

School of Taxation and Business Law

TABL2741 BUSINESS ENTITIES

Course Outline Semester 2, 2017

Course-Specific Information

The Business School expects that you are familiar with the contents of this course outline. You must also be familiar with the Course Outlines Policies webpage which contains key information on:

- Program Learning Goals and Outcomes
- Academic Integrity and Plagiarism
- Student Responsibilities and Conduct
- Special Consideration
- Student Support and Resources

This webpage can be found on the Business School website:

<https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

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COURSE-SPECIFIC INFORMATION

1 STAFF CONTACT DETAILS

Lecturer-in-charge: Dotte Derrickson (Casual Academic)

Room: Level 2 Quad Building (South Wing)

Email: d.derrickson@unsw.edu.au

Consultation Times – Appointment by email

A full list of tutors will be posted on UNSW Timetable:

<http://timetable.unsw.edu.au/2017/TABL2741.html#S2-4699>

Communication with Staff

- Students are invited to consult, by email appointment, with the **lecturer in charge** on any aspect of the course.
- Students may contact staff by e-mails regarding course administration matters, **using only their official university email address as per *University Email Policy***. E-mail is not an appropriate medium for learning. It is a poor substitute for personal consultation. Do not expect staff to reply to e-mails which request extensive or substantive answers. Teaching staff will use their discretion when consulted via e-mail and may instead invite students to meet in person during consultation hours to discuss complex questions, solutions to tutorial questions, past exam questions, etc.

2 COURSE DETAILS

2.1 Teaching Times and Locations

Lectures start in Week 1(to Week 12): There are 2 lecture streams: a Day lecture stream and a Night lecture stream. Students need only attend 1 lecture stream (the stream officially enrolled in).

Times and Location are:

Day Lecture Steam: Wednesday 10.00-1.00pm – **Rex Vowels Theatre** (K-F17-LG3);
OR

Night Lecture Stream: Wednesday 6.00-9.00pm – **Macauley Theatre** (K-E15-1027)

Tutorials start in Week 2 (to Week 13). A full list of tutorials, times and tutors will be on the Course Website. It is your responsibility to ensure that you have a formal Tutorial Guide (downloadable from Moodle).

2.2 Units of Credit

The course is worth 6 units of credit.

2.3 Summary of Course

The purpose of this course is to examine the main principles of company law. Emphasis will be given to the areas dealing with the legal effects of incorporation, corporate liability, the raising and maintaining of capital; the responsibility for company management and governance (directors duties and liabilities); the commercial conduct of companies; the

protection of shareholders (rights and remedies); liquidation and alternatives for companies in financial distress. Other forms of business structures or organisations will also be referred to in the context of company regulation. The comparative utility of alternative business structures will be assessed. Such utility will be examined from aspects such as personal liability, suitability for property ownership, nature of title to assets and facility for the conduct of commercial operations.

Lecture material will be grounded in contemporary commercial and legal developments to illustrate the practical relevance of topics studied.

2.4 Course Aims and Relationship to Other Courses

Business Entities is the main company law course offered by the School of Taxation and Business Law. CPA Australia and the Institute of Chartered Accountants in Australia (ICAA) have accepted UNSW as an approved tertiary institution for purposes of membership qualifications. Bachelor of Commerce (Accounting) students will generally need to complete the following courses to satisfy professional requirements:

- TABL 1710 *Business and the Law*
- TABL 2741 *Business Entities and*
- TABL 2751 *Business Taxation* (for CPA students, it is advisable to do tax law as part of your degree; otherwise you will need to undertake a tax law course at the CPA after you graduate)

Students may choose to study Business Entities as part of a Business Law major or a Taxation major.

A Business Law co-major involves completing 8 courses (1 compulsory course TABL 1710 *Business and the Law*; and 7 TABL electives which must include at least 3 Level 3 TABL courses). The school offers, for example, the following options that build upon the knowledge gained in this course.

Business Law

- TABL 3741 *Insolvency Law*
- TABL 3761 *Law of Banking and Finance*

Taxation Law

- TABL 3757 *Corporate Tax Strategy*
- TABL 3755 *Taxation of Business Entities*

2.5 Student Learning Outcomes

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

By the end of this course, you should be able to:

1. explain the practical features of various types of non-corporate and corporate business structures and the legal environment in which they operate;
2. explain and apply principles of company law;
3. analyse and evaluate legal problems;
4. apply logical argument, in written or oral form, to legal problems that arise in modern company law
5. research legal principles that apply to business structures; and

6. identify emerging trends in corporate regulation and corporate governance;

The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all undergraduate students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. 'be an effective team player'). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. 'participate collaboratively and responsibly in teams').

