

CASE STUDY MATERIALS

January 2012

Level 6

PRACTICE OF COMPANY & PARTNERSHIP LAW

Subject Code L6-16

The logo for ILEX, consisting of the word "ilex" in a blue, lowercase, sans-serif font. To the right of the text is a small circular emblem featuring a crown and other heraldic symbols.A diagonal watermark in the top right corner that reads "StudentBounty.com" in a white, sans-serif font, set against a dark grey background.

INSTITUTE OF LEGAL EXECUTIVES

UNIT 16 – PRACTICE OF COMPANY & PARTNERSHIP LAW *

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the ILEX Examination Regulations.

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* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

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ADVANCE INSTRUCTIONS TO STUDENTS

You work in the Corporate Department of Kempstons LLP, Solicitors, The Manor House, Bedford, MK42 7AB.

You arrive at work to find the following memo awaiting your attention:

KEMPSTONS LLP

INTERNAL MEMORANDUM

To: Legal Executive
From: Derek Ryan
Date: (Today)
Matter: **McBain Haulage Limited**

McBain Haulage Limited (MHL) has been a long time client of the firm, stemming from a pre-established contact, Mr Chris Reese. We have been advising MHL for some time, and it looks like matters have moved on somewhat since I last spoke with Mr Reese. Mr Reese has also asked us to advise on another business venture of his which involves his son. Please consider the issues arising from these matters. Mr Reese will be calling in and I will need you to prepare so that you are able to assist me in discussing these matters with him. I've attached copies of the relevant documents.

Derek

You find the following documents attached to the memo:

- DOCUMENT 1** Email (McBain Haulage Limited: Retainer file)
- DOCUMENT 2** Company Search: McBain Haulage Limited (File of McBain Haulage Limited: Retainer file)
- DOCUMENT 3** Email (McBain Haulage Limited: Retainer file)
- DOCUMENT 4** Draft personal guarantee (McBain Haulage Limited: Retainer file)
- DOCUMENT 5** Email (C H Reese: commercial file)

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EMAIL

From: dr@kempstonsllp.com
To: legalexec@kempstonsllp.com
Date: 15 January 2012
Re: **McBain Haulage Limited: Retainer file**

I had a very quick telephone call from Chris Reese in relation to the above company this evening, and I would like you to assist me as matters don't look straight forward.

Since first assisting the three directors in establishing the company, matters have moved on somewhat, and it transpires that McBain Haulage Limited (MHL) has hit a rocky patch. I have attached a company search (**Document 2**) so that you can familiarise yourself further with the company.

There have been a number of issues that Chris raised. In summary the issues are:

- MHL's current assets are £1,000,000 and current liabilities are £1,300,000 (including an overdraft facility standing at approximately £85,000).
- On 4 September 2011 MHL took a secured loan from GDF Bank PLC for £500,000. No repayments on the loan have been made to date (two repayments have now been missed, and it is expected that the December repayment will also be missed).
- MHL's financial situation was discussed at a board meeting on 7 November and more recently on 5 December 2011. At both meetings, the issue of MHL's major creditors was discussed, particularly, GDF Bank PLC. The Bank have refused to advance any more loans to MHL until the outstanding loan repayments are made. Chris believed that MHL could trade its way out of trouble and proposed to delay releasing the accounts for the year ending 31 December 2011.
- In fact, despite the financial situation, MHL's accounts actually show a £200,000 profit made in the June to November 2011 period. A dividend was declared in accordance with McBain Haulage Limited's constitution on 3 December 2011 and paid on 5 December 2011. All directors were present and agreed to this distribution. Chris made some reference about Maureen, but said he would drop me a separate note about this.

Throughout this period, Chris has been actively looking for a solution and believes that this needs to be externally sourced. Chris believes that he may have found an investor, Alan Nalson, who is experienced in and runs his own haulage business. Consequently, Chris believes that the assets and the customer base of MHL is the main attraction, irrespective of the current potential financial risks.

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At the moment, the discussions have centred on Alan investing between £200,000 to £600,000, either for an equity stake or in exchange for some form of secured charge over MHL's assets. Chris is expecting that Alan will make a number of other demands in relation to this investment, one of which is the possibility of Alan's appointment to the board. Chris has indicated that he is prepared to meet these demands provided that his own position and that of the other shareholders and directors are not compromised.

Chris has promised to clarify MHL's position and progress with Alan when we meet. I have told Chris of your involvement and you may find that he will contact you directly with further information in the interim.

