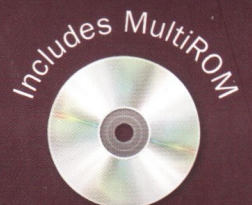
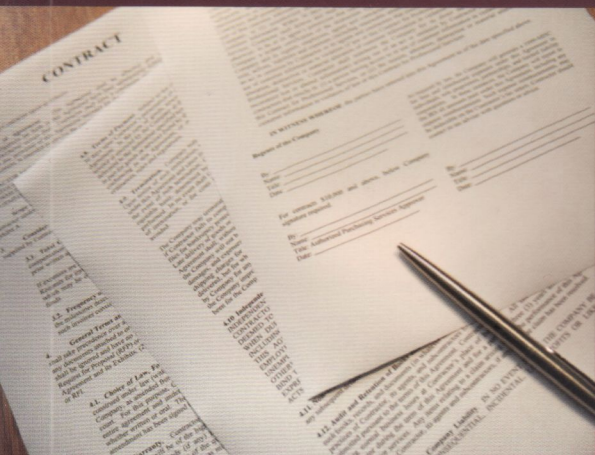
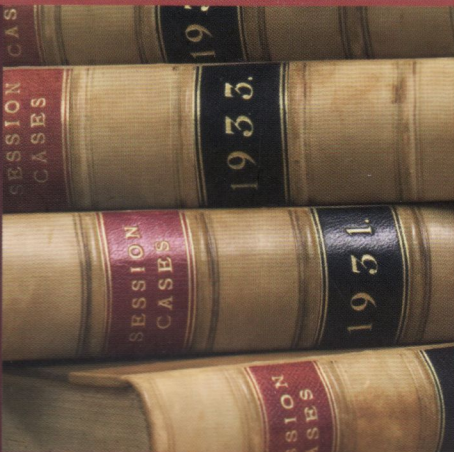


OXFORD Business English

English for Legal Professionals

Andrew Frost

EXPRESS SERIES



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Illustrations by: Stephen May

M-ROM



MultiROM

English for Legal Professionals is accompanied by a MultiROM which has a number of features.

Interactive exercises to practise useful phrases, vocabulary, and communication through your computer.

Listening extracts. These are in enhanced audio format that can be played on a conventional CD-player or through the audio player on your computer.

If you have any problems, please check the technical support section of the readme file on the MultiROM.

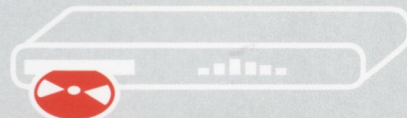


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26	3	Buying and selling goods and services	preambles agreements and contracts of sale contractual disputes common legal terms and conditions	common contract terminology interacting with a client advising on a course of action
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About the book

English for Legal Professionals has been designed to provide anyone who needs to speak about the law in a business environment with the language they need to be able to operate with confidence.

The six units cover selected basic areas of Commercial Law: company law, employment law, contract law, patent and copyright law, mergers and takeovers, risk management, and bankruptcy law.

Each unit has its own storyline which throws up interesting points of law designed to place the experienced legal professional in a position to advise clients on suitable courses of legal action in English. A client is given advice on starting up a company in Unit 1, employees are hired and contracts of employment negotiated in Unit 2, and contracts with partners are finalized in Unit 3. Successful companies protect their products in Unit 4; some are in a position to take over smaller firms in Unit 5; others have to take a closer look at their liabilities, perhaps because they are on the brink of bankruptcy, in Unit 6. Although there is a logical progression from start-up to bankruptcy, the units can be approached in any order.

Each unit begins with a **Starter**, a warm-up activity that introduces the theme of the unit and encourages the student to refresh existing knowledge. New occupational vocabulary is acquired by analyzing authentic documents. There are **Vocabulary Assistants** for many exercises, which provide definitions of important words and phrases. New figures of speech are practised in listening and speaking exercises. Language boxes provide advice on the correct usage of legal and general English language structures, while the **Did you know?** boxes integrate useful professional and linguistic information for English-speaking legal experts.

Realistic role-plays used with role-play cards from the **Partner Files** allow students to practise what they have learnt in authentic legal situations. An **Output** closes every unit with a demanding and authentic text from the trade press and students are encouraged to take personal points of view through the accompanying **Over to you** discussions.

The **MultiROM** contains all the **Listening extracts** from the book. These can be played through the audio player on your computer, or through a conventional CD player. In order to give yourself extra listening practice, listen to it in your car. The **Interactive exercises** let you review your learning by doing **Useful phrases, Vocabulary, and Communication** exercises on your computer. This will be particularly valuable if you are using the book for self-study. There is also an **A-Z wordlist** with all the key words that appear in **English for Legal Professionals**, as well as a glossary of **Useful phrases and vocabulary**. The wordlist includes a column of phonetics and a space for you to write the translations of the words in your own language.

1

Setting up a business

STARTER

Lawyers often have to use these terms when talking about business law. How many of them are you familiar with? Can you explain any of them?

articles of association • sole trader •
equity / company capital • tangible assets •
register of companies • unlimited liability

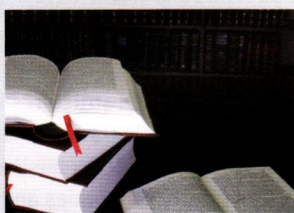
For further help, look at the terms in the text below.



- 1 Deborah Evans, a solicitor in the law firm Garfield Brown, is writing a brochure for the firm's clients about the different business structures in the United Kingdom. Fill the gaps with the words supplied below.

GARFIELD BROWN

**GARFIELD
BROWN**



INFORMATION FOR INVESTORS AND ENTREPRENEURS FROM ABROAD

Legal structures in the United Kingdom

agreement • cash • debts • on your own • owners •
personally liable • profits • publicly • separate • shareholding

Working for yourself

If you work for yourself, you are self-employed and are described as a sole trader. You do not have to register your business in order to set it up: you simply start trading and manage the business _____.¹ However, once your business makes a certain amount of money every year, you must register with the tax authority. As a sole trader, there is no limit to the amount of capital you can take out of the business, but on the other hand, you have unlimited liability for your _____.²

Partnerships

There are two main types of partnership in the U.K. The oldest is the general partnership. This business vehicle does not have a separate legal identity from the people who form it. This means that the partners are _____³ without limit for the debts of the firm. A written partnership _____⁴ is recommended but is not required by law. A general partnership can keep its partnership agreement and its financial information private. Partners do not have to provide a minimum amount of equity by law but they usually agree to pay capital into the firm when they join the partnership. The second type of partnership in the U.K. is the limited liability partnership (LLP). Unlike a general partnership, the partners are called *members*. They are still the _____⁵ of the business, but their liability for the debts of the firm is limited. However, every LLP must publish regular financial information about itself.

Limited companies

These business structures must be registered on the Register of Companies and have a _____⁶ legal identity. This means the members are only liable to pay for their _____⁷ in the company. It is the company that is liable to its creditors. When a company is formed, its owners will normally put capital into it. However, this company capital does not have to consist entirely of _____⁸ – tangible assets e.g. machinery can also be contributed. Limited companies must also have a written agreement – called the *articles of association*. The two main types of limited company are the private company (which has *Limited* or *Ltd* in its name) and the public company, or *plc*. A plc is often – but not always – a company whose shares are traded _____⁹ i.e. anyone is allowed to buy them. For these companies there is a minimum amount of capital and there are different requirements regarding directors and accounting procedures.

DID YOU KNOW?

The British and American English terms for business structures vary. The established structures in the United Kingdom are sole traders, general partnerships, and limited companies. Sole traders and partnerships are often (but not always) small businesses. Limited companies are used by businesses of all sizes, from the very small to the very large. The smaller ones are often private companies and have *Ltd* or *Limited* in their name. Larger limited companies often choose to be public companies and have *plc* in their name. Since 2001 in the U.K., a fourth business structure, the limited liability partnership or LLP, has existed.

In the U.S., the abbreviations *Inc* and *Corp* are very common, but they are just the abbreviations acceptable in all U.S. states for a company that has registered itself as a separate legal identity. The U.S. limited liability company or *LLC* is a different type of company which combines the tax flexibility of a partnership with the personal liability protection of a corporation.

Be sure to check and use the correct term in the right jurisdiction: exercise 1 on pages 5–6 will help you do this.

2 Here are some points of view about different legal aspects of the company types presented above. What do you think?



A limited liability partnership is a really good idea nowadays. You can't expect law firms, architects, tax advisers and so on to accept unlimited liability in traditional partnerships. If a big contract goes wrong, it can cost tens of millions.

It's very important for a public company to have minimum equity. How can anyone have confidence in a company of this sort if it doesn't have any capital of its own?



I can't see why the law in the U.K. requires a company to register itself before it starts trading, but doesn't require a sole trader or a partnership to register at that point. They're all businesses, aren't they?

I feel very sorry for entrepreneurs who form a limited company. The idea behind this type of company is that your personal assets shouldn't be at risk. However, as soon as the owners go to the bank for start-up capital, the bank secures any loans it makes against the owners' personal assets – usually their home.



3 Deborah Flynn has a meeting with her client Miya Osborne, a Japanese woman living in the U.K.

Part 1: Listen to the first part of the meeting and answer the questions.

1 When did she form her company?

2 What is the nature of Miya Osborne's business?

3 What area of business does she now want to move into and why?

4 What plans does she have for one or two of her colleagues?

5 What other reason does she have for seeking advice from Deborah?



AUDIO



3

Part 2: Listen and complete Deborah Flynn's written notes from the meeting.

- Miya Osborne is currently running her import business as a sole trader and has 2 employees.
- She has found a possible new property to use as a shop and wants to make an offer to buy it immediately. Risk! We don't know whether she will be allowed to change its use from an _____^a building to a shop. Need to find out more.
- She's financed the business up to now using the _____^b of the business and some savings. She has 3 reasons for forming a company now:
 1. to reward the loyalty of her 2 staff by giving them a _____^c in the business
 2. also to reward them some time in the future by making them _____^d of the company
 3. the business needs to expand and there is a possible new _____^e who wants shares in the business
- She doesn't want to borrow money from the bank because the bank will ask her to _____^f the loan personally and that will put her home at risk as the loan will be secured on her house.

4 In principle, Miya Osborne has a potentially good idea, but there are a lot of issues to consider. Work in small groups and discuss these questions.

- Should Miya Osborne give shares in the new company to her two loyal employees? What are the risks for her? Are there any other ways of rewarding loyalty that are less risky?
- What other structures are available for Miya's business? Why do you think Deborah did not suggest them?
- If you were advising Miya in your own country, would your advice be the same or different from Deborah's? Why?

Look at Deborah's list of issues. What should Miya do and why? Use the following phrases:

I would (wouldn't) advise her to ...

She (really) ought to ...

I (don't) think she should ...

She could always ...

5 A day later Deborah Flynn sends Miya Osborne the following letter. Put the six paragraphs into the correct order.

Dear Mrs Osborne

New business proposals

- a) Accordingly, I must stress that a bank will usually ask you to guarantee the loan personally, which it might make to your company and take your house as security. This would mean that, if the company defaulted on the loan, the bank would require you to repay it. If you could not afford to do so, the bank would take legal proceedings to sell your house and recover its money.
- b) I look forward to meeting you again next week as arranged. Meanwhile if you have any questions about the matters I have raised in this letter, please do not hesitate to contact me on my direct line, which is set out at the top of the page.
- c) Following our meeting this morning, I write to summarize my advice and set out the steps which you should take now.
- d) As you explained, your business has now reached a point where it needs to expand and requires external funding to do this. Your choices are between debt (that is, a bank loan) and equity (that is, financing through shares bought by an investor). Bank loans are available to you as a sole trader and would also be available if you were to form a company. You explained initially that you were interested in obtaining a bank loan to pay for some of the expansion, but that you were worried about the effect that this might have on your personal assets, particularly your house.
- e) If you decide to incorporate the business as just described, then you will be under more legal obligations than you were as a sole trader. These obligations relate to the ways in which you can take money out of the company, and the ways in which you make valid decisions on behalf of the company. I enclose a copy of our firm's booklet *Running your new company* which gives some examples of these obligations and explains a little about the constitution of the company.
- f) Turning to financing through shares, this option is not available to sole traders or partnerships and is only possible if you form a company. Since an external investor is already interested in investing in your business, I would advise the formation of a private company as the most practical option. The assets of the business would be transferred from you as their owner to the company and shares would be issued to you and the other shareholders.

Yours sincerely

Deborah Flynn

Solicitor

Answers: 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐

6 Work in small groups and discuss these questions.

- 1 How does this advice compare with the advice you gave in exercise 4?
- 2 What phrase does Deborah use to mean a *bank loan*? What advantages and disadvantages does Deborah mention in relation to this type of finance? Can you add any more from your experience?
- 3 What phrase does Deborah use to mean *money raised by selling shares in a company*? What advantages and disadvantages does Deborah mention in relation to this type of finance? Can you add any more?
- 4 Deborah's letter warns that running a company is more complicated than being a sole trader. From your experience, can you suggest why she says this?

DID YOU KNOW?

In the U.K., the constitution of a company consists of its **memorandum of association**, which gives information about the location of the company and its objects or legal purposes, and its **articles of association**, which contain internal rules about how the company is organized. Both the memorandum and the articles can be read by the public at Companies House, the central register of companies.

In the U.S., the **articles of incorporation** is the document that has to be filed with the relevant state. This document is required of incorporated and non-incorporated firms alike.

7 In her letter Deborah Flynn uses some verb + noun pairs, e.g. *to set out details*. The following verb + noun pairs are common when getting started in business. Try to make pairs.

VERB

- 1 register / run
- 2 raise / contribute
- 3 submit / reject
- 4 draw up
- 5 impose
- 6 incur
- 7 view / inspect
- 8 obtain
- 9 issue / hold
- 10 conduct

NOUN

- a restrictions
- b debts / costs
- c the register of companies
- d business
- e capital
- f shares
- g a company
- h a certificate of incorporation
- i an application (for entry in a register)
- j a contract / a partnership agreement

8 Fill in the gaps using the verb + noun pairs above. You may have to modify the verb.

- 1 In the U.K. any member of the public is allowed to _____ at Companies House to get information about a particular company.
- 2 A plc can extend its equity base by _____.
- 3 Under normal circumstances a company should not commence trading until it has _____.
- 4 A sole trader does not need to register his or her activities in order to _____.

- 5 The Companies House can _____ for registration if the proposed name of the company is too similar to a name that already exists.
- 6 The law does not require partners in a general partnership to _____, but most solicitors would recommend this.
- 7 When a company tries to _____, the bank often insists on securing any loan against the personal assets of the company's owners.
- 8 In a general partnership, the partners bear personal liability for any _____ which the partnership might _____.

GIVING ADVICE AND MAKING RECOMMENDATIONS

Some expressions for giving advice and making recommendations require a gerund and some an infinitive.
NB: Some phrases are appropriate when spoken but are not appropriate in a formal written context.

Gerund (-ing)

*I (would / wouldn't) suggest / recommend **making** an offer at this stage.*

*How / What about **talking** to a property expert about this? (spoken)*

Infinitive

*I think you should **tell** me a bit more about the business.*

*I (strongly) advise you to **talk** to a property expert about this.*

*You could always **make** an offer when you know a bit more. (spoken)*

*You ought to **make** an offer when you know a bit more. (spoken)*

*Why don't you **make** an offer when you know a bit more? (spoken)*

NB: All the above phrases can be used when you are advising someone directly. If you are discussing what *he / she / they* should do, use the phrases listed in exercise 4.

If you would like to use *recommend* and *suggest* for a third party, the structure is as follows:

I recommend / suggest that he / she should + infinitive

9 Look at an extract from a letter from a client whose partnership has got into difficulty, to their lawyer.

Dear ...

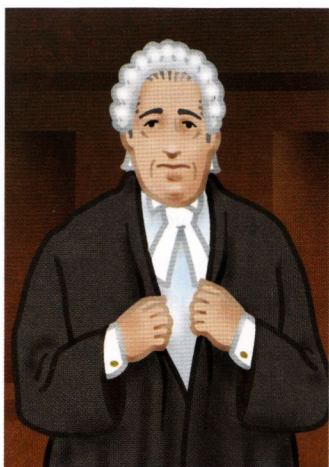
... I formed an accountancy partnership with David B. five years ago, specializing in accountancy services and tax advice for small businesses. My partner has now informed me he wishes to leave our firm in order to accept a partnership with a large firm specializing in accountancy for large corporations. My problem is that I do not think I can afford to buy him out right now. What is more, the new firm is not very far away. I mention this because our partnership agreement states that if a partner leaves, he should not do business within a 5-mile radius of his old firm. I am, of course, worried that David B. might take some of our existing clients with him to his new firm. ...

Match the beginnings in A with the endings in B to rebuild the lawyer's suggestions below:**A**

- 1 You could always ...
- 2 I suggest ...
- 3 You really ought ...
- 4 I wouldn't advise you ...
- 5 I don't think you should ...
- 6 I don't recommend ...

B

- a ... worry about the cost of buying your partner out yet. Your partnership agreement states that this payment would only be due at the end of the next financial year.
- b ... ascertain the precise value of the firm. Then you will know how much it will cost to buy your partner out.
- c ... trying to come to a binding agreement about existing clients. You will lose some clients, but don't want to lose too many.
- d ... to terminate the existing partnership with immediate effect. David B. is not going to act in your firm's interests any more.
- e ... bringing in a new partner straight away. Wait and see how much business you have before you rush into such an important decision.
- f ... to invoke the five-mile radius clause. It's probably not enforceable anyway.

Is there any advice you don't agree with? Do you have any other advice for the client?**VOCABULARY ASSISTANT**ascertain *find out*binding (adj) *which must be obeyed because it is accepted in law*buy s.o. out *to pay s.o. for their share in a business, usually in order to get control of the business yourself*due *owed, payable*enforceable (adj) *a clause which is enforceable is one which can form the basis of a court action, if the promise contained in the clause is broken with immediate effect* *at once, immediately***DID YOU KNOW?**

Lawyer is a general term which we use to refer to someone who has learnt the law and has a licence to practise. In the U.S., lawyers are often called **attorneys** or **attorneys-at-law**. In England and Wales, the legal profession is not unified, so a distinction is drawn between **solicitors**, who have rights of audience in only some courts, and **barristers**, who specialize in advocacy (i.e. the art of presenting cases in court) and who have a right of audience in all courts. Generally, a solicitor will consult with his or her client and prepare a brief. This brief is then passed on to a barrister who will present the case in court. Successful and distinguished barristers are often invited to become a Queen's Counsel. Such barristers always use QC after their name.

10 A client consults a lawyer about forming a company. Before you begin your consultations, agree the country of jurisdiction with your partner.

PARTNER FILES

Partner A File 01, p. 70
Partner B File 01, p. 75

Use language for making recommendations and giving advice in your consultation. After you have finished the activity, tell the class what you agreed to do.

GIVING REASONS AND EXPLANATIONS

It is often important to give reasons and explain things step by step.

Note: Words like **firstly** and **first of all** aren't used in the same way.

Enumerating reasons

Firstly, the company is investing with minimum risk ...

Secondly, the investor receives 75 % of any rent above the minimum.

Thirdly, ...

Finally, ...

Explaining the steps involved in a procedure

First of all, we need to discuss the business relationship between ...

Next, I would suggest depositing ...

Following that, it would be your job to persuade

Last of all, we would notify the tax office ...

NB. Be careful with **at first**. We use this to express the fact that we thought something initially and then changed our minds.

Example: *At first it seemed a good idea to form a company. Later we realized that this would be too expensive and too complicated.*

11 Read the extracts from a presentation about business formats in the U.K. Complete the gaps with expressions for ordering an explanation from the language box above.

' _____¹ I'd like to provide you with a bit of background on business formats in this country and the rationale behind these different formats. _____², I'd like to go on to look in more detail at the plc or to give it its more formal name, the public company. _____³, I'd like to look at the time scale for converting a private company into a public company. _____⁴, I'd like to discuss with you some examples of *listed* plcs: ones which can sell their shares on global stock exchanges.

[....]

I'd like to move on now to talk about the plc in more detail.

_____⁵, you might think that there aren't many advantages to becoming a plc. But when you read company legislation and the rules of the London Stock Exchange, there are three clear reasons for doing so. _____⁶ it's illegal to offer shares to the public if you are not a plc. _____⁷, the Alternative Investment Market (where shares in young companies are traded) is only open to plcs. _____⁸, for more established companies, the Main Market of the London Stock Exchange is also only open to plc shares. And _____⁹, some might say that becoming a plc is good for marketing.'



12 The speaker says in her presentation that there are three reasons for becoming a plc in the U.K., but it is not a suitable format for every business. How similar is this situation to the jurisdiction in your country?

13 Here is a comparison table showing the four forms of business structure in the U.K. Complete a-f in the table using the notes below.

- Two
- Small business
- Bank loans or profits of business
- Registration fee. Registration formalities.
Constitutional documents required and must be open to public.
- Yes
- Unlimited

Business structure	Sole trader	Limited company (Ltd or plc)	LLP	General partnership
Raising money	Bank loans or profits of business	Bank loans, profits of business or selling shares in the company NB: only plcs can sell their shares on a large scale	a _____	Bank loans or profits of business
Suitable for	b _____	Any size business (larger businesses choose plcs)	Any size	Any size
Minimum number of people	One	One	Two	c _____
Minimum capital requirement?	No	d _____	Yes	No
Set up costs and formalities	No registration fee. No formalities to set up. No constitutional documents required.	Registration fees; administrative costs greater for plcs. Registration formalities. Constitutional documents required and must be open to public.	e _____	No registration fee. No registration formalities. Constitutional document not required but if one is used, there is no obligation to make it open to public.
Liability	f _____	Limited to capital contribution	Limited to capital contribution	Unlimited

Complete the advantages and disadvantages of each business structure.

- 1 _____ and _____ have few formalities but are liable to the debts of the business without limit.
- 2 _____ and _____ have limited liability and bank loans may be easier to obtain but there are more formalities.

14 A lawyer gives a client information on forming a company. Work with a partner.

OUTPUT

Read these readers' letters to the editor of the law supplement of *The Times* newspaper. What advice would you give them?

Letter 1

Dear Sir

After I was made redundant from a job in a luxury hotel three years ago, I started doing some work with an ex-colleague. We agreed to work part-time for the business because both of us were already working separately on other projects. We invested several thousand pounds each in our new business and agreed to divide the responsibilities between us. I dealt face-to-face with customers and he worked mostly with our suppliers and did the paperwork.

Things went smoothly at first, but when my colleague's other projects started to do better, he just stopped doing any work for our business and handed everything back to me. I took over his responsibilities, but it was too much for one person to manage. As a result I lost two major customers and had to wind the business up, losing all of my capital investment.

Can you advise?

Yours faithfully
Simon Braithwaite

Letter 2

Dear Sir

My husband and I were partners in a small manufacturing business until our retirement. The business is still going strong in the hands of the remaining two partners, but we have not had any involvement in it, financially or managerially, for over a year. We have now found out that a claim is being made against the firm in relation to a debt incurred just after the date of our retirement. We have been named in the claim along with the other two partners, because our names were not taken off the firm's letter head until two months after we retired, even though we repeatedly asked for this to be done earlier.

What do you advise?

Yours faithfully
Ann Richardson

OVER TO YOU

Now go to page 96 and read at the bottom the replies to these letters that were written by experts.

- Do you think the law is being fair to the two people who wrote the letters?
- Are there any differences between the legal position as explained in the two replies and the legal position in your own jurisdiction?

2

Employing people

STARTER

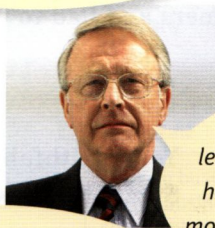
These people are talking about different aspects of their contracts of employment. Work with a partner and make a list of the points they are sure or unsure about.



If I want to earn some money on the side doing call centre work at the weekends or working in a bar, there's nothing my employer can do to stop me.



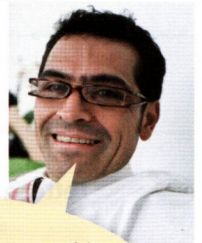
As far as I'm aware, my employer has no control over who I go to work for if I leave the company.



If I wanted to leave the company, I would have to tell my employer a month in advance. Or is it two months?



I always manage to use up all my holiday by the end of the year, so I don't know what happens if you've got some days left over. I imagine you just carry them over into the following year.



I actually can't remember if my contract says anything about company secrets, taking documents home and all that kind of thing. I suppose it does though.



If I work overtime, I try to take that extra time off before the end of the year. Otherwise, I lose it. I don't have any right to be paid for overtime that I have worked.

Now look at your list again. What, in your experience, does a standard contract of employment usually say about these points? Discuss this with other members of the group.

DID YOU KNOW?

A commercial contract usually starts with its own description, for example, *THIS AGREEMENT*, followed by the parties and the date. Next usually come the definitions of words used repeatedly in the contract, and then **recitals**, giving details of the history or purpose of the contract. The **operative part** (the terms of the contract) then follows.

An employment contract contains information on salary or pay. The heading for this part of the contract or clause is usually called **Remuneration** (BE) or **Compensation** (AE).

A **severance** (BE) or **separability / severability** (AE) clause is very common. It ensures that the contract as a whole remains valid even if one or two clauses in it become invalid. The two parties are simply required to renegotiate the invalid clauses as quickly as possible.

1 Below are some clause headings taken from a standard contract of employment. Match them with the correct clauses. One heading does not fit anywhere.

Absence • ~~Applicable law~~ • Competition • Confidentiality • Duration of contract /
Term of employment • Duties • Leave entitlement • Severance • Working hours

Clauses

1

The Employee shall not make known to any third party any information in respect of patents, know-how, trade secrets or other confidential matters which relate to the Company or its clients or its suppliers or its co-operation partners. The originals of any documents relating to such information are to be **surrendered** to the Company immediately upon termination of employment.

2

For the **duration** of this contract of employment and for a period of two years thereafter the Employee **undertakes** not to be employed in any way *either* by firms which compete with the Company or conduct similar business to that of the Company or by firms which are connected to or associated with such firms without the **consent** of the Company.

3

The Employee's service with the Company **commences** on April 1st 20... and continues for an unlimited period of time, but until no later than the statutory retirement age.

4

Should the Employee be unable to work on account of certificated illness, full pay will continue according to the length of service scales set forth in the attached Staff Handbook. Irrespective of the length of service, there is a minimum full pay entitlement of 30 days.

5

The Employee is **entitled** to 30 days' paid **leave** in the calendar year plus public holidays. In arranging the dates of this leave, the Employee shall give proper consideration to the needs of the Company.

6

The Employee shall, as External Project Coordinator, manage the Company's projects with external partners in the field of telecommunications software development.

7

Applicable law

The construction, validity and performance of this contract shall be governed in all respects by English law.

8

The invalidity or unenforceability of individual **provisions** does not affect the validity or enforceability of the contract as a whole. **In lieu of** any such **inoperative** provisions, agreement shall be reached by the parties on replacement provisions which approximate as closely as possible to the stated commercial intentions of the parties.

2 Match the words or expressions highlighted in the contract on page 17 (column A) with words or expressions that have a similar meaning in plain English (column B).

A contract vocabulary

- 1 surrender
- 2 duration
- 3 undertake
- 4 consent
- 5 commence
- 6 leave
- 7 be entitled to
- 8 provisions
- 9 in lieu of
- 10 inoperative

B plain English

- a agreement
- b holiday
- c have the right to
- d terms
- e promise
- f in place of
- g length (of time)
- h invalid
- i give back
- j begin



3 Two days ago Cathy O'Brien from Dublin, Ireland was offered the position of software developer at Softline Ltd, the U.K. subsidiary of a Luxembourg-based company. Today she has a meeting with the Head of Human Resources, Thierry Schwarz, to go over some of the details of her contract. Listen to the conversation and decide if the statements below are true or false.



VOCABULARY ASSISTANT

assume *think that something is correct without having checked*
 clarify *make clear, explain*
 draft *a rough written version of something not yet in its final form*
 entitlement *a legal right to have or do something*
 to that effect *a phrase used to show that you are giving the general meaning of something heard or read, and not using the exact words which the speaker or writer used*

- 1 According to Thierry Schwarz, the normal working week isn't Monday to Friday. ☐
- 2 Cathy is prepared to work weekends now and then. ☐
- 3 Thierry states that it is unusual to carry over annual leave into the following year. ☐
- 4 Cathy might be prepared to accept extra pay in compensation for unused annual leave. ☐
- 5 As a senior member of staff, Cathy will not be entitled to receive any pay for overtime. ☐
- 6 Cathy wants something in her contract that entitles her to be paid for any overtime done if her line manager agrees. ☐
- 7 Thierry tells Cathy that it will be possible to change the overtime clause in the contract. ☐

DID YOU KNOW?

