

Unit 1

Sources of Company Law

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Practice I

Before you read, think how law is created and what the sources of law in the legal system of your country are. While reading, try to answer these questions:

1. What is the major difference between the Anglo-Saxon and continental law?
2. Which type of law, enacted or common, prevails in the Anglo-Saxon system?
3. What is a precedent?
4. How do the courts influence the law both in the Anglo-Saxon and continental systems?
5. What is a custom?

In the Anglo-Saxon countries, such as the United Kingdom and the United States of America, the system of law is divided into **statutory law**¹ and **common law**².

Common law includes extensive non-statutory law reflecting precedents laid down by judges hearing real cases. Through precedents courts make law as they recognise and apply new rules which will then serve as a basis for determining later, similar, cases. Precedents are laid down if the statute does not deliver a norm of conduct in a given case; however, if such statute exists, it prevails.

Such judgments which lay down a precedent are **binding**: (a) only upon the courts of a lower instance than the court which **pronounced** it (and, in the case of the US, only on the courts of the same state (except for the federal courts)), (b) if they are **holdings** included in opinions of **appellate courts**.

Another important element of the common law are the **rules of equity** (which could be called the principles of justice) which supplement the strict application of the rules of law where this application is considered harsh, so as to achieve so-called “natural justice”.

On the other hand, there is the statutory law, also called the written or enacted law which has its source in legislation (**legal acts**). Enacted law is composed of the **Acts of Parliament** (Congress in the US) and so-called **delegated legislation**, which includes **statutory instruments**, such as rules, orders or regulations issued by a government or its agencies, or **executive orders** issued by the President (US). These laws do not necessarily apply to the entire

¹ Law contained in law-making instruments, a.k.a. enacted law, statute.

² It is also referred to as judge-made law, case law, decisional law or precedent law.

area of the country – in the United Kingdom their scope may cover the territory of England and Wales, Scotland and/or Northern Ireland – and the area covered by the particular law is determined in the document. In the US, on the other hand, the legal system is divided into **federal** and **state law**. The state statutes constitute an important part of enacted law in the USA. However, although a few **uniform acts** which aim to unify the U.S. law do exist, not all states have adopted them.

Another important feature of the UK legal system, unlike in the US, is the lack of a **written constitution**. It is an area of uncodified law, consisting of both written and unwritten sources. There is no technical difference between ordinary statutes and law considered “constitutional law”.

In modern practice, the most important distinction between law and equity is the set of **remedies**. **Remedies are** the means of enforcing a right or preventing or redressing a wrong. They include **equitable remedies** and **legal remedies**. Equitable remedies are usually non-monetary remedies such as **injunction** or **specific performance** obtained when available legal remedies, usually monetary damages, cannot adequately **redress** the injury.

We also must not forget about the importance of a **custom** in common law as a basis for so called **implied terms**, which derive directly from the letter of law or a custom as opposed to **explicit terms** (a.k.a. express terms), the terms included in a particular document in black and white.

Polish law is formed exclusively by enacted law. The main sources of Polish law are: the Constitution, acts and ordinances. Precedent law does not exist in the Polish legal system although **judicial decisions** (i.e. rulings and resolutions of courts designated to administer justice) of higher courts and tribunals (e.g. the Constitutional Court, the Supreme Court, the Supreme Administrative Court), whose rulings are not law-creating and refer only to a particular case, *de facto* play an important role in the interpretation of the above-mentioned legal acts. Exceptions include the **Resolutions of the Seven Justices of the Supreme Court** which became a rule of law. Moreover, the Civil Code provides for the application of **principles of community life** (i.e. principles which individuals must obey in order not to violate the rights of other members of the society) and commonly-accepted customs.

Additionally, as far as Polish law is concerned, we must not forget about the role of the European Union law and the impact of its binding instruments, such as **regulations**, **directives** and **decisions**, on the legal systems in most European countries.

