

BRITISH COMMERCIAL & COMPANY LAW

University of Trier, Lecture 3 – FFA 2

K. Schnittger, LL.M., LL.B., M.B.S., B.B.S., M.A.

Trier, 28.11.2019

Hoersaal 6, Gebaude C

18.30 – 20.00

Email: schnittger@uni-trier.de

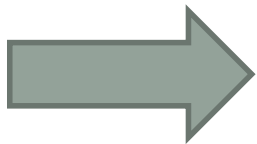
Agenda – British Commercial & Company Law

Date	Time	Agenda	Reading
07.11.2019	18:30 - 20:00	Introduction – course objectives, lecturer, What is a company?	<ul style="list-style-type: none">- LR Talbot, "The history of English & American Company Law", chapter 1- Lecture notes pages 1-7
21.11.2019	18:30 - 20:00	Liability under company law	<ul style="list-style-type: none">- Lecture notes pages 7-30- Ottolenghi: "From peeping behind the corporate veil to ignoring it completely."- Case: <i>Saloman v Saloman</i>
28.11.2019	18:30 - 20:00	Company formation	<ul style="list-style-type: none">- Lecture notes pages 30-39
19.12.2019	18:30 - 20:00	Directors' duties	<ul style="list-style-type: none">- Lecture notes pages 39-56- Case: <i>Guinness plc v Saunders</i>
16.01.2020	18:30 - 20:00	Minority shareholders	<ul style="list-style-type: none">- Lecture notes pages 56-70- Case: <i>Foss v Harbottle</i>
23.01.2020	18:30 - 20:00	Corporate insolvency	<ul style="list-style-type: none">- Lecture notes pages 70-82- Case: <i>Lehman Brothers</i>
30.01.2020	18:30 - 20:00	Limited Partnerships	<ul style="list-style-type: none">- Partnership Law notes

Liability under Company Law: Final comments

- **Subsidiary companies:**

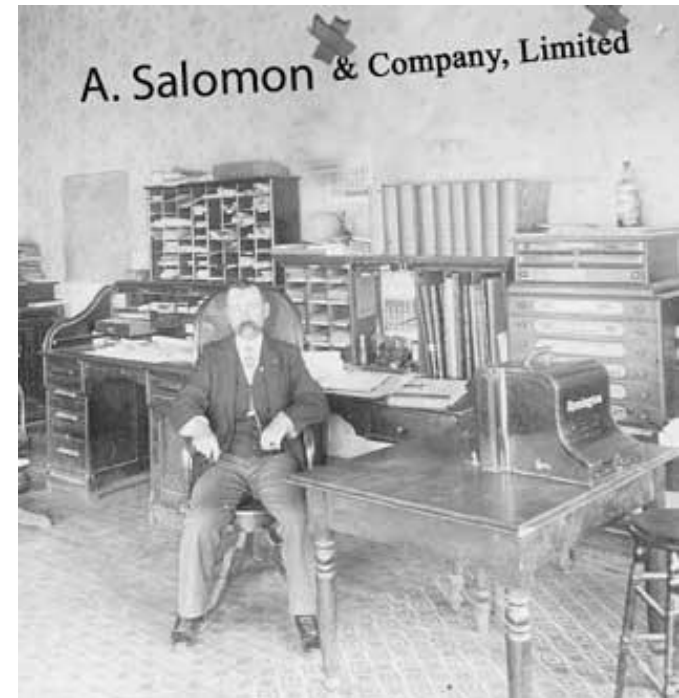
- “There is no general principle that all companies in a group of companies are to be regarded as one. On the contrary, the fundamental principle is that each company in a group of companies is a separate legal entity possessed of separate legal rights & liabilities.”
- **Adams v Cape:**
 - Court is not free to disregard the principle of Salomon v Saloman merely because it considers that justice so requires.



Let's move now to setting up a company...

Formation of a company

- **All limited companies in the UK are registered at the Companies House**
- **Incorporation is a practical process that lawyers should be able to advise clients about:**
 - The process of registration / incorporation;
 - Nature of documents required to be filed, their significance;
 - Contents of each document & legal effect;
 - Significance of the certificate of incorporation.



