THE ENGLISH LEGAL SYSTEM

Law is a formal mechanism of social control', *Business Law 5th Edition*, David Kelly, Ann Holmes and Ruth Hayward

- The distinction between **criminal liability** and **civil liability** is central to the English legal system.
- In criminal cases, the **state** prosecutes the wrongdoer.
- **Civil law** exists to regulate disputes over the rights and obligations of persons dealing with each other and seeks to compensate injured parties.
- The **civil court structure** comprises the following.

– **Magistrates' Courts** mostly deal with small domestic matters.

– **County Courts** hear claims in contract and tort, equitable matters and land and probate disputes among others.

– The **Crown Court** hears appeals from Magistrates' Courts.

– The **High Court** is divided into three specialist divisions; Queen's Bench, Family and Chancery.

– The **Court of Appeal** hears appeals from the County Court, the High Court, the Restrictive Practices Court, and the Employment Appeal Tribunal.

– The **Supreme Court for the United Kingdom** hears appeals from the Court of Appeal and the High Court.

- The **criminal court structure** comprises the following.

– **Magistrates' Courts** hear summary offences and committal proceedings for indictable offences.

– The **Crown Court** tries serious criminal (indictable) offences and hears appeals from Magistrates' Courts.

– The **Divisional Court of QBD** hears appeals by way of case stated from Magistrates' Courts and the Crown Court.

– The **Court of Appeal** hears appeals from the Crown Court.

– The **Supreme Court for the United Kingdom** hears appeals from the Court of Appeal or a Divisional Court of QBD.

- The court system is not the only way to settle disputes. There is also the alternative system of **tribunals**.
- The first legal source of law, consisting of decisions made in the courts, is **case law,** which is judge-made law based on the underlying principle of consistency. Once a legal principle is decided by an appropriate court it is a **judicial precedent**.
- Statements made by judges can be classified as **ratio decidendi** or **obiter dicta**.
- The second major source of law is **legislation**. This is also known as statute law and may take the form of **Acts of Parliament** or **delegated legislation** under the Acts.
- Legislation must be **interpreted correctly** before judges can **apply it fairly**. The **literal**, **golden** and **mischief rules** of interpretation developed over time. Nowadays a **purposive approach** is taken

- The **Human Rights Act 1998** is a key example of the influence of International law in the United Kingdom
- The **Human Rights Act 1998** incorporates the European Convention on Human Rights (the Convention) into UK domestic law.
- The impact of the legislation is **pervasive** in many areas of UK law.
- The Human Rights Act protects a number of **Convention Rights**.
- The Act has an impact **on new legislation**, **statutory interpretation** and the **common law**.

CONTRACT LAW

- A **valid contract is a legally binding agreement**, formed by the mutual consent of two parties.
- The law seeks to protect the idea of 'freedom of contract', although **contractual terms** may be regulated by **statute**, particularly where the parties are of unequal bargaining strength.
- The **three essential elements** of a contract are **offer and acceptance**, **consideration** and **intention to enter into legal relations**.
- As a general rule, **a contract may be made in any form**.
- The first essential element in the formation of a binding contract is **agreement**. This is usually evidenced by **offer and acceptance**. An offer is a definite promise to be bound on specific terms, and must be distinguished from the mere **supply of information** and from an **invitation to treat**.
- An offer may only be accepted while it is still open. In the absence of an acceptance, an offer may be **terminated** in any of the following ways.

– Rejection
– Counter-offer
– Lapse of time
– Revocation by the offeror
– Failure of a condition to which the offer was subject
– Death of one of the parties

- **Acceptance** must be an unqualified agreement to all the terms of the offer. **Acceptance** is generally not effective until **communicated** to the offeror, except where the **'postal rule'** applies. In which case acceptance is complete and effective as soon as it is posted.
- The general rule is that acceptance **must be communicated** to the offeror and that it is not effective (and hence there is no contract) until this has been done. However this rule does not apply in all cases.
- In certain circumstances, the courts may infer the existence of a contract without the formalities of offer and acceptance. This type of contract is a **collateral contract**
- **Consideration** is an **essential** part of most contracts. It is what each party brings to the contract.

