

Title:	(Unit 1) Company & Partnership Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES		ASSESSMENT CRITERIA		KNOWLEDGE, UNDERSTANDING AND SKILLS	
THE LEARNER WILL:		THE LEARNER CAN:			
1	Understand different forms of business media	1.1	Identify the principal types of business media	1.1	Sole traders, Partnerships, Limited Partnerships, Limited Liability Partnerships (llp) and Companies limited by shares (public and private).
		1.2	Summarise the formation of the principal types of business media	1.2	<p>Sole-trader: occurs where an individual starts ‘trading’;</p> <ul style="list-style-type: none"> • No statutory formation process or system of registration; • Possible regulation of business name under the Companies Act 2006 (CA 2006) s.1192; • Partnership: • governed by Partnership Act 1890 (PA 1890); • partners (at least 2) form partnership by starting in business together with a view of 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 CA 2006; formed by successful registration of specified documentation and fee (CA 2006 part

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		<p>2 ss7-16) with registrar of companies under approved name (CA 2006 Part 5 ss 53-85);</p> <ul style="list-style-type: none"> • Identity verification under the Economic Crime and Corporate Transparency Act (ECCTA) 2024 (in force 4 March 24) • Limited Liability Partnership (LLP): governed by Limited Liability Partnership Act 2000 (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>1.3 Analyse the advantages and disadvantages of different business media</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;</p> <ul style="list-style-type: none"> • Practical considerations, eg, nature, size and risk of business.
	<p>1.4 Apply an understanding of appropriate business media to a given situation</p>	<p>1.4 Application of understanding to a complex scenario.</p>
	<p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>1.5 A reasoned opinion of likely legal implications, and defences, where appropriate.</p>

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<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 ordinary partnerships, limited partnerships (Limited Partnership Act 1907) and Limited Liability Partnerships (LLP Act 2000);</p> <ul style="list-style-type: none"> • ordinary partnership: definition, s1 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 • relevant case law.
	<p>2.2 Explain how a partnership may be terminated</p>	<p>2.2 An explanation of:</p> <ul style="list-style-type: none"> • relevant sections of PA 1890; • 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.

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	2.3 Explain the effects of insolvency of partnership	2.3 An explanation of: <ul style="list-style-type: none"> • relevant sections 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.
	2.4 Apply the law on the principles of partnership to a given situation	2.4 Application of the law to a complex scenario.
	2.5 Critically evaluate a given issue or situation to predict probable legal implications	2.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
3. Understand the underlying principles of company law	3.1 Explain the concept of incorporation and its consequences	3.1 Development of the company, eg, the company limited by shares and limited by guarantee; <ul style="list-style-type: none"> • corporate personality; • limited liability; • the corporate veil, eg, <u>Salomon v Salomon & Co Ltd (1897)</u>.

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<p>3.2 Analyse the circumstances in which the court may pierce the corporate veil</p>	<p>3.2 Piercing the veil by the judiciary: <u>Torts Williams v Natural Life Health Foods</u> (1998);</p> <ul style="list-style-type: none"> • <u>Chandler v Cape Plc</u> (2012), <u>Okpabi v Royal Dutch Shell Plc</u> (2021), Supreme court decision; • National interest, eg, <u>Daimler</u> (1916); • fraud, eg, <u>Gilford Motors</u> (1933); • more recent examples involving concealment or evasion in the context of matrimonial property e.g. <u>Petrodel Resources Ltd v Prest</u> (2013) and re-affirmation of <u>Salomon</u> (1897); • Economic Entity (subsidiaries), eg, <u>DHN</u> (1976), <u>VTB Capital v Nutritek</u> (2013); • agency, eg, <u>Smith, Stone & Knight</u> (1939); • justice, eg, the views of Lord <u>Denning</u>; • <u>Adams v Cape Industries</u> (1990); • <u>Creasey</u> (1992); • <u>Ord v Bellhaven</u> (1998); • use of statutory powers, eg, s212 Insolvency Act (IA)1986.
<p>3.3 Apply an understanding of the main 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>3.3 Application of understanding to a complex scenario.</p> <p>3.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>

