

5.2 Key themes and concepts

5.2a Key themes and concepts

The key themes of this section are:

- company;
- business;
- capital.

After studying this section, you should be able to:

- describe in general terms what a business is;
- demonstrate an appreciation of the concept of capital.

5.2b What is a ‘company’?

In this section we will start by examining some of the basic concepts which will underpin your understanding of the unit. We will begin by examining what you think a company is (you do not need to have previous legal knowledge for this).

Activity 1: What does ‘company’ mean?

0 hours 10 minutes

What do you understand by the word ‘company’? What do you think a company is, or does?

Discussion

There is not really any right answer to this activity as different people have different conceptions of what the word ‘company’ means. Perhaps you came up with some of the following, which are listed under the word ‘company’ in the *New Shorter Oxford English Dictionary*:

- a social party or assembly;
- a number of individuals assembled or associated together; a body of people combined for some common object;
- a legal association formed to carry out some commercial or industrial undertaking;
- a party of actors, entertainers, musicians, etc.

You might have had some idea that most companies are concerned with running businesses; in which case your ideas of a company are closely related to what companies actually do, and not just what they are. This, too, is important, as we will see in due course that much of the law relating to companies arises out of the fact that most of them are business undertakings.

End of discussion

Our studies will be concerned in particular with the third of the ‘definitions’ in the *New Shorter Oxford English Dictionary* in the activity above. (We will not be too concerned with musicians and parties!) We will be exploring how in the eyes of the law persons may ‘combine’ to form companies, and what are the consequences which follow from them doing so. The *New Shorter Oxford English Dictionary* definition will turn out to be only a starting point for the legal concept of what a company is.

5.2c What is a ‘business’?

The vast majority of companies are, indeed, set up and run with ‘commercial objects’ – in other words, they are business enterprises, or ‘undertakings’, set up to trade and make a profit. It is principally in the context of the company as a form of business organisation (or ‘business medium’) that we will be studying it. So, before we start to look in detail at what companies are, it is a good idea to have a grasp of what companies do, which will lead us on to consider why they exist in the first place.

The next activity will allow you to start to consider what we mean when we talk about ‘a business’ and to develop an appreciation of the range of legal issues which might affect the operation of a business. We will keep things simple at this stage by not looking at a business run by a company, but at one which is simply run by an individual person.

Activity 2: What is a business?

0 hours 20 minutes

Imagine you had decided to open a newsagent. What are the different things you would need to do in order to set up in business and trade? Think of as many ways as you can in which the law would have an impact on your planned activity.



What, then, *is* a business? Well, it is not really a ‘thing’ at all. It is perhaps better to think of it in terms of all the different things involved in running a business. A lawyer might think of a business in terms of the *totality* of the legal relationships, rights, obligations, permissions, statuses, etc., which the owner has when they are involved in running a business. It is probably not too difficult to conceive of an individual person having all of these sorts of things. We will see as we go through the unit how a company may have them too.



5.2d What is ‘capital’?

Before we move on to look at the different types of business organisation, we will introduce one more concept. It is the concept of capital. It has, historically, been a very important concept in company law. But it is a concept not limited to company law. The next activity will allow you to reflect on your own ideas of what ‘capital’ means, without you needing to have any prior legal knowledge, or, for that matter, knowledge of any other discipline.

Activity 3: Capital

0 hours 10 minutes

What do you understand by the word ‘capital’? What would someone mean if they said they had some capital to invest? Or if they said they had a lot of capital tied up in a business?

Discussion

Capital is one of those words with all sorts of different shades of meaning in law, accountancy, economics and even politics. After all, Karl Marx had some bad things to say about it; but capitalism is very much based on it. Fortunately, the sense in which we need to understand it for the purposes of this unit is comparatively straightforward. One definition of capital in the *New Shorter Oxford English Dictionary* is:

“stock with which company or person enters into business; the total sum of shareholders’ contributions in a joint-stock company; accumulated wealth especially as used in further production.”

These are basically the senses in which we will use the term ‘capital’ in this section.

End of discussion

In our newsagency business in Activity 2, you would probably have had to contribute some capital to get the business up and running. Perhaps you would need, say, a capital sum of £30,000 to buy you the means of setting up in business. (The word ‘capital’ is often used by economists to mean ‘the means of production’ in this wider sense.) You might have this capital yourself, or you might have to borrow to start your business off. If your business did well, you might decide it was worth investing more capital in it.

Sometimes capital is contrasted with profit, though both words represent forms of wealth. Suppose you invested £30,000 in your newsagency business, but traded profitably so that you could afford better premises, etc. As a result, by the end of the first year, the business was worth £40,000. In one sense, we can say that you have contributed £30,000 capital and have made £10,000 profit. Loosely speaking, we would consider capital to be the wealth *invested* in the business, and profit to be the wealth *created by* the business. This is often the sense in which lawyers think of capital: as the investment rather than the profit generated from it.

Sometimes, however, capital is used in a wider sense, to encompass all the wealth ‘tied up’ in a business: so if, in the example above, you did not take any profits out of the business, an economist or an accountant might describe the capital of the business as £40,000. Even a lawyer might describe you as having ‘capitalised’ your profits: in other words, having re-invested *in* the business the wealth created *by* the business. However, for the purposes of this unit, you need not be concerned with the different senses in which the word ‘capital’ is used.

Now we have some basic concepts in our minds, we will move on to consider some of the ways in which businesses might be run. In particular we will look at sole traders and partnerships.

