiting it commercially.
- Fair dealing with a literary work (other than a database), or a dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright.

2-Business property:

7-Remedies for infringement:

-Damages and an injunction to prevent future breaches of copyright are the usual remedies for infringement. An owner of copyright may also apply for a court order that a person hands over an infringing copy of a work in his possession. An infringer may also be ordered to hand over profits made from exploiting the copyright.

8-Moral rights:

-Authors are given several moral rights in respect of their works. These are not economic rights, but if these rights are infringed then a remedy for breach of statutory duty will be available. Damages are therefore available. An injunction will be the appropriate remedy to prevent derogatory treatment of the work.

2-Business property:

9-Criminal offences:

Various criminal offences are created in relation to articles which are, and which the defendant knows or has reason to believe are, infringements of copyright. These offences relate to:

- (i) making copies of the work for sale or hire; (ii) importing them for business purposes;
- (iii) possessing them for business purposes with a view to committing a copyright infringement;
- And (iv) selling, exhibiting or distributing them.

10-Patents:

-Patents can be taken out only in respect of inventions which are capable of having an industrial application. A patent must be applied for and is not easily granted. Patent law is governed by the Patents Act 1977.

2-Business property:

10-Patents:

-Patents have two purposes: they encourage innovation by granting monopoly rights in respect of inventions, while at the same time making technological advances public.

11-Patentable inventions:

Section 1(1) of the Patents Act 1977 provides that a patent can only be granted for an invention if:

- (i) the invention is new; and
- (ii) it involves an inventive step; and
- (iii) it is capable of industrial application.

2-Business property:

11-Patentable inventions:

- PA 1977 does not define what an invention is, but s. 1(2) provides that the following matters are not inventions and that there can therefore be no patenting of them:

- (a) discoveries, scientific theories or mathematical methods;
- (b) aesthetic creations and literary, dramatic, musical or artistic work (because these are covered by copyright);
- (c) ways of performing a mental act, playing a game, or doing business,
- (d) a program for a computer; or
- (e) the presentation of information.

An invention can be regarded as new only if it does not form part of the state of prior knowledge, which includes all matters that have at any time before the date of the invention been made available to the public in any way.

2-Business property:

11-Patentable inventions:

- A step can be regarded as an inventive step only if it was not obvious to a person who was skilled in the relevant field.
- An invention is capable of having industrial application if it can be made or used in any kind of industry, including agriculture. Almost every new invention will be regarded as having an industrial application. There is no requirement that it can be put to an immediate industrial use. New methods of surgery, therapy or diagnosis which are to be practised on humans or animals cannot be taken to be of industrial application.
- Patents can apply not only to new items, but also to the way an existing item is used, or to the way in which an existing item is produced. For example, a new way of manufacturing paper could be patentable.

3-Trade marks:

1-Meaning of trade marks and registration of trade marks:

- The Trade Marks Act 1994 governs the law on trade marks. A trade mark is given a wide definition as a 'sign', and can consist of almost any visual representation, including a letter, word, drawing or shape. The only two requirements are that the sign should be capable of being reproduced graphically and that it should be capable of distinguishing one person's products from another person's. A mark which has no distinctive character cannot be registered as a trade mark, but it is possible to register a shape.
- The rights given by TMA 1994 are only conferred once the trade mark, which is a property right, is registered. As regards an unregistered trade mark an action for passing off may lie, but TMA 1994 will provide no remedies.

3-Trade marks:

2-Effect of registered trade mark:

-The proprietor of a registered trade mark is given exclusive rights in the trade mark. If the trade mark is used in the United Kingdom without his consent, these rights are infringed.

A sign can be used in various ways, including by:

(i) fixing it onto a package; (ii) putting goods under the sign;
(iii) importing or exporting under the sign; or (iv) using the sign on business paper or in advertising.

-Trade marks are not infringed by a person using his own name and address, as long as the use is in accordance with honest practices in industrial or commercial matters. This is an objective test and is not the same as asking whether or not the defendant acted honestly.

3-Trade marks:

2-Effect of registered trade mark:

-An action for infringement is brought by the owner of the trade mark, and all remedies which would be available in respect of any other property right are available. In addition the court may:

- (i) order offending signs to be erased or removed;
- (ii) order infringing goods, materials or articles to be delivered up to the owner; and
- (iii) order that these may be destroyed or forfeited to such person as the court thinks fit.

- If a groundless threat of infringement proceedings is made the victim may apply to a court for a declaration that the threats are unjustifiable, or for damages or for an injunction.

A registered trade mark is personal property which can be co-owned or assigned to another. Licences permitting their use may be granted to others.

3-Trade marks:

3-Procedure for registration:

- An application for registration of a trade mark has to include a statement of the goods or services to which the trade mark is to apply, and a representation of the trade mark itself.
- A system of classification exists under which the applicant applies for registration into one of more than 42 classes of goods and services. Where the registrar decides that the application for registration has been accepted, he publishes this in the Trade Marks Journal. Initially, trade marks are registered for a ten-year period from the date of registration. Registration may be renewed for further periods of ten years if the proprietor pays the appropriate fee.
- Damages or an injunction are the usual remedies for infringement, but destruction of offending goods or erasure of offending signs can also be ordered.

3-Trade marks:

4-Breach of confidence:

-Article 8 of the European Convention on Human Rights gives the right to respect for a person's private and family life, home and correspondence. The Human Rights Act 1998 came into force in 2000. It did not create a new tort of invasion of privacy but it did strengthen the law of breach of confidence. However, Art. 10 of the Convention gives the right to freedom of expression, and so freedom of the press has to be weighed against the right to privacy.

5- Suing for breach of privacy

A person bringing a claim for breach of privacy will need to prove three things:

(i) that the information disclosed was confidential; (ii) that there was an obligation of confidence; and (iii) that there was unauthorized use of the information.



Thank You