For more information on the Undergraduate Program Learning Goals and Outcomes, see: <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

Program Learning Goals and Outcomes		Course Learning Outcomes	Course Assessment Item
<i>This course helps you to achieve the following learning goals for all Business undergraduate students:</i>		<i>On successful completion of the course, you should be able to:</i>	<i>This learning outcome will be assessed in the following items:</i>
1	Knowledge	Explain the practical features of various types of non-corporate and corporate business structures. Explain and apply principles of company law	<ul style="list-style-type: none"> • Tutorial Problems • Assignment • In-tutorial Tests • Final Exam
2	Critical thinking and problem solving	Analyse the legal environment in which business structures operate and evaluate its use in a commercial context. Identify legal problems which arise out of the formation and use of business structures, research relevant sources, propose an outcome and identify possible challenges to any proposed outcome.	<ul style="list-style-type: none"> • Tutorial Problems • Assignment • In-tutorial Tests • Final Exam
3a	Written communication	Construct written work which is logically and professionally presented.	<ul style="list-style-type: none"> • Assignment • Final Exam
3b	Oral communication	Communicate ideas in a succinct and clear manner.	<ul style="list-style-type: none"> • Part of tutorial participation
4	Teamwork	Work collaboratively to complete a task.	Not specifically assessed.

5a.	Ethical, social and environmental responsibility	Identify and assess ethical considerations in decision – making in the management of business structures – for example, directors, trustees and partners	<ul style="list-style-type: none"> • Tutorial Problems • In-tutorial Tests • Final Exam
5b.	Social and cultural awareness	Analyse corporate governance trends in the context of their social impact on society.	<ul style="list-style-type: none"> • Final Exam

3 LEARNING AND TEACHING ACTIVITIES

3.1 Approach to Learning and Teaching in the Course

The approach to learning and teaching in this course is premised on the fact that active student involvement in the course will facilitate understanding and deep learning of the course materials. The accompanying tutorial program to this course facilitates this outcome together with the opportunities that will arise from time to time in the lectures. Consequently, students are expected to understand rather than memorise and to apply, rather than regurgitate.

In order to obtain the potential benefit from the course and to succeed in all aspects of course assessment, students are required to follow the points below:

1. Read the prescribed materials *before* class lectures. This will make the class material easier to follow and comprehend;
2. Download the lecture handout/slides (available from *Moodle*) *before* class lectures. It is essential to bring the handout/slides to class and to supplement it with notes taken from the lecture. It is important to remember that the lecture handouts are not designed to be comprehensive and serve as a substitute for class lectures;
3. Actively participate in class: answer answers and ask your own;
4. Attend classes on time (important announcements are usually made prior to the delivery of lectures);
5. Attempt all the revision questions (in tutorial guide) for self-evaluation; and
6. Make an appointment to see the lecturer(s) during their consultation hours if further clarification regarding the course content is required.

3.2 Learning Activities and Teaching Strategies

The teaching strategies in this course adopts a combination of weekly lectures and tutorials (or seminars) designed to allow the delivery of a body of material and the opportunity thereafter to discuss and contextualise the material. This is done with real life examples to aid student understanding. The teaching strategies adopted aims to encourage critical thinking, deep and positive learning. The course is also designed to cater for the learning needs of a diverse range of students. It incorporates self-review questions, found in the tutorial guide, to facilitate your own assessment of your progress in understanding the course materials.

The tutorial program for this course serves several useful and practical purposes. It is designed to help consolidate, interpret and apply the lecture material. Students are taught to learn by understanding and application, not memorisation and regurgitation. Solutions to tutorial questions are not provided to ensure that students participate actively in class to confirm their understanding, learn from their mistakes and receive feedback on the correct approach to the questions. Students may see the lecturer or tutor during their consultation hours if further clarification regarding the tutorial questions is needed.

Additionally, the tutorial program and assessment is also designed to allow students to develop the skills (both verbal and written) necessary to analyse problems which may arise in practice. The guide is designed to allow each student to reach the goal of being able to apply theory, knowledge and problem solving technique to fact situations that may arise in company law. It is essential that students learn to select the important issues in such fact situations and that they be able to advance, in discussion, a carefully analysed solution aimed at resolution of the factual situation based on both relevant legislation and case law.

This course assumes you have studied TABL 1710 *Business and the Law* or the equivalent course. If you need to refresh your memory and re-familiarise yourself with the general principles of Australian law, you should read a short introductory book such as Carvan, *Understanding the Australian Legal System*, latest edition (Law Book Co), or Chisholm and Nettheim, *Understanding Law*, latest edition (Butterworths).

Reading cases is the best way to gain an understanding of:

- how common law and equity evolve (ie Judge made law, based on previous decisions)
- how the judges interpret the provisions of statutes

4 ASSESSMENT

4.1 Formal Requirements

In order to pass this course, you must:

- achieve a composite mark of at least 50; **AND**
- **achieve a mark of at least 45% (i.e. 27 out of 60) in the final exam; AND**
- complete all assessment tasks; **AND**
- attend at least 80% of the tutorials.

