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S. V. Dorda, O. I. Leshchenko

# **A SHORT GUIDE TO LEGAL STRUCTURES**

Study guide

Recommended by the Academic Council of Sumy State University



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Reviewers:

*M. V. Starynsky* – Doctor of Law, Professor of the Chair of International, European Law and Civil-and-Legal Disciplines, Education and Research Institute of Law of Sumy State University;

*L. P. Rudakova* – Candidate of Pedagogical Sciences, Associate Professor of the Chair of English Phonetics and Grammar, Education and Research Institute of Foreign Languages of Cherkassy National University named after B. Khmelnytsky

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**Dorda S. V.**

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*A Short Guide to Legal Structures* is a course for learners who need to be able to use English in the legal environment. The course is intended for law students and practicing lawyers alike. *A Short Guide to Legal Structures* is suitable for both self-study and classroom use. In addition to texts and exercises, this book provides *Ideas for Discussion* section; it gives students opportunities to apply what they have learned, reinforce basic communication skills.

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## INTRODUCTION

*A Short Guide to Legal Structures* is a lower-intermediate to an upper-intermediate level course for learners who need to be able to use English in the legal environment. The course is intended for law students and practicing lawyers alike. *A Short Guide to Legal Structures* is suitable for both self-study and classroom use.

Since the vast majority of practicing lawyers in the world deal with commercial law, *A Short Guide to Legal Structures* focuses on the use of English for this purpose. A number of important topics, such as forms of business, company law, contract law, competition, have been selected as the subject matter of this book.

It is important to bear in mind that *A Short Guide to Legal Structures* should only be used for the purpose of learning Legal English and should not be relied upon for legal advice in the practice of law.

*A Short Guide to Legal Structures* consists of 16 units. Each unit includes a reading text which provides students with an overview of the topic area in question. These texts introduce legal concepts while presenting a variety of relevant vocabulary in the topic area. These texts are accompanied by a wide range of tasks, designed to build the core skills of reading and speaking.

In addition to exercises, this book provides *Ideas for Discussion* section; it gives students opportunities to apply what they have learned, reinforce basic communication skills.

## UNIT I

**1.1. The words in the box frequently occur after “business”:**

	leaders	
school		interests
ventures	<b>business</b>	empire
community		confidence

**Find combinations that mean:**

- 1) individual’s business activities, especially those of politicians;
- 2) a very large business organization;
- 3) specific money - making projects, perhaps involving an element of risk;
- 4) an institution that awards qualifications in business studies;
- 5) people involved in business in general;
- 6) heads of important companies who speak for 5 as a whole;
- 7) the morale of all those referred to in 5 and 6.

**1.2. Read the text and find the one best variant to complete each sentence:**

1. An increase in the number of laws is due to...
  - a) the growth of population
  - b) the growth of possibilities
  - c) the economic growth in the world

2. If you do not run your business honestly you may also need a knowledge of ...
  - a) civil law
  - b) criminal law
  - c) public law
3. Every country has its own set of laws designed to ...
  - a) regulate business
  - b) run business
  - c) stop business
4. Most businesses face ...
  - a) different problems
  - b) similar problems
  - c) one problem

## **RUNNING A BUSINESS**

Every year there is an increase in the number of laws, lawyers, and legal cases in the courts. To a large extent, this increase is due to the economic growth in the world; more business means more transactions, more possibilities for conflict and confusion, and, consequently more legal activity to regulate business. If you set up a business, even a very small one, you will buy and sell products and services, and perhaps, employ people, buy or rent land, and borrow money. In order to engage in all of these activities, you need to have some knowledge of basic legal principles such as contract, tort, and land law. And you will need to know about any laws specifically relevant to your kind of business, such as statutes

regulating companies. If you do not run your business honestly you may also need knowledge of criminal law!

Nearly every general area of the law is relevant to running a business, and nearly every country has its own set of laws designed specifically to regulate business. The attempts of the European Community to create a single market by 1993 show just how difficult it can be to harmonize business laws. Throughout the world, most businesses face similar problems; they must determine their organizational form; duties to clients; investors and employees; tax liabilities; and ability to minimize losses if the business fails.

**1.3. A company, or corporation, is the business entity most often used when carrying on business activities. The word *company* is often preferred in the UK whereas the word *corporation* is generally used in the US. The term *incorporation* refers to the act or process of forming a company. Choose the best variant to complete each sentence.**

1. The statute provides for the --- of limited liability partnerships.

- a) formation
- b) forming
- c) formatting

2. The process of starting a new business has been immensely helped by the availability of sample --- documents.

- a) legislative
- b) association
- c) incorporation

3. The accounting --- date is the last day of the month.

- a) renewal
- b) reference
- c) referral

4. Incorporation offers the benefit of limited --- protection.

- a) exposure
- b) liability
- c) vulnerability

5. After the founders filed all of the necessary documents, the de facto corporation was deemed to be a de --- corporation.

- a) jure
- b) juris
- c) jus

6. Your --- documents must be stamped and approved by the Tax Department.

- a) ratification
- b) induction
- c) registration

7. 1 000 000 new shares in the company were issued to ---.

- a) subscribers
- b) supporters
- c) sponsors



## UNIT II

**2.1. Read the text and say if the following sentences are true or false:**

1. The owner is not liable for the obligations of the business.
2. The sole trader stands alone.
3. The sole trader is not easy form to assume.
4. This form of business is not flexible and responsive to change.

### SOLE TRADER

This is the simplest way to set up and run a business: ownership and control of the business rests with a single individual. Being a Sole Trader is inherently risky because the individual is not separate from the business and has sole unlimited personal liability for the business, its debts and contractual obligations, and any claims against it. They own all the assets of the business and can dispose of them as they wish, and may employ staff and trade under a business name. However, it is unlikely that sole trader status will be suitable for businesses, which need more than a small level of external investment – being unincorporated limits borrowing and prevents the business raising equity finance by issuing shares.

Regulation for the Sole Trader is minimal: there is no requirement for a formal constitution for the business, and no need to register or file accounts and returns with Companies House. Sole Traders are treated as self-employed by HMRC and must register and make an annual self-assessment tax

return – profits from the business are treated as personal income subject to income tax and national insurance contributions.

**2.2. Find combinations in the box that refer to business people who ...**

- 1) are well-known (2 expressions);
- 2) have great ability to change things;
- 3) have been good at their jobs and made money;
- 4) are important in the place where their business is, but not nationally;
- 5) are from abroad;
- 6) own businesses that are not large.

	prominent	
local		small
leading	<b>business people</b>	foreign
successful		powerful

**2.3. Now use the words in the box to complete the extracts, choosing between the suggestions in brackets. Each word is used once.**

1. Many --- business people consider it a compliment for an expatriate to be able to converse in their language.
  - a) prominent
  - b) foreign
  - c) small

2. Mary Brown, a ceramic artist, found herself becoming a --- businesswoman when she needed factory floor space to lay out the tiles she has agreed to make for an architect working on a pop star's swimming pool.

- a) small
- b) foreign
- c) powerful

3. All the management techniques we use in business, they knew already. They would be very --- business people in their own right.

- a) successful
- b) local
- c) leading

4. Other help to businesses comes from the Training Council, run by local business people who understand --- needs.

- a) foreign
- b) local
- c) successful

5. Mr Iuzzini, one of Italy's most --- businessmen.

- a) foreign
- b) prominent
- c) leading

6. Only the most --- businessmen, like Mr Grey, can cut through the red tape by going straight to the top.

- a) powerful
- b) small
- c) leading

## UNIT III

**3.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Unincorporated Associations; set out; set up; unlimited personal liability; indemnify; self-employed tax status*

### UNINCORPORATED ASSOCIATION

Unincorporated Associations are groups that agree, or “contract”, to come together for specific purpose. They normally have a constitution setting out the purpose for which the association has been set up, and the rules for the association and its members. They are typically governed by a management committee. All members of the management committee will again have unlimited personal liability, unless they are specifically indemnified in the constitution. As for a Sole Trader, there is a limitation on raising finance, minimal regulation, and self-employed tax status for management committee members.

### 3.2. Match the two parts of the sentences:

1	Business history books are full of entrepreneurial	a	culture would be strangled by GM's bureaucracy.
2	EDS has turned its relationship with General Motors to advantage despite initial concerns that its entrepreneurial	b	firms that failed to survive for long after their founders' departure.
3	His company has become an entrepreneurial	c	flair of the founder of the organization, Michael Moore.
4	It was his entrepreneurial	d	role in which he had a big financial stake in his own efforts. "I'd rather build a company than run one."
5	Most governments now believe self-employment is something to be promoted and encouraged with tax-payers' money. It releases people's entrepreneurial	e	skills and is a vital source of new jobs, they claim.
6	Mr Lakoff was eager to return to a more entrepreneurial	f	spirit which took him from being a waiter at the Savoy to riches beyond most people's dreams.
7	The nature of the company and its success since its start-up were closely influenced by the entrepreneurial	g	success story and one of the area's leading employers.

