

CASE STUDY MATERIALS

January 2021
Level 6
THE PRACTICE OF COMPANY AND
PARTNERSHIP LAW
Subject Code L6-16



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 16 – THE PRACTICE OF COMPANY AND PARTNERSHIP LAW*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.
- You are permitted to take your own clean/unannotated copy of the case study materials and a statute book, where permitted, into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEx Examination Regulations – Online Examinations or with the CILEx Examination Regulations – Online Examinations with Remote Invigilation.

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* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE and the LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

ADVANCE INSTRUCTIONS TO STUDENTS

You work in the Corporate Department of Kempstons LLP, Solicitors, The Manor House, Bedford, MK42 7AB. Your supervisor is David Jones.

You arrive at work to find the following memo awaiting your attention:

KEMPSTONS LLP

INTERNAL MEMORANDUM

To: Trainee Lawyer
From: David Jones
Date: [Today's date]
Matter: Francesca Cozens

I have been approached by a good friend of mine, Francesca Cozens. As you can see (**Document 1**), Francesca emailed me this morning. I subsequently followed up with a call to her, to see what else she wished to discuss. I have arranged a meeting with Francesca to come and see me shortly – please brief yourself on the attached documents and prepare accordingly, so that you may assist.

David

You find the following documents attached to the memo:

- DOCUMENT 1** Email from Francesca Cozens, Partner of Percival Street Artisans
- DOCUMENT 2** Percival Street Artisans (PSA) Partnership Deed
- DOCUMENT 3** Attendance Note (File of Centenary Coffee)
- DOCUMENT 4** Draft Guarantee, GDF Bank PLC (File of Centenary Coffee)
- DOCUMENT 5** Company Search, Kempston Shelf Co 0233567 Limited

DOCUMENT 1

EMAIL

From: FCozens@psArtisans.co.uk
To: dj@kempstonsllp.com
Date: [Today's date]
Subject: Percival Street Artisans (PSA)

Dear David,

As you may know, I tried calling you this morning. Your assistant suggested I drop you a note, setting out a little more background to the business and the reasons for my call.

It is probably best that I first let you know a little more about PSA.

PSA was established about three years ago. We came together having all previously run stalls in the local market. I was running a specialist coffee stall, Jess Elwell ran a bespoke cake and confectionery stall, and Bradley McKelvie and Rhodri Jones had an artisan bread stall. When the lease for the Percival Café premises became available (a café on the outskirts of the covered market), I managed to secure it, with a view to opening a café business ourselves. As we all knew each other very well, we agreed to enter into partnership. As the market has become increasingly popular, and with the opening of a number of new offices nearby, we have managed to build a strong client base.

I have attached the only document that we have formalising our arrangements [**Document 2**]. It is one of those inevitable situations in that, at the time we were setting up, we only briefly jotted down our arrangements with the intention of putting in place a full partnership agreement together after the first year, if all went well.

As you can see, there used to be four partners. However, on 31 October 2019, with the agreement of all the partners, Rhodri Jones retired. Jess bought Rhodri's share of capital and the partnership paid Rhodri his share of profits. The partnership continues to use the same Partnership Deed. However, Jess's contribution to capital is now £150,000 and she now has 30% of the profits. This was agreed between the partners at a partnership meeting, although we haven't formally recorded this anywhere.

We have brief, but regular, business meetings each Friday morning, to approve matters which we agreed at the outset required the consent of all of us, for example expenditure over £1,000. Otherwise, it is generally left to me to run the day-to-day business activities of the partnership.

I thought that it would be useful to set out our financial position. We make up our accounts to 31 October each year. We made a profit last year and withdrew it all according to our profit ratios. This year, we have so far made a profit of £100,000, £50,000 of which has been withdrawn. The partnership had net assets of £680,000 as at 31 October 2020.

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The other matter that I wanted to mention relates to a problem with one of my fellow partners, Bradley McKelvie, who is objecting to me establishing a new business as follows.