4.2 Assessment Details

Assessment in this course consists of 3 Components:

- Formal written Research assignment,
- Tutorial Quizzes and
- final exam

Assessment Task	Weighting	Length	Due Date
1. Formal Written Research Assignment	20%	1,700 words	Wednesday 20 September by 6.00pm sharp [Week 9]
2: Tutorial Quizzes (x3; worth 10 marks each; best of 2) Note: The higher of the two set of quiz marks awarded (out of 20) will automatically be chosen and awarded	20%	Each 10 minutes duration	Quiz 1 Week Beginning 14 August [start of Week 4] Quiz 2 Week Beginning 11 September [start of Week 8] Quiz 3 Week Beginning 9 October [start of Week 11]
3. Final Exam	60%	2 hours	University Exam Period
Total	100%		

4.3 Assessment Format

The written assignment is worth 20% of the course assessment.

The topic will be released via Moodle in Week 4. This is a formal written assessment which involves individual legal research and analysis. It has a minimum word limit of 1,500 words and maximum word limit of 1,700 words.

See Style Guide posted to Moodle *for further details* on presentation.

It must be lodged at Turnitin before the due date and time: by 6.00 pm Wednesday 20 September 2017 (note: No other form of submission, for example email submission, is allowed without prior lecturer consent).

*Unauthorised late submissions will attract an immediate deduction of 20% and thereafter the same deduction per day late. **Any assignment submitted 5 or more days late will score zero.***

Tutorial Quiz

Written quizzes conducted in tutorials are worth 20% of the course assessment.

Tutorial Quiz

There will be three (3) quizzes given in tutorials during the session, based on the lecture material [tutorial questions are, indeed, based on lecture material]. Students are advised to use the information below to guide preparation for the tutorial quizzes – it indicates the lecture material (as spelt out in the course outline) that will be assessed in each quiz:

Quiz 1: Lecture Topics covered in lectures 1-3 inclusive

Quiz 2: Lecture Topics covered in lectures 4-7 inclusive

Quiz 3: Lecture Topics covered in lectures 8-10 inclusive

Each quiz will consist of short answer questions and/or multiple choice questions and will each be worth 10% of the total mark of the course. These tutorial assessments will be closed book. Further details will be announced in the lectures.

Each quiz will start no earlier than 5 minutes after the hour that the tutorial commences and students arriving late to tutorials will be given only the remaining allotted time to complete the quiz.

Students will be marked on the highest 2 scores attained out of the 3 quizzes held during the session. Students absent in the tutorial on the date of the quiz will have 0 marks recorded for that quiz. **There will be no supplementary or make up quiz should a student miss a quiz** because only the best 2 out of the 3 quiz results will be used for assessment purposes.

Final Exam

The final examination is worth 60% of the course assessment and will consist of problem questions and essay questions. It will be 2 hours long and cover the entire course material, unless advised by the lecturer to the contrary in class.

It is a closed book exam (no external materials are allowed into the exam). However, a case list (comprising of cases listed in this **Course Outline**) and extracts from the Corporations Act will be supplied in the exam room, attached to the question paper. Thus, there is no need to commit case names or section numbers to memory.

The final examination will be held in the regularly scheduled University examination period. *Further information concerning the exam and its format will be announced in lectures in the final week of the course and a summary of the key points will be posted to Moodle.*

4.4 Assignment Submission Procedure

See above.

All students must retain a spare copy of the assignment to be produced, if required, on demand.

4.5 Late Submission

See above.

If you foresee that you will have problems submitting the assignment on time you should contact the lecturer-in-charge immediately. Only the lecturer-in-charge can grant an extension for an assignment.

Do not wait until the due date to ask for an extension. No extensions will be granted on the due date itself.

If circumstances beyond your control mean that you cannot complete an assignment by the due date you should make an application for special consideration (see <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

Extensions will not be granted lightly and may only be granted in exceptional circumstances, supported by detailed documentation.

Quality Assurance

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will be used to inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential.

5 COURSE RESOURCES

The textbooks for this course are:

1. Harris J, Hargovan A and Adams M, ***Australian Corporate Law, 5th Edition (2016)*** LexisNexis/Butterworths [hereinafter referred to as HHA]
Note that there are valuable supplementary learning resources accompanying this book, such as quizzes with solutions, available online and accessible by publisher bar-code.
2. Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths

And

3. Australian Corporations Legislation, 2017, LexisNexis/Butterworths [student edition]

Note: Students are strongly advised to use the latest edition of prescribed materials to ensure accuracy. Due to a continuous process of law reform and judicial pronouncements in a rapidly changing corporate environment, it is unadvisable to use previous editions of the prescribed materials. If you do so, you undertake a large risk which may have an adverse impact on performance in the variety of assessments for this course.

