Faculty of Business
  (Incorporating the AGSM)

School of Business Law & Taxation

LEGT 2741

BUSINESS ENTITIES

Course Outline
Session 1, 2007
LEGT 2741 BUSINESS ENTITIES

COURSE OUTLINE

Session 1 — 2007

1. STAFF

<table>
<thead>
<tr>
<th>Lecturer</th>
<th>Room</th>
<th>Phone No.</th>
<th>E-mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anil Hargovan (BA;LLB;LLM) Senior Lecturer</td>
<td></td>
<td>9385-3577</td>
<td><a href="mailto:a.hargovan@unsw.edu.au">a.hargovan@unsw.edu.au</a></td>
</tr>
<tr>
<td>(Lecturer/Tutor in Charge) Weeks 1-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janet Austin (BCom;LLB;LLM) (Weeks 8-14)</td>
<td></td>
<td>9385-3295</td>
<td><a href="mailto:Janet.austin@unsw.edu.au">Janet.austin@unsw.edu.au</a></td>
</tr>
</tbody>
</table>

The names of tutoring staff and their contact details will be announced in lectures in Week 1 and posted to the course Webct by the end of Week 2.

1.1 Communication with Staff

- Students are invited to consult 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 INFORMATION**

This course consists of lectures and tutorials. Attendance at tutorials is mandatory and class attendances are recorded.

### 2.1 Lecture times and Locations

<table>
<thead>
<tr>
<th>Lectures</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thursdays</td>
<td>6.00-9.00pm</td>
<td>CLB 7</td>
</tr>
</tbody>
</table>

**Tutorial times and locations**

Tutorial commence in Week 2. It is your responsibility to ensure that you have a formal Tutorial Guide. This document will be distributed by tutors in the first class during Week 2 of session.

Students should enroll in a tutorial via MyUNSW. Students may not enroll in tutorials by email or via academic staff. If for some valid reason you are unable to attend your assigned tutorial, or you are not enrolled in a tutorial, you should approach the Faculty’s Student Center (John Goodsell Building) in the first instance for assistance. To minimise class disruptions, tutorial allocations will not be changed lightly, nor after Week 2 of session.

*Please consult the School Notice Board outside JG G20 for tutorial times and location.*

### 2.2 Units of Credit

This course is worth 6 credit points.

### 2.3 Parallel teaching in the course

There is only one lecture stream available for this course.

### 2.4 Relationship of this course to other course offerings

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

- LEGT 1711 *Legal Environment of Commerce*
- LEGT 2721 *Business Transactions*
- LEGT 2741 *Business Entities and*
- LEGT 2751 *Business Taxation*
Students may choose to study Business Entities as part of a Business Law co-major or a Taxation major.

A Business Law co-major involves completing 3 compulsory courses (the first three detailed above) and 4 options. The school offers, for example, the following options that build upon the knowledge gained in this course.

**Business Law**
- LEGT 2761 *Law of Banking and Finance*
- LEGT 4721 *Special Topic in Business Law* (for example, corporate governance may be the focus of research as a special topic)

**Taxation Law**
- LEGT 3757 *Corporate Tax Strategy*
- LEGT 3755 *Taxation of Business Entities*

### 2.5 Approach to Learning and Teaching

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 Webct) *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 questions 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. See the lecturer or tutors during their consultation hours if further clarification regarding the course content is required.
This course assumes you have studied Legal Environment of Commerce (LEGT 1711) and Business Transactions (LEGT 2721) or equivalent courses. 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, 4th ed. 2002 (Law Book Co), or Chisholm and Nettheim, Understanding Law 6th ed. 2002 (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

3. COURSE AIMS AND OUTCOMES

3.1 Course Aims

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; the commercial conduct of companies; the protection of shareholders; and alternatives for companies in financial distress. Other forms of business structures or organisation 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 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.

3.2 Student Learning Outcomes

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

3.2.1 understand the practical features of various types of non-corporate and corporate business structures and the legal environment in which they operate;

3.2.2 understand principles of company law;

3.2.3 recognise emerging trends in corporate regulation and corporate governance;

3.2.4 research legal principles that apply to business structures; and

3.2.5 apply logical argument, in written or oral form, to legal problems that arise in modern company law

The course also seeks to develop learning outcomes introduced in prior studies, including: -
3.2.6  confidence in oral and written communication of legal issues;

3.2.7  the ability to analyse legal issues in a logical and structured way (i.e. to identify problems, research relevant sources, propose an outcome and identify possible challenges to the proposed outcome);

3.2.8  the ability to resolve an issue in a logical and structured manner; and

3.2.9  the ability to evaluate available legal options in their wider commercial context

3.3  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.

