

Unit 1



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| Title: | Company and Partnership Law |
| Level: | 6 |
| Credit Value: | 15 |

| Learning outcomes | Assessment criteria | Knowledge, understanding and skills |
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| The learner will: | The learner can: | |
| 1 Understand different forms of business media | <p>1.1 Identify the principal types of business media</p> <p>1.2 Summarise the formation of the principal types of business media</p> | <p>1.1 Sole traders, Partnerships, Limited Partnerships, Limited Liability Partnerships (LLP) and Companies limited by shares (public and private)</p> <p>1.2 Sole-trader: occurs where an individual starts “trading”; no statutory formation process or system of registration; possible regulation of business name under the Companies Act 2006 (CA2006) s.1192; Partnership: governed by Partnership Act (PA) 1890; partners (at least 2) form partnership by starting in business together with a view to profit (s1-2 PA 1890); no statutory formation process or system of registration; no need to have written partnership agreement; possible regulation of business name under s.1192 CA 2006; Limited company: governed by CA2006; formed by successful registration of specified documentation and fee (CA 2006 Part 2 ss7-16) with Registrar of Companies under approved name (CA 2006 Part 5 ss 53-85); Limited Liability Partnership (LLP): governed by Limited Liability Partnership</p> |

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| | <p>1.3 Analyse the advantages and disadvantages of different business media</p> <p>1.4 Apply an understanding of appropriate business media to a given situation</p> <p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>(LLP) Act 2000; LLP formed by registration of specified documentation and fee with Registrar of Companies and under approved name (s1-3 LLP Act 2000 & Schedule)</p> <p>1.3 Distinguishing between the sole trader, partnership, limited liability partnership and company as business media, eg, in terms of forms of liability (limited liability, unlimited liability, joint and several liability), disclosure requirements; practical considerations, eg, nature, size and risk of business</p> <p>1.4 Application of understanding to a complex scenario</p> <p>1.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| <p>2 Understand the principles of partnership law</p> | <p>2.1 Analyse the different types of partnership and the rights and responsibilities of partners</p> | <p>2.1 Understanding the differences between traditional partnerships, limited partnerships (Limited Partnership Act 1907) and limited liability partnerships (LLP Act 2000); traditional partnership: appropriate definition, eg, PA 1890; formation; the partnership agreement; joint and several liability; fiduciary nature of relationship; partners as agents; limited partnerships: Limited Partnership Act 1907; formation; distinguishing between general and “sleeping partners”; s4 at least 1 general partner liable; limited liability partnership: LLP Act 2000; formation; limited liability; registration procedure; statutory control; liability, eg, contractual, to 3rd parties, for wrongful acts and omissions, misapplications of property; breach of trust</p> |

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| | <p>2.2 Explain how a partnership may be terminated</p> <p>2.3 Explain the effects of insolvency of partners</p> <p>2.4 Apply the law on the principles of partnership to a given situation</p> <p>2.5 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>2.2 An explanation of: PA 1890; <i>Hadlee v Commissioner of Inland Revenue (1989)</i>; contractual grounds for dissolution; bankruptcy or death; the grounds upon which a partner may apply to the court; liability of outgoing and incoming partners; LLP Act 2000 transfer; winding up</p> <p>2.3 An explanation of: PA 1890 joint and several liability; Insolvent Partnerships Order 1994; Partnership Voluntary Arrangement; LP Act 1907, at least one partner unlimited; LLP Act 2000, limited liability</p> <p>2.4 Application of the law to a complex scenario</p> <p>2.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| <p>3 Understand the underpinning concepts of the company</p> | <p>3.1 Explain the concept of incorporation</p> <p>3.2 Analyse the power to pierce the corporate veil</p> <p>3.3 Apply an understanding of the main</p> | <p>3.1 Development of the company, eg, the company limited by shares and limited by guarantee; corporate personality; limited liability; the corporate veil, eg, <i>Salomon (1897)</i></p> <p>3.2 Piercing the veil by the Judiciary: Torts; National interest, eg, <i>Daimler (1916)</i>; Fraud, eg, <i>Salomon (1897)</i>, <i>Gilford Motors (1933)</i>; Economic Entity (subsidiaries), eg, <i>DHN (1976)</i>; Agency, eg, <i>Smith, Stone & Knight (1939)</i>; Justice, eg, the views of Lord <i>Denning</i>; <i>Adams v Cape Industries (1990)</i>; <i>Creasey (1992)</i>; <i>Ord v Bellhaven (1998)</i>; use of statutory powers, eg, s212 Insolvency Act (IA)1986</p> <p>3.3 Application of understanding to a complex</p> |