**3.3. Choose the best variant to complete each sentence.**

1. The memorandum and --- of the new company were filed in the Companies Registration Office.

- a) certificate of association
- b) share certificate
- c) articles of association

2. A company may not issue more shares than as allowed by the ---.

- a) uncalled capital
- b) authorised capital
- c) working capital

3. The company increased its regular --- on common stock.

- a) bonus
- b) dividend
- c) fee

4. In corporate law, the word “---” often refers to the shareholders’ ownership interest in a corporation.

- a) equity
- b) coupon
- c) bond

5. The directors confirmed that no events had led to the --- of any floating charges.

- a) buyback
- b) disposition
- c) crystallization

6. If the company continues to run at a loss it may go into ---.

- a) recession
- b) rescission
- c) liquidation

## UNIT IV

**4.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*legal person; carry on a business; draw up a legally binding partnership agreement; share the profits and losses; raising equity finance*

### PARTNERSHIP

A Partnership is a relatively simple way for two or more legal persons to set up and run a business together with a view to profit. A partnership can arise, without any formal agreement, when people carry on a business in common, but typically there is agreement to trade as a partnership. Partners will usually draw up a legally binding partnership agreement, setting out such matters as the amount of capital contributed by each partner and the way in which they will share the profits (and losses) of the business.

Again, the Partnership has no separate legal personality. Partners share the risks, costs and responsibilities of being in business. Because partners generally bear the consequences of each other's decisions, partners usually manage the business

themselves, though they can hire employees. Partners usually raise money for the business out of their own assets, and/or with loans, although again being unincorporated limits borrowing in practice, and not being a company with a share capital prevents the business itself from raising equity finance by issuing shares.

Each partner is self-employed and pays tax on this basis on their share of the profits. The partnership itself and each individual partner must make annual self-assessment returns to HMRC, and the Partnership must keep records showing business income and expenses.

Legal persons other than individuals – such as Limited Companies or Limited Liability Partnerships – can also be partners in a partnership. They are treated like any other partner except that they have additional tax and reporting obligations – for example, companies must pay corporation tax rather than income tax on their profits from the partnership.

#### **4.2. Match the terms with their definitions:**

1	General partners	a	nonpartners held out as partners
2	Sleeping partners	b	publicly known partners not actively involved in management of partnership
3	Silent partners	c	partners participating in partnership management with full personal liability for partnership obligations
4	Nominal partners	d	partners not known as such by public
5	Secret partners	e	partners neither acknowledged publicity nor actively involved in management



### **4.3. Fill in the gaps with the terms given below:**

*General partners, sleeping partners, silent partners,  
nominal partners, secret partners*

The flexibility of the partnership form is shown by the various types of partners that may use it. For example, (1) ----- participate in the management of the partnership and are fully liable for the partnership's obligations. (2) ----- are properly and publicly acknowledged as partners but do not participate actively in the management of the partnership.

(3) -----, on the other hand, are partners but are not known as such publicly. (4) ----- are not actually partners but hold themselves out as such or allow themselves to be held out as such. Finally, (5) ----- are neither acknowledged publicly as partners nor do they actively participate in the management of the partnership.

### **4.4. Choose the best variant to complete each sentence.**

1. Accountants were hired to --- the company's spending.

- a) disclose
- b) audit
- c) indemnify

2. A --- is a company that is controlled by another company.

- a) subsidiary company
- b) holding company
- c) trust company

3. The fact that you were also working for our main competitor seems to be a serious ---.

- a) power of attorney
- b) conflict of interest
- c) declaration of trust

## UNIT V

**5.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Limited Partnership; limited liability; fully liable for;  
Companies House*

### LIMITED PARTNERSHIP

Not to be confused with a Limited Liability Partnership (see below) – a Limited Partnership has two sorts of partner: general partners and limited partners. The form is similar to a Partnership, with the main differences being that the limited partners may not be involved in the management of the business and their liability is limited to the amount that they have invested in the partnership. Note that limited partners are different from “sleeping” partners in a Partnership or Limited Partnership, who do not take part in running the business but remain fully liable for its debts. Limited partnerships must register at Companies House, and do not come into existence until they are registered. Changes to the partnership must also be registered.

**5.2. Here is a list of roles in company management. Match the roles (1–10) with their definitions (a–j).**

1	Auditor	a	a person appointed by a shareholder to attend and vote at a meeting in his/her place when the shareholder is unable to attend
2	Company secretary	b	company director responsible for the day-to-day operation of the company
3	Director	c	person elected by the shareholders to manage the company and decide its general policy
4	Liquidator	d	person engaged in developing or taking the initiative to form a company (arranging capital, obtaining personnel, making arrangements for filing corporate documentation)
5	Managing director	e	person appointed by the company to examine the company's accounts and to report to the shareholders annually on the accounts
6	Official receiver	f	company's chief administrative officer, whose responsibilities include accounting and finance duties, personnel administration and compliance with employment legislation, security of documentation, insurance and intellectual property rights
7	Promoter	g	member of the company by virtue of an acquisition of shares in a company
8	Proxy	h	officer of the court who commonly acts as a liquidator of a company being wound up by the court
9	Receiver	i	person appointed by creditors to oversee the repayment of debts
10	Shareholder	j	person appointed by a court, the company or its creditors to wind up the company's affairs

### 5.3. Find combinations in the box that mean:

- 1) the products that a company has to offer, considered as a group (4 expressions);
- 2) the life of a product considered in terms of the phases from its development and launch to its withdrawal;
- 3) the way a product is designed to be perceived in relation to other products;
- 4) a company paying for its product to be used or seen in a film or TV programme.

	mix	
lifecycle		range
positioning	<b>product</b>	placement
portfolio		line

**5.4. Study the following information and then fill in the gaps with the words in bold.**

### EXECUTIVE PAY-OFFS

A compensation package for an executive leaving a company is also known as a **golden goodbye**, **golden handshake**, or **golden parachute**. Compensation for someone leaving a company may be referred to as a **compensation payment**, **compensation payoff**, or **compensation payout**. These payments may form part of a severance package. **Severance payments** can be the subject of complex negotiations when an executive leaves, or is **ousted**: forced to leave. When executives are ousted, people may talk about companies giving them the **golden boot**.

1. Stephen Walls, who picked up a six-figure --- when Plasma was bid for four years ago, is in line for another bumper pay-off. He stands to receive at least \$ 785 000 --- after a boardroom row at Anglo-Brazilian paper group.

2. He also said he would work without a contract indefinitely. Such a move would prevent him from receiving substantial --- severance pay should he leave Spanish employment.

3. Mr. John Brown, former co-chairman of PR, the American-Brazilian information and publishing group, is to receive one of the largest executive pay-offs in Britain in recent years – a --- worth \$ 2.02 million. Mr. Brown, who resigned in July after a dispute over management responsibilities, is to receive \$ 652 000 in cash, \$ 1.3 m of enhanced pension entitlements and up to \$ 70 000 in fringe benefits, including temporary use of an office suite in Chicago.

4. Huge --- recently have included \$ 1.5 million for Jack Green, who was ousted as chairman and chief executive of NP following a boardroom row.

5. International Business Techniques gave a --- to Mr. John Atkins, its former chairman and chief executive, who retired last March under pressure from the board of directors as a result of the company's worsening financial performance. According to a statement issued today, Mr. Atkins received a --- of about \$ 4.3 million. This included \$ 3.1 million, equivalent to one year's compensation, as part of a retirement incentive program.

## UNIT VI

**6.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*legal identity; holding assets; separate legal ownership; trustees; personally liable; trust's objectives; raise finance*

### TRUST

Trusts are unincorporated and have no legal identity of their own. They are essentially legal devices for holding assets so as to separate legal ownership from economic interest. A trust holds assets on behalf of an individual or another organisation and governs how they are to be used. A trust is run by a small group of people called trustees who are legally responsible for the administration of the trust and personally liable for any debts or claims against it that cannot be met out of the trust's own resources. Trusts make their own set of rules – enshrined in a trust deed – which sets the trust's objectives and may be used to ensure that assets and profits are used for a particular purpose. Trusts do not typically raise finance – they simply manage assets and do not distribute profits. Trusts are often used in conjunction with unincorporated associations, which cannot themselves own property.

**6.2. Choose the best variant to complete each sentence.**

1. A trust is an arrangement whereby property is transferred by one person (the settlor, also known as the ----) for the benefit of another.

