

Part V – Sole Trader Partnership and Company**Chapter 38 Non-Corporate Bodies****The sole trader**

1. Define a sole trader
2. What are the key features of a sole trader?

Partnership

3. Define partnership
4. How is a partnership created?
5. What will a partnership agreement deal with?
6. What authority does a partner have in the firm?
7. What is the extent of the liability of each partner?
8. Define the relationship of persons in a partnership
9. How is a partnership dissolved?
10. Which legislation establishes limited partnership?
11. What does the Limited Liability Partnership Act 2000 (LLP) afford to a partnership?
12. What does the LLP Regulations 2001 (SI 2001/1090) provide?

Chapter 39 Corporate Bodies – The Company

13. Define the three basic types of company
14. What are the main differences between companies and partnerships?
15. What are the similarities between companies and partnerships?
16. What is the most important consequence of incorporation for a company?
17. Which case illustrates the point that a company as a separate legal entity from its members is not necessarily beneficial to those members?
18. Define corporate manslaughter

19. There are many consequences of incorporation flowing from separate legal personality. Name at least four of these.
20. What is the '*veil of incorporation*'?
21. Give an example where the court has '*lifted*' the veil of incorporation
22. Give an example where the court has refused to lift the veil of incorporation
23. In which case did the UK courts show a reluctance to '*lift the veil*' within a group of companies?
24. Define a public company.
25. Define a private company.
26. State the main differences between public and private companies.
27. What are the functions of the Registrar of Companies?
29. What is the significance of S 13 Companies Act 1985?
30. How is a private company re-registered as a public company?
31. How is a public company re-registered as a private company?

Pre-Incorporation Contracts

32. What is the effect of a contract made on behalf of a company prior to its incorporation?
33. When may a public company commence business?
34. Is a Company Seal still a requirement? What is your authority for your answer?

Chapter 40 The Memorandum and Articles of Association

35. Define the following (1) The Memorandum (2) The Articles (3) Table A
36. What must be contained within the memorandum?
37. State the relevance of the following sections of the Companies Act 1985. S 25(1) S 25(2) S 36 and S 28
38. Where must a company publish its name?
39. What is required under the Business Names Act 1985?
40. What is the purpose of the Registered Office?

41. What documentation must be kept at the registered office?
42. What must a public company keep in addition to 1 – 9 above?
43. How is a change of co address affected?

The Objects Clause

44. What is the purpose of the objects clause?
45. Prior to 1989 how did companies avoid the *ultra vires* rule?
46. Where is the authority to be found allowing the memorandum to state the object of the company in general terms?
47. What is the purpose of S 35(1) of the Act?
48. How can a company ratify an *ultra vires* act?
49. How can a company amend its company objects clause?
50. How is the minority protected?
51. What is a company limited by shares?
52. What is a company limited by guarantee?
53. What are the advantages of an unlimited company?

Other Clauses

54. What is a capital clause?
55. How can the memorandum of a company be altered?
56. Describe the natures of the Articles of Association
57. What is the model for Articles of Association?
58. Where is Table A contained?
59. How may the articles of association be altered?
60. How may the articles of association of a private company be altered?
61. May an alteration of the Articles constitute a fraud on the minority?
62. What is the significance of Ss 459 – 461?

63. What is the effect of the Memorandum of Association and Articles of a company?

Chapter 41 Share Capital

64. How do the following raise funds (1) Private companies (2) Public Companies?

65. Where are these provisions contained?

66. What are listed securities?

67. What are unlisted securities?

68. Which two provisions in the FSA make it clear that the Act does not apply to private companies?

69. What is a public issue by '*Offer for Sale*'?

70. What is a Rights Issue?

71. What remedies are available for misrepresentation and omission?

Types of capital and alteration of capital

72. What is meant by the term '*Capital*'?

73. There are six different meanings of 'Share Capital'. What are they?

74. How may a company alter the capital clause of its memorandum?

75. How is the capital of a limited company protected?

76. What must Directors of a public company do when the net assets fall to $\frac{1}{2}$ or less of a company's called up share capital?

77. How may a company reduce its capital?

78. Why does a company issue shares at a premium?

79. Can a company acquire its own shares?

80. Which sections of the Act refer to exceptions to the basic rule?

81. Why is it undesirable for a company to purchase its own shares?

82. What would be the advantages to a company purchasing its own shares?

83. Is it illegal for a company to give any financial assistance for acquisition of shares?

- 84. What are the effects of contravention of S 151?
- 85. What are the exceptions to S 151?
- 86. How may a private company give financial assistance for the acquisition of shares?

