

Małgorzata Cyganik

# LEGAL English

2<sup>nd</sup> edition



LEGAL & BUSINESS  
ENGLISH



# LEGAL English



Małgorzata Cyganik

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2<sup>nd</sup> edition



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Wydawnictwo C. H. Beck  
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[Kup książkę](#)

Wydawca: Anna Wieczorek

*Redakcja i korekta:*  
Dominika Baczyńska  
Dominika Drygas



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# Unit 1

# Sources of Company Law

## Contents:



1. Introductory note \ 3
  - Introduction
  - Definition of law



2. Text focus \ 8  
Company law



3. Discussion \ 11  
Scope of company law



4. Vocabulary focus \ 12
  - Legal acts
  - Types of business entities
  - Confusing words
    - a) prescribe, proscribe, ban
    - b) delete, waive, set aside, repeal, cease, resign
    - c) set forth, provide, stipulate



5. Reading for detail \ 17



6. Quick quiz \ 21



7. Plain English vs. legalese \ 22
  - Legalese and grammar – modal verbs and legalese



8. Rephrasing \ 26



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10. Build your legal glossary \ 29



11. Branches of law \ 31  
The constitutional law



12. Unit quiz \ 32





## 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 United Kingdom and in the United States of America, the system of law is divided into **enacted law** (the law contained in law-making instruments, a.k.a. statutory law) and **common law**<sup>1</sup> (especially a major part of the law in nations with a history as British territories or colonies. It includes extensive non-statutory law reflecting precedent derived from centuries of judgments by judges hearing real cases).

In the United Kingdom enacted law is composed of the **Acts of Parliament** and so-called **delegated legislation** (a.k.a. subordinate delegation), which includes statutory instruments, such as rules, orders or regulations issued by a government or its agencies. These laws do not necessarily apply to the entire area of 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. Another important feature of the English legal system 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”. The lack of a central written constitutional document explaining the fundamental principles of the state and the relationship between its institutions and between the people leads some constitutionalists to regard the United Kingdom as having “no (formal) constitution”. The phrase “unwritten constitution” is sometimes used, despite the fact that the UK constitution incorporates many written sources, statutory law being considered the most important source of the constitution. But it remains the case that the constitution relies far more on unwritten constitutional conventions than virtually any other liberal democratic constitution.

Common law in the UK comprises two important elements: common law based on the rules of law built upon decisions of courts [**precedents**] (a judicial judgment includes *ratio decidendi*

<sup>1</sup> It is also referred to as judge-made law, case law, decisional law or precedent law.

and *obiter dictum*; *ratio decidendi* is the source of law to be applied by subsequent judges and includes the motive which determined the judgment; *obiter dictum* consists of a judge's opinion on this particular case) and the **rules of equity** which constitute a set of legal principles that are also applied in the countries that follow the British common law tradition. Rules of equity supplement the strict application of the rules of law where this application is considered harsh, so as to achieve so-called "natural justice". As law applies legal doctrines or statutes to judge a particular case, equity, with its emphasis on fairness and flexibility, has only general guidelines, known as the **maxims of equity**. In modern practice, the most important distinction between law and equity is the set of **remedies** (measures employed to enforce a right or redress, i.e. compensate for, an injury) each offers (for example a court of law can award financial damages whereas equity enters injunctions or decrees that either direct someone to act or forbid them from acting). Only a judge can dispense **equitable remedies**, as it is a matter of law. The distinction between "legal" and "equitable" remedy (a.k.a. relief) is an important aspect of common law systems, including the American legal system. In the event that the enacted law does not deliver a norm of conduct in a given case, a norm of precedent applies and if there is no such norm, then the judge hearing the case lays down a new precedent. 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.

4

American common law derives from British common law and law of equity. In the United States of America enacted law is composed of a number of **law-making instruments**<sup>2</sup>, such as the **Federal Constitution, statutes, executive orders, rules, regulations** and **ordinances**. Moreover, 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 (e.g. the RMBCA<sup>3</sup>), not all states have adopted them. Similarly to the UK, common law applies in cases not governed by enacted law. The usage of a habitual or customary practice also constitutes an important element of American law.

Moreover, in the Anglo-Saxon system of law, the judgments are **binding**: (a) only upon the courts of a lower instance than the court which pronounced it and only on the courts of the same state (except for the federal courts) (b) if they are holdings included in opinions of **appellate courts** i.e. courts of higher instance to which an appeal may be lodged. 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 the **judicature** (i.e. rulings and resolutions of courts designated to administer justice) of higher courts and tribunals (e.g. the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court), whose rulings are not law-creating and refer only to a particular case, *de facto* play an

<sup>2</sup> A.k.a. legal acts, legislative documents.

