

## **Brief Contents**

	List of Figures	page xxv
	List of Tables	xxvii
	Table of cases	xxix
	UK statutes	xlvii
	Statutory Instruments	lxxxiii
	EU sources	lxxxvii
	International and comparative sources	xciv
	List of Abbreviations	C
	Introduction: What Is Enterprise Law?	1
	Part I History and Theory	9
1	History: State and Corporate Power	11
2	Modern Theory	47
	Part II General Enterprise Law	93
3	Corporate Constitutions and Directors	95
4	Investment and Shareholding	138
5	Labour Rights	173
6	Competition and Consumers	217
7	Insolvency and Creditors	267
	Part III Specific Enterprise Law	301
8	Education	303



20

**Fiscal and Social Policy** 

**Postscript** 

Appendix Index

Conclusion: The Future of Enterprise

Afterword: Why I've Written a Book on 'Enterprise Law'

xii		Brief Contents	_
	9	Health and Care	334
	10	Banking	366
	11	Natural Resources	394
	12	Electricity and Energy	427
	13	Food, Forests and Water	452
	14	Housing and Construction	484
	15	Road and Rail Transport	514
	16	Communications	552
	17	Web and Broadcast Media	586
	18	Marketplaces	611
	19	Military and Security	633
		Part IV Policy	661

663

686

690

696

699

700



## **Contents**

	List	of Fig	gures	page xxv
	List	of Ta	bles	xxvii
	Tab	le of o	cases	xxix
	UK	statut	tes	xlvii
	Stat	utory	Instruments	lxxxiii
	EU	sourc	es	lxxxvii
	Inte	rnatio	onal and comparative sources	xciv
	List	of At	bbreviations	С
	Intro	oduct	ion: What Is Enterprise Law?	1
	Par	t I	History and Theory	9
1	Hist	огу: Ѕ	state and Corporate Power	11
	(1)	And	cient and Medieval Enterprise	12
	(2)	Mei	rcantilism, 1492–1765	19
	(3)	Ind	ustrial Revolution, 1765–1855	23
	(4)	Cor	porate Revolution, 1855–1945	30
	(5)		bal Revolution, 1945–2021	38
	(6)	Cor	nclusion	46
2			heory	47
	(1)	Eco	nomic Theory	48
		(a)		48
		(b)	e ,	56
		(c)	•	60
		(d)	Public and Private Ownership	62
	(2)		rket Failures and Market Conditions	64
			Failure of Competition and Natural Monopoly	66
		(b)		69
		(c)		70
		(d)	1	72
		(e)	Unemployment, Inflation and Disequilibrium	73



XIV	Contents

	(f) Unequal Bargaining Power	74
	(g) Irrational Decision-Making	76
	(h) Market Conditions	77
(3)	Evidence and Politics	79
` /	(a) Quantitative Studies	79
	(b) Qualitative Studies	81
	(c) Behavioural Economics	81
	(d) Politics and Ideology	82
(4)	Principles, Rights and Justice	83
` ,	(a) The Sociopolitical Nature of Rights	84
	(b) International Rights and National Law	85
	(c) Justice	88
(5)	Conclusion: The Principles of Enterprise Law	90
Par	rt II General Enterprise Law	93
Согр	porate Constitutions and Directors	95
(1)	Nature and Formation of Companies	99
	(a) Separate Legal Personality	100
	(b) Limited Liability	102
	(c) Delegated Agency	106
	(d) Transferable Shares	107
	(e) Ownership	109
(2)	Company Constitutions and Members' Rights	110
	(a) Membership and the Vote	111
	(b) Members' Governance Rights	113
	(c) Constitutional Models and Construction	114
(3)	Board Removal, Appointment and Pay	116
	(a) Removal	116
	(b) Appointment	118
	(c) Pay	119
(4)	Directors' Duties and Litigation	121
	(a) Following the Constitution: Section 171	123
	(b) The Company's Success: Sections 172 and 173	125
	(c) Duty of Care: Section 174	128
	(d) Duty to Avoid Conflicts of Interest: Sections 175–7	7 129
	(e) Litigation: Derivative Claims and Alternatives	132
	(i) Derivative Claims	133
	(ii) Unfair Prejudice Petitions	135
(5)	Conclusion	136