Recommended reference

- Hanrahan, Ramsay, Stapledon, *Commercial Applications of Company Law*, 17th ed., 2016, Oxford University Press

General corporations law texts and/or casebooks

- Baxt, Fletcher & Fridman, *Corporations and Associations – Cases and Materials*, 10th ed., 2008, LexisNexis/Butterworths
- Ford, Austin & Ramsay, *Principles of Corporations Law*, 16th ed., 2015, LexisNexis/Butterworths
- Harris, *Corporations Law, Questions and Answers*, 4th ed, 2013, LexisNexis/Butterworths
- Lipton, Hertzberg & Welsh, *Understanding Company Law*, 18th ed., 2015, Thomson Reuters
- Redmond, *Corporations and Financial Markets Law*, 6th ed., 2013, Thomson Reuters

Professional references

- Butterworths, *Australian Corporation Law Principles and Practice* (loose-leaf volumes available online)
- CCH, *Australian Corporate News* (loose-leaf 1 Volume available online).
- Butterworths, *Australian Corporation Law Bulletin* (loose-leaf 1 Volume available online)

Specific topic reference texts [for selected topics only]

- Austin, Ford & Ramsay, *Company Directors-Principles of Law and Corporate Governance*, 2005, LexisNexis/Butterworths
- Murray, & Harris, *Keay's Insolvency: Personal and corporate law and practice*, 9th edition, 2016, Thomson Reuters

Online Resources: The website for this course is on Moodle at <http://moodle.telt.unsw.edu.au>

Students are encouraged to check the course website at Moodle for announcements and the following resources designed to assist students with their study of this course:

- course outline
- assessment details (format of final exam; some past exam papers)
- relevant lecture slides;
- cases and articles;
- useful links

The following websites are also useful sources:

- Australasian Legal Information Institute (<http://www.austlii.edu.au>)
- Federal (Commonwealth) Parliament (bills, legislation, committees etc <http://www.aph.gov.au>)
- Australian Securities and Investment Commission: [Asic](http://www.asic.gov.au)
- Australian Securities Exchange: www.asx.com.au
- <https://www.legislation.gov.au/>
- www.camac.gov.au

6 COURSE EVALUATION AND DEVELOPMENT

Each year feedback is sought from students and other stakeholders about the courses offered in the School and continual improvements are made based on this feedback. UNSW's myExperience survey is one of the ways in which student evaluative feedback is gathered. In this course, we will seek your feedback through end of semester myExperience responses. Changes made in the past, based on student feedback, include changes to the assessment regime by substituting the mid-session exam for a regime of continuous assessment.

7 COURSE SCHEDULE

LECTURE SCHEDULE		
Week	Topic	References
Week 1 26 July	Course Overview, Development, Structure and Administration of Australian Company Law	HHA Chapters 1-2
Week 2 2 August	Alternative Business Structures: Part 1 [sole traders, partnerships, joint ventures]	HHA Chapters 3-4
Week 3 9 August	Alternative Business Structures: Part 2 [trusts, companies and associations]	HHA Chapters 3-4
Week 4 16 August	Legal Effects of Incorporation Separate Legal Personality and its Limits Lifting the Corporate Veil (common law and statutory) Personal Liability for Insolvent Trading	HHA Chapters 5 and 18 [para 18.3; 18.10-22]
Week 5 23 August	Internal Governance: Corporate Constitution and Replaceable Rules Corporate Liabilities: Contract	HHA Chapters 6-7
Week 6 30 August	Promoters Corporate Fundraising [Shares] and Investor Protection Debt Capital [Debentures]	HHA Chapters 8-10 and 22 [para 22.3; 22.26-37]
Week 7 6 September	Shares and Share Capital Transactions Company Meetings	HHA Chapters 11-12

Week 8 13 September	Corporate Governance: Directors and Officers Duties – Part 1	HHA Chapters 15-16
Week 9 20 September <u>Assignment</u> <u>Due in Week 9</u>	Corporate Governance: Directors and Officers Duties – Part 2	HHA Chapter 17
Mid-semester break: 23 Sept – 2 Oct Monday 2 October – Labour Day Public Holiday		
Week 10 4 October	Shareholders: Rights and Remedies [Note: Weeks 8-10 deals with the commercial conduct of the company]	HHA Chapter 19
Week 11 11 October	External Administration: Part 1 [Schemes, Voluntary Administration and Receivership]	HHA Chapter 22
Week 12 18 October	External Administration: Part 2 [Liquidation/Winding Up and Deregistration]	HHA Chapter 22
Week 13 25 October	NO LECTURES	Last Week of Tutorials

LECTURE TOPIC OUTLINE

Class 1

Topic: Structure of Australian Company Law and Administration

- Introduction to course, course materials and assessment
- Sources of company law
- History of company's legislation and the constitutional background to the Corporations Act.
- Corporations Act 2001 (Cth)
- Administration of the national scheme. Role of the Australian Securities and Investments Commission (ASIC).
- Investigations and prosecutions.

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed, (LexisNexis/Butterworths, 2016)** – Chapters 1- 2.
- Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths, pp 2, 4, 6, 12, 16

Internet references:

- www.asic.gov.au
- www.treasury.gov.au

Class 2 -3

Topic: Alternative Business Structures and Types of Companies

1. Alternative Business Structures (sole trader, partnership, joint venture, company and trusts).
2. Comparative assessment of the legal structures available for carrying on business – with reference to:
 - (i) formalities and expense
 - (ii) size
 - (iii) management
 - (iv) fundraising
 - (v) management
 - (vi) liability
 - (vii) holding property
 - (viii) taxation
 - (ix) duration of existence
3. Types of companies, the differences between public and proprietary companies and the distinction between small and large proprietary companies.