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| | <p>features of the company to a given situation</p> <p>3.4 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>scenario</p> <p>3.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| 4 Understand the promotion and formation of the company | <p>4.1 Explain the role and duties of the promoter</p> <p>4.2 Analyse the developments in companies legislation with regard to the significance of pre-incorporation contracts</p> <p>4.3 Explain the process of incorporation for public and private companies</p> <p>4.4 Apply an understanding of company promotion and formation to a given situation</p> <p>4.5 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>4.1 Definition: eg, <i>Twycross v Grant (1876-77)</i>; duties; liabilities, eg, <i>Erlanger v New Sombrero (1877-78)</i></p> <p>4.2 Effects of pre-incorporation contracts for promoters, the company and 3rd parties, eg, <i>Kelner v Baxter (1866-67)</i>, <i>Newbourne v Sensolid (1954)</i>; the effect of the EU Directive and s36C Companies Act 1985: <i>Phonogram v Lane (1982)</i>; now s51 CA 2006.</p> <p>4.3 Role of Registrar of Companies; Companies House (CH) requirements; documentation, eg, constitution (Memorandum of Association (MA) & Articles of Association (AA)), statements; fees; electronic registration; certificate of incorporation; commencement of trading and borrowing; PLC trading certificate; effect of non-compliance; “off the shelf” companies</p> <p>4.4 Application of understanding to a complex scenario</p> <p>4.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| 5 Understand the nature and purpose of the company’s constitution | 5.1 Explain the purpose and contents of the memorandum of association | 5.1 Definition; contents; objects clause; s8 CA2006; s18 CA 2006 |

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| | <p>5.2 Explain the purpose and contents of articles of association</p> <p>5.3 Analyse the importance of the constitution of the company to members</p> <p>5.4 Analyse the developments in the doctrine of ultra vires</p> <p>5.5 Apply an understanding of the nature and purpose of the company constitution to a given situation</p> <p>5.6 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>5.2 Definition; contents; model articles etc</p> <p>5.3 Possible contractual effect of s14 CA 1985 and insider/ outsider rights: ie, <i>Salmon v Quinn (1909)</i>; <i>Hickman v Kent & Romney Sheepbreeders (1915)</i>; <i>Rayfield v Hands (1960)</i>; <i>Beattie (1938)</i>; the theories of Wedderburn, Gregory and Greene; the effect of s33 CA 2006</p> <p>5.4 An explanation of the effect of the objects clause: ie, <i>Ashbury Railway Carriage Co (1875)</i>, <i>Cotman v Brougham (1918)</i>; <i>Bell Houses (1966) Clause</i>; the ultra vires doctrine and the developments because of s9 European Communities Act 1972; s35 CA 1985; now CA 2006 s33: unlimited objects unless specified in articles; s39 CA 2006 replaces s35 CA 1985 but refers to constitution not memorandum (relegated position s8 CA 2008); authority of directors</p> <p>5.5 Application of understanding to a complex scenario</p> <p>5.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| <p>6 Understand the principles of share issue, capital and capital maintenance</p> | <p>6.1 Explain how and when shares may be issued and allotted and the responsibilities and duties of those promoting an issue</p> | <p>6.1 Definitions of a share: <i>Borland's Trustee (1901)</i>; the statement of share capital, s9 CA 2006; the abolition of authorised share capital; types of capital: issued, paid up, called up capital; required disclosure to members, ss 31 and 32 CA 2006; directors' rights to allot shares, s550, ss549 and 551 CA 2006; requirements: ordinary resolution;</p> |

