

Chapter 1

Introduction

Here, basic guidance to the end-of-chapter questions will be provided.

1. Define the following terms:

- **think small first;**
- **sole proprietorship;**
- **partnership;**
- **limited partnership;**
- **limited liability partnership.**

Term	Definition
think small first	The approach recommended by the CLRSG when drafting the CA 2006, namely to draft provisions with small companies in mind first.
sole proprietorship	A sole individual carrying out some form of business activity on their own account (i.e. a self-employed person)
partnership	A partnership (often known as a 'general' or 'ordinary' partnership is defined as 'the relation which subsists between persons carrying on a business in common with a view of profit' (PA 1890, s 1(1))
limited partnership	A partnership created under the Limited Partnerships Act 1907, that consists of at least one general partner (with unlimited liability) and at least one limited partner (whose liability is limited).
limited liability partnership	An incorporated business structure created under the Limited Liability Partnerships Act 2000. LLPs have corporate personality and its members have limited liability.

2. State whether each of the following statements is true or false and, if false, explain why:

- **the company is the most popular business structure;**
- **a sole proprietor is a self-employed person;**
- **all forms of partnership are brought into existence by the partners agreeing to conduct business through a partnership;**
- **the liability of all the partners in a limited partnership is limited;**
- **limited liability partnerships are generally regulated by partnership law;**
- **the company is the only business structure that has separate legal personality.**

- **The company is the most popular business structure:** This statement is true.
- **A sole proprietor is a self-employed person:** This statement is true.

- **All forms of partnership are brought into existence by the partners agreeing to conduct business through a partnership:** This statement is false. For example, a limited liability partnership comes into existence via incorporation.
- **The liability of all the partners in a limited partnership is limited:** This statement is false. At least one partner in a limited partnership must be a general partner whose liability is unlimited.
- **Limited liability partnerships are generally regulated by partnership law:** This statement is false. Limited liability partnerships are generally regulated by company law, unless otherwise stated.
- **The company is the only business structure that has separate legal personality:** This statement is false. Limited liability partnerships also have corporate personality.

3. What are the aims of company law and provide examples of how the law seeks to fulfil these aims.

Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This essay simply requires setting out the aims of company law and providing examples of how company law aims to fulfil these aims. Note that a more analytically-focused essay might require you to discuss whether the UK system of company law fulfils these aims.

The aims of company law

- Pages 4-10 of the text highlight seven aims of our company law system. Set out these aims and discuss why they are important. Then provide an example(s) of how our system of company law aims to fulfil these aims. Examples would include:
 - (a) The first aim is accountability. The law provides mechanisms to hold the company accountable, such as the imposition of civil and criminal liability on the company itself or certain wrongs. The law also seeks to make the directors accountable by imposing upon them certain obligations, notably the imposition of the general duties. Certain governance mechanisms (e.g. general meetings) also aim to bolster corporate and directorial accountability.
 - (b) The second aim is flexibility. A notable example of the flexibility provided by company law are the different rules for public and private companies, and the disapplication of certain company law rules to private companies. The law also provides that certain obligations need not be complied with if the company is small.
 - (c) The third aim is certainty. One example of this is the fact that the UK company law regime is based around a few key pieces of legislation, the main principles of which tend not to alter dramatically over time.

- (d) The fourth aim is transparency. There are many provisions in the CA 2006 that require companies to disclose certain information, with the most noteworthy being the preparation and publication of annual reports and accounts.
- (e) The fifth aim is avoiding the misalignment of interests. An example of this are the general duties found in ss 175-77 of the CA 2006, which regulate director conflicts of interest.
- (f) The sixth aim is efficiency. An example of this is the disapplication of certain potentially burdensome company law rules to private companies and small companies.
- (g) The seventh aim is avoiding disaster. An example of this would be the rescue mechanisms found in statute, namely administration and the company voluntary arrangement.

Conclusion

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

4. Jane Dragon and Angela Smith decide that they wish to work together, but are unsure as to which business structure would be most appropriate. They seek your advice regarding which business structure would be most suitable, bearing in mind:

- they wish to avoid significant levels of formality and regulation
- they want to have flexibility in establishing the procedures by which the business is to be run
- they want to be able to run their affairs
- they want to avoid personal liability for the debts and liabilities of the business
- the process of creating the business should be relatively cheap and quick
- they do not want to invest significant amounts of their own capital in setting up the business and will probably wish to raise capital from outside sources
- they wish to take on employees.

Discuss to what extent each of the various business structures fulfil all, or some, of these aims and advise Jane and Angela which business structure would be most suitable for their business.

- This question requires you to discuss which business structure would be most suitable for the business needs of Jane and Angela. You could do this by focusing on each aim and stating which businesses would suit those aims. However, perhaps the best and most structured way to do this would be to focus on each business structure in turn and discuss its suitability.
- Note that none of the available business structures meet all of Jane and Angela's needs, so it is a question of weighing up the advantages and the disadvantages. It will also depend on which business needs matter the most. If their most important need is a lack of regulation, then a partnership would appear to be more suitable than a company.

However, if their most pressing need was a desire to avoid being liable for the debts and liabilities of the business, then a company might be more suitable.

Sole proprietorship

- Jane and Angela wish to work together, so a sole proprietorship would not be available, unless one person was willing to simply be an employee of the other. Given the facts, this seems unlikely, so a sole proprietorship will not be suitable.

Partnership

- It is worth noting that there are three types of partnership, but a limited partnership can be discounted as it would require Jane or Angela to not be involved in management. Accordingly, the ordinary partnership and the limited liability partnership will be discussed.

Ordinary partnership

- A partnership might be suitable for several reasons:
 - (a) partnerships are subject to much less regulation than companies;
 - (b) the procedures by which the business will be run can be set out by Jane and Angela themselves via the partnership agreement;
 - (c) Jane and Angela will have free reign over the affairs of the business;
 - (d) creating a partnership is relatively straightforward;
 - (e) they can take on employees.
- However, a partnership does not meet all of their aims:
 - (a) Jane and Angela will be liable for the debts and liabilities of the business;
 - (b) they will likely need to invest their own capital in the business, unless they can obtain enough debt capital.

Limited liability partnership

- A limited liability partnership (LLP) might be suitable for several reasons:
 - (a) Jane and Angela will manage the affairs of the business;
 - (b) a LLP can be created quickly and cheaply, although likely not as quickly as a partnership;
 - (c) Jane and Angela will not be liable for the business's debts and liabilities – the LLP itself will be liable;
 - (d) They can take on employees.
- However, a LLP does not meet all of their aims:
 - (a) as LLPs are largely regulated by company law, they are subject to notable levels of formality and regulation;
 - (b) they are less flexible than partnerships'

Company

- A company might be suitable for several reasons:

- (a) Jane and Angela will not be liable for the company's debts and liabilities – the company itself will be liable;
 - (b) Jane and Angela will have free reign over the affairs of the business if they control the majority of the company's shares;
 - (c) creating a company is relatively straightforward (but not as straightforward as creating a partnership);
 - (d) they can avoid having to invest their own capital by obtaining debt capital or by selling shares (note, however, that they may be reluctant to sell shares to outsiders for fear of losing control of the company);
 - (e) they can take on employees.
- However, a company does not meet all of their aims:
 - (a) companies are subject to significant amounts of regulation, but this can be reduced slightly by creating a private company;
 - (b) As a result of the significant amount of regulation, there is not as much flexibility as in a partnership.