- a) grantor
- b) grantee
- c) trustee

2. During the lifetime of the settlor, the ---- shall hold, administer and distribute the trust income and principal.

- a) grantor
- b) grantee
- c) trustee

3. A trust can be set up to provide for ----, such as children, who are too young to manage the money themselves.

- a) beneficiaries
- b) grantors
- c) settlors

4. The trustee owes a fiduciary ---- to the beneficiaries.

- a) trust
- b) duty
- c) capacity

5. The terms of the trust must state what property is to be ---- into the trust.

- a) transferred
- b) paid
- c) assigned

6. A trust ---- is the written document used to formalise the creation of a trust.

- a) register
- b) cadaster
- c) instrument

## UNIT VII

**7.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Memorandum; Articles of Association; Companies Act; Company Limited by Shares; Company Limited by Guarantee; raise capital from shareholders; Listed Company; stock exchange; regulatory requirements; Companies House*

### LIMITED COMPANY

The Limited Company is the most common legal form in use for running a business. Companies are “incorporated” to form an entity with a separate legal personality. This means that the organisation can do business and enter into contracts in its own name.

On incorporation under the Companies Act 2006, a company is required to have two constitutional documents:

- a Memorandum, which records the fact that the initial members (the subscribers) wish to form a company and agree to become its members. The Memorandum cannot be amended; and
- Articles of Association – often just referred to as the Articles – which are essentially a contract between the company and its members, setting the legally binding rules for the company, including the framework for decisions, ownership and control. The Companies Act 2006 provides significant flexibility to draw up articles to suit the specific needs of the company, provided it acts within the law.

A Limited Company is owned by its members – those who have invested in the business – and as the name suggests



they enjoy limited liability – i. e. the company’s finances are separate from the personal finances of their owners and as a general rule creditors of the business may only pursue the company’s assets to settle a debt. The personal assets of the owners are not at risk. There are two mechanisms for company membership:

- Company Limited by Shares. Most companies fall into category. Members each own one or more shares in the company and are therefore known as shareholders. Shareholders’ limited liability means that they only stand to lose what they have already invested or committed to invest (amounts unpaid on shares).

- Company Limited by Guarantee. Members of the company give a guarantee to pay a set sum if the company should go into liquidation.

A company must have at least one member. In a Company Limited by Shares, each share usually has a voting right attached to it so the members are able to vote on important decisions affecting the company. The arrangement is normally one share one vote, although many companies will create different classes of share with different voting rights attached. In a Company Limited by Guarantee the arrangement is usually one member one vote (OMOV).

Day to day management of a company is nominally separate from its ownership and undertaken by a director or board of directors, with the core principle that they act in the interest of the company and its members. However, directors may also be members, thus the simplest form of Limited Company is a single member who owns the whole company

and is also its sole director. A company must have at least one director (public companies described below must have two) and at least one director must be a real person.

In a Company Limited by Guarantee, finance comes from the members, from loans or from profits retained in the business as working capital. A Company Limited by Shares can also raise capital from shareholders in return for a stake in the business – any profits from the business are usually distributed to shareholders in the form of dividends, apart from profits retained in the business as working capital. Limited Companies have a greater capacity to finance themselves with loans than unincorporated businesses, as they can use their assets as security for loans, creating a “charge” over the company’s assets. These charges are registered at Companies House, providing transparency about the extent of a company’s secured credit. Lenders, including banks and building societies will therefore typically make incorporation a condition of providing a business loan.

The Limited Company form is subject to stricter regulatory requirements than unincorporated forms: greater accountability and transparency is the price to pay for the benefit of limited liability. Accountability is both to the company’s shareholders and also to the public who may wish to deal with the business. Companies are registered at Companies House, and it is the directors’ responsibility to maintain the company’s public records – including annual accounts and an annual return about the company – and to file them at Companies House. They must notify Companies House of changes in the structure and management of the business.

If a company has any taxable income or profits, it must tell HMRC that it exists and is liable to corporation tax. Companies liable to corporation tax must make annual returns to HMRC.

A Company Limited by Shares is either a Private Limited Company (Ltd) or a Public Limited Company (Plc). The key difference is that the Public Limited Company is permitted to offer shares for sale to the public. The Private Limited Company is the most common legal form used by the vast majority of businesses – ranging from a business with a single shareholder director to large companies which have attracted large investments of private equity capital. Public Limited Companies usually begin life as Private Limited Companies but later go public for the advantage that this provides in raising finance. A Public Limited Company must have at least two directors and a qualified company secretary. It must have issued shares to the public to a value of at least £ 50 000. Public companies attract stricter regulation than private companies to ensure transparency and protection for the public investor, who is often more separated from the management of the company than in a private company.

A Public Limited Company may also become a Listed Company by floating its shares on a recognised stock exchange, creating a wider market for its shares. Listed companies are subject to even greater regulatory requirements in the form of listing rules and information disclosure requirements put in place to ensure the market works and maintains its integrity.

**7.2. The words in the box frequently occur after “corporate”:**

	image	
strategy		collapses
governance	<b>corporate</b>	culture
logo		ladder
	performance	

**Find combinations that refer to:**

- 1) the perception that people have of a corporation;
- 2) what corporate employees climb during their career;
- 3) company results over a period of time;
- 4) the values that people have and the ways that things are done in an organization;
- 5) the way a company is managed at the highest level;
- 6) plans that companies have maintaining and developing their position in the future;
- 7) company failures;
- 8) a symbol, usually showing the company’s name.

**7.3. Now use the expressions to complete the extracts.**

A. Corporate ---- and associated fiascos have exposed the failure of the auditing industry as a whole, not just the failure of individual audits.

B. No single subject has so dominated the attention of managers, consultants and management theorists as the subject of corporate ----.

C. While Wal-Mart grew, Walton was developing the practices that were to give the firm one of America's most-admired corporate ---- s.

D. Braxton, remaining one step ahead on the corporate ----, has been transferred to New York as head of the subsidiary in America.

E. Good corporate ---- should be about stopping messes from happening, not just cleaning up afterwards.

F. Few investors are prepared to look beyond conventional measures for assessing corporate ----.

G. All phone books are to have identical blue covers with the British Telecom ----. It is part of the corporate ----.

**7.4. The following sentences deal with company formation and management. Choose the correct word or phrase to complete them.**

1. The constitution of a company ---- of two documents.

- a) comprises
- b) consists
- c) contains

2. The memorandum of association ----- the objects of the company and details its authorized capital.

- a) states
- b) provides for
- c) sets up

3. The articles of association contain ----- for the internal management of a company.

- a) arguments
- b) provisions
- c) directives

4. The company is governed by the board of directors, whilst the day-to-day management is delegated ---- the managing director.

- a) upon
- b) to
- c) for

5. In some companies, the articles of association ----- provision for rotation of directors, whereby only a certain portion of the board must retire and present itself for re-election before AGM.

- a) make
- b) give
- c) allow

6. Many small shareholders do not bother to attend shareholders' meetings and will often receive proxy circulars from the board, seeking authorization to vote ---- the shareholders.

- a) on the basis of
- b) in respect of
- c) on behalf of

## UNIT VIII

**8.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*separate legal personality; personal guarantees; equal share of the profits; national insurance contributions; annual returns*

### **LIMITED LIABILITY PARTNERSHIP (LLP)**

A Limited Liability Partnership is a body corporate with a separate legal personality similar to a company. Unlike in a normal partnership, the members of an LLP enjoy limited liability as the name suggests – liability is limited to the amount of money they have invested in the business and to any personal guarantees they have given to raise finance. Each member takes an equal share of the profits, unless the members’ agreement specifies otherwise.

Much like a Partnership, each non-corporate member of an LLP needs to register as self-employed with HMRC, and both the LLP itself and each individual member must make annual self-assessment returns HMRC. Non-corporate members of an LLP pay income tax and national insurance contributions on their share of the profits. Additionally, LLPs must register and file accounts and annual returns at Companies House. At least two members must be “designated members” who hold additional responsibilities – it is they who appoint auditors and sign off and file the accounts at Companies House.

Limited Liability Partnerships have much more freedom than companies over arranging their internal affairs, for

example in the way in which decisions are made, and the way in which profits are distributed to members.

## **8.2. Study the following information:**

Shares **change hands** when they are **traded**. When there is a lot of **trading** in a market, **turnover** is high. Trading is most often described as **moderate** or **active**.

Trading on the stock exchange and on other markets can also be:

a) dull, lackluster, light, negligible, quiet, slow, sluggish, thin, or weak when activity is low;

b) bumpy, choppy, erratic, hesitant, mixed, uncertain, or volatile when the overall direction of prices is not clear;

c) brisk, heavy, or hectic when there is a high volume of trading, in other words high turnover of shares;

d) frantic, frenetic, or frenzied when there is a very high volume of trading.