- Consideration may be **executed** (an act in return for a promise) or **executory** (a promise in return for a promise). It may not be **past**, unless one of three recognised exceptions applies.
- The long-established rule is that consideration need **not be adequate** but it **must be sufficient**.
- The principle of **promissory estoppel** was developed in *Central London Property Trust v High Trees House 1947.* It means that in some cases where someone has made a promise they can be prevented from denying it.
- Various cases give us a set of rules to apply when determining whether the **parties** to a contract intended to be **legally bound** by it.
- As a general rule, only a person who is a party to a contract has enforceable rights or obligations under it. This is the doctrine of **privity of contract**. The Contracts (Rights of Third Parties) Act 1999 has had a fundamental effect on the doctrine.
- The **pace of technological change** raises issues for modern contract law. Problems arise as contracts are often **electronic**, are **digitally signed**, are **accepted by email** and consideration is often provided by **credit card**.
- Statements made by the parties may be classified as **terms or representations**. Different **remedies** attach to breach of a term and to misrepresentation respectively.
- As a general rule, the parties to a contract may include in the agreement whatever **terms** they choose. This is the principle of **freedom of contract**. Terms clearly included in the contract are **express terms**. The law may complement or replace terms by **implying** terms into a contract.
- Terms may be implied by the **courts**, by **statute** or by **custom**.
- Statements which are classified as contract terms may be further categorised as **conditions** or **warranties**. A **condition** is a vital term going to the **root** of the **contract**, while a **warranty** is a term **subsidiary** to the main purpose of the **contract**. The remedies available for breach are different in each case.
- It may not be possible to determine whether a term is a condition or a warranty. Such terms are classified by the courts as **innominate terms**.
- An **exclusion clause** may attempt to restrict one party's liability for breach of contract or for negligence.
- The courts protect customers from the harsher effects of exclusion clauses by ensuring that they are properly **incorporated** into a contract and then by **interpreting** them strictly.
- The Unfair Contract Terms Act 1977 aims to **protect consumers** (effectively individuals) when they enter contracts by stating that some exclusion clauses are **void**, and considering whether others are **reasonable.**
- The Unfair Terms in Consumer Contracts Regulations 1999 defines what is meant by an **unfair term**. They deal with consumer contracts and terms which have not been individually negotiated.

- Contracts can be discharged through **agreement**, **frustration**, **performance** and **breach**.
- A party is said to be in breach of contract where, without **lawful excuse***,* he does not perform his contractual obligations precisely.
- **Breach** of a **condition** in a contract or other repudiatory breach allows the injured party to **terminate** the contract unless the injured party elects to treat the contract as continuing and merely claim **damages** for his loss.
- If there is **anticipatory breach** (one party declares in advance that he will not perform his side of the bargain when the time for performance arrives) the other party may treat the contract as discharged forthwith, or continue with his obligations until actual breach occurs. His claim for damages will then depend upon what he has actually lost.
- **Damages** are a common law remedy intended to restore the party who has suffered loss to the position he would have been in had the contract been performed. The two tests applied to a claim for damages relate to **remoteness of damage** and **measure of damages**.
- **Remoteness of damage** is tested by the **two limbs** of the rule in **Hadley v Baxendale 1854**.

– The first part of the rule states that the **loss must arise either naturally from the breach** or in a manner which the parties may reasonably be supposed to have contemplated when making the contract.

– The second part of the rule provides that a **loss outside the usual course of events** will only be compensated if the exceptional circumstances which caused it were within the defendant's **actual or constructive knowledge** when he made the contract.

- The **measure of damages** is that which will **compensate for the loss incurred**. It is not intended that the injured party should profit from a claim. Damages may be awarded for financial and non-financial loss.
- To avoid later complicated calculations of loss, or disputes over damages payable, the parties may include up-front in their contract a formula (**liquidated damages**) for determining the damages payable for breach.
- A simple **action for the price** to recover the agreed sum should be brought if breach of contract is failure to pay the price. But property must have passed from seller to buyer, and complications arise where there is anticipatory breach.
- A **quantum meruit** is a claim which is available as an alternative to damages. The injured party in a breach of a contract may claim the value of his work. The aim of such an award is to restore the claimant to the position he would have been in had the contract never been made. It is a **restitutory** award.
- An order for **specific performance** is an equitable remedy. The party in breach is ordered to perform his side of the contract. Such an order is only made where damages are inadequate compensation, such as in a sale of land, and where actual consideration has passed.
- An **injunction** is a discretionary court order and an equitable remedy, requiring the defendant to observe a negative conditions of a contract.