<sup>3</sup> The Revised Modern Business Corporation Act.

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 and British law are 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 those legal systems.

## 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. enacted law	
b. common law	
c. precedent	
d. implied terms	
e. explicit terms	
f. custom	
g. legal acts	
h. binding	
i. appellate courts	
j. judicature	
k. principles of community life	
l. uniform act	
m. regulation	
n. directive	
o. decision	

**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:

## 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. Legislative 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 provisions of law

- (a) legal stipulations which regulate the mode of 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 of the law
- (b) public authorities responsible for creating the law
- (c) ruling

## 6. Enforcement of law

- (a) compelling observance of the law
- (b) implementing the law
- (c) causing a legal action to happen by force

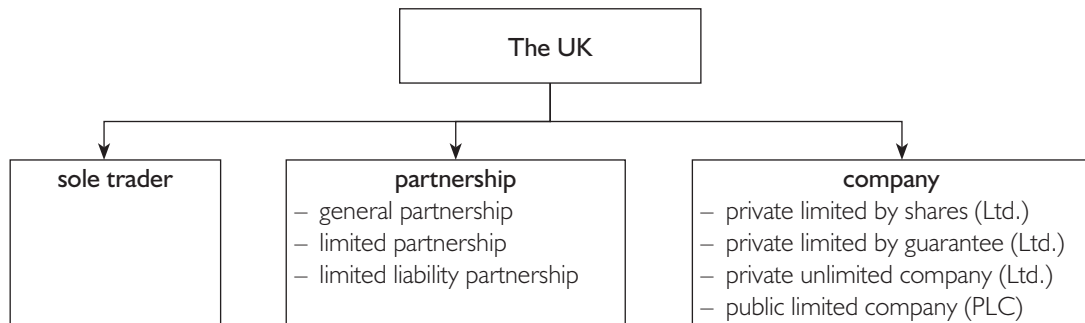




## Company law<sup>4</sup>

**Company law** concerns the forming, organising, operating, merging, dividing and winding-up of companies<sup>5</sup>. Moreover, it governs the relationships among various constituents of a company, i.e. members of 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 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 created under the laws of the country or state it is incorporated within; 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 actions necessary to conduct its business operations. It has a separate legal identity from its members (owners/shareholders). Although the term “company” refers only to incorporated entities, colloquially it is often used to refer to any business entity (e.g. it is often used to refer to Polish partnerships since both companies and partnerships are regulated by one and the same code).



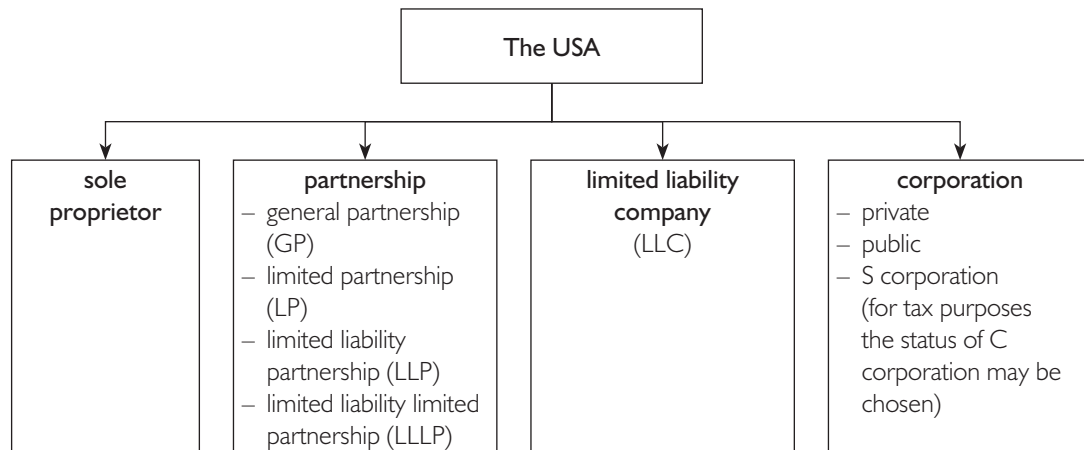
In the UK, a company in the legal context means an entity formed and registered under the Companies Act or an existing company (a company formed on the basis of previously existing

<sup>4</sup> AmE: the corporate law or corporation law; Pl: partnerships and companies law (a.k.a. commercial companies law).

<sup>5</sup> In Poland also partnerships, as the companies and partnerships are governed by the same Code of Partnerships and Companies (a.k.a. Commercial Companies Code).

acts), registered in the Registrar of Companies held by Companies House<sup>6</sup>. The UK company law is mainly a creature of statute and the most important statute is the Companies Act<sup>7</sup>.

