

Title:	(Unit 16) The Practice of Company and Partnership Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES		ASSESSMENT CRITERIA		KNOWLEDGE, UNDERSTANDING AND SKILLS	
THE LEARNER WILL:		THE LEARNER CAN:			
1. Understand the key practical, financial and fiscal implications in choice of business medium	1.1	Analyse the relative advantages and potential disadvantages of different business media	1.1	Media to include: sole trading, general partnership, limited partnership, limited liability partnership, private limited company, public limited company, company limited by guarantee; <ul style="list-style-type: none"> implications to include: liability, eg, joint and several liability, unlimited and limited liability, eg, <u>Salomon</u> (1897); formal requirements; practical considerations, eg, nature, size and risk of business. 	
	1.2	Explain the tax implications for each of the different business media	1.2	Tax definitions, eg, income tax, corporation tax, capital gains tax, inheritance tax, stamp duty and VAT; <ul style="list-style-type: none"> responsibility of individuals and/or the business media, the rates of taxation for different media and individuals, and the procedure for taxation 	
	1.3	Analyse a given legal situation on choice of business medium in order to offer practical advice and assistance	1.3	Analysis of a complex scenario to offer practical advice and assistance, eg, taking account of the client's needs, business types available and potential liability.	

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<p>2. Understand the practices and procedures relating to the formation and management of a partnership</p>	<p>2.1 Explain the requirements for the formation of partnerships</p>	<p>2.1 Statutory requirements: Partnership Act (PA) 1890 and partnership agreements;</p> <ul style="list-style-type: none"> • unlimited liability; • ‘sleeping partners’; • the Limited Liability Partnership Act (LLPA) 2000: limited liability and registration procedure • Limited Partnership Act (LPA) 1907; s4: at least 1 general partner liable
	<p>2.2 Explain the powers, duties and liabilities of partners</p>	<p>2.2 Contractual relationship;</p> <ul style="list-style-type: none"> • agency relationship; • within authority; • duty of care and skill; • fiduciary duties, eg, disclosure to each other, declare personal financial benefit, no competition; • liabilities, eg, liability for contracts, debts and legal obligations • relevant sections of PA 1890, including ss 5, 6, 7, 8, 9 and 17.
	<p>2.3 Analyse a given legal situation on the formation and management of a partnership in order to offer practical advice and assistance</p>	<p>2.3 Analysis of a complex scenario to offer practical advice and assistance, eg,</p> <ul style="list-style-type: none"> • the relative merits of the different partnership types to the client in light of an existing or proposed business; • drafting clauses within a partnership agreement

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3. Understand the procedure for the termination of a partnership	3.1 Explain the procedure for the termination of a partnership	3.1 Statutory procedures: Partnership Act 1890 (PA 1890) eg, <ul style="list-style-type: none"> • automatic termination; • service of notice; • dissolution by the court; • limited partnerships; limited liability partnerships.
	3.2 Explain the effects of termination	3.2 Procedures and effects: statutory notices; valuation of assets; <ul style="list-style-type: none"> • distribution of assets.
	3.3 Explain the procedure when there is a change of partners	3.3 Partnership agreement provision; <ul style="list-style-type: none"> • PA 1890: default provision (terminates if one party leaves); • process of sale of interest in partnership; • effect of sale; • effect of retirement • notice provisions under s36 PA.
	3.4 Explain the effect of insolvency on a partnership	3.4 PA 1890: effect of unlimited liability; <ul style="list-style-type: none"> • joint and several liability; • Insolvent Partnerships Order 1994; • provision for bankruptcy of a partner; • dissolution in default of provision; • Partnership Voluntary Arrangement; • LPA 1907 (minimum of 1 partner with unlimited liability); • LLPA 2000 and limited liability.
	3.5 Analyse a given legal situation on the procedure for the termination of a partnership in order to offer practical advice and assistance	3.5 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the appropriate actions to be adopted in the event of the termination of a partnership.