TORT LAW

- The law gives various rights to persons. When such a right is infringed the wrongdoer is liable in **tort**.
- **Negligence** is the most important modern tort. To succeed in an action for negligence the claimant must prove that:
- The defendant had **a duty of care** to avoid causing injury, damage or **loss**
- There was **a breach of that duty** by the defendant
- *In consequence* the claimant suffered **injury, damage or loss**
- The term negligence is used to describe **carelessly** carrying out an **act** and breaking a **legal duty of care** owed to another causing them **loss or damage.**
- In the landmark case of *Donoghue v Stevenson 1932* the House of Lords ruled that a person might **owe a duty of care to another with whom he had no contractual relationship** at all. The doctrine has been refined in subsequent rulings, but the principle is unchanged.
- The second element that must be proven by a claimant in an action for negligence is that there was a **breach of the duty** of care by the defendant.
- Finally the claimant must demonstrate that he suffered injury or loss as a **result** of the breach.
- The amount of damages awarded to the claimant can be reduced if it is shown that he **contributed** to his injury. The defendant can be **exonerated** from paying damages if it can be proved that the claimant **expressly** or **impliedly** consented to the risk.
- Professional individuals and organisations have a special relationship with their clients and those who rely on their work. This is because they act in an **expert capacity**.
- According to Lord Denning, to establish a **special relationship** the person who made the statement must have done so in some professional or expert capacity which made it likely that others would rely on what he said. This is the position of an adviser such as an accountant, banker, solicitor or surveyor.
- The **Caparo case** is fundamental to understanding professional negligence. It was decided that **auditors do not owe a duty of care to the public at large** or to **shareholders increasing their stakes in the company in question**

EMPLOYMENT LAW

- It is important to distinguish between a **contract of service** (employment) and a **contract for services** (independent contractor). Each type of contract has different rules for taxation, health and safety provisions, protection of contract and vicarious liability in tort and contract.
- A contract of service is **distinguished** from a contract for services usually because the parties **express** the agreement to be one of service. This does not always mean that an employee will not be treated as an independent contractor by the court, however; much depends on the three tests.

– Control test– Integration test

– Economic reality test

- The distinction between **employed** and **self-employed** is important as to whether certain **rights** are available to an individual and how they are treated for **tax purposes**
- There are no particular legal rules relating to the commencement of employment – it is really **just like any other contract** in requiring offer and acceptance, consideration and intention to create legal relations.
- The **employer** has an implied **duty at common law** to take **reasonable care** of his employees; he must select proper staff, materials and provide a safe system of working.
- The **employee** has a duty of **faithful service** and to exercise **care and skill** in performance of his duties.
- **Statute** implies terms into employment contracts, which may not usually be overridden, regarding pay and equality, maternity leave and work-life balance generally, time off, health and safety and working time.
- A contract of employment can only be **varied** if the contract **expressly** gives that right, or if all parties consent to the variation.
- Many rights given to employees under the **Employment Rights Act 1996** are only available if an employee has a specified period of **continuous employment**
- When an employment contract is terminated by notice there is **no** breach of contract unless the **contents** of the notice (such as notice period) are themselves in breach.
- Where employment is **terminated by notice** the period given must **not be less** than the **statutory minimum**.
- **Breach of the employment contract** occurs where there is **summary dismissal**, **constructive dismissal**, **inability** on the employer's side to **continue employment**, or **repudiation** of the contract by the employee.
- Where the employer has **summarily dismissed** an employee without notice (as where the employer becomes insolvent), there may be a claim for **damages** at common law for **wrongful dismissal**.
- Generally, the only **effective remedy** available to a **wrongfully dismissed** employee is a claim for **damages** based on the **loss of earnings**. The measure of damages is usually the sum that would have been earned if **proper notice** had been given.
- Certain employees have a right not to be **unfairly dismissed**. Breach of that right allows an employee to claim compensation from a tribunal. To claim for unfair dismissal, the employee must satisfy certain criteria.
- Dismissal must be **justified** if it is related to the employee's capability or qualifications, the employee's conduct, redundancy, legal prohibition or restriction on the employee's continued employment or some other substantial reason.
- Dismissal is **automatically unfair** if it is on the grounds of trade union membership or activities, refusal to join a trade union, pregnancy, redundancy when others are retained, a criminal conviction which is 'spent' under the Rehabilitation of Offenders Act 1974 or race or sex.

