

PEARSON

LawExpress

法学初阶——西方法学经典教材系列·影印双语注释本

LAW
REVISION
BESTSELLER
FIND OUT WHY
INSIDE & ONLINE

Nielsen Bookscan data 2009-2011
Law Revision Series

- > UNDERSTAND QUICKLY
- > REVISE EFFECTIVELY

2nd edition

COMPANY LAW

公司法学 (第2版)

CHRIS TAYLOR

王梓 注释 胡晓静 审校

PEARSON

著名法学家江平教授、许章润教授联袂推荐!

ALWAYS LEARNING



华中科技大学出版社

<http://www.hustp.com>

PEARSON

LawExpress

法学初阶——西方法学经典教材系列·影印双语注释本

2nd edition

COMPANY LAW

公司法学 (第2版)

CHRIS TAYLOR

王梓 注释 胡晓静 审校



华中科技大学出版社

<http://www.hustp.com>

中国·武汉

图书在版编目 (CIP) 数据

公司法学 / (英) 泰勒 (Taylor, C.) 著; 王梓注. —影印本. —武汉: 华中科技大学出版社, 2013.9

(法学初阶: 影印注释本)

西方法学经典教材系列

ISBN 978-7-5609-9399-7

I. ①公… II. ①泰… ②王… III. ①公司法—教材 IV. ①D912.29

中国版本图书馆 CIP 数据核字 (2013) 第 233860 号

湖北省版权局著作权合同登记图字: 17-2013-246 号

Authorized Adaptation from the English language edition, entitled Company Law, 2 edition, 9781408271711 by Chris Taylor, published by Pearson Education, Inc, publishing as Prentice Hall, Copyright © 2013 Pearson Education, Inc.

All rights reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage retrieval system, without permission from Pearson Education, Inc.

ENGLISH language adaptation edition published by PEARSON EDUCATION ASIA LTD., And Huazhong University of Science & Technology Press Copyright © 2013

ENGLISH language adaptation contents manufactured in the People's Republic of China, and is authorized for sale only in the mainland of China, including Hong Kong and Macau.

本书影印改编版专有出版权由培生教育出版集团亚洲有限公司授予华中科技大学出版社。仅限于中国大陆境内(不包括中国香港、澳门特别行政区和中国台湾地区)销售发行。未经许可,不得以任何方式复制或抄袭本书之部分或全部内容。本书影印改编版贴有 Pearson Education 培生教育出版集团激光防伪标贴,无标贴者不得销售。

公司法学 (第 2 版) [英] 泰勒 (Taylor, C.) 著 王梓注释 胡晓静审校

策划编辑: 王梓

责任编辑: 王梓

封面设计: 傅瑞学

责任校对: 九万里文字工作室

责任监印: 周治超

出版发行: 华中科技大学出版社 (中国·武汉)

武汉喻家山 邮编: 430074 电话: (027) 81321915

录排: 北京楠竹文化发展有限公司

印刷: 湖北新华印务有限公司

开本: 880mm×1230mm 1/32

印张: 5.5

字数: 150 千字

版次: 2014 年 1 月第 1 版第 1 次印刷

定价: 20.00 元



华中出版

本书若有印装质量问题, 请向出版社营销中心调换

全国免费服务热线: 400-6679-118, 竭诚为您服务

版权所有 侵权必究

著名法学家江平教授、许章润教授为
《西方法学经典教材系列》题词

教材所收皆为精品，精准阐释了英美法制的专门领域，而篇幅适中，书写畅达，值得一读。

——中国政法大学终身教授 江平

采撷异域法意，以接济和光弘本土法律精神，助推中国转型，进而建政立制，本套教材正当时也！

——清华大学法学院教授 许章润

华中法学出版学术顾问

(按姓氏笔画为序)

方流芳 刘春田 张 军 郭寿康

《公司法》导读

由英国 PEARSON 出版社授权华中科技大学出版社出版的《法学初阶——西方法学经典教材系列·影印双语注释本》已经与读者见面了。该系列涵盖了国内法学本科生必修的法学课程内容，是一套非常适合中国法学院校本科生系统了解与学习英美法系课程内容的经典教材，同时该教材兼顾法律英语的学习目的。