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4. Understand how to form a limited company	4.1 Explain the process relating to promotion and registration of a company	4.1 Definition and role of promoter, ie, <u>Twycross v Grant</u> (1876-77); <ul style="list-style-type: none"> • formation of the limited company: the role of the Registrar of Companies; • Companies House requirements, eg, constitutional requirements and statements; fees; electronic registration; • certificate of incorporation; • private or PLC; • trading certificate; • effect of non-compliance; • the purchase of ‘off the shelf’ companies: removing/adding directors, changing registered office, drafting board minutes, transfer of shares
	4.2 Explain the purpose of the memorandum of association and the default provisions	4.2 Definition; <ul style="list-style-type: none"> • default provisions; • s8 Companies Act 2006 (CA 2006).
	4.3 Explain the purpose of the articles of association and the default provisions	4.3 Definition; <ul style="list-style-type: none"> • Model articles default provisions (model articles (Companies (Model Articles) Regulations 2008)
	4.4 Analyse a given legal situation on the formation of a limited company in order to offer practical advice and assistance	4.4 Analysis of a complex scenario to offer practical advice and assistance, eg, the necessary steps a promoter would need to take to set up a registered company; <ul style="list-style-type: none"> • drafting a memorandum of association and articles of association.

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5. Understand the implications of incorporating as a registered company	5.1 Explain the disclosure requirements of incorporation and the potential loss of control	5.1 Documentation to Companies House, eg, accounts, registration of charges, registration of directors, shares; <ul style="list-style-type: none"> • separate legal entity; • members; • directors. •
	5.2 Explain the tax implications of incorporation	5.2 Income tax, corporation tax, CGT; stamp duty; <ul style="list-style-type: none"> • notification and liability.
	5.3 Analyse a given legal situation on the implications of incorporation in order to offer practical advice and assistance	5.3 Analysis of a complex scenario to offer practical advice and assistance, eg, advising the client of the most appropriate form of incorporation, taking account of the process, tax liability, disclosure and control.
6. Understand the practices relating to the convening and conduct of shareholder meetings	6.1 Explain the requirement and process of convening general shareholder meetings	6.1 Definitions, eg, AGM, GM; <ul style="list-style-type: none"> • no requirement for AGM for private company unless a traded company; • notification- requirement, content and process; • quorum; • Articles & Model Articles.
6.2 Explain the process and rules governing members' resolutions		6.2 Ordinary and Special Resolutions; <ul style="list-style-type: none"> • voting procedures; • elective and written resolutions; • process; • voting: arrangements; • restrictions on voting; • Model Articles; • informal resolutions eg <u>Re Duomatic</u> (1969)

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	<p>6.3 Explain the rules and procedures to provide minority shareholder protection</p>	<p>6.3 Relevant case law, eg, <u>Foss v Harbottle</u> (1843);</p> <ul style="list-style-type: none"> • S994 CA 2006: unfair prejudice; • S122 Insolvency Act 1986 (IA 1986): just and equitable winding up; • burden of proof; • derivative claims ss260-264 CA 2006.
	<p>6.4 Analyse a given legal situation on the practices relating to the convening and conduct of meetings in order to offer practical advice and assistance</p>	<p>6.4 Analysis of a complex scenario to offer practical advice and assistance, eg, advising a client on the rights, powers and duties of the member.</p>
<p>7. Understand the practices relating to the role and responsibility of directors and other company officers</p>	<p>7.1 Explain how a director is appointed retained, remunerated and removed</p>	<p>7.1 Definition CA2006: 250;</p> <ul style="list-style-type: none"> • requirements, eg, number, age, natural, ie see ss 154, 155, 157; • initial appointments in s12 statement; • appointment: under Articles, Regulation 17 (Model Articles for Private Companies); • by members resolution; • registration; • disclosure; • restrictions on appointment, eg, disqualification under Company Directors' Disqualification Act (CDDA) 1986, bankrupt, eg, <u>R v Brockley</u> (1994); • service contracts: ss228 and 229 CA 2006; • resignation in writing (Model Articles); • removal: s168 CA 2006 <u>Bushell v Faith</u> (1970) clause; • compensation: <u>Southern Foundries v Shirlaw</u> (1940).