4.  STUDENT RESPONSIBILITIES AND CONDUCT

4.1  Workload

It is expected that you will spend at least ten hours per week studying this course. This time should be made up of reading, research, working on exercises and problems, performing computer tasks and attending classes. In periods where you
need to complete written assessment tasks or prepare for examinations the workload may be greater.

Over commitment to non-academic activities has been a significant cause of failure for some students. You should take the required workload into account when planning how to balance study with employment and other activities.

4.2 Attendance
Your regular and punctual attendance at lectures and tutorials is expected in this course. University regulations indicate that if students attend less than eighty per cent of scheduled classes then they may be refused final assessment.

4.3 General Conduct and Behaviour
You are expected to conduct yourself with consideration and respect for the needs of your fellow students and teaching staff. Conduct which unduly disrupts or interferes with a class, such as ringing or talking on mobile phones, is not acceptable and students may be asked to leave the class. More information on student conduct is available at www.my.unsw.edu.au

4.4 Keeping informed
You should take note of all announcements made in lectures, tutorial or on the course web site. From time to time, the University will send important announcements to your university email address without providing you with a paper copy. You will be deemed to have received this information.

5. LEARNING ASSESSMENT

5.1 Formal Requirements
Assessment in this course (detailed below) consists of tutorial assessment, a mid-session exam and a final exam.

OVERVIEW OF ASSESSMENT REGIME

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Tutorial assessment</td>
<td>25%</td>
</tr>
<tr>
<td>Mid-session exam</td>
<td>15%</td>
</tr>
<tr>
<td>Final exam</td>
<td>60%</td>
</tr>
</tbody>
</table>

In order to attain a pass grade for this course, you must:

- Achieve a composite mark of at least 50; and
- Make a satisfactory attempt at all assessment tasks (see below).
5.2 Assessment Details

5.2.1 Assessment Tutorial

The tutorials carry a 25% assessment which consists of:

- (a) An individually Written Assessment of a tutorial question which will be allocated by the tutor in the first tutorial in Week 2, worth **15 marks**. This is a formal written assessment which involves legal research and analysis. It has a minimum word limit of 1,750 words and maximum word limit of 2,000 words (see style guide and cover sheet attached to tutorial guide, distributed in tutorials in Week 2, for further details) **and**
- (b) General Participation in Class Discussion, including regular preparation of tutorial questions, **worth 10 marks**.

It is assumed that students will come prepared for each tutorial class. As part of that preparation, **all students are expected, at the minimum, to have**:
- read the ‘Essential Readings’ - copies of materials are located on-line and can be easily accessed through the link at My Course (library website);
- read the prescribed materials (ie. Textbook and legislation) for the course; and
- to have considered the relevant legal issues in the tutorial questions.

Negative inferences will be drawn by the tutor from student responses to random questioning that suggest superficial or nil preparation by the student.

**Note**: No marks (zero) will be awarded for mere attendance or confining participation to the topic of the written tutorial paper submitted for assessment. The participation marks will be earned through consistent thoughtful participation that demonstrates an understanding of the week’s material.

This form of assessment is designed to achieve student learning outcomes identified in 3.2.2-3.2.3 and 3.2.4-3.2.9

5.2.2 Mid-Session Exam

A mid-session examination will be held on **Thursday, 19 April 2006 at 6.00pm (ie, in week 7 immediately after the mid-session break) at the lecture venue**. The mid-session examination is worth **15 marks**. The examination contains of thirty (30) multiple-choice questions worth **0.5 marks each (total of 15 marks)**.
The mid-session exam is a closed book examination and covers material lectured in weeks 1 through 6 inclusive. The examination will be 40 minutes in length. Students are to be seated at the venue by 6:15 pm and the examination commences at 6:15 pm. The examination finishes at 6:55 pm. Students who arrive late to the examination will be admitted, but will be required to finish the examination at 6:55 pm. Students must bring their student card, a pencil and an eraser to the exam room.

