

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 PRACTICE**

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: Trainee Legal Executive

From: Derek Ryan

Date: (Today)

Matter: Jack Boyle

Mr Boyle has been a client of the firm for some time and has instructed us to act for him in two matters, (1) relating to a company he is currently involved in and (2) a new business venture. Please consider the issues arising from these matters. Mr Boyle 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 (File of Jack Boyle) |
| DOCUMENT 2 | Telephone Attendance Note (File of Jack Boyle) |
| DOCUMENT 3 | Email (File of Jack Boyle) |
| DOCUMENT 4 | Company Search: Coopers Solutions Limited (File of Jack Boyle) |
| DOCUMENT 5 | Email (File of Jack Boyle) |
| DOCUMENT 6 | Email (File of Jack Boyle) |
| DOCUMENT 7 | April 2011 Management Accounts: Balance Sheet Coopers Solutions Limited (File of Jack Boyle) |

DOCUMENT 1

EMAIL

From: dr@kempstonsllp.com
To: traineelegalexec@kempstonsllp.com
Date: 24 May 2011
Re: **Jack Boyle: Retainer file**

Jack Boyle (JB) has been a client of the firm for some while now and has a number of varying business interests and has always instructed the firm.

I spoke to JB last week regarding a matter that he wanted to come in and discuss with us, a copy of my telephone attendance note is attached (**Document 2**).

At the time JB's most immediate concern was to facilitate his exit from Coopers Solutions Limited (CSL). You will see from JB's email of 24 May what is proposed (**Document 3**). I have also attached a company search I requested on CSL, so that you can get some background and details about CSL (**Document 4**). Given the nature of what is proposed, I have requested from JB a copy of CSL's most recent accounts. When these come through I'll pass them to you.

However, in addition to JB's issues with CSL, it also transpires that JB is getting involved in a new business venture. He didn't mention this when I spoke to him last week, but it doesn't surprise me given his various business interests. The details are lightly outlined in his email of 24 May (**Document 3**).

JB has asked for a meeting later next week, which I would like you to prepare for and attend with me. In the meantime please make sure that you are fully conversant with the attached.

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DOCUMENT 2

Telephone Attendance Note

Date: 16 May 2011

Client Jack Boyle

File No. 00201547.04/JB/DR

Matter Jack Boyle: Coopers Solutions Limited

Meeting with Jack Boyle (JB) to discuss his exit strategy from Coopers Solutions Limited (CSL).

JB is both shareholder and director in this specialist technology outsourcing company. CSL was established just over six years ago; JB was one of the initial shareholders providing seed capital into the company, the other founding members were Abel Worth and Beatrice Young.

JB invested £150,000 in exchange for ordinary shares which were issued to him at par, i.e. £1 each. JB was also appointed a director, and tasked with both marketing the company's services and raising further investment. JB successfully introduced a number of new investors, all of whom also contributed to the capital of CSL; the most notable being an investment by VC Limited of £5,250,000.

VC Limited is a venture capital company that invests in technology related companies that it sees as having potential and from which it will eventually look to recover its investment as CSL is prepared for flotation. As part of VC Limited's investment, Fiona Flynn, a VC Limited employee, was appointed as director of CSL. Fiona, apparently, has considerable experience in aiding the preparation of companies, such as CSL, ready for a stock market flotation. Accordingly, under Fiona's guidance, CSL is preparing itself to convert from a private limited to a plc in approximately six months' time, although it is not expected that CSL will float immediately but will do so to raise further funding in a couple of years, and when it does it will most probably do so via the London Stock Exchange's AIM market.

Since Fiona joined, aspects of the relationship that JB fostered to obtain VC Limited's investment have soured – one of the main reasons for this is that JB believes that CSL is ready to float and should do so now. Fiona is less keen and has persuaded the other board members to her view point.

Consequently, JB has decided that this now is a suitable juncture for him to exit CSL. JB has already mooted his departure with the other board members. Abel and Beatrice were initially keen that JB remain with the company. However JB has explained to them that he wishes to pursue new interests; they have said that they will assist in smoothing through his exit. JB then explained that as part of VC Limited's investment it was agreed all the members of CSL would, and did, enter into a shareholders agreement under which they agreed to offer their shares first to existing shareholders.

JB has, informally offered his shareholding to the other members, including VC Limited. However, JB is not confident that the other members of the Company will wish to further invest in CSL. Many of them already have substantial

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mortgages over their homes and so do not want to increase their investment in CSL further. JB said that he is due to attend a meeting of the board of directors later this week, which would be an opportunity for him to establish whether or not the shareholders would be interested in the purchase of his shares.

JB stated that he would be in touch once he was in a position to update further.

Time in attendance: 15 minutes

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DOCUMENT 3

EMAIL

From: j.boyle@cooperssolutions.org.uk
To: dr@kempstonsllp.com
Date: 24 May 2011
Re: **Coopers Solutions Limited & other matters**

Dear Derek

Many thanks for your time earlier last week on the above matter.

As you may have assumed matters have moved on. It is probably best that I deal with each in turn.