The words *clause*, *section*, and *paragraph* can often be confusing. Contracts and agreements consist of *clauses*, *subclauses*, and *paragraphs*. *Sections*, *subsections*, and *paragraphs* are used to refer to parts of national legislation. In each case, you can use the general word *provision* to describe what something in the document says. For example, *Section 3 subsection 4 paragraph a [written s.3(4)(a)] of the Act contains a provision about directors' remuneration.*

REFERRING TO A LEGAL DOCUMENT

The following expressions are useful when referring to a legal document or explaining its content.

It says in clause 3 that ...

*The termination clause clearly **states** / **stipulates** that ...*

According to clause 5 the employee must ...

*It says **here** ...*

This simply means that ...

4 Work with a partner to discuss some problems relating to a contract of employment.

PARTNER FILES

Partner A File 03, p. 70–71

Partner B File 03, p. 75–76

5 Thierry speaks English very well, but has difficulty finding the right tone in letters and emails. He would like to write his email in a friendly but formal style. Fill the gaps with the words below.

contacting • discuss • getting in touch with • got back • here are • I am attaching •
I apologise • just • please • pretty • reasonably • resolve • returned •
sort out • sorry • talk about • unfortunately • want • wish • you see

From: t.schwarz@softline.com To: cathy.obrien@hotmail.com

Subject: amendments to contract

Dear Mrs. O'Brien

Regarding our meeting last week, _____¹ for not _____²
you earlier. _____³, our solicitor was in court for most of last week and only
_____⁴ yesterday.

As we agreed, _____⁵ the amendments to your contract as suggested by him.
I think you'll find that overall they _____⁶ the issues you raised with me last
week _____⁷ well.

Could you have a look at them and let me know me by the end of the week at the latest if there are
any points you still _____⁸ to _____⁹? I can then try to
have the contract ready for signing by the middle of next week.

In the meantime, if there are any other matters where I can be of help, _____¹⁰
give me a call.

I look forward to hearing from you soon.

Best regards
Thierry Schwarz



6 Read the attachment Thierry Schwarz sent and discuss with a partner the two questions below.

Suggested amendments to Cathy O'Brien's contract of employment

Please note: the suggested amendments to the contract have been added in italics.

1.2 Working Hours

The length of the standard working week will be 38 hours. Weekend work will be necessary from time to time.

6.2 Leave Entitlement

The Employee has an entitlement to compensation for up to and no more than 15 days of unused leave based on the basic salary amount as defined in 4.1. Unused annual leave may be carried over into the following year, up to a maximum of seven days. Any leave carried over must be taken before 1st March.

4.5 Remuneration

There is no claim to *financial compensation* for overtime, weekend or holiday work or other work performed in addition to the working hours as set out in 1.2. Overtime worked may be taken as time off in lieu at the discretion of the line manager.

- 1 On what point(s) has Cathy got what she wanted?
- 2 On what point(s) has she got less than she wanted?

VOCABULARY ASSISTANT

consistent with (*adj*) in agreement with
 detrimental to (*adj*) harmful to
 express *clearly and openly said or written down*
 (*in contracts, the opposite of implied*)

7 Cathy replies to Thierry's email. First sort the words into sentences and then put the sentences in the correct order.

From: cathy.obrien@hotmail.com
 To: t.schwarz@softline.com
 Subject: amendments to contract of employment

Dear Mr. Schwarz

- ☐ a compromise / I / a / suggest / Perhaps / could / here
- ☐ b to / happy / suggested amendments / with / I / clauses 1.2 and 4.5 / the / am
- ☐ c let / if / know / be / possible / Please / might / me / this
- ☐ d take / extra month / to / give / it / would / which / an / It / me / also / in
- ☐ e year / would / stands / still / eight days' leave / I / As / risk / up to / a / it / losing
- ☐ f the / sending / amendments / Thank you / yesterday / me / for / contract
- ☐ g by / would / the end of / any / leave / have to / February / I / Furthermore / take / unused
- ☐ h by / end / ten days / taken / the / you / to / Would / to / March / agree / be / of ?
- ☐ i me / 25 / minimum / days' / would / a / of / This / leave / guarantee
- ☐ j am / about / leave entitlement / little / However / clause / a / the / I / concerned

Kind regards
 Cathy O'Brien

8 Cathy reaches an agreement on her leave entitlement clause. Now she must resign from her current job. Look at her letter and at the two clauses below which she refers to. Has she resigned in accordance with her contract?

41 Ratra Road
Dublin 7

Mr. John Flannagan
Personnel Director
Intelligent Solutions Ltd.
28 Parnell Place
Dublin 1

November 15th 2...

Dear John

In accordance with clauses 7.2 and 7.5 of my contract of employment I hereby serve notice of my wish to resign from my current position as Software Development Co-ordinator with effect from January 1st of next year. I will be taking up a new position in software development with a leading developer of telecommunications software.

I would like to take this opportunity to thank you for your friendly and professional support during my five years at this company.

Yours sincerely

Cathy O'Brien

Cathy O'Brien



Extract from Cathy's contract

7.2 A probationary period of six months has been agreed. During this time employment can be terminated with two weeks' notice. Thereafter, a notice period of three months to the last day of the month is in effect.

7.5 Notice of termination must be delivered in writing. The Employee must address her written notice to the Personnel Director.

EXPRESSING RIGHTS AND OBLIGATIONS

Contracts often talk about **rights** and **obligations**.

Rights

The employee **is entitled / is allowed to / has the right to / can** take 30 days' leave.

Obligations

The employee **must / is required to / is obliged to / has a duty to / has to** treat all company data and files with complete confidentiality.

9 Look at the following clauses from Cathy's contract. Match the sentence halves below. Decide which sentences refer to rights and which to obligations.

Extract from Cathy's contract

3.2 For the duration of this contract of employment and for a period of two years thereafter the Employee undertakes not to be employed in any way *either* by firms which compete with the Company or conduct similar business to that of the Company or by firms which are connected to or associated with such firms.

3.4 Should the Company decide not to waive the ban on competition (as defined in 3.2) expressly and in writing within 7 days of receipt of the Employee's written notice to terminate, it shall pay to the Employee compensation as follows: 50% of the current basic salary (as defined in 4.1), to be paid in arrears at the end of each calendar month for a period of no longer than two years.

7.6 There may be circumstances where the Employer reserves the right to require the Employee not to attend work for the full duration of the notice period. The Employee's entitlement to full pay continues unaffected.

- | | |
|--|---|
| 1 According to 3.2 the Company can ... | a ... receive half pay for a period of two years. |
| 2 According to 3.4 the Company, but not the Employee, can ... | b ... send the Employee home on the day she hands in her notice. |
| 3 If the Company makes this decision, it is required to ... | c ... pay her full salary for the rest of her period of notice. |
| 4 If the Company decides to enforce 3.2, the Employee is entitled to ... | d ... communicate this to the Employee in writing. |
| 5 7.6 states that the Company is entitled to ... | e ... prevent the Employee from working for a competitor for two years after leaving the Company. |
| 6 If the Employee is sent home, the Company has to ... | f ... decide not to make use of clause 3.2. |

**VOCABULARY ASSISTANT**

instalment *one of a number of payments which are made regularly over a period of time until something is paid for*
waive *to choose not to demand something, even though you have a legal right to do so*

10 John Flannagan, Head of Human Resources at Intelligent Solutions Ltd., is unhappy about Cathy's plans and so he consults Mary Wilson, a solicitor specializing in employment law. During the meeting they make reference to the clauses above.



Listen to the conversation. Which of the three statements below best sums up what is said?

- 1 John and Mary want to stop Cathy going to work for Softline, the mobile phone company.
- 2 John and Mary want to send Cathy home today.
- 3 John and Mary are, to different degrees, worried about confidentiality.

Listen again and choose the best option or options to complete the sentences below.

- 1 Mary says that the company ...
 - a ... can prevent Cathy from starting on 1st of January if it wants to.
 - b ... can't really prevent Cathy from starting on 1st of January.
 - c ... intends to prevent Cathy from starting on 1st of January.
- 2 John isn't happy about Cathy moving to Softline ...
 - a ... because it is poaching the company's staff.
 - b ... because confidential information might change hands.
 - c ... because Softline is an important co-operation partner.
- 3 To invoke the competition clause would mean that the company ...
 - a ... could employ Cathy on half-pay for the next two years.
 - b ... could prevent Cathy from working for Softline for two years.
 - c ... would have to prove that Cathy had contact with a competitor.
- 4 In the end, there is a risk that ...
 - a ... the company won't be able to prove its case in court.
 - b ... that the company's response will be more dramatic than is really necessary.
 - c ... that Softline will reduce its level of involvement with Intelligent Solutions Ltd.

VOCABULARY ASSISTANT

gardening leave *a period during which some one does not go to work but remains employed by a company in order to prevent them working for another, usually competing, company*
 invoke a clause *to use it for its intended purpose*
 poach staff *to recruit employees from another, usually competing, company*

We don't hear the end of the meeting. What would you suggest if you were the in-house lawyer?

11 You and your partner are solicitors, one from Intelligent Solutions and the other from Softline. Work with your partner to discuss Cathy's contract.

PARTNER FILES

Partner A File 04, p. 71
 Partner B File 04, p. 76

After you have finished, present the outcome of your negotiation to the rest of the group.

PRESENTING AN OUTCOME

We agreed / decided to ...	In return they will ...
The best option here is to ...	By way of compensation they will ...

OUTPUT

Read the article from *The Times* newspaper about dress codes.

Tie case throws dress codes into confusion

The collar and tie faces an uncertain future in the office. Willie Manners and Juliet McMyn look at the implications of a recent tribunal ruling.

Last week's ruling that a man who worked in a JobCentre was a victim of sex discrimination because he was made to wear a collar and tie has been seen variously as a "victory for common sense" and the death of the traditional white-collar male dress code.

Matthew Thompson, an employee in a JobCentre at Stockport, objected to the "smart casual" dress code imposed by the Department for Work and Pensions because it required men to wear a collar and tie but made no similar clothing requirements for women. The code, which banned employees from wearing fleeces without management consent, was at first assumed to be a joke. But when Thompson was disciplined for refusing to wear a tie, it all became less amusing.

Thompson's real complaint was that dress standards did not apply equally between the sexes. While men had to wear a tie, women were allowed to wear T-shirts or even football shirts to work. Thompson claimed that the males were victims of "gender stereotyping" and that the dress code was discriminatory. The tribunal agreed. But its ruling, which may go to appeal, is

surprising. It appears to be in direct contrast to the previous view that an employer could impose different dress codes on the sexes as long as the rules were enforced equally; it certainly paves the

way for other employees who dislike formal dress to bring similar claims. We may, for instance, hear from Dennis Fitzpatrick of Birmingham, another JobCentre employee, who was banned from wearing jeans to work. He recently reported for duty in a kilt, lumberjack shirt and a loud multicoloured tie. Of his employers, he said: "They seemed happy for me to go to work like this, even though I looked like a pillock" (slang: a stupid person).

At the hearing on Thompson's case, the panel was invited by his employer to consider the meaning of the term "smart casual" and, in particular, what kind of clothing would be considered acceptable in an office. For men, smart trousers with a collar and tie were suggested. For women, skirts, dresses, trousers and fitted or loose tops. From such analysis it is clear that while society's ideas of acceptable clothing for a man have remained fairly constant, its views on dress codes for women have changed radically.

(abridged)

Willie Manners and Juliet McMyn – Macfarlanes law firm



OVER TO YOU

- Do you agree with Matthew Thompson and Dennis Fitzpatrick?
- Do you have any sympathy for the employer, in both cases the local JobCentre?
- Is there a dress code at your place of work?
- Does it apply to different groups of people equally? How do you feel about it?

3

Buying and selling goods and services

STARTER

Here are some sales managers having a consultation about contracts with the in-house lawyer. How would you answer their questions?

What happens if, after the parties have signed, we find that there's a mistake in a contract – say about VAT? Do we have to draw up a whole new contract?

A client agreed to buy some goods from us but needed them urgently. He didn't have time to wait for all the paperwork to be drawn up and signed. I sent him the goods and he paid – no problem. But was he actually legally bound by our verbal agreement?

I often see terms and conditions in our sales documentation. Aren't they just two words for the same thing?

Let's say there's a rail strike and we fail to deliver our goods to the client. I assume we're protected by the force majeure clause, aren't we?

We had a big order from a client and the client said it was OK to ask a third party to supply part of the order for us. But are we liable if the third party's goods are defective?

I keep coming across this word consideration in contracts. Does it mean that you have – sort of – thought carefully about the other party's offer before signing the contract?



1 Look at the beginning of a contract for the sale of goods and find the following information:

- 1 What is the product?
- 2 Which party manufactures the product?
- 3 Where is there detailed information about the product?
- 4 Who plans to buy the product?

Version 1

CONTRACT OF SALE

This agreement is made this 1st day of March 2... by and between Digital View plc (registered number 123456), with its principal place of business at 17, Hopkinson Way, Andover, SP10, ENGLAND, (hereinafter 'PURCHASER') and Pixeltechnik S.A., with its principal place of business at place Jourdain, 34, 1180 Uccle BELGIUM, (hereinafter 'SELLER') and its permitted sub-contractors and assignees.

Whereas:

- PURCHASER, a manufacturer of electrical goods, wishes to purchase the goods (hereinafter 'GOODS') specified in Annex 1 hereto and subject to the terms and conditions of this agreement:
- SELLER, a manufacturer of high-performance LCD screens, wishes to manufacture and supply the aforementioned GOODS.

IT IS AGREED:

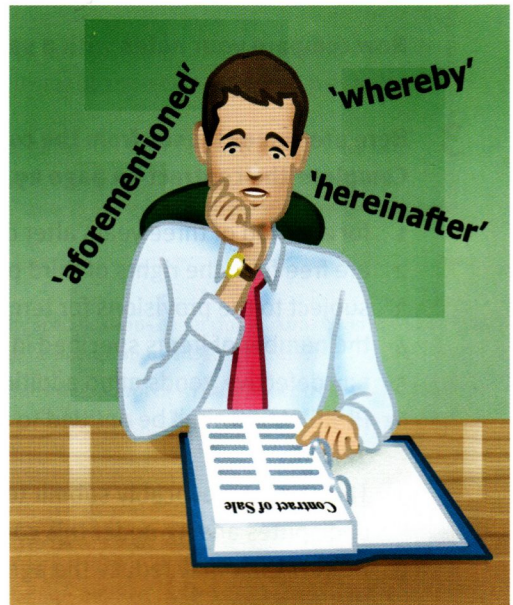
DID YOU KNOW?

The language of contracts is changing in the U.K. and the U.S. as consumer and business groups campaign for more contemporary language so that the agreements are easier for people without a legal background to understand. Contracts between businesses have been slower to change, in contrast. The Contract of Sale above is an example of a *business-to-business* agreement, and has examples of the type of language that is becoming less common.

Whereas in this context is used to introduce the information about the transaction that the two parties want to enter into. *Where* can also be used with *by*.

Here and *there* can also be used with other words. *Here* is used in a legal document to mean the document itself, while *there* is used to mean other documents or things. *Hereinafter* means from this point in the document. *Hereby* means as a result of this document.

Aforementioned means that something has been discussed or referred to earlier.



- 2 Compare Version 1 of the Contract of Sale with Version 2, which uses more contemporary language. Make notes on how the phrases mentioned in the *Did you know?* box on page 27 have changed between the two versions.**

Version 2

CONTRACT OF SALE

This agreement is made this 1st day of March 2... by and between Digital View plc (registered number 123456), with its principal place of business at 17, Hopkinson Way, Andover SP10, ENGLAND, (the 'PURCHASER') and Pixeltechnik S.A, with its principal place of business at place Jourdain, 34, 1180 Uccle, BELGIUM (the 'SELLER') and its permitted sub-contractors and assignees.

Recitals

- The PURCHASER, a manufacturer of electrical goods, wishes to purchase the goods specified in Annex 1 to this agreement (the 'GOODS') subject to the terms and conditions of this agreement;
- The SELLER, a manufacturer of high-performance LCD screens, wishes to manufacture and supply the GOODS.

Now compare your notes with a partner.

- 3 Here are some clauses from the contract between Digital View plc and Pixeltechnik. Complete the contract on page 29, by inserting phrases 1–8 below into boxes a–h.**

- 1 for a period of three years after delivery
- 2 are free from the rights of third parties
- 3 subject to the provisions for termination in 8.1 and 8.2 below
- 4 the number of items specified in Annex 2
- 5 any defective goods at no additional cost to PURCHASER
- 6 PURCHASER shall be entitled to terminate the agreement by giving 21 days' written notice to SELLER
- 7 The parties irrevocably submit to the exclusive jurisdiction of English courts for the determination of disputes arising under this contract.
- 8 PURCHASER may reduce the agreed price for the order by 1%

1 Delivery

- 1.4 Failure on the part of SELLER to meet the terms of delivery shall entitle PURCHASER to invoke the following penalty clause terms: for every week or part thereof by which the delivery date is exceeded, ☐ ^a. The rights of PURCHASER under 8.1 shall remain unaffected.

3 Minimum Orders

- 3.1 PURCHASER undertakes to purchase during the first 24 months following signature of this agreement ☐ ^b. The minimum amount ordered each calendar month shall be according to the details set out therein.

4 Price

- 4.1 The price charged for the goods shall be in accordance with the price list set out in Annex 2. The stated price shall be binding on both the seller and the purchaser for the duration of this agreement.

5 Duration

- 5.1 This agreement shall be for a period of two years from the date of signature ☐ ^c.
 5.2 The agreement shall be renewed automatically for a further period of one calendar year unless either SELLER or PURCHASER terminates in accordance with the provisions contained in 8.2 below.

8 Termination

- 8.1 Should SELLER: (i) fail to provide satisfactory performance of this agreement or (ii) fail to fulfil any of its obligations hereunder or (iii) become bankrupt or have a winding up petition made against it or have a liquidator or administrator appointed, ☐ ^d.
 8.2 In all other cases, notice to terminate must be made in writing by either SELLER or PURCHASER no later than 90 days in advance of the expiry date as defined in 5.1 above.

10 Warranties

- 10.1 SELLER warrants that the goods will comply with the specifications as set out in Annex 1 and will be free of defects (other than those caused by incorrect usage or operation by PURCHASER) ☐ ^e.
 10.2 Pursuant to the above warranty SELLER guarantees that after receipt of written notice from PURCHASER it will promptly repair or replace at PURCHASER's option and to PURCHASER's entire satisfaction ☐ ^f.

11 Warranty of title

- 11.1 SELLER warrants that the GOODS ☐ ^g SELLER shall indemnify PURCHASER on demand against any claims made by third parties in this regard.

12 Applicable law and jurisdiction

- 12.1 This agreement shall be governed by the laws of England and Wales.
 12.2 ☐ ^h.

DID YOU KNOW?

Warranty has two meanings in contract law.

- 1 It can be the statement that a manufacturer makes to the purchaser in which the repair or replacement of defective goods within a certain period of time is guaranteed.
- 2 It is the word used for a **term** in a contract that is not a condition. A **condition** is an essential element of a contract. If it is breached, then the other party has the right to terminate the whole contract. A **warranty** is not an essential part of a contract. If a **warranty** is breached, the contract as a whole remains in force for both parties.

Expiry date is the end of a period for which something is valid. It is often called **expiration date** in American English (AE).

The heading **Duration** in a contract can also be **Term**, especially in AE. This use of the word **term** has nothing to do with the meaning of term above. Here it means a period of time.

Force majeure is sometimes referred to as **act of God**. This clause covers all of the things that can happen which might make performance impossible, but over which the parties have no control, e.g. storms, natural disasters, unannounced strike action.

4 Read the dictionary definitions below and choose the correct term among the words underlined in the contract on page 29, which fit the definition.

1 _____ person appointed by the court to manage the affairs of a bankrupt company

2 _____ to be in accordance with

3 _____ conditions (in an agreement)

4 _____ to make use of or apply a clause in a contract

5 _____ formal request to have a company closed down

6 _____ a guarantee issued to the purchaser of an article promising repair or replacement in case of defects

7 _____ to hold a person safe or secure against a risk

8 _____ to go beyond a set limit (quantity or time)

9 _____ imposing an obligation which one must fulfil

10 _____ to state or describe something in writing



5 You are the in-house lawyers at Digital View plc. At a meeting with the purchasing department you are asked the following questions about the agreement with Pixeltechnik S.A. Listen to each question and note your answers below. Then share your views with the class.

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____

STYLE TIPS FOR LEGAL TEXTS

Legal English often uses **past participles** to make sentences more compact. Instead of:

The price which is charged for the goods shall be ... or ... the number of items which is specified in Annex 2

the contract says:

*The price **charged** for the goods shall be ... or ... the number of items **specified** in Annex 2*

Present participles are also used to make sentences more compact. So instead of:

The agreement which exists between the parties is due to expire at the end of this year.

we can say:

*The agreement **existing** between the parties is due to expire at the end of this year.*

6 Put the verbs into the sentences below. Decide if you need a present participle or a past participle. Be careful! There are two verbs which you don't need.

arise • claim • dispatch • entitle • fail • find • impose • lead • list • reach

- 1 Any goods _____ to be defective must be replaced within 48 hours to the full satisfaction of the purchaser.
- 2 Any decision _____ by the arbitrator is binding on both parties.
- 3 The prices _____ in Annex 1 fail to take account of possible quantity discounts.
- 4 The purchaser is indemnified against any loss or injury to a third party _____ out of any product defect as defined in 6.4 above.
- 5 The 1,000 euro charge _____ on the supplier by my client is completely in accordance with the penalty clause in the agreement.
- 6 A transport strike _____ to delays in delivery is only covered by the *force majeure* clause to a limited extent.
- 7 Any products _____ to meet the agreed specifications will be returned to the supplier at the supplier's expense.
- 8 The compensation _____ by the purchaser is, in our view, unreasonable.

7 The contract runs well for 15 months. Then Pixeltechnik S.A. is forced to send the following letter to Digital View plc. Read the letter and answer the following questions:

What is the problem?

How quickly can Pixeltechnik solve the problem?

Pixeltechnik S.A.
 place Jourdain 34
 1180 Uccle
 Tel: +32 511 648 31 50
 Email: pixel.technik@t-mobile.be

September 23rd 2...

Mr. Gary Thorne
 Head of Purchasing Department
 Digital View plc
 17 Hopkinson Way
 Portway Industrial Estate
 Andover
 SP10
 England

Dear Mr. Thorne

Recall of all batches from TZ64/0 to TZ64/9

I regret to inform you that we have to recall the above ten batches of LCD screens for use in digital cameras. Unfortunately, it has come to our attention that a chemical processing error has caused minor inconsistencies in the candlepower of the screens. They failed to pass all of our quality controls and must therefore be regarded as defective.

I appreciate that, in recalling a total of 5,000 screens, I am causing considerable inconvenience to your company. I apologise for this and will endeavour to dispatch to you 1,000 screens within the next ten days and the remaining 4,000 within 21 days at the latest.

Please accept once again my sincere apologies for this error. If you have any questions or would like to discuss this matter further, do not hesitate to contact me.

Yours sincerely

Jean-Marie Hérault
 Jean-Marie Hérault
 Managing Director

What is your overall opinion of the letter? Is the tone appropriate? Is the information sufficient? Give some examples.

8 You are a lawyer in the legal department of Digital View. Decide how your company should respond to this problem. Consider the following options and give reasons for your choices:

- accept Pixeltechnik's apology
- accept the apology but take steps to obtain compensation or to impose penalties
- suggest another alternative

9 Now listen to a consultation between Jean-Marie Hérault, Managing Director of Pixeltechnik S.A., and Mr. Evans, an English contract lawyer, working for an international law firm.

AUDIO



7

Part 1: The problem

Are the following statements true or false?

- 1 Digital View replied to Pixeltechnik's original letter of September 23rd. ☐
- 2 The Production Manager first realized there was a problem when he noticed a chemical processing error. ☐
- 3 M. Hérault is sure that the screens still conformed to the product specifications agreed in the contract. ☐
- 4 The technicians only carried out tests on the product once every ten days. ☐
- 5 Some defective LCD screens had already been delivered to Digital View. ☐



AUDIO



8

Part 2: The dispute

Answer the following questions.

- 1 Name three reasons why M. Hérault thought he had avoided a dispute with Digital View.

- 2 What does Digital View now intend to do?

- 3 On what legal grounds is it trying to do this?

- 4 Why is it important to Pixeltechnik that the contract runs at least two years?

10 You are solicitors advising M Hérault. Discuss the following questions with a partner.

- 1 To what extent are the following points significant?
 - a In his letter of September 23rd, M. Hérault described the 5,000 LCD screens as *defective*.
 - b Pixeltechnik already seemed to have reached a compromise with Digital View.
- 2 To what extent can it be argued that Digital View is not justified in invoking 8.1 (i)?
- 3 How important is the concept of *reasonableness* here?
- 4 If Digital View wants to terminate the contract, what are its rights and obligations?
- 5 Is the absence of a dispute resolution clause significant?

Now decide what advice to give your client.

11 Contracts and legal correspondence often contain words with negative prefixes e.g. *invalid*, *insolvent*. Look at the list of adjectives below and match them with the correct negative prefix.

IR • UN • IN • IM • DIS

- | | |
|---------------------|----------------------|
| 1 <u>in</u> valid | 8 ____ foreseeable |
| 2 ____ lawful | 9 ____ partial |
| 3 ____ enforceable | 10 ____ confirmed |
| 4 ____ satisfied | 11 ____ correct |
| 5 ____ reconcilable | 12 ____ complete |
| 6 ____ affected | 13 ____ reasonable |
| 7 ____ effective | 14 ____ satisfactory |

USEFUL LANGUAGE

The words *valid*, *enforceable*, and *effective* sometimes cause confusion.

A work permit or residence permit can be **valid**, i.e. it has the correct stamps on it or hasn't expired.

A contract of employment can be **effective**, i.e. it is in use and has legal relevance.

As an employee, I might have certain rights or claims with respect to an employer that are **enforceable**, i.e. I can go to court and ask the court to ensure that my rights are respected or my claims met.

A contract that has no legal basis – because, for example, one of the contracting parties acted under duress or because the object of the clause is unlawful – is **void**.

12 Work with a partner. Use the information in the Partner Files to find the legal vocabulary.

PARTNER FILES

Partner A File 05, p. 71
Partner B File 05, p. 76

INTERACTING WITH A CLIENT

Lawyers need to get information from their clients and summarize what the client has said, to direct the consultation and to express their own point of view. The following questions and expressions can be useful.

Getting information

Could I start by asking you when / why / how the problem began?
 And what happened then?
 What did you do then?
 How did the other party react to this?
 Could you explain why ...?

Getting the client to refocus

Let me take you back to ...

Checking and clarifying

Are you suggesting that ...?
 So, if I understand you correctly ...
 Could you explain what you mean by ...?

Expressing an opinion

As I see it ...
 Our best option would be to ...

13 A client and a lawyer discuss contract issues. What advice did your lawyer give you?**VOCABULARY ASSISTANT**

comply with *to obey a rule or contractual promise*
 invoice *a bill; a list of goods sold or work done showing what the customer must pay*
 offer *the act of saying you are willing to do something, for example, make a contract*
 reject *refuse to accept*
 tiles *coverings for a roof, wall, or floor*

PARTNER FILES

Partner A File o6, p. 72
 Partner B File o6, p. 76-77

14 Fill in the gaps with words from the unit. Be careful! There are two words which you don't need.

binding • bound • comply • defective • expire • invoke • specifications •
 terminate • terms • warranty

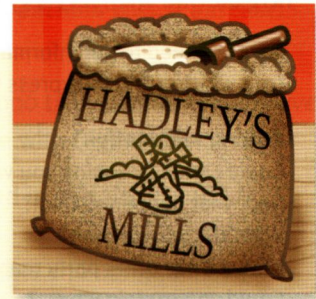
- Any _____ items must be replaced within five working days to the full satisfaction of the purchaser.
- The insolvency of the supplier entitles the purchaser to _____ this agreement with immediate effect.
- The prices hereby agreed shall be _____ on both parties for a period of 24 months.
- The goods must be manufactured according to the _____ set out in Annex 2.
- The _____ of delivery state that the supplier remains liable for the goods until they have been unloaded at the specified delivery point and signed for by the purchaser.
- Your failure to _____ with this completion date entitles my client to impose the following financial penalties:
- To _____ the termination clause because some of the goods delivered were not of the required standard would be seen as unreasonable.
- The agreement will _____ exactly twelve months following its date of signature.

OUTPUT

Read the article about a famous case in contract law.