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed, (LexisNexis/Butterworths, 2016)** – Chapters 4 and 3
- Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths, p 59

Cases: *Smith v Anderson* (1880) 15 Ch D 247
 Checker Taxicab v Stone [1930] NZLR 169
 Keith Spicer v Mansell [1970] 1 WLR 333
 Canny Gabriel v Volume Sales (1974) 131 CLR 321
 Mercantile Credit v Garrod [1961] 3 All ER 1103
 United Dominions Corp. v Brian (1985) 157 CLR 1
 Re Megevand: Ex parts Delhasse (1878) 7 Ch.D. 51 1

Class 4

Topic: Separate Legal Personality and Lifting the Corporate Veil

The meaning, significance and consequences of incorporation.

Concept of corporate veil.

Lifting the corporate veil - exceptions created by statute and by the courts.

The problem of corporate groups and individual corporate personality.

Director's duty to prevent insolvent trading by the corporation

Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.

Personal Liability: s. 588G,[Parent Company liability] 588V

Defences: s. 588H, 588X

Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 5

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015)

LexisNexis/Butterworths – pp 1, 24, 28, 30, 39, 49, 50, 52, 59, 61, 66, 72

Cases:

Salomon v Salomon & Co. Ltd [1897] AC 22

Lee v Lee's Air Farming [1961] AC 12

Macaura v Northern Assurance [1925] AC 619

Andar Transport Pty Ltd v Brambles Ltd (2004) 204 ALR 387

Gifford Motor v Horne [1933] Ch 935

Creasey v Breachwood Motors Ltd 10 ACLC 3052

Re Darby [1911] 1 KB 95

Green v Bestobell Industries Ltd [1982] WAR 1

Walker v Wimbourne (1976) 137 CLR 1

IEL v Blackburn (1977) 17 ALR 575

Smith, Stone & Knight Ltd v Birmingham Corporation [1939] 4 All ER 116

Dennis Wilcox Pty Ltd v FC of T (1988) 14 ACLR 156

Adams v Cape Industries plc (1990) BCLC 479

Spreag v Paeson (1990) 94 ALR 679

Briggs v James Hardie (1989) 7 ACLC 841

Pioneer Concrete Services v Yelnah (1987) 5 ACLC 467

ACN 007 528 207 Pty Ltd (In Liq) v Bird Cameron [2005] SASC 204

Commissioner of Taxation v BHP Billiton Finance Ltd [2010] FCAFC 25

Prest v Petrodel Resources Ltd [2013] UKSC 34

Insolvent Trading Cases

Hawkins v. Bank of China (1992) 10 ACLC 588

Morley v Statewide Tobacco Services Ltd (1992) 10 ACLC 1233 (Court of Appeal)

Commonwealth Bank of Australia v. Freidrich (1991) 9 ACLC 946 ("Eise's case")

Metropolitan Fire Systems Pty Ltd v Miller (1997) 23 ACSR 699

Tourprint International Pty Ltd v Bott (1999) 17 ACLC 1543

Deputy Commissioner Taxation v Clark (2003) 45 ACSR 332

Williams v Scholz [2007] QSC 266; *affirmed* [2008] QCA 94

Hall v Poolman (2007) 65 ACSR 123

McLellan (in the matter of The Stake Man Pty Ltd) v Carroll [2009] FCA 1415.

Class 5

Topic: Corporate Constitution, Replaceable Rules and its Effects; Contractual Liability of Corporations

- Impact of Company Law Review Act 1998
- Process of incorporation (overview).
- The Company's Constitution (Memorandum and Articles of Association) and Replaceable Rules and its legal effect
- The legal capacity and powers of a company—the doctrine of *ultra vires*—ss 124-125 Corporation Act.
- Agency and Company Contracts.
- Authority of a company's officers and agents—ss 128-129
- Indoor Management Rule and its application

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 6- 7
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 18, 19, 32, 34, 36, 44, 51, 53, 54, 58, 67

Cases: *Ashbury Railway Carriage & Iron Co v Riche* (1875) LR 7 HL 653
Hickman v Kent [1915] 1 Ch 881
Bailey v NSW Medical Defence Union Ltd (1995) 185 CLR 399
Andrews v Queensland Racing Ltd [2009] QSC 338
Gambotto v WCP Ltd (1995) 182 CLR 432

Freeman and Lockyer v Buckhurst Park Properties Ltd [1964] 2 QB 480
Royal British Bank v Turquand (1856) 119 ER 886
Northside Developments Pty Ltd v Registrar-General (1990) 8 ACLC 611
BNZ v Fibern Pty Ltd (1994) 12 ACLC 48

Class 6

Topic: Promoters; Corporate Fundraising; Debt Capital

- Promoters of companies. Identifying the promoters. An examination of the legal duties of promoters and of the remedies available for breach of those duties
- Pre-registration contracts and liability — s 131.

