

## 2.2 Module 7 Company Law

### 2.2.1 Headline information about the module

<b>Module title</b>	Company Law
<b>Module NFQ level (only if an NFQ level can be demonstrated)</b>	N/A
<b>Module number/reference</b>	Module 7
<b>Parent programme(s) the plural arises if there are embedded programmes to be validated.</b>	LLB (Hons)
<b>Stage of parent programme</b>	2
<b>Semester (semester1/semester2 if applicable)</b>	Semester 1 and 2
<b>Module credit units (FET/HET/ECTS)</b>	ECTS
<b>Module credit number of units</b>	15
<b>List the teaching and learning modes</b>	Full-time, Part-time
<b>Entry requirements (statement of knowledge, skill and competence)</b>	Learners are required to have successfully completed of Stage 1 of the programme.
<b>Pre-requisite module titles</b>	None
<b>Co-requisite module titles</b>	None
<b>Is this a capstone module? (Yes or No)</b>	No
<b>Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)</b>	Lecturers are expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
<b>Maximum number of learners per centre (or instance of the module)</b>	60
<b>Duration of the module</b>	Two Semesters, 24 weeks
<b>Average (over the duration of the module) of the contact hours per week</b>	4
<b>Module-specific physical resources and support required per centre (or instance of the module)</b>	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
96	1:60						279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				40			60	100%		

### 2.2.2 Module aims and objectives

In this Module, learners are able to engage in the theory and practice of Company Law. The Module incorporates a broad range of learning allowing learners to become familiar with important ingredients of Company Law, from both a common law and statutory perspective. Opportunities for reform of Company Law are also explored, for example in relation to the treatment of corporate manslaughter in Ireland.

The Module places significant emphasis on the effects of the Companies Act 2014 while also placing this Act within the context of established common law practice and principles. The core principles and philosophical underpinnings of Company Law are presented, discussed and applied to factual scenarios.

From a company's foundation through to its dissolution, the Module examines all key aspects of Company Law including the role of shareholders, company officers and creditors. Learners are also introduced and familiarized with key procedural aspects of Company Law, including Examinership, Liquidation, Capital Maintenance and the Registration of Securities. Learners can, upon successful completion of the module, become more effective in a broad range of skills gained and thus develop careers in the commercial sphere.

### **2.2.3 Minimum intended module learning outcomes**

On successful completion of this module, learners will be able to:

- (i) Interpret relevant case law and legislation in the area of Company Law;
- (ii) Analyse the distinction between common law and statute as it relates to the rules and principles of Company Law;
- (iii) Apply rules and principles of Company Law to factual scenarios;
- (iv) Employ research skills and communicate effectively on matters of Company Law;
- (v) Evaluate and analyse the core provisions of Company Law;
- (vi) Critique the societal impact of Company Law.

### **2.2.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs**

Company Law is an important area of practice and academic interest in Ireland. This module is a required entrance subject to enable the successful learner sit the entrance examinations for the Barrister at Law at Kings Inns and is also an examinable subject in the Law Society FE1 examinations. The skills acquired through successful completion of the programme are transferable and relevant to lay a foundation to not only successfully progress to professional practice as a Barrister or Solicitor but also to other opportunities in business, commerce, politics or media.

This module serves to directly underpin programme learning outcomes 1, 2, 3, 5, 6, 8, 9, 10.

### **2.2.5 Information provided to learners about the module**

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Timetable (via Moodle and Email);
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

### **2.2.6 Module content, organisation and structure**

The module is delivered over 24 lecture sessions of 4 hours' duration for Full Time learners and 2 hours' duration for Part Time Learners.