Flour power and contract law

By Franklin G. Snyder



Legal scholars from around the world are celebrating a momentous event: a broken steam engine shaft at a flour mill in Gloucester. That shaft gave rise to the most widely known case in the history of common law: the 1854 decision of *Hadley v Baxendale*.

Great cases sometimes have trivial causes. In an era engrossed by news of impending war with Russia, few cared about that broken shaft. Two people who did were Joseph and Jonah Hadley, the mill owners. They needed that shaft and as it could be repaired only in Greenwich, they hired Pickfords, the removal company, to take it from Gloucester by the next day. For some unexplained reason, the shaft took several days to arrive. During the delay, the mill lay idle.

The Hadleys sued for the delay. The question before the court was whether Pickfords was liable for the money that the Hadleys had lost while the mill was without its shaft. The court's answer was no. Since Pickfords did not necessarily know that the mill would be idle until the shaft could be returned – there might have been a spare – the court found that the company could not be charged with those damages. Its opinion announced what came to be known as the “foreseeability” test for contract breaches: you cannot be held liable for losses that you could not reasonably have anticipated.

How did this rather mundane dispute become a fixed star in the legal firmament? There are

two reasons. The first was the growth of contract law. Before the 19th century, many commercial relationships were regulated by custom, not by individual agreements. There was, in fact, no body of law called “contracts”. Secondly, the world of 1854, like that of today, was one of revolutions in transport, communications, economics, politics and society. It was the first era of “globalisation”.

An era of rapid change needs contract rules that are predictable, but also flexible. And Hadley is the embodiment of the common law's success at dealing with change. Its “foreseeability” rule encourages people to engage in transactions by protecting them from damages that could not be anticipated. But by avoiding a fixed rule – say, that the carrier is never liable for such lost profits – it allows for flexibility when things change. Next time, the carrier might be aware that there is only one shaft and that it had better take precautions or charge more in exchange for the greater exposure.

The Hadleys' old mill is, coincidentally, being restored. For me, a law professor who studied Hadley 20 years ago as a student, it is fitting that the mill is being adapted to face a new century, just as Hadley's rule has allowed us to adapt to futures about which we could only guess.

(abridged)

OVER TO YOU

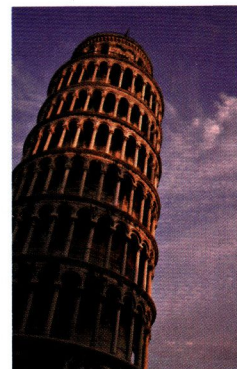
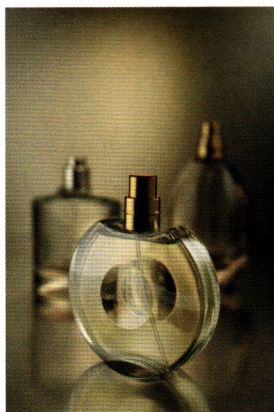
- How does the law deal with the concept of foreseeability in your jurisdiction?
- Do you share the author's enthusiasm for this case as an example of clarity and flexibility?
- What, in your opinion, works better in contract law? Case law (the Anglo-Saxon tradition) or codified law (the tradition in continental Europe)?

4

Protecting intellectual property

STARTER

How, if at all, can the law give protection to the following and prevent copying?



- a new drug substance
- a 19th century violin concerto
- a new perfume
- a scientific theory, e.g. $e = mc^2$
- a distinctive chocolate product
- a TV news show format
- a new novel
- a sauce or drink with an unmistakeable flavour
- a toaster that downloads the weather forecast and toasts the day's temperature onto your bread.
- a photo of the Leaning Tower of Pisa at sundown

DID YOU KNOW?

Copyright is an exclusive right granted to someone who creates a literary, artistic, musical or other creative work. It is the right of the author or composer to reproduce or sell this work. The right can be granted to others e.g. publishers or record companies. Oddly, the period of **protection** (in the EU) depends on the type of work under copyright. In the case of a novel, for example, it is the author's lifetime plus 70 years; in the case of a song it is 50 years from the date when the song was first released or broadcast.

A **patent** gives an inventor the exclusive right to exploit an invention for a period of 20 years. The date when this period begins (**priority date**) is not when the invention comes onto the market as a finished product but when the patent application is made. If the **patentee's** rights are **infringed**, the remedies available are to seek a court **injunction** and to sue the infringing party for **damages**.

A **trade mark** is a design, logo or wording which distinctively identifies a product. When a trade mark has been **registered** the owner has the exclusive right to use this trade mark in connection with the products listed in the original registration. If a competitor starts to use a trade mark that is so similar to this registered trade mark that **confusion** might arise in the mind of the public, this offence is called **passing off**. As long as a trade mark is used, it lasts for ever.

Original shapes or patterns or designs can be protected using a **design right**. The period of protection here is 25 years.

1 Work with a partner. Complete the three texts using the words in the box. Then try to guess how the court decided in each case and why.

competitor • copyright • damages • format • general • infringement •
patented • plaintiff • trade mark • validity

a

A TV show _____¹ in which members of the public could perform a stage act and viewers could vote for their favourite was designed by Mr Green, a TV compère. Following its launch in the UK, the show became extremely successful. Subsequently the Broadcasting Corporation of New Zealand broadcast a very similar show, with the same title, elsewhere. Infringement of intellectual property rights and passing off were claimed by Mr Green, who sued for _____.² The defendant responded by claiming that the show format was that of a talent show, and was therefore of too _____³ a nature to be granted _____⁴ protection.

*Green v Broadcasting Corporation
of New Zealand (1989) RPC 700, Privy Council*

b

A disposable nappy, with fasteners made of a Velcro-like material, was _____⁵ by Mölnycke AB. The fasteners made it possible to check and refasten the nappy without damaging it. A _____⁶, Proctor & Gamble, started producing nappies of an almost identical design, which led Mölnycke to claim _____⁷ of its patent. Proctor & Gamble used grounds of obviousness in their defence, asserting that the fastening system was common general knowledge, and challenged the _____⁸ of the patent.

*Mölnycke AB v Procter & Gamble Ltd (No 5) (1994) RPC 49,
Court of Appeal*

c

The owner of a Japanese-style noodle restaurant called *WAGAMAMA* brought an action against the owner of an Indian-themed restaurant for _____⁹ infringement and passing off, when he named his restaurant *RAJAMAMA*. The _____¹⁰ claimed that the name *WAGAMAMA* means 'healthy eating and healthy living', whereas *RAJAMAMA* has no meaning. The defendant changed the name of his restaurant to *RAJAMAMA's*, which the plaintiff felt to be unsatisfactory, so the case was brought to court.

Wagamama Ltd. V City Centre Restaurants plc (1995) FSR 713, Chancery Division

2 Now have a look at the answer key to see what was decided in each case.

- Do you agree with the court's ruling in each case?
- Would a court decide in the same way in your jurisdiction? Why or why not?

3 The following agreement was reached a few years ago between a film production company and a publisher regarding the film rights for a novel.

This Agreement is made this day, May 1st 2...

between: Index Films Inc.
34 West 62 Street.
New York 10023
USA

(hereinafter PURCHASER)

and: Blackbird Ltd
218 The Strand
London WC2R 1AT
England

(hereinafter OWNER)

Whereas:

- a) OWNER, a publishing house, is the *sole* / _____¹ and exclusive owner of all rights, including copyrights, to the original literary work entitled 'BLACKOUT' by **Adam Parks** (hereinafter WORK).
- b) PURCHASER *desires* / _____² to produce or cause to be produced a motion picture based upon or adapted from the WORK.
- c) PURCHASER has *acquired* / _____³ from OWNER and OWNER has *granted* / _____⁴ to PURCHASER an exclusive option to purchase the worldwide motion picture rights (hereinafter RIGHTS) to the WORK under the terms and conditions *set forth* / _____⁵ herein.

- 2 OWNER *warrants* / _____⁶ that it has the exclusive right and authority to enter into and to perform this agreement in full and to grant exclusively to PURCHASER the rights herein.

- 3.1 The exclusivity period for which PURCHASER has acquired RIGHTS shall *commence* / _____⁷ either a) on the date this Agreement is signed by both parties and shall end exactly ten years later to the day or b) upon the initial release of the motion picture as defined in Appendix A and end exactly eight years later to the day, whichever period *expires* / _____⁸ first.

- 4.1 The purchase price of \$... is payable on the date this Agreement is signed by both parties.

- 5.2 Should a third party wish to produce or cause to be produced a motion picture based upon or adapted from the WORK within the exclusivity period as defined above in this Agreement, this will only be *permissible* / _____⁹ with the express written *consent* / _____¹⁰ of both PURCHASER and OWNER.

Are the following statements about the agreement true or false?

- ☐ 1 The copyright to *Blackout* by Adam Parks will be sold to the purchaser.
- ☐ 2 Index Films can commission another film production company to make the planned film.
- ☐ 3 This agreement is not restricted in any way to certain geographical regions.
- ☐ 4 The exclusivity period is for eight years.
- ☐ 5 If Index Films makes the film and then another film maker wants to do a remake before this agreement has expired, this will not be possible.

4 The words in *italics* in the contract on page 39 are standard legal vocabulary. Replace them with standard non-legal vocabulary below.

agreement • begin • bought • ends • given • guarantees • only • possible • wants • written down

DID YOU KNOW?

Quite often contracts contain sentences that begin with *should*. These are not requests or questions but *if* sentences. We can rewrite clause 5.2 without changing the meaning as follows:

If a third party wishes to produce ..., this will only be permissible with the express written consent of ...

5 Some years later, Fabian Stein, the head of Left Hand Productions, a London-based film production company, is interested in doing a remake of the film version of *Blackout*. Read the following letter from their solicitors in London and, using the agreement between Index Films and Blackbird for reference, write a *number* or *date* in each of the six gaps.

Walker & Field Solicitors • 52 Gloucester Road • London SW7 4QT

Mr. Fabian Stein
Left Hand Productions
52 Kings Road
London SW3 1LR

May 1st 2...

Dear Mr. Stein

Acquisition of motion picture rights to *Blackout*

With regard to your plans to acquire the motion picture rights to the novel *Blackout* by Adam Parks, I am forwarding you the written response I have now received from the attorneys for Index Films in New York and from Blackbird, the publishers of the work. In addition, I enclose an abridged copy of the original agreement between these two parties.

The legal situation is relatively straightforward and I am confident that we will be able to negotiate a satisfactory agreement. However, I would like to draw your attention to the following points.

As you can see from the preamble of the original agreement, it was signed on _____¹ exactly four years ago. Index Films actually released their motion picture one year after signing the agreement. As a result, in accordance with clause _____², the exclusive worldwide motion picture licence will expire _____³ years after the release date. Since we are not negotiating a new agreement but simply asking Index Films to waive its right to exclusivity, we too will be bound by the same expiry date. In other words, you would have no more than _____⁴ years in which to produce your film. Moreover, after the expiry date, any other party would be free to negotiate exclusive film rights with the publisher. Of course, your right to exploit the film you produce will exist in perpetuity.

The publishers have indicated their willingness to consider your acquisition of the motion picture rights within the defined exclusive period in return for financial consideration. With your permission, I would be happy to draw up a Letter of Intent – to be signed by yourself and the publishers. The final compensation figure would not be fixed at this stage.

However, clause _____⁵ makes clear that the consent of both the original parties is necessary, so we must also reach an agreement with Index Films. Clearly, Index Films will be looking for financial compensation in return for waiving their exclusivity rights. Nevertheless, it should be borne in mind that their film was released _____⁶ years ago and is generating hardly any income now. In my view, Index Films will not wish to drive too hard a bargain here, so it should be possible to reach an agreement for no more than EUR 100,000. With your permission, I could draw up a draft agreement and set up a video conference to negotiate with the attorneys in New York.

I would be grateful if you could let me know how you would like me to proceed in this matter. If you have any questions concerning the above, please do not hesitate to contact me.

Yours sincerely

William Field

William Field

Enc. Abridged copy of original agreement between Index Films and Blackbird

Written reply (April 22nd 2...) from Blackbird, publishers

Written reply (April 28th 2...) from Mason and Gonzales, attorneys-at-law, New York

VOCABULARY ASSISTANT

abridged	<i>shortened</i>	generate income	<i>earn money</i>
attorney (AE)	<i>U.S. legal professional</i>	in perpetuity	<i>forever</i>
bear in mind	<i>consider</i>	in the region of (IRO)	<i>approximately,</i>
bound by	<i>forced to do something by law</i>	about	
consideration (legal)	<i>here, money</i>	release (film)	<i>publish</i>
drive a hard bargain	<i>demand the best</i>		
	<i>terms for yourself</i>		

6 William Field often uses a linking word or phrase to join a sentence with the previous sentence. What words or phrases does he use to do the following?

express a contrast _____

provide additional information _____

express a consequence _____

state an opinion *In my view* _____

restate or reformulate some information _____

7 Use linking words and phrases from exercise 6 to complete these sentences.

- 1 We can apply for a court injunction against any further use of the logo. _____, we should consider suing the infringing party for damages.
- 2 This product clearly has a commercial application. _____, it may be difficult to demonstrate that it is really innovative.
- 3 The songwriter in question sold the copyright to the record label. _____, she cannot prevent the record label using this song in a commercial for a product of which she disapproves.
- 4 The film studio is prepared to waive its right to exclusivity. _____, it will allow another filmmaker to make a film of the same book.
- 5 The court accepted that a quiz show is not normally capable of copyright protection. _____, it ruled in this case that certain features of the show format were so distinctive that a right to protection existed.

AUDIO



8 Index Films and Left Hand Productions hold a video conference. Listen and decide if the statements below are true or false.

- 1 Fabian Stein is not willing to pay royalties. ☐
- 2 According to Fabian Stein, Index Films would not be allowed to keep the proposed down payment of €20,000 if the film flopped. ☐
- 3 Jake Glover changes his mind about a success-related payment. ☐
- 4 Fiona Martinez makes it clear that her client has plans to negotiate with a third party. ☐
- 5 If Left Hand Productions can't get the agreement of the publishers within three months, it won't have to make a down payment. ☐

VOCABULARY ASSISTANT

cease *stop*

conditional upon (adj) *depending on*

down payment *payment in advance*

drag on *take more time than necessary*

proposed *planned*

royalties *payment to author or artist*

viable (adj) *possible*

zilch (AE slang) *nothing*

9 Read the draft agreement below. Now listen again and complete the sentences.

MOTION PICTURE RIGHTS AGREEMENT

This Agreement is made this day, May 15th 2... between Left Hand Productions Limited (registered number 678910) with its registered business address at 52 Kings Road, London SW3 1LR (hereinafter _____¹) and Index Films Inc. with its registered business address at 34 W. 62nd Street, New York, 10023, USA (hereinafter _____²).

Whereby it is agreed as follows:

RIGHTS HOLDER, a film production company, wishes to surrender its right of exclusivity in respect of the motion picture rights as defined in Annex 1.

RIGHTS HOLDER shall surrender its right of exclusivity in respect of the above mentioned motion picture rights to PURCHASER. As consideration PURCHASER, on condition that it acquires permission from Blackbird, (hereinafter _____³) to film a re-make, shall pay a total of EUR _____⁴. An initial sum of EUR _____⁵ shall be payable to RIGHTS HOLDER upon the acquisition of said rights following the signing of this agreement. Failure to make the initial payment within a period of _____⁶ following the signing of this agreement shall render said agreement null and void. No later than _____⁷ following the release of the movie by PURCHASER, a second and final payment of EUR _____⁸ shall be payable to RIGHTS HOLDER.

LANGUAGE OF NEGOTIATION

In a negotiation, **confrontational** language (*We can't possibly accept that.*) states absolutes and closes down options. **Tentative** language (*We would find that difficult to accept.*) makes the speaker's position clear, but leaves options open. Look at some examples from the negotiation you have just listened to.

Tentative

*I'm afraid my board **might** find that figure a little low.*

*We **might be able to** agree to if we **could** participate in ...*

*Any other type of agreement **isn't really workable** ...*

*€30,000 **isn't really high enough**.*

*I think €45,000 **is a little high**.*

Confrontational

*My board **will** find that figure too low.*

*We **will** agree to if we **can** participate in ...*

*Any other type of agreement is **unworkable** ...*

*€30,000 **is too low**.*

*€45,000 **is too much**.*

is better than

10 Use the information in the language box on page 43 to make the statements less confrontational.

1 The payment period you suggest is too short.

2 Our share of the royalties is too low.

3 That's completely impractical.

4 If you extend the licence area to include Japan, we will accept royalties of 4 %.

5 Our board will never agree to that.

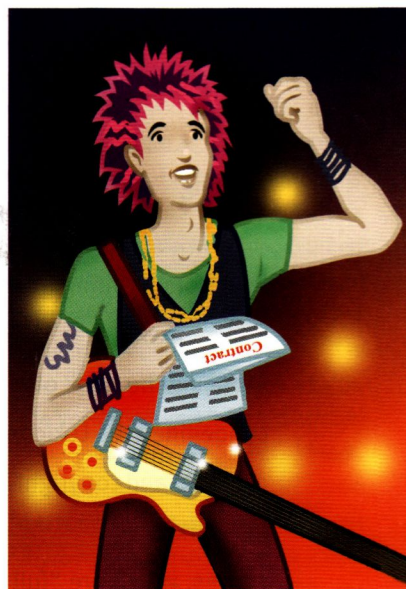
11 Read the following extracts from a songwriting agreement and choose the best option to complete each of the statements below. Sometimes more than one option is possible.

An Agreement made this first day of March 2... between Global Music Inc. (hereinafter PUBLISHER) of the one part and Billy Ratt (hereinafter COMPOSER) of the other part.

1. COMPOSER agrees to compose and write music and lyrics for and during the period of this Agreement for and on behalf of PUBLISHER and hereby undertakes to assign, transfer and deliver to PUBLISHER or its successors the whole of the copyright to such music and lyrics and also to such music and lyrics written heretofore by COMPOSER for all countries of the world insofar as such copyright is not held by third parties.
2. COMPOSER makes the following productivity commitment: he will endeavour to deliver a minimum of ten compositions, each of which comprising three minutes of music on average, every year for the duration of this Agreement.
4. The rights of PUBLISHER include the right to make translations of song texts in foreign languages in consultation with COMPOSER. PUBLISHER is also entitled to grant licences or to authorise others to exercise rights hereunder in whole or in part and to assign in whole or in part the compositions hereunder. However, PUBLISHER shall not be entitled to assign the whole burden of this agreement without the prior consent of COMPOSER.
5. The term of the Agreement shall be for a period of three years from the date hereof. PUBLISHER shall have the option to renew this Agreement for a further period of three years.
8. PUBLISHER agrees to pay fees and royalties in respect of the compositions acquired hereunder to COMPOSER as follows:
 - i) 12.5% of net receipts of PUBLISHER from sales of reproductions to public (CDs and vinyl).
 - ii) PUBLISHER shall divide performing fees and broadcast fees between PUBLISHER and COMPOSER in the ratio 20% and 80% respectively, subject to any allocation for orchestral arrangements in accordance with the rules of the Performing Rights Society currently in force.
 - iii) 12.5% of net receipts including the licensing of compositions for use in films, television programmes and commercials.

10. The royalty and free statements shall be made up to June 30th and December 31st in each year and shall include all receipts by PUBLISHER in that period. Such statements will be sent to COMPOSER within 28 days of the relevant date and be accompanied by a remittance for the amounts which are shown by the statement to be due and payable.

- 1 The composer is transferring copyright to the publisher ...
 - a for all works composed during the lifetime of the agreement.
 - b for all works which the composer has already composed, where the copyright is available.
 - c but not to a third party which might acquire the rights of the publisher.
- 2 The publisher needs the composer's prior written consent ...
 - a to make written translations of song texts.
 - b to assign selected compositions to third parties.
 - c to assign the entire agreement to a third party.
- 3 The agreement is drawn up so as to be able to run ...
 - a for three years only.
 - b for six years.
 - c for more than three but less than six years.
- 4 When the composer performs his music in a concert, he will ...
 - a receive 20% of the performing fees.
 - b get possibly less than 80% of the performing fees.
 - c collect more than 80% of the performing fees.
- 5 The performer will be paid his fees and royalties ...
 - a twice a year.
 - b whenever he likes.
 - c no later than 28 days after the publisher has received them.



12 Two lawyers, each representing their client, meet to negotiate an exclusive copyright agreement.

PARTNER FILES

Partner A File 07, p. 72
Partner B File 07, p. 77

After you have finished the role-play, tell the class what amendments you agreed to make.

WORD BUILDING – LEGAL VOCABULARY

Prefixes and suffixes are added to modify words.

Prefixes e.g. *in-*, *un-*, *over-*, *ex-*, are used to change the meaning of a word.

Suffixes e.g. *-ate*, *-able*, *-tion*, *-ship*, *-ment*, *-ism*, *-ee*, *-ity*, *-ly* are used to change both the meaning and the grammar of a word, i.e. to turn it into a noun, an adjective, an adverb.

Look at the following examples:

valid (adj.) – **invalid** (adj.), **validity** (n.), **validate** (v.)

patent (n. or v.) – **patentee** (n. *person*), **patented** (adj.), **patentable** (adj.)

compose (v.) – **composer** (n. *person*), **composition** (n.)

respond (v.) – **response** (n.), **respondent** (n. *person*), **responsive** (adj.), **unresponsive** (adj.)

13 Complete the following article using the correct form of the words on the right.

J. K. Rowling determined to block RDR Books' Harry Potter 'rip-off'

by Dalya Alberge, Arts Correspondent, *The Times*

J. K. Rowling may be no stranger to battles against evil wizards and magical beasts but in her latest tussle she is preparing to appear in person in the American courts. The notoriously shy author is ready to testify herself to protect her _____¹ of Harry Potter against RDR Books, an independent American _____², next month. A U.S. court is to decide whether she can block the publication of an _____³ encyclopaedia of the wizarding world that she created. Rowling and Warner Bros., the Hollywood studio behind the epic film _____⁴ of the Hogwarts adventures, are taking legal action to stop RDR from profiting from a Harry Potter Lexicon, a 400-page guide to the Potter books and movies.

Accusing the book of lifting 2,034 of its 2,437 entries straight from her work, Rowling condemned the Lexicon as "a Harry Potter 'rip-off' ... [that] interferes with my rights as a creator and copyright _____⁵". She noted that RDR's attempt "to co-opt my work for _____⁶ gain" was out of keeping with the spirit of the Potter stories, which are "full of moral choices and ethical dilemmas". She claims that the RDR book is not only an _____⁷ of her copyright but undermines her own planned lexicon. As she will donate its royalties to charity, "the _____⁸ in such a situation would be the charities that I hope, eventually, to benefit".

David S. Hammer, co-counsel for RDR Books, said: "The Harry Potter Lexicon draws material and _____⁹ from the Harry Potter series but is an entirely new piece of work. It is a companion to Rowling's work, not a substitute for it".

In Britain and the U.S. the work's _____¹⁰ holds the copyright; this prevents substantial passages being reproduced without _____¹¹. In Britain the "fair dealing" provision allows use of copyright work for _____¹² and review. In the U.S. rule, the third party must make a contribution in reproducing material.

own

publish

authorise

adapt

hold

finance

infringe

lose

inspire

create

permit

criticize

How do you think the court decided?

Read the following article about IP rights and Internet Service Providers (ISP).

Why businesses should be wary of going after eBay fakes

by Gill Grassie specialist lawyer in intellectual property
and information technology

The Internet may not be completely lawless, but it does facilitate infringement of intellectual property laws on an unprecedented scale.

How do you stop infringement when it is occurring on such a huge scale? Some companies have gone after the intermediaries such as eBay and Facebook, which provide the platform on which users can exchange goods and content so freely.

As the law stands, however, the middle men are generally immune from prosecution provided they remove infringing material from their sites as soon as they are notified of any potential infringement.

This sound like a sensible approach. It gives IP owners a quick and efficient mechanism for protecting their rights without placing burdensome restrictions on popular sites such as eBay. But there is a catch. IP owners keen to prevent copycatting of their products, brands and ideas are often unaware that asserting what they consider to be genuine rights may give rise to liability.

It may seem surprising, but IP owners who request intermediaries remove “infringing” products from their sites can themselves be sued for an injunction and damages by the person or company they have accused.

The rationale is: an accusation that a business has infringed IP rights may result in that business ceasing to sell the allegedly infringing item. The business as a result may lose revenue, while public allegations may damage its reputation. The allegations may be made by a competitor or in bad

faith; and even if they are made honestly, they may have no legal basis. In the UK, the law on patents, trade marks and designs makes such allegations actionable.

Take eBay’s Verified Rights Owner (VeRO) programme. Under VeRO, you can notify eBay, via an online form, that there is material on the auction site infringing your intellectual property rights, such as a design right or a patent. eBay’s standard response is to remove the highlighted material without – understandably, for reasons of expediency – any investigation of the merits of the claim. This immediately deprives the seller of his point of sale. eBay is contractually entitled to do this, but what if the VeRO notification is unfounded and there is no infringement? The alleged registered design right or patent may not have been granted. You may not actually own the right in question. Or there may just be no infringement.

Notification programmes such as VeRO are therefore a double-edged sword: at first sight, they are useful tools for IP owners to have infringing material removed from the Internet. But unsuspecting IP owners can find themselves on the receiving end of an injunction or damages claim.

This puts the UK out of line with other countries in Europe and elsewhere, where no such provisions apply. For the time being, IP owners should be cautious about notifying an ISP of alleged infringement. *(adapted)*

OVER TO YOU

- In your opinion, is the procedure described a good approach?
- What remedies are available in your country to IP owners who are faced with ISP infringements?
- Do they risk being sued in the same way as their U.K. counterparts?

5

Mergers and acquisitions

STARTER

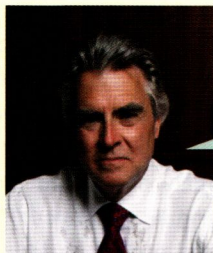
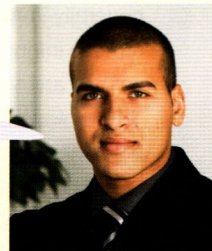
Read the *Quotations of the Week* from a U.S. magazine.

- Who do you think the speakers might be?
- Which of them seem to be in favour of more regulation to control M & A?
- Which of them aren't? Where do you stand on this question?

Quotations of the Week

1

When the company I work for was taken over, the price offered was far too high. The scope for savings through synergies was then overstated to justify the high price. The shareholders won, the directors won, all the legal and financial advisers walked away with their fees – and the price was paid by the employees. Within one year 2,000 jobs had been cut.



2

The legal instruments in place for identifying and combating insider dealing are more than sufficient. Any more legislation in this area would simply restrict the freedom of companies to expand and would make them unattractive to investors.

3

Naturally, we take the Federal Trade Commission (FTC) or its equivalent in other countries very seriously when we make an acquisition. But, to be quite honest, it has never intervened once. The whole thing is more of a formality, really.



4

Mergers and acquisitions are a perfectly acceptable way for the market to optimise its efficiency. We were delighted when a large multinational wanted to acquire our small private limited company. The price was fair, no one lost their job and there was much more R&D money available to drive forward our most innovative ideas.

1 Read the article. Complete the sentences using words from the box. Be careful! Two of the words don't fit anywhere.

acquired • expansion • merger • offer • results • takeover
• targeted • uneven

***Foodstyle plc* brings in CEO from US**

The Anglo-Spanish company *Foodstyle plc*, which was formed two years ago out of the _____¹ between the Spanish restaurant chain *Pimentón* and the British cafeteria and snack bar chain *Culture Café*, has responded to criticism of its



recent performance by its major shareholders. Following the disappointing _____² posted by the sandwich bar chain *The Bread Company*, which was recently _____³ from a British hotel group for €60 million, and the failed _____⁴ bid which had _____⁵ the well-known restaurant chain

Pasta Plus, *Foodstyle's* share price had fallen by 20%. The long-serving CEO Dr. Henri Kroll has agreed to make way for a fresh face – Matt Delaney, who has switched from his post as CEO of the major U.S. fast-food restaurant chain *Lucky's*. Mr. Delaney is expected to sharpen up the company's performance and to put it back on an _____⁶ course. News of the appointment was received positively by the market, with *Foodstyle's* share price rising by 6%.



2 Matt Delaney leaves the following voicemail message for Esther Suarez, the recently appointed in-house lawyer. Listen and decide if the statements below are true or false.



- 1 Matt finds mergers and acquisitions confusing. ☐
- 2 There is documentation on mergers but not on acquisitions. ☐
- 3 Esther Suarez has to explain to Matt where the hidden difficulties are. ☐

3 Esther mails the following document to Matt. The first and last steps are in the correct order. Put the remaining steps in the correct order.

Acquisitions – 10 steps

The following ten steps represent a standard procedure for carrying out mergers and acquisitions, starting with identifying a target company and finishing with the signing of a final contract with that company.