Funding the corporation, securities and investor protection:

- (i) Chapter 6 D of the Corporations Act. Rationale and types of disclosure documents. Legislative framework for investor protection. Liability. Defences. Role of ASIC.
- (ii) Debentures and Security Interests.
- (iii) Security interest in a non-circulating asset vs security interests in a circulating asset [Fixed and Floating charges under repealed law]. Registration and priority.
 - Personal Property Securities (Corporations and Other Amendments) Act 2010 – in effect from 30 January 2012;

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 8- 10
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 2, 11, 21, 32, 39,68

Cases: *Twycross v Grant* (1877) 2 CPD 469

Erlanger v New Sombrero [1878] 3 AC 1218

Gluckstein v Barnes [1900] AC 240

Tracy v Mandalay (1953) 88 CLR 215

Re Leeds and Hanley Theatres of Varieties Ltd [1902] 2 Ch 809

Kelner v Baxter (1866) LR 2 CP 174

Black v Smallwood (1966) 117 CLR 52

Fraser v NRMA Holdings Ltd (1995) 13 ACLC 132

Cadence Asset Management Pty Ltd v Concept Sports Ltd [2005] FCAFC 265

ASIC v Axis International Management Pty Ltd (No 5) [2011] FCA 60

ASIC v Axis International Management Pty Ltd (No 6) [2011] FCA 811

Class 7

Topic: Shares, Share Capital Transaction and Company Meetings

(i) **Shares:**

- Equity financing v Debt financing (overview)
- The legal nature of shares
- Reasons for classes of shares
- Classes of shares (ordinary v preference shares)
- Alteration of class rights and statutory protection – s 246

(ii) **Impact of Company Law Review Act 1998:**

(a) **Modern share capital rules**

- No par value shares (abolition)
- Removal of share premium accounts

(b) **Impact on doctrine of capital maintenance**

(c) **Simplified Procedure for Share Transactions (Chapter 2 J of *Corporations Act*):**

- Protection of creditors and shareholders
- Reduction of capital – s 256
- Financial assistance – s 260
- Share buy backs – ss256; 257

Consequences of breach: Failure to comply with Chapter 2 J

(iii) **Meetings**

- Rules and procedure
- Notice
- Quorum
- Chairperson
- Voting
- Proxy
- Minutes
- Irregularities

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 11-12

Cases:

Trevor v Whitworth (1887) 12 App Cas 409
Gambotto v WPC Holdings (1995) 13 ACLC 342
ASIC v Adler (2002) 20 ACLC 576
Beck v Weinstock [2013] HCA 15
Weinstock v Beck [2013] HCA 14

Class 8-9

Topic: Corporate Governance: Duties of Directors and Officers of the Corporation

Part 1:

- Meaning and content of corporate governance
- Best Practice (ASX recommendations)
- Current Issues in Corporate Governance
 - *ASIC v Macdonald [No 11]* [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision)
 - [*ASIC v Hellicar* \[2012\] HCA 17](#); [*Shafron v ASIC* \[2012\] HCA 18](#) (James Hardie High Court case)
 - *Gillfillan v ASIC* [2012] NSWCA 370 (James Hardie case – NSW Appeal Court Penalty decision))
 - *Australian Securities and Investment Commission v Healey* [2011] FCA 717

Part 2:

Definition of "director" in s.9 and "officer" in s. 9

The duty at **COMMON LAW**: - the **FIDUCIARY DUTY**.

1. The "duty of honesty" or the "duty to act bone fide in the interests of the company as a whole".
 - Concept of "interests of the company as a whole" and its problem areas: different classes of shares, nominee directors, company groups, creditors, employees.
 - Duty to exercise power for the proper purpose, especially power to issue shares.
 - Duty to avoid conflicts of interest; especially contracts with the company, personal profits, bribes and undisclosed benefits, usurping corporate opportunities, use of confidential information and competition with the company.
 - Duty to retain discretion.
2. The duty of care, skill and diligence.
3. Forgiveness (ratification, exoneration or exculpation) by the company of a director's breach of fiduciary duty.
4. Remedies available to the company in common law for breach of fiduciary duty:
 - compensation, damages, account of profit, rescission, constructive trust

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 14 (skim read), 15-17

Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths – pp 16, 20, 25,35, 40, 43, 44, 47, 48, 50, 55, 56, 58, 62, 64, 69, 72, 77

Cases: *CAC v Drysdale* (1978) 141 CLR 236
DFC of T v Austin (1998) 16 ACLC 1555
Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2011] NSWCA 109

Percival v. Wright [1902] 2 Ch. 421
Coleman v. Meyers [1977] 2 NZLR 225
Bunninghausen v Glavanics [1999] NSWCA 199; (1999) 17 ACLC1 247

Mills v. Mills (1938) 60 CLR 150
Re Scottish Co-op. Wholesale Society v. Meyers [1958] 3 All ER 66
Re Broadcasting Station 2GB Pty Ltd [1964-1965] NSWLR 1648
Whitehouse v. Carlton Hotel Pty Ltd (1987) 5 ACLC 421

Parke v. Daily News Ltd [1962] Ch 927
Walker v. Wimborne (1976) 3 ACLR 529; 137 CLR 1
Kinsela v Russell Kinsela Pty Ltd (1986) 4 NSWLR 722
Spies v The Queen (2000) 201 CLR 603

- *Westpac v The Bell Group Ltd (in liq)* [2012] WASCA 157.