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| | <p>6.2 Explain the rights and responsibilities that attach to share ownership</p> <p>6.3 Explain the process and restrictions on the transfer and transmission of unlisted shares</p> <p>6.4 Explain the concept of and the restrictions on insider dealing</p> <p>6.5 Analyse the doctrine of capital maintenance</p> | <p>the power to alter share capital, s617; pre-emption rights, eg, <i>Rayfield v Hands (1960)</i>; disapplication of pre-emption rights, s569 CA 2006</p> <p>6.2 Types of shares, eg, ordinary, preference; rights of shareholder, eg, to a dividend, to vote; liability, eg, to pay nominal value; class rights: defined, eg, <i>Cumbrian Newspapers (1987)</i>, s629 CA 2006; variation of class rights, eg, <i>Greenhalgh v Arderne Cinemas (1946)</i>, <i>White v Bristol Aeroplane (1953)</i>, s630 CA 2006; articles of association and entrenchment, s22 CA 2006; possible s33 CA 2006; variation and protection of the minority: <i>Foss v Harbottle (1843)</i> and exceptions; unfair prejudice, s994 CA 2006; just and equitable winding up; s122 IA 1986</p> <p>6.3 <i>Re Smith & Fawcett (1942)</i>: discretion to refuse to register; must give notice; s776 CA 2006; forged transfer of shares; transfer of shares involving a forged certificate</p> <p>6.4 Definition: "victimless crime", eg, EC Directive; Criminal Justice Act 1993 s52 definition; ss54-60 terms defined; s53 defences; s63 penalties; Market Abuse; Financial Services and Markets Act 2000 possible civil penalties; FSA; UK Listing Authority Model Code</p> <p>6.5 Doctrine defined: eg, <i>Trevor v Whitworth (1887)</i>; reduction of capital in articles (Table A); procedure for private companies to reduce capital: Special Resolution and declaration of solvency; ss 642-644 CA 2006; dividends only from profits, eg, <i>Baird v Queen's Moat Houses plc (2001)</i>;</p> |
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| | <p>6.6 Apply an understanding of the principles of share issue, capital and capital maintenance to a given situation</p> <p>6.7 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>companies purchase of own shares; giving of assistance and subsidiaries, eg, <i>Heald v O'Connor (1971)</i>, <i>Brady v Brady (1988)</i>; sale at discount: <i>Ooregum Gold Mining Co (1892)</i> and s542 CA 2006; purchase for non-cash consideration; duty of directors of PLC to call public meeting on serious loss of capital, s656 CA 2006; personal liability for loss</p> <p>6.6 Application of understanding to a complex scenario</p> <p>6.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| <p>7 Understand how a company borrows money</p> | <p>7.1 Explain the concept of the debenture and differentiate between a fixed and floating charge</p> <p>7.2 Analyse the benefits of the fixed and floating charge to the company and debenture holder</p> <p>7.3 Analyse the importance of the type of charge and effect of registration on the priority of charges in a liquidation</p> <p>7.4 Analyse the effectiveness of retention of title clauses</p> | <p>7.1 Definition: <i>Levy v Abercorris (1888)</i>; fixed or floating charges: <i>Re Panama (1869-70)</i>; <i>Re Yorkshire Woolcombers (1904)</i>; <i>Smith v Bridgend CBC (2002)</i></p> <p>7.2 Registration priority; what can cause crystallisation; the categorisation of book debts as fixed or floating charges: ie, <i>Siebe Gorman (1979)</i>; <i>Re New Bullas (1994)</i>; <i>Brumark (2000)</i>; <i>Spectrum Plus (2005)</i></p> <p>7.3 Effect on liquidation of fixed and floating charges: ie, <i>Re Automatic Bottlemakers (1926)</i>; <i>Re Woodroffes (1986)</i>; the conclusiveness of certificate of registration: s869 CA 2006; <i>Re CL Nye (1971)</i>; the avoidance of charges on a liquidation: s245 IA 1986; <i>Power v Sharp Investments (1994)</i></p> <p>7.4 Definition: the <i>Romalpa clause (Aluminium Industrie Vaasen v Romalpa Aluminium 1976)</i>; requirements: equitable ownership,</p> |

