

2022 UNIT SPECIFICATION

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 1.2 Summarise the formation of 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 Sole-trader: occurs where an individual starts 'trading'; <ul style="list-style-type: none"> • 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 1890 (PA 1890); • partners (at least 2) form partnership by starting in business together with a view of profit (s1-2 PA 1890);

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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>	<ul style="list-style-type: none"> • 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 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 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 Application of understanding to a complex scenario.</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.
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	<p>2.2 Explain how a partnership may be terminated</p> <p>2.3 Explain the effects of insolvency of partnership</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;</p> <ul style="list-style-type: none"> • 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>2.3 An explanation of: PA 1890 joint and several liability;</p> <ul style="list-style-type: none"> • Insolvent Partnerships Order 1994; • Partnership Voluntary Arrangement; • LP Act 1907, at least one partner unlimited; • LLP Act 2000, limited liability. <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 underlying principles of company law</p>	<p>3.1 Explain the concept of incorporation and its consequences</p>	<p>3.1 Development of the company, eg, the company limited by shares and limited by guarantee;</p> <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>3.3 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>3.2 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]; • 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 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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<p>4. Understand the promotion and formation of the company</p>	<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>4.1 Definition: eg, <u>Twycross v Grant</u> (1876-77);</p> <ul style="list-style-type: none"> • duties; • liabilities, eg, <u>Erlanger v New Sombrero</u> (1877-78). <p>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);</p> <ul style="list-style-type: none"> • s51 CA 2006; • relevant case law eg <u>Phonogram v Lane</u> (1982), <u>Braymist v Wise</u> (2002). <p>4.3 Role of Registrar of Companies;</p> <ul style="list-style-type: none"> • Companies House requirements; • 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. <p>4.4 Application of understanding to a complex scenario.</p>
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	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.
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 CA 2006 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).

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	<p>5.4 Analyse the developments in the doctrine of <i>ultra vires</i></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>5.4 An explanation of the effect of the objects clause: ie, <u>Ashbury Railway Carriage Co (1875)</u>, and other cases eg <u>Cotman v Brougham (1918)</u>;</p> <ul style="list-style-type: none"> • <u>Bell Houses (1966) Clause</u>; • the ultra vires doctrine; • introduction of s9 European Communities Act 1972 and 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). <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>
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	<p>6.3 Explain the process of 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>	<ul style="list-style-type: none"> • just and equitable winding up; • s122 Insolvency Act 1986; • relevant case law exploring these statutory provisions eg <u>lesini v Westrip</u> (2009), <u>Ebrahimi v Westbourne Galleries</u> (1973), <u>O’Neill v Phillips</u> (1999). <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 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.
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	<p>6.5 Analyse the doctrine of capital maintenance</p> <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>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>Ooregum 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 CA 2006; • personal liability for loss. <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>
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<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>7.1 Definition: <u>Levy v Abercorris</u> (1888);</p> <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). <p>7.2 Registration priority;</p> <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). <p>7.3 Effect on liquidation of fixed and floating charges: ie, Re <u>Automatic Bottlemakers</u> (1926);</p> <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.
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	<p>7.4 Analyse the effectiveness of retention of title clauses</p> <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>7.4 Definition: the <u>Romalpa clause</u> (<u>Aluminium Industrie Vaasen v Romalpa Aluminium</u> 1976);</p> <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). <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>
<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;

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	<p>8.2 Explain the rules governing board meetings</p> <p>8.3 Explain how directors may be appointed, retained, remunerated and removed</p>	<ul style="list-style-type: none"> • 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 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. <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; • 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 CA 2006;
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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>	<ul style="list-style-type: none"> • 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 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 Nagggar</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 Turquand's case and s40 CA 2006; • the statutory duties: s170 CA 2006 and continuing relevance of common law in interpreting statutory duties; • the content of the statutory duties ss171-178 CA 2006 and case law relevant to their interpretation e.g. <u>Re D'Jan</u> (1993);
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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><u>Regentcrest plc v Cohen</u> (2001); <u>Fulham FC v Cabra</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 Lts)</u> (2017); <u>Raithatha v Baig</u> (2017);</p> <ul style="list-style-type: none"> • 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). <p>8.5 Definition of SPT s190 CA 2006;</p> <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. <p>8.6 Application of understanding to a complex scenario.</p>
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	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.
9. Understand the principles of reconstruction, merger and acquisition	9.1 Analyse the methods by which a reconstruction can be achieved	9.1 Alteration of objects; <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 CA 2006.
	9.2 Explain the processes of merger and acquisition	9.2 Definitions; <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.
	9.3 Apply an understanding of the principles of reconstructions, mergers and acquisitions to a given situation	9.3 Application of understanding to complex scenario.
	9.4 Critically evaluate a given issue or situation to predict probable legal implications	9.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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<p>10. Understand the concepts of insolvency and liquidation</p>	<p>10.1 Explain the company voluntary arrangement (CVA)</p> <p>10.2 Analyse the differences between receivership, administrative receivership and administration</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 Rescue regime;</p> <ul style="list-style-type: none"> • Enterprise Act 2002 Schedule B1; • administrator appointment; • 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, <u>MC Bacon</u> (1991).
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	<p>10.5 Apply an understanding of the concepts of insolvency and liquidation to a given situation</p> <p>10.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.5 Application of understanding to a complex scenario.</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)	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	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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