Howard Smith v. Ampol Petroleum (1974) AC 821
Ngurli Ltd. v. McCann (1953) 90 CLR 425
Harlowe's Nominees Pty Ltd v. Woodside (Lakes Entrance) Oil N.L. (1968) 121 CLR 483

Hospital Product Ltd v US Surgical Corp (1984) 156 CLR 41
Teck Corp. Ltd v. Miller (1972) 33 DLR 3rd 288
Aberdeen Railway Co. v. Blaikie Brothers [1843-60] All ER Rep 249; (1854) 1 Macq.461
Boardman v. Phipps (1966) 3 All ER 721
Regal Hastings Ltd. v. Gulliver [1942] 1 All ER 378
Furs Ltd. v. Tomkies (1936) 54 CLR 583
Cook v. Deeks [1916] 1 AC 554
Peso Silver Mines v. Cropper (1966) 58 DLR (2nd) 1
Green v Bestobell Industries Pty Ltd [1982] WAR 1
Queensland Mines Ltd. v. Hudson (1978) 18 ALR 1
ASIC v Vizard [2005] FCA 1037
Streeter v Western Areas Exploration Pty Ltd (No 2) [2011] WASCA 17

Class 8-9 (Continued)

Topic: **Duties of Directors and Officers of the Corporation** (continued)

STATUTORY DUTIES of directors and officers of the corporation.

Part 2D.1:

Care and diligence	(civil)	s. 180 (1)
Business Judgment Rule defence		s. 180 (2)
Reliance		s. 189
Delegation		s. 190
Good faith and proper purpose	(civil)	s. 181
	(criminal)	s. 184(1)
Improper use of position	(civil)	s. 182
	(criminal)	s. 184(2)
Improper use of information	(civil)	s. 183
	(criminal)	s. 184(3)
Interaction of s. 180 – 184 with other laws,		
(operation in addition to the common law)		s. 185
Disclosure of Material Interests		s. 191 - 196

Director's duty to prevent insolvent trading by the corporation [Covered in Class 4 - see Class 4 topic on lifting Corporate Veil]

Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.

- Personal Liability: s. 588G, [Parent Company Liability] 588V
- Defences: s. 588H, 588X
- Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

Related Party Transactions: Part 2E, s. 207 - 230

Civil penalty provision regime: Part 9.4B

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 15-18

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015)
LexisNexis/Butterworths – pp 4, 6, 7, 12, 13, 26, 44, 60, 71,

Cases:

Re City Equitable Fire Insurance Co. [1925] | Ch. 407

Commonwealth Bank of Australia v. Freidrich (1991) 9 ACLC 946 ("Eise's case")

A.W.A. Limited v. Daniels (trading as Deloitte Haskins & Sells) (1992) 10 ACLC 933 Rogers, CJ

Daniels v. Anderson (1995) 16 ACSR 607 (NSW C of A)

South Australia v Clark (1996) 14 ACLC 1019

Sheahan v Verco [2001] SASC 91

ASIC v Vines [2005] NSWSC 738

Vines v ASIC [2007] NSWCA 75

ASIC v Rich & Ors (No2) (2003) 21 ACLC 672
ASIC Rich & Ors (2003) 21 ACLC 450

ASIC v Adler (2002) 20 ACLC 576
ASIC v Adler (2002) 20 ACLC 1146
ASIC v Adler (2003) 21 ACLC 1810
R v. Byrnes (1995) 13 ACLC 1488
Chew v. R (1992) 10 ACLC 816

- **James Hardie Litigation:** *ASIC v Hellicar* [2012] HCA 17; *Shafron v ASIC* [2012] HCA 18 (High Court liability decisions); *Gillfillan v ASIC* [2012] NSWCA 370 (civil penalty decision by Court of Appeal); *ASIC v Macdonald [No 11]* [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision);
- ***ASIC v Healey*** [2011] FCA 717 [Centro case - liability decision]
ASIC v Healey (No 2) [2011] FCA 1003 [Centro case- penalty decision]
- ***ASIC v Mariner Corporation Ltd*** [2015] FCA 589

Insolvent Trading Cases [see Class 4]

Class 10

Topic: Members Remedies

1. **Common law** obligations of majority shareholders to minority shareholders.

The concept of the rule in *Foss v Harbottle* and its exceptions, now abolished (s. 236(3)), save for right to enforce personal actions.

Concept of fraud on the minority involving:

- Expropriation of the company's property
- Ratification (forgiving or exoneration or exculpation) by the company of a director's breach of fiduciary duty
- Expropriation of a shareholder's property

2. **Statutory rights** of shareholders of the corporation.