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4. Understand the promotion and formation of the company	4.1 Explain the role and duties of the promoter	4.1 Definition: eg, <u>Twycross v Grant</u> (1876-77); • duties; • liabilities, eg, <u>Erlanger v New Sombrero</u> (1878).
	4.2 Analyse the developments in companies' legislation with regard to the significance of pre-incorporation contracts	4.2 Effects of pre-incorporation contracts for promoters, the company and 3rd parties, eg, <u>Kelner v Baxter</u> (1866-67), <u>Newbourne v Sensolid</u> (1954); • s51 CA 2006; • relevant case law eg <u>Phonogram v Lane</u> (1982), <u>Braymist v Wise</u> (2002).
	4.3 Explain the process of incorporation for public and private companies	4.3 Role of registrar of companies; • Companies House requirements (including changes under the ECCTA 2024); • documentation, eg, constitution (Memorandum of Association and Articles of Association), statements; • fees; • electronic registration; • certificate of incorporation; • commencement of trading and borrowing; • PLC trading certificate; • effect of non-compliance; • 'off the shelf' companies.
	4.4 Apply an understanding of company promotion and formation to a given situation	4.4 Application of understanding to a complex scenario.
	4.5 Critically evaluate a given issue or situation to predict probable legal implications	4.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate

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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; <ul style="list-style-type: none"> • objects clause; • S8 CA 2006; • S28 CA 2006.
	5.2	Explain the purpose and contents of articles of association	5.2	Definition; <ul style="list-style-type: none"> • contents; • model articles etc.
	5.3	Analyse the importance of the constitution of the company to members	5.3	Possible contractual effect of articles: s33 CA2006 and insider/outsider rights: eg, <u>Salmon v Quinn</u> (1909); <ul style="list-style-type: none"> • <u>Hickman v Kent & Romney Sheepbreeders</u> (1915); • <u>Rayfield v Hands</u> (1960); • <u>Beattie</u> (1938); • The theories of different academic writers eg Wedderburn and Gower. Alteration of the articles via s21 CA 2006 and the courts' review of alterations eg <u>Allen v Gold Reefs</u> (1900) and <u>Greenhalgh v Arderne</u> (1951).
	5.4	Analyse the developments in the doctrine of <i>ultra vires</i>	5.4	An explanation of the effect of the objects clause: ie, <u>Ashbury Railway Carriage Co</u> (1875), and other cases eg <u>Cotman v Brougham</u> (1918); <ul style="list-style-type: none"> • <u>Bell Houses</u> (1966) clause; • the ultra vires doctrine; • successive reforms now contained principally in s39 and s40 CA 2006; • limitations on transactions involving directors (s41 ca 2006); • s31 CA 2006: unlimited objects unless restrictions specified in articles; • effect of s28 CA 2006; • connection between restrictions in a company's objects and the duties of its directors: s171 CA 2006 (duty to act within powers).
	5.5	Apply an understanding of the nature and purpose of the company constitution to a given situation	5.5	Application of understanding to a complex scenario.
	5.6	Critically evaluate a given issue or situation to predict probable legal implications	5.6	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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<p>6. Understand the principles of how shares are issued, share 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: <u>Borland’s Trustee</u> (1901);</p> <ul style="list-style-type: none"> • 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, s32 CA 2006; • directors’ authority to allot shares, ss549-551 CA 2006; • requirements: ordinary resolution; • application of s550 to private companies with a single class of shares; • the power to alter share capital, s617 CA2006; • pre-emption rights, disapplication of pre-emption rights, ss569-571 CA2006.
	<p>6.2 Explain the rights and responsibilities that attach to share ownership</p>	<p>6.2 Types of shares, eg, ordinary, preference;</p> <ul style="list-style-type: none"> • meaning of person of significant control; • rights of shareholder, eg, to a dividend, to vote; • liability, eg, to pay nominal value; • class rights: defined, eg, <u>Cumbrian Newspapers</u> (1987), s629 CA 2006; • variation of class rights, eg, <u>Greenhalgh v Arderne Cinemas</u> (1946), <u>White v Bristol Aeroplane</u> (1953), s630 CA entrenchment, ss 21 and 22 CA 2006; • effect of s33 CA 2006; • protection of the minority: <u>Foss v Harbottle</u> (1843) and exceptions; • derivative claims ss260-263 CA 2006; • unfair prejudice, s994 CA 2006; • just and equitable winding up; • s122 Insolvency Act 1986; • relevant case law exploring these statutory provisions eg <u>Iesini v Westrip</u> (2009), <u>Ebrahimi v Westbourne Galleries</u> (1973), <u>O’Neill v Phillips</u> (1999).