《法学初阶——西方法学经典教材系列·影印双语注释本》，通过中英文双语注释的方式，把原汁原味的英国各类部门法的内容介绍给读者，这是该系列教材与以往出版的影印版法学书籍最大的不同之处。注释者依据国内法学院校教授英美法系课程内容和法律英语教学的特点，在参考《布莱克法律字典》、《元照英美法词典》、《牛津法律大辞典》等多部权威字典基础上，采取中英文双语注释的方式，将教材中重要的法律词汇一一作出解释。这样，便于大家学习英美法系课程内容，同时也能够更快地掌握法律英语。

《法学初阶——西方法学经典教材系列·影印双语注释本》的出版，旨在将英美法系中（英国各部门法）的法律内容介绍给中国法学院校的老师与同学们，大家可以借助中英文注释这一桥梁，便捷、准确地了解英国法律。

出版者希望采用该系列教材的法学院校师生们，喜欢我们这样的编排方式，并从中受益，也期待师生们对其提出宝贵意见！

下面是对这套法学经典教材之一《公司法》的介绍。

公司法，是商法中最重要的部门法之一，也是法学本科生必修的课程。在这本教材中，作者采用通俗易懂的语言将其重点知识，如公司的结构、公司的分类、公司的章程、股东权利等内容一一作了介绍与阐释。教材每一章节之始，

作者为其内容的重点知识词汇编制了知识网络图，这种最为直观的方式，可以使学生在学习前就对其有一个完整及初步的了解。同时，每一章节还配有相关的案例以及分析，这样可以帮助学生理解相关知识并熟悉司法实践过程，提高运用能力。再有，每一章节还附有部分内容的知识图表，便于学生对所学的知识能够得到及时的总结和梳理。

《公司法学》这本教材语言简明易懂，便于老师和学生在短时间内掌握公司法学的主要内容，并了解英国法是从怎样的角度和思路介绍公司法内容的。教材附录部分的重点词汇，可以使学生很快地理解重点词汇的含义，以扫清阅读和学习障碍。

为了保证本教材中英文注释的准确性，出版社邀请了吉林大学法学院副教授法学博士胡晓静担任专业审校，确保该教材注释内容的专业精准和学术权威。

Acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.

Introduction

Company law is a challenging but interesting area of legal study and one which is increasingly in demand from employers. With the implementation of the Companies Act 2006, many of those involved in the running of companies find themselves having to grapple with the new provisions. For this reason, students who can demonstrate a grasp of the new regulatory framework will have a distinct advantage.


Against this background it is even more important that you are well prepared for the examination and that you understand the most common pitfalls which undermine so many students. As a rule, examinations in company law are often dominated by problem questions and many students do not fully exploit the opportunities which such questions present. Answers which are general, lack supporting authority and which do not offer clear advice to the parties involved will always score badly and so it is vital to adopt a structured approach and to address all of the key issues in a methodical manner.

Essay questions, by contrast, tend to focus on the development of a principle such as limited liability or minority shareholder protection and require not only a statement of the relevant provisions but also analysis of the effectiveness of the law, and an essay which simply recites the section numbers and cases will always underachieve.

It is important to remember that company law is invariably a second- or third-year subject on undergraduate programmes and this means that it will be assessed at a level which requires evidence of analytical ability. That said, the level of analysis required to satisfy that element of the assessment is relatively modest and so even the most basic advice to the parties in a problem question or the most tentative conclusion in an essay will significantly elevate your marks – providing that they are based on relevant legal principles and supported by appropriate authorities.

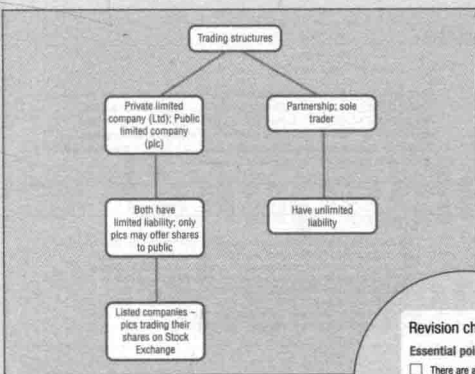
In comparison to many other areas of legal study, company law is heavily 'statute based', formerly by the Companies Act 1985 and now by the Companies Act 2006.