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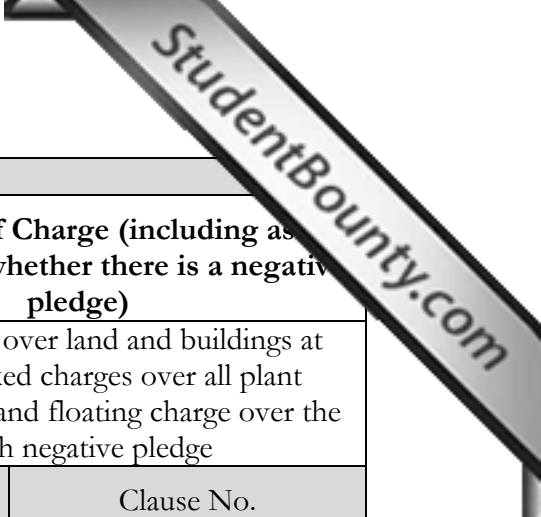
DOCUMENT 2

JRN SEARCH AGENCY LIMITED

Company Search

Name of Company	McBain Haulage Limited		
Company Number	83450981		
Company Type	Private company limited by shares		
Date of Incorporation	1 November 2007		
Previous Names	None		
Registered Office	The Manor House, Bedford, MK42 7AB		
Date of Last Annual Return	20 February 2010		
Accounting Reference Date	31 December		
Accounts	Last filed	Next due for period to	Overdue
	15 February 2010	31 December 2011	N/A
Current Directors and Secretary	Directors		Secretary
	Chris Reese Kay Reese Maureen Denny		Kemptions Company Secretarial Services Limited
Share Capital	Issued	Class	Amount paid up
	£600,000	Ordinary £1 600,000	£1 per share
Shareholders	Name	Class	No. of shares
	Chris Reese	Ordinary £1	£200,000
	Kay Reese	Ordinary £1	£200,000
	Maureen Denny	Ordinary £1	£200,000

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Undischarged Mortgages or Charges			
Chargee	Date of charge	Amount Secured	Description of Charge (including as secured and whether there is a negative pledge)
GDF Bank PLC	4 September 2011	All monies	Legal mortgage over land and buildings at various sites, fixed charges over all plant and machinery and floating charge over the undertaking with negative pledge
Memorandum of Association		Yes/No	Clause No.
Check the main objects to see, as far as we are aware, it has the power to carry on its main business		YES	3 (a) to (d)
Check the objects to ensure it has the power to:			
borrow		YES	3 (e)
secure its own borrowings		YES	3 (f)
give guarantees without consideration		YES	3 (g) and (m)
give security for guarantees and other third party obligations		YES	3 (g)
charge all of its assets, including uncalled capital, if and to the extent and in the manner required by the security/ charge		YES	3 (f)
give financial assistance		YES	3 (h)
Articles of Association			
		Model Articles for private companies limited by shares (with pre-emption rights on transfer of existing shares)	
Unusual documents		Yes/No	(Include copies)
Appointment of receiver/administrator/ winding-up order		NO	
Authority to allot shares under section 551 CA 2006		NO	
Any other comments		NO	
Report completed by:		PR	Date: December 2011

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EMAIL

From: creese@mcbainhaulage.co.uk
To: dr@kempstonsllp.com
CC: legalexec@kempstonsllp.com
Date: 16 January 2012
Re: **McBain Haulage Limited**

Dear Derek

Thanks for your time last night, I apologise that it had to be cut short.

I made reference to a couple of matters last night that I explain further now, but I wanted to clarify my facts before doing so.

One related to a supplier who is starting to be a bit of a nuisance. On 12 November 2011, MHL placed an order with Duxford Tools Ltd for 500 haulage-pallet kits. This we did on the usual terms and on our existing credit arrangements, for £150,000. We have subsequently received Duxford Tools Ltd's invoice, with the due date for payment being one month from the invoice date.

If possible it would be useful to delay payment of this for a little while longer, particularly given that we have only recently declared our dividend payment. Ideally I would like to try and delay this for a month or so longer and pay once we have secured Alan's investment.

In relation to Maureen, this is an issue that both Kay and I have become concerned about recently. Given the recent difficulties the business has been in, we have been looking to expand our customer base and to look for new opportunities. However, Maureen, has refused to countenance the idea, saying that we should "stick with what we know".