 Remedies for **unfair dismissal** include:

– **Reinstatement**

– **Re-engagement**

– **Compensation**

 Dismissal is caused by **redundancy** when the employer has ceased to carry on the business in which the employee has been employed or the business no longer needs employees to carry on that work. In these circumstances, dismissal is **presumed** by the courts to be by redundancy unless otherwise demonstrated.

AGENCY LAW

 Agency is a relationship which exists between two legal persons (the **principal** and the **agent**) in which the function of the agent is to form a **contract between his principal and a third party**. Partners, company directors, factors, brokers and commercial agents are all acting as agents.

 The relationship of principal and agent is created by **mutual consent** in the vast majority of cases. This **agreement does not have to be formal or written**.

 The mutual consent comes about usually by **express agreement**, even if it is informal. However, it may also be **implied agreement**, due to the **relationship** or **conduct** of the parties.

 A principal many later **ratify** an act of an agent retrospectively.

 An agency may be created, or an agent's authority may be extended, without express consent. This happens **by estoppel**, when the principal **'holds out'** a person to be his agent, and when there is an **agentof necessity**.

 If an agent acts within the limits of his authority, any contract he makes on the principal's behalf is **binding** on both principal and third party. The extent of the agent's authority may be **express, implied** or **ostensible**. Express and implied authority are both forms of **actual authority**.

 An agent's **apparent** or **ostensible authority** may be greater than his express or implied authority. This occurs where a **principal** holds it out to be so to a third party, who relied on the representation and altered his position as a result. It may be **more extensive** than what is usual or incidental.

 Agency is terminated by **agreement** or by **operation of law** (death, insanity, insolvency).

 An agent usually has **no liability** for a contract entered into as an agent, nor any **right to enforce it**. Exceptions to this: when an agent is **intended** to have liability; where it is **usual business practice** to have liability; when the agent is actually acting on his own behalf; where agent and principal have joint liability.

 A third party to a contract entered into with an agent acting outside his ostensible authority can sue for breach of **warranty of authority**.

BUSINESS ORGANISATION

- In a **sole tradership**, there is no legal distinction between the individual and the business.
- **Partnership** is defined as 'the relation which subsists between persons carrying on a business in common with a view of profit'. A partnership is *not* a separate legal person distinct from its members, it is merely a 'relation' between persons. Each partner (there must be at least two) is **personally liable** for all the debts of the firm.
- Partnerships can be **formed** very informally, but there may be complex formalities to ensure clarity.
- Partnerships may be **terminated** by passing of time, termination of the underlying venture, death or bankruptcy of a partner, illegality, notice, agreement or by order of the court.
- The **authority** of partners to bind each other in contract is based on the principles of agency.
- Partners are **jointly liable** for all partnership debts that result from contracts that the partners have made which bind the firm.
- **A limited liability partnership** formed under the 2000 Act combines the features of a traditional partnership with the limited liability and creation of a legal personality more usually associated with limited companies.
- A company has a **legal personality** separate from its owners (known as members). It is a formal arrangement, surrounded by formality and publicity, but its chief advantage is that members' **liability** for the company's debts is typically **limited**.
- The fact that a company's members – not the company itself – have **limited liability** for its debts **protects** the **members** from the company's creditors and ultimately from the full risk of business failure.
- Most companies are those **incorporated** under the **Companies Act**. However there are other types of company such as **corporations sole**, **chartered corporations**, **statutory corporations** and **community interest companies**.
- A company may be **private** or **public**. Only the latter may offer its shares to the public.
- To trade a public company must hold a **Registrar's trading certificate** having met the requirements, including **minimum capital** of **£50,000**.
- The main differences between public and private companies relate to: **capital**; **dealings** in **shares**, **accounts**; **commencement of business**; **general meetings**; **names; identification**; and **disclosure requirements**.
- There are a number of other ways in which companies can be **classified**.
- The case of *Salomon v Salomon & Co Ltd 1897* clearly demonstrates the **separate legal personality** of companies and is of great significance to any study of company law.
- Incorporation '**veils**' members from outsiders' view but this veil may be lifted in **some circumstances**, so creditors and others can seek redress directly from members. The veil may be lifted: by statute to enforce the law; to prevent the evasion of obligations; and in certain situations where companies trade as a group.
- It is sometimes necessary by law to look at who the owners of a company are. This is referred to as

'lifting the veil'.