## **8.3. Say to which of the above groups a–d the missing words in these extracts belong. It is not always possible to say exactly which words are missing.**

1. After five or six weeks of ----- trading and rapidly rising prices the black pepper market has entered a quieter period.

2. Analysts debated the meaning of sluggish trading volume. Optimists argued that ----- trading volume signaled that investors remain confident. But pessimists countered that investors aren't being tempted into the markets at current price levels.



3. Base metals soar in hectic trading at LME. In one of the most ----- days on the London Metal Exchange in living memory, prices soared yesterday as wave after wave of investment fund and speculative buying took copper, aluminium and lead to fresh four-year peaks and nickel and zinc to their highest levels for two years.

4. Foreign exchange dealers survived on adrenalin, coffee and sandwiches as currency markets entered a second day of ----- trading. Wednesday was bad. Thursday, if anything, was worse.

5. ----- trading on the Taiwan stock exchange yesterday pushed volume to a record \$ 7.55 billion as optimistic small investors bought heavily and big investors took profits ahead of a possible change in tax rules.

6. Precious metals. The ----- trading pattern of prices continued, with gold and silver declining and platinum rising again.

7. Prices fell in extremely thin trading. The ----- trading activity came ahead of several key economic reports due out this week.

8. Bangkok ended lower in ----- trading as investors, including institutions, stayed on the sidelines.

9. Share prices close easier in uncertain trading. Share prices moved sharply in an ----- trading session in London yesterday, as equally uncertain trends in bonds kept investors confused over the near term outlook for domestic securities markets.

10. The Mexican bolsa had a highly volatile session with ----- trading until the market received the positive news of

discussions between the US, Canada and the International Monetary Fund on an emergency credit line.

**8.4. Match stock exchange term with its definition:**

1	Bear	a	Treasure investors' growth receipt
2	Bull	b	Investments which produce indirect incomes
3	Stag	c	An insolvent speculator
4	Tiger	d	A misleading surge in shares after a sudden fall
5	Dingo	e	Aggressive competition
6	Dragon: Dragon Market	f	Fluctuations in the monetary system
7	Cats and dogs	g	A free-lance speculator who buys and sells very quickly
8	Dog	h	Asian countries' stock market
9	Rat: Rat Race	i	Zero coupon bond denominated in Australian dollars
10	Pig	j	When the prices of shares are likely to rise
11	Duck: Lame Duck	k	An inexpert market speculator
12	Lamb	l	When the prices of shares are likely to drop
13	Cat: Dead Cat Bounce	m	A firm with a low market share
14	Snake	n	Shares with little stability

## UNIT IX

**9.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Community Interest Company; social enterprises; community interest statement; asset lock; caps on dividends; to strike a balance between; the benefit of the community*

### **COMMUNITY INTEREST COMPANY (CIC)**

A Community Interest Company (CIC) is a form of company (limited either by shares or by guarantee) created for so called “social enterprises” that want to use their profits and assets for community benefit. CICs are easy to set up and have all the flexibility and certainty of the company form, but with several special features which ensure they serve a community interest:

- First, all companies applying to be registered as CICs must submit a community interest statement to provide the CIC Regulator with evidence that they will satisfy a community interest test defined in law. The company must continue to satisfy the test for as long as it remains a CIC, and must report annually to the Regulator.

- Second, a CIC must have an “asset lock” which restricts the transfer of the company’s assets (including any profits generated by its activities) to ensure that they are used for the benefit of the community.

- Third, CICs are subject to caps on dividends and interest payable – to strike a balance between encouraging people to invest in CICs and the principle that the assets and

profits of a CIC should be devoted to the benefit of the community.

**9.2. Study the following information and then fill in the gaps with the words in bold.**

Debts to lenders form part of a company's **liabilities**. Liabilities are also used to refer exclusively to debt. Long-term debts are **long-term liabilities**. The ratio of a firm's debt to its equity is its **gearing** or **leverage**; a firm with a high proportion of debt in relation to equity is **highly geared** or **highly leveraged**. Short-term debts and debts to suppliers are among its **current liabilities**.

1. Chief Executive said: "We are in a good debt position and although ----- will rise, it is controllable".

2. Investors worry that an economic downturn would make it difficult for ----- companies to meet their debt obligations.

3. Any buyer of ABC would have to assume \$ 4.5 billion in debt, plus billions more in other -----.

4. A company may be ----- for the realities of the markets in which it is operating.

5. When a firm borrows money, it promises to make a series of fixed payments. Because the shareholders get only what is left over after the debtholders have been paid, debt is said to create financial -----.

6. ----- are bills that the company expects to pay in the near future. They include debts that are due to be repaid within the next year and payables: amounts owed by the company to its suppliers. In addition to these short-term

obligations, ABC has issued bonds that will not be repaid for many years. These are shown as -----

**9.3. Complete this extract about leverage with the words listed** ( $a \times 4$ ;  $b \times 3$ ;  $c$  and  $d$  twice each, and the others once each).

- a debt*
- c leverage*
- e debtholders*
- b assets*
- d market*
- f accounting*

**LEVERAGING THE ASSETS**

Financial (1) ----- is usually measured by the ratio of long-term debt to total long-term capital. Another way to express leverage is in terms of the company's debt-equity ratio. Notice that both these measures make use of book, i. e. (2) ----, values rather than market values.

The market value of a company finally determines whether (3) ----- get their money back, so you would expect analysts to look at the face amount of the (4) ----- as a proportion of the total market value of the (5) ----- and equity. The main reason they don't do this is that (6) ----- values are not readily available. Does it matter much? Perhaps not; after all, the (7) ----- value includes the value of intangible assets generated by research and development, advertising, staff training and so on. These (8) ----- are not readily saleable and, if the company falls on hard times, the value of these (9) ----- may fall to zero. For some purposes, it may be just as well to follow the accountant and to ignore these intangible (10) ----- entirely.

Notice also that this measure of (11) ----- takes account only of long-term (12) ----- obligations. Managers sometimes also define (13) ----- to include all liabilities other than equity.

## UNIT X

**10.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Charitable Incorporated Organisation; charities;  
dual registration; charity law; devolved*

### **CHARITABLE INCORPORATED ORGANISATION (CIO)**

The Charitable Incorporated Organisation (CIO) is a new legal form which is available to charities in England and Wales from 2012. Currently charities wanting to incorporate normally do so as a Company Limited by Guarantee – which means dual registration with Companies House and the Charity Commission and dual regulation under company law and charity law. CIO status will offer the benefits of incorporation, but the organisation will only be registered with the Charity Commission and regulated under charity law. The new form is expected to be used primarily by small and medium charities. Like any charity the organisation's profits and assets will be locked in for charitable purposes. Note that charity law and regulation are devolved: similar legislation has been passed in Scotland, but not yet in Northern Ireland.

**10.2. Study the following information and then fill in the gaps with the words in bold.**

## **ASSETS**

Things of value or earning power to a firm are its **assets**. **Current assets** include cash, receivables, bank deposits, and trade investments: investments in other companies. **Fixed assets** include land, plant, buildings, and furniture. Assets such as plant and equipment that over time wear out or become outdated are said to **depreciate**. A **charge** must be made for this **depreciation** or **amortization** in calculating a business's profitability: the assets are **depreciated** or **amortized** by an amount each year. The **book value** of an item of equipment is the amount it is theoretically worth after depreciation, but this may not reflect what someone would pay for it if it was sold. **Intangible assets** may include such things as patents owned by the company, and **goodwill**, the value of the company as a functioning business or **going concern** with a client base, experienced management, and other benefits that a start-up may not have.

1. The figures revealed that News Corp's debt had blown out to \$ 10 billion and that ----- of \$ 3.4 billion were little more than half current liabilities of \$ 6 billion.

2. ----- is an ----- : the value of a firm as going concern in excess of the sum of its parts.

3. The need for an asset to be "measured at a monetary amount with sufficient reliability" would also affect accounting for ----- such as brand names.

4. Mr. Atkins said the group remains fully committed to its heavy investment program. This saw combined spending on ----- and research and development rise to 8.2 trillion from 6.7 trillion a year earlier.

5. British Airports Authority has expanded the “economic life” of its terminals and runways from 16 years and 23.5 years respectively to 50 years for terminals and 100 years for runways. This means these assets can be ----- over a longer period, reducing the annual charge, and thereby increasing reported profits.

6. The technology is developing so fast that ABC Television, which it had initially planned on ----- over five years, grew obsolete in less than two years. Now ABC must lay out money for a newer, even costlier generation of equipment.

7. The ----- of a catalytic cracker may be a poor guide to its true value, but at least you know what cash in the bank is worth.