Practice 2

Choose the correct answer:

1. Anglo-Saxon law
 - a. is contained in written and unwritten rules
 - b. is based on precedents
 - c. is created by courts
2. Delegated legislation is contained in
 - a. acts enacted by Parliament
 - b. documents issued by public authorities other than Parliament
 - c. orders of the Council of Ministers
3. The courts in Poland
 - a. participate in the creation of new laws
 - b. have great influence on the legal system
 - c. show how law should be interpreted
4. The UK
 - a. does not have a Constitution
 - b. has a written Constitution
 - c. has a Constitution which relies on unwritten conventions and other documents
5. Uniform acts in the USA
 - a. must be adopted by all the states
 - b. are a part of federal law
 - c. try to unify law within the country

Practice 3

On the basis of the above text define the following terms:

a. statutory law	
b. common law	
c. precedent	
d. implied terms	
e. explicit terms	
f. custom	

g. legal acts	
h. binding	
i. appellate courts	
j. judicial decisions	
k. principles of community life	
l. uniform act	

Practice 4

Every legal system contains regulations designed to govern the conduct of people. Below you will find several short definitions of law and law-related terms. Decide which definition is the most accurate and justify your choice. Find the best definition:

6

1. Law

- (a) is formed by a set of rules and norms of conduct
- (b) lays down the rules which prohibit, permit or regulate particular actions and relationships among various persons/entities
- (c) is designed to eliminate, minimise and punish the breaking of commonly accepted rules and to bring about justice
- (d) is divided into substantive and procedure laws
- (e) is administered by a system of courts and representatives of public administration
- (f) all of the above

2. Separation of Powers

- (a) the division of authority into legislative, executive and judicial branches vested in particular state authorities by the national constitution
- (b) the division of rights between the members of an organisation
- (c) another term for “corporate governance”

3. Right of initiative

- (a) the power granted by a competent state authority to propose legislation
- (b) the power granted by the constitution to propose legislation
- (c) the proposal of a new law (known as a bill)

4. Applicable laws

- (a) legal stipulations which regulate the conduct in a particular situation
- (b) rules which are prescribed by law and have to be absolutely followed and obeyed in any situation
- (c) rules of law which are relevant in a particular case and which bind the persons involved in the activity described by these rules

5. Administration of law

- (a) directing and controlling the implementation and obedience of the law
- (b) public authorities responsible for creating the law
- (c) ruling

6. Enforcement of law

- (a) compelling compliance with a law
- (b) implementing the law
- (c) using force to make someone obey law



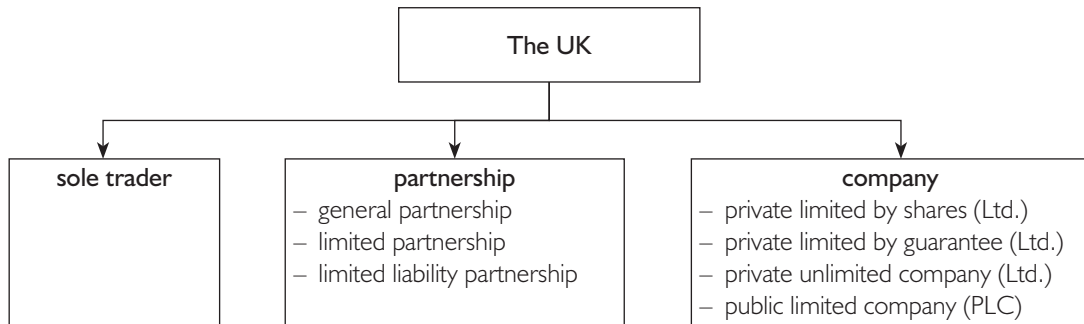
Text focus

Company law³

Company law concerns the **forming, organising, operating, merging, dividing and winding-up** of companies. Moreover, it governs the relationships among various **constituents** of a company, i.e. its **governing bodies**. Company law is also sometimes strictly connected to **securities law**, which governs the conditions whereunder companies may issue shares and raise capital, and bankruptcy (UK: insolvency) law, which lays down the procedures to be followed in the event a company gets into severe financial trouble.