Coopers Solutions Limited

1. Following our meeting, I attended our regular monthly board meeting yesterday. The matter of my departure obviously came up for discussion; I have now decided that I will both be stepping down as director of the company and looking to sell my shareholding. A preliminary evaluation of the company values my current shareholding at £300,000, representing a premium of £1 over the nominal value. I have yet to see the full report by the accountants; this valuation is a fair reflection of what I would anticipate to be their current value.

Unfortunately, and although they would like to, the remaining members have indicated that they cannot currently afford to purchase my shares; Fiona has also indicated that VC Limited is currently reluctant to invest further in the company and would not seek to offer to buy them. However, Fiona explained that whilst VC Limited would be reluctant to see any new investors, it will not object to the company looking for an alternative means by which to purchase my shares.

Until such time as we have found a means by which to facilitate my exit from the company, I have naturally agreed to continue to work for the company full time. Thereafter I will tender my resignation.

2. A number of other matters have arisen in relation to CSL over which Fiona was getting irritated when they were discussed. These are:
 - (i) It was proposed that CSL would pay off a debt owed by Ewan, one of our directors, to De Villiers Finance Limited, in return for his promise to repay CSL.
 - (ii) It also transpires that Diana, another one of our directors, failed to disclose, at a board meeting at which only two directors, including Diana, were present, a personal interest which she had in a transaction decided on by that board meeting.

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Personally I am comfortable with what has been proposed and see no problem with either of these matters. I have known Ewan for a number of years and I know that he will be good for the debt, however, as this matter became a little acrimonious, it was decided not to make the decision until the next board meeting.

In relation to the transaction involving Diana, this was one that the board had previously discussed and was likely to be entered into in any event.

However, given Fiona's reaction to these matters I would be grateful if we can discuss these when we meet next week.

Capio Renovations

This is a new venture that I am currently contemplating and would like to discuss with you also next week. I have been approached by Charles Edwards and Stuart Edwards (who are cousins), long term associates of mine, about entering into business with them.

Capio Renovations is a partnership between Charles and Stuart Edwards that acquires and renovates old commercial properties, invariably in brown field sites. The Edwards have been steadily acquiring various plots of land with a view to their future development. I was approached by the Edwards a couple of months ago with a view to getting involved in a development of a site they owned. The site is the Seymour Industrial Park, now disused but owned jointly by them as part of the Capio Renovations partnership assets. As you may realise, this is adjacent to the Harmon Warehouse I have on the outskirts of Bedford.

Our discussions have primarily focused on the development of both sites into residential apartments and commercial units. The Edwards have already sought planning consents for the majority of the site and this looks likely to be in place early next month. Given that this planning application will probably be granted, I anticipate that it should be relatively straightforward to seek and obtain planning consent to convert the Harmon Warehouse into luxury residential suites.

My discussions with the Edwards thus far have centred on the inclusion of the Harmon Warehouse and my involvement in the development to identify possible backers to secure the further funding.

Our agreement thus far is:

1. We incorporate a separate entity for the development project so that we can limit our liability and exposure to the development as a whole.
2. The new entity is to take/include the Capio Renovations name, given its pre-established brand and goodwill in the property development sector.
3. We will each transfer our various properties that will become part of the overall development; namely the Edwards will transfer the Seymour Industrial Park land and I'll transfer the Harmon Warehouse. We have not yet sought a formal valuation for each of our contributions to the development in this regard, however we have approximated that they will equate to a third share each, in terms of the new entity's asset once transferred.

4. Charles Edwards, Stuart Edwards and I will be the sole owners managers of the entity. I will have responsibility for external marketing and investment; Charles will have overall responsibility for project managing the delivery of the development; and Stuart, finance.

However, we do expect that we will be seeking additional funding from investors as the project develops so we consider it probable that we will be introducing new owners/managers in time.

5. Once my exit from CSL has been formalised, I will make a further contribution by way of a loan to the new entity of £300,000, at a rate of 3.5% per annum.

I have agreed with the Edwards that I will ask you to advise on this. But as discussed, if we could meet next week, I would like the opportunity to talk these matters through with you.

Kind regards

Jack

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DOCUMENT 4

JRN SEARCH AGENCY LIMITED

Company Search

Name of Company	Coopers Solutions Limited		
Company Number	887765490		
Company Type	Private company limited by shares		
Date of Incorporation	1 March 2005		
Previous Names	None		
Registered Office	One Westcheap, London EC2A 1AA		
Date of Last Annual Return	20 December 2010		
Accounting Reference Date	30 September		
Accounts	Last filed	Next due for period to	Overdue
	15 Dec 2010	30 Sept 2011	N/A
Current Directors and Secretary	Directors	Secretary	
	Abel Worth Beatrice Young Jack Boyle Diana Smith Ewan Hutchings Fiona Flynn	Beatrice Young	
Share Capital	Authorised	Class	No. of shares
	£6,000,000		
		Ordinary £1	2,000,000
		6% Cumulative Convertible Preference £1	4,000,000
	Issued	Class	Amount paid up
	£6,000,000	Ordinary £1 2,000,000	£1 per share
		4,000,000 6% Cumulative Convertible Preference £1	£1 per share
Shareholders	Name	Class	No. of shares
	Abel Worth Beatrice Young	Ordinary Ordinary	200,000 150,000

