

CASE STUDY MATERIALS

June 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 Amanda Fairway.

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

KEMPSTONS LLP

INTERNAL MEMORANDUM

To: Trainee Lawyer
From: Amanda Fairway
Date: [Today's date]
Matter: Henry Brooker

We have received new instructions from Henry Brooker. As you can see [**Document 1**], Henry contacted me this morning. I subsequently followed up with a call to him, to see what else he wished to discuss. I have arranged a meeting with Henry to come and see me shortly. Please brief yourself on the attached documents and prepare accordingly, so that you may assist.

Amanda

You find the following documents attached to the memo:

- DOCUMENT 1** Attendance note re Henry Brooker (various matters)
- DOCUMENT 2** Letter from Patrick Smith, Managing Director of Surf & Turf Foods Limited – File of Henry Brooker (various matters)
- DOCUMENT 3** Copy of the latest accounts for Surf & Turf Foods Limited for year ending 1 April 2021 – File of Henry Brooker (various matters)
- DOCUMENT 4** Company Search, Surf & Turf Foods Limited – File of Henry Brooker (various matters)

DOCUMENT 1

Attendance Note

Date: [Today's date]
Client: Henry Brooker
File No.: AF/TM/894/
Matter: Henry Brooker (various matters)

Time in attendance: 5 units

Telephone conversation with Henry Brooker (HB). HB was calling to request a meeting in relation to a couple of potential business ventures. HB's background is one of supply chain delivery expertise, and he has worked for a number of major retailers in the past.

Scuttleforth Farmers' Market Deliveries (SFMD)

This was a business venture that HB had been asked to assist with during the pandemic. HB explained that his son, Richard, had previously run a market stall in a local farmers' market. Richard's business had been heavily impacted by the various pandemic-related lockdowns and the resulting restrictions on social distancing and generally reduced attendance at the market. Richard had established a close working relationship with a fellow market stall holder, Anton. Anton baked and supplied his own bread.

With the first lockdown in 2020, Richard and Anton recognised that they needed to adapt their business model in order to survive. They both realised that, with the shortage of supermarket delivery slots, there was a void to fill, by supplying farm produce to those customers who used to attend the Scuttleforth Farmers' Market. Between them, they had the contacts to be able to source and supply a reasonable range of produce to meet the initial demand. The only way that Richard and Anton could do this was by pooling their resources. It was at this point that HB also got involved and provided additional financing.

It was agreed that HB and Richard would run the business, and that Anton would focus on bread production. No other terms were discussed or agreed, other than that HB and Richard would each put £25,000 into the business, while Anton would contribute £50,000.

Since the end of the first national lockdown, problems have arisen. Anton has now decided that he wishes to involve himself in the running of the business. There is also disagreement over a number of issues.

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The first concerns the sharing of the profits of the business. Anton is demanding 50% of the profits, on the basis that he has invested 50% of the capital. HB and Richard are arguing that this does not take account of the experience they bring to the business, nor the fact that they have been working full-time for the business, while Anton has not. The second issue concerns Anton's insistence that his younger sister, Tonya, also become involved as well.

HB also has concerns that Anton has possibly overstepped his area of responsibility and is using equipment for other activities and for private consultancy. HB is still trying to establish what has happened and who Anton has been in contact with. HB will update when we speak next.

HB and Richard are extremely unhappy with this state of affairs and have decided that they would prefer to carry on the business on their own. HB has asked to discuss this when he comes in to meet.

Surf & Turf Foods Limited

This is a company that independently approached HB about getting him involved.

The company has been in business for seven years and was established by Patrick Smith (PS) and his sister Julia, to exploit a niche in the delivery of upmarket ready-made meals. HB met with PS, Managing Director of Surf & Turf Foods Limited, and has been persuaded that the time is right to take advantage of an opportunity in the market and to consider options for expansion. PS is keen to get HB involved in the company and to link up with small and local businesses that have popped up since the start of the pandemic, such as Scuttleforth Farmers' Market Deliveries.

As part of this strategy, Cat Jones joined the company last year. Cat previously worked for one of the large accountancy firms in developing back office operations and has an excellent knowledge of the market and generally of the market potential. With her assistance, the company has managed to streamline its operations further, discharging a substantial portion of the debt the company was carrying, and has taken advantage of the exceptional growth for online delivery since the pandemic began.

In his discussions with PS, HB identified a number of issues of concern. From what HB understands, one issue related to some sort of payment, or repayment, of a loan to one of the directors. The other is some sort of meeting irregularity. HB has yet to establish the full details, but he will confirm as soon as he has more information.

Additionally, one particular customer of Surf & Turf Foods Limited, a corporate client, Binders Limited ('Binders'), has apparently been very frank with PS, reporting that it has been making losses recently. Apparently, it has been very badly hit by the pandemic and has seen a dramatic downturn of business. One of the directors of Binders, Ben Manson, has said that several of its trade creditors are pressing Binders for payment and in the last five days it has been served with statutory demands by two of them. Binders apparently does not have sufficient funds to settle these demands.