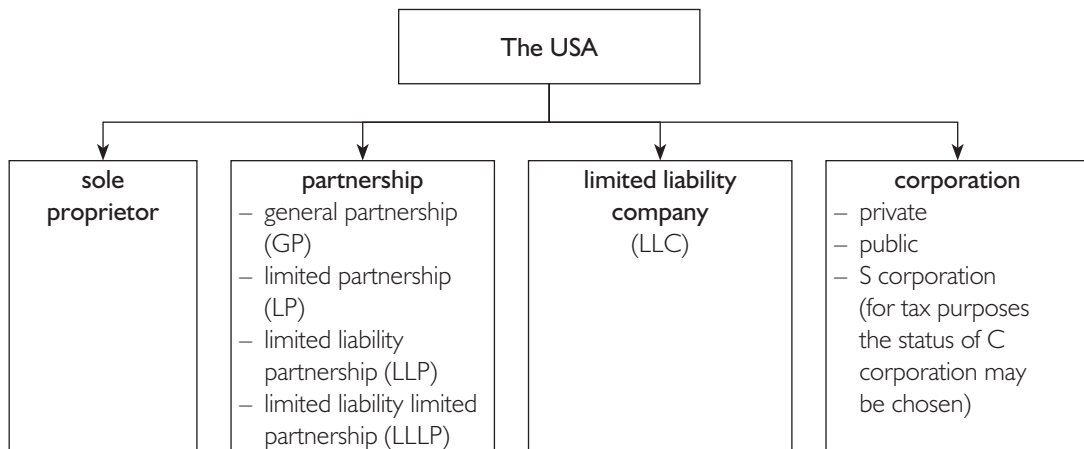
A **company** (AmE: corporation) is a **legal entity incorporated and existing** under the laws of the country or state of its **domicile**; although it is a legal artifice, it can be compared to an “artificial person” that can sue or be sued, conclude contracts, and perform other acts necessary to conduct its **business operations**. It has a separate **legal personality** from its **members** (owners/shareholders). Although the term “company” refers only to incorporated entities, its meaning may be sometimes extended to refer to any business entity (e.g. it is often used to refer to Polish-law partnerships since both companies and partnerships are governed by the same code).

³ AmE: corporate law or corporation law; Pl: partnership and company law – both types of entities are covered by the same legal act – the same Code of Partnerships and Companies.



In the UK, a company is an entity formed and registered under the **Companies Act**, registered in the **Registrar of Companies** kept by **Companies House**⁴. The UK company law is mainly a creature of statute and the most important statute is the Companies Act.

Generally, the UK business entities may adopt the following legal structures: from the **sole trader**, through **partnerships** to **companies**.

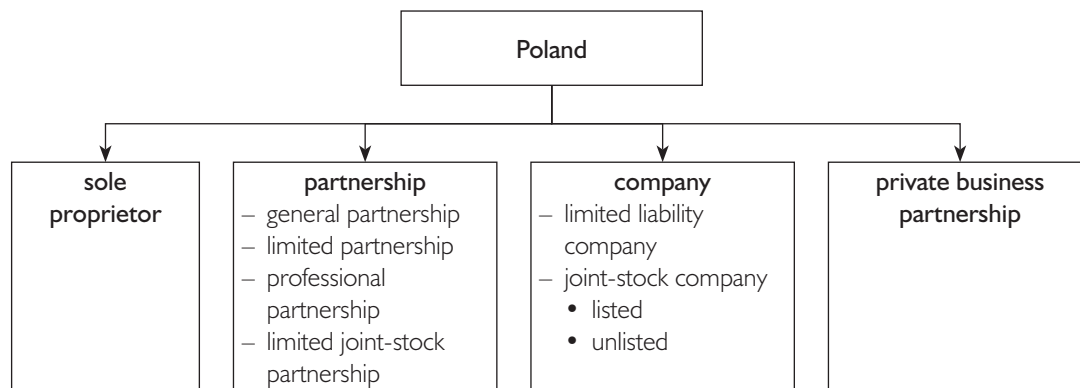


In the United States, the term “**corporation**” generally refers to incorporated business entities, or entities chartered under the laws of a particular state. The corporate law of a state where a corporation was incorporated generally governs that corporation (even if the corporation’s operations take place outside that state⁵). Despite some attempts to unify corporate law in the

⁴ www.gov.uk/government/organisations/companies-house

⁵ A corporation which operates in the state of domicile is called a domestic corporation, and a corporation which operates in another state, in that state is referred to as a foreign corporation.