- 1 An initial screening process is carried out to identify a target company.
- ☐ (a) The board of management of the target company is approached. If the approach is not *rejected*, there will be a *mutual* exchange of information between the companies, but only after a *non-disclosure agreement* (NDA) has been signed by all persons involved at this stage.
- ☐ (b) Based on the *outcome* of the due diligence process, the kind of transaction that is under consideration can be structured and the process of negotiation started.
- ☐ (c) Assuming that *exploratory talks* have been successful, a *Letter of Intent* (LOI) is then drawn up and signed by the legal representatives of both companies. In our case, according to clause 15.1 of the company's *articles of association*, the CEO has this *power of representation*. In some jurisdictions, the LOI is not legally binding in all respects.
- ☐ (d) The process of due diligence can now be carried out. Anyone now entering the group of persons with insider information must be added to the list held by the *compliance* officer.
- ☐ (e) At this late stage we may still not be *in the public domain*. Once a contract of sale is ready for signing, an Extraordinary General Meeting (EGM) would normally be held and the shareholders' *approval obtained*. According to clause 16.2 of the company's articles of association a simple majority of the registered share capital would be necessary.
- ☐ (f) A potential target for takeover is selected. According to clause 14.2 of our company's articles of association, supervisory board approval must be obtained before the target company can be approached.
- ☐ (g) In the gastronomy sector the due diligence process has to particularly include an assessment of public law compliance (i.e. health and safety, public building law, etc. and food hygiene and labelling norms).
- ☐ (h) From this point on, the U.K. régime for listed companies, which is broadly equivalent to the U.S. Securities Exchange Act, requires that the company's insider list – designed to prevent insider dealing – should be regularly updated to include anyone in the company with knowledge of the planned acquisition. This list must then be kept with the company compliance officer. Failure to comply may open company directors up to criminal and civil charges.
- 10 We have now entered the public domain. The contract can be signed.

VOCABULARY ASSISTANT

Letter of intent (LOI) / Memorandum of understanding *a document containing the outline of a future agreement. The parties use it as a basis for more negotiation. In some countries it is a legally binding contract in itself.*

Non-disclosure agreement (NDA) *the parties negotiating agree not to talk publicly about the possible contract outcome* *result*

screen *check*

DID YOU KNOW?

In M & A, reference is often made to certain laws or authorities. The following are broadly equivalent.

Your jurisdiction?	U.S.	U.K.
_____	Corporation Law	Companies Act 2006
_____	Securities Exchange Act	Financial Services and Markets Act 2000
_____	Securities and Exchange Commission (SEC)	Financial Services Authority (FSA)
_____	Federal Trade Commission (FTC)	Competition Commission

4 Esther has been reviewing the articles of association of Foodstyle plc. Look at the clauses below and decide what information she should add to her advice to Matt on the previous page.

14.2 The management board may only carry out the following measures with the approval of the supervisory board:

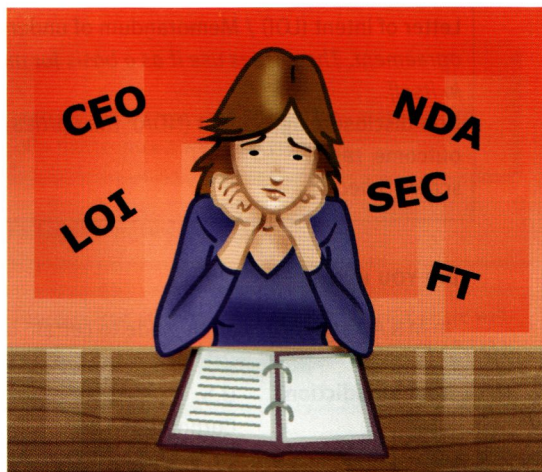
(i) Formation, dissolution, acquisition or sale of enterprises in which the obligation of the company exceeds EUR 2 million.

15.1 The company is statutorily represented by two members of the management board or by one member together with an authorised signatory.

16.2 Resolutions are passed with a simple majority of the registered share capital, unless a 75% majority or higher is necessary. For resolutions requiring a 75% majority, see 14.2 (i), (ii) and (iv) of these articles.

5 Discuss the following questions with a partner.

- 1 What kind of things would an NDA contain? How effective are these agreements in practice?
- 2 What use do LOIs have if they are not fully binding under the law?
- 3 What might the SEC be looking for if it inspected the insider knowledge list?
- 4 Bodies like the Federal Trade Commission are very important. But is there a role for some monopolies in our society?



MAKING COMPARISONS

M&A often involves comparing various national laws and institutions.

U.K. Financial
Services Authority

is (*broadly, basically*)

equivalent to
similar to
comparable to
like
the same as

the US Securities
and Exchange
Commission.

is (*a little, very, completely*)

unlike
different from

differs (*slightly, completely*)

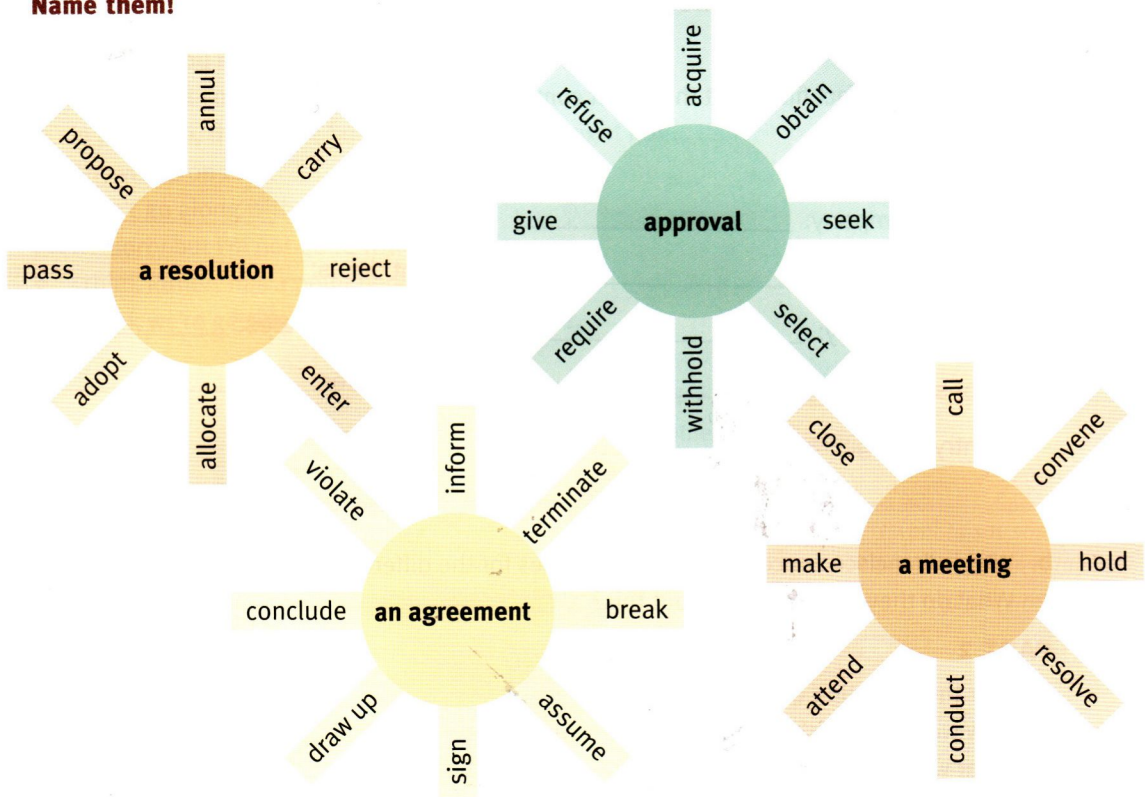
from

6 What are the aspects of your legal practice which most often require explanation to foreign clients and investors? Do they match any of the items on the list below? Use this list, or the aspects which are relevant to you. Use some of the phrases from the language box above.

- common law or civil law system
- national or federal legislation
- a unified legal profession or a split legal profession
- the requirement to register most business structures before they start to trade

Example: Many European states, for example France, have legal systems which **are broadly similar to** civil law in the U.S. However, the French system **differs in that** its law is codified, while U.S. law consists of a mixture of statute and judicial decisions.

- 7** Each circle contains a noun surrounded by eight verbs. Six of these verbs make verb + noun pairs; two verbs don't. Cross these two out! Two verbs in each circle mean the same thing. Name them!



- 8** Use the pairs above to complete the gaps in the sentences below.

- The board was confident of the shareholders' support on the new share issue so it was unpleasantly surprised when the EGM voted to _____ the _____.
- According to the company's articles of association, the board must _____ the _____ of the shareholders before starting takeover talks with a company.
- In view of the company's current difficulties, the board has decided to _____ a shareholders' _____ to discuss the question of raising fresh capital.
- The details of this takeover are so complex that it will take at least two weeks for the acquiring company's lawyers to _____ an _____.
- If a shareholder cannot _____ a _____ in person, he can send a proxy to vote on his behalf.
- At the general meeting the shareholders voted to _____ their _____ of the actions of the board until full details of the terms of the acquisition deal were made available.

AUDIO



11

- 9** Six months have passed and Foodstyle plc has identified a candidate for acquisition. Listen to the discussion between Matt Delaney (CEO), Esther Suarez (in-house lawyer), and Francisco Narvaez (Finance Director), and answer the questions below.

PART 1

- a Complete the fact file about the target company.

Fact file

Name of company: _____	Paid-up capital: _____
Founded in: _____	Current debts: _____
Type of company: _____	Current no. of cafés: _____
No. of shareholders: _____	Style of cafés: _____
Country of registration: _____	

- b Why is Francisco concerned about the leases for the different cafés?
c What do they decide to do about this?

PART 2

Answer the following questions.

- a How would Francisco like to pay the current owners of No Frills, the target company?
b What would the legal status of No Frills be after the takeover?
c What agreement must be reached with the existing shareholders of Foodstyle before the company can issue new shares?
d Why do both Francisco and Esther see a bank loan as an unattractive option?
e Does Foodstyle have to consult its shareholders if it pays for No Frills out of its capital reserve?
f Why is the Bread Company mentioned in this discussion?

VOCABULARY ASSISTANT

capital reserves *money owned by a company. In some jurisdictions, the company must not spend it without approval of shareholders*
charge *here, security for a loan, for example, a mortgage*
debts *money owed*
deplete *decrease, make smaller*
drain (on finances) *a thing which uses a lot of money or wastes money*
issue shares *create new shares and sell them to shareholders*
operating costs *money spent on running a business*
sound *(here) in good financial health*

Discussion

If Foodstyle decides to finance the acquisition by issuing new shares, it will need the support of its shareholders.

- Why might existing shareholders be unhappy about waiving their right to buy newly issued shares?
- What arguments might Esther use to persuade them to support this plan?
- What do you think Foodstyle should do to finance the acquisition? Are there any options they haven't considered yet?

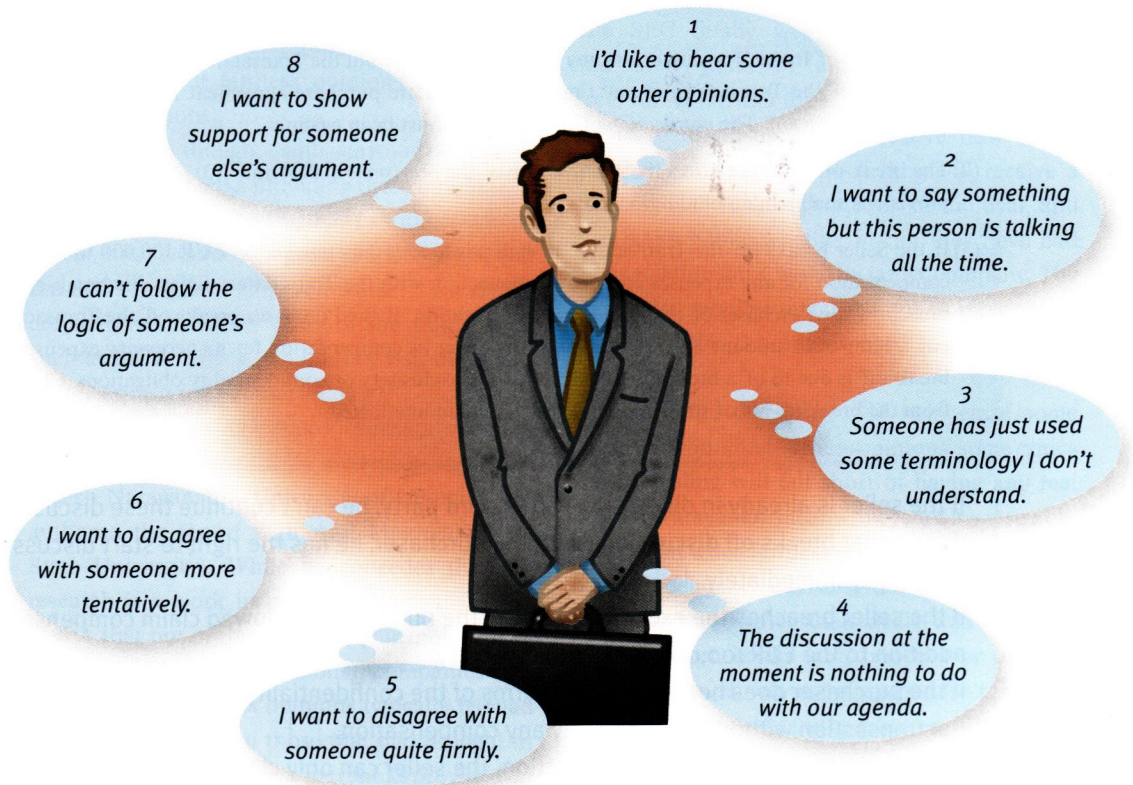
AUDIO



12

10 During the meeting, Matt, Francisco, and Esther use certain phrases to guide the flow of discussion. Stefan, the trainee lawyer, would like to manage meetings well but can't always find the right thing to say. Match each thought bubble with the correct expression.

- a What do you mean by *leverage financing*?
- b Could I just come in there?
- c In principle, that's true but I'm sure you're right but ...
- d Any views on that?
- e I can't go along with that, I'm afraid.
- f I'm sorry but I'm not quite with you there.
- g I think Robert has a point here.
- h I think we're getting away from the point here.



EXPRESSIONS USED IN TAKEOVERS

A lot of colourful expressions are used in the context of takeovers. Here are a few common ones.

white knight	A friendly bidder who is brought in by the target company to outbid a hostile bidder.
black knight	This is a hostile bidder.
poison pill	A strategy adopted by the target company to make itself unattractive to the bidding company. It might involve a shareholders' rights plan, changes to voting and non-voting stock, or an acquisition which burdens the target company with higher levels of debt.
killer bees	These are the experts (lawyers, accountants, etc.) employed by a target company to fend off a hostile takeover bid.
whitemail	This is the opposite of blackmail. Here the target company sells stock to a friendly third party at a discount price.
bear hug	The bidder offers a share price too high to refuse.
crown jewels	All the valuable assets of the target company.

11 Look at these clauses from a Letter of Intent and say whether the statements below are true or false.

4 Exclusivity

- (1) Beginning with the signing of this Letter of Intent until six months after the end of the due diligence period, the Seller shall not hold any discussions, either directly or indirectly, with any third party about the *transfer* of the Shares or of the Company's business operations. The Seller shall end any current discussions.
- (2) The exclusivity ends *in any event* upon the signature of the share purchase agreement or if one of the parties breaks off from the Transaction pursuant to clause 7(1).
- (3) *In the event* the Seller breaches the exclusivity, it shall pay a *contractual penalty* in the amount of EUR 100,000 to the Purchaser. Further *claims* made by the Purchaser shall remain *unaffected*. The contractual penalty shall not be payable, if binding contracts are *concluded* between the parties.

7 Binding Effect

- (1) This Letter of Intent does not create any obligation to carry out the Transaction. Both parties shall be entitled to break off the Transaction at any time before the share purchase agreement is signed, without having to provide any reason. The *notification* of breaking-off must be in writing.
- (2) The break-off shall not affect the *applicability* of the *provisions* in 4(3) and 7(3) of this Letter of Intent; these provisions shall remain binding.
- (3) If the Seller breaks off the Transaction, it shall pay a *lump-sum amount* of EUR 100,000 to the Purchaser as compensation for any expenses *incurred* in connection with the Transaction, unless the break-off is due to a breach by the Purchaser of the *confidentiality* obligation. If the Purchaser breaks off the Transaction, it shall pay a lump-sum amount of EUR 50,000 to the Seller as compensation for its necessary expenses, unless the break-off is due to a breach by the Seller of the exclusivity or confidentiality obligations. Claims resulting from the breaking-off of the Transaction shall remain unaffected.

- 1 If the seller is already in discussion with a third party, he can't continue these discussions. ☐
- 2 If the seller breaks off discussions with the purchaser, he has the right to start discussions with a third party immediately. ☐
- 3 If the seller breaches the exclusivity clause, the purchaser is allowed claim compensation in addition to the EUR 100,000 contractual penalty. ☐
- 4 If the purchaser does not observe the terms of the confidentiality clause, the seller can break off the transaction without having to pay any compensation. ☐
- 5 If the purchaser breaks off the transaction, the seller can only claim a maximum compensation payment of EUR 50,000. ☐

VOCABULARY ASSISTANT

applicability here, whether or not the clauses can be invoked /used in this situation
claims legal demands for money *conclude* end *confidentiality* secrecy; privacy (of information)
contractual penalty payment of money which a party to a contract must pay if it breaks a term of the contract
in any event in all possible cases, whatever the circumstances *in the event* (that) if
incur (an expense) here, spend money or create a debt
lump sum amount here, money (the opposite of a payment in instalments)
notification telling someone formally (usually in writing) about something *provisions* here, terms of a contract
transfer here, selling or giving existing shares in a company to another person *unaffected* unchanged

12 Foodstyle plc is planning to acquire a U.K. company. Have a meeting about a Letter of Intent. Use some of the expressions for meetings in exercise 10.

PARTNER FILES

Partner A File 08, p. 73
 Partner B File 08, p. 78

OUTPUT

Fairness Opinions are assessments provided by banks which show whether the valuation of a company is fair. Read the article below.

Regarding Fairness Opinions Pros Ask, What's Fair?

New research and a recent ruling from the SEC take aim at the conflicts inherent in fairness opinions

by Ken MacFadyen

A recent report has reignited the debate around fairness opinions with claims that conflicts of interest do in fact exist. The examination into what is fair is by no means new. But since 1985, when the Delaware Supreme Court ruled against Trans-Union Corp., decreeing that the company's board was negligent in its sale, most public companies have sought out fairness opinions as a shield against litigation.

Questions, though, still surround what is motivating the banks providing these opinions. If they are indeed being brought in to "rubber stamp" a deal, then would it be good practice to impede the deal's progress? Or, even worse, if the banks are involved in other parts of the transaction, such as the financing, would they risk those fees by declaring a transaction "unfair?"

According to a new report, fairness opinions are impacted by these diverging agendas. Rajesh Narayanan, (University of Georgia), co-authored the report with Anil Makhija, (Ohio State University). While he concedes that the research is a work in progress, Narayanan tells *M&A* that out of the deals the pair looked at (a sampling of 1,927 transactions), companies that didn't employ fairness opinions typically fetched higher premiums than those that had brought in outside help. On average, when banks provided an opinion, the target companies reached a premium that was 48 % above their share price going into the deal, versus a 54 % premium when no fairness

opinion was provided. "The banks are brought in to find a price at which they can get the deal done," Narayanan says. "But they don't necessarily tell you if a company can find a better price."

Any solutions?

The SEC finally weighed in on the debate, and after years of analysis, issued a concrete ruling (NASD Rule 2290) that broadly calls for more disclosure. The directive now forces member firms to disclose if they will receive a "success fee" at the completion of the deal, and also make public whether or not they have had other relationships with the target company. The ruling also requires member firms to incorporate in writing the procedures used to develop the opinion.

While more disclosure will help erase some doubts surrounding fairness opinions, some critics feel the ruling will fall short of having any real impact. Narayanan, meanwhile, cites his research, noting that when fairness opinions were provided by "independent" advisers, the average merger premium was higher than deals that included opinions from banks with previous or ongoing relationships. However, Narayanan isn't ready to say independence should be required. "There is the chance that a current adviser, if they're intimately involved with the company, knows more about its true value."

Article from *Mergers & Acquisitions*, (abridged)

OVER TO YOU

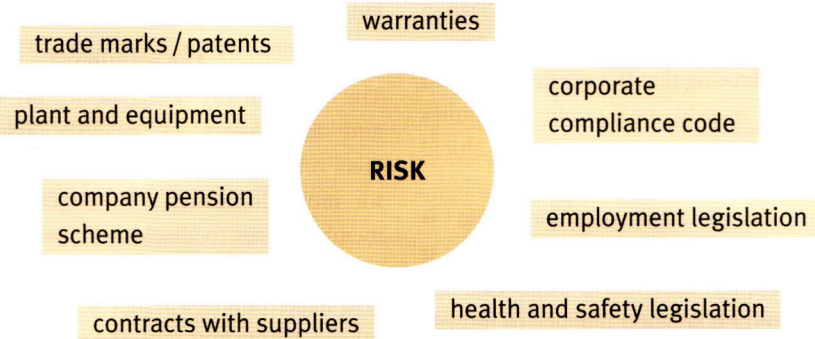
- Why do some people feel that banks don't always do a good job?
- What has the Securities and Exchange Commission (SEC) decided to do to improve things?
- What measures exist in your country for ensuring that a company is valued objectively?
- What remedies exist if a party feels that a valuation is too low or too high?

6

Risk management and insolvency

STARTER

How can the following be a source of potential risk to a company?



- 1** The business magazine *Fact File* regularly conducts interviews with entrepreneurs from different continents who have successfully set up businesses in Europe. Read the extract from an interview with Piet Forster from South Africa and put the questions in the correct places.

- a And you were happy to rely on your client's assurances?
- b So had you already founded Form and Function, your office and hotel furniture business, in Cape Town?
- c But not everything went to plan, did it?
- d And the headquarters of the company have remained in Cape Town?
- e And what made your products different?
- f What brought you to London?



Fact File

PF Yes, we had.

Fact File

PF Well, three things really. Firstly, they were ergonomically designed. Secondly, our furniture was based around a building block principle. All units could be taken apart and reassembled in different shapes to give customers maximum flexibility in their use of resources. Finally, the styling was light and uncomplicated.

Fact File

PF Pure chance really. A lot of our customers in South Africa were subsidiaries and branch offices of European companies and they assured us that our products and design concept would definitely fill a gap in the market in Europe.

Fact File

PF Not entirely, no. We hired an agency to do some market research. The findings looked promising, so we decided to open a branch office in London – about five years ago.

Fact File

PF Actually, no. Business began to look so promising in Europe that we registered the company in the U.K. as a limited and made our Cape Town office a branch. We also set up a European production facility outside Warsaw and acquired a timber processing company in Finland.

Fact File

PF Not at all. We had a very difficult period a few years back. We could almost have gone under. You see, what happened ...

- 2 Piet says ‘We could almost have gone under.’ Go under is a phrasal verb. A lot of phrasal verbs are used in the context of insolvency. Have a look at the following newspaper report and match the phrasal verbs with their dictionary definitions below.**

Skylark wiped out

by our financial affairs correspondent Hazel Watts

Skylark plc, the low-cost airline founded in the late 1990s, announced yesterday that it had gone into liquidation. This is the second European budget airline to **go under** in as many months. The announcement followed weeks of speculation that the airline's creditors were unwilling to **bail** it **out** with extra cash. "The company will now be **wound up** as a matter of urgency," said Jonathan Mills, Skylark's CEO. This will be little comfort to Skylark's unsecured creditors, some of whom will have to **write off** considerable sums.

Skylark had been the big success story of the past decade. It quickly rose to become the leading player in the budget airline market with a spectacular

series of hostile takeovers. Criticism of Skylark's sharp business practices was growing, however, and the decision of the OFT to impose a £50 m fine for price fixing **set** the company **back** financially towards the end of last year. In order to make this payment, Skylark was forced to **draw on** its capital reserves and to borrow as well. When the markets suffered a downturn earlier this year, the airline found itself overstretched. The crunch came when it tried to raise the £20 m it needed to **ward off** insolvency. So bad was the scale of the problem at this stage, according to inside sources, that the banks refused to **put up** what, by the standards of the airline industry, is a relatively modest sum.

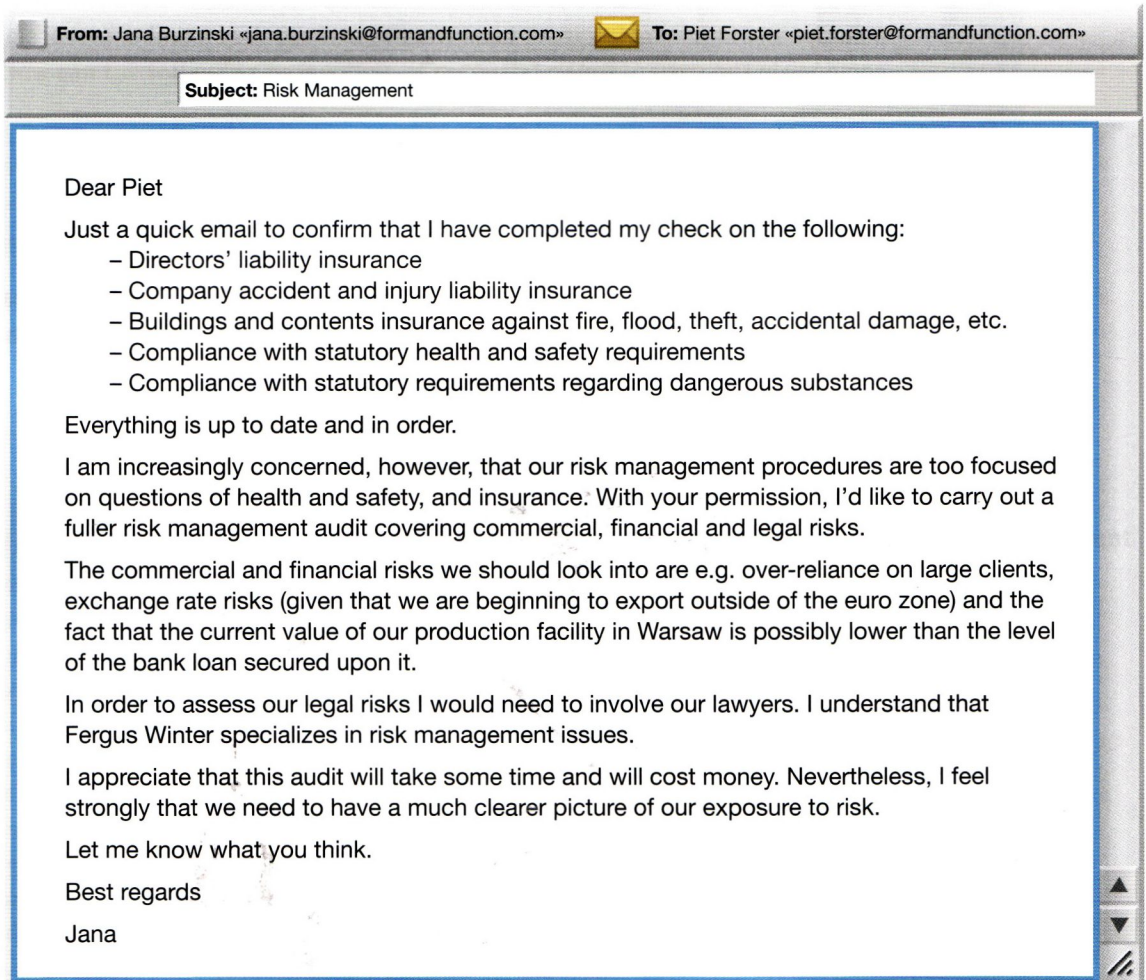
Example ward off to prevent something from causing harm to someone

- | | |
|--|--|
| 1 _____ to rescue | 5 _____ to provide money for an enterprise |
| 2 _____ to obtain money from an existing source | 6 _____ to cancel the record of a bad debt |
| 3 _____ to delay or impede the progress of something | 7 _____ to dissolve a company |
| 4 _____ to become bankrupt | 8 _____ to destroy, eliminate |

3 Work with a partner to practise phrasal verbs.**PARTNER FILES**

Partner A File 09, p. 73
 Partner B File 09, p. 78

4 The story of Form and Function's difficult period begins a few years ago with an email from the Finance Director, Jana Burzinski, about risk assessment within the company. Read the email and answer the questions below.



- 1 Why is Jana unhappy about the company's current risk management procedures?

