

5.1 Company law in context

5.1a General introduction to company law and practice

Before embarking on this course material, it is important to take some time to think about the implications of its title: **Company law in context**. In particular, what constitutes ‘**company law**’, and what is the **context** in which we are thinking about it?

At this point, you might like to pause for a moment and contemplate what this phrase means to you. In particular, what do you understand by the concept of a ‘company’?

At first, this may seem like a ludicrously straightforward question. However, try defining ‘company’, and the idea may become harder to pin down than you first thought. For example, what about people who run businesses on their own (‘sole traders’), or in partnership with other people? Can these ways of running a business be ‘companies’? Does it make a difference to a business's status as a company whether it deals in goods or whether it supplies services? Does it make a difference if the business is involved in manufacturing or designing items rather than selling them?

To help you understand how companies work, and how company law has developed, it is useful to start off by looking at the different ways in which a business can be run, and how forms of business organisations other than companies work. This will give us a background against which to place the study of company law and is why we will be concentrating on how sole traders and partnerships run their businesses.

5.1b Law and context

The law relating to businesses, which includes company law, is a highly practical subject because of the areas which it covers. You may in fact already have experience of this if you are in business; in addition or alternatively, you may be a shareholder in a company, or have lent money to one.

All students and practitioners of these areas of law therefore need to have a good understanding of how they actually work in practice, as well as the commercial, political, economic and social contexts in which they operate. For example, it is certainly important for a lawyer who advises business clients on their transactions to understand how partnership and company law work, and to have a thorough grounding in the legislation and case law in this area.

However, it is equally important to understand the practical implications of the legal advice which a lawyer might give (e.g. how to draft documentation so that it is correct for the particular way in which the client does business or how a client should structure a transaction for commercial reasons). You will therefore sometimes be asked to consider this law from the point of view of people in business (e.g. a bank manager, a partner in a business or a company director) to help you understand the practical implications. The aim of this unit is to help you acquire knowledge, understanding and skills in relation to both law and the practical context in which it operates.

Most, if not all, of the work which you do in this unit is designed to help you acquire knowledge of the law. To help you acquire and develop an understanding of the practical aspects of the relevant law, we will ask you at the end of the unit to reflect briefly on what you have been studying (in particular, through the activities) and consider some practical points which arise.

5.1c Wider aspects of business and company law

So far, we have touched on just a few of the many aspects of the law which relates to companies and other businesses. It will be useful at this point to consider how these areas fit into some wider issues raised by the study of law in general. For example:

- The law relating to businesses such as companies and partnerships regulates important areas of daily life, and allows you to see that there is a connection between the law and the way in which people think and behave when running a business.
- It allows you to consider the implications of creating a legal framework which regulates aspects of daily life, for example, questions may arise as to how far the law should regulate the way in which businesses operate, or whether the law in a particular area is adequate (e.g. does the present law on shareholders do enough to protect people who invest their money in companies in this way?).
- It allows a study of how and why law is made, and how and why it changes. It allows an appreciation of some of the pressures which bring about change in and development of law, and (in some areas) what roles individuals may play.
- It promotes an awareness of some of the values underpinning law, such as whether companies have a 'social' role to play.
- It allows you to consider the concept of rights and duties which lies beneath law generally. Duties and rights are usually regarded as inextricably linked; for every right enjoyed by an individual, there is a duty on others to respect that right. Equally, individuals must appreciate that other individuals also have rights. We will consider some of the issues which arise from this in a company law context.
- It allows you to understand the role of the law as a mechanism for solving problems and providing protection, and also to appreciate the law's limitations in these areas.
- It allows you to understand in general terms the need for a system of enforcement of law. Knowledge of the law is of limited use unless you understand how the system works to enforce it and the mechanisms for seeking help and advice.

Where possible, we have tried to encourage you to think through issues on your own and come to conclusions about them. We have used a range of active learning strategies, including problem-solving and decision-making to assist you in this process.