USA (e.g. the Revised Model Business Corporation Act, which was adopted by many states), the corporate laws of various states differ. Therefore, some states, notably Delaware, are more attractive for businesspeople than others and for this reason most American public corporations have been incorporated there. The federal law of the United States and local laws may also form applicable sources of corporate law. Business entities in the USA may take the form of a sole proprietorship, partnerships, limited liability company (LLC), and corporations. All these business entities are governed by a separate relevant statute.



In Poland, the **Code of Partnerships and Companies** governs the formation, existence and termination of commercial law business entities, which are divided into partnerships and companies. The Code of Partnerships and Companies applies to both groups of these business entities. Polish business entities include a sole trader, partnerships and companies. However, there is another type of business entity which is governed by the Civil Code – **private business partnership** (*spółka cywilna*). This type of business entity is not a legal entity but an agreement between two or more individuals who aim to achieve a common business objective.

Practice 5

Decide whether the following statements are true or false:

	T / F
1. In the legal context, a sole trader is a company.	<input type="checkbox"/> <input type="checkbox"/>
2. Federal law is a key element of American corporate law.	<input type="checkbox"/> <input type="checkbox"/>
3. Relations between a company and its directors are determined by company law.	<input type="checkbox"/> <input type="checkbox"/>
4. The English (BrE) term “company” means an entity incorporated under the Companies Act.	<input type="checkbox"/> <input type="checkbox"/>
5. “Corporation” is an American term for a “company”.	<input type="checkbox"/> <input type="checkbox"/>

	T / F
6. Some states, such as Delaware, are more attractive for business than other.	<input type="checkbox"/> <input type="checkbox"/>
7. The Revised Model Business Corporation Act has not been adopted by all the U.S., states.	<input type="checkbox"/> <input type="checkbox"/>
8. Delaware's corporate law is very attractive for the incorporation of a corporation.	<input type="checkbox"/> <input type="checkbox"/>
9. Companies do not enjoy legal personality.	<input type="checkbox"/> <input type="checkbox"/>
10. Polish private business partnership is governed by the Code of Partnerships and Companies.	<input type="checkbox"/> <input type="checkbox"/>

Practice 6

Match the terms with the definitions:

1. formation	a. company bodies which are empowered to set forth its policies (shareholder meeting), represent it and manage its affairs (board of directors/management board)
2. merger	b. liquidating the company's affairs
3. governing bodies	c. a holder of a company's equity (a.k.a. shareholder)
4. member	d. the law governing the trade in e.g. shares
5. sole trader	e. in general, the process of at least two entities becoming one
6. securities law	f. the legal status of being regarded by law as a person
7. legal personality	g. the process of creating and incorporating an entity
8. winding-up	h. self-employed person who runs its own business



Discussion

Scope of company law

Decide which areas are covered by company law; prepare a brief overview for a potential client; try to use the phrases given below:

- company formation
- contract formation
- penal liability of members/directors
- profit-sharing
- mergers and acquisitions
- resolving disputes

- company division
- company organisation
- company representation and management
- trading in securities
- performance of contracts
- acquisition of goods
- declaration of insolvency
- raising finance