- 2 In what ways could the three commercial or financial risks mentioned by Jana cause problems for the company in future?

- 3 What would be Fergus Winter's role?



5 Later that day Jana finds a message on her voicemail. Listen and decide which of the statements is correct.

- 1 When Piet says, 'I see where you're coming from', he means
 - a I understand your position on this issue.
 - b I agree with you on this issue.
 - c It is clear to me that you want to discuss this issue.
- 2
 - a Piet has no problem with Jana's suggestion.
 - b Piet does not want to carry out this audit.
 - c Piet has some reservations about this audit.
- 3
 - a Piet tells Jana to go ahead.
 - b Piet wants more information before he can decide.
 - c Piet says that he doesn't want to go into detail at this stage.



6 In the course of carrying out his share of the risk assessment task, Fergus Winter finds that he is particularly concerned by the following contract clauses:

2. Commencement, Duration of Lease, Transfer

- (1) The lease shall commence on the day of transfer in accordance with section 2(2).
- (2) The transfer shall take place on 1st November 2...
- (5) The lease shall end five years after the day on which it commenced.
- (6) The lease shall be automatically extended by a further five years unless the Lessee formally waives its right to this extension. Notification of its intention to waive this right must be made to the Lessor in writing at least twelve months prior to the end of the lease pursuant to section 2(5).

5. Rent price adjustment

- (3) The rent payable shall be adjusted automatically if the Retail Prices Index for the United Kingdom (basis in year 1 = 100), as published by the Office for National Statistics, rises or falls by ten points compared with the value at the start of the lease or at the time of the previous adjustment of the rent payable.

3. Compensation

For the loss of his/her employment the Employer shall pay to the Employee a compensation of three monthly salaries per year of employment. The compensation shall be paid in addition to the salary owed by the Employer until the Termination Date pursuant to sec. 2 para. (1) of this agreement. The claim to the payment of the compensation shall be inheritable.

6. Sale price adjustment

- (1) The base purchase price increases by the amount by which, as of December 31st of the first full calendar year following signature of this agreement, the value of the working capital – as defined in section 4.1 above – is greater than the amount of EUR 750,000. Analogously, the base purchase price is reduced by the amount by which the value of the working capital, as of December 31st of the first full calendar year following this agreement, is lower than the amount of EUR 750,000.

VOCABULARY ASSISTANT

adjust *to change something slightly*
 analogously *in the same way (as the thing discussed earlier)*
 consumer price index (CPI) *a list (published by government) of the prices of some ordinary goods and services which shows how much these prices change each month*
 inheritable (adj) *able to be given to another living person, if the first owner dies*

lessee *the person who pays to use property (usually land or a building) owned by someone else*
 lessor *the person who receives payment for the use of property (usually land or a building)*
 prior to *before*
 working capital *the money needed to run a business from day to day (e.g. to pay employees)*

Discuss the following points.

- 1 What kind of legal agreements do the above clauses come from? Note down your answers.
- 2 In what way might each of these clauses represent a potential risk to Form and Function?

AUDIO



7 Now listen to part of the meeting between Piet Forster, Jana Burzinski, and Fergus Winter. Check you labeled the legal agreements in exercise 6 correctly.

VOCABULARY ASSISTANT

deductions *amounts of money subtracted from wages, for example, tax*
 disadvantageous (*adj*) *negative, bad (here, for Form and Function)*
 gross (*adj*) *here, without deductions having been made; gross pay is your pay before tax is taken away*
 lay off (workers) *dismiss, ending someone's employment (usually because of a lack of work)*
 leasehold agreement *rental contract for land or buildings*
 premises (*legal term*) *building in which a business or trade is carried on*
 price adjustment *change to price for legally agreed reasons*
 redundancy *ending someone's employment because there is no more work for them*

Listen again and complete the table.

Clause / Legal Document	Risk	Action necessary
2 / _____ _____		
5 / _____ _____		
3 / _____ _____		
6 / _____ _____		

EMPHASIZING A POINT

We can add emphasis to what we say in the following ways:

- 1 by stressing a particular word e.g. *I **will** try to keep it straightforward.*
- 2 by adding the auxiliary *do* e.g. *I **did** find ...*
- 3 by restructuring the statement, *Clause 5 is the problem* into ***It's** clause 5 **that** is the problem.*
- 4 by changing the statement, *I would recommend that you allocate ...* into ***What** I would recommend **is** that you allocate ...*
- 5 by moving certain negative or near negative adverbs or adverbial phrases e.g. ***never, under no circumstances, at no time, on no account, seldom*** to the beginning of the sentence.

Therefore, *You should not, under any circumstances, just allow the lease to be extended* becomes ***Under no circumstances should you** just allow the lease to be extended.*

When we use this structure the subject and verb invert i.e. ***you should*** becomes ***should you.***

NB: When the main verb is in the present simple or past simple the following happens:

My client never claimed he was a partner in the company becomes *Never **did** my client **claim** he was a ...*

8 Fergus sometimes tries to add emphasis to what he says. Look at the explanations in the language box on page 62. Then rebuild the sentences below to make them more emphatic.

- 1 My client was not at any time made aware of the true financial circumstances of your client's company when he signed the contract. (At no time ...)
- 2 One seldom comes across an employment contract with as many loopholes as this. (Seldom ...)
- 3 The whole question of misrepresentation interests me in this case. (It ...)
- 4 The members of this union find it particularly unfair that the company is considering cuts after such a successful year. (What ...)
- 5 I find it suspicious that the company in this case was registered in the Cayman Islands. (What ...)
- 6 The rest of the clause is fine. However, the last sentence is open to interpretation. (It ...)

9 About 18 months later the following report appears in the financial press.

Fuller's Construction plc digs itself into a hole

by our financial affairs correspondent Hazel Watts

Mr. Gareth Jenkins, the chairman of Fuller's Construction plc, announced yesterday that the company's board of directors had petitioned Sussex County Court for a winding up order. A liquidator has already been appointed to wind up what is one of the UK's market leaders in the construction of hotels and residential homes for the elderly. "In view of the collapse in orders we have experienced and the insolvency of two of our major clients, we were advised by our lawyers that no other course of action was open to us. All attempts to involve our creditors in a debt restructuring

plan, which would have reduced the monthly cost of the company's loan repayments, had failed," explained Mr. Jenkins.

Not only the financial markets were caught unawares by the news. Brian Harrington, the chairman of British Brick Ltd, expressed concern at the impact of this insolvency on his company. Other key suppliers to Fuller's Construction, who may be affected, are understood to be Thermaglass plc, manufacturers of double glazing, and Form and Function Ltd, the London-based furniture designers. Investment analysts ...

- 1 What two reasons does the chairman give for the company's insolvency?

- 2 What role did the company's creditors play in the insolvency?

- 3 What does this insolvency have to do with Form and Function?

AUDIO



15

10 Now listen to a meeting in which Piet Forster, Jana Burzinski, and Fergus Winter discuss the implications of the insolvency for Form and Function. Are the following statements true or false?

- 1 An administration order and a winding-up order are basically the same. ☐
- 2 The person appointed by the court is going to try to sell Fuller Construction's assets. ☐
- 3 Jana only knew that Fuller's construction was experiencing payment difficulties at the beginning of the month. ☐
- 4 Form and Function would be regarded as an unsecured creditor. ☐
- 5 Fergus is confident that Form and Function can get all its furniture back. ☐
- 6 Jana doesn't think this will be possible. ☐
- 7 It's possible that Form and Function will suffer a loss of 1.5 million. ☐
- 8 Jana thinks that some of Form and Function's non-core activities may not survive this crisis. ☐

VOCABULARY ASSISTANT

administration order (in U.K.) a court decision which formally starts an administration of an insolvent company (see Did you know? below)

appoint put into place, give a duty to

charge a form of security for a loan. A bank which takes a charge over a company's machinery can take the machinery if the company does not pay its debt to the bank.

creditor someone to whom I owe money

debtor someone who owes money to me

default on payment to fail to repay part of a loan at a time when it has to be repaid

knock-down price very cheap

off-load get rid of something that you do not need

petition a court ask a court formally to do something / take action

preferential creditors people who have a legal right to have money which is owed to them repaid before any other debts are repaid (see exercise 12 on page 65)

realize assets (legal) sell things that you own in order to get cash

service debts to pay interest on debts that you owe

11 A lawyer discusses an insolvency case with a client. Work with a partner.

PARTNER FILES

Partner A File 10, p. 74
Partner B File 10, p. 79

DID YOU KNOW?

In the U.K., as in many other jurisdictions, it is illegal for a company to continue trading once it has become **insolvent**. In both jurisdictions, however, there is now a greater emphasis on **rescuing** than on **liquidating** the company or **winding it up**. Accordingly, there is a distinction drawn between a company being in **administration** and in **liquidation**. These two procedures are carried out by an **administrator** or a **liquidator** accordingly. The administrator has the task of keeping the company going; the liquidator has the job of winding the company up and **realizing** its **assets** in order to satisfy its **creditors** as far as possible. This work is often done by **Insolvency Practitioners**, who are usually specially qualified accountants. If the liquidator is appointed directly by the court, he / she is called the **Official Receiver (OR)**.

In the U.S., companies file with the **bankruptcy court**. The two procedures that are broadly analogous to administration and liquidation are called **Chapter 11** (administration) and **Chapter 7** (liquidation) of the U.S. **Bankruptcy Code**. For example, a company 'goes Chapter 11' or it 'goes Chapter 7'.

12 Read this excerpt from the booklet *A Guide for Creditors*, published by the Insolvency Service at The Department of Trade and Industry in the U.K. and fill in the gaps.

asset • ~~creditor~~ • distribute • preferential • repayment • secured • unsecured

Creditors – Order of priority

The rights of a creditor who holds a fixed charge, or security, on assets (such as a mortgage) to sell the asset to recover their debt are not affected by insolvency. The chargeholder (_____ ¹ creditor) is the first to get paid when the _____ ² is sold. Any surplus will be handed over to the trustee / liquidator.

When all the assets available to unsecured creditors have been realized, the trustee / liquidator will _____ ³ the proceeds in a strict order of priority as follows:

1. The fees and charges of the liquidation / bankruptcy.
2. Debts due to _____ ⁴ creditors. These debts are set out in the Insolvency Act 1986 and include wages owed in the four months before the date of the insolvency order and contributions to occupational pension schemes.
3. All unsecured creditors.
4. Any interest payable on debts.
5. In company cases, the shareholders.

Therefore, _____ ⁵ creditors will usually only be paid when the fees and charges of the insolvency procedures and the claims of secured and preferential creditors have been paid. If full _____ ⁶ of claims is not possible, payments are made to creditors by way of a dividend in proportion to the value of each claim.

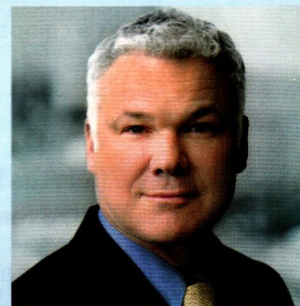
(abridged)

13 Read the end of Piet Forster's interview with Fact File. Complete the interview using words from the box.

acquisition • debts • insolvent • lease • loss • severance

Fact File So how close were you to becoming _____ ¹ at that time?

PF Well, not nearly as close as we would have been. You see, we implemented most of the risk management measures suggested at the time and I'm glad we did. If we hadn't renegotiated the _____ ² on our business premises and our staff _____ ³ arrangements, and if we hadn't put aside capital to cover for the additional sums that arose due to our _____ ⁴ of Finnwood, our financial situation would have been much tighter. It wouldn't have been as easy to finance the necessary redundancies and to restructure our _____ ⁵. As it was, we were able to absorb the _____ ⁶ of 1.5 million euros and we haven't looked back since.



HYPOTHESIZING ABOUT PAST ACTIONS

In his interview with *Fact File*, Piet Forster looks back at the past and considers scenarios that were a possibility at the time, but that didn't happen. We often do this when we talk about mistakes we made or mistakes we avoided making. The structure works as follows:

*If we **hadn't implemented** those risk management measures, we **would have gone** under.*

The logic of the statement is that they **did** implement the risk management measures and as a result they **didn't** go under.

14 Rewrite the following statements.

Examples Our client withheld vital evidence so we lost the case.

If our client hadn't withheld vital evidence, we wouldn't have lost the case.

The core business was healthy, so the Insolvency Practitioner didn't wind the company up.

If the core business hadn't been healthy, the Insolvency Practitioner would have wound the company up.

- 1 The new machine in the company's warehouse was paid for, so it was part of the insolvency estate.

- 2 The bank secured its loan against assets of the company, so it got its money back.

- 3 The creditors had no confidence in the company's ability to pay, so they petitioned the court to make a winding-up order.

- 4 The directors took the correct action quickly when the company became insolvent, so they weren't guilty of an offence.

- 5 The company got into a lot of speculative ventures, so its core business was exposed to risk.

- 6 It was a company with limited liability, so the members' personal assets were not at risk.

15 Choose from the topics in the list and tell your partner what happened. Try to finish with a sentence like the ones you practised above.

- a case that went badly because the judge made a strange ruling
- a difficult client or difficult board of management decision
- a failure to negotiate an out-of-court settlement
- a course in your studies which, contrary to your expectations, turned out to be useful
- something important that you noticed in a contract but nearly missed
- a case in which your client didn't tell you something important

OUTPUT

Look at the definition of Individual Voluntary Arrangements (IVAs) and then read the article from *The Times* newspaper below.

Individual voluntary arrangements (IVA)

An individual voluntary arrangement is an alternative to bankruptcy. It is a formal agreement with your creditors to pay part or all of your debts.

Lenders write off a record £1.4bn of IVA debt

by Graham Searjeant, Financial Editor

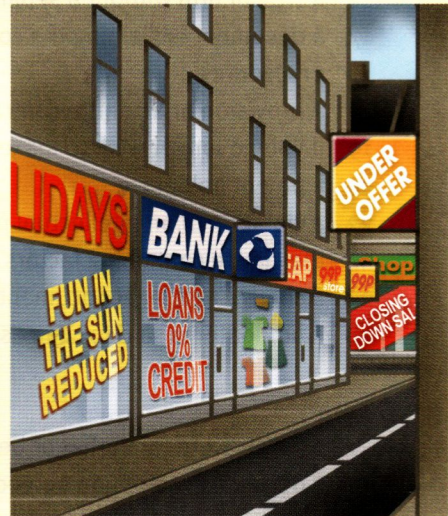
Lenders have written off (*cancelled*) a record £1.4 billion in debts this year as more consumers than ever lose their debts but keep their homes by entering into Individual Voluntary Arrangements (IVAs) with their creditors. An analysis by KPMG, the accountancy firm, has found that about 45,000 people have entered IVAs during this year — double the figure for the previous year. People applying for IVAs, now overwhelmingly consumers, had average debts of £52,000, but on average they have offered to repay only 39 per cent to their creditors.

Banks and other credit institutions have expressed increasing alarm at the unregulated spread of IVAs among consumers but have received little sympathy from the government or debt counselling bodies, which blame them for lax (*too soft*) lending standards.

IVAs were introduced by the Thatcher Government as a measure to encourage more people to take the risk of founding new businesses. If the business failed, an IVA would be less brutal and carry less stigma because it has fewer restrictions than bankruptcy. In the early years, IVAs helped about 2,000 people a year to cope with business failure. Recently, however, the use of IVAs has radically changed.

Steve Treharne, KPMG's head of personal insolvency, said: "Typically, the sort of debts we have seen being dealt with by IVAs this year are personal loans, credit card balances and other forms of buy-now-pay-later unsecured loans. Most of the money is borrowed to meet current expenditure, including lifestyle elements such as holidays, rather than to acquire assets or to fund a business."

(abridged)



OVER TO YOU

- Do IVAs, in your view, provide a necessary safety net to individuals who have got into debt or do they simply encourage irresponsible personal spending?
- Does your country have anything comparable to IVAs?
- Is it necessary to impose tighter credit restrictions on banks and credit card companies?

Test yourself!

See how much legal vocabulary you have learned.

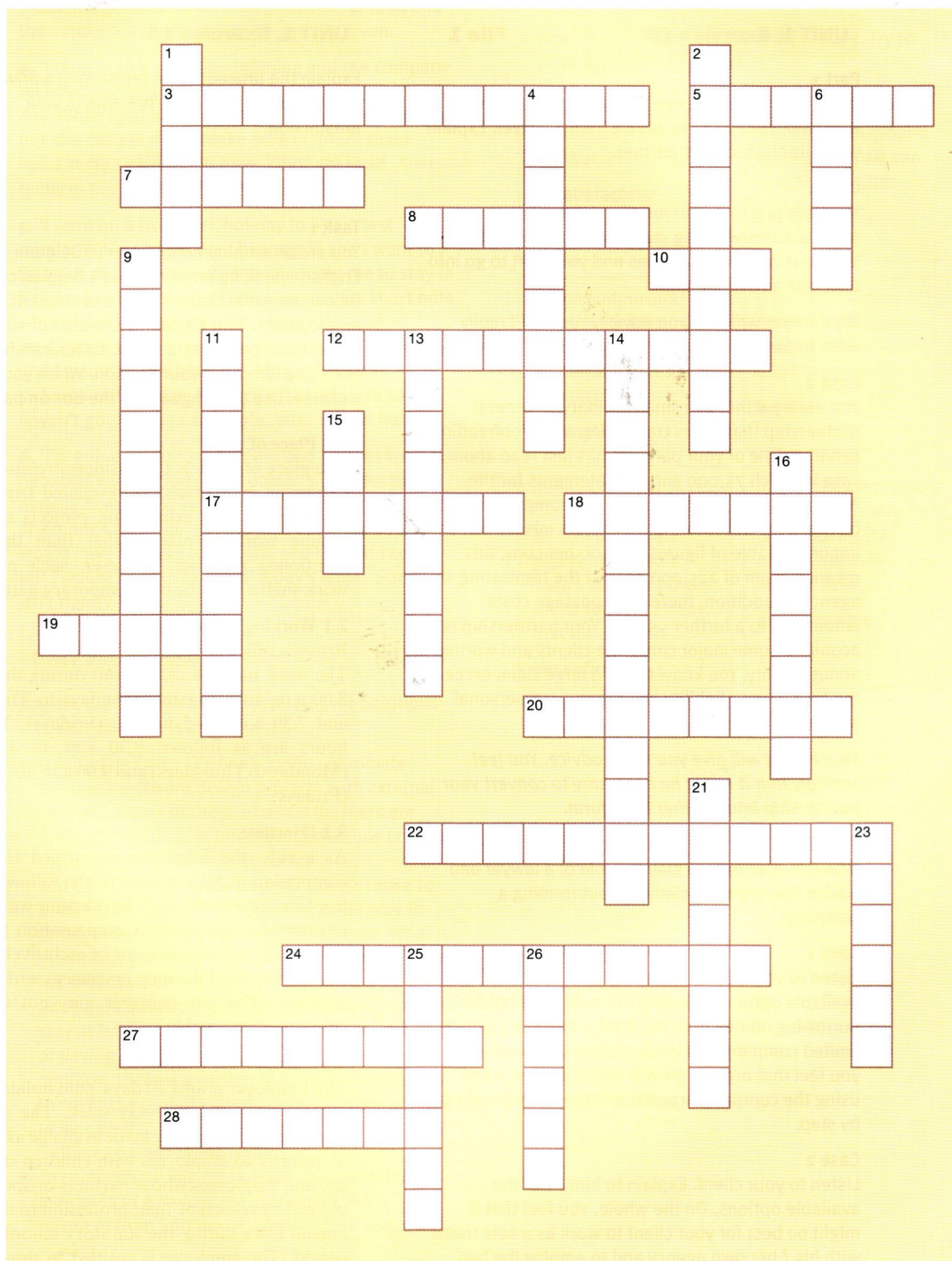
Use the clues to complete the crossword puzzle.

Across

- 3 the pay and benefits from your employer in return for the work you do
- 5 shareholders' capital
- 7 If you act in accordance with a contract, then you ... with it.
- 8 You ... a provision in a contract if you wish to base your case on it.
- 10 to take legal action against another party
- 12 a type of firm without a separate legal identity to which two or more people belong
- 17 a document explaining the constitution of a company and its internal decision-making procedures
- 18 A provision or an entire contract that places an obligation on a party can be described as ...
- 19 If you no longer wish to make use of a right, you can ... it.
- 20 a patent holder
- 22 a violation of an intellectual property right
- 24 the clause containing factors that prevent performance in a contract and that are beyond control
- 27 a change to a legal document
- 28 A liquidator is said to ... an asset if he or she sells it in order to be able to pay creditors.

Down

- 1 another word for earlier or before
- 2 a decision or intention agreed by shareholders at a formal meeting
- 4 A company that is no longer able to meet its financial obligations is ...
- 6 to create new shares and offer them for sale
- 9 in the case of insolvency this is a type of creditor, e.g. an employee
- 11 If a sum of money is paid in regular smaller amounts, each of these amounts is an ...
- 13 payments made to authors or composers based on the sales of their work
- 14 detailed information about the features and properties of a product
- 15 Describing a contract, this means *invalid from the beginning* or *not effective*.
- 16 having the right to something
- 21 any form of collateral for a loan
- 23 A company which others are aiming to take over is a ... company.
- 25 another word for agree or agreement
- 26 things that belong to a company or a person



Partner A

Partner files

UNIT 1, Exercise 10

File 1

Part 1

In Part 1 you play the role of two separate clients who would like to have advice from a lawyer. Explain your situation to your partner.

Case 1

You have just lost your job at a company that manufactures washing machines. You understand a lot about washing machines and you want to go into business as a repair man.

Your lawyer will give you advice. You don't really want to form a limited company. Give some reasons.

Case 2

You are a partner in a small ordinary or general partnership that offers translation and proofreading services. One of your partners has just read about a case in which 75,000 annual statements for the Annual General Meeting of a major company had to be reprinted because the translators missed out an important table of figures. At 3.00 per copy, this meant a claim of 225,000 against the translating agency. In addition, there were postage costs amounting to a further 55,000. Your partnership is acquiring some major corporate clients and worried about liability. You know that if a large claim exceeds the limit of your liability insurance, your personal assets will be at risk.

Your lawyer will give you some advice. You feel strongly that it might be necessary to convert your partnership into another legal form.

Part 2

Now it is your turn to play the role of a lawyer and advise two separate clients about forming a company.

Case 1

Listen to your client. Explain to him / her the available options: bringing in a new shareholder / borrowing money from the bank / forming a public limited company and issuing shares. Basically, you feel that organic growth might be best – just using the company's capital reserves to expand step by step.

Case 2

Listen to your client. Explain to him / her the available options. On the whole, you feel that it might be best for your client to work as a sole trader with his / her own agency and to employ the two younger colleagues – maybe with the chance of a partnership if things go well.

UNIT 1, Exercise 14

File 2

Explain the procedure for registering a private limited company or a partnership in your jurisdiction.

UNIT 2, Exercise 4

File 3

Task 1

You are an employment lawyer in Belgium advising English-speaking employees at a Belgian company. Below are some clauses from a contract of employment. Your partner wishes to consult you about three problems at work. Listen carefully and then give him / her your opinion. When you refer to a clause, use the language in the box on page 19.

1 Place of work

The place of work is the business premises of the Company in Brussels. Work-related trips (client visits, trade fairs, exhibitions, projects etc.) may require work in places other than the aforementioned premises. However, such places of work shall always be of a temporary nature.

2.1 Working hours and locationBrussels office

The work must be carried out during the period 8.00 a.m. to 6:00 p.m. (Mondays to Thursdays) and 7.30 a.m. to 5.30 p.m. (Fridays). The core hours are as follows: 9.30 a.m. to 4.00 p.m. (Monday to Thursdays) and 9.00 a.m. to 3.30 p.m. (Fridays).

3.2 Overtime

As a rule, the Employee is entitled to receive compensation for overtime in the following way: free time for one-third of the overtime worked and payment for two-thirds. Compensation for overtime exclusively by payment or exclusively by free time is possible following agreement with the line manager. The line manager may not withhold consent unreasonably.

4.1 Annual leave entitlement

The Employer grants 30 days' paid holiday a year on the basis of a five-day week. The statutory school holidays shall be made available as a matter of priority to employees with children of school age and employees whose partners or spouses are obliged by reason of their profession to take their annual leave during the statutory school holiday period. The employee is entitled to three weeks' continuous holiday (15 working days).

Task 2

Swap roles with your partner. You are now an employee and your partner is a lawyer. You wish to consult your partner about the following three problems at work. Read each problem out loud and then make a note of the advice you are given.

4. 'I rang in sick on Friday morning and the company received my doctor's note on the following Wednesday. When I got back to work, my boss was very nice but she did ask me to make sure in future that I hand in my sick note on time. I thought I had. Am I really in the wrong here?'

5. 'I went on a two-week holiday to Spain last month. While I was there I became ill and I went to a Spanish doctor. He treated me and told me to stay in bed for two or three days. He also wrote a short note – in English – for my doctor, telling him what medication he had prescribed. I was ill for three days and I would like to have this time counted as sickness not holiday. My boss disagrees. He says I haven't got a proper sick note. Who is right here?'

6. 'I'm going on holiday to India and have to have a hepatitis vaccination at the doctor's. The doctor usually does these vaccinations on Thursday afternoons between 3 and 4 p.m. I told my boss I would have to leave work early and he said I could but I would have to take half a day's leave. Surely, he isn't right!'

UNIT 2, Exercise 11**File 4**

You are the solicitor acting for Intelligent Solutions Ltd. Your position is as follows:

- It would be Cathy O'Brien's job to coordinate Softline's software design projects with external partners. Some of these external partners are direct competitors of Intelligent Solutions Ltd. So there is a clear risk to your client.
- You don't want to block Cathy O'Brien's move to Softline, but you will if there is no other way to protect your client's commercial interests. What is more, Cathy O'Brien's contract allows you to block her move to Softline for two years.
- Intelligent Solutions Ltd has told Cathy O'Brien to stay at home during her period of notice. The cost of paying her to do nothing is EUR 20,000. In addition, there is a further EUR 30,000 necessary to cover the cost of external consultants who have to be called in to do her work. You would like Softline to cover these costs.
- To compensate you for the risk that know-how may pass to a competitor you would like a payment from Softline of a further EUR 100,000.

UNIT 3, Exercise 12**File 5**

- 1 Read out the definitions of legal words below, but don't read out the word in bold. See if your partner can give you the word you are looking for.
- 2 Now listen to your partner's definitions. Try to provide the missing word.

If performance is not good enough, we can say that it is ...

unsatisfactory

If two parties cannot find common ground in a dispute, we can say that they are ...

irreconcilable

If some important clauses are missing from a contract, then we can say that the contract is ...

incomplete

If an export licence expires, then this licence cannot be used because it is ...

invalid

If the purchaser says that he plans to place an order for some goods but he still hasn't actually placed the order, we can say that this order is ...

unconfirmed

If one party reacts to a situation in a way that is excessive, this party's behaviour can be said to be ...

unreasonable

UNIT 3, Exercise 13**File 6****Task 1**

You are a client and you go to a lawyer with the following problem. Just give a brief overview of the problem. Then let the lawyer ask you questions to find out the details.

Overview

I'm trying to sell my house at the moment and I'm having problems with a prospective buyer. He says that I am bound by an offer which I accepted earlier. I think he is wrong.

Details

My house is valued at around EUR 340,000. I put it on the market three months ago and invited offers in the region of EUR 340,000. I was visited by a prospective buyer, Mr Blue. He had a look at the house and found some things that needed to be repaired or improved (two defective windows / a problem with the light in the cellar / the locks on the front and back door / part of the fence round the garden / some tiles on the roof). I agreed with him and offered to sell my house to him for EUR 320,000. He asked for a day to think about my offer. He then contacted me a day later and offered EUR 300,000. I told him that his offer was too low for me and rejected it. A week later I received another offer from Mr Blue of EUR 320,000. By this time I was already in negotiations with another prospective buyer, Mrs Green. She was really interested in the house and there was a good chance that we would agree on a sales price of around EUR 325,000 or even EUR 330,000. I contacted Mr Blue and told him I wasn't interested in his offer. Now he has sent me a letter telling me I am bound by the original offer I made to him of EUR 320,000. He's not right, is he?

Task 2

You are a lawyer. A client comes to you with a problem. He or she is going to give you a brief overview of the problem. Then you must ask questions to get all the necessary details. Try to use some of the language in the language box on page 35. Finally, give your client some advice about what to do.