Remember that this is a revision guide, not a core text, so it can never provide you with the depth of understanding which you will need to excel in examinations and it will be no substitute for attendance at lectures and tutorials, together with structured reading around the various topics. What it can do, however, is to focus your revision on the key areas and highlight those additional points which examiners are looking for. The single most common failing in company law examinations is that students write 'common sense' answers, without sufficient reference to the cases and legal principles. This usually arises from a lack of familiarity with the provisions and an assumption that, if you recognise the general area of law, that will be sufficient. That may be true if a bare pass mark is your aim but, as in any other area of legal writing, there really is no such things as a free lunch. You need to produce logical, reasoned arguments supported by relevant authorities if you are to achieve the highest grades.

 REVISION NOTE

Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.

Guided tour



Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your own revision notes.

Revision checklists – How well do you know each topic? Use these to identify essential points you should know for your exams. But don't panic if you don't know them all – the chapters will help you revise each point to ensure you are fully prepared. Print the checklists off the companion website and track your revision progress!

Revision checklist

Essential points you should know

- There are a number of different trading structures, partnership, private limited company
- Each structure has different characteristics than for others
- The main distinction is between those which do not

Sample questions with answer guidelines – Practice makes perfect! Read the question at the start of each chapter and consider how you would answer it. Guidance on structuring strong answers is provided at the end of the chapter. Try out additional sample questions online.

Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample essay question and guidance on tackling it can be found on the companion website.

Assessment advice – Not sure how best to tackle a problem or essay question? Wondering what you may be asked? Use the assessment advice to identify the ways in which a subject may be examined and how to apply your knowledge effectively.

ASSESSMENT ADVICE

Questions on this topic can take the form of essays, which ask you to outline the different trading forms, or problem questions which depict a new business unsure of which trading form to adopt and seeking your advice. In reality, such 'problem' questions are also basically essays, as they require you to set out the different trading structures in exactly the same way but ending with, 'therefore X should be advised to ...'.

In all cases, you should differentiate clearly between the different structures, paying particular attention to issues of limited liability. It is also important to emphasise the different regulatory burden attached to each, as this is one of the key factors which may influence the choice of which is most appropriate for any particular business.

Key definitions – Make sure you understand essential legal terms. Use the flashcards online to test your recall!

KEY DEFINITION: Promoter

The person or persons who initially incorporate the company. They are the first shareholders and often also the directors. They have the ability to draft the company's memorandum and articles and so can shape the structure and direction of the company.

Key cases and key statutes – Identify and review the important elements of the essential cases and statutes you will need to know for your exams.

KEY CASE

Reckitt and Colman Products Ltd v. Borden Inc. and others [1990] 1 All ER 873 (HL)

KEY STATUTE

Partnership Act 1890 – A plastic container shaped like a lemon. Over time it became known as 'lemon juice'. A rival company began selling its lemon juice in a similar container. The court held that the rival company alleged 'passing off'.
Partnership is the relationship between two or more persons who have in common with a view to profit.

Make your answer stand out – This feature illustrates sources of further thinking and debate where you can maximise your marks. Use them to really impress your examiners!

✓ Make your answer stand out

The degree of regulation and accountability placed on companies is the subject of much political debate. Companies complain about the cost of preparing such documentation and the time which it takes to complete. See L. S. Speeding (2004). The government has sought to address such concerns by reducing the burden for smaller businesses: for example, by allowing smaller firms to present simplified accounts. The examiner will give credit for recognition of this as an issue for discussion.

Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.

EXAM TIP

The requirement for solicitors and accountants to operate within partnerships, rather than companies, is an important control on professionals and makes them more careful to act in the interests of their clients because, if one partner causes a loss (for example, by their negligence), the others will have to pay. The examiner will give you credit for recognising the purpose of this restriction. You should also mention that the Limited Liability Partnerships Act 2000 allows partners in such professions to create 'limited liability partnerships' which allow them to restrict their liability for general trading debts but not their individual liability for negligence – again to protect clients.

Revision notes – Get guidance for effective revision. These boxes highlight related points and areas of overlap in the subject, or areas where your course might adopt a particular approach that you should check with your course tutor.

REVISION NOTE

In order to fully appreciate the differences between sole trader/partnership status and limited liability company, you must understand the concepts of 'corporate personality' and 'limited liability' discussed in Chapter 3. Return to this chapter after you have read these sections.

Don't be tempted to . . . – This feature underlines areas where students most often trip up in exams. Use them to spot common pitfalls and avoid losing marks.