This attitude is very unhelpful at the moment, and has brought Maureen's performance into question generally. For some time now we have felt that she is no longer committed to the business. It was confirmed to me last night, by one of my existing customer contacts, that a recently formed business that has started to compete in the area is owned and run by Maureen's brother. As a result both Kay and I strongly suspect that Maureen is assisting her brother with this.

This is most likely why Maureen has been objecting to the negotiations that I have been having with Alan. In addition, it would explain why Maureen appeared distracted and was not paying attention to the discussions at our last meeting, despite approving the dividend payment. She has apparently said to Kay that she did not read the company accounts or know the amount of the dividend to be paid out.

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Can we discuss Maureen generally when we meet please?

I am hoping that I should be in a position to update you on Alan when we meet next. However, having spoken to Alan this morning, he is still deciding how exactly he may wish to invest. There are currently effectively three options he is considering:

1. a secured charge over assets of MHL for £500,000 – Alan has asked his firm of solicitors to make the necessary enquiries to see whether this is practical;
2. an equity stake of £600,000 which will either be:
 - 600,000 ordinary shares of £1 each, or
 - 600,000 preference shares of £1 each – which will have a nominal value of £1.00, be non-voting, cumulative, with a fixed return of 8.5% and with a limit on the amount that can be received in a distribution and will be allotted for £1.50 each;
3. it may be such that the equity stake could consist of a combination of ordinary or equity shares.

In any event, whatever form the investment takes Alan has said that it will be conditional on him being appointed to the board (I am inclined to say, given his experience and connections, that if he is on the board he is MD), and he will also be looking for a guaranteed term of appointment.

In addition, to further encourage Alan, I have also agreed in principle that I will make a personal guarantee to GDF Bank PLC in respect of the loan to the company. I have not yet spoken to the Bank about this, but have prepared a draft form of guarantee (**Document 4**) that I would like to also discuss when we meet.

I'll be in touch shortly with more details when I have them.

Chris

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DOCUMENT 4

Guarantee

To GDF Bank PLC
GDF Buildings
71 High Street
Bedford

[] 2012

Christopher Henry Reese, in consideration of your entering into a loan agreement dated 4 September 2011 ('the Agreement') with McBain Haulage Limited (registered number 83450981) ('the Principal'), unconditionally guarantees the due payment of all money payable under the Agreement, and shall pay to you immediately on demand any money so payable.

Christopher Henry Reese further agrees that this guarantee shall not be affected by any time or other indulgence which you may see fit to grant to the Principal.

The paper on which this guarantee is written shall remain at all times the property of the Bank.

Signed: **Christopher Henry Reese**

EMAIL

From: dr@kempstonsllp.com
To: legalexec@kempstonsllp.com
Date: 17 January 2012
Re: **C H Reese (commercial file)**

I had another telephone call from Chris Reese, this time on a different business venture that he has been involved in.

Approximately 18 months ago Chris, his son Richard, and a college friend of Richard's, Sebastian Torres, entered into business together. It was agreed that Sebastian and Richard would run the business and that Chris would not take any part in the running of the business.

No other terms were discussed or agreed other than that Sebastian and Richard would put £25,000 each into the business whilst Chris would contribute £50,000. Problems have now arisen, particularly as there is apparently no formal agreement, nor is the business incorporated. Consequently, Chris has now decided to involve himself in the running of the business.

It appears that aspects of the relationship between Sebastian and Richard have become rather acrimonious, and they are disagreeing over a number of issues. The first concerns the sharing of the profits of the business. Chris is now looking to receive 50 per cent of the profits on the basis that he has invested 50 per cent of the capital (Chris did hint that this was also as a consequence of his need to increase his capital given what is happening with McBain Haulage Limited). Sebastian and Richard are arguing that this does not take account of the fact that until now only Sebastian and Richard have been working full time for the business whilst Chris has not. Chris, however, is arguing that he has been bringing greater experience to the business. The second issue concerns Sebastian's insistence that his 17-year-old brother, Julian, become a partner in the firm.

Chris and Richard are extremely unhappy with this state of affairs and have decided that they would prefer to carry on the business on their own. Whatever arrangement Chris and Richard enter into, Chris wants Richard to remain focused on the business and not to be distracted; Chris mentioned that he anticipates having a significant involvement to help Richard establish the business and eventually transfer his interest to Richard.

Chris will explain more when we meet him next week. When we do meet with Chris, please ensure that you record the time carefully as we will have to attribute the time to two different matters.

End of Case Study Materials

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