xv Contents

Inve	stment and Shareholding	13
(1)	Finance and Governance of Shareholding	13
	(a) Financial Conduct Authority	14
	(b) Asset Managers	14
	(i) Financing	14
	(ii) Legal Basis	14
	(iii) Trustee and Fiduciary Duties	14
	(iv) Governance Rights	14
	(c) Pension Funds	15
	(d) Life Insurance	15
	(e) Mutual Funds	15
	(f) Retail Shareholders	15
(2)	Equity Finance and Profit Distribution	15
	(a) Share Allotments and Issues	16
	(b) Public Offers, Accounts and Market Abuse	16
	(c) Pre-emption Rights	16
	(d) Profits, Dividends, Buy-Backs and Capital Maintenance	16
	(e) Prohibition on Financial Assistance	16
(3)	Takeovers and Transfers	16
(4)	Corporation, Dividend Income and Capital Gains Tax	17
(5)	Conclusion	17
Labo	our Rights	17.
(1)	Management, Employment, Unionisation	17
	(a) Management and Delegated Agency	17
	(b) Scope of Employment Rights	17
	(c) Contract of Employment	18
	(d) Unions	18
(2)	The Minimum Floor of Rights	18
	(a) Wages and Income Tax	18
	(b) State and Occupational Pensions	19
	(c) Working Time and Child Care	19
	(d) Equality	19
	(e) Health and Safety	19
	(f) Privacy and Expression	19
(3)	Participation and Fair Standards	20
	(a) Worker Participation in Corporate Governance	20
	(b) Right to Collectively Bargain	20
	(c) Right to Strike	20
(4)	Job Security	20
	(a) Full Employment	20
	(b) Notice and Fair Dismissal	21



•	
XVI	Contents

	(c) Redundancy and Transfers	214
(5)	Conclusion	216
Com	petition and Consumers	217
(1)	Framework of Fair Competition	218
	(a) Consumer Rights	219
	(b) Scope of Competition Law	222
	(c) Enforcement	228
	(d) Value Added Tax and Other Duties	229
(2)	Dominance, Abuse and Merger Control	230
	(a) Dominance	231
	(b) Abuse	235
	(i) Unfair Prices and Conditions	235
	(ii) Limiting Production and Technical Development	238
	(iii) Price and Term Discrimination	240
	(iv) Tying, Bundling, Exclusive Dealing and Supplementary	r
	Obligations	243
	(v) Categories not Closed	245
	(c) Mergers or Takeovers	245
	(i) The Concentration of Modern Enterprise	246
	(ii) Concentrations, Decisive Influence and Notification	247
	(iii) Significantly Impeding Competition	248
	(iv) Horizontal Mergers and Collective Dominance	248
	(v) Vertical and Conglomerate Mergers	250
	(d) Remedies	251
(3)	Cartels and Collusion	254
` '	(a) Restricting Competition	255
	(b) Exemptions	257
	(c) Vertical Restraints	259
(4)	State Involvement and Aid	261
` '	(a) Principle of Ownership Neutrality	261
	(b) Competition Law and Public Service Delivery	262
	(c) State Aid	264
(5)	Conclusion	266
Inso	lvency and Creditors	267
(1)	Priority, Security and Insurance	268
	(a) Priority in Case Law and Statute	269
	(i) The Basic Rule of <i>Pari Passu</i>	269
	(ii) Security Interests	269
	(iii) Preferential Claims	270
	(iv) The Priority List	271
	(b) Fixed and Floating Charges	274
	(i) Importance of Security and Its Limits	274
	, , , , , , , , , , , , , , , , , , , ,	