**10.3. Corporate responsibility extends to the environment, local communities, employment procedures and its financial and ethical integrity. Choose the correct word to complete the sentences.**

1. ABC agreed to ----- with the association’s standards on working hours by July 2020.

- a) contend
- b) conspire
- c) comply



2. Some of the technology that schools bought at ----- prices should have been provided free of charge.

- a) conflated
- b) exaggerated
- c) inflated

3. The ABA factory was presented as a vision of an ideal village where residents ----- in community events.

- a) associated
- b) participated
- c) cooperated

4. The trust was founded in 1966 by famous industrialist to provide a high ----- of living for workers.

- a) adequacy
- b) level
- c) standard

5. A spokesperson ensured that there would be no ----- effect on the local community.

- a) adverse
- b) converse
- c) diverse

6. The company aims to provide homes for people who have been excluded and ----- against.

- a) distinguished
- b) discriminated
- c) differentiated

7. The company is focused on ----- local culture through technology and making products which are specific to the local market.

- a) uplifting
- b) preserving
- c) suspending

## UNIT XI

**11.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*Industrial and Provident Society; Co-operative Society; Community Benefit Society; Financial Services Authority; exclusively charitable objects*

### INDUSTRIAL AND PROVIDENT SOCIETY

An Industrial and Provident Society (sometimes referred to as an I&P, or IPS) may take one of two forms: Co-operative Society (Co-op) and Community Benefit Society (BenCom).

#### *Co-operative Society (Co-op)*

A Co-operative Society is a membership organisation run for the mutual benefit of its members – serving their interests primarily by trading with them or otherwise providing them with goods, services and facilities – with any surplus usually being ploughed back into the organisation, although profits can be distributed to members. A Co-operative Society

may or may not be a social enterprise, depending on its activities and how it distributes its profits.

A Co-operative Society is governed by rules, which must reflect the co-operative values and principles set out by the International Co-operative Alliance. The Alliance defines a co-operative as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through jointly owned and democratically controlled enterprise.

A Co-operative Society is incorporated – and so has a separate legal personality – and must register and submit annual accounts to the Financial Services Authority (FSA) rather than Companies House. As with a company, the members' liability is limited to the amount unpaid on shares. They have a principle of open membership and can therefore raise funds by issuing shares to the public.

They are run and managed by their members, usually through a committee of officers, similar to a company's board, that manages on members' behalf. However, members always have democratic control on a "one member one vote" (OMOV) basis, regardless of size of respective shareholdings, under the co-operative values and principles.

### ***Community Benefit Society (BenCom)***

A Community Benefit Society (BenCom) is similar to a Co-operative Society except that it conducts business for the benefit of the community, rather than the members of the society. Indeed a BenCom must be run primarily for the benefit of people who are not members of the society and must also be in the interests of the community at large. Profits are not

distributed among members, or external shareholders, but returned to the community. BenComs also often apply an asset lock, which protects their assets for the future benefit of the community. It is unusual for the BenCom to issue more than nominal share capital (e. g., one share valued at £1 per member). If more than nominal share capital is issued or if members make loans to the BenCom, dividends and interest paid are capped at a reasonable rate needed for the business to retain the capital it needs.

A BenCom can be established as a charity, providing it has exclusively charitable objects that are for the public benefit, allowing them to raise capital through public grants and charitable trusts. If approved, they are known as exempt charities – reporting only to the Financial Services Authority (FSA), not the Charity Commission. Charitable BenComs must have an asset lock.

**11.2. Match the verbs (1–4) with their definitions (a–d):**

1	exercise (control)	a	1) to remove someone from their job, usually because they have done something wrong; 2) to cease to consider, to put out of judicial consideration
2	restrict (powers)	b	to increase in number or amount over a period of time, especially in a financial sense
3	accrue (benefits)	c	to make use of / apply something
4	dismiss (members)	d	to limit someone or something

**11.3. Match the verbs above (1–4) with the nouns in the box with which they collocate. Some nouns can go with more than one verb.**

access; authority; benefits; caution; capital; a case; a charge;  
a claim; control; an employee; force; freedom; influence;  
interest; power; pressure; profits; restraint; revenue; rights;  
sales; spending

**11.4. Complete these sentences using exercise, restrict, accrue or dismiss.**

1. A motion was filed by the Board of Directors to ----- the case.

2. The chairman warned that if investors were asked for more money, they might ----- their option to sell their shares.

3. The Chief Executive resigned when the board tried to ----- greater control over the company's bankruptcy plan.

4. The company is expected to ----- its spending while its markets remain weak.

5. Financial benefits ----- to the owners and operators of the factories, as well as to the shareholders.

6. A company spokeswoman advised shareholders to ----- caution in their share dealings until a further announcement is made.

7. One important Commercial Code provision may ----- some of the freedom of directors to grant options without shareholder approval.

8. The annual general meeting has authority to draw up or amend the constitution and to elect or ----- member directors of the Board.

## UNIT XII

**12.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*to provide financial services; Building Societies; residential mortgage lending; money transmission services; operated for the purpose of; at reasonable rates; life assurance*

### FINANCIAL MUTUALS

There are three other types of mutual form, not covered in detail here, that specifically exist to provide financial services. These are also registered with the FSA.

- **Building Society.** Building Societies are mutual financial services institutions, primarily providing residential mortgage lending, but also other financial services such as other forms of lending and investment, money transmission services, banking and insurance services. They are funded substantially by their members.

- **Credit Union.** A credit union is a cooperative financial institution that is owned and controlled by its members and operated for the purpose of providing credit at reasonable rates, and providing other financial services to its members.

- **Friendly Society.** A friendly society is a voluntary mutual organisation whose main purpose is to assist members

financially during sickness, unemployment or retirement, and to provide life assurance.

**12.2. Legal documents are characterized by the use of formal verbs not generally found in everyday speech. Many of these verbs are of Latinate origin. Match the formal verbs (1–15) with their more informal counterparts (a–o).**

1	assist	a	get
2	commence	b	stop
3	comprehend	c	ask
4	deem	d	show
5	desist	e	tell
6	endeavor	f	look through
7	enquire	g	start
8	ensure	h	have
9	evince	i	suggest
10	inform	j	think
11	intimate	k	keep
12	peruse	l	try
13	possess	m	help
14	receive	n	make sure
15	retain	o	understand

**12.3. Irregular plural forms. Choose the correct plural form (*a* or *b*) for these words. For some of the words, both options are acceptable.**

1	addendum	a	addendums	b	addenda
2	analysis	a	analyseses	b	analyses
3	appendix	a	appendixes	b	appendices
4	attorney general	a	attorney generals	b	attorneys general
5	bureau	a	bureaus	b	bureaux
6	criterion	a	criteria	b	criteria
7	forum	a	forums	b	fora
8	index	a	indexes	b	indices
9	memorandum	a	memoranda	b	memorandums
10	notary public	a	notaries public	b	notary publics
11	phenomenon	a	phenomenons	b	phenomena
12	prospectus	a	prospectora	b	prospectuses



## UNIT XIII

**13.1. The words in the box go in front of “contract”.  
Find combinations that mean:**

bilateral	yellow-dog	unilateral
principal	<b>contract</b>	accessory
labor	investment	special

1. A contract between an employer and a labor union reached through and containing the results of collective bargaining.

2. An illegal employment contract in which a worker disavows membership in and agrees not to join a labor union in order to get a job.

3. A contract (as a security agreement) made to secure the performance of another obligation.

4. A contract from which a secured obligation arises.

5. A contract containing provisions and stipulations not ordinarily found in contracts of its kind.

6. A contract in which only one party is obligated to perform.

7. An agreement or transaction in which a party invests money in a common enterprise the profits from which are derived from the efforts of others.

8. A contract in which both parties have promised to perform.

**13.2. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*agreement; circumstances; to rely; to trust; common sense;  
to resolve; breach*

### **CONTRACTS: DIFFERENT TYPES**

Many people think of a contract as a written agreement between people stating the exact details of promises they have made to each other. For example, when a farm agrees to supply fruit and vegetables to a supermarket, the two businesses will probably draw up a contract containing many clauses about what kind of goods are to be supplied, how often and in what quantities; who is to pay for transport and unpacking; what prices are to be paid, what happens if some of the vegetables arrive in a poor condition and just what is meant by poor condition, and what happens if delivery is made too late for the shop to sell the goods. The contractors will try to think of all the possible circumstances which may arise – even unlikely events such as the vegetables being stolen by a third party while they are being transported.