Dividends

- 87. Define dividends
- 88. How is interest distinguished from dividends?
- 89. Define a '*distribution*'
- 90. When may a public company not make a distribution?
- 91. What are the consequences of an unlawful distribution?
- 92. Define a capitalisation issue

Types of shares

- 93. What are the two basic types of company security and how are they distinguished?
- 94. Define a share
- 95. Define a preference share
- 96. What is an ordinary share?
- 97. How does the general law of contract apply to an application for shares?
- 98. Can a private company advertise shares for sale?
- 99. Define an equity share
- 100. What information must be contained in the documentation submitted to the Registrar when any company allots shares?
- 101. What information is contained in a share certificate?
- 102. When does estoppel arise?

Transfer of shares

- 103. How may a share be transferred?

- 104. What is the significance of S 183 in relation to the transfer of shares
- 105. What is the endorsement of '*certificate lodged*' on the transfer known as?
- 106. What are the effects of a forged transfer of shares?
- 107. How may restrictions on transfer be effected?

Chapter 42 Loan Capital

- 108. Define a debenture
- 109. Differentiate between shares and debentures
- 110. What are the similarities between shares and debentures?
- 111. Distinguish between a fixed and floating charge
- 112. What must the Company's Register of charges contain under S 411?
- 113. What is contained in a Trust Deed?
- 114. Which remedies are generally conferred by the Trust Deed for debentureholders?
- 115. What is the first step for debentureholders or their trustees if problems arise?

Chapter 43 Membership and minority protection

- 116. How does a person become a member of a company?
- 117. What methods are used to indicate agreement?
- 118. Can a minor be a member?
- 119. On a members death in whom does his shares vest?
- 120. Can a company be a member of (1) another company and (2) its own holding company?
- 121. What must be maintained in a company register?
- 122. Where is the register located?
- 123. May anyone inspect the register?
- 124. What is the Rule in *Foss v Harbottle* (1843)?
- 125. What are the reasons for the rule in *Foss v Harbottle* (1843)?

126. In *Baile v Oriental Telephone Co* (1915) what was the company restrained from doing?
127. What important decision came out of *Cooks v Deeks* (1916)?
128. Explain the following terms (1) personal actions (2) derivative actions (3) representative actions
129. What authority is afforded by a petition under S 459?
130. What are the powers of the court in relation to unfair prejudice under S 459 – 461?
131. Which problems have been caused by the rule in *Foss v Harbottle* and its exceptions?

Chapter 44 Directors and the Secretary

132. What is the position of a Co Director within the Company?
133. What are the requisite numbers of Directors in (1) a public company (2) a private company?
134. Where is the authority allowing for the appointment of a Co Secretary?
135. Describe a casual vacancy in relation to company directors.
136. How can the Board fill a casual vacancy?
137. Who may not be appointed as a company director?
138. How may the office of company director be vacated?
139. What did the court decide in *Southern Foundries v Shirlaw* (1940)?
140. How is the remuneration for a Director fixed?

Powers of Directors

141. Which document contains the powers of the directors?
142. How can shareholders remove a director?
143. Where does the Managing Director derive his powers?
144. What did the court hold in *Freeman & Lockyer v Buckhurst Park Properties* (1964)?

Enforcement of fair dealing by directors

- 145. Define a shadow director
- 146. Where the Act refers to a '*person connected with a director*' who is included?
- 147. What is a quasi-loan?
- 148. Describe a credit transaction
- 149. What is the relevance of S 312 in relation to compensation for loss of office?
- 150. Where does a director declare his interest in a contract?
- 151. What penalty will a director face if he fails to disclose an interest?
- 152. What is the maximum period for the employment of a director under S 319?
- 153. Is it possible for a director to gain employee status?
- 154. What is the value of property which a company can transfer from a director
- 155. Is it possible for a director to purchase for cash or otherwise a listed share or debenture of any company in the group?

Fiduciary duties and duties of care and skill

- 156. What is the basic duty a director owes to the company?
- 157. To whom is the fiduciary duty owed?
- 158. What is the relevance of S 309 regarding directors' duties in relation to employees?
- 159. What is meant by the phrase for the '*benefit of the company*'?
- 160. What is understood by the terms '*poison pill*' or '*shark repellent*' instances?
- 161. What point was made by the court in *IDC v Cooley* (1972)?
- 162. Which case illustrates the obligations of directors to display skill and diligence?
- 163. Which case has overtaken *Re City Equitable Fire Insurance*?
- 164. Which case illustrates the 'ability of a director to entrust to others his/her duties'?
- 165. Which legislation allows for the disqualification of a person to act as a director?