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| | <p>7.5 Apply an understanding of how a company borrows money to a given situation</p> <p>7.6 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p><i>Re Bond Worth Ltd (1980)</i>; identifiable, eg, <i>Hendy Lennox (1948)</i>; undergone process, eg, <i>Borden Ltd (1981)</i></p> <p>7.5 Application of understanding to a complex scenario</p> <p>7.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| 8 Understand the long-term and day-to-day management of the company | <p>8.1 Explain the rules covering the convening and conduct of general meetings</p> <p>8.2 Explain the rules governing board meetings</p> <p>8.3 Explain how directors may be appointed, retained, remunerated and removed</p> | <p>8.1 Definition of meeting, <i>Sharp v Dawes (1876)</i>; the AGM and EGM; requirements for meetings: no requirement for private company AGM; notification requirement, <i>Kaye v Croydon Tramways Co (1898)</i>; content and process: quorum; Articles and Model Articles; Ordinary and Special resolutions; elective and written resolutions; informal resolutions, eg, <i>Re Duomatic (1969)</i>; voting procedures: no longer unanimous; voting agreements; restrictions on voting; Table A; Court ordered s306 CA 2006; provisions in relation to quoted and publicly traded companies</p> <p>8.2 Constitution; frequency; voting; quorum; GM has no right to interfere with the management of the company by the directors, eg, <i>Automatic Self-cleaning Filter Syndicate Co (1906)</i></p> <p>8.3 Requirements, eg, number, age, natural, see ss154, 155, 157 CA 2006; initial requirements in statement; appointment: under Articles, Article 17 of the 2009 Model Articles applicable to Private Companies and Article 20 of the 2009 Model Articles applicable to Public Companies by members'</p> |

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| | <p>8.4 Analyse the roles and duties of the different types of director and the impact of the statutory list of directors' duties in CA 2006</p> | <p>resolution; restrictions on appointment: disqualification under Company Directors Disqualification Act 1986: bankrupt, eg, <i>R v Brockley (1994)</i>; service contracts: generally, ss228-230 CA 2006; over 2 years need approval of members, ss188-189 CA 2006; termination and/or retirement of directors - art.18 of the 2009 Model Articles applicable to Private Companies, arts.21 and 22 of the 2009 Model Articles applicable to public companies; removal of director: s168 CA 2006 (old s303 CA 1985); weighted voting to protect position, <i>Bushell v Faith (1970)</i> clause; compensation for termination, <i>Southern Foundries v Shirlaw (1940)</i></p> <p>8.4 Definition of shadow director: <i>Re Hydrodan (Corby) Ltd (1994)</i>; s251 Insolvency Act 1986; s22(5) CDDA 1986; eg, <i>Secretary of State for Trade and Industry v Deverell (2001)</i>; distinguishing executive and non-executive directors; the standard of care, ie, <i>Re City Equitable (1925)</i>; <i>Re D'Jan (1993)</i>; s214 IA 1986; s174 CA 2006; the fiduciary duties and duties of care and skill; <i>Percival v Wright (1902)</i>, duty to company; the statutory duties: s170 and ss171-177 CA 2006; statutory factors to be considered; cannot exempt from liability by provision in articles etc, s232 CA 2006, but can insure directors, s.233 CA 2006; court may relieve a director of liability for breach in whole or in part if has acted honestly and court thinks just in circumstances, eg, <i>Re Duomatic (1969)</i>; disqualification of directors: ss2-5 and 11 CDDA 1986; s178 breach of duty liability; s180 consent</p> <p>8.5 Definition of SPT s190 CA 2006; approval by</p> |
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| | <p>8.5 Explain the provisions regulating substantial property transactions (SPT) and loans to directors</p> <p>8.6 Apply an understanding of the long-term and day-to-day management of the company to a given situation</p> <p>8.7 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>members; voidable; liability to account, s195 CA 2006; exceptions, ss192-194 CA 2006; loans to directors, ss197-214 CA 2006; generally prohibited, s197 CA 2006; exceptions, ss204-209 CA 2006</p> <p>8.6 Application of understanding to a complex scenario</p> <p>8.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| 9 Understand the principles of reconstruction, merger and acquisition | <p>9.1 Analyse the methods by which a reconstruction can be achieved</p> <p>9.2 Explain the processes of merger and acquisition</p> <p>9.3 Apply an understanding of the principles of reconstructions, mergers and acquisitions to a given situation</p> <p>9.4 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>9.1 Alteration of objects; reduction of capital; purchase of own shares; variation of shareholder rights; re-registration</p> <p>9.2 Definitions; private companies: articles; PLC: offeror sends circular to shareholders; CA 2006 statutory authority to takeover panel; judicial review, eg, <i>Datafin</i>; <i>City Code</i>; directors' duties in takeover</p> <p>9.3 Application of understanding to a complex scenario</p> <p>9.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p> |
| 10 Understand the concepts of insolvency and liquidation | <p>10.1 Explain the company voluntary arrangement (CVA)</p> <p>10.2 Analyse the differences between receivership, administrative receivership</p> | <p>10.1 Definition of insolvency; CVA: IA 1986 as amended IA 2000; process; supervisor; proposal; meetings and approval; failure into administration; success into solvency; schemes of arrangement CA</p> <p>10.2 Rescue regime; Enterprise Act 2002 Schedule B1; administrator appointment;</p> |