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	<p>7.2 Differentiate between de jure, de facto and shadow directors</p>	<p>7.2 Definition of shadow, eg, <u>Re Hydrodam (Corby) Ltd</u> (1994);</p> <ul style="list-style-type: none"> • s251 CA 2006, s251 IA 1986; • s22(5) CDDA 1986; • <u>Secretary of State for Trade and Industry v Deverell</u> (2001).
	<p>7.3 Explain how directors exercise their duties and powers both as a board and as individuals</p>	<p>7.3 The importance of board meetings and the requirement for minutes of these meetings;</p> <ul style="list-style-type: none"> • executive and non-executive directors; • directors' authority; • exercise of powers, eg, standard of care, ie, <u>Re City Equitable</u> (1925); • s214 IA 1986; • fiduciary duties and duties of care and skill; • statutory duties, ie, s170 CA 2006 and ss171-177 CA 2006; • statutory factors to be considered; • s232 CA 2006: cannot exempt by provision in articles etc; • can insure directors s233 CA 2006; • effects of breach; • s1157 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: ss2-5a and 11 CDDA 1986; • s178 CA 2006 civil liability for breach of general duties; • s180 CA 2006 consent, approval or authorisation of members; • s239 CA 2006 ratification by members • derivative claims ss260-264 CA 2006 • transactions with a director, e.g. long-term services contracts (s188), loans (s197), substantial property transactions (s191).

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	<p>7.4 Explain the appointment role, duties and removal of a company secretary or an auditor</p>	<p>7.4 Company secretary:</p> <ul style="list-style-type: none"> • requirements to have: s270-271 CA 2006; • qualifications: s273 CA 2006; • duty of care; • liability, ie, burden of proof; • auditors, ie, s477 CA 2006: small company exemptions; • s480 CA 2006: exemption for dormant companies; • appointment: s485 private company; • s489: PLC; • continuing duty of care, ie, burden of proof; • resignation and/or removal, ie, s.510 CA 2006. • Liability Limitation Agreements (for auditors): s534 CA2006
	<p>7.5 Analyse a given legal situation on the role and responsibility of directors and other company officers in order to offer practical advice and assistance</p>	<p>7.5 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the potential personal liability of company officers and the processes involved in establishing liability.</p>
<p>8. Understand when and how a company's constitution may be altered</p>	<p>8.1 Explain when and how a memorandum of association and articles of association may be changed</p>	<p>8.1 Definitions, eg, memorandum, objects clause, articles;</p> <ul style="list-style-type: none"> • s8 CA 2006; • s18 CA 2006; • the <i>ultra vires</i> doctrine; • s39 and s40 CA 2006; • limitations on transactions involving directors (s41 CA 2006); • altering the articles, eg, special resolution, registration with Companies House; restriction on exercise of power to alter articles eg <u>Allen v Gold Reefs</u> (1900); • model articles; • agreement to alter articles, ie, <u>Cane v Jones</u> (1980); • special resolution; • ss21-27 CA 2006; • notify Registrar: s380 CA 2006; • contractual effect of s33 CA2006

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	8.2	Analyse a given legal situation on when and how a company's constitution may be altered in order to offer practical advice and assistance	8.2	Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the process and effect of alteration of clauses in the company's constitution.
9.		Understand the procedures for the issue of share capital	9.1	Explain the different types of share and their benefits to the company and member <ul style="list-style-type: none"> Definition of share and interest; classes of share and rights, eg, ordinary and preference; liability limited to nominal value; dividends and the right to a dividend; declaration by board; rights of shareholder: possibly under s33 CA 2006; s994 CA 2006; variation of class rights, s630 CA 2006; Articles and entrenchment, s22 CA 2006.
	9.2	Explain the restrictions on allotment of shares, the process of share issue and possible restrictions on transfer and transmission	9.2	Definitions, eg, issued, paid up and called up; <ul style="list-style-type: none"> authorised share capital abolished (ss9 and 10 CA 2006); disclosure to members: ss31 and 32 CA 2006; increase: s617 CA2006, Ordinary Resolution; directors' right to allot: s550 CA 2006, ss549 and 551 CA 2006; pre-emption rights: incl ss 561, 565, s569 and 570 CA 2006 possible unfair prejudice: s994; PLC requirements for issue, eg, prospectus; procedure on transfer of shares, incl requirement for stock transfer form and possible stamp duty payment drafting stock transfer forms and share certificates; updating of company share records and electronic transfer (eg, CREST).