166. Which legislation allows the Secretary of State to accept directors undertakings re disqualification?

The Company Secretary

167. Must every company have a company secretary?

168. Who has the powers to appoint and remove a company secretary?

169. Which section stipulates the minimum qualifications for a company secretary in a public company?

170. What are the minimum qualifications required?

171. What are the powers of a company secretary?

172. Which Law Lord defined the role of the Company Secretary?

173. When does a company secretary not have authority to act?

174. What are the duties of a company secretary?

Insider Dealing

175. Define insider dealings. What legislation controls insider dealings?

176. What are the three offences which could be committed by someone with insider dealing information?

177. What is the maximum penalty for insider dealing?

178. Who may bring prosecutions in insider dealings?

Chapter 45 Auditors and Investigations

The Audit Requirement

179. Under which legislation is an auditor appointed?

180. In what circumstances will a company require an accountant's report?

181. Who are the supervising bodies established under the Act in relation to Auditors and audit?

182. Who are the professional bodies?

183. Under what circumstances will an auditor hold an '*appropriate qualification*'?

184. What is meant by a "*sufficient period of professional experience*"?

- 185. How many years of practical training is required for the profession?
- 186. How may a person obtain an exemption from practical training?
- 187. By what means is a person ineligible to be a company's auditor?

Appointment, removal and resignation

- 188. How is the first auditor appointed?
- 189. How is a "*casual vacancy*" filled?
- 190. What procedures are required to fill a casual vacancy or a re-appointment of auditor?
- 191. If no appointment or re-appointment is made whom must the company inform. Who may make an appointment?
- 192. What is the authority for the removal of the auditor?
- 193. By which type of resolution may an auditor be appointed or removed?
- 194. In which circumstances is a special notice required to appoint an auditor?
- 195. How does an auditor resign?
- 196. State the rights of a resigning auditor.

Powers, Duties and Liabilities of Auditors

- 197. State the duties owed by the auditor in relation to the Auditors' Report S.235-236.
- 198. State the extent of the auditors' duties under S.237.
- 199. What powers are conferred on auditors under S.389A?
- 200. What does S.389A state in relation to false statements to auditors?
- 201. What are the legal standards of care and skill required by the 1989 Act in relation to an auditor?
- 202. What guidelines have been laid down in judicial decisions in relation to the standard of care of auditors?
- 203. To whom are the Auditors' duties owed?
- 204. State the decisions in *Hedley Byrne v Heller* (1964).

205. What is the 3-part test expounded in the *Caparo Industries plc v Dickman* (1990) case?

Department of Trade Investigations

206. How many types of investigations may be undertaken by the Department of Trade?
207. What are the powers of Inspectors?
208. What are the discretionary powers of the Secretary of State?
209. Who has the power to present a winding up petition and in what circumstances?
210. Who must investigate the ownership of company shares?
211. To whom may the Secretary of State disclose information relating to share ownership?
212. Who may give direction to a Company to produce specified books or papers?

Chapter 46 Meetings, Resolutions and Publicity

213. What is the rule concerning an Annual General Meeting (AGM)?
214. Who may order an AGM to be held?
215. What must a notice of an AGM state?
216. What is an EGM?
217. What is the statutory right of Members re an EGM?
218. What are the powers of the Court in respect of an EGM?
219. Under what other circumstances may an EGM be called?

Convening Meetings

220. What notice is required to convene (1) an AGM; and (2) an EGM?
221. What must be contained in the Notice of Meeting?
222. What is a “*special notice*” and how many days are required to move the resolution?

223. What are the advantages to Companies stated under the Electronic Communications Order 2000?
224. What do you understand by a “*quorum*”?
225. State the responsibilities of a Chairman?
226. What is the usual method of voting?
227. How does voting differ from a poll?
228. Describe the role of a “*proxy*”?
229. What are “*minutes*” of a meeting? Where are the “*minutes*” stored?
230. (a) What is an ordinary resolution?
(b) What period of notice is required?
(c) What is the purpose of an ordinary resolution?
231. (a) What is a special resolution?
(b) What period of notice is required?
(c) What is the purpose of a special resolution?
232. (a) What is an extraordinary resolution?
(b) What period of notice is required?
(c) What is the purpose of an extraordinary resolution?
233. What did the Companies Act 1984 (S.381A-382A) introduce re private companies?
234. Explain the “*Duomatic Principle*” re written resolutions.
235. What was held in *Deakin v Faulding* (2001)?
236. What is the effect of S.116 Companies Act 1989?
237. When would a company use an elective resolution?
238. How may an elective resolution be revoked?
239. In what ways is publicity achieved in a company?
240. What is recorded in the *London Gazette*?
241. What other issues require notification by the Registrar?
242. Which events occurring in a company require official notification?