Learners are provided with a knowledge of the historical development of company law and an understanding of the sources of company law and its relevance and importance for the appropriate governance within corporations. The practical operations of company law is considered via a holistic approach where learners apply, on a weekly basis, their ongoing knowledge to real-life scenarios. Learning outcomes have been articulated using *the Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

## **Module Curriculum**

- Introduction: historical background and company law fundamentals
- Sources of company law
- Constitution of companies
- Separate legal personality
- Corporate capacity and authority
- Company directors
- Statutory obligations of companies and their officers
- Fraudulent and reckless trading
- Restriction and disqualification of company officers
- Capital maintenance
- Shareholders – rights, powers, duties, remedies
- Corporate borrowing
- Receivership
- Examinership
- Liquidation
- Winding up a company
- Operations and functions of the Company Law Review Group

### **2.2.7 Module teaching and learning (including formative assessment) strategy**

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Company Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical Company Law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn

to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

### **2.2.8 Work-based learning and practice-placement**

There is no work-placement with this module.

### **2.2.9 E-learning**

Moodle (the College's virtual learning environment) contains PDFs of core-essential readings for each topic, as well as the detailed Module Descriptor (including comprehensive readings lists by topic breakdown), and the detailed Assignment Brief (which also includes grading criteria).

### **2.2.10 Module physical resource requirements**

The module is delivered in class via lectures, presentations and discussion. Reading materials and online resources are uploaded on Moodle. A classroom with high-speed internet connection for the purposes of viewing online materials and projecting presentations is required.

### **2.2.11 Reading lists and other information resources**

#### **Primary Reading**

*Conroy, B. (2015), The Companies Act 2014: An Annotation. Dublin: Roundhall.*

*Courtney, T.B. (2016) The Law of Companies. Dublin: Bloomsbury*

*Courtney, T.B. (2015) The Bloomsbury Professional Guide To the Companies Act 2014. Dublin: Bloomsbury*

*Hutchinson, B. (2016) Keane on Company Law. Dublin: Roundhall*

*Forde, M. & Kennedy, H., (2017) Company Law. Dublin: Roundhall*

*Callanan Grainne (2015), An Introduction to Company Law. Dublin: Gill*

#### **Secondary Reading:**

*Davies, P. (2012) Gower and Davies' Principles of Modern Company Law. London: Sweet & Maxwell*

*Thuillier, A. (2013) Company Law in Ireland. Dublin: Clarus Press*

*Girvin, S. (2010) Charlesworth's Company Law. London: Sweet & Maxwell*

*Samad, M. (2013) Court Applications Under the Company Acts. Dublin: Bloomsbury*

### **2.2.12 Specifications for module staffing requirements**

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

### 2.2.13 Module summative assessment strategy

Theoretical knowledge will be assessed by both continuous assessment (40%) and a summative end of year examination (60%). The continuous assessment shall consist of a written assignment (40%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to Company Law. Problem Style questions will enable learners to apply the principles of Land Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No.	Description	MIMLOs	Weighting
1	Assignment	iv, v	40%
2	Exam	i, ii, iii, iv, v, vi	60%

### 2.2.14 Sample assessment materials

#### Company Law Sample Essay Assignment

In *Allied Irish Coal Supplies Ltd. v Powell Duffryn International Fuels Ltd.* [1998] 2 IR 519, the Supreme Court held that the rule in Salomon's case 'remains the corner stone of company law'. The approach of the Court was more nuanced in *Power Supermarkets v Crumlin Investments & ors* (1981) WJSC 2038.

**With reference to relevant case law and statute, critically discuss the development of the law in relation to separate legal personality and the exceptions thereto.**

The submitted assignment should be 2,500-3,000 words in length. This does not include reasonable footnotes. Referencing must be in accordance with the OSCOLA referencing system. Assignments should be typed in Size 12, Times New Roman Font, 1.5 spacing and full-justified.

Please submit via the link on the LLBH-COM Moodle page. Completed assignments must be uploaded as one document with the first page being the Assignment Cover Page (will be available on Moodle prior to submission date). Failure to submit prior to this time and date will result in late penalties being incurred.