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| | <p>and administration</p> <p>10.3 Explain winding up</p> <p>10.4 Analyse the avoidance provisions and potential liability of company officers</p> <p>10.5 Apply an understanding of the concepts of insolvency and liquidation to a given situation</p> | <p>purposes; receiver's appointment; purposes; administrative receiver's appointment; purposes; effects of appointment of each: role, powers and duties; avoidance powers; collection and distribution; the Enterprise Act 2002 and the removal of Crown priority; the introduction of "top-slicing"; the administrator's duty of care and the costs of administration, eg, <i>MC Bacon (1991)</i></p> <p>10.3 Creditors' and members' voluntary winding up; process; resolutions; statements; appointment of liquidator; effect; priority of creditors; court winding up, s124 IA 1986</p> <p>10.4 The avoidance of transactions at an undervalue; s238 IA 1986; time limits; connected persons; burden of proof; the avoidance of preferences; s239 IA 1986; time limits; burden of proof; 'desire to prefer'; extortionate credit transactions; s244 IA 1986; wrongful trading, s214 IA 1986; fraudulent trading; s213 IA 1986; Misfeasance; s212 IA 1986; the standing and burden of proof to establish these; also s349 CA 1985 provides that if the company name on the cheque is defective and it is not honoured, then the signing director may be personally liable; this has not been incorporated into or repealed by the CA 2006, therefore, the provision stands; defences, eg, <i>Re Duomatic (1969)</i>; disqualification, CDDA 1986; the possible liability to account</p> <p>10.5 Application of understanding to a complex scenario</p> |
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| | 10.6 Critically evaluate a given issue or situation to predict probable legal implications | 10.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate |
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| Additional information about the unit | |
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| Unit aim(s) | To accredit a broad and detailed understanding of Company and Partnership Law |
| Unit expiry date | 31 March 2015 |
| Details of the relationship between the unit and relevant national occupational standards (if appropriate) | This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards |
| Details of the relationship between the unit and other standards or curricula (if appropriate) | Na |
| Assessment requirements specified by a sector or regulatory body (if appropriate) | Na |
| Endorsement of the unit by a sector or other appropriate body (if required) | Na |
| Location of the unit within the subject/sector classification | 15.5 Law and Legal Services |
| Name of the organisation submitting the unit | ILEX (Institute of Legal Executives) |
| Availability for use | Available to all Awarding Bodies to award credit (shared) |
| Availability for delivery | 1 September 2009 |

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