The mid-session exam is compulsory. Students who do not sit the mid-session exam as a result of illness or misadventure must advise the Lecturer of their circumstances in writing with accompanying supporting documentation within three (3) days of the mid-session exam. Students whose circumstances are accepted as a valid reason for not sitting the mid-session exam may, at the lecturer’s discretion, have the 15 marks allocated for the mid-session exam added to the 60 marks allocated for the final examination (i.e., these students may have their Final Exam marked out of 75 marks). All other students who did not sit the mid-session exam will be awarded no (0) marks for the mid-session exam and their final exam will be marked out of 60.

This form of assessment is designed to achieve student learning outcomes identified in 3.2.1-3.2.2

5.2.3 Final Examination

The final examination is worth 60% of the course assessment and will consist of problem questions and essay questions. It will be 3 hours long and cover the entire course material, including tutorial materials. 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 between Weeks 12-14 and a summary of the key points will be posted to the course Webct.

In the final lecture (week 14), the 2007 Case List will be handed out to students. The 2007 Case List will contain all the cases listed in the Lecture Topic Outline for each topic and can be taken into the final examination, together with the prescribed legislation (unannotated version), so long as it is unmarked except for highlighting and underlining only.

This form of assessment is designed to achieve student learning outcomes identified in 3.2.1-3.2.3 and 3.2.8

IMPORTANT

Students are allowed to take the UNANNOTATED Corporations Legislation (any edition, though it is unadvisable to use older editions) and the 2007 Case List into the Final Exam (but not the Mid-session Exam), provided copies are not marked other than highlighting and underlining.
Note: Flags, tabs or any other attachments or insertions (including Post-it notes) or folding of pages is not allowed. Infringement of these rules in the final exam will be dealt with in accordance with the University’s academic misconduct policy.

Confiscation of prohibited materials in the exam (for example, the taking away of annotated legislation by the invigilator) IS NOT grounds for special consideration.

5.3 Tutorial Assessment Submission Procedure

The written tutorial assessment, together with the attached cover sheet (see tutorial guide) must be lodged for assessment in the marked collection box outside JG 20 (John Goodsell Building) by Monday 11.00 am of the week in which the written tutorial paper is due.

5.4 Late Submission

Late lodgment of the written tutorial assessment after clearance of the collection box at 11.00 am sharp, or any other unauthorised method of lodgment (for ex, by email or slipping the tutorial paper under the office door of the lecturer/tutor/secretary), will attract an immediate penalty deduction of 3 marks and thereafter 2 marks for each day late.

Extensions will not be granted lightly and may only be granted in exceptional circumstances, supported by detailed documentation.
5.5 Special Consideration and Supplementary Examination

If you feel that illness or circumstances beyond your control have affected your performance in, or attendance at an examination (mid-session or final), or if you missed an examination because of illness or other compelling reasons, you may apply for special consideration. Such an application may lead to the granting of additional assessment. Each of the following procedures must be followed.

1. **Within 3 days** of the examination, a request for special consideration must be submitted to New South Q in the Chancellery, along with full supporting documentation; a copy of such request and supporting documentation should be delivered to the Lecturer-in-Charge of the subject within the same time frame by leaving it with the secretary at the School’s office, G20 John Goodsell Building.

2. A written letter will be forwarded by the School of Business Law & Taxation to each student who has been granted additional assessment at their current local address appearing on the University’s records. It is your responsibility to ensure that the University has your latest contact details.
   - You must confirm the actual date/time/room of any supplementary examination which will be held before the start of Session 2.
   - If you have more than one additional assessment and if these are scheduled for the same time, you must email the Lecturer in Charge, as soon as possible before the supplementary examination and he will attempt to solve the problem.
   - There will be only one supplementary final examination held, most probably during the week beginning 16 July 2007. Students who apply for special consideration and are granted a supplementary final exam as a result and who fail to attend will not be given an alternate supplementary final examination.