Centenary Coffee

This is a separate venture that I have been working on over the last eight months. It stems from a number of requests that I was getting from customers at the café for more speciality coffee. I started sourcing and supplying, to a growing number of clients, speciality coffee beans and ground coffee. My other half, Richard Fairlie who I live with and who frequently travels to South America, has been assisting me. Bradley McKelvie claims that I have been doing this without the knowledge of the other partners; this is despite flyers for the business being left in the café and despite the fact that a number of our clients have collected their coffee orders directly from the café.

Bradley has escalated the issue unnecessarily, claiming that I have used various café-related equipment and facilities, such as paper, printing and the café's computers and phone, etc., resulting in an expense on the business. This came to a head when the partnership received an invoice from a new coffee supplier, Escobar Imports plc (Escobar). I ordered 125 kg of high-grade Colombian coffee from Escobar, costing £7,500 plus VAT. The coffee was delivered to Richard's home address. The terms associated with the invoice state that it must be settled within 28 days, otherwise legal action will be commenced.

Yesterday, Bradley called an emergency meeting with Jess, but did not invite me to attend. I am not quite sure what happened, but Bradley and Jess say that they have voted to expel me under the terms of the Partnership Deed. They also said they are not going to pay me for my share of the profits, claiming that I have not spent sufficient time on café business during the last three months. I was informed of this yesterday morning.

Hopefully I'll be able to speak to you soon.

Kind regards

Francesca Cozens

DOCUMENT 2

PERCIVAL STREET ARTISANS (PSA) PARTNERSHIP DEED

Partnership Deed: We hereby agree to enter into partnership together as follows:

1. Capital contributions

Francesca Cozens – £200,000 (comprising £100,000 for the lease of Percival Café and £100,000 cash)

Bradley McKelvie – £150,000 (comprising £80,000 for equipment to be used by the business and £70,000 cash)

Jess Elwell – £100,000 (cash only)

Rhodri Jones – £50,000 (cash only)

2. Business: Café, bakery and cake shop

3. Name of business: Percival Street Artisans

4. Business premises

12 Percival Street, Southampton, Hampshire, SO18 6TG

5. Profit share:

Francesca Cozens:	40%
Bradley McKelvie:	30%
Jess Elwell:	20%
Rhodri Jones:	10%

6. Management: No partner to incur any expenditure over £1,000 without the consent of all partners.

7. Partnership commencing: 24 June 2018

8. Duration of partnership: Initial period of 12 months

9. Termination: After the end of the first 12 months, by any partner giving at least 6 months' notice in writing to all the other partners.

10. Expulsion: A partner may be expelled by a majority of the partners if that partner commits a serious breach of this partnership agreement.

SIGNED as a deed by the said

Francesca Cozens

Francesca Cozens

In the presence of:

Alan Owen, Doctor, 105, Esplanade Drive, Southampton, SO18 5DF

SIGNED as a deed by the said

Bradley McKelvie

Bradley McKelvie

In the presence of:

Alan Owen, Doctor, 105, Esplanade Drive, Southampton, SO18 5DF

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SIGNED as a deed by the said

Jess Elwell

Jess Elwell

In the presence of:

Alan Owen, Doctor, 105, Esplanade Drive, Southampton, SO18 5DF

SIGNED as a deed by the said

Rhodri Jones

Rhodri Jones

In the presence of:

Alan Owen, Doctor, 105, Esplanade Drive, Southampton, SO18 5DF

DOCUMENT 3

ATTENDANCE NOTE

Date: [Today's date]
Client: Francesca Cozens
File No.: 00001289/FC
Matter: Francesca Cozens – Centenary Coffee

Telephone conversation with Francesca Cozens (FC). We agreed that Centenary Coffee would be opened as a separate file to that of Percival Street Artisans.