UNIT 4, Exercise 12**File 7**

You are an attorney-at-law, acting on behalf of Global Music Inc. (PUBLISHER). You are planning to enter into an exclusive copyright agreement with Mr Billy Ratt (COMPOSER), a popular rap music artist. You have sent Mr Ratt's attorneys a draft version of the proposed agreement, but they are unhappy with the following clauses:

1. COMPOSER ... hereby undertakes to assign, transfer and deliver to PUBLISHER ... the whole of the copyright for all countries of the world ... in and to such music and lyrics written heretofore by COMPOSER insofar as such copyright is not held by third parties.
2. COMPOSER ... will endeavour to deliver a minimum of ten compositions, each of which comprising three minutes of music on average, every year for the duration of this Agreement.
4. The rights of PUBLISHER include the right ... to assign in whole or in part the compositions hereunder ...
5. The term of the Agreement shall be for a period of three years from the date hereof. PUBLISHER shall have the option to renew this Agreement for a further period of three years.
8. PUBLISHER agrees to pay fees and royalties in respect of the compositions acquired hereunder to COMPOSER as follows:
 - iii) 12.5% of net receipts including the licensing of compositions for use in films, television programmes and commercials.
10. The royalty and fee statements shall be made up to June 30th and December 31st in each year and shall include all receipts by PUBLISHER in that period. Such statements will be sent to COMPOSER within 28 days of the relevant date and shall be accompanied by a remittance for the amounts which are shown by the statement to be due and payable.

You are quite happy with these clauses as they stand. Before you start the role-play, if possible, work with someone who has the same role. Try to think of some good reasons for keeping the draft clauses as they are.

During the role-play, be prepared to listen carefully to the arguments of Mr Ratt's attorneys. It will be necessary to make some amendments to the draft clauses, but try to get the best possible deal for your client.

UNIT 5, Exercise 12**File 8**

The company Foodstyle plc is planning the acquisition of a U.K. company called Fusion Food.

You are a solicitor acting for Foodstyle plc. Here are some clauses from the draft version of the Letter of Intent (LOI). Have a meeting with the solicitor representing Fusion Food. Your aim is to reach agreement with them about the precise wording of the LOI. Your position is set out below.

4 Exclusivity

(1) Beginning with the signing of this Letter of Intent until six months after the end of the due diligence period, the Seller shall not hold any discussions, either directly or indirectly, with any third party about the transfer of the Shares or of the Company's business operations. The Seller shall end any ongoing discussions.

(2) The exclusivity ends in any event upon the signature of the share purchase agreement or if one of the parties breaks off from the Transaction pursuant to clause 7(1).

(3) In the event the Seller breaches the exclusivity, it shall pay a contractual penalty in the amount of EUR 100,000 to the Purchaser. Further claims of the Purchaser shall remain unaffected. The contractual penalty shall not be payable, if binding contracts are concluded between the parties.

7 Binding Effect

(1) This Letter of Intent does not create any obligation to carry out the Transaction. Both parties shall be entitled to break off from the Transaction at any time before the share purchase agreement is signed, without having to give any reason. The notification of breaking-off must be in writing.

(2) The breaking-off shall not affect the applicability of the provisions in 4(3) and 7(3) of this Letter of Intent; these provisions shall remain binding.

(3) If the Seller breaks off the Transaction, it shall pay a lump-sum amount of EUR 100,000 to the Purchaser as compensation for its necessary expenses incurred in connection with the Transaction, unless the breaking-off is because of a breach by the Purchaser of the confidentiality obligation. If the Purchaser breaks off the Transaction, it shall pay a lump-sum amount of EUR 50,000 to the Seller as compensation for its necessary expenses, unless the breaking-off is because of a breach by the Seller of the exclusivity or confidentiality obligations. More extensive claims resulting from the breaking-off of the Transaction shall remain unaffected.

Your position

Clause 4.1 is helpful because it gives your client confidence in the seriousness of Fusion Food's intentions.

A contractual penalty of EUR 100,000 in 4.3 is realistic. Your client will have to invest a lot of money in due diligence and the penalty clause is a guarantee against Fusion Food wasting his time.

Foodstyle plc should have the right to make further claims against Fusion Food (4.3) if it can prove that it really has incurred these extra costs.

According to clause 7.3, Fusion Food should be entitled to lower compensation. Normally the seller doesn't invest as much money in due diligence as the purchaser.

Follow up

Present to the class any changes you have agreed to make to the wording of the Letter of Intent.

UNIT 6, Exercise 3**File 9**

1 Read out the sentences below but don't read out the phrasal verb in bold in brackets. See if your partner can find the word you are looking for.

- The investors are prepared to **BLANK** 10 m euros of capital for this project, but the board of management is asking for more. (**put up**)
- I accept that ABC Ltd owes you 50,000 euros. But they've gone bankrupt, so I think you may have to **BLANK** this debt **BLANK**. (**write off**)
- The company cannot recover. I would advise you to **BLANK** it **BLANK**. (**wind up**)
- As I see it, your company will have to **BLANK** its reserves to cover its losses. (**draw on**)

2 Now listen to your partner's sentences. Try to provide the missing word.

UNIT 6, Exercise 11**File 10**

You are an insolvency lawyer. Prior to your first meeting, your client, Mr Ranjit Singh, sent to you the following information about his current assets and liabilities. All the sums of money are in euros.

<u>Liabilities</u>		<u>Assets</u>	
<u>Banks</u>		Flat	110,000
Bank loan	25,000	Receivables (unpaid invoices for party service and events)	8,000
Mortgage (on flat)	85,000	Inventory (kitchen equipment / furniture)	10,000
<u>Staff</u>			
Part-time employees	6,000		
<u>Other creditors</u>			
Utilities	2,500		
Landlord of premises	6,500		
Suppliers of fresh food	2,500		
Telephone / Internet	500		
Tax authorities	18,000		
<u>Total</u>	146,000	<u>Total</u>	128,000

Talk to him and find out:

- his career history
- the nature of his business
- location of business
- legal status of the business
- start-up capital needed
- source of the capital
- reason for business difficulties
- if he is currently servicing his loan and mortgage debts

Advise him on the following:

- How bad is his financial situation?
- Should he register himself insolvent?
- Is it possible to save his home?
- Are there other solutions available?

After you have finished the activity, be prepared to tell the rest of the class what advice you gave to your client.

Partner B

Partner files

UNIT 1, Exercise 10

File 1

Part 1

In Part 1 you play the role of a lawyer and advise two separate clients about forming a company.

Case 1

Listen to your client. Discuss with him / her the available options. Generally, you favour a limited company because washing machines can go wrong and cause thousands in damage.

Case 2

Listen to your client. Discuss with him / her the available options. Generally, you think your client shouldn't overreact. Good liability insurance and good quality assurance procedures should be sufficient.

Part 2

Now it is your turn to play the role of two separate clients who would like to have advice from a lawyer. Explain your situation to your partner.

Case 1

You are one of three shareholder / directors of a successful private limited company specializing in solar cell technology. You would like to expand, but are worried about overstressing the company financially. You are also worried about losing management control of the company if you go public. The problem is that you don't have much choice but to expand. Your clients are demanding a wider range of products and higher volumes. They may lose confidence in your company if it doesn't grow.

Your lawyer will give you some advice. You feel that you must have a solution that gives you the option to expand quickly if necessary.

Case 2

You have worked as an employee in a large architectural partnership for ten years. You were hoping to be made a partner but this is now not very likely. You feel that you have good references to make a success of your own business. There is also some money in your family which you can use as start-up capital. You have two colleagues who are in the same situation as you, but they have fewer years' experience. They are talented and you all work well together. However, they have no capital which they could bring into a partnership.

Your lawyer will give you some advice. You feel that you would like to have these two colleagues on board as partners. How else can you persuade them to leave their current jobs?

UNIT 1, Exercise 14

File 2

Explain the advantages and / or disadvantages of one of the legal structures in the examples below.

- a A firm decides to remain a private limited company even though it has a turnover in billions of euros and could raise substantial sums of money if it went public.
- b An entrepreneur decides to buy a *shelf* company (a *ready-made* company) rather than form a new one.

UNIT 2, Exercise 4

File 3

Task 1

You are an English-speaking employee in a Belgian company. You wish to consult your lawyer about the following three problems at work. Read each problem out to your partner and then make a note of the advice you are given.

1. 'I normally work in the Brussels office but the company has set up a project group in the offices of a cooperation partner in Antwerp and now wants to send me there for the third week in a row. I asked my line manager how long my presence in Antwerp was going to be for and she said she didn't know. Can she keep sending me to Antwerp for as long as she wants?'
2. 'I have 36 hours on my overtime account at the moment. I'm trying to save for a holiday and I'd like to be paid for all 36 hours. My line manager says that I should accept payment for 12 hours and that I should take the other 24 hours as free time. He says that he doesn't have time to discuss the matter further. Do I have to accept this?'
3. 'A colleague told me that she can take her summer leave during the school holidays because she has children aged eight and ten. I haven't got any children, but when I told her that my live-in boyfriend is a school teacher, she said that this doesn't count. Is she right?'

Task 2

Swap roles with your partner. You are now a lawyer. Below are some clauses from a contract of employment. Your partner wishes to consult you about three problems at work. Listen carefully and then give him / her your opinion. When you refer to a clause, use the language in the box on page 19.

5 Sickness during annual leave

In the event that an employee becomes sick while on annual leave, the sick days covered by a doctor's note shall not be counted as annual leave.

6 Public duties and appointments with authorities

As a rule, such appointments will be either court appointments (e.g. being summoned to appear in court as a witness or as an expert,) or medical checks required by the Employer or made necessary by a business trip in the course of the Employee's duties to an overseas location for which certain vaccinations (e.g. tetanus, yellow fever, hepatitis) may be necessary. If the Employee can demonstrate that it is not possible for such appointments to be made outside of the core working times, the Employer must grant him paid time off in order to enable these appointments to be kept.

7 Marriage

The Employer grants one day's paid special leave for marriage involving immediate relatives (i.e. son / daughter, father / mother, brother / sister).

8.2 Inability to work due to sickness

In all cases of the employee being unable to work due to sickness the line manager must be informed immediately. A doctor's note must be produced no later than on the fourth calendar day following the commencement of the period of sickness.

UNIT 2 Exercise 11**File 4**

You are the solicitor representing Softline. Your position is as follows:

- You don't want Intelligent Solutions Ltd. to block Cathy O'Brien's move to your client. You think that the legal situation here isn't 100 % clear, but you accept that Intelligent Solutions Ltd has a case.
- Intelligent Solutions Ltd is not allowing Cathy O'Brien to work during her period of notice. You understand the reason for this and you accept that it is costing Intelligent Solutions Ltd money to keep her at home at the moment. Softline would be prepared to pay something here – maybe EUR 15,000 or 20,000.

- If Intelligent Solutions Ltd claims further compensation, you are not prepared to pay.
- Intelligent Solutions Ltd is a very good, innovative company. You are prepared to enter into new co-operation agreements with them.
- You are prepared to discuss systems and safeguards to prevent confidential information passing from Cathy O'Brien to third parties.

UNIT 3 Exercise 12**File 5**

- 1 Your partner is going to read out the definitions of some words. Listen and try to provide the missing word.
- 2 Read out the definitions of legal words below but don't read out the word in bold. See if your partner can give you the word you are looking for.

If the wrong number of pieces was delivered to the purchaser, we can say that the quantity delivered was ...

incorrect

If a clause in a contract cannot stay as it is because the law has been changed, we can say that this clause is now ...

ineffective

In a dispute an arbitrator is not allowed to favour one party or the other. He must be ...

impartial

A severance clause ensures that, if one clause has to be changed, the other clauses remain ...

unaffected

If it was impossible to know that a certain event e.g. a strike was going to happen, then this event was ...

unforeseeable

If the purchaser is not happy with the performance of the supplier, then we can say that the purchaser is ...

dissatisfied

UNIT 3 Exercise 13**File 6****Task 1**

You are a lawyer. A client comes to you with a problem. He or she is going to give you a brief overview of the problem. Then you must ask questions to get all the necessary details. Try to use some of the language in the language box on page 35. Finally, give your client some advice about what to do.

Task 2

You are a client and you go to a lawyer with the following problem. Just give a brief overview of the problem. Then let the lawyer ask you questions to find out the details.

Overview

I asked a construction company to build a swimming pool for me in my garden. All of the specifications were agreed in the contract. The company has finished the work. But the pool which was built does not comply with the specifications we agreed to. I am not willing to pay the invoice of EUR 35,000. I think they should rebuild the pool.

Details

One of the specifications in the contract was that the deep end of the pool should measure 2.40 metres. This was to enable people to dive safely. When the pool was finished, it was clear that the deep end of the pool only measured 2.10 metres. Another problem was that the depth of the pool underneath the diving board was only 2 metres. I ordered a safety inspection. The inspector's report concluded that the pool was still safe for use. Nevertheless, I want the construction company to rebuild the pool to the specifications we originally agreed in our contract. The company says this would cost about EUR 30,000 and has offered me EUR 5,000 in compensation for my dissatisfaction. I would like to reject their offer because I don't see why I should accept something that isn't exactly what I wanted.

UNIT 4 Exercise 12

File 7

You are an attorney-at-law, acting on behalf of Mr Billy Ratt (COMPOSER), a popular rap music artist. He is planning to enter into an exclusive copyright agreement with Global Music Inc. (PUBLISHER). The publisher has already sent you a draft version of the proposed agreement. However, you are unhappy with the following clauses:

1. COMPOSER ... hereby undertakes to assign, transfer and deliver to PUBLISHER ... the whole of the copyright for all countries of the world ... in and to such music and lyrics written heretofore by COMPOSER insofar as such copyright is not held by third parties.
2. COMPOSER ... will endeavour to deliver a minimum of ten compositions, each of which comprising three minutes of music on average, every year for the duration of this Agreement.
4. The rights of PUBLISHER include the right ... to assign in whole or in part the compositions hereunder ...

5. The term of the Agreement shall be for a period of three years from the date hereof. PUBLISHER shall have the option to renew this Agreement for a further period of three years.
8. PUBLISHER agrees to pay fees and royalties in respect of the compositions acquired hereunder to COMPOSER as follows:
 - (iii) 12.5% of net receipts including the licensing of compositions for use in films, television programmes and commercials.
10. The royalty and fee statements shall be made up to June 30th and December 31st in each year and shall include all receipts by PUBLISHER in that period. Such statements will be sent to COMPOSER within 28 days of the relevant date and shall be accompanied by a remittance for the amounts which are shown by the statement to be due and payable.

Before you start the role-play, if possible, work with someone who has the same role and make sure you understand the reasons why you aren't happy with the draft clauses above.

During the role-play, try to get the best deal for your client.

Reasons

Clause 1 doesn't make it clear that the copyright reverts to the composer after the end of the agreement. You would like this to be clearly stated. Without such a statement, there is the risk that the publisher can retain the copyright for the duration of the copyright itself.

Clause 2 requires too much of the composer. You want a more flexible productivity commitment here.

Clause 4 gives the publisher assignment rights for any song by the composer. The composer wants more control over his material. He doesn't want his music used, for example, in commercials for products or services he doesn't agree with.

Clause 5 seems to suggest that the publisher can renew the agreement with or without the consent of the composer. Clarification is needed.

Clause 8 (iii) is unfair. If the publisher allows the composer's music to be used in a movie, the publisher has no material and production costs. The royalties should be much higher – for example, 80%.

Clause 10 means the composer only receives payment twice a year. You want quarterly payments.

UNIT 5, Exercise 12**File 8**

The company Foodstyle plc is planning the acquisition of a U.K. company called Fusion Food.

You are a solicitor acting for Fusion Food. Here are some clauses from the draft version of the Letter of Intent. Have a meeting with the solicitor representing Foodstyle. Your aim is to reach agreement with them about the precise wording of the LOI.

4 Exclusivity

(1) Beginning with the signing of this Letter of Intent until six months after the end of the due diligence period, the Seller shall not hold any discussions, either directly or indirectly, with any third party about the transfer of the Shares or of the Company's business operations. The Seller shall end any ongoing discussions.

(2) The exclusivity ends in any event upon the signature of the share purchase agreement or if one of the parties breaks off from the Transaction pursuant to 7(1).

(3) In the event the Seller breaches the exclusivity, it shall pay a contractual penalty in the amount of EUR 100,000 to the Purchaser. Further claims of the Purchaser shall remain unaffected. The contractual penalty shall not be payable, if binding contracts are concluded between the parties.

7 Binding Effect

(1) This Letter of Intent does not create any obligation to carry out the Transaction. Both parties shall be entitled to break off from the Transaction at any time before the share purchase agreement is signed, without having to give any reason. The notification of breaking-off must be in writing.

(2) The breaking-off shall not affect the applicability of the provisions in 4(3) and 7(3) of this Letter of Intent; these provisions shall remain binding.

(3) If the Seller breaks off the Transaction, it shall pay a lump-sum amount of EUR 100,000 to the Purchaser as compensation for its necessary expenses incurred in connection with the Transaction, unless the breaking-off is because of a breach by the Purchaser of the confidentiality obligation. If the Purchaser breaks off the Transaction, it shall pay a lump-sum amount of EUR 50,000 to the Seller as compensation for its necessary expenses, unless the breaking-off is because of a breach by the Seller of the exclusivity or confidentiality obligations. More extensive claims resulting from the breaking-off of the Transaction shall remain unaffected.

Your position

4.1 is a problem. You can accept that Fusion Food should not start talks with a third party. You can't accept that it should break off any ongoing discussions with third parties. If Fusion Food has the freedom to continue ongoing discussions with a third party, then it can put Foodstyle under pressure if the third party is offering better terms.

The penalty in 4.3 is too high. A fairer and more realistic sum would be: EUR 50,000 if Foodstyle has completed due diligence and EUR 25,000 if due diligence is still in progress.

You are against the idea that Foodstyle should have the right to make further claims against your client. The penalty agreed in clause 4.3 must be sufficient. If Foodstyle has the right to make further claims, then you could get into a long-running legal dispute, which would not be in your client's interests. Foodstyle also needs an incentive to keep its costs under control.

The penalty in clause 7.3 should be the same as in clause 4.3. You don't think the compensation for Fusion Food should be lower than the compensation for Foodstyle. After all, the purchaser should take its obligations seriously, too.

Follow up

Present to the class any changes you have agreed to make to the wording of the Letter of Intent.

UNIT 6, Exercise 3**File 9**

- 1 Your partner is going to read out some sentences to you. Listen and try to provide the missing word.
- 2 Read out the sentences below but don't read out the phrasal verb in bold in parentheses. See if your partner can find the word you are looking for.
 - I think we can help you to **BLANK** bankruptcy, but the company will have to go into administration. (**ward off**)
 - It is my understanding that, if you implement a radical cost-cutting programme, your creditors will be willing to **BLANK** you **BLANK**. (**bale out**)
 - I strongly advise you to change your company's tax status. If you don't do something to reduce your tax burden, your company could **BLANK**. (**go under**)
 - I recommend that you formally object to this latest tax demand. Paying this sum by the end of next month could **BLANK** you **BLANK** completely. (**wipe out**)

UNIT 6, Exercise 11

File 10

You are Ranjit Singh. You are going to meet with an insolvency lawyer. You have already sent him / her the following brief overview of your assets and liabilities. All the sums of money are in euros.

<u>Liabilities</u>		<u>Assets</u>	
<u>Banks</u>		Flat	110,000
Bank loan	25,000	Receivables (unpaid invoices for party service and events)	8,000
Mortgage (on flat)	85,000	Inventory (kitchen equipment / furniture)	10,000
<u>Staff</u>			
Part-time employees	6,000		
<u>Other creditors</u>			
Utilities	2,500		
Landlord of premises	6,500		
Suppliers of fresh food	2,500		
Telephone / Internet	500		
Tax authorities	18,000		
<u>Total</u>	146,000	<u>Total</u>	128,000

Your lawyer has told you that he / she will want to know a lot more about your business and financial situation, so you have decided to take these notes along to your first meeting.

- I worked for many years as a food technologist for a large supermarket chain. Four years ago I got married to Sabine – she was a student at Nottingham University at the time – and moved from Nottingham to _____ (agree a town with your partner). Sabine is a full-time parent at home looking after our children.
- At first I found work in an event-catering company. Then I sold my flat in England and used some of the profit from the sale to make a down payment on a flat here in _____. The flat cost EUR140,000 and is in my name. The mortgage was just EUR90,000.
- Two years I decided to go into business as a sole trader providing fresh Indian snacks and event catering for office workers and companies. I rented some business premises in a smart canal-side office development. The start-up costs for the business were EUR45,000: EUR10,000 of this sum was my own capital and EUR35,000 was a bank loan secured against my flat.
- Business went well for a while, but recently there has been a dramatic economic downturn. The lunchtime trade has fallen away and I can no longer cover my costs. A business rescue plan seems pointless because the surrounding office buildings continue to lose tenants.
- Over the last two years I have kept up with my mortgage and loan repayments, but during this time the flat has fallen in value by EUR30,000.

Your lawyer will give you advice about what to do. Ask about anything that isn't clear. Listen to your lawyer present the advice he gave you. Then tell the class whether you intend to follow it.

Transcripts



UNIT 1, EXERCISE 3

Part 1

- Deborah* Nice to see you again, Mrs Osborne. Business is good, I hope?
- Miya* Not bad, not bad, thank you. I can't complain.
- Deborah* Now you mentioned on the phone that you wanted to consult me on the question of changing the structure of your business. How exactly can I help you?
- Miya* Well I'm thinking of getting into something new with my business and I'd like to discuss the legal implications with you.
- Deborah* Up till now you've been operating as a sole trader since you started in 2001, haven't you?
- Miya* That's right. When I first moved here from Japan, I was selling Japanese goods from my own home. The business has done really well and I want to expand into furniture and textiles. I feel the growth potential there is greater than in the food and clothing sector.
- Deborah* I can't see any problems with doing that with your business as it is. Or are you thinking of forming a separate company specializing in furniture and textiles?
- Miya* Well, that had crossed my mind. But I am the only owner and manager at the moment, so I'm thinking of offering one or two of the people who work with me, some sort of position as well. That's fairly straightforward, isn't it?
- Deborah* Well, it certainly doesn't have to be complicated. I think you should tell me a bit more about your plans and about the people you want to bring into the business.
- Miya* Fine. The main thing is that I think we're going to need more capital in order to expand the business and this is where I need your advice.



UNIT 1, EXERCISE 3

Part 2

- Miya* Let me explain. Every year since I started, my profits have gone up and I have used those profits to expand the business. I've just used profits and some money of my own that I had in the bank. I'm really proud that I haven't had to ask anyone else for money and even now the business has no debt at all. The problem is that we now need to expand. We need new premises for our showroom, we need new storage space, we need to invest in new IT equipment ... I've heard about an office in a great part of town and I could easily convert it into a shop. It's got all the storage space we need too. We can't afford to miss this chance and we have just enough cash in the bank to make an offer for it right away.
- Deborah* Hmm... I wouldn't recommend doing that without knowing a bit more. You said it's an

office building at the moment? Well, it's possible that you'll need permission from the local council to change the use of the building and if you don't get the permission, you won't be able to use it as a retail outlet. It'll just be standing empty. In my view it's too much of a risk to make an offer for it at this stage: can you find out any more about it?

- Miya* Mmm. It's not actually on the market yet... but I'll try and find out a bit more.
- Deborah* Good. I'd strongly suggest talking to a property lawyer about this. I can ask someone from our property department to give you a call about it. Is that OK?
- Miya* Yes, I'd appreciate that.
- Deborah* And what about your colleagues? You said earlier that you wanted to bring one or two people into the business?
- Miya* Yes. Firstly, I'm really keen to reward the loyalty of two of my staff. They've stayed with me since the beginning and even turned down job offers from other companies in order to make this business succeed. I want to give them a share in the business.
- Secondly, in a year or two from now I might want to give these two people some say in the management of the business. They've supported me from the beginning and so I could perhaps make them directors of the new company. Thirdly, as I said, the business needs to expand, and for that we need a little more money. My accountant put me in touch with a possible investor who could contribute the amount that we need.
- Deborah* I see. So forming a company really does seem to be the best option for you. Certainly if you want to bring in a new investor, I'd suggest incorporating the business, and the investor will probably suggest doing that anyway.
- Miya* Exactly. I assume that the assets of the business will be transferred from me personally into the new company, once it's set up. And then I'll have shares in the company, together with the two staff, and the new investor. Is that right?
- Deborah* Yes, that's it. But do you have any more details about the investor? And had you thought what would happen if you and he couldn't agree? What would you do for funds then?
- Miya* Then I suppose it would mean going to the bank for a loan. But I really hope it won't come to that... I've heard that the bank could ask me to guarantee the loan personally, and maybe even ask for my house as security.
- Deborah* Yes, exactly. The loan would be to the company, but the person guaranteeing the loan would be you. You have limited liability as a shareholder in the company, but unlimited liability as a personal guarantor of the loan. That's normally what banks ask for

in this situation, and yes, ultimately your home is at risk.

Miya Then let's hope that we can persuade the investor to invest in us! I think I would be happier if you could come to the next meeting with him.

Deborah I'd be happy to. But can I just come back to the formation of the company itself? There are quite a few things that I will need to check with you before we can set up the company. Can I suggest that I set all this out in an email, and then maybe when you've had a chance to read through all the information, we could meet again. Does that sound OK from your point of view?

Miya Yes, that sounds fine.



UNIT 2, EXERCISE 3

Thierry ... the 1st of January. Fine. So, I'll put that starting date into your contract. Before we finish, Mrs O'Brien, you mentioned on the phone last Friday that there are a few things in your contract you'd like to discuss before signing it.

Cathy Well, yes. There are just a few points that I'd like to clarify with you.

Thierry No problem. What would you like to know?

Cathy Well, in clause 1, paragraph 2, it says that the normal working time will be 38 hours a week. But it doesn't say anywhere that the normal working week is Monday to Friday.

Thierry Well, usually it is, but occasionally our software people have to come in at the weekend if there's an important deadline to meet or some other difficulty. So, I think that's why the wording is as it is.

Cathy Wouldn't it be possible to add something to that effect? For example, the normal working week is Monday to Friday but sometimes it will be necessary ... Something like that?

Thierry I'm sure that'll be OK.

Cathy Fine. And then I've got a question about annual leave. Err ... Yes, here it is. According to clause 6, if I can't take all my holiday, I can have financial compensation for up to 15 days of it.

Thierry Yes, that's right. If there is a lot of work and you aren't able to take your full leave entitlement, we don't want you to lose out. That's the reason for this particular clause.

Cathy I understand. But if this happens, can't I carry 15 days' holiday into the next working year?

Thierry I suppose, in theory you could. We've just never really felt it was necessary to write it down. And, in any case, employees are usually quite happy to receive the extra pay if they can't take some of their holiday. Another problem, of course, is that in the following year someone might be entitled to 30 days' plus 15 days' annual leave. That's a lot of holiday!

Cathy Well, as you know from my job interview, I have a young family and I really would prefer to have something in my contract that guarantees me my full holiday entitlement. Even if it means carrying leave into the following year.

Thierry Mmm ... I'd like to check this with our lawyer. I can't imagine that there would be any legal difficulties here; it's more a question of company policy with respect to senior staff. Let me get back to you on that one. I don't want to make any promises at this stage but I'm sure we'll be able to find some kind of compromise on this.

Cathy OK ... And there's just one more thing. It's clause 4, paragraph 5. It says that ... 'There is no claim to compensation for overtime, weekend or holiday work.'

Thierry Yes, that's quite standard for senior staff contracts. Of course, in the case of employees who are earning standard union pay rates we have to pay overtime or give the employees the time back.

Cathy I see. But, as a senior staff member I wouldn't be entitled to any pay for overtime.

Thierry That's right.

Cathy But does it also mean that I wouldn't be entitled to have any of this time back, either?

Thierry Not necessarily. I think you'll find that senior staff usually sort something out with their line managers. It all depends on how much work there is at any one time.

Cathy I see. I'm just wondering if all this could be stated a bit more clearly in the contract. Can't we add a paragraph that says something like ... er ... 'Overtime may be taken as free time. But this must be with the agreement of the line manager.'? Or something like that?

Thierry I'm assuming there won't be any legal complications here. But, again, I'll have to check with our lawyer on this.

Cathy OK. That's everything. The rest of the contract seems to be fine.

Thierry Good. I'll send all this off to the lawyer and I'll mail you in the next day or two to let you know what he thinks.

Cathy Great. I'll expect to hear from you soon, then. And thank you for taking the time to discuss all these things with me. I'll get back to my flat hunting now.

Thierry Well, good luck with that. If you run into any difficulties, do let me know. The company would be able to organize some accommodation for you for two or three months, if necessary.

Cathy I'll certainly bear your offer in mind, Mr Schwarz. Thank you once again for your time. Bye.



UNIT 2, EXERCISE 10

Mary ... the matter of Mrs O'Brien's resignation. Now, I've had a look at all the documents you sent me, Mr Flannagan and ... well the first thing I've noticed is Mrs O'Brien's actual letter of resignation. You see, according to her contract, she isn't entitled to start her new job as early as the 1st of January – unless, of course, you're happy to let her go early.