3. You will need to produce your University Student Card before you can gain entry to the supplementary examination.

4. A list of students who have been granted additional assessment as a result of an application for special consideration will be posted to the course Webct page as soon as possible after determination by the Assessment Committee of the Faculty. Due to privacy considerations, only student numbers may be published.
IMPORTANT NOTES ON SPECIAL CONSIDERATION:

(a) Students with a poor record of attendance or performance through the session may be failed regardless of illness or compassionate grounds affecting the final examination. The following may be taken into account:

- the student’s performance in other items of assessment in the course;
- the severity of the event;
- academic standing in other courses; and
- history of previous applications for special consideration.

(b) The additional assessment may be of a different from the original assessment.

(c) In exceptional circumstances the requirements for applications to be lodged within 3 days of the examination may be waived; for example, an accident or sudden illness occurring which requires your immediate hospitalisation.

You should also be aware that it is Faculty policy that:

1. The lodging of applications for special consideration does not guarantee that supplementary assessments will be granted.

2. It is the responsibility of students who apply for special consideration to be available for supplementary assessments during the specified period (holiday plans and/or pre-booked tickets are not sufficient reason for non-availability).

3. For administrative and organisational reasons it is not possible to announce the venue and time of the supplementary examinations until after the Faculty Assessment Committee Meeting, although it is anticipated that any supplementary final exam is likely to be held in the week beginning 16 July 2007.

For further information on the grounds for the granting of special consideration consult the UNSW Student Guide.

5.6 Tutorial Assessment (Written Paper) Format

All students must comply with the instructions in the style guide for written presentation which is attached to the tutorial guide (distributed in week 2 in each tutorial by the tutor).

6. ACADEMIC HONESTY AND PLAGIARISM

The University regards plagiarism as a form of academic misconduct, and has very strict rules regarding plagiarism. For full information regarding policies, penalties and information to help you avoid plagiarism see: www.my.unsw.edu.au/student/atoz/Plagiarism
Plagiarism is the presentation of the thoughts or work of another as one’s own.* Examples include:

- direct duplication of the thoughts or work of another, including by copying work, or knowingly permitting it to be copied. This includes copying material, ideas or concepts from a book, article, report or other written document (whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, web site, Internet, other electronic resource, or another person’s assignment without appropriate acknowledgement;
- paraphrasing another person’s work with very minor changes keeping the meaning, form and/or progression of ideas of the original;
- piecing together sections of the work of others into a new whole;
- presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people, for example, another student or a tutor; and,
- claiming credit for a proportion a work contributed to a group assessment item that is greater than that actually contributed.†

Submitting an assessment item that has already been submitted for academic credit elsewhere may also be considered plagiarism.

The inclusion of the thoughts or work of another with attribution appropriate to the academic discipline does not amount to plagiarism.

Students are reminded of their Rights and Responsibilities in respect of plagiarism, as set out in the University Undergraduate and Postgraduate Handbooks, and are encouraged to seek advice from academic staff whenever necessary to ensure they avoid plagiarism in all its forms.

The Learning Centre website is the central University online resource for staff and student information on plagiarism and academic honesty. It can be located at:

www.lc.unsw.edu.au/plagiarism

The Learning Centre also provides substantial educational written materials, workshops, and tutorials to aid students, for example, in:

- correct referencing practices;
- paraphrasing, summarising, essay writing, and time management;
- appropriate use of, and attribution for, a range of materials including text, images, formulae and concepts.

Individual assistance is available on request from The Learning Centre.

Students are also reminded that careful time management is an important part of study and one of the identified causes of plagiarism is poor time management. Students should allow sufficient time for research, drafting, and the proper referencing of sources in preparing all assessment items.

* Based on that proposed to the University of Newcastle by the St James Ethics Centre. Used with kind permission from the University of Newcastle
† Adapted with kind permission from the University of Melbourne.
7. STUDENT RESOURCES

7.1 Course Resources

PRESCRIBED MATERIALS


   Or
   Corporations and Securities Legislation, vol 1, 2007(CCH)
   Or

Note: Students are strongly advised to use the latest edition of each statute 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.

IMPORTANT

Students are allowed to take the UNANNOTATED Corporations Legislation (any edition, though it is unadvisable to use older editions) and the 2007 Case List into the Final Exam (but not the Mid-session Exam), provided copies are not marked other than highlighting and underlining.

Note: Flags, tabs or any other attachments or insertions (including Post-it notes) or folding of pages is not allowed. Infringement of these rules in the final exam will be dealt with in accordance with the University’s academic misconduct policy.