••	
XVII	Contents

	(ii) Distinguishing Fixed and Floating Charges	275
	(iii) Registration and the Limits of Transparency	276
	(iv) Quasi-security Interests	277
	(c) Social Insurance	278
(2)	Governance of Insolvency Procedures	278
	(a) Appointment of Administrators	279
	(i) Rights of Appointment	279
	(ii) Conditions for Appointment	280
	(iii) Rescue or Pre-packs	280
	(iv) Moratorium	283
	(b) Duties of Administrators	283
	(c) Liquidation, Receivership and Voluntary Arrangements	285
(3)	Creditor Liability and Voidable Transactions	287
	(a) Dispositions after Winding Up, Section 127	287
	(b) Transactions at an Undervalue, Section 238	288
	(c) Unlawful Preferences, Section 239	290
	(d) Voidable Floating Charges, Section 245	290
	(e) Transactions Defrauding Creditors, Section 423	291
(4)	Director Liability and Unlawful Trading	291
	(a) Unlawful Trading	292
	(b) Litigation	293
<b>/-</b> >	(c) Director Disqualifications	294
(5)	Shareholder Liability and the Corporate Veil	295
	(a) Separate Personality and Fraud	295
	(b) Corporate Groups	296
(6)	(c) Other Shareholders	298
(6)	Conclusion	299
Par	t III Specific Enterprise Law	301
Educ	cation	303
(1)	Historical Background	304
(2)	Finance	309
(-)	(a) Universities	309
	(i) Public Funding	309
	(ii) Private Endowments and Finance	310
	(iii) Student Fees	312
	(b) Schools	315
	(i) Free Public Schools	315
	(ii) Fee-Charging Private Schools	315
(3)	Governance	317
` /	(a) Department for Education	317
	(b) Universities	317
	(c) School Governance	320

8



XVIII	Contents

(d) UNESCO	322
(4) Students' Rights	323
(a) University Student Rights	323
(i) Right to Have Rules and Law Followed	324
(ii) Equal Treatment	326
(iii) Quality and Competence	327
(iv) No Conflicts of Interest	328
(b) School Student Rights	330
(i) Class Sizes	330
(ii) Admissions and Equal Treatment	331
(iii) Standards of Teaching	332
(5) Conclusion	333
Health and Care	334
(1) Historical Background	335
(2) Finance	341
(a) Public Funding, Outcomes and International Comparison	341
(b) Privatisation	345
(i) Private Provision and Competition	346
(ii) Private Finance Initiative	348
(iii) Private Insurance Policies	348
(c) Exceptional Charging and Foreign Patients	349
(d) Intellectual Monopoly Rights and Medical Patents	349
(e) Public Health	352
(3) Governance	354
(a) Department of Health and Social Care and NHS England	355
(b) Integrated Care Boards	356
(c) NHS Foundation Trusts, GPs and Specialists	357
(d) Supervisory Bodies	358
(e) Social Care and Homes	358
(f) World Health Organization	359
(4) Patients' Rights	359
(a) Right to Treatment	360
(b) Equal Treatment	363
(c) Medical Negligence	363
(d) Conflicts of Interest	364
(5) Conclusion	365
Banking	366
(1) Historical Background	367
(2) Finance of Finance and Public Banks	375
(a) Central Bank Governance	377
(b) Monetary Policy	380
(i) Macroeconomic Logic	380



xix	Contents

_		
	(ii) Goals of Monetary Policy	381
	(iii) Monetary Policy Powers	383
	(c) International Monetary Fund and World Bank	388
	(d) Public Option and Mutual Banks	388
(3)		389
(-)	(a) Standard Governance Model	389
	(b) Licensing Oversight	390
	(c) Capital Requirements	390
	(d) Bank Insolvency	391
(4)	•	391
` '	(a) Contract and Property Rights	392
	(b) Deposit Protection	392
	(c) Consumer Protection	392
(5)	• •	393
(-)		
Na	tural Resources	394
(1)	Historical Background	395
(2)	Finance	402
	(a) Climate Damage Science and International Targets	402
	(b) Ownership of Resources	407
	(c) The Failure of Tort and Criminal Law?	409
	(i) Tort Law	410
	(ii) Directors' Duties	414
	(iii) Criminal Law	415
(3)	Governance of Private Corporations	416
	(a) Oil and Gas Authority and Coal Authority	416
	(b) Licensing and Planning Permission	418
	(i) Oil and Gas Offshore	418
	(ii) Fracking	420
	(iii) Coal Extraction	422
	(c) Decommissioning and Insolvency	423
(4)	Public Rights	424
	(a) The Right to Clean Energy	424
	(b) Taxation or Subsidies	425
(5)	Conclusion	426
Ele	ctricity and Energy	427
(1)		428
(2)	· · · · · · · · · · · · · · · · · · ·	435
` '	(a) Climate Damage and Carbon Taxes	435
	(i) Total Energy Consumption	435
	(ii) Methods to Decarbonise Consumption	436
	(iii) Taxation	437
	(b) Contracts for Difference and Renewable Obligations	438
	<i>5</i>	