! Don't be tempted to . . .

Although companies limited by share are the most common, be aware that it is also possible to have a company limited by guarantee. In such companies, the promoters of the company 'guarantee' to pay a set sum if the company should go into liquidation. Such companies are far less common than those limited by share, which form the overwhelming majority of commercial companies. Be careful not to confuse the two types of company in your answers.

Read to impress – Focus on these carefully selected sources to extend your knowledge, deepen your understanding, and earn better marks in coursework as well as in exams.

READ TO IMPRESS

Dance, M. (2002) 'limiting personal liability in business: Sole trader, partnership or limited liability company?', 3 *Due Diligence and Risk Management* 1, 22.

Haywood, J. (2010) 'LLP members: how limited is your liability? Part 1', 9 *Journal of International Banking and Financial Law* 546.

Mather, J. (2010) 'LLP members: how limited is your liability? Part 2', 10 *Journal of International Banking and Financial Law* 587.

Speeding, L.S. (2004) 'Red tape and the impact on small business, Part 1', 3(5) *Advisory Business*.

See the following websites for additional information:

www.businesslink.gov.uk

www.companieshouse.gov.uk

Glossary – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms.

Glossary of terms

The glossary is divided into two parts: key definitions and other useful terms. The key definitions can be found within the chapter in which they occur, as well as in the glossary below. These definitions are the essential terms that you must know and understand in order to prepare for an exam. The additional list of terms provides further definitions of useful terms and phrases which will also help you answer examination and coursework questions effectively. These terms are highlighted in the text as they occur but the definition can only be found here.

1

Companies and other trading structures

Revision checklist

Essential points you should know:

- There are a number of different trading structures including sole trader, partnership, private limited company and public limited company
- Each structure has different characteristics which make it more suitable for some businesses than for others
- The main distinction is between those structures which offer 'limited liability' and those which do not

Contents

Introduction	i
Guided tour	i
Chapter 1: Companies and other trading structures	1
Chapter 2: Incorporation	17
Chapter 3: Limited liability and corporate personality	31
Chapter 4: Pre-incorporation contracts	51
Chapter 5: The constitution of the company	63
Chapter 6: Directors	77
Chapter 7: Corporate finance and charges	97
Chapter 8: Minority shareholder protection	115
Chapter 9: Liquidation	133
And finally, before the exam . . .	147
Glossary of terms	157

1

Companies and other trading structures

Revision checklist

Essential points you should know:

- There are a number of different trading structures including sole trader, partnership, private limited company and public limited company
- Each structure has different characteristics which make it more suitable for some businesses than for others
- The main distinction is between those structures which offer 'limited liability' and those which do not

第一章注释

序号	页	表格	行	词汇	中文注释	English
1	5	1		Private limited company	私人有限公司	A type of company that offers limited liability, or legal protection for its shareholders but that places certain restrictions on its ownership. These restrictions are defined in the company by laws or regulations and are meant to prevent any hostile takeover attempt.
2				Public limited company	公众有限公司	A type of public company (publicly held company), legally abbreviated to PLC. It is a limited (liability) company whose shares may be freely sold and traded to the public (although a PLC may also be privately held, often by another PLC).
3	7		17	Sole trader	个人独资企业	Also as known as sole proprietorship or simply a proprietorship, is a type of business entity that is owned and run by one individual and in which there is no legal distinction between the owner and the business.
4	8		13	Accountability	会计账簿义务	The obligation of an individual or organization to file annual accounts or reports.
5	9		The second line from the bottom	Companies House	公司注册登记处	An official organisation where the records of companies must be deposited, so that they can be inspected by the public. The official name is the 'Companies registration Office'.

序号	页	表格	行	词汇	中文注释	English
5	9		The first line from the bottom	Promoter	发起人	A founder or organizer of a corporation or business venture. Individuals who are setting up the company.
6	11		4	Liquidation	清算	Bankruptcy liquidation. The process of collecting a debtor's nonexempt property, converting that property to cash, and distributing the cash to the various creditors.
7						20
8	12		6	Annual account	年度决算报表	The account prepared at the end of a financial year.
9						7
10	14		10	Listed company	上市公司	A public limited company whose shares are listed (quoted) on a stock exchange for public trading. Also called quoted company.
11						25