English business entities may adopt the following legal structures: from the sole trader, through partnerships (general, limited and limited liability) to companies (private limited by shares or by guarantee or unlimited company, or a public company).



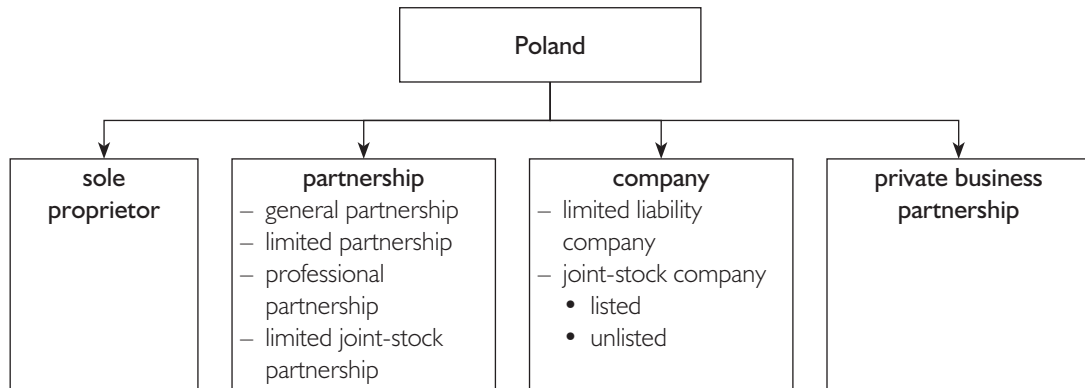
In the United States, the term “corporation” generally refers to incorporated business entities, or entities chartered under the laws of a particular state. The corporate law of a state where a corporation was incorporated generally governs that corporation (even if the corporation’s operations take place outside that state<sup>8</sup>). Despite some attempts to unify corporate law in the USA (e.g. the Revised Model Business Corporation Act<sup>9</sup>, which was adopted by many states), the corporate laws of various states differ. Therefore, some states, notably Delaware, are more attractive for businessmen 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 (general partnership, limited partnership, limited liability partnership and limited liability limited partnership), a limited liability company (LLC), and corporations (private and public) including S corporation and C corporation which are subject to different taxation rules. All these business entities are governed by a separate relevant statute.

<sup>6</sup> [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) (all internet links were last verified on 27 June 2013).

<sup>7</sup> It may be downloaded at [www.opsi.gov.uk](http://www.opsi.gov.uk).

<sup>8</sup> 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.

<sup>9</sup> It may be found at [www.americanbar.org/resources\\_for\\_lawyers.html](http://www.americanbar.org/resources_for_lawyers.html) (all internet links were last reviewed on 27 June 2013).



In Poland, the Code of Partnerships and Companies<sup>10</sup> 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. However, there is another important source of law, the Civil Code, which governs private business partnerships. This type of business entity is not a legal entity but constitutes an agreement between two or more individuals who aim to achieve a common objective. Polish commercial law business entities are divided into partnerships (general partnership, professional partnership, limited partnership, limited joint-stock partnership) and companies (a limited liability company and a joint-stock company which may be listed or unlisted i.e. its shares may be traded (or not) on the stock exchange market).

## 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 “ <i>company</i> ” means an entity incorporated under the Companies Act.	<input type="checkbox"/> <input type="checkbox"/>
5. “ <i>Corporation</i> ” is an American term for a “ <i>company</i> ”.	<input type="checkbox"/> <input type="checkbox"/>
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"/>

<sup>10</sup> Also called the Commercial Companies Code.

	T / F
9. Polish private partnerships are governed by the Code of Partnerships and Companies.	<input type="checkbox"/> <input type="checkbox"/>
10. Poland's so called Commercial Companies Code applies to both companies and partnerships.	<input type="checkbox"/> <input type="checkbox"/>

## Practice 6

Match the terms with the definitions:

1. formation	a. a company whose shares are not offered to the general public
2. merger	b. liquidating the company's affairs
3. private company	c. a holder of a company's equity
4. public company	d. the law governing the trade in e.g. shares
5. raise capital	e. in general, the process of two entities becoming one
6. securities law	f. a company listed on the stock exchange whose shares are offered to the general public (not to be confused with a state-owned company)
7. shareholder	g. the process of creating and incorporating an entity
8. winding-up	h. to acquire capital from e.g. shareholders' contributions, bank loans or from the general public



## 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
- profit-sharing
- merger
- resolving disputes
- division
- performing contracts
- organisation
- acquiring goods
- management
- declaring insolvency
- trading in securities
- finance raising