Documents required

- **Part I of the Companies Act 2006:**
 - Application for registration form
 - Memorandum of Association
 - Articles of Association
 - Statement of guarantee (if necessary)
 - Statement of capital & initial shareholdings
 - Address of registered office
 - Statement of proposed officers
 - Statement of compliance



[Home](#) > [Business and self-employed](#) > [Setting up](#)

Register a private limited company online

You can register ('incorporate') a limited company online if it's:

- a private company [limited by shares](#)
- using [model articles of association](#)
- name doesn't contain a word [you need permission to use](#)

Start now >

on the Companies House website

Before you start

It usually takes 24 hours and costs £15 (paid by debit or credit card or PayPal account).

You'll need:

- the company's name and registered address
- names and addresses of directors (and company secretary if you have one)
- details of shareholders and share capital

Setting up

[Set up a private limited company](#)

[Business support on the phone and online](#)

[More](#)

Company Name & Address >

Officers >

Capital >

Subscribers >

Statement of Compliance >

Summary >

Payment >

Confirmation

Company name (See note 1).

Enter proposed company name *

Coyote Consulting Group

Select a name ending

LIMITED

Location of Registered Office

Please select: *

- England and Wales
- Northern Ireland
- Scotland
- Wales

Registered office address (See note 3).

Building Name/No. *

2

Postcode

W1U 3PZ

LOOKUP

Address Line 1 *

Wolf Street

Address Line 2

Post Town *

London

County/Region

Country *

United Kingdom

Note 1: Company Name

You must enter your proposed company name and select one of the name ending options available.

The name cannot contain more than 160 characters (including spaces and name ending), and some symbols are not permitted. All new name letters are converted to capitals.

The service will automatically check if the proposed name contains sensitive words and if it is considered to be the 'same as' any existing names on the Register. There is no guarantee that the name will be accepted.

Note 2: Location of Registered Office

Every company must have a registered office and this is the address to which Companies House will send correspondence.





For England and Wales companies, the address must be in England or Wales.

For Welsh, Scottish or Northern Ireland companies, the address must be in Wales, Scotland or Northern Ireland respectively.

Note 3: Registered Office Address

This address must be a physical location for the delivery or inspection of documents. It cannot be a PO Box number (unless contained within a full address), a DX or LP number.

You must ensure that the address entered in this section is consistent with the situation indicated in the above section.

Company Name & Address Officers Capital Subscribers Statement of Compliance Summary Payment 

Confirmation

Details of new director (See note 1).Title Forename * Other Forename (s) Surname * ? Country/State of residence * Other Country/State

(details of 'Country/State of residence' must correspond with the residential address)

Nationality * ? Date of Birth * Business Occupation * ? **Former names**Former forename Former surname **Director's service address (See note 2).**

This is the address that will appear on the public record.

Where is the service address situated? (please select): *

- The service address is 'same as' the company's registered office
- The service address is at the address supplied (select to display address fields)

Director's residential address (See note 3).

Details provided will NOT appear on the public record.

Where is the residential address situated? (please select): *

- The residential address is 'same as' the service address
- The residential address is at the address supplied (select to display address fields)

Note 1: Company Officers

Private limited companies must appoint at least one director who is an individual. All directors must be at least 16 years of age. Once you have completed the details for the first director, you can choose to appoint other officers, including a secretary and corporate directors.

Note 2: Director's service address

This is the address that will appear on the public record. It does not have to be a residential address.

The first button should be used to indicate if the service address is the 'same as' the company's registered office address. By selecting this option the officer's service address may be affected by changes made to the registered office address. See HELP for more information on the 'same as' option.

To supply the service address as a full address, select the second option to display the address fields and enter details in the fields provided.

Note 3: Director's residential address

The first button provided should be used to indicate if the residential address is the 'same as' the service address. By selecting this option the officer's residential address may be affected by changes made to the service address. See HELP for more information on the 'same as' option.

You cannot select the 'same as' option if:

- the service address is already marked as 'the same as' the company's registered office address
- the service address contains a 'care of' (c/o) component
- the director is subject to (or applying for) a disclosure exemption.

To supply the residential address as a full address, select the second option to display the address fields and enter details in the fields provided. The residential address cannot be a PO Box, DX or LP (Legal Post in Scotland) number.