Derivative Action (Proceedings on behalf of a company): Part 2F.1A, Sections. 236 - 242

Oppression – Chapter 2F, Part 2F.1, Sections 232 - 235

- History and background of statutory relief for oppressive conduct
- Who may apply: s. 234
- Concepts and judicial consideration of meaning in s. 232 of: "oppression", "unfair prejudice", "unfair discrimination" and "contrary to the interests of the members as a whole".
- Remedies available: s. 233

Statutory Injunction for breach of Corporations Act - Section 1324

Inspection of company records – Part 2F.3, Section 247A

Winding Up of company in the event of:

- directors acting in own interests or unfairly or unjustly - Section 461(e)
- oppressive conduct of affairs of the company - Section 461(f)
- oppressive act or omission by or on behalf of company - Section 461(g)
- it being just and equitable - Section 461(k)

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 19

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 17, 22, 31, 25, 36, 50, 67, 73, 78

Cases:

ACCR v CBA [2015] FCA 785

Foss v. Harbottle (1843) 2 Hare 461; Ch 12 LJ 319

Residues Treatment & Trading Co. Ltd v. Southern Resources Ltd (1988) 6 ACLC 1160

Peters' American Delicacy Co. Ltd v. Heath (1939) 61 CLR 457 (H.Ct.)

Gambotto v. WPC Ltd (1995) 16 ACSR 1; 13 ACLC 342

Cook v. Deeks [1916] 1 AC 554 (P.C.)

Re Scottish Co-op. Wholesale Society v. Meyers [1959] AC 324

Re HR Harmer [1958] 3 All ER 689

Sanford v Sanford Courier Services Pty Ltd (1987) 5 ACLC 394
Re H W Thomas (1984) 2 ACLC 610
Shamsallah Holdings Pty Ltd v CBD Refrigeration & Aircon Services Pty Ltd [2001] WASC 8
Wayde v. New South Wales Rugby League Ltd (1985) 3 ACLC 799; (1984) 9 ACLR 349; (1985) 61 ALR 225 (H. Ct.)
Morgan v 45 Flers Avenue Pty Ltd (1987) 5 ACLC 222

Swansson v Pratt [2002] NSWSC 583
Campbells v Backoffice [2008] NSWCA 95
Chahwan v Euphoric Pty Ltd [2008] NSWCA 52

BHP Ltd v Bell Resources Ltd (1984) 2 ACLC 157
Mesenberg v Cord Industrial Recruiters Pty Ltd (1996) ACLC 519
Airpeak Pty Ltd v Jetstream Ltd (1997) 15 ACLC 715

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Yenidje Tobacco Co Ltd [1916] 2 Ch 426
Re Tivoli Freeholds Ltd [1972] VR 455
ASIC v Storm Financial Ltd [2009] FCA 269

Class 11-12

Topic: External Administration of a Company –

Chapter 5 Corporations Act

Part A: Alternatives to the immediate winding up of a company

1. Amalgamations and reconstructions

- Procedure and notices (s. 411 and 412)
- Powers of court to facilitate (s. 413)
- Mopping up (s. 414)

2. Voluntary Administration

- Procedure: commencement of administration, conduct of administration, administrator's duties and powers, creditor's rights and obligations
- Effect of administration: protection of company's property during administration and exceptions
- Termination of administration at creditor's meeting by selection of deed of company arrangement [DOCA], winding up or release from administration; effect of deed of company arrangement

3. Receivership (Overview: see Class 6)

Part B: Winding up or liquidation of companies

1. Voluntary winding up

- **Members** voluntary winding up (Part 5.5 Divisions 1 & 2) Procedure and test of solvency
- **Creditors** voluntary winding up (Part 5.5 Divisions 1 & 3) Procedure

2. Compulsory winding up

- **On grounds other than insolvency** (s. 461-464), especially the just and equitable ground (s. 461(k)); standing to apply for winding up (s. 462)
- **On grounds of insolvency** (Part 5.4) Application for winding up (s. 459P) and power to wind up (s. 459A -459B). Test of insolvency (s. 95A) and presumptions of insolvency (s459C). Procedure for statutory demand (s. 459E and F). Procedure to determine disputed debts in statutory demands (s. 459 G – N)
- **Liquidators duties and powers**

3. Effect of external administration on:

Company; Directors; Shareholders; Creditors and Employees

4. Corporations Amendment (Sons of Gwalia) Act 2010 – reversed the effect of the High Court's decision in *Sons of Gwalia v Margaretic* (2007) HCA 1 in which it was found that s 563A of the Corporations Act did not subordinate certain compensation claims by aggrieved shareholders below the claims of other creditors.

Text references: Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 22

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 3, 16, 29, 70

- **Cases**

- *Re Ansett Australia Ltd and Mentha (No 3)* [2002] FCA 2

- *David Grant & Co Pty Ltd v Westpac (1995) 13 ACLC 1,572*
- *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corp Ltd* [2008] HCA 9
- *ASIC v Storm Financial Ltd* [2009] FCA 269
Westpac v The Bell Group Ltd (in liq) [2012] WASCA 157.