XX	Contents

	(c) Feed-In Tariffs	439
	(d) Natural Monopoly	441
(3)	Governance	442
(-)	(a) Ofgem, Licensing and Competition	442
	(i) Constitution of GEMA and Ofgem	442
	(ii) Licences, Duties and Powers	443
	(iii) Competition and Separation	444
	(b) Planning Permission	445
	(c) Stakeholder Governance	446
	(d) Insolvency	449
(4)	Customers' Rights	449
(-)	(a) Vote with Feet?	449
	(b) Price Regulation	450
	(c) Supply and Disconnections	451
(5)	Conclusion	451
(5)	Contractor	101
Foo	d, Forests and Water	452
(1)	Historical Development	453
(2)	Finance	460
	(a) Common Agricultural Policy and Water Subsidies	461
	(i) UK Agriculture Act 2020	461
	(ii) EU Common Agricultural Policy	461
	(iii) US Farm Bills	462
	(iv) The True Destination of Subsidies	464
	(v) Subsidies from and to Water	465
	(b) Natural Monopoly and Patents	466
	(c) Climate Damage and Pollution	468
	(i) Agriculture	468
	(ii) Water	469
(3)	Governance	471
	(a) Agriculture	471
	(i) Administration of Subsidies	471
	(ii) Private Land-Ownership	472
	(iii) Public Land-Ownership	473
	(b) Water	475
	(i) Scotland, Northern Ireland and Wales	475
	(ii) England	476
	(c) International Agencies	478
(4)	Human Rights	478
	(a) Fair Food and Water Prices?	479
	(b) Quality of Food and Water	481
	(c) Water Supply and Disconnections	482
(5)	Conclusion	483



xxi Contents

	sing and Construction	48
(1)	Historical Background	48
(2)	Finance	48
	(a) Building, Construction and Developers	49
	(b) Renting and Housing Benefits	49
(2)	(c) Buying and Mortgage Finance	49
(3)	Governance	49
	(a) Builders and Developers	49
	(b) Landlords, Estate Agents and Tenants	49
	(c) Home Ownership	50
(4)	Home-Dweller Rights	50
	(a) Tenant Rights against Landlords	50
	(i) Rent Regulation	50
	(ii) Security of Tenure	50
	(iii) Right to Repair and Habitability	50
	(iv) Right to Be Housed	50
	(v) Equal Treatment	51
	(b) Mortgagor Rights against Banks	51
	(c) Homeowner Rights	51
(5)	Conclusion	51
Roa	d and Rail Transport	51
(1)	Historical Development	51
(2)	Finance	52:
	(a) Auto-makers	52
	(i) Public Roads and Space	52
	(ii) Road Deaths and Casualties	52
	(iii) Climate Damage and Toxic Air	52
	(iv) State Aid for Manufacturing	52
	(b) Buses	53
	(c) Taxis and Private Hire Vehicles	53
	(d) Business Vehicles	53
	(e) Train Companies to Great British Railways?	53
(3)	Governance	53
	(a) Public Infrastructure	53
	(i) Office of Rail and Road	53
	(ii) Highways, Charging and Pricing	53
	(iii) Network Rail Ltd to Great British Railways?	53
	(b) Auto-makers	54
	(c) Buses	54
	(d) Taxis and Private Hire Vehicles	54
	(e) Business Vehicles	54
	(f) Trains	54