Giving information		
Structuring	First(ly), Secondly, Thirdly, Finally,	Firstly , company law governs the formation, organisation, and management of a company. Secondly , it deals with issues concerning mergers and divisions of companies.
Focusing and linking	Notably, With reference to, As regards ... As far as ... is concerned, as for	As far as insolvency issues are concerned , company law only partly covers this area. Notably , trading in securities may be the object of a company's operations and not just a way to raise finance.
Adding information	Moreover, Furthermore, and, as well as, in addition, on top of that	Moreover , company law governs the duties of the corporate bodies as well as the relations between them.
Giving examples	for example, for instance, e.g., in particular, including but not limited to	For instance , company law lays down the rules for appointment and revocation of the members of a company's bodies. In particular , it determines when such action is valid. Board of Directors is a body vested with a number of powers, including but not limited to the right to represent the company.
Logical consequence	therefore hence thus and so as a result consequently	Therefore , company law must be supplemented by a number of related legal acts to fully cover all the aspects of a company's existence.
Contrasting points	On the other hand, while/whereas, although, despite, in spite of, however, nevertheless	However , the insolvency procedure is determined in the relevant bankruptcy law.



Practice 7

There are a number of documents that form the legal system. Match the following terms with their definitions:

1. statute	a. a set of rules (written or not) which govern a country and human activities which may be enforced by a court of law
2. laws	b. a statute approved by Parliament (Congress)
3. act	c. a draft of a proposed law presented to Parliament for discussion; it is called this until it is passed and signed, at which time it becomes a law (statute)
4. executive order	d. written enacted law passed by a legislative body
5. bill	e. rules and administrative codes issued by governmental agencies at all levels; it is a form of secondary legislation (as opposed to primary legislation, i.e. the law enacted by Parliament); e.g. in Poland it is passed by the Council of Ministers
6. law	f. conditions or requirements in a legal document
7. ordinance	g. collection of written laws gathered together, usually covering a specific subject matter
8. code	h. a normative act issued by the president, governor or mayor (USA) which has force of law, usually based on existing statutory powers; its purpose is to create conditions to achieve goals set forth by a particular normative act
9. rules (of conduct, of procedure)	i. the fundamental, underlying document which establishes the government of a nation or state
10. constitution	j. set of internal rules governing the rights and obligations of a given group of people or a body

1	2	3	4	5	6	7	8	9	10

Practice 8

Fill the gaps with an appropriate word from the box below:

statutes • bill • ordinance • law • constitutions • act
• Code • Laws • executive orders • Rules of procedure

1. are often gathered into compilations called “codes” – large sets of books that can be found in many law libraries or on the Internet.
2. There are no legally binding on intentionally dosing pregnant women with chemicals for experimental purposes.
3. The on genetic modification was passed by Parliament following thorough consideration.
4. At Parliament there is a debate over the intellectual property rights
5. They were prosecuted for breaking the
6. The provisions of the Civil shall be applicable in issues not governed by this Agreement.
7. National define the fundamental political principles and provide for the powers and duties of each government and also guarantee certain rights to the people.
8. Under the new which was issued by the Council of Ministers last month, your right to protest a decision of governmental authorities may be limited.
9. Most are orders issued by the President to United States executive officers to help direct their operations.
10. generally cover meetings, elections of a board of directors and officers, the filling of vacancies, notices, types and duties of officers, committees, assessments and other routine conduct.

The terms below are related to business entities, their form, name, types of operations. Try to think how they differ or what kind of entities could be called like this:



Practice 9

Below you will find definitions of the above business entities. Decide which of the three entities given below each description is defined – a, b or c:

1. A business entity which is an association with another entity or a combination of businesses, financial institutions, or investors, for the purpose of achieving a common objective.

a) business	b) enterprise	c) joint venture
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2. This is a general term for any institution, company, corporation, partnership, government agency, university or any other organisation distinct from individuals.

a) corporation	b) entity	c) company
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3. This term refers to any activity entered into for profit.

a) entity	b) business	c) partnership
-----------	-------------	----------------
4. A company which owns the stock of other companies, and thereby controls the management and policies of all of them.

a) holding company	b) firm	c) enterprise
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5. An entity formed with state governmental approval to act as an artificial person to carry out business (or other activities), which can sue or be sued, and (unless it is non-profit) can issue shares to raise the funds necessary to start a business or increase its capital.