- Because it is a separate legal entity, a company has a number of features which are different from a partnership. The most important difference between a company and a traditional partnership is that a company has a **separate legal personality** from its members, while a traditional partnership does not.
- A promoter **forms** a company. They must act with **reasonable skill** and **care**, and if shares are to be allotted they are the agent of the company, with an agent's fiduciary duties.
- A promoter has **no automatic right** to be reimbursed **pre-incorporation expenses** by the company, though this can be expressly agreed.
- Pre-incorporation contracts **cannot** be ratified by the company. A new contract on the same terms must be expressly created.
- A **company** is **formed and registered** under the Companies Act 2006 when it is issued with a **certificate of incorporation** by the Registrar, after submission to the Registrar of a number of documents and a fee.
- Buying a company **'off the shelf'** avoids the administrative burden of registering a company.
- A **private company** with share capital may be able to re-register as a **public company** if the share capital requirement is met. A public company may re-register as a private one.
- To **trade** or **borrow**, a public company needs a **trading certificate**. Private companies may commence business on **registration**.
- The price of limited liability is greater **public accountability** via the Companies Registry, registers, the *London Gazette* and company letterheads.
- A company must keep **registers** of certain aspects of its constitution, including the registers of members, charges and directors.
- Companies must keep **sufficient accounting records** to explain the company's transactions and its financial position, in other words so a profit and loss account and balance sheet can be prepared.
- A registered company must prepare **annual accounts** showing a true and fair view, lay them and various reports before members, and file them with the Registrar following directors' approval.
- Every company must make an **annual return** to the Registrar.

- The memorandum is a **simple document** which states that the subscribers wish to form a company and become members of it.
- A **company's constitution** comprises the **Articles of Association** and any **resolutions and agreements** it makes which affect the constitution.
- The articles may be altered by a **special resolution**. The basic test is whether the alteration is for the **benefit of the company as a whole**.
- A **company's objects** are its aims and purposes. If a company enters into a contract which is outside its objects, that contract is said to be **ultra vires**. However the rights of third parties to the contract are protected.

- Companies may only act in accordance with their **objects**. If the directors permit an act which is restricted by the company's objects then the act is *ultra vires*.
- The articles **constitute** a **contract** between:

– Company and members

– Members and the company

– Members and members

- The articles **do not constitute** a contract between the **company** and **third parties**, or members in a **capacity** other than as **members** (the *Eley* case).
- The constitution can be used to **establish the terms** of a contract existing elsewhere.
- **Shareholders' agreements** sometimes supplement a company's constitution.
- Except in **certain circumstances** a company's name must end with the words limited (Ltd), public limited company (plc) or the Welsh equivalents.
- No company may use a name which is:

– The **same** as an existing company on the Registrar's index of company names

– A **criminal offence, offensive** or **'sensitive'**

– Suggest a **connection** with the **government** or **local authority** (unless approved

- A member of a company is a person who has **agreed to become a member**, and whose name has been **entered** in the **register of members**. This may occur by: subscription to the memorandum; applying for shares; the presentation to the company of a transfer of shares to the prospective member; applying as personal representative of a deceased member or a trustee of a bankrupt.
- There are **eight** ways in which a member ceases to be so.
- **Public** and **private companies** must have a minimum of **one** member (s 7). There is **no maximum** number.
- A **share** is a transferable form of property, carrying rights and obligations, by which the interest of a member of a company limited by shares is measured.
- The term **'capital'** is used in several senses in company legislation, to mean issued, allotted or called up share capital or loan capital.
- If the constitution of a company states no differences between shares, it is assumed that they are all **ordinary** shares with parallel rights and obligations. There may, however, be other types, notably **preference shares** and **redeemable shares**.
- The most common right of preference shareholders is a **prior right** to receive a fixed dividend. This right is not a right to **compel payment** of a dividend, but it is **cumulative** unless otherwise stated. Usually, preference shareholders **cannot participate** in a dividend over and above their fixed dividend and **cease to be entitled to arrears of undeclared dividends** when the company goes into liquidation.
- The holders of **issued** shares have **vested rights** which can only be varied by using a strict procedure. The standard procedure is by **special resolution** passed by at least **three quarters** of the votes cast at a **separate class meeting** or by written consent.