(4)	Passenger Rights	549
	(a) Free Travel and Service	549
	(b) Fare Regulation	549
	(c) Delays and Other Rights	550
(5)	Conclusion	550
Com	munications	552
(1)	Historical Development	553
(2)	Finance	560
	(a) Government Subsidies	561
	(b) Network Monopoly	563
	(c) Data and Ads	564
(3)	Governance	565
	(a) Public Regulators: Ofcom, Information Commissioner,	
	ITU and ICANN	565
	(i) Ofcom	565
	(ii) Information Commissioner	568
	(iii) International Telecommunications Union	568
	(iv) Internet Corporation for Assigned Names and Number	s 569
	(b) Telecoms Companies	570
	(c) Web Communication Companies	572
	(i) Google and Gmail	573
	(ii) Facebook, Instagram, WhatsApp	574
	(iii) Microsoft, Outlook, Skype, LinkedIn	576
	(iv) Amazon and Data Storage	577
	(d) Royal Mail and Post Office	577
(4)	Consumer Rights	578
	(a) Privacy	578
	(b) Free Expression, Fair Prices and Roaming	581
	(c) Service and Speed	583
	(d) Switching, Telephone Numbers and Data Portability	584
(5)	Conclusion	585
Web	and Broadcast Media	586
(1)	Historical Development	587
(2)	Finance	592
	(a) Advertising and Data	592
	(b) Democracy and Political 'Externalities'	595
	(c) Public Grants, Voluntary Subscriptions and Licence Fee	596
(3)	Governance	597
	(a) Ofcom and Broadcasters	597
	(b) Web Media Companies	599
	(i) Wikimedia	599
	(ii) Facebook	601



xxiii Contents

		(iii) YouTube, Google and Alphabet	603
		(iv) Twitter	604
		(c) British Broadcasting Corporation	604
	(4)	Viewer, Listener and Reader Rights	606
		(a) Accuracy and Impartiality	606
		(b) Equality and Offensive or Harmful Material	607
		(c) Privacy and Data	609
	(5)	Conclusion	610
18	Mar	ketplaces	611
	(1)	Historical Development	612
	(2)	Finance	618
		(a) Network Monopoly	618
		(b) Data and Information Asymmetry	620
		(c) Externalities and Waste	621
		(d) Government Subsidies	622
	(3)	Governance	623
		(a) Markets and Supermarkets	624
		(b) Internet Marketplaces	625
		(i) Amazon	625
		(ii) Google Shopping	627
		(iii) eBay	627
		(c) Employment Agencies	628
		(d) Stock Exchanges	630
	(4)	Trader Rights	630
		(a) Access to Marketplace	631
		(b) Equal Treatment	631
		(c) Right to Communication?	631
	(5)	Conclusion	632
19	Mili	tary and Security	633
	(1)	Historical Development	634
	(2)	Finance	642
		(a) Parliament Consent for Tax	643
		(b) Private Procurement and Corruption	645
		(c) Death and Destruction	649
		(d) Climate Damage	652
	(3)	Governance	653
		(a) Military Command	653
		(b) Military-Industrial Complex	655
	(4)	Human Rights	656
		(a) Right to Security?	657
		(b) Right to Life?	658
	(5)	Conclusion	659



xxiv Contents

Pai	rt IV Policy	661
Fisc	al and Social Policy	663
(1)	The Goals of Government	664
	(a) Growth	665
	(b) Steady State	667
	(c) Dynamic Justice	670
(2)	Taxation and Prices	671
	(a) Principles of Taxation and Prices	671
	(b) Raising Taxation	674
	(c) Tax Burden Distribution	675
(3)	Budgeting and Public Services	680
	(a) Public Debt and Public Funds	680
	(b) Annual Budgets	682
	(c) Universal Services	683
(4)	The Future of Democracy	684
Con	clusion: The Future of Enterprise	686
Afte	erword: Why I've Written a Book on 'Enterprise Law'	690
Pos	tscript	696
App	pendix	699
Ind	ex	700