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	<p>6.3 Explain the process of and restrictions on the transfer and transmission of unlisted shares</p>	<p>6.3 Re <u>Smith & Fawcett</u> (1942):</p> <ul style="list-style-type: none"> • discretion to refuse to register; • Articles of association; • must give notice; • s776 CA 2006; • forged transfer of shares; • transfer of shares involving a forged certificate.
	<p>6.4 Explain the concept of and the restrictions on insider dealing</p>	<p>6.4 Market abuse definition:</p> <ul style="list-style-type: none"> • the UK Market Abuse regulation(Post-Brexit) ('MAR'); • transactions by directors and senior managers (Article 19 MAR); • sanctions and role of the FCA • criminal offences under the Criminal Justice Act 1993 s52 definitions; • ss54-60 terms defined; • s53 defences; • s63 penalties.
	<p>6.5 Analyse the doctrine of capital maintenance</p>	<p>6.5 Doctrine defined: eg, <u>Trevor v Whitworth</u> (1887);</p> <ul style="list-style-type: none"> • procedure for private companies to reduce capital: Special Resolution and declaration of solvency; • ss 641-644 CA 2006; • dividends only from profits, eg, <u>Bairstow v Queen's Moat Houses Plc</u> (2001); • companies purchase of own shares; • giving of assistance and subsidiaries, eg, <u>Heald v O'Connor</u> (1971), <u>Brady v Brady</u> (1988); • sale at discount: <u>Oregum Gold Mining co</u> (1892) and s542 CA 2006; • purchase for non-cash consideration; • duty of directors of PLC to call public meeting on serious loss of capital, s656 CA2006; • personal liability for loss.

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	6.6	Apply an understanding of the principles of share issue, capital and capital maintenance to a given situation	6.6	Application of understanding to a complex scenario.
	6.7	Critically evaluate a given issue or situation to predict probable legal implications	6.7	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
7. Understand how a company borrows money	7.1	Explain the concept of the debenture and differentiate between a fixed and floating charge	7.1	Definition: <u>Levy v Abercorris</u> (1888); <ul style="list-style-type: none"> fixed or floating charges: re <u>Panama</u> (1869-70); re <u>Yorkshire Woolcombers</u> (1904); <u>Smith v Bridgend CBC</u> (2002).
	7.2	Analyse the benefits of the fixed and floating charge to the company and debenture holder	7.2	Registration priority; <ul style="list-style-type: none"> what can cause crystallisation; the categorisation of book debts as fixed or floating charges: ie, <u>Siebe Gorman</u> (1979); re <u>New Bullas</u> (1994); <u>Brumark</u> (2000); <u>Spectrum Plus</u> (2005).
	7.3	Analyse the importance of the type of charge and effect of registration on the priority of charges in a liquidation	7.3	Effect on liquidation of fixed and floating charges: ie, re <u>Automatic Bottlemakers</u> (1926); <ul style="list-style-type: none"> re <u>Woodroffes</u> (1986); the conclusiveness of certificate of registration: s859i CA 2006; re <u>CL Nye</u> (1971); the avoidance of charges on a liquidation: s245 IA 1986; <u>Power v Sharp Investments</u> (1994); s239 IA 1986.
	7.4	Analyse the effectiveness of retention of title clauses	7.4	Definition: the <u>Romalpa Clause</u> (<u>Aluminium Industrie Vaasen v Romalpa Aluminium</u> 1976); <ul style="list-style-type: none"> requirements: equitable ownership, re <u>Bond Worth Ltd</u> (1980); identifiable, eg, <u>Hendy Lennox</u> (1948); undergone process, eg, <u>Borden Ltd</u> (1981).