This Assessment requires the Learner to research and report on an aspect of Company Law or a specific legal scenario. This assignment meets outcome 4 of the module learning outcomes: -

Employ research skills and communicate effectively on matters of Company Law.

#### Sample Examination

Answer any three of the following questions.

All questions carry equal marks.

#### Sample Examination Paper

##### Question 1

In *Fyffes plc v DCC plc* [2009] IR 417 Laffoy J. noted that:

*“It has been a fundamental principle of Irish company law since the decision of the House of Lords in *Salomon v Salomon & Co* that a company registered under the Companies Acts is an artificial legal entity separate and distinct from the members, whether natural or corporate persons of which it is composed.”*

Critically discuss the doctrine of separate legal personality and the exceptions thereto, in light of the above statement. Your answer should give due regard to pertinent case law and statutory provisions, where relevant.

### **Sample Answer 1**

*This question requires students to consider meaning and effect of the corporate veil/separate legal personality of a company and the circumstances in which the courts will pierce the corporate veil. Students should have due regard to the common law and statutory exceptions and should explore the following exceptions in some detail; fraud, contractual obligations, agency/alter ego, and the single economic entity exception. This question is broadly drafted and affords students a degree of flexibility to demonstrate their knowledge of the topic. The pertinent cases for consideration are as follows: *Salomon v. Salomon & Co. Ltd* [1897] AC 22; *Macaura v Northern Assurance Co. Ltd.* [1925] AC 619. *O’Neill v Ryan & Ryanair Ltd* [1993] ILRM 557; *Lee v. Lee’s Air Farming* [1961] AC 12; *Roundabout Ltd. v. Beirne* [1959] IR 423; *Re Bugle Press* [1961] Ch 270; *Re Shrinkpak Ltd. unrep. HC 20/12/1989 Barron J (I.T. 21/12/1989)*; *Cummings v. Stewart* [1911] 1 IR 236; *Gilford Motor Company v. Horne* [1933] Ch 935; *Jones v. Lipman* [1962] 1 All ER 442; *Smith, Stone and Knight v Birmingham Corporation* [1939] 4 All ER 116; *DHN Food Distributors Ltd. v. Tower Hamlet London Borough Council* [1976] 3 All ER 462; and *Power Supermarkets Ltd v. Crumlin Investments Ltd & Dunnes Stores (Crumlin) Ltd unrep. HC 22/6/1981.**

### **Question 2**

John, Jacob and George are the directors and equal shareholders of Bluebell Ltd. (“the Company”). John and Jacob have known each other for years and regularly enter business investments together. George gets along well with John and Jacob. Management meetings to discuss all financial and operational matters are held weekly between all three shareholders. John has put forward a number of suggestions in relation to expanding the company and, though Jacob has reservations, he supports these proposals. George is concerned that the company would be over-extending itself and could not support an expansion in its current financial position. George is informed that the weekly meetings have been reduced to one meeting each month but he has noticed issues arising and changes being made within the company, over which he had no input since the meetings were reduced.

In addition, George has been told by a friend that John and Jacob have put an offer in on new business premises nearby and they have accepted a large contract that interferes with an existing long-term contract that George arranged for the company many years ago. When George approached John and Jacob about the above issues, John and Jacob stormed

out, with John shouting that there were ‘plenty more surprises waiting for him when he checked the balance in the bank’.

Advise George as to any grounds on which he might seek to bring an action under section 212 of the Companies Act, 2014 and as to the remedies, which may be available to him under that section. Students should refer to relevant case law and statute in their answer.