However, not all contracts are written. There are many kinds of unwritten agreements between people which the law of most countries describes as contracts. They may continue buying and selling things for years by relying on trust and common sense, and if sometimes there is a disagreement – e. g., a supplier fails to deliver goods by the time he said he would – contractors manage to deal with the problem simply by discussion. If the disagreement becomes so serious that they cannot resolve it, they may decide it is necessary to take legal

action. One of the most common kinds of legal action is to claim that a contract has existed and that one of them is in breach of contract (has broken an agreement). To win such an action it is necessary to show that the agreement can indeed be described as a contract.

The problem with unwritten contracts is that it may be very difficult to show evidence of the agreement you made. Of course, problems of evidence can arise even when there is a detailed written agreement. Indeed a court of law may decide that the contract consists not just of the written document you possess but includes things that were said but never written down. The contract may even include things that the contractors understood but never talked about. Sometimes an agreement turns out to be a contract even though the persons who made it did not realize this at the time. And sometimes people make agreements which they think are contracts, but when they try to take legal action the court declares that no contract was ever made.

It is therefore important to know just what the law considers a contract to be. In many systems of law there is a written legal code stating exactly what is required to make a contract and what the rights and obligations of contractors are. In case law systems, there is no one code or law defining what a contract is. The law regarding contracts in general is to be found in judgments made by courts and even in legal textbooks. But there are statutes which clarify the law. For example, the Unfair Contract Terms Act, passed in Britain in 1977, specifies circumstances in which a contractor may avoid being obliged by some parts of a contract.

**13.3. Say if the following statements are true or false:**

- A. Contracts must be written to be legal.
- B. A spoken contract is less useful than a written one.
- C. Contracts may include matters that were never discussed.

**13.4. Match the types of contract clauses (1–10) with their definitions (a–j).**

Lawyers are usually involved at the formation stage of a contract, which includes advising, drafting and negotiating. Drafting is commonly carried out with the help of contract templates or forms. Nevertheless, legal counsel must advise on the inclusion or omission of clauses and their wording. To do this, familiarity with common clause types and the language typically used in them is necessary.

1	Acceleration	a	clause stating that the written terms of an agreement may not be varied by prior or oral agreements because all such agreements have been consolidated into the written document
2	Assignment	b	clause designed to protect against failures to perform contractual obligations caused by unavoidable events beyond the party's control, such as natural disasters or wars
3	Confidentiality	c	clause outlining when and under which circumstances the contract may be terminated
4	Consideration	d	clause concerning the treating of information as private and not for distribution beyond specifically identified individuals or organizations, nor used

			other than for specifically identified purposes
5	Force Majeure	e	clause in a contract requiring the obligor to pay all or a part of a payable amount sooner than as agreed upon the occurrence of some event or circumstance stated in the contract, usually failure to make payment
6	Liquidated Damages	f	clause setting out which party is responsible for payment of costs related to preparation of the agreement and ancillary documents
7	Entire Agreement	g	clause expressing the cause, motive, price or impelling motive which includes one party to enter into an agreement
8	Severability	h	clause referring to an amount predetermined by the parties as the total amount of compensation a non-breaching party should receive if the other party breaches a part of the contract
9	Termination	i	clause prohibiting or permitting assignment under certain conditions
10	Payment of Costs	j	clause providing that, in the event that one or more provisions of the agreement are declared unenforceable, the balance of the agreement remains in force

**13.5. Complete the sentences below using the correct form of the verbs in the box.**

<i>breach; enter into; modify; renew; sign; terminate</i>
---

1. Minors and the mentally incompetent lack the legal capacity to ----- contracts.

2. Courts generally rule that if the parties have a meeting of the minds and act as though there was a formal, written and ----- contract, then a contract exists.

3. The lawsuit claimed that the defendant ----- a confidentiality contract by attempting to sell trade secrets as his own inventions.

4. “Evergreen clauses” are those clauses which cause automatic renewal unless the contract -----.

5. While fixed-term contracts involve an agreement that the job will last for a specified period of time, provisions are often included to enable the contract ----- if so desired.

6. The committee shall have no authority to change or otherwise ----- contract language.

### **13.6. Read the text and explain the essential elements of a contract.**

#### **ESSENTIAL ELEMENTS OF A CONTRACT**

English law textbooks often describe a contract as an agreement which is made between two or more parties and which is binding in law. In order to be binding in law the agreement must include an offer and an acceptance of that offer. The parties must agree to contract on certain terms – that is, they must know what they are agreeing to. Valuable consideration must have been given by the person to whom a promise was made. In this case, consideration is a legal word to describe something a person has given, or done, or agreed not to do, when making the contract.

When a court is deciding if a contract has been made, it must consider all these elements. In common law countries, the judge will be guided by decision made in previous cases. If the judge is dealing with a problem which has never arisen before he must make a decision based upon general legal principles, and this decision will become a precedent for other judges in similar cases in the future. The most important principle guiding a judge is whether a reasonable observer of the agreement would decide that it was a contract. But sometimes decisions seem very technical because lawyers try to explain exactly why a decision has been made, even when that decision appears to be obvious common sense.

One principle of English contract law mentioned above is that there must be *offer* and *acceptance*. Another principle is that the terms being offered and accepted must be certain. One more principle is that there is no contract if one of the parties did not intend to be legally bound. This is supported by a case decided in 1605 (*Weeks vs. Tybald*) when a man joked that he would pay money to any man who would marry his daughter.

Most systems of law have similar requirements about *offer* and *acceptance*, *legal intention*, and *consideration*. They also consider the *capacity* of the contractors; that is, whether they were legally entitled to contract. In English law there are some special rules if one of the contracts is a company, rather than an individual, under the age of 18, or insane. Legal systems have rules for interpreting contracts in which one or more contractors made a mistake or was pressured or tricked into making an agreement, and rules for dealing with illegal contracts. For example, under English law a contractor cannot

enforce an agreement against another party if the agreement was to commit a crime!

## UNIT XIV

**14.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*breach of contract; damages; to claim damages; award damages; remoteness; specific performance; remedies*

### DAMAGES

Once a court decides that there has been a breach of contract, it must then judge how the party in breach must compensate the other party. The usual award is damages – monetary compensation. The court must be satisfied that there was a contract, that one party is in breach, and that the other party has suffered some loss because of the breach. In addition to financial loss a plaintiff sometimes tries to claim damages for mental distress caused by the breach of contract.

A court will award damages only for loss closely connected with the defendant's breach. Remoteness is an important concept in both contract and tort.

In deciding just how much in damages to award, English and American courts try to put the plaintiff into the same financial position that he would have been in if the defendant had carried out the contract properly.

Instead of damages, a plaintiff sometimes asks the court to force the other contractor to carry out the contract. In English law this is called specific performance. The court will not agree to do this if it causes hardship to the defendant,



however, or if it is no longer possible or practical to carry out the contract. Sometimes the court decides to award damages instead of specific performance, and sometimes it awards both. A plaintiff may also ask the court to award an injunction against the defendant, that is, to order the defendant not to do something which would be in breach of contract. Specific performance and injunctions are remedies which were developed by the courts of Equity because of inadequacies in the Common Law courts.

Contract law is a central part of legal systems all over the world. It is especially important in international business, where the parties try to specify all the parts of their agreement in a clear written contract so that differences of law and custom between their countries can be avoided. It is sometimes said that some societies are much more “contractual” than others. For example, in the United States people are accustomed to signing written contracts connected with daily life. Some people even draw up a contract with a girlfriend or boyfriend when they start living together in the hope of reducing arguments if they part later. On the other hand, Japanese people rarely even sign contracts of employment when they take a new job, believing that custom and social obligation will be enough to resolve any differences. Perhaps it is not a question of one society being more contractual than another, but rather that in some societies people are more likely to use lawyers and courts to sort out their disagreements, and they therefore feel the need to have precise evidence of their agreements in the form of written contracts.

## 14.2. Match the word to the description:

1) *capacity*; 2) *consideration*; 3) *damages*

- a) a disadvantage suffered by someone because of a promise made to him;
- b) the legal right to make a contract;
- c) a court order to carry out a contract;
- d) compensation for breach of contract.