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<p>8. Understand the long-term and day-to-day management of the company</p>	<p>8.1 Explain the rules covering the convening and conduct of general meetings</p>	<p>8.1 Definition of meeting, <u>Sharp v Dawes</u> (1876); the annual general meeting (AGM) and the general meeting (GM);</p> <ul style="list-style-type: none"> • requirements for meetings; • generally, chapter 3, part 13 CA 2006 no requirement for private company AGM; • notification requirement, <u>Kaye v Croydon Tramways Co</u> (1898); • content and process: • quorum; Articles and Companies (Model Articles) Regulations 2008 (Model Articles); Ordinary and Special Resolutions; • written resolutions; • generally Chapter 2, Part 13 CA 2006; • informal resolutions, eg, Re <u>Duomatic</u> (1969); • voting procedures; • voting agreements; • restrictions on voting; • member requisitioned meetings s303 CA 2006; • Court ordered meetings s306 CA 2006 and relevant case law eg <u>Union Music v Watson</u> (2003); • provisions in relation to quoted and publicly traded companies.
	<p>8.2 Explain the rules governing board meetings</p>	<p>8.2 Articles of association;</p> <ul style="list-style-type: none"> • frequency; • voting; • quorum; • GM's limited right to interfere with the management of the company by the directors, eg, <u>Automatic Self-Cleaning Filter Syndicate Co</u> (1906) and Model Articles 3 and 4.

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<p>8.3 Explain how directors may be appointed, retained, remunerated and removed</p>	<p>8.3 Requirements, eg, number, age, natural persons, see ss154, 155, 157 CA 2006;</p> <ul style="list-style-type: none"> • initial requirements on incorporation; • identity verification under ECCTA 2024; • appointment: under Articles, Article 17 of the Model Articles applicable to Private Companies and Article 20 of the Model Articles applicable to Public Companies by members' resolution; • restrictions on appointment: disqualification under Company Directors Disqualification Act 1986: bankrupt, eg, <u>R v Brockley</u> (1994); • service contracts: generally, ss228-230 CA 2006; over 2 years need approval of members, ss188-189 CA2006; • termination and/or retirement of directors - Articles 18 of the Model Articles applicable to Private Companies, Articles 21 and 22 of the Model Articles applicable to public companies; removal of director: s168 CA 2006; • weighted voting to protect position, <u>Bushell v Faith</u> (1970) clause; compensation for termination, <u>Southern Foundries v Shirlaw</u> (1940); • relevance of s994 CA 2006.
<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>8.4 Definition of shadow director: re <u>Hydrodan (Corby) Ltd</u> (1994);</p> <ul style="list-style-type: none"> • s251 Insolvency Act 1986; • s22(5) CDDA 1986 eg, <u>Secretary of State for Trade and Industry v Deverell</u> (2001); • definition of de facto director eg <u>Re Gemma Ltd (in liq)</u> (2008); <u>Smithton v Naggat</u> (2014) duties of shadow directors (<u>Vivendi SA v Richards</u> (2013)); • distinguishing executive and non-executive directors; • the authority of different directors: express, implied and ostensible authority; • the rule in <u>Turquand's case</u> and s40 CA2006; • the statutory duties: s170 CA2006 and continuing relevance of common law in interpreting statutory duties;