Web Incorporation Service

[Company Name & Address ✓](#)
[Officers ✓](#)
[Capital >](#)
[Subscribers >](#)
[Statement of Compliance >](#)
[Summary >](#)
[Pay](#)

Statement of Capital for COYOTE CONSULTING GROUP LIMITED

Currency	GBP - Pound Sterling
Class of share	Ordinary
Amount paid up on each share	1
Amount unpaid on each share	0
Number of shares	1000
Aggregate nominal value	1000
Prescribed particulars	Each share has full rights in the company with respect to voting, dividends and distributions.

[EDIT](#)
[REMOVE](#)

Currency	GBP - Pound Sterling
Total number of shares issued	1000
Total aggregate value of shares issued	1000

[ADD NEW SHARE CLASS TO THIS CURRENCY](#)
[ADD NEW CURRENCY AND CLASS](#)

Web Incorporation Service

LO

Company Name & Address ✓

Officers ✓

Capital ✓

Subscribers >

Statement of Compliance >

Summary >

Payment >

Confirmation

Initial Shareholdings for COYOTE CONSULTING GROUP LIMITED

SUBSCRIBER **Manuel Neuer**

Class of share: GBP - Ordinary
 Number: 50
 Nominal value of each share: 1.000000

EDIT REMOVE

SUBSCRIBER **Franz Beckenbauer**

Class of share: GBP - Ordinary
 Number: 50
 Nominal value of each share: 1.000000

EDIT REMOVE

SUBSCRIBER **Oliver Kahn**

Class of share: GBP - Ordinary
 Number: 900
 Nominal value of each share: 1.000000

EDIT REMOVE

ADD NEW SUBSCRIBER

Initial Shareholdings

The subscribers (shareholders) of the company are displayed here, along with the number and class of shares and nominal value of each share.

Please note that the nominal value is automatically calculated from the information entered in the Share Capital section. To amend the nominal value, you will need to return to the previous Share Capital section and edit the information entered.

The total number of shares allocated for the subscribers must match the total number of shares entered in the Share Capital section.

You can choose to edit or delete the subscriber details by clicking on the 'Edit' or 'Remove' buttons provided.

To add more subscriber details, please select the 'Add New Subscriber' button.

Please check the information on this screen before proceeding.

PREVIOUS

Summary of information

Please review the information on this page before submitting your application.

Company Name and Address

[CHANGE DETAILS](#)

Company Name	COYOTE CONSULTING GROUP LIMITED
Registered Office Address	2 Wolf Street London United Kingdom W1U 3PZ
Company Type	Private Limited by Shares

Officers

[CHANGE DETAILS](#)

Name	DOB	Appt Type
Oliver Kahn	15/06/1969	Person Director

Statement of Capital (Totals)

[CHANGE DETAILS](#)

Currency	Class of share	Total number of shares issued	Total aggregate value of shares issued
GBP - Pound Sterling	Ordinary	1000	1000

Initial Shareholdings

[CHANGE DETAILS](#)

Name	Number of shares	Currency and Class
Manuel Neuer	50	GBP - Ordinary
Franz Beckenbauer	50	GBP - Ordinary
Oliver Kahn	900	GBP - Ordinary

Statement of Compliance

[CHANGE DETAILS](#)

Completed by all of the subscribers of the memorandum of association:

- Manuel Neuer
- Franz Beckenbauer
- Oliver Kahn

Memorandum and Articles of Association

The following memorandum and articles of association have been accepted by the subscribers as the memorandum and articles of association with which

Note 1: Summary of information

This screen displays a summary of the information you have entered in your application to incorporate a company.

To amend any of the details displayed, click on the 'change details' button which will direct you to the corresponding section for editing. Please note you will then need to click back through the sections to return to this Summary screen.

Note 2: Statement of Capital (Totals)

The Statement of Capital shows the totals for each currency and class entered. To amend the share capital information, click the 'change details' button to return to the Capital section for editing.

Note 3: Memorandum and Articles of Association

The **Memorandum of Association** is a statement that each subscriber wishes to form a company and it records each subscriber's agreement to be a member of the company and to take at least one share in that company. It is authenticated by each named subscriber. The Memorandum is in the form required by law.