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		Jack Boyle Diana Smith Ewan Hutchings VC Limited VC Limited	Ordinary Ordinary Ordinary Ordinary 6% Cumulative Convertible Preference	150,000 150,000 100,000 1,250,000 4,000,000
Undischarged Mortgages or Charges				
Chargee	Date of charge	Amount Secured	Description of Charge (including assets secured and whether there is a negative pledge)	
BTD Bank plc	3 July 2007	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: May 2011

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DOCUMENT 5

EMAIL

From: dr@kempstonsllp.com
To: traineelegalexec@kempstonsllp.com
Date: 26 May 2011
Re: **Jack Boyle: Retainer file**

Further to my earlier email, and JB's email, I spoke to JB and have requested that he let us have a copy of the most recent management accounts so that we can establish CSL's profits and capital. I have also asked for more details in relation to the debt that CSL is proposing to pay on behalf of Ewan Hutchings.

This JB has now provided, which I have attached (**Document 7**) together with the accompanying email (**Document 6**). The April 2011 Management Accounts: Balance Sheet should be sufficient for our purposes when we meet with JB; you will see from the accounts that Coopers Solutions Limited (CSL) appears to currently have some £250,000 distributable profits.

You will see also that in JB's email (**Document 6**) he raises a couple of issues in relation to a supplier of CSL, which JB seems to also think may have a potential opportunity for his new venture. Can you carefully look at what has happened here so that we can advise JB next week.

Many thanks.

Derek

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DOCUMENT 6

EMAIL

From: j.boyle@coopersolutions.org.uk
To: dr@kempstonllp.com
Date: 25 May 2011
Re: **Coopers Solutions Limited & other matters**

Dear Derek

Thanks for the call today.

As requested, I attach the most recent management accounts (balance sheet) for Coopers Solutions Limited (CSL) – these were prepared for the month ending April 2011. If you require any further information please let me know.

In relation to Ewan's debt to De Villiers Finance Limited; my understanding is that Ewan took this out when he moved down from North Yorkshire to be nearer CSL's head office. The total debt I am told is approximately £13,500.

Since speaking, one further matter has arisen with CSL. We currently have Sykes Limited on our books as owing us a debt of £11,000. Three months ago Sykes Limited granted us a floating charge over all of its assets because it could not pay the debt due.

The charge was expressed to cover:

- (i) the indebtedness of £6,000 owed at the time that the charge was granted; and
- (ii) all future indebtedness.

The original £6,000 has not been paid off and, since the charge was given, a further £5,000 of debt has been incurred with Sykes Limited. I have done a little digging around and it transpires that there are several trade creditors pressing the company for payment and in the last five days it has been served with statutory demands by two of them.

In chasing for the monies owed to CSL, I ended up speaking to Sykes Limited's finance director. In stating CSL's position, I explained that CSL would not be undertaking any further work for Sykes Limited and would be issuing a statutory demand to push for the debt. Surprisingly, he was quite frank about the company's circumstances. From what I can determine, the company does not have sufficient funds to settle these demands. The company's non-preferential unsecured creditors are owed about £180,000 and they would receive very little in the event that the company goes into liquidation. In addition, I understand that the company continues to make losses and their order book continues to drop.

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The company has assets valued at £398,000, including the freehold office which is worth £320,000. The company's liabilities amount to £515,000, including £65,000 owed to H M Revenue & Customs.

In the course of our discussions, the finance director mentioned the company has received an offer to buy the freehold office for £255,000 from a local property developer who has heard that the company may be about to close down. The directors are contemplating accepting the offer in order to pay off some of its debts, including CSL's, on the promise that CSL does not pursue Sykes Limited and issue a statutory demand. I said that I would need to speak to my other directors before agreeing to this.

It occurred to me there were a number of opportunities here. I have already spoken to Charles and Stuart Edwards to sound them out about our new venture making an offer for the freehold office slightly above the current offer price, say £275,000. That way, not only will we be able to increase our property portfolio but CSL will also be able to recover some of its debt owed by Sykes Limited.

Perhaps we can discuss this next week?

Kind regards

Jack

[Attachment: April 2011 Management Accounts: Balance Sheet]

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DOCUMENT 7

Coopers Solutions LimitedManagement Accounts: Balance Sheet at 30th April 2011

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Employment of Capital**Fixed Assets**

Tangible assets	4,898,000	
Investments	<u>8,000,000</u>	
		<u>12,898,000</u>

Current Assets

Stocks	1,025,000	
Debtors	1,125,000	
Cash at bank	<u>200,000</u>	2,350,000

Creditors Due Within 1 Year

Trade creditors	368,000	
Other creditors	<u>90,000</u>	<u>(458,000)</u>

Net current assets

1,892,000

Total assets less current liabilities

14,790,000

Creditors due after 1 year(8,540,000)**NET ASSETS****6,250,000****Capital & Reserves**

Called up share capital:

2,000,000 ord £1 shares 2,000,000

4,000,000 preference shares 4,000,000

Profit & loss account 250,000**6,250,000****End of Case Study Materials**

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