John Yes, I'd noticed that, too. But that isn't really what I'm worried about. My biggest concern is that the company she's planning to go to is Softline.

- Mary** Yes, I wanted to come to that. Looking at your files, I can see that Softline has become an important co-operation partner for your company.
- John** Exactly.
- Mary** Well, if Softline has started to poach your staff, it's very irritating, I admit. But, in reality, there isn't very much you can do about it.
- John** Actually, I'm worried about confidentiality.
- Mary** I see. Well, you can, of course, invoke clause 7.6 of Mrs O'Brien's contract, which says, quite simply, that you can send her home today on gardening leave. The only problem there is that you would have to continue to pay her for the full period of her notice – that is ... er ... three months' salary. Quite a lot of money. But it may be worth it.
- John** What about the competition clause? You know – the one that says that the employee isn't allowed to go and work for a competitor for two years.
- Mary** Well that would be difficult. You see, we can hardly say that Softline is a competitor, when you have co-operation agreements with them. The other problem is that the competition clause would be very expensive for you as a company. Clause 3.4 states that you would have to pay Mrs O'Brien half-pay for two years – and she wouldn't have to do any work for this money.
- John** It would cost us a lot more money if we lost know-how to a competitor. Anyway, there's a further complication. You see, we aren't Softline's only co-operation partner in the field of telecommunications software development. And some of Softline's other partners are direct competitors of ours.
- Mary** Mm. And what exactly will Mrs O'Brien's new job be at Softline?
- John** To co-ordinate all their external software development projects.
- Mary** So there is a risk that your company's know-how might be transferred to a competitor.
- John** Indeed there is. So, can't I invoke clause ... er ... 3.2? It says here quite clearly that ... the employee can't work for a competitor or – I quote – 'a firm connected with them.' I mean, I can stop her, can't I?
- Mary** Perhaps. But I wouldn't want you to overreact to what may be only a very small risk. And another thing. If you do anything to delay Mrs O'Brien's transfer to Softline, they're not going to be very pleased with you. This could even have a negative impact on future co-operation agreements.
- John** So, what do you suggest I do?
- Mary** To be honest, I think it would be best to ...



UNIT 3, EXERCISE 5

- 1 Just a question about the penalty clause. Can we reduce the price by 1% if Pixeltechnik delivers four days late?
- 2 Where exactly does it say in this contract how many items we have to order?
- 3 Where can we find all the prices for the different LCD screens?

I'm just looking at clause 4. Can Pixeltechnik increase the price if it wants to?

- 5 I'm a little unclear about clause 5. Is this a two-year contract?
- 6 What exactly are our rights if Pixeltechnik goes bankrupt?
- 7 There's something in clause 10 I'd like to clarify. What happens if some goods are defective? Can we insist on a replacement?
- 8 What happens if another company suddenly claims that it owns the patent on Pixeltechnik's LCD screen technology? Can we be sued by this company?



UNIT 3, EXERCISE 9

Part 1

- M. Héroult** ... and it was very good of you to fit me in at such short notice.
- Mr Evans** Not at all, M. Héroult. I think the quicker we can work out a response to this matter the better. Now, let me see. I have here a copy of the original contract between Pixeltechnik and Digital View and I also have a copy of the correspondence which was exchanged between the two companies. But can I start by asking you to describe what happened?
- M. Héroult** Well, in September I was contacted by my production manager. He informed me that our random sampling was showing inconsistencies in every single LCD screen and that he was going to shut production down.
- Mr Evans** And what happened then?
- M. Héroult** I joined him in the production area and we organised a series of checks to find out what the problem was. It turned out to be a minor error in chemical processing. It meant that the screens were not consistently as bright as they should have been.
- Mr Evans** Could you explain what you mean by 'not consistently'?
- M. Héroult** Well, the screens might still have conformed to the agreed product specifications, but they didn't pass our stringent testing regime. And that's what matters. You see, the whole process is patented. It means that our digital camera display screens can be seen perfectly – even in bright sunshine and ...
- Mr Evans** Yes, but let me take you back to the question of these defects. Are you saying that the screens were not defective as defined in Annex 1 to the contract?
- M. Héroult** I think as far as the contractual specifications are concerned the screens were probably still OK. But we knew there was a processing error. The screens might have developed malfunctions at a later stage. We just thought it was best for the reputation of Pixeltechnik not to take any risks.
- Mr Evans** OK. Can you explain why you had to recall so many screens? 5,000 wasn't it?
- M. Héroult** At first, we thought that one batch – 500 – was affected. But when we checked the sample data it became clear that we had

- Mr Evans had the error for about ten days.
So, if I understand you correctly, you're saying that your production manager only found the production error ten days after it started.
- M. Hérault I'm afraid that's right. For ten days the test results showed slight inconsistencies in screen brightness but it seems that our technicians misinterpreted the results and thought the screens were fine.



UNIT 3, EXERCISE 9

Part 2

- Mr Evans What did your company do then?
M. Hérault We contacted Digital View immediately and informed them about the product recall.
Mr Evans And how did they react?
M. Hérault They weren't very pleased, but we agreed on a schedule for delivery of 5,000 LCD screens and Pixeltechnik accepted the full financial consequences of late delivery.
Mr Evans This would be clause 1.4 ... er ... '... for every week or part thereof by which the delivery date is exceeded, the purchaser can reduce the agreed price for the order by 2%.'
M. Hérault Quite a lot of money, I might add.
Mr Evans Have you calculated precisely how much?
M. Hérault I haven't got the exact figures from our Finance Manager yet, but it's somewhere in the region of 15,000 euros.
Mr Evans So, reasonable compensation for any inconvenience suffered by Digital View, one would think.
M. Hérault Indeed.
Mr Evans Did you deliver the 5,000 screens according to the agreed schedule?
M. Hérault Yes, we did. And the product quality was 100% as well. That's why I was so shocked to receive this letter yesterday. I mean they can't just terminate the contract with 21 days' notice, can they? Surely this is breach of contract!
Mr Evans Well, they are invoking clause 8.1(i), which refers to unsatisfactory performance. That could be a slight problem for us. Was this the first time you had had quality problems?
M. Hérault Yes, it was. So, in my view, it's completely unfair. We did a lot of extra development work on our product – just for Digital View – and we won't begin to make a profit on this deal until after two years of production. So if we get thrown out of this contract now, we'll suffer an enormous loss.
Mr Evans I suppose that's why the contract was to run for a minimum of two years.
M. Hérault Exactly. And our patented product really gave Digital View the edge over its competitors.
Mr Evans I must say, it does seem unfair. It's possible that Digital View could be using this production problem as an excuse to get out of a contract that it no longer wants for strategic reasons.
M. Hérault But is there anything we can do about it?
Mr Evans Well, as I see it, Digital View's conduct goes against the whole spirit of your agreement. In view of this, our best option would be to ...



UNIT 4, EXERCISE 8

- William Good morning to you in New York. I'd like to start by confirming who is present at this video conference. My name is William Field and I'm acting on behalf of my client Mr Fabian Stein, the Chief Executive of the London-based film company, Left Hand Productions.
- Fiona And I'm Fiona Martinez, attorney-at-law, acting on behalf of my client, Jake Glover, who is the Financial Director of Index Films here in New York.
- William So. We are all in possession of the draft version of the proposed agreement. Could I suggest that we hand over to Mr Stein and Mr Glover?
- Jake Maybe we could start by agreeing on a sum of money here. What kind of figure did you have in mind, Mr Stein?
- Fabian Well, I was thinking of an initial down payment followed by a later payment after the release of the film. The total would be in the region of 60,000 euros.
- Jake I'm afraid my board might find that figure rather low. After all, you are asking us to waive our right to exclusivity here.
- Fabian I appreciate that, Mr Glover. But this is a low-budget film. If we agreed to a significantly higher sum, the project could quickly cease to be viable.
- Jake Well, we might be able to agree to your figure if we could participate in the film's royalties.
- Fabian I don't think that will be possible. But perhaps you could accept a figure of, say, a maximum of 75,000 euros, depending on the success of the film.
- Jake You mean, if your movie flops, we would get nothing.
- Fabian Not quite. You would still have the down payment.
- Jake And how much did you have in mind?
- Fabian I think 20,000 euros would be fair.
- Jake Let me see if I understand you here. Index Films would get a guaranteed payment of 20,000 euros. Any further payment would be limited to the balance, namely 55,000 euros, and if the film flopped, we'd get zilch.
- Fabian Well, yes. But that's putting it rather negatively. I'm simply trying to suggest a framework which would give you some kind of share in the success of the film.
- Jake Now that I think about it, maybe a success-related payment would only lead to endless arguments between lawyers and accountants. Why not drop the idea and have a 40,000 euros down payment and 50,000 euros within one year of the release of your movie?
- Fabian I could agree to the 40,000 euros down payment if we reduced the second payment to 30,000 euros.
- Jake 30,000 euros isn't really high enough. I could compromise on 45,000 euros but on the condition that we clarify the terms for the down payment.
- Fabian Mm. The down payment would be conditional upon our securing the formal agreement of the publishers.
- William And we do already have a signed Letter of Intent from the publishers in this matter.

- Fiona** But letters of intent are, as you know, just that. They aren't necessarily legally binding. Your negotiations with the publisher could drag on for months and months and during all this time my client's hands would be tied. No payment and no freedom to negotiate with other third parties.
- William** How about setting a time limit for the down payment? Let's say six months following the signing of our agreement, or the deal is off.
- Jake** Well, in view of what you just said about your Letter of Intent, I'd have thought that six months was a little too long. How about three months?
- Fabian** I think I could agree to that.
- Jake** So, to summarize. You would make an initial down payment of 40,000 euros within three months...
- Fabian** Not payable, of course, if we get a rejection from the publishers.
- Jake** Sure. And you would pay a further 45,000 euros within one year of the movie's release.
- Fabian** I think 45,000 euros is a little high. However, I could agree to 35,000 euros.
- Jake** And I think my board would be happier with 40,000 euros.
- Fabian** Agreed.
- William** Fine. I'll draw up a final agreement ready for signature and will notify you as soon as we have secured the agreement of the publishers in this matter. Thank you very much for your time, Mr Glover and Ms. Martinez and ...



UNIT 5, EXERCISE 2

- Esther** You have reached the office of Esther Suarez. I am unable to take your call at the moment. Please leave a message after the tone.
- Matt** Hi there, Esther. It's Matt. I just had a look through our company's M&A documentation and I'm sort of confused. Some of it's in Spanish; some of it's in English and one or two things seem to be – I dunno – some kind of post-merger documents. Do you think you could get all this into some kind of shape for me? What I'd like is a straightforward guide to the steps we have to take when trying to make an acquisition up to the point when the whole thing enters the public domain. And I guess I need to know where all those minefields are, too. Can you do that for me, Esther? Thanks a lot. Talk to you later.



UNIT 5, EXERCISE 3

Part 1

- Matt** Hi Esther. Hi Oliver. OK. I know you've both got full schedules right now, so let's get started. Now, our solicitors in the U.K. have completed the due diligence process on our target company, No Frills. Can you take us through their findings, Esther?
- Esther** Certainly. Well, what you have in front of you is a summary prepared by Stefan, our trainee lawyer. You can inspect the original documents in my office at any time, of course. And ... no unpleasant surprises really. It's a limited company, registered in England

since 2005 and ... is still owned by its three original founders. It's grown to 16 retro-style English cafés – seems to have good growth prospects. The finances are sound. There's £300,000 of fully paid-up equity and all growth has been organic.

- Francisco** I'm sorry, Esther. What do you mean by *organic*?
- Esther** Er ... I mean that the growth has financed itself. The company hasn't borrowed in order to finance expansion. So, as far as we can tell, the company has no debts and there are no charges against it.
- Matt** And what about their public health clearance certificates, disabled access to restroom facilities, staff qualifications – all that kind of thing?
- Esther** No problems there, either. It almost seems to be too good to be true but ...
- Francisco** Sorry to butt in, Esther, but what's your opinion of the current leases for many of the café premises? According to these findings, the company has generally gone for very short leases. Isn't it a bit over exposed?
- Esther** I'm sorry, Francisco. I'm not quite with you.
- Francisco** I mean, when leases expire, there's often the risk that the landlord wants to negotiate a much higher rent.
- Esther** I see. Well, yes. In principle, that's true but it doesn't seem to be a risk that the solicitors choose to highlight.
- Matt** Maybe not, but I think Francisco's got a point here. Surely something like this is quantifiable, isn't it? What's your opinion, Francisco?
- Francisco** I think it is, yes. I mean, I'm sure Esther is right. But it would be nice to know what potential additional operating costs the company might be facing.
- Esther** No, I agree. Better to be safe than sorry. I can ask the solicitors to go through all the leasehold agreements again and to check commercial rents in all the relevant locations. Then Francisco and I can have a short meeting to re-assess the level of risk.
- Matt** And when do you think you'll be able to give me the figures?
- Esther** Err ... It depends on our solicitors. I mean, it's one or two days' work at most. So we could ask them to get back to us by Thursday.
- Francisco** Would you have time for a meeting on Friday?
- Francisco** Sure. I've got appointments through most of the afternoon but the morning's free. Shall we say 9.30 and then we can get our figures to Matt by lunchtime?
- Esther** Sounds fine.
- Matt** Good. Now before we move on I'd just like to say one more thing ...



UNIT 5, EXERCISE 9

Part 2

- Matt** So, we can't yet confirm our offer price but, assuming it would be in the region of £7.5 million, what are our financing options?
- Francisco** Basically, there are three options – some of which could be combined. We can finance the

acquisition out of our capital reserves, we can borrow, or we can pay the three current owners in the form of newly issued shares in Foodstyle.

Matt And which option do you favour, Francisco?
Francisco I'd prefer to issue new shares to the value of £7.5 million and buy out the owners that way. The limited company continues to exist as before. There's just a change of owner, that's all. Foodstyle would be entered into the Register of Companies as the owner of 100% of the equity of No Frills.

Matt Any views on that, Esther?

Esther Well, it's perfectly possible, of course. But there's always the risk of upsetting existing shareholders. We have some quite important institutional shareholders and they might worry about the impact of a new share issue on their own shareholding. And we shouldn't forget – company law stipulates that the shareholders have the right to buy newly issued shares. We would need to get a 75% vote from them in favour of waiving their right to these shares before we could offer them to the three owners of No Frills. Votes like this can be risky.

Matt And bringing in loan capital?

Esther I'm against it.

Francisco I'm not in favour either. You see, borrowing conditions are not so easy at the moment, so we might be looking at fairly unattractive rates of interest and a drain on the company's finances for the entire repayment period.

Matt And what about taking the money out of capital reserves? I think we need the shareholders' approval here.

Esther Absolutely. It's needed for any acquisition of a company or a stake in a company involving an obligation of more than 2 million euros. But we would avoid the complications of a share issue.

Francisco Of course, you're right. But our capital reserves amount to 10 million euros at the moment. I don't want them to become so depleted that we over-expose ourselves. After all, our recent acquisition The Bread Company isn't doing so well and we may have to ask the shareholders to approve a release of capital from our reserves to finance investment there.

Matt Yeah, it's as I thought. There's no easy answer here but I think we're all agreed that No Frills represents an excellent acquisition opportunity. So why don't we now ...?

paying for legal services if all this is really going to get us somewhere. To come back to your email – you don't really go into any detail about the scope of the audit you have in mind. So – er – before you go ahead, can you fill me in on that? Thanks. Speak to you soon. Bye.



UNIT 6, EXERCISE 7

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Piet So, let's move on to the main reason for our meeting today – this risk assessment analysis you've both been working on. Jana, how do you want to proceed on this?

Jana Well, I thought it would be interesting to hear from Fergus first and then I can go on to set out some of the other risks we might be facing.

Piet Fine. So, Fergus. How do things look from your point of view?

Fergus Generally good. But I did find clauses in the agreements that we should perhaps look at in more detail. I've – uh – prepared a print out of the relevant clauses and I will try to keep things as straightforward as possible.

Piet Well, I'm certainly grateful for that, Fergus.

Fergus Now the first document I'd like to draw your attention to is the leasehold agreement for our offices here in London.

Piet It's coming up for renewal soon, isn't it?

Fergus Exactly. As you can see from clause 2.6, the lease is automatically extended by five years unless we specifically state in writing twelve months before the termination date that we don't want this.

Piet But where's the problem?

Fergus I think it's clause 5 that's the problem. You see, your rent for these premises has been rising steadily over the past five years in line with the consumer price index whereas typical rents for commercial and office space in this part of the city have been falling. Basically, you're probably paying about 10 to 15% too much at the moment. What's more, if this agreement is automatically extended, then clause 5 will continue to apply for the next term of five years.

Piet I see. So what do you suggest we do?

Fergus Under no circumstances should you just allow the lease to be extended automatically. I suggest you state in writing as soon as possible that you waive your right under clause 2.6 but that you wish to negotiate a new lease for these premises. This will give you the chance to renegotiate clause 5 and thus save quite a lot of money. You are also holding an option on 200 m² of office space on the 2nd floor. Do you really need that space? I mean, you haven't needed it so far. If you renegotiate, you can get that clause removed.

Piet OK. That all makes sense. And the other things you noticed?

Fergus Well, I had a look at the redundancy proposals you sent and I think it would be better to renegotiate the size of the compensation you're offering in case of redundancy. I mean, three months' salary for every year's service could be very expensive if you had to lay off 15 or 20 staff one day. I think, too, that any compensation proposal should specifically



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UNIT 6, EXERCISE 5

Jana You have reached Jana Burzinski. I'm afraid I'm not available to take your call right now. But if you leave your name and number, I'll get back to you as soon as possible.

Piet Hi Jana. Piet Forster here. I got your email. Glad that everything checked out OK. On the risk audit issue – yeah – I see where you're coming from on this. As you say, it could be very important, so I – er – don't have a problem with

state that such a payment would be gross and subject to all the relevant deductions – social insurance, tax etc.

Piet So this three months thing isn't some statutory amount.

Fergus No, not at all. This is an entirely voluntary arrangement and one that is potentially disadvantageous to you.

Piet Fine. I can ask the HR manager to get onto that. And you found one more thing too, didn't you?

Fergus Yes. It's a clause agreed with Finnwood, the Finnish timber processors you acquired at the end of last year.

Piet But that whole acquisition has been a great success so far!

Fergus Absolutely. It's just that ...

Jana Maybe I could just come in here.

Fergus Sure, by all means.

Jana You see, when we acquired Finnwood, valuing the company was not at all easy. So, we inserted this price adjustment clause. It's all about the company's liquidity and, essentially, it means that we may have to pay a little extra at the beginning of next year.

Piet How much?

Jana It depends on some quite complex calculations, but it could be as high as 500,000 euros.

Piet Are you suggesting that we challenge this agreement?

Fergus Not at all. The agreement is quite fair and reasonable. What I would recommend is that, at the beginning of next year when you decide on profit allocation in the company, you allocate an appropriate sum to the capital reserves in order to cover this risk.

Piet Is that going to be possible, Jana?

Jana Definitely. It's just going to mean less money going to the shareholders next year or being available for investment.

Piet I can see that there's more to this risk management business than I realized. Before we discuss Jana's findings, why don't we take a short break and ...



UNIT 6, EXERCISE 10

Piet Thank you both for coming at such short notice. As you've probably seen in the financial press this morning, one of our major clients, Fuller's Construction Ltd. in the U.K., has gone bankrupt. I've called this meeting to find out exactly what this means for us. Maybe you could fill us in on the legal side of things, Fergus.

Fergus Certainly. Well, I've checked the Register of Companies and Fuller's Construction is listed there as being in compulsory liquidation. Sounds bad.

Piet I'm afraid it does. You see, the directors of the company clearly took the view that the company couldn't service its debts and couldn't be rescued. They could have filed for an administration order but they didn't – instead they petitioned the court to make a winding-up order.

Piet I'm afraid you've lost me, Fergus.

Jana Me too.

Fergus Sorry. Basically, when a company is 'in administration' then the administrator is trying to keep as much of the company going as possible. But when a court issues a winding-up order, it appoints a liquidator whose job it is to realize the assets of the company in order to satisfy its creditors.

Piet I see. So the whole company is going to be sold off.

Fergus Well, its assets, yes.

Piet And how do we stand with Fuller's Construction right now, Jana?

Jana It's not looking good, I'm afraid. They defaulted on payment on one very large order six months ago. Then they made another large order and we restructured the whole terms of payment. I checked our records just a few minutes ago. They were due to pay the first instalment at the beginning of last month but ...

Piet So how much are we owed?

Jana About 1.5 million euros, I'm afraid.

Piet (*sounding resigned*) Well, I suppose we will just have to register ourselves as a creditor and wait to get back – well – some of what we're owed at least.

Fergus I'm not sure we can count on that.

Piet You're going to have to explain that.

Fergus Basically, Form and Function is a supplier and qualifies as an unsecured creditor. Ahead of you are preferential creditors like the employees, who may be owed wages and secured creditors or charge holders like banks, who lent money to the company and secured the loan against the company's assets. And then there are the costs of the liquidation process itself. They too have to be paid before the unsecured creditors can be satisfied.

Piet So what would you advise?

Fergus Well, certainly you should register as a creditor. But, if I remember the sale of goods contract for this client, title doesn't pass to the buyer until the goods have been paid for. It could be possible to get the goods back again.

Piet Jana?

Jana I'm not sure we would really benefit. I mean some of the furniture is already in use. Another problem is that it was custom-built to specifications of the client. We might be able to offload it for a few hundred thousand euros. But there's the damage to our brand to consider if we start selling second-hand goods at knock-down prices.

Piet So the worst case scenario is that we will have to take a hit of 1.5 million euros. Can we do that?

Jana Well, I've been going through the figures and I imagine that, with some debt restructuring, with some cost cuts across all levels of the company and possibly with voluntary redundancies of 20 or 30 staff, we'll be able to get through this with our core business intact.

Piet Sounds too good to be true. Maybe you could go through the figures and then ...

Answer key

UNIT 1

page 5

Starter

Articles of association / articles of incorporation

see *Did you know?* box on page 10

Sole trader

Sole trader – the simplest form of business – an individual person who owns all the assets of the business and is liable for all of its debts.

Equity / Company capital

The law says that for limited companies a certain amount of cash or assets must be paid in when the company is formed. The law does not require a minimum amount of equity for partnerships. This company capital must always be available so that there are at least some assets left to satisfy creditors if the company goes bankrupt.

Tangible assets

Assets is another word for property. There are different categories of assets, and tangible assets are physical objects e.g. equipment, buildings, vehicles, raw materials. Intangible assets are not physical objects but they have a value e.g. goodwill, know-how, patents.

Register of companies

(*Companies House*) all corporations must be entered here. This register contains key information about the company e.g. the name of the company and the address of its head office, the names of its directors, the date of its formation, the kind of business it conducts and the size of its share capital. This information can be inspected by any member of the public and is increasingly available on the Internet.

Unlimited liability

This problem exists for self-employed people and for ordinary partnerships. In these cases the business is not a separate legal entity. This means that liability rests with the owner(s) of the company. If the company has debts, the owner is liable for them and is not allowed to limit this liability – even if it means him losing the roof over his head. In a corporation the liability of a shareholder is limited to the value of the shares he or she holds.

- | | |
|-----------------|----------------|
| 1 1 on your own | 6 separate |
| 2 debts | 7 shareholding |
| 3 personal | 8 cash |
| 4 agreement | 9 publicly |
| 5 owners | |

page 7

2

Limited liability partnerships are indeed becoming more popular amongst lawyers, accountants and architects, whose liability can run to millions of euros.

This is a balance that the lawmaker must strike. High mandatory levels of equity create confidence in a

company but make life difficult for entrepreneurs. Low mandatory levels of equity – as in the case of the English limited company – are good news for entrepreneurs but make life more risky for creditors.

This is a particular problem for young companies but one has to have some understanding for a bank in this situation. Life gets easier once a company is established. Then its directors might secure new bank loans against the company's assets, not their personal assets.

3 Part 1

- 1 2001
- 2 selling Japanese goods (food and clothing)
- 3 furniture and textiles, because she feels the growth potential in this sector is greater than in the food and clothing sector
- 4 to offer them a position in the restructured business
- 5 to find out how to get more capital in order to expand the business

page 8

3 Part 2

- a office
- b profits
- c share
- d directors
- e investor
- f guarantee

page 9

- | | |
|-------|-----|
| 5 1 c | 4 f |
| 2 d | 5 e |
| 3 a | 6 b |

page 10

- 6 1 [How does this advice compare with yours?] This depends on jurisdiction. Some students may discuss the possibility of a partnership instead of a company. There are no wrong answers: the key things are minimising risk (limited liability) and paperwork and maximising money-raising possibilities.
- 2 [What phrase does Deborah use...?] The phrase is *debt / debt finance*. Confusingly the media discuss this as the *availability of credit*. The pros and cons of debt finance depend on the economic climate. Will the bank lend, and on what terms? (interest rates, type of security, restrictions placed on the running of the business, e.g. the owners may not be able to sell large assets without the bank's consent). Sometimes there are tax advantages for a company, too.
- 3 [What phrase does Deborah use...?] The phrase is *equity / equity finance* (the opposite of debt, in question 2). The pros and cons depend on the economic climate and the health of the business: you can only raise money by selling shares if people want to buy the shares.

Also, shares often have votes attached to them. The new shareholders may be able to influence decisions which the business owners have been used to making on their own. Do the owners want to give up a measure of control?

- 4 She says this because in the U.K. companies need to produce more official paperwork than other forms of business (*sole trader* and *general partnership*). Companies need to be registered at Companies House in order to do business, while others do not (this is different elsewhere in the world). They also need to file (send in) annual sets of accounts and to file forms every time their membership and management changes. The law also imposes a high standard of behaviour on directors of companies, in contrast to partners and sole traders, which are not so closely regulated.

- 7 1 g 6 b
2 e 7 c
3 i 8 h
4 j 9 f
5 a 10 d

- 8 1 view / the commercial register
2 issuing / shares
3 obtained / a certificate of incorporation
4 conduct / business
5 reject / an application
6 draw up / a partnership agreement
7 raise / capital
8 debts / incur

page 12

- 9 1 b 4 f
2 c 5 a
3 d 6 e

page 13

- 11 1 First of all 6 Firstly
2 Next 7 Secondly
3 Following that 8 Thirdly
4 Last of all 9 Finally
5 At first

page 14

- 13 a Bank loans or profits of business
b Small business
c Two
d Yes
e Registration fee. Registration formalities. Constitutional documents required and must be open to public.
f Unlimited
1 Sole trader / General partnership
2 Limited Company / LLP
- 14 a There are some very large companies in Germany that have remained private limited companies e.g. Bosch.

Advantages

- The company is protected from hostile takeover bids.
- The shareholders are often primarily members of an extended family and will always act to preserve the integrity and continuity of the company.
- The company is free of the obligations that would be imposed on a large plc, e.g. mandatory quarterly reports.

Disadvantages

- The company has less access to capital – a possible problem if it wanted to embark on a major investment programme.
 - Family in-fighting can make decisions more difficult.
 - Company less willing to bring in outside expertise to freshen up its performance.
- b This is not uncommon in situations where it is very important to move fast.

Advantages

- The company is already registered so the amount of time needed before you can commence trading is very short.
- Time might be very important. Imagine a situation in which you want to manufacture and distribute spin-off articles like T-shirts, basecaps etc. which articulate some issue of short-lived popular interest. You simply haven't got the normal amount of time it takes to register a new company.
- This kind of registration is less expensive, too.

Disadvantages

- A possible disadvantage is that some claims exist against the company you bought. It could be a complicated matter to get out of liability for such claims.
- Because the company is no longer trading, it is more difficult to carry out due diligence.

UNIT 2

page 17

- 1 1 Confidentiality 5 Leave entitlement
2 Competition 6 Duties
3 Duration of contract/ 7 Applicable law
Term of employment 8 Severance
4 Absence

page 18

- 2 1 i 6 b
2 g 7 c
3 e 8 d
4 a 9 f
5 j 10 h
- 3 1 false 5 true
2 true 6 true
3 true 7 false
4 false

page 19

- 4 1 No. Clause 1 says that other places of work are always of a temporary nature. The manager must decide how long the project group will meet in Lucerne or how long one particular employee should have to work there. She can't send the same employee there week after week.
- 2 No. According to clause 3(2) compensation for overtime solely by payment is possible even if it is not typical. The management can refuse but it can't do this unreasonably. If a manager simply says that he doesn't have time to discuss the matter, this is not reasonable.