- It is **not** a variation of class rights to issue shares to new members, to subdivide shares of another class, to return capital to preference shareholders, or to create a new class of preference shareholders.
- A **dissenting minority** holding 15% or more of the issued shares may apply to the court within 21 days of class consent to have the variation cancelled as 'unfairly prejudicial'.
- Directors exercise the **delegated power** to allot shares, either by virtue of the articles or a resolution in general meeting.
- If the directors propose to allot 'equity securities' wholly for cash, there is a general requirement to

  offer these shares to **holders** of **similar shares** in proportion to their holdings
- Companies have an **implied power** to borrow for purposes incidental to their trade or business.
- **Loan capital** comprises all the longer term borrowing of a company. It is distinguished from share capital by the fact that, at some point, borrowing must be repaid. Share capital on the other hand is only returned to shareholders when the company is wound up.
- A **debenture** is a document stating the terms on which a company has borrowed money. There are three main types.

– A **single debenture**

– **Debentures issued as a series** and usually registered

– **Debenture stock** subscribed to by a large number of lenders. Only this form requires a **debenture trust deed**, although the others may often incorporate one

- A charge over the assets of a company gives a creditor a **prior claim** over other creditors to payment of their debt out of these assets.
- Charges may be either **fixed**, which attach to the relevant asset on creation, or **floating**, which attach on 'crystallisation'. For this reason it is not possible to identify the assets to which a **floating** charge relates (until **crystallisation**).
- Floating charges **crystallise** or harden (convert into a fixed charge) on the happening of certain relevant events.
- Floating charges rank **behind** a number of other creditors on liquidation, in particular preferential creditors such as employees.
- If more than one charge exists over the **same class of property** then legal rules must be applied to see which takes priority in the event the company goes into liquidation.
- To be valid and enforceable, charges must be **registered** within **21 days** of creation by the Registrar.
- A debenture holder **without security** has the same rights as any other creditor.
- A **secured** debenture holder may enforce the security if the company defaults on payment of interest or repayment of capital. They may take possession of the asset subject to the charge and sell it or apply to the court for its transfer to their ownership by a foreclosure order. They may also

appoint a receiver or administrator of it. A floating charge holder may place the company into administration

- The rules which dictate how a company is to manage and maintain its capital exist to maintain the delicate balance between the **members' enjoyment of limited liability** and the **creditors' requirements that the company shall remain able to pay its debts**.
- Reduction of capital can be achieved by: **extinguishing/reducing liability on partly-paid shares; Cancelling paid-up share capital;** or **paying off part of paid up share capital**. Court confirmation is required for public companies. The court considers the interests of creditors and different classes of shareholder. There must be power in the articles and a special resolution.
- In issuing shares, a company must fix a **price** which is **equal** to or **more than** the **nominal value of the shares**. It may not allot shares at a discount to the nominal value.
- Private companies may issue shares for **inadequate consideration** provided the directors are behaving reasonably and honestly.
- There are **stringent rules** on consideration for shares in public companies.
- If shares are issued at a premium, the **excess** must be credited to a **share premium** account.
- Use of the share premium account is limited. It is most often used for **bonus issues**.
- Various rules have been created to ensure that dividends are only paid out of **available profits**.
- Distributable profits may be defined as 'accumulated realised profits ... less accumulated realised losses'.

'Accumulated' means that any losses of previous years must be included in reckoning the current distributable surplus. **'Realised'** profits are determined in accordance with generally accepted accounting principles.

- A public company may only make a distribution if its **net assets** are, at the time, **not less than the aggregate of its called-up share capital and undistributable reserves**. It may only pay a dividend which will leave its net assets at not less than that aggregate amount.
- The profits available for distribution are generally determined from the **last annual accounts** to be prepared.
- In certain situations the **directors** and **members** may be liable to make good to the company the amount of an **unlawful dividend**.
- Any person who occupies the position of director is treated as such, the test being one of **function**.
- The method of appointing directors, along with their rotation and co-option is **controlled** by the **articles.**
- Directors are entitled to **fees** and **expenses** as directors as per the articles, and **emoluments** (and compensation for loss of office) as per their service contracts (which can be inspected by members). Some details are published in the directors' remuneration report along with the accounts.
- A director may vacate office as director due to: **resignation**; **not going** for **re-election**; **death**; **dissolution** of the company; **removal**; **disqualification**.