### **Sample Answer 2**

*Students should discuss the nature of section 212 of the Companies Act, 2014 in relation to a fundamental breakdown in the relationship between shareholders of the company. The petitioner and conduct should be dealt with (oppressive/burdensome, harsh or wrongful). The Section 212 (2) remedies should be discussed as well as s. 212 (3) and the Court ‘ending the matters complained of’. Re Murphs Restaurant, Irish Press –v- Ingersoll, Re Greenore, Scottish Wholesale Co Op, Re Williams Group Tullamore, Re Five Minute Car Wash.*

### **Question 3**

In Re Lo-Line Motors Limited [1988] Ch 477, Browne-Wilkinson VC considered the purpose of restriction proceedings as follows:

*“The primary purpose of the section is not to punish the individual but to protect the public against the future conduct of companies by persons whose past record as a directors of insolvent companies have shown them to be a danger to creditors and others...Ordinarily commercial mismanagement is in itself not sufficient to justify disqualification. In the normal case, the conduct complained of must display a lack of commercial probity, although I have no doubt that in an extreme case of gross negligence or total incompetence disqualification could be appropriate.”*

Critically analyse the above statement of with reference to the relevant case law and statute.

### **Sample Answer 3**

*This question requires students to consider the regime concerning the restriction of company directors under Irish law. Students should consider s.819 of the Companies Act 2014 (“the 2014 Act”) (formerly s.150 of the Companies Act 1990) and ss.818 to 836 of the 2014 Act generally. Students should outline the fact that Part 14 of the 2014 Act provides restrictions on directors when an insolvent company is being wound up and that the purpose of restriction is to combat the ‘phoenix syndrome’ whereby companies wind up and reappear using a different corporate vehicle in order to defeat their creditors. Students should consider what restriction is, who can be restricted, the effect of a restriction order and the defence of acting honestly and responsibly, ensuring to make reference to the above statement. The pertinent cases are as follows: Re La Moselle Clothing Ltd and Rosegem Ltd [1998] 2 ILRM 345; Re USIT World plc [2005] IEHC; Business Communications Ltd v. Baxter & Parsons unrep. HC 21/7/1995; Re Costello Doors Ltd, unrep. HC 21/7/1995; Re Squash (Ireland) Ltd [2001] 3 IR 35; Re James Murphy & Sons Ltd. [2010] IEHC 115; Re Digital Channel Partners Ltd. [2004] 2 ILRM; Re Tralee Beef and Lamb Ltd; Kavanagh v Delaney [2005] ILRM 34 (HC), [2008]*



3 IR 347 (SC); *Re Mitek Holdings* [2010] IESC 31; *Re Verit Hotel Ltd.* Unreported, High Court, 23/1/2002.

#### **Question 4**

*“The traditionally superior position of fixed charges provoked credit institutions to be imaginative in seeking to stretch the boundaries of the sort of assets that could be the subject of a fixed charge.”* Courtney, T. *The Law of Companies* (4th edition) at para 19.035

Critically discuss the above in light of the development of charges over book debts with reference to relevant law and commentary where appropriate.

#### **Sample Answer 4**

*Students should outline a fixed charge, as well as defining book debts and introducing the relationship between fixed charges and floating charges and the evolution of the charge over book debts; Illingworth –v- Houldsworth, Re Yorkshire Woolcomers, Re JD Brian, Siebe Gorman –v- Barclays Bank, Re Armagh Shoes, Re Brightlife, Re Keenan Bros., Re Wogans, Re Holidayair, Westminster Bank –v- Spectrum Plus, Re Bullas Tradi*

#### **Question 5**

Up And Running LTD borrowed €1 million from Providence Bank plc (“the Bank”) in order to purchase a building on which it will run its business. Under the loan agreement, the Bank can appoint a receiver to acquire and sell all assets of the company if repayments on the loan are not made. Petra, a director of Up And Running LTD, personally guarantees to repay any amount outstanding if the Bank is not repaid by the company or out of the sale of its assets by a receiver.