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Binders' non-preferential unsecured creditors are owed about £275,000; they would receive very little in the event that the company goes into liquidation, but this has not stopped Binders from placing further orders with its own suppliers.

To tide the company over these cash flow problems, the company's bank, Bedford Bank plc, lent the company £365,000 approximately 12 months ago, which was secured by a fixed charge over the freehold office premises. Binders borrowed a further £15,000 from Essex Bank plc six months ago; this was not secured by any charge.

HB said that he would explain further the details of this issue and his potential involvement when we meet. In the interim, he would forward a copy letter and management accounts (which are currently with HB's accountants for review).

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DOCUMENT 2

Surf & Turf Foods Limited

Moore Business Unit
Wapping, London, E1W 3FX

[April 2021]

Henry Brooker
84 Hillsground Road
Kempston
Bedford
MK42 7BT

Dear Henry

Business Proposition

I refer to our telephone conversation this morning.

Thank you for your agreement to become involved further with the company and advise further on its expansion plans. We now feel that Surf & Turf Foods Limited must take advantage of the opportunity that the market presents, which really means that we need to consider options for expansion. With your expertise and sector knowledge, I am confident of our future success.

As discussed, an immediate concern of the board of directors is to determine how best to finance the expansion. We are currently in discussions with a number of Private Equity houses and we expect at least one to invest, but this will require the existing shareholders to invest further. I should also let you know that Jackson Higgins, a director of the company, has indicated that he is likely to retire in the forthcoming year.

I attach a copy of the company's last management accounts made up to 1 April 2021. I look forward to meeting you again next month to formalise your introduction into the company's operations.

Yours sincerely

Patrick Smith

Managing Director

DOCUMENT 3

Surf & Turf Foods Limited

Profit & loss account for the year ending
1 April 2021

	£
Turnover	11,300,000
Cost of sales	<u>6,280,000</u>
Gross Profit	5,020,000
Administrative costs	<u>1,190,000</u>
	3,830,000
Income from associated undertakings	-
Operating Profit	<u>3,830,000</u>
Extraordinary items	-
Profit On Ordinary Activities	3,830,000
Interest payable	<u>29,000</u>
Profit On Ordinary Activities Before Tax	3,801,000
Taxation	<u>874,230</u>
Profit for the Year	2,926,770
Dividends	<u>2,380,770</u>
Retained Profit for the Year	<u>546,000</u>

Surf & Turf Foods Limited

Balance sheet as at
1 April 2021

	£
Fixed Assets	
Tangible assets	495,000
	495,000
Current Assets	
Stocks	24,000
Debtors	95,000
Cash at bank	<u>305,000</u>
	424,000
Creditors due within 1 year	
Trade creditors	42,000
Other creditors	<u>16,000</u>
	(58,000)
Net Current Assets	366,000
Total Assets less Current Liabilities	861,000
Creditors due after 1 year	<u>(274,000)</u>
Net Assets	<u>587,000</u>
Capital & Reserves	
Paid up share capital (50,000 ord £1 shares)	25,000
Profit & loss account	<u>562,000</u>
	<u>587,000</u>

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KEMPSTON SHELF CO 02257 LIMITED

Company Search

Name of Company		Surf & Turf Foods Limited	
Company Number		9934875	
Company Type		Private company limited by shares	
Date of Incorporation		11 April 2014	
Previous Names		None	
Registered Office		Moore Business Unit, Wapping, London E1W 3FX	
Date of Last Annual Return		N/A	
Accounting Reference Date		30 September	
Accounts	Last filed	Next due for period to	Overdue
	N/A	30 September 2020	N/A
Current Directors and Secretary	Directors		Secretary
	Patrick Smith Julia Smith Jackson Higgins Cat Jones		Julia Smith
Share Capital	Issued	Class	Amount paid up
	£50,000	Ordinary £1	£0.50 per share
Shareholders	Name	Class	No. of shares
	Patrick Smith Julia Smith	Ordinary £1 Ordinary £1	25,000 25,000
Undischarged Mortgages or Charges			
Chargee	Date of charge	Amount Secured	Description of Charge (including assets secured and whether there is a negative pledge)
Cotton Bank Plc registered on 31 May 2015, £450,000			Fixed and floating charge in favour of Cotton Bank Plc registered on Moore Business Unit, Wapping, London
Memorandum of Association			
Standard, unamended			
Articles of Association			
Model Articles for private companies limited by shares		Special Article restricting member transfer of shares to family, trust set up for the benefit of the member of her family, a member's personal representatives provided that by the will or law	

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	of intestacy the beneficial interest will devolve to a member of the family of the deceased member, or another member. Quorum for directors' meetings: three (3)	
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: April 2021

End of Case Study Materials