- Directors may be required to vacate office because they have been disqualified on grounds dictated by the articles. Directors **may** be disqualified from a wider range of company involvements under the Company Directors Disqualification Act 1986 (CDDA).
- Directors may be **disqualified** from acting as directors or being involved in the management of companies in a number of circumstances. They must be disqualified if the company is insolvent, and the director is found to be unfit to be concerned with management of a company.
- The **powers** of the directors are **defined** by the **articles**.
- Directors' powers may be restricted by statute or by the articles. The directors have a duty to exercise their powers in what they honestly believe to be the **best interests** of the company and for the **purposes** for which the powers are given.
- The CEO or MD has **apparent authority** to make **business contracts** on behalf of the company. Their **actual authority** is whatever the **board gives** them.
- The Companies Act 2006 sets out the **seven principal duties** of **directors**.
- The **statutory duties** owed by directors are to:

– Act within their powers
– Promote the success of the company
– Exercise independent judgement
– Exercise reasonable skill, care and diligence
– Avoid conflicts of interest
– Not accept benefits from third parties
– Declare an interest in a proposed transaction or arrangement

- Every public company must have a **company secretary**, who is one of the officers of a company and may be a director. Private companies are not required to have a secretary.
- Every company (apart from certain small companies) must appoint appropriately qualified **auditors**. An audit is a check on the stewardship of the directors.
- The Companies Act provides **statutory rights** for auditors to enable them to carry out their duties.
- Auditors may leave office in the following ways: **resignation**; **removal from office** by an ordinary resolution with special notice passed before the end of their term; **failing** to **offer themselves** for **re-election**; and **not being re-elected** at the general meeting at which their term expires.
- However auditors leave office they must either: state there are **no circumstances** which should be brought to **members' and creditors' attention**; or list **those circumstances**. Auditors who are resigning can also: **circulate a statement** about their resignation to members; **requisition a general meeting**; **or speak** at a general meeting.
- Although the management of a company is in the hands of the directors, the **decisions which affect the existence of the company**, its structure and scope are **reserved to the members** in general meeting.
- There are two kinds of general meeting of members of a company:

– **Annual general meeting (AGM)**
– **General meetings at other times**

- A meeting can pass two types of resolution. **Ordinary resolutions** are carried by a simple majority (more than 50%) of votes cast and requiring 14 days notice. **Special resolutions** require a 75% majority of votes cast and also 14 days notice.
- A private company can pass any decision needed by a **written resolution**, except for removing a director or auditor before their term of office has expired.
- A meeting cannot make valid and binding decisions until it has been properly convened. Notice of general meetings must be given **14 days** in advance of the meeting. The notice should contain **adequate information** about the meeting.
- Meetings must be called by a **competent person** or authority.
- **Clear notice** must be given to members. **Notice** must be **sent to all members** entitled to receive it.
- **Special notice of 28 days** of intention to propose certain resolutions (removal of directors/auditors) must be given.
- **Members** rather than directors may be able to requisition resolutions. This may be achieved by requesting the directors call a meeting, or proposing a resolution to be voted on at a meeting already arranged.
- The **notice** convening the meeting must give certain details. The **date**, **time** and **place** of the meeting, and identification of AGM and special resolutions. Sufficient information about the business to be discussed at the meeting should be provided to enable shareholders to know what is to be done.
- Company meetings need to be properly run if they are to be **effective** and within the **law**.
- The meeting should usually be chaired by the **chairman** of the board of directors. They do not necessarily have a casting vote.
- The **quorum** for meetings may be two or more (except for single member private companies). **Proxies** can attend, speak and vote on behalf of members.
- Voting at general meetings may be on a **show of hands** or a **poll**.
- **Minutes** must be kept of all **general, directors'** and **management meetings**, and members can inspect those of general meetings.
- **Class meetings** are held where the interests of different groups of shareholders may be affected in different ways.
- There are **special rules** for **private companies** with only **one shareholder.**

- **Liquidation** is the **dissolution** or '**winding up**' of a company.
- There are three different methods of **liquidation: compulsory**, **members' voluntary** and **creditors' voluntary**. Compulsory liquidation and creditors' voluntary liquidation are proceedings for insolvent companies, and members' voluntary liquidation is for solvent companies.
- A **liquidator** must be an authorised, qualified insolvency practitioner.
- Once **insolvency procedures** have commenced, share trading must cease, the company documents must state that the company is in liquidation and the directors' power to manage ceases.