Petra is now aware that a receiver, William, has been appointed by the Bank because Up And Running LTD has failed to make repayments for some time. The company has €900,000 outstanding on the loan. Petra hears a rumour that the receiver is intending to sell all assets of the company for €600,000. She therefore emails William to complain that the receiver ought to wait another six months before selling, in order to get the highest possible price. In her email to William, she also states her view that at least €750,000 should be obtainable for the assets in the present market. Indeed, she further states, the most likely buyer is a rival company, Down and Out LTD, which operates in the local area and for whom the assets would probably have a value in excess of €750,000. Petra demands that William inform Up And Running LTD about any discussions with Down And Out LTD and what in any event William intends to do with the assets in his possession. Petra also asserts that William is obliged to run the company in the same manner that an honest and careful director would do so.

As a related matter, Eddie, an electrician, undertook the re-wiring of the building which was purchased by Up and Running LTD. His agreed fee of €100,000 for this work has been due and owing by Up And Running LTD for some time.

Advise William as to his duties and his potential liabilities as receiver to Up And Running LTD, Petra, and Eddie. Your answer should have due regard to relevant law.

### **Sample Answer 5**

*This question concerns the duties and liabilities of a receiver in relation to the company and creditors. Students are expected to outline the relevant statutory and case law and apply the same to the facts of the case. Students should identify that the receiver's appointment must be valid - Re Goldberg (No. 2); s. 438 – liability for failure to obtain the best price, Standard Chartered Bank –v- Walker, American Express International Banking Corporation –v- Hurley, re Bula Ltd, s. 439(1). Receiver's potential liability as mortgagee in possession for breach of care (and possibly for negligence). Liability for contracts: s. 438(4), s. 438(5) Ardmore Studios –v- Lynch. Learners may also highlight the differences in legal duty between Receiver- Simpliciter and Receiver-Manager is also relevant.*

### **Question 6**

Michael and Mary are directors and 50:50 shareholders in a company called M&M Cars LTD ("the Company") based in county Dublin. Because of the economic recovery, they wish to expand their business but do not have the necessary expertise or capital to do so. A number of months ago, they had a meeting with Harold who has 40 years' experience in the motor industry. Harold told them that he is willing to help them to develop their business on the basis that he will "enjoy the fruits of his labour". He asks to purchase €100,000 worth of shares in the company which will make him a one-third shareholder in the business.

However, he informed Michael and Mary that he will need a loan to raise the finance to purchase the shares. As a gesture of good faith, Michael and Mary have agreed for the Company to provide security for this loan. Harold has arranged to meet Alex, Bank Manager of Local Bank plc to apply for a loan. At this meeting, Harold tells Alex that, because they are anxious to get him to join the company, the directors of M&M Cars LTD are willing to offer the company premises as security for his loan. Harold also informs Alex that he plans to use the loan to purchase shares in the company. Because Harold has a longstanding relationship with the Bank, Alex is willing to give him the loan. However, he is worried about the type of transaction Harold proposing to enter into and he sends the loan application to you, as legal adviser in Corporate Headquarters. He has requested you to advise him whether he is entitled to offer the loan and, if so, what conditions need to be satisfied before he can do so.

In light of the above facts, and citing relevant case law and statute in your answer, advise Alex of the rules contained in section 82 of the Companies Act 2014 and whether the bank is entitled to give the loan to Harold under these conditions. You are also required to advise Alex of the consequences for the Bank in the event of a breach of section 82 of the Companies Act 2014.

### **Sample Answer 6**

*This Question relates to Capital Maintenance rules under the Companies Act 2014, in particular Section 82 CA 2014. Students should be able to set out the scope of this restriction. Better students will also be able to identify changes introduced by the 2014 Act, including restricting the scope of the prohibition; "primary purpose" criterion under section 82 and exceptions to the prohibition in terms of "ordinary course of business", profit redistribution/dividends and employee shares arrangements.*

*Pertinent caselaw in this Question include Bank of Ireland v Rockfield [1979]; Quinn & Ors v IBRC (2012); Charterhouse Investment v Tempest Diesels Ltd [1986]; Wallersteiner v Moir [1974]. Having set out the relevant caselaw and statute, students are required to address the Question to arrive at relevant conclusions.*