The **Articles of Association** contains details of running the company, internal management affairs and liability - they are essentially the company's internal rulebook.

The Companies Act 2006 offers Model Articles of Association, which are available from our website and can be viewed by clicking on the link on this page.

The current application for a company, if successful, will be incorporated by adopting the model articles in their entirety. If the company wishes to make changes to the model articles after incorporation a copy of the special resolution making the change must be delivered to Companies House within 15 days of being passed. You must also deliver a copy of the amended articles to Companies House within 15 days.

Choice of the company name

- Name must end with 'Limited', 'LTD' or public limited company, 'PLC'
- Secretary of State will decide whether proposed company name is offensive or sensitive or would constitute a criminal offence
- Name cannot be the same as any other kept in the index names

When names are similar...

- Court will look to see whether passing off is occurring
 - Reputation
 - Misrepresentation
 - Damage to goodwill

Exxon Corporation & Others v Exxon Insurance Consultants International [1981]



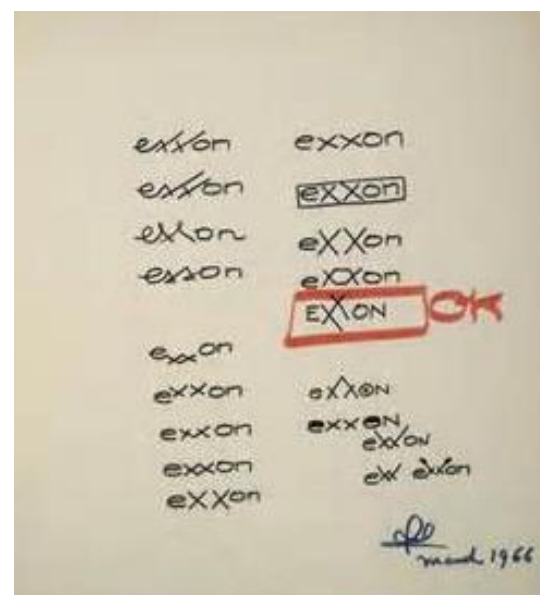
Exxon Corporation & Others v Exxon Insurance Consultants International [1981]

- **Facts:**

- This appeal is concerned with the word “Exxon”, and a claim by four companies against a fifth. The claim is first for breach of contract, secondly for passing-off and thirdly for infringement of copyright.
- Appeal with regard to the use of the word Exxon

- **Held:**

- Appeal denied
- [Wombles Ltd. v. Wombles Skips Ltd. \[1977\]](#)
[R.P.C. 99](#)



R v Registrar of Companies, ex p Attorney General [1991]

- **Facts:**

- 1979: Lindi St Clair wanted to register a private limited company
- Object of the company: 'to carry on the business of prostitution
- Followed a policy decision by Inland Revenue that tax should be paid on the proceeds of prostitution
- Secretary: refused to register Prostitutes Ltd, Hookers Ltd but did register Lindi St Clair (Personal Services) Ltd
- AG (1980) applied to court to quash registration on basis that it was formed for an unlawful purpose (contrary to public policy)



- **Held:**

Court ruled that registration should be quashed

Company names

“4. How must I display the company name in communications?”

You must include your company’s registered name in all forms of business correspondence and documentation, whether in hard copy or electronic, including:

- *business letters, notices and other official publications*
- *business emails*
- *bills of exchange, promissory notes, endorsements and order forms*
- *cheques purporting to be signed by or on behalf of the company*
- *orders for money, goods or services purporting to be signed by or on behalf of the company*
- *bills of parcels, invoices and other demands for payment, receipts and letters of credit*

5. Must I display my company name on my website?

Yes. Every company must disclose its registered name on its website. You do not need to include the company name on every page but it must be visible and easily read.”

Incorporation and names

Forming a company



You Tube:

The Wombles:

<https://www.youtube.com/watch?v=7veCpNhTzn4>

Company Formation: https://www.youtube.com/watch?v=Yx_oCw5BRY

BRITISH COMMERCIAL & COMPANY LAW



Next class: 19.12 Directors' duties

Read: Lecture notes pages 39-56

Case: Guinness plc v Saunders