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	<p>9.3 Analyse the restrictions on purchase of own shares, offering of financial assistance and the reduction of capital</p>	<p>9.3 Case law, eg, <u>Trevor v Whitworth</u> (1887);</p> <ul style="list-style-type: none"> • reduction of capital in articles Model Articles); • ss 641-644 CA 2006: a private company can pass a Special Resolution and make a declaration of solvency; • dividends may only be paid from profits; • discounting shares (s542 CA 2006); • sale for non-cash assets; • assistance for purchase and selling to subsidiaries; • the possible personal liability of directors.
	<p>9.4 Analyse a given legal situation on the procedures for the issue of share capital in order to offer practical advice and assistance</p>	<p>9.4 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the most appropriate form of share issue for the company.</p>
10. Understand company borrowing	<p>10.1 Explain the purpose and process of debenture issue, including the fixed and floating charge</p>	<p>10.1 Case law, eg, <u>Re Yorkshire Woolcombers</u> (1904);</p> <ul style="list-style-type: none"> • book debts; • bank accounts; • registration process and effect.
	<p>10.2 Analyse the effectiveness of fixed and floating charges</p>	<p>10.2 Registration priority;</p> <ul style="list-style-type: none"> • crystallisation; • relevant case law, eg, <u>Siebe Gorman v Barclays Bank Ltd</u> (1979), <u>Re New Bullas</u> (1994); • <u>Brumark</u> (2000) and <u>Re Spectrum Plus Ltd</u> (2005); avoidance of charges on liquidation (s245 IA 1986); • liability.
	<p>10.3 Explain retention of title clauses</p>	<p>10.3 Relevant case law: eg, the Romalpa clause (<u>Aluminium Industrie Vaasen v Romalpa Aluminium</u> 1976);</p> <ul style="list-style-type: none"> • identification of property with interest retained.

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	10.4 Analyse a given legal situation on company borrowing in order to offer practical advice and assistance	10.4 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the benefits and disadvantages to the company and creditors of the different methods of borrowing.
11. Understand the administration and disclosure requirements of the company	<p>11.1 Explain the administrative and disclosure requirements of company officers</p> <p>11.2 Explain the key documents and records required for the maintenance of registration</p> <p>11.3 Analyse a given legal situation on the administration and disclosure requirements of the company in order to offer practical advice and assistance</p>	<p>11.1 Filing requirements, eg, resolutions, share issues, charges, appointment and departure of directors, confirmation statement, accounts;</p> <ul style="list-style-type: none"> • officers responsible; • penalties for non-compliance; • company searches. <p>11.2 Statutory records, eg, registers of members, directors and secretaries, persons with significant control;</p> <ul style="list-style-type: none"> • charges; • directors' interests; • minute book; • accounting records. <p>11.3 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the administrative and disclosure requirements of company officers.</p>

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<p>12. Understand the responsibilities and process of corporate insolvency</p>	<p>12.1 Explain the directors' duties and responsibilities if the company is insolvent</p>	<p>12.1 Definitions;</p> <ul style="list-style-type: none"> • Duty to creditors, eg, <u>West Mercia</u> (1988); • Insolvency practitioners.
	<p>12.2 Explain the purpose and process of company voluntary arrangements</p>	<p>12.2 Definition;</p> <ul style="list-style-type: none"> • CA 2006: schemes of arrangement; • company voluntary arrangements: IA 1986, as amended IA 2000; • process; • supervisor; • proposal; • meetings and approval; • failure into administration; • success into solvency.
	<p>12.3 Analyse the purpose and process of the standalone moratorium procedure, administration, administrative receivership and receivership</p>	<p>12.3 Definitions;</p> <ul style="list-style-type: none"> • standalone moratorium procedure • rescue regime and pre-pack sales; • Enterprise Act 2002, schedule B1; • administrator appointment; • purposes; • receiver's appointment; • purposes; • effects of appointment of each; • role, powers and duties; • avoidance powers; • collection and distribution; • Enterprise Act 2002: priority • of distribution, ie, Crown 'top-slicing'.

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<p>12.4 Explain the process of winding up</p>	<p>12.4 Members' and creditors' voluntary winding up;</p> <ul style="list-style-type: none"> • process; • resolutions; • statements; • appointment of liquidator; • effect; • priority; • court winding up: s124 IA 1986; • the process of 'striking off' the register; • adjustment of prior transactions: ss238-240 IA 1986
<p>12.5 Explain the potential liabilities of company officers</p>	<p>12.5 Wrongful (s214 IA 1986) and fraudulent (s213) trading;</p> <ul style="list-style-type: none"> • provisions and misfeasance (s212); • disqualification CDDA 1986.
<p>12.6 Analyse a given legal situation on the responsibilities and process of corporate insolvency in order to offer practical advice and assistance</p>	<p>12.6 Analysis of a complex scenario to offer practical advice and assistance, eg, advice on the appropriate action when the company is thought to be insolvent.</p>

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of the Practice 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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