We briefly discussed her current situation and the types of options that she was considering in relation to the café. FC asked whether I had any thoughts arising out of the issues in her earlier email. I explained that I had not had a chance to fully read into the matter, rather that I would do so prior to our meeting and that a trainee would most likely be attending with me. To help with our preparation, I requested from FC a copy of the order she had placed with Escobar Imports plc. FC promised to provide a copy.

FC explained that whilst her relations with her fellow partners in PSA were unsettled, she was looking further into the speciality coffee business with Richard Fairlie (RF), who wants to put the arrangements onto a more formal footing.

FC explained that she and RF were contemplating the following arrangement:

1. To structure the business in such a way as to limit their exposure to liability. FC was unclear as to the consequences of the difference arising from various business entities and said that she would appreciate a greater explanation when we met.
2. The new entity is to take/include the Centenary Coffee name, as FC believes it is establishing a reputation for quality imported coffee.
3. Each of them will transfer/lease various assets to the business: RF has been using a separate outhouse that is detached from his house, The Stables (he owns the freehold, and FC lives with RF), and from where he has been running most of the business. This will be incorporated somehow into the business as a fixed asset for the business. FC owns a suitable motor vehicle that is capable of collecting/delivering coffee supplies, together with office-related equipment. Neither has sought a formal valuation of these with cash assets, but they will most likely supplement with cash contributions.
4. FC and RF's relationship with Centenary Coffee will be formalised.
5. RF has also negotiated a loan from GDF Bank PLC to help with travel and development of further sources of supplies. FC and RF have agreed in principle that Centenary Coffee will give a guarantee to GDF Bank PLC. FC has forwarded the attached draft form of guarantee (**Document 4**).

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6. The business is expected to seek additional funding from either family members or business loans. If the former, it is not improbable that new owners/managers may be introduced in time.

FC agreed to a meeting at 10 am on Friday next week.

DOCUMENT 4

DRAFT GUARANTEE

To GDF Bank PLC

GDF Buildings

71 High Street

Bedford

[] 2021

Centenary Coffee Limited (registered number), in consideration of your entering into a loan agreement dated 2021 ('the Agreement') with Richard Fairlie, Southampton, Hampshire ('the Principal'), unconditionally guarantees the due payment of all money payable under the Agreement, and shall pay to you immediately on demand any money so payable.

Centenary Coffee Limited further agrees that this guarantee shall not be affected by any time or other indulgence which you may see fit to grant to the Principal.

The paper on which this guarantee is written shall remain at all times the property of the Bank.

Signed: Francesca Cozens

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DOCUMENT 5

KEMPSTON SHELF CO 0233567 LIMITED

Company Search

Name of Company		Kempston Shelf Co 0233567 Limited		
Company Number		HEQ3900087A		
Company Type		Private company limited by shares		
Date of Incorporation		01 November 2020		
Previous Names		None		
Registered Office		The Manor House, Bedford, MK42 7AB		
Date of Last Annual Return		N/A		
Accounting Reference Date		31 December		
Accounts		Last filed	Next due for period to	Overdue
		N/A	31 December 2021	N/A
Current Directors and Secretary		Directors		Secretary
		David Jones Susan Morris		David Jones
Share Capital		Issued	Class	Amount paid up
		£2	Ordinary £1	£1 per share
Shareholders		Name	Class	No. of shares
		David Jones Susan Morris	Ordinary £1 Ordinary £1	1 1
Undischarged Mortgages or Charges				
Chargee	Date of charge	Amount Secured	Description of Charge (including assets secured and whether there is a negative pledge)	
N/A				
Constitution				
Model Articles for private companies limited by shares				
Unusual documents		Yes/No	(Include copies)	
Appointment of receiver/administrator/winding-up order		NO		
Authority to allot shares under section 551 CA 2006		NO		
Any other comments		NO		
Report completed by:		JZE	Date: November 2020	

End of Case Study Materials