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		<ul style="list-style-type: none"> the content of the statutory duties ss171-178 CA2006 and case law relevant to their interpretation e.g. <u>Re D'Jan</u> (1993); <u>Regentcrest Plc v Cohen</u> (2001); <u>Fulham FC v Caba</u> (1994); <u>Regal (Hastings) v Gulliver</u> (1942); <u>O'Donnell v Shanahan</u> (2009); <u>Thermascan Ltd v Norman</u> (2011); <u>Dickinson v Nal Realisations (Staffordshire Ltd</u> (2017); <u>Raithatha v Baig</u> (2017); on section 172 duty, the Sequana case (UKSC 2022); provisions purporting to exempt directors from liability generally void, 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, <u>Re Duomatic</u> (1969); disqualification of directors: ss2-5 and 11 CDDA 1986; s178 civil liability for breach of general duties; s180, effect of consent or approval of members. relief from liability <u>Cullen Investments Ltd v Brown</u> (2017).
	8.5 Explain the provisions regulating substantial property transactions (SPT) and loans to directors	8.5 Definition of SPT s190 CA 2006; <ul style="list-style-type: none"> approval by 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.
	8.6 Apply an understanding of the long-term and day-to-day management of the company to a given situation	8.6 Application of understanding to a complex scenario.
	8.7 Critically evaluate a given issue or situation to predict probable legal implications	8.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

This specification is for the 2026 examination sessions.



<p>9. Understand the principles of reconstruction, merger and acquisition</p>	<p>9.1 Analyse the methods by which a reconstruction can be achieved</p>	<p>9.1 Alteration of objects;</p> <ul style="list-style-type: none"> • reduction of capital; • purchase of own shares; • variation of shareholder rights; • re-registration. schemes of arrangement under Part 26 CA2006.
	<p>9.2 Explain the processes of merger and acquisition</p>	<p>9.2 Definitions;</p> <ul style="list-style-type: none"> • private companies: articles; • PLC: offeror sends circular to shareholders; Part 28, CA 2006 confers statutory authority on takeover panel; • judicial review, eg, <u>Datafin</u>; • City Code on Takeovers and Mergers; • directors' duties in takeover.
	<p>9.3 Apply an understanding of the principles of reconstructions, mergers and acquisitions to a given situation</p>	<p>9.3 Application of understanding to complex scenario.</p>
	<p>9.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>9.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>

This specification is for the 2026 examination sessions.



<p>10. Understand the concepts of insolvency and liquidation</p>	<p>10.1 Explain the company voluntary arrangement (CVA)</p>	<p>10.1 Definition of insolvency;</p> <ul style="list-style-type: none"> • CVA: IA 1986 as amended IA 2000; • process; • supervisor; • proposal; • meetings and approval; • failure into administration; • success into solvency; • schemes of arrangement CA; • relevant case law eg <u>Prudential v PRG Powerhouse</u> (2007).
	<p>10.2 Analyse the differences between receivership, administrative receivership and administration, and the standalone moratorium scheme</p>	<p>10.2 Rescue regime;</p> <ul style="list-style-type: none"> • application of the standalone moratorium scheme (introduced through the Corporate Insolvency and Governance Act 2020) • <u>administration under the Insolvency Act 1986</u> schedule B1; <ul style="list-style-type: none"> ○ administrator appointment; ○ purposes; ○ process • receiver's appointment <u>and purposes</u> • administrative receiver's appointment <u>and purposes</u>; • 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, <u>MC Bacon</u> (1991).

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10.3 Explain winding up

10.3 Creditors' and members' voluntary winding up;

- process;
- resolutions;
- statements;
- appointment of liquidator;
- effect;
- priority of creditors;
- court winding up, s124 IA 1986.

10.4 Analyse the avoidance provisions and potential liability of company officers

10.4 The avoidance of transactions and potential liability of officers:

- transactions at an undervalue.
- s238 IA 1986;
- time limits;
- connected persons;
- burden of proof;
- preferences;
- s239 IA 1986;
- time limits;
- burden of proof;
- 'desire to prefer' (re Mc Bacon);
- extortionate credit transactions;
- s244 IA 1986;
- floating charges s245 IA 2006;
- wrongful trading, s214 IA 1986;
- fraudulent trading, s213 IA 1986
- misfeasance, s212 IA 1986
- the standing and burden of proof to establish these;
- disqualification, CDDA 1986;
- the possible liability to account.

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<p>10.5 Apply an understanding of the concepts of insolvency and liquidation to a given situation</p>	<p>10.5 Application of understanding to a complex scenario.</p>
<p>10.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Company and Partnership Law
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)	N/a
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/a
Endorsement of the unit by a sector or other appropriate body (if required)	N/a
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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