Matters requiring registration at the Companies Registry

243. What information re a company is recorded on the registration file at the Company's Registry?

Registers which must be maintained by the Company

244. What information must be contained in the Register of Directors and Secretaries?
245. What is the requirement for a Director under *S.324 CA 1989*?
246. Where are the rules for the register of substantial shareholdings for a public company found?
247. What is commonly known as a "*concert party*"?
248. When does a "*concert party*" exist?

The Annual Return

249. State the basic rules relating to the Annual Return under *S.363-365*.
250. What must be contained in the Annual Return?

The accounting records and the accounts

251. Distinguish between (a) the accounting records; and (b) the accounts.
252. For what period of time must (a) a private company keep its accounting records and (b) any other company?
253. What is the relevance of *S.241 Companies Act 1984*?
254. Can a private company dispense with laying of accounts before the company in general meeting?
255. What documents are required to be comprised in the accounts?
256. What is a "*small company*"?
257. What is a "*medium sized company*"?

The Directors' Report

258. What must be contained within the Directors' Report?

Chapter 47 Reconstructions, Mergers and Takeovers

259. Distinguish between (a) a merger; and (b) a reconstruction.

- 260. How may a merger or reconstruction be effected?
- 261. What is a reconstruction under *S.110 IA*?
- 262. Distinguish between (a) a compromise and (b) an arrangement.
- 263. How must a compromise or an arrangement be agreed?

Takeovers

- 264. What is a “*takeover*”?
- 265. Why do takeovers occur?
- 266. Which case illustrates the lifting of the veil of incorporation of a company while basing its decision on the actual identity of the members concerned?
- 267. When was the City Code on Takeovers and Mergers published?
- 268. When was the Code revised to the current edition?
- 269. Who supervised the Code?
- 270. How may the Panel *police* the Code?
- 271. To whom may an appeal be made?
- 272. What is the basic purpose of the Code?

Chapter 48 Liquidation, Administration and Receivership

- 273. What do you understand by (a) the term “*liquidation*” and (b) how does liquidation commence?
- 274. There are seven grounds by which a company may be wound up by the court. State at least five of these.
- 275. State the four instances where a company is deemed to be unable to pay its debts under *S.123 IA*.
- 276. Illustrate circumstances of “*justice or equity*” in relation to a court order.
- 277. How are proceedings commenced?
- 278. Where is the petition presented?
- 279. Who may present the petition?

- 280. What are the effects of a Compulsory Winding-up Order?
- 281. Who assumes the Directors' powers?
- 282. What becomes of the company's employees?
- 283. What happens to floating charges?
- 284. What becomes of the company's assets?
- 285. Where is the notice of receipt of the winding-up order published?
- 286. What is contained within the *statement of affairs* required by the official receiver?
- 287. What is the duty of the official receiver?
- 288. What must the official receiver decide within 12 weeks of the winding-up order?
- 289. What are the general functions of the liquidator?
- 290. What power does the liquidator have?
- 291. Without sanction what can a liquidator do?
- 292. How is the Office of the Liquidator vacated?
- 293. When is the company officially dissolved?

Provisions applicable to every kind of liquidation

- 294. What is fraudulent trading?
- 295. What sanctions may be brought against anyone found guilty of fraudulent trading?
- 296. Of what must the court be satisfied in order for a liquidation to apply an order under *S.214 IA*?
- 297. Under what circumstances will a court not make an order against a Director for wrongful trading?
- 298. Prioritize the debts in a winding-up.
- 299. What are the main preferential debts of a Company?
- 300. What are the types of Voluntary Winding-up?

- 301. How is a members' voluntary winding-up secured?
- 302. How is a Creditors' voluntary winding-up secured?
- 303. What are the consequences of a Voluntary winding-up?
- 304. What is the role of the liquidation final meeting as members?
- 305. What is the role of the liquidation final meeting as creditors?

Administration Orders

- 306. What is the basic purpose of an administrator?
- 307. Who may appoint an administrator?
- 308. What is the administrator required to do?
- 309. What type of procedure is administration?
- 310. Who manages the affairs of a business during this period?
- 311. What are the powers of an administrator?
- 312. What are the statutory duties of the administrator?
- 313. What is the purpose and advantage of a Moratorium?

Receiverships

- 314. What is a receiver?
- 315. Why is a receiver appointed?
- 316. What is an administrative receiver?
- 317. Under what circumstances will a receiver be appointed?
- 318. What powers are conferred on a receiver?
- 319. State the receiver's general duties.
- 320. State the duties of an administrative receiver appointed prior to 2003.
- 321. What is the role of the liquidator?