- A **winding** up is **voluntary** where the decision to wind up is taken by the company members, although if the company is insolvent, the creditors will be heavily involved in the proceedings.
- In order to be a members' winding up, the directors must make a **declaration of solvency**. It is a criminal offence to make a declaration of solvency without reasonable grounds.
- When there is no declaration of solvency there is a **creditors' voluntary winding** up.
- A creditor may apply to the court to wind up the company, primarily if the company is **unable to pay its debts**. There are statutory tests to prove that a company is unable to pay its debts
- A **dissatisfied member** may get the court to wind the company up on the **just and equitable ground**.
- The differences between compulsory and voluntary liquidation are associated with **timing**, the **role** of the **official receiver**, **stay of legal proceedings** and the **dismissal of employees**.
- An **administrator** is appointed primarily to try to rescue the company as a going concern. A company may go into administration to carry out an established plan to save the company.
- Some parties – **secured creditors** and **directors** and the **members** by resolution – can appoint an administrator without a court order.
- Various parties can apply for **administration** through the court.
- The **effects** of administration depend on whether it is effected by the **court** or by a **floating chargeholder**, to some degree.
- The administrator has **fiduciary duties** to the company as its agent, plus some legal duties.
- The administrator must either **propose a rescue plan**, or state that the **company cannot be rescued**.
- The administrator takes on the **powers** of the directors.
- Administration can last up to **12 months**.
- Administration has many advantages for the **company**, the **members** and the **creditors**

- Corporate governance is simply a term used for **the way that companies** (corporate) **are managed** (governed).
- There are many different **stakeholders** in most companies.
- The stakeholders most closely involved in corporate governance are the **directors** (the managers of the company) and the **shareholders** (who have some ultimate controls in general meeting).
- Directors must prepare **financial statements** for shareholders annually, and these are independently audited to provide an objective check on the directors.
- At the AGM the shareholders can exercise their **ultimate control.**
- Following high-profile corporate failures, corporate governance codes set out **best practice**.
- Whether their status is down to **voluntary** or **statutory** rules, there are certain aspects of governance, or 'governance structures' which are generally acceptable.
- Many companies have a **unitary board** system, where there is one board to run a company.

- In Germany and some other countries, a supervisory (or dual) board system is used. This means that there is a **management board to run the company** plus a **supervisory board to oversee** the management board.
- In practice, the principles of **independence** and **verification** behind both the **unitary** and the **dual systems** are increasingly growing closer. Both systems face **similar problems** in terms of finding **suitably qualified people** to undertake supervisory roles and to be an **independent** voice in a company.
- In the UK, rules on corporate governance are set out in the **UK Corporate Governance Code**. This code contains main and supporting principles and provisions which should be complied with by major listed companies. Where the rules have not been followed, this should be explained in the financial statements.
- Much of the law we have studied has involved to some extent the **regulation** of corporate governance through statute.
- The **Financial Services Authority** (FSA) is the **regulator of the financial services industry**, **company markets** and **share exchanges** in the UK.
- The FSA has wide powers to investigate suspicions of certain offences, such as **money laundering**, **insider dealing** and **market abuse**.
- Crime is **conduct prohibited by the law**. Financial crime can be international in nature, and there is a need for international co-operation to prevent it.
- Insider dealing is the statutory offence of **dealing** in securities while in **possession** of **inside information** as an insider, the securities being price affected by the information.
- The law on insider dealing has had some **limitations**, and new offences, such as market abuse, have been brought in to reduce security related crime.
- **Market abuse** relates to behaviour which amounts to abuse of a person's position regarding the stock market.
- Money laundering is the attempts to **make money from criminal activity appear legitimate** by disguising its original source.
- In the UK, there are various offences relating to **money laundering**, including tipping off a money launderer (or suspected money launderer) and failing to report reasonable suspicions.
- **Criminal offences** in relation to **winding up** include: making a declaration of solvency without reasonable grounds and fraudulent trading.