## 14.3. Explain “remoteness”.

## 14.4. Match these types of damages (1–7) with their definitions (a–g):

1	expectation damages/ “benefit of the bargain” damages	a	compensation agreed upon by the parties and set forth in the contract that must be paid by one or the other in the event that the contract is breached
2	general/actual damages	b	compensation determined by the amount of benefit unjustly received by the breaching party
3	liquidated/stipulated damages	c	compensation for losses which are as a result of special facts and circumstances relating to a particular transaction which were foreseeable by the breaching party at the time of contract
4	reliance damages	d	compensation which seeks to put the non-breaching party in the position he would have been had the contract been performed

5	restitution damages	e	compensation for a loss that is the natural and logical result of the breach of the contract
6	special/consequential damages	f	compensation which is imposed by the court to deter malicious conduct in the future
7	punitive/exemplary damages	g	compensation necessary to reimburse the non-breaching party for efforts expended or expenses incurred in the reasonable belief that the contract will be performed

**14.5. Choose the correct word or phrase to complete each sentence in this liquidated damages clause.**

### **LIQUIDATED DAMAGES FOR DELAYS**

Contractor understands and acknowledges that time shall be (1) *on/of/in* the essence of this contract and agrees that the damages that may (2) *cause/result from/bring about* any delay in finishing the work or parts (3) *thereby/thereof/therein* will be difficult, if not impossible, to (4) *change/avoid/ascertain*. Thus, Contractor agrees that if the work and all parts thereof are not completed (5) *in/at/on* or before the dates stipulated for completion thereof, as extended in the manner specified (6) *herein/hereof/hereafter*, Contractor (7) *shall/may/should* pay to owner as stipulated, agreed and liquidated damages and not as a penalty, the amount stated on the cover sheet for each calendar day in which the work or any portion

thereof remains uncompleted after such completion date as so extended.

## UNIT XV

**15.1. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*adversary; to consolidate control; would-be monopoly;  
to bear the loss; antitrust acts; amendments*

### COMPETITION

Although it is now popular to think of government with its regulations and paperwork as the main adversary of business, history shows that there is a far more important adversary, an adversary that puts far more companies out of business than any other. That adversary is competition. Seldom government is more than a thorn in the side of businesses. Competition, however, eliminates inefficient companies and keeps the economy healthy by keeping it populated mainly with companies that sell quality products for the lowest cost. As a consequence, in the past some businesspeople sought to eliminate competition. The common law responded by making conduct that tended to consolidate control over the production of a good or the provision of a service into one person's or one firm's hands illegal. Such control was referred to as monopoly. The initial victims of monopolizing conduct are those who seek to compete with the would-be monopoly. Ultimately, of course, the consumer has to bear the loss, for example, in the form of

higher prices and diminished quality of the monopolized product.

As businesses grew in size, the ability of a single state's legal system to stop monopolies from forming decreased. So, near the turn of the 20<sup>th</sup> century, the US Congress passed the first of several statutes intended to stop the monopolizing conduct, that is saw as threatening to dominate interstate commerce. The first act is known today as the Sherman Antitrust Act. At the time of its passage, the primary way of consolidating control over businesses into a monopoly was through the use of a legal device called a trust. Thus, the word *antitrust* was applied to acts opposing such behaviour. "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of (interstate or international) trade or commerce" was declared illegal by the Sherman Act. The act also made it illegal for any person "to monopolize or attempt to monopolize" interstate or international trade or commerce. Other antitrust acts and amendments have followed over the years.

**15.2. Answer the question: what is the role of competition?**

**15.3. Study the following information and then fill in the gaps with the words in bold.**

**Competitors** are organizations selling products or services in the same market, and they can also be the products or services themselves. Competitors **compete** with each other. The related adjective is **competitive**: commentators talk about

the things that give one company or product its **competitive advantage** or **competitive edge** over others. Competitors in a market are **players**, and the most important ones are **key players**. **Competition** is characterized in many ways. Companies without competitors are **monopolies**.

1. Telecoms is still widely associated with “natural” --- that competitive businessmen have to be kept away from in order to prevent chaos.

2. Fusions has suffered a setback in its ambitions to become a --- in the pharmaceutical industry.

3. European airlines yesterday warned the European Commission that proposals governing airline reservation systems would hand a --- to American airlines.

4. Like most businesses, British Airways would rather be rid of its ---.

5. The merger of Nestle and Perrier is a significant obstacle to the maintenance of effective --- in the French market.

6. In the words of one exporter, “If you want the ---, you’ve got to get over there frequently and let your foreign partners know you care about them.”

7. Despite the inevitable comparison with A, B’s new notebook won’t be a direct ---.

**15.4. Use an appropriate word or phrase from the box to complete each sentence.**

*monopoly; competition; regulation; regulated; deregulated;  
free trade; unfair competition; protectionism*

1. Tobacco can only be sold at state shops in Spain: it is a -----.

2. When two or more companies want to sell their goods to the same customers, they are in ----- with each other.

3. It is ----- when the rules of business do not apply equally to all participants.

4. When the European Commission issues rules about how firms do business, the market is said to be -----.

5. When those rules are removed and the market is free, the market is said to be -----.

6. ----- is the concept of doing international business with no barriers or restrictions.

7. If one country tries to keep out foreign competitors so that national industries will be safe, it is called -----.

8. The concept of ----- is that of ordering and controlling how business is conducted.

## UNIT XVI

**16.1. Read the article and choose the best alternatives to complete it.**

### COMPANY RESTRUCTURING

Company restructuring is usually (1) *a response/ an answer* from the company to (2) *extend/expand*, merge or downsize, depending on the economic circumstances prevailing. The important thing for a company is the (3) *timing/punctuality* of the restructuring. Company restructuring can be defined (4) *as/by* a process through which a company significantly changes the contractual relationships that exist among its creditors, shareholders, employees and other stakeholders. Usually, the goal of restructuring is to increase the (5) *overall/general* market value of the business enterprise. However, in recessionary times, the goal may be different, and the focus may be on trying to (6) *keeping/maintaining* the company's effectiveness and profitability. Some warning signs are obvious and need to be taken seriously. One may be the need to (7) *remedy/cure* poor financial performance. The warning signs are usually pretty clear: declining or stagnating sales, accounting losses or a (8) *reducing/falling* stock price. Defaulting on debts, resulting in bankruptcy, may occur in more extreme situations. Restructuring the debt can be difficult and costly. In some cases, however, legal processes are available that can greatly (9) *accelerate/speed up* the process. In the US, for example, bankruptcy can also be used to breathe new life into a business. Companies are allowed, for example, in a bankruptcy to (10) *refuse/reject* unfavorable leases or sell



unwanted assets in a competitive auction. On the other hand, another reason to restructure is as a result of a new corporate strategy or to (11) *follow/take* advantage of a business opportunity. Such restructuring may involve expansion, including mergers, consolidations, acquisitions and various other activities which result in an enlargement of a firm or its (12) *scope/width* of operations. For example, diversified firms' businesses may be split into independent entities, each with its own common stock. In this case, there is an equity (13) *spin-off/spin-out*. These can be beneficial when high-growth business is being held (14) *back/down* by a parent company. One sign here is when the stock market is valuing the (15) *complete/entire* company for less than if it were split into separate entities.

The options available are frequently dependant on each individual company's circumstances and the prevailing market in which the company (16) *performs/operates*.

### **16.2. Answer the questions.**

1. What does company restructuring usually depend on?
2. Whose contractual relationships are changed?
3. What are the warning signs of poor financial performance?
4. How can bankruptcy breathe new life into a business?
5. How can a business restructure to expand?
6. When might an equity spin-off be beneficial?

**16.3. Match the questions (1–12) with the answers (A–L).**

**Questions**

1. Is there any real difference between a merger and an acquisition?
2. When do we use the term *takeover*?
3. What constitutes a hostile takeover?
4. When is a takeover friendly?
5. How can smaller companies profit from being acquired by a larger company?
6. How can companies sometimes lose out after a merger?
7. Is it important for merging companies to be related?
8. What procedures need to be followed when one company is acquiring another?
9. Can you explain the meaning of *due diligence*?
10. What significance do warranties have in the context of mergers and acquisitions?
11. What are the potential benefits and drawbacks to shareholders when a merger takes place?
12. Is it possible to prevent a hostile takeover?

**Answers**

A. It is when the whole takeover process goes really smoothly. A public offer of stock or cash is made to a company, and the board of the target company publicly approves the terms of the buyout, even though the terms may be subject to shareholder or regulatory approval.

B. Yes. With the former, two companies combine to form a new company, whereas with the latter, a new company is formed by the purchase of one company by another.

C. There are many potential downsides for companies, including managers being over-involved in the big picture rather than paying attention to smaller, crucial details such as employer-employee relations; different corporate cultures, which are often overlooked when dealing with market synergies; and too much focus on integration and cost-cutting rather than on day-to-day business, which can result in loss of customer base.

D. Usually a smaller company does well from a merger with another company if it can add to the synergy between the two companies. For example, a small company may have an excellent distribution network but poor products, and another company has good products but an inefficient distribution set-up.

E. This term is used to describe an action where a company makes a bid for another company. If the shares of the company being targeted are quoted on the stock exchange, then an offer will be made for the outstanding shares.

F. Essentially, it is an investigation or audit of a potential investment. It can have other meanings in other legal contexts, but in the context of mergers and acquisitions, it can be carried out on the prospective assets and financial records of the targeted company.

G. This term is used when the takeover attempted is resisted by the company being targeted; the company does not approve of the buyout and fights the acquisition.