- 3 Probably not. If the boyfriend and the employee live together all the time (i.e. he doesn't have his own separate home), then he is her partner. Clause 4.1 states that the employee is entitled to take her leave in the school holidays if her partner is tied to these holidays because of his / her profession. This is the case because he is a school teacher.
- 4 Yes. According to clause 5 the sick note must be handed in no later than four calendar days after the start of the period of absence. Saturday and Sunday are calendar days, so the sick note arrived late.
- 5 Probably the employer. The note written by the Spanish doctor to the employee's doctor back in Switzerland is not a formal sick note in the sense of clause 5. It simply contains some information about the medication which the patient was given. However, there might be scope here for the employer and the employee to find a compromise.
- 6 He is right. Clause 6 states that the employee has a right to paid time off if the vaccination is made necessary by a business trip. In this case, the vaccination is made necessary by a holiday so the employee must have the vaccination in his or her own time.
- 5 1 I apologize 6 resolve
2 contacting 7 reasonably
3 Unfortunately 8 wish
4 returned 9 discuss
5 I am attaching 10 please

page 20

- 6 (suggested answer)
Working hours: Cathy has basically got what she wanted. Although the contract still doesn't say specifically that the normal week is Monday to Friday, it says this indirectly because weekend work is referred to as being necessary 'from time to time'.
- Leave entitlement: This is definitely not what she wanted. According to this, she can only carry seven days' leave over into the following year and only up to the beginning of March.
- Remuneration: This is exactly what she wanted.

page 21

- 7 a Perhaps I could suggest a compromise here?
b I am happy with the suggested amendments to clauses 1.2 and 4.5.
c Please let me know if this might be possible.
d It would also give me an extra month in which to take it.
e As it stands, I would still risk losing up to eight days' leave a year.
f Thank you for sending me the contract amendments yesterday.
g Furthermore, I would have to take any unused leave by the end of February.
h Would you agree to ten days, to be taken by the end of March?
i This would guarantee me a minimum of 25 days' leave.
j However, I am a little concerned about the leave entitlement clause.

The correct order is:

1 f 2 b 3 j 4 e 5 g 6 a 7 h
8 i 9 d 10 c

page 22

- 8 (suggested answer)
Cathy has given notice in writing and her written notice is addressed to the correct person. However, she has misunderstood the period of notice in her contract. She can only start a new job on the 1st of March.

page 23

- 9 1 e (right) 4 a (right)
2 f (right) 5 b (right)
3 d (obligation) 6 c (obligation)

page 24

- 10 Statement 3 best sums up what is said.

The following statements are true:

- 1 a 2 b 3 b, c 4 b, c

UNIT 3

page 26

Starter

'What happens if, after the parties have signed, we find that there's a mistake in a contract – say about VAT? Do we have to draw up a whole new contract?'

There should be a *severance* clause in a contract. This clause makes it clear that if one particular clause in the contract turns out to be an error or invalid for some other reason, the rest of the contract remains unaffected. The severance clause usually goes on to state that the two parties will replace the invalid clause with a clause that is valid and comes as close as possible to the original intention of the parties.

'Let's say there's a rail strike and we fail to deliver our goods to the client. I assume we're protected by the *force majeure* clause, aren't we?'

Not necessarily. If a rail strike went on for two weeks and you made no effort to transport the goods to the client in some other way – even though other forms of transport might have been possible – the *force majeure* clause won't protect you.

'We had a big order from a client and the client said it was OK to ask a third party to supply part of the order for us. But are we liable if the third party's goods are defective?'

It's possible. It all depends on how the *assignment* clause is worded. If liability is not explicitly transferred to the third party in the wording, then it rests with the original party to the contract. So Party A (the client) might make a claim against Party B (the other party to the contract) in respect of defective goods delivered by Party C (the third party). Party B would then, in turn, have to make a claim against Party C!

'I often see *terms and conditions* in our sales documentation. Aren't they just two words for the same thing?'

Yes and no. In a non-specialist context *terms and conditions* is one of these noun pairs like *life and limb* or *peace and quiet* – to be understood as a single unit of meaning. However, for a lawyer *terms* can be *conditions* or *warranties*. If Party A breaches a condition, then Party B has no continuing obligations under the contract. However, if Party A breaches a warranty, then Party B can claim damages for this breach but the contract remains in force.

'A client agreed to buy some goods from us but he needed them urgently. He didn't have time to wait for all the paperwork to be drawn up and signed. I sent him the goods and he paid – no problem. But was he actually legally bound by our verbal agreement?'

In this situation the verbal agreement was binding. Problems arise, of course, if the two parties recall the details of their verbal agreement differently.

'I keep coming across this word *consideration* in contracts. Does it mean that you have – sort of – thought carefully about the other party's offer before signing the contract?'

No, it doesn't. Consideration is Party B's performance in return for Party A's goods or services. Consideration is usually in the form of money but doesn't have to be. Party A might sell his motorbike to Party B. As consideration, Party B might agree to repair the roof of Party A's house.

- | | | | |
|---|--------------------------------|---|------------------|
| 1 | 1 High-performance LCD screens | 3 | Annex 1 |
| 2 | Pixeltechnik S.A. | 4 | Digital View plc |

page 28

- 2 There are a few small differences which reflect a preference for simpler and more modern language. Both versions are correct: it is a question of style. Version 2 uses *Recitals* rather than *Whereas*. It uses *to this agreement* rather than *hereto*. It also creates a definition of *Goods* by simply using brackets and quotation marks, rather than using *hereinafter*.

page 29

- 3 a 8 b 4 c 3 d 6 e 1
f 5 g 2 h 7

page 30

- | | | | |
|---|-----------------------|----|-----------|
| 4 | 1 administrator | 6 | warranty |
| | 2 comply with | 7 | indemnify |
| | 3 terms | 8 | exceed |
| | 4 invoke | 9 | binding |
| | 5 winding-up petition | 10 | set out |

page 31

- 5 1 Just a question about the penalty clause. Can we reduce the price by 1% if Pixeltechnik delivers four days late?

Yes, you can. The contract states: '... for every week or **part thereof**'. This means that any part of a week – even if it is one day – entitles the purchaser to invoke the penalty clause and charge the full 1%.

- 2 Where exactly does it say in this contract how many items we have to order?

It is all set out in Annex 2. (see 3.1)

- 3 Where can we find all the prices for the different LCD screens?

This is all set out in Annex 2. (see 4.1)

- 4 I'm just looking at clause 4. Can Pixeltechnik increase the price if it wants to?

No. The prices are fixed for the full period of the agreement. (see 4.1)

- 5 I'm a little unclear about clause 5. Is this a two-year contract?

It is a two-year contract but it will be renewed for one additional year unless either of the parties terminates the contract (see 5.2).

- 6 What exactly are our rights if Pixeltechnik goes bankrupt?

You can terminate the contract with 21 days' notice. (see 8.1(iii))

- 7 There's something in clause 10 I'd like to clarify. What happens if some goods are defective? Can we insist on a replacement?

Yes, you can. (see 10.2)

- 8 What happens if another company suddenly claims that it owns the patent on Pixeltechnik's LCD screen technology? Can we be sued by this company?

No you can't. Clause 11.1 protects you against this risk.

- | | | | |
|---|-----------|---|---------|
| 6 | 1 found | 5 | imposed |
| | 2 reached | 6 | leading |
| | 3 listed | 7 | failing |
| | 4 arising | 8 | claimed |

page 32

- 7 What is the problem?

Pixeltechnik has to recall 10 batches of 500 items each because they are defective.

How quickly can Pixeltechnik solve the problem?

They guarantee to deliver all 5,000 items within 21 days.

Is the tone appropriate?

Definitely. Polite and apologetic.

Is the information sufficient?

In some ways not. It is not clear how many items will be delivered between the 10th and the 21st day. The letter is also a bit vague about the cause of the problem. The client would want to be reassured that there isn't a serious technical problem that might turn out to be difficult to solve.

page 33

- 8 The advice would probably be to invoke the penalty clause. If Digital View is going to experience serious production difficulties because of this delay, it might feel entitled to some further compensation. Furthermore, Digital View might have to offer some kind of discount to its customers to compensate them for late delivery. In such a situation, Digital View would be justified in seeking to recover these additional costs from Pixeltechnik, too. This is something that would have to be negotiated.

9 Part 1

- 1 true
- 2 false (The production manager noticed that the sampling results were a problem.)
- 3 false (He is not completely sure. He uses the word *probably*.)
- 4 false (They carried out tests every day but didn't notice the problem for ten days.)
- 5 true

9 Part 2

- 1 – He agreed a new delivery schedule.
– He delivered the 5,000 screens on time and the quality was fine.
– He paid 15,000 euros penalty to Digital View.
- 2 Digital View is seeking to terminate the contract with 21 days' notice.
- 3 It is invoking 8.1(i), which makes reference to unsatisfactory performance as a reason for terminating the contract.
- 4 Pixeltechnik is only going to cover its costs after two years. If the contract is terminated now, before the two years are over, Pixeltechnik will make a loss. A third year would be necessary for Pixeltechnik to make any profit.

page 34

10 (suggested answer)

- 1 a Since M. Hérault used the word *defective* in his letter to Digital View, the purchaser would naturally have assumed that the goods were defective in terms of the contractual specifications. In any case, M. Hérault is a little unclear about how defective the 5,000 screens were.
- 1 b The fact that a compromise seemed to have been reached favours Pixeltechnik. Digital View's good faith seems to be in question here.
- 2 It depends how difficult the consequences of the product recall were for Digital View. If the problems they encountered with their clients were such as to put these client relationships at risk, then Digital View has a point. If Digital View managed to resolve any problems with clients amicably, then, given the penalty paid by Pixeltechnik anyway, its attempts to terminate the contract early could be seen as unreasonable.
- 3 The concept of *reasonableness* is important. In principle, contracting parties should behave reasonably to one another.
- 4 Digital View doesn't have to go into a third year if it doesn't want to. It must, however, observe its obligations for the full term of two years – unless it can reasonably claim *unsatisfactory*

performance. In order to terminate the contract after two years, it must give written notice of its intention to terminate no later than 90 days before the end of the two-year period.

- 5 A dispute resolution clause would certainly have been helpful to Pixeltechnik. The contract has an *Applicable law and jurisdiction* clause. This means that disputes have to be settled in the court of law stated in the clause. As this is an English court, a legal dispute would involve some degree of inconvenience and extra cost for Pixeltechnik.

Ultimately, the solicitors' advice will depend on the size of the loss Pixeltechnik will have to bear if Digital View is allowed to terminate the contract now. A court case would be time-consuming and potentially costly. However, if Pixeltechnik's loss is going to be considerable, i.e. in the hundreds of thousands of euros, legal action would certainly seem sensible. In any case, Pixeltechnik is well advised to make sure any future contracts contain a dispute resolution clause.

- | | |
|-------------------------|--------------------------|
| 11 1 <i>invalid</i> | 8 <i>unforeseeable</i> |
| 2 <i>unlawful</i> | 9 <i>impartial</i> |
| 3 <i>unenforceable</i> | 10 <i>unconfirmed</i> |
| 4 <i>dissatisfied</i> | 11 <i>incorrect</i> |
| 5 <i>irreconcilable</i> | 12 <i>incomplete</i> |
| 6 <i>unaffected</i> | 13 <i>unreasonable</i> |
| 7 <i>ineffective</i> | 14 <i>unsatisfactory</i> |

page 35

- 13 **Task 1** – The case about the house is clear cut. Mr Blue rejected the original offer and made a counter-offer. The vendor of the house rejected Mr Blue's counter-offer. In no way is he bound by his original offer because this offer was rejected.

Task 2 – The swimming pool case is more complex. Clearly the swimming pool is safe to use even though it isn't quite as deep as the owner wanted it to be. Some courts would suggest that the owner accept compensation. Others might side with the owner and insist that the whole swimming pool be rebuilt at the expense of the construction company. What happened in this particular case was that the owner was required to accept compensation. Once again, the concept of *reasonableness* was an important factor in this decision.

- | | |
|-------------------------|-----------------|
| 14 1 <i>defective</i> | 5 <i>terms</i> |
| 2 <i>terminate</i> | 6 <i>comply</i> |
| 3 <i>binding</i> | 7 <i>invoke</i> |
| 4 <i>specifications</i> | 8 <i>expire</i> |

UNIT 4

page 37

Starter

- A new drug substance. Patent (limited to 20 years from date of registration, the so-called priority date, not date of market launch)
- A 19th century violin concerto. The published music score would be covered by copyright but the music itself was composed too long ago. The descendants of the composer would have no rights to royalties.

- A new perfume. The bottle, and the name would be protected by design rights and trade marks. However, it is difficult to protect a smell.
- A scientific theory e.g. $e = mc^2$. The theory itself cannot be protected, only any commercial applications.
- A distinctive chocolate product. Such a product would have trade mark protection and possibly design right protection, too.
- A TV news show format. Difficult. One could argue that a news show is of such a universal nature that you can't protect it. However, if it has certain very identifiable special features, these might be able to be protected by copyright.
- A new novel. Copyright.
- A sauce or a drink with an unmistakeable flavour e.g. HP sauce or Coca-Cola. Trade mark protection. Beyond this, Coca-Cola protects the recipe of its drink by simply keeping it a secret. The handful of executives who know the formula are never allowed to fly together!
- A new type of toaster. A patent. In the case of this particular toaster, the student who invented it entered it for a design competition. Unfortunately, this placed his invention in the public domain. The student had not yet patented his invention, so it was no longer patentable.
- A photo of the Leaning Tower of Pisa at sundown. Difficult. The photograph itself is protected by copyright. If someone copies it out of a book and uses it without the photographer's permission, this is a copyright infringement. However, the image of the tower is universally accessible and so can't be protected unless the composition of the photograph is particularly original. This is a very important source of protection to photographers who take highly innovative pictures. It would be unfair for someone to just stand in the same position, recreate the image and then offer it on the market at a knock-down price.

page 38

- 1 format 6 competitor
2 damages 7 infringement
3 general 8 validity
4 copyright 9 trade mark
5 patented 10 plaintiff
- 2 a This is a case about **copyright** and went all the way to appeal. The plaintiff claimed that his copyright existed in the scripts to his show and in the format. His problem was that he was required by law to demonstrate that his show should enjoy protection as *an original dramatic work*. The court took the view that a talent show is something that can't enjoy copyright protection because this would be unjust to anyone else who wanted to do a talent show on TV. In its view, Mr Green's show, despite the catchphrases and some distinctive format features, remained a talent show and, therefore, undeserving of copyright protection.
b This is a case about **patents**. The Court of Appeal found that the patent was indeed valid. Something that may seem obvious with hindsight might not have been obvious at all before it was done. Generally, this question of obviousness seems to be a problem in patent law that refuses to go away.

- c This is a case about **trade mark** protection. The court decided that, despite the name change made by the defendant, the *likelihood of confusion* still existed. It found for the plaintiff.

page 40

- 3 1 false 4 false
2 true 5 false
3 true
- 4 1 only 6 guarantees
2 wants 7 begin
3 bought 8 ends
4 given 9 possible
5 written down 10 agreement

page 40/41

- 5 1 May 1st 4 5
2 3.1 5 5.2
3 8 6 3

page 42

- 6 express a contrast *However / Nevertheless*
provide additional information *Moreover*
express a consequence *As a result*
state an opinion *In my view*
restate or reformulate some information *In other words*
- 7 1 Moreover 4 In other words
2 However 5 Nevertheless / However
3 As a result
- 8 1 true 4 false
2 false 5 true
3 true

page 43

- 9 1 purchaser 5 40,000
2 rights holder 6 three months
3 publisher 7 one year
4 80,000 8 40,000

page 44

- 10 1 The payment period you suggest is a little too short / isn't quite long enough.
2 I think our share of the royalties is a little too low / isn't really high enough.
3 I don't think that's very practical.
4 If you extended the licence area to include Japan, we would / could / might accept royalties of 4%.
5 I don't think our board would agree to that.

page 44 / 45

- 11 1 a, b 2 c 3 b 4 b 5 a

page 46

- 13 1 ownership 7 infringement
2 publisher 8 loser
3 unauthorised 9 inspiration
4 adaptations 10 creator
5 holder 11 permission
6 financial 12 criticism

The court found for J. K. Rowling and Warner Bros., stating that the publication of the encyclopaedia would cause Rowling *irreparable harm*.

UNIT 5

page 48

Starter

- 1 In favour of more regulation. An employee, possibly a member of the union or the works council.
- 2 Not in favour of more regulation. Possibly a director of a company or a business analyst.
- 3 Slightly unclear. Sounds as if she sees the OFT as something that, in reality, doesn't make much difference. Probably the director of a company.
- 4 The owner / director of a company that was taken over. Not in favour of more regulation. Very happy with the way things turned out for his company.

page 49

- 1 1 merger 4 takeover
2 results 5 targeted
3 acquired 6 expansion
- 2 1 false (He finds the company's documentation on M&A procedures confusing.)
2 false (There is documentation on both.)
3 true

page 50

- 3 2 f 3 h 4 a 5 c 6 d 7 g
8 b 9 e

page 51

- 4 Changes to information:
Step f: Esther needs to add that for small acquisitions (up to 2 million euros) the supervisory board does not need to be consulted.

Step c: The CEO can represent the company but only with another board member or an authorised signatory.

Step e: For those acquisitions for which the supervisory board needs to be consulted, the necessary majority of represented equity capital is now 75%.

page 52

- 5 1 NDAs set out the obligations of those persons who come into contact with certain information. The agreement sets out in detail all the things that these persons are not allowed to do with this information. The agreement also specifies a fine if its terms are breached. The fine does not exclude the injured party's rights to seek further damages in a civil action. Generally quite effective but the burden of proof lies with the injured party.
- 2 LOIs do create obligations and very often include a fine that must be paid if either party is in breach of the terms of the LOI. Civil actions for damages beyond the fine paid are not excluded unless this is specifically stated. LOIs are good at giving parties some assurance that a complicated process (e.g. a planned merger) that will cost time and money is being taken seriously by the other party. However, they provide no guarantee that a particular contract will actually come into being.
- 3 The SEC would become suspicious if there were unusual patterns of trading in a particular company's shares. They would have the right to

check if any of the names on the insider list had been involved in share transactions after the date on which, for example, they became aware of confidential information that could affect the price of a company's shares. Proving that a criminal offence has been committed can, however, be extremely difficult.

- 4 Not everything is entrusted to the free market. Think of the Law Society or the General Medical Council. These bodies have the exclusive right to regulate their respective professions. A competitor organisation isn't allowed to offer the same services.

page 53

- 7 • *Resolution* does not collocate with *allocate* and *enter*.
The two synonyms are *pass* and *carry*.
• *Approval* does not collocate with *select* and *acquire*.
The two synonyms are *withhold* and *refuse*.
• *Agreement* does not collocate with *assume* and *inform*.
The two synonyms are *break* and *violate*.
• *Meeting* does not collocate with *resolve* and *make*.
The two synonyms are *call* and *convene*.

- 8 1 reject / resolution 4 draw up / agreement
2 seek / approval 5 attend / meeting
3 convene / meeting 6 withhold / approval

page 54

9 Part 1

- a Name of company: No Frills
Paid-up capital: £300,000
Founded in: 2005
Current debts: nil
Type of company: limited
Current no. of cafés: 16
No. of shareholders: 3
Style of cafés: retro
Country of registration: England
- b They are short. When they expire the landlord may want to demand a much higher rent.
- c Esther will ask the solicitors in England to check again the lease agreements and the market commercial rents in the relevant locations. Esther and Francisco will then quantify the risk.

9 Part 2

- a He would like to pay them in the form of Foodstyle plc shares.
- b It would still be a limited company. It would now be a wholly owned subsidiary of Foodstyle plc.
- c The existing shareholders must agree with a majority of 75% to waive their right to a new share issue.
- d They think that the bank's interest rates might be unattractive. The repayments would also burden the company for a number of years.
- e It does if it wants to take out more than EUR 2 million.
- f Because it may need major investment soon and this money should come from the capital reserve.

page 55

10 1 d 2 b 3 a 4 h 5 e 6 c 7 f 8 g

page 56

- 11 1 true
 2 true (This is made clear in 4 (2).)
 3 true
 4 true
 5 false (The seller also has the right to make claims in addition to the stated amount of 50,000 euros.)

UNIT 6

page 58

Starter

Trade marks need to be monitored in case of passing off. **Patents** need to be monitored because they expire. A product's profitability is inevitably affected when it is no longer protected by a patent. Legal challenges to patents can also represent a risk. A company may have to invest a lot of money to defend its patent rights in court.

Warranties can represent a risk, especially towards the end of the warranty period. Realistic sums for repair, maintenance and replacement of defective goods need to be set aside to cover this risk.

A **company pension scheme** can quickly represent a risk to a company if it has, on the one hand, a contractual commitment to provide a particular pension scheme but, on the other hand, has not done enough to ensure that the necessary funds are really available. This happens to more companies than one might think.

Contracts with suppliers can represent a risk in all kinds of ways. The quality of the supplier's goods and services may be a problem or the completion of work by specific deadlines. The relevant contracts have to be drafted very carefully to ensure that, if the supplier's performance is unsatisfactory, the damage and inconvenience caused to the other party can be kept to a minimum.

Equipment represents a risk because it wears out or becomes obsolete. Moreover, the tax advantage from its depreciation is only available for a limited number of years.

Compliance with the **corporate code** can be extremely important. We only need to think of companies like Enron, where executive standards were not as high as they should have been, to see the enormous damage that can be done to a company and its reputation. Closer to home, a certain supermarket discounter could have avoided damaging publicity if they had monitored adherence to data protection legislation more carefully and a well-known DAX company could have prevented a long and painful period of introspection if it had monitored compliance with its own guidelines on the payment of bribes.

Employment legislation is always a risk factor. A company needs to understand exactly what its obligations are, so that it can manage its staff without fear of being overruled by a court of law.

Health and safety legislation represents a risk because new processes or facilities may be more expensive to design because of this legislation or may be constructed and then not allowed to go into use because of compliance problems.

1 1 b 2 e 3 f 4 a 5 d 6 c

page 59

- | | |
|--------------|-------------|
| 2 1 bail out | 5 put up |
| 2 drawn on | 6 write off |
| 3 set back | 7 wind up |
| 4 go under | 8 wipe out |

page 60

- 4 1 She thinks they are too focused on health and safety and insurance issues and not enough on commercial, financial and legal issues.
 2 i) Over-reliance on major clients is a risk if the major client becomes insolvent or simply decides to use a new supplier.
 ii) Exchange rate fluctuations can wipe out the profit on a transaction.
 iii) It is a risk to have a sum of money secured against an asset where the asset, if realized, cannot cover the sum secured on it. This could force the company into insolvency if it got into financial difficulties and was unable to service its debts.
 3 Fergus Winter would look at risk management from a legal point of view.

page 61

5 1 a* 2 c 3 b

* / see where you're coming from is sometimes a polite way of signalling disagreement.

6 For answers see exercise 7 below.

page 62

7 Clauses 2 and 5

These clauses are from a **leasehold agreement**. The automatic renewal clause is a risk because there is then no chance to renegotiate the agreement. The lawyer recommends terminating the agreement whilst at the same time signalling that one wishes to negotiate a new leasehold agreement. Another important reason for renegotiating is the fact that the company is holding an option on – and paying for – 200 m² of office space which it probably doesn't need.

The link between the rent and the Consumer Price Index is only fair if commercial rents are rising in line with inflation. This is not the case in this particular district of London. Basically, the company is paying 10% to 15% more rent than the market rate.

Clause 3

This clause comes from a **works council agreement**, which supplements the contract of employment. This is a fairly generous compensation package and would be very expensive for the company if it had to make staff redundant. The company should renegotiate with the works council.

Clause 6

This clause comes from a **company acquisition agreement**. Basically, it makes clear that Form and Function might have to pay an additional sum for a company it recently acquired. The company should find out how large this sum might be and should make provision for this.

page 63

- 8 1 At no time **was my client** made aware of the true financial circumstances of your client's company when he signed the contract.
 2 Seldom **does one come** across an employment contract with as many loopholes as this.
 3 **It is** the whole question of misrepresentation **that** interests me in this case.
 4 **What** the members of this union find particularly unfair **is** that the company is considering cuts after such a successful year.
 5 **What** I find suspicious in this case **is** that the company was registered in the Cayman Islands.
 6 The rest of the clause is fine. However, **it is** the last sentence **that** is open to interpretation.
- 9 1 Collapse in orders / insolvency of two major clients
 2 They refused to support a debt restructuring plan.
 3 Form and Function is thought to be a major supplier and could be affected by this bankruptcy.

page 64

- 10 1 false (An administration order means that an attempt will be made to rescue the company. A winding-up order means that the company will be liquidated.)
 2 true
 3 false (The repayment problems first began six months ago.)
 4 true
 5 true
 6 false (She thinks the lawyer is right but she isn't sure that getting the furniture back will benefit the company.)
 7 true
 8 true (By implication. She says that the company should be able to keep its core business intact.)
- 11 The mortgage on Ranjit's flat and the loan secured on it do not exceed the value of the flat. If Ranjit can find an alternative source of income quickly, he should be able to continue to meet his mortgage and loan obligations. If he does this, the secured creditors will have no need to force him to sell his home.

Ranjit has made progress in paying off both the loan and the mortgage, so will be seen as creditworthy.

If he realizes his receivables and his inventory, he will have EUR 18,000.

As employees are preferential creditors, they will be entitled to EUR 6,000.

The remaining sum of EUR 12,000 would be available to be distributed amongst the unsecured creditors.

There is nothing to be gained by the unsecured creditors seeking to force Ranjit to sell his home –

even if this were possible – because its value would only be sufficient to satisfy the claims of the secured creditors.

Assuming that Ranjit finds an alternative source of income, he would be required to make further payments to the unsecured creditors for a number of years.

page 65

- | | |
|----------------|----------------|
| 12 1 secured | 4 preferential |
| 2 asset | 5 unsecured |
| 3 distribute | 6 repayment |
| 13 1 insolvent | 4 acquisition |
| 2 lease | 5 debts |
| 3 severance | 6 loss |

page 66

- 14 1 If the new machine in the company's warehouse **hadn't been** paid for, it **wouldn't have been** part of the insolvency estate.
 2 If the bank **hadn't secured** its loan against assets of the company, it **wouldn't have got** most of its money back.
 3 If the creditors **had had** confidence in the company's ability to pay, they **wouldn't have petitioned** the court to make a winding-up order.
 4 If the directors **had delayed** in registering the company insolvent, they **would have been** guilty of a criminal offence.
 5 If the company **hadn't got** into a lot of speculative non-core ventures, its core business **wouldn't have been** exposed to risk.
 6 If it **hadn't been** a company with limited liability, the members' personal assets **would have been** at risk.

page 68 / 69**Test yourself!****Across**

- 3 remuneration
 5 equity
 7 comply
 8 invoke
 10 sue
 12 partnership
 17 articles
 18 binding
 19 waive
 20 patentee
 22 infringement
 24 *force majeure*
 27 amendment
 28 realize

Down

- 1 prior
 2 resolution
 4 insolvent
 6 issue
 9 preferential
 11 instalment
 13 royalties
 14 specifications
 15 void
 16 entitled
 21 security
 23 target
 25 consent
 26 assets

Reply 1

I cannot see from your letter what form your business took. If you did not incorporate it as a company, it is likely that a partnership was formed when you and your colleague started working together.

From the details you have given, it seems that you unintentionally created a “partnership at will”. Assuming that you and your colleague did not agree anything different, this type of partnership can be brought to an end at any time by any partner, even without the consent of the other partners. This seems to be what your colleague did when he handed back his duties to you.

Partners in a partnership at will are required to act in good faith, which would include being honest about other projects, but nothing in the facts you have given suggests that your colleague deceived you about his other interests. You do not therefore seem to have any claim against him on that ground. Even so, it would be worth calculating, if you have not already done so, the total losses incurred by the business. Partners in this kind of partnership usually share losses and profits equally, so in law you should bear only half of the total loss. You may be able to claim the remainder from your colleague.

James Hopkins, barrister

Reply 2


Your situation underlines how important it is for retiring partners to make clear and effective arrangements for their departure from the firm.

The debt for which the firm is now being sued was incurred after you and your husband left the partnership. A departing partner is not usually liable for future debts of the firm, since the retirement itself terminates the relationship between him or her and the business.

The claimants have included your names in this claim because, in their view, you and your husband have allowed the firm to “hold you out” or represent you as partners, despite your retirement. However, the facts that you have described suggest that the claimants are not likely to succeed. You did your best to compel the partnership to remove your names promptly from its business stationery. You did not therefore knowingly allow yourselves to be represented as partners after the date of your retirement. It is likely, therefore, that you and your husband have no continuing liability for the debts of the partnership.

Steven Carter, Partner at Garfield Brown

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