a) entity	b) corporation	c) business
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6. The name used with respect to a commercial partnership of two or more persons, especially chosen by lawyers, accountants or other consultants.

a) enterprise	b) corporation	c) firm
---------------	----------------	---------
7. A business enterprise entered into for profit which is owned by more than one person whose liability may be either unlimited or limited up to the value of their investment.

a) partnership	b) joint venture	c) firm
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8. A venture or an organisation operated for business purposes.

a) business	b) entity	c) enterprise
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Practice 10

Fill in the gaps with the appropriate name of a business entity:

Mr. Shaw worked for an international public (a) incorporated in Delaware for over ten years. Throughout that time, he gained a wealth of knowledge on how to operate in the

business world. For a few months, he had been considering leaving his work to set up an independent (b) At first, he decided to act as a sole proprietorship, although he was aware that if the business went as well as he hoped, he would definitely need a partner to share his duties and risk. The first two years were very busy for him but thanks to his hard work and personal connections he managed to build an extensive list of clients and a well-functioning customer network. He took on over 15 employees. One day, at a business meeting, he got together with his old friend, Mr. Johansson, who was a skilled and knowledgeable businessman. They discussed some minor problems that Mr. Shaw was experiencing while conducting his daily business operations. Mr. Johansson quickly resolved them as he had experienced similar difficulties in his professional life. Some time later, the two friends formed a (c) where they acted as equal partners. They both decided that for the time being that was the best business (d) for them. As the business grew progressively, they decided to employ a professional consultancy (e) to deal with their financial and legal matters. At the beginning, their enterprise was small and not very profitable but soon the two partners implemented substantial changes to its organisational structure and two years later they became one of the key players in their industry. The partners entered into many large-scale contracts, which could lead to significant profits, but also bore the risk of substantial losses. That was the reason why they decided to limit their liability and formed a (f) Eventually, they got involved in a (g) with another company in order to be able to present a more comprehensive offer to prospective clients.

Practice 11

Match the words given in the boxes with the definitions and complete the sentences with one of the words. Use the appropriate form of the verb:

a)

prescribe • proscribe • ban

1. officially or legally prohibit, also: exclude someone from a place
 2. forbid by law, usually by a written document
 3. state as a rule which needs to be obeyed
- i. Article 5 hereof the manner the payment shall be made.
 - ii. The contract the assignment of rights.
 - iii. The law in many countries smoking in public places.
 - iv. Drunk-drivers are usually from driving.
 - v. He was from the club due to his offensive behaviour.

b)

delete • waive • set aside • repeal • cease • resign

1. not to insist on or give up on taking advantage of a right or claim; not to apply or enforce a rule, right
 2. end an action
 3. end the force or effectiveness of something, e.g. a law or a rule
 4. voluntarily quit or give up on something, e.g. power, privilege, work
 5. annul a legal decision
 6. remove a text from a document or data from database or computer memory
- i. *He was ordered to the violation of his neighbour's property rights.*
 - ii. *He all the data from his computer which could provide evidence against him.*
 - iii. *This law was outdated and so it was*
 - iv. *The losing party appealed against the judgment of the lower court and the higher court it*
 - v. *Hereafter, the Parties shall their rights to pursue claims.*
 - vi. *He from his well-paid job.*
 - vii. *The lawyers the entire Article 3 from the contract.*

c)

set forth • govern • prevail

1. control or guide the actions of someone or the way something is done
 2. be commonly accepted or predominant, take priority over other thing
 3. lay down (e.g. rules)
- i. *The rules in the workplace regulations apply to all employees.*
 - ii. *This Agreement shall be by the laws of France.*
 - iii. *In the event of discrepancies between the Polish and English language versions, the Polish version shall*



Quick quiz

Choose the correct option:

1. Anglo-Saxon law is based on
 - a) common law
 - b) common and equity law
 - c) common and enacted law
2. Delegated legislation comprises law-making instruments issued by
 - a) local authorities and governmental agencies
 - b) Parliament
 - c) company bodies