H. Usually, the first step is for the targeting company to start buying shares in the targeted company. If more than 5 % of the shares are purchased, then the company must make a tender offer. The price offered is often at a premium compared to the market price, but acquisition of 5 % or more of the shareholding must be disclosed to the relevant Securities and Exchange Commission. Once a tender offer is made, the targeted company may accept or negotiate or may use some hostile takeover defence, such as granting existing shareholders options to buy extra stock at a discount to reduce the acquiring company's share or find a "white knight", such as a friendlier potential acquiring company. When a deal goes through, it can be a cash-for-stock transaction or stock-for-stock, and these can have different tax implications.

I. No, though there should be some connection between them for some synergy to be beneficial.

J. They may see the price of their shares rise or fall, depending on the success or otherwise of the newly formed company.

K. Their importance is threefold. Together with representations from the seller, they enable the buyer to learn as much as possible about the seller and the business before the buyer signs the acquisition agreement. They are protective in that they give the buyer information to decide to walk away or renegotiate. They are supportive in that they give a framework for indemnification of the seller's obligations to the buyer after the closing of the deal.

L. Yes, it is. Usually a company issues shares to its shareholders at a reduced price to try to retain control.

**16.4. Mergers and acquisitions (often shortened to M&A) is the field of (commercial or company) law is rich in specific legal and financial terminology, much of which is very creative – but also rather confusing. Choose the correct word to complete the sentences.**

1. Gala Coral has long been seen as vulnerable to ----- since it was taken over by its creditors in a restructuring deal in 2010.

- a) white knights
- b) predators
- c) targets

2. The buyer will acquire all of the shares of Airco under an all-cash ----- offer for approximately \$ 7 billion.

- a) target
- b) white knight
- c) tender

3. Sandford Exploration might have trouble finding a ----- to rescue it from Carmecom's attempted hostile takeover.

- a) white knight
- b) golden parachute
- c) predator

4. Barrel Old Country Store Inc. adopted ----- in an attempt to avoid the hostile takeover by making a takeover more difficult and more expensive.

- a) a poison pill
- b) a white knight
- c) pac-man

5. It was a classic ----- defence: you can't buy us, we're going to buy you!

- a) greenshoe
- b) pac-man
- c) people pill

6. The company asked for advice on the implementation of ----- measures to avoid a change in control.

- a) lightning raid
- b) greenshoe
- c) defensive

7. Including a ----- option to meet additional demand, the total IPO size could rise to HK \$ 5.4 billion (\$ 696 million).

- a) golden parachute
- b) greenshoe
- c) tender

8. The threatened -----, if enacted, would make the takeover more difficult and expensive for the acquiring company as it would need to replace the entire management.

- a. lightning raid
- b. hammering

9. BT's share price is taking a -----, as the markets adjust the firm's share price to the "dilution" of the rights issue.

- a) drilling
- b) hammering
- c) plastering

10. The shareholders were angered by a ----- clause in the director's service contract entitling her to a payout of £ 2 million if the company is taken over.

- a) pac-man
- b) golden parachute
- c) dawn raid

**16.5. While reading the text pay attention to the following words and think of their Ukrainian equivalents:**

*to be terminated; to be dissolved; to be cancelled;  
to be liquidated; to be wound up; voluntary; setting up*

### **TERMINATION OF A COMPANY**

There are several ways in which a company may be terminated (dissolved): its registration may be cancelled; it may be removed from the register if it has simply ceased to function as a company; or, it may be liquidated, or wound up. This means that its resources will be used to pay creditors in an established order of priority. It is likely that the reason the company is being wound up is that it is bankrupt – that is, it cannot pay all its debts. This means that creditors may only get a proportion of what they are owed. Shareholders may be liable for up to the value of shares they hold but have not yet paid for. Sometimes liquidation is voluntary, at the insistence of most of the shareholders, and sometimes it is ordered by the court.

There are also laws regulating transactions in the years before liquidation. These laws prevent companies from transferring funds to third parties whom the creditors cannot

touch before the firm goes bankrupt or from giving unauthorized preference to certain creditors.

Setting up, running, and winding down a company are not the only legal matters businessmen have to deal with. At some stage, most of them employ the services of lawyers for advice on how to minimize their tax liabilities and to make sure their business does not exceed noise or pollution regulations. Company directors, partners and sole traders alike have to consider the legal implications of making contracts to buy and supply goods and services, and the torts they may face if a product injures a consumer.

**16.6. Say if the following sentences are true or false:**

1. There are some ways of termination.
2. Liquidation is never voluntary.
3. Laws regulating transactions never prevent companies from transferring funds to third parties.
4. Businessmen have to consider only legal matters.

**16.7. Choose the correct word to complete the sentences.**

1. Shareholder voluntary liquidation is possible when the company believes that it is ----- and that there is no compelling reason which could force a liquidation.
  - a) solvent
  - b) insolvent
  - c) insoluble



2. A creditor may petition the court to have a company placed into ----- liquidation.

- a) intentional
- b) compulsory
- c) voluntary

3. The ----- main function is to sell the assets of the company and distribute the proceeds to those entitled according to the priorities set out in law.

- a) creditor's
- b) debtor's
- c) liquidator's

4. A majority of the directors must make a statutory declaration of solvency before a resolution to ----- the assets of the company is passed.

- a) wind up
- b) realise
- c) crystalise

5. As long as a company is solvent, the directors owe their ----- duty to the shareholders.

- a) fiduciary
- b) equitable
- c) contractual

6. A company facing financial difficulties may benefit from the protection of a -----, which is effectively a freeze on creditors taking action against the company.

- a) restructuring plan
- b) moratorium
- c) debt for equity swap

7. Now run by court-appointed administrators, the company is attempting to reduce its workforce as part of a financial ----- plan.

- a) restructuring
- b) insolvency
- c) auctioning

8. When a corporation has been declared bankrupt, ----- share the proceeds of remaining assets.

- a) creditors
- b) liquidators
- c) debtors

9. In some jurisdictions, an ----- order may be granted as a rescue mechanism for insolvent companies as an alternative to liquidation, allowing them to continue trading.

- a) out of court
- b) administration
- c) executive

10. The implementation of a restructuring through a scheme of arrangement can take many forms, including a -----, where the creditors convert indebtedness owed by the company into shares in the company.

- a) restructuring plan
- b) moratorium
- c) debt for equity swap

### **IDEAS FOR DISCUSSION**

1. What are the main types of companies in your jurisdiction?

2. What are the features of each different type of companies?

3. Discuss what you think are the advantages and disadvantages of the different types of companies. Which type of companies do you think would be most suitable for setting up in your country?

4. Choose one type of companies and describe it as you would for a client from another country. Tell your client which documents must be filed to complete the formation process. Wherever relevant, compare and contrast your company type with a UK business entity.

5. What may a lawyer have to do when dealing with private individuals who have debtor/creditor problems?

6. What constitutes a partnership?

7. Are there any protected industries in your country? Why do you think these industries are protected? Are there any advantages in keeping out competitors? Make a list of points for and against the regulation of competition.

8. You have decided to start a sports wear retail business. Are you going to sell locally-made shoes or import them from other countries at a lower price? Think of some legal factors you should consider when entering the market: for example, are there import taxes on foreign goods? What government protection for local industry is there?

9. You run legal training programs. You have been asked to give a program on competition law. Decide what you should include in the program and why (e. g., anti-competitive activity, consequences of breach).

10. Is knowledge of competition law only important for big businesses? What can the consequences of breaching competition law be for: a) businesses; b) individuals?

11. Have you ever drafted a contract? If yes, what were the difficulties or problems? If no, what do you think the difficulties or problems might be?

12. What general advice would you give someone who is drafting a contract?

13. What effects can legal disputes over contracts have on a company?

14. How is competition control carried out in your jurisdiction? Which authority is responsible for it?

15. Prepare to talk about mergers and acquisitions. Consider the following issues: different types; risks; advantages; choosing a target company to acquire; procedures involved; possible problems.

16. Do some research on a recent merger that has made the headlines and prepare a short report.

17. A client owns a large electronics company. He is considering taking over a small company that supplies electronic components. Advise him on legal procedures and potential problems. Consider the following issues: what initial steps to take; the risks involved; the effect that a merger will have on the company structure.

18. You are going to give a talk at a conference for young entrepreneurs about what can go wrong in a partnership and how to deal with this. Consider the following issues:

- a) explain why a strong business plan is vital;
- b) point out the legal options when a partnership is failing;
- c) outline the importance of a formal partnership agreement and clear exit strategy;
- d) emphasize the value of legal advice when problems arise.

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Навчальне видання

**Дорда Світлана Володимирівна,  
Лещенко Ольга Іллівна**

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