Confiscation of prohibited materials in the exam (for example, the taking away of annotated legislation by the invigilator) IS NOT grounds for special consideration.

ONLINE RESOURCES

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

- course outline and tutorial guide
- assessment details (venue for mid-session exam; sample questions for mid-session exam; mid-session exam results; format of final exam)
- relevant lecture slides;
- cases and articles;
- useful links
Webct is designed to assist you with your studies in the course but it does not replace the lectures, readings or tutorials. Visit the Webct page at:

http://webct.edtec.unsw.edu.au/webct/public/home.pl

REFERENCE MATERIALS

General corporations law texts and/or casebooks

- Ford, Austin & Ramsey, *An Introduction to the CLERP Act*, 1999, Butterworths
- Donelly and Harris, *Corporations Law Questions and Answers*, 2nd ed., 2003, Butterworths

Professional references

- Butterworths, *Australian Corporation Law* (loose-leaf volumes or CD-ROM)
- Butterworths, *Australian Corporation Law Bulletin* (loose-leaf 1 Volume or CD-ROM)
- Harris, Corporations Legislation, LawBook Co, 2005 (legislation with case annotations)

Specific topic reference texts

- Austin, Ford & Ramsay, *Company Directors-Principles of Law and Corporate Governance*, 2005, Butterworths
• Keay and Murray, *Insolvency*, 2002, LBC
• McConvill, *An Introduction to CLERP 9*, 2004, Butterworths

## 7.2 Other Resources, Support and Information

### 7.2.1 LEARNING SUPPORT

**Education Development Unit**

Additional learning support, tailored to the needs of FCE students, is available from the *Education Development Unit (EDU)* in the Faculty. The EDU offers a range of services for FCE students including:

- Academic skills workshops run throughout the session;
- Printed and on-line study skills resources e.g. referencing guide, report writing and exam preparation;
- A limited consultation service for students with individual or small group learning needs.

More information about the EDU services including on-line resources and workshop details are available from the EDU website: [http://education.fce.unsw.edu.au](http://education.fce.unsw.edu.au)

### 7.2.2 Other UNSW support

In addition, the *UNSW Learning Centre* provides academic skills support services for students. For further information on The Learning Centre, see: [http://www.lc.unsw.edu.au/](http://www.lc.unsw.edu.au/).

Students experiencing problems of an academic or personal nature are encouraged to contact the *Counselling Service* at UNSW. This service is free and confidential and run by professional counsellors. For further information, see: [http://www.counselling.unsw.edu.au](http://www.counselling.unsw.edu.au)

Students who have a disability that requires some adjustment in their teaching or learning environment are encouraged to discuss their needs with the Course Co-ordinator or the Equity Officer. For further information on *Disability Support* services, see: [http://www.equity.unsw.edu.au/disabil.html](http://www.equity.unsw.edu.au/disabil.html)

In additional, it is important that all students are familiar with University policies and procedures in relation to such issues as:

* Examination procedures* and advice concerning illness or misadventure: [http://my.unsw.edu.au/student/academiclife/assessment/examinations/examinationrules.html](http://my.unsw.edu.au/student/academiclife/assessment/examinations/examinationrules.html)
• **Occupational Health and Safety** policies and student responsibilities:  

8. **Continual Course Improvement**

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 Course and Teaching Evaluation and Improvement (CATEI) Process ([http://www.ltu.unsw.edu.au/ref4-5-1 catei process.cfm](http://www.ltu.unsw.edu.au/ref4-5-1 catei process.cfm)) is one of the ways in which student evaluative feedback is gathered. Significant changes to courses and programs within the School are communicated to subsequent cohorts of students.
### 9. COURSE SCHEDULE: S 1 - 2007 (Overview)

<table>
<thead>
<tr>
<th>Week of Session</th>
<th>Week Beginning</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>26 Feb</td>
<td>Development, Structure and Administration of Australian Company Law (Role of ASIC)</td>
</tr>
<tr>
<td>2</td>
<td>5 March</td>
<td>Alternative Business Vehicles (Sole Trader; Partnerships, Joint Ventures; Trusts) and Types of Companies</td>
</tr>
<tr>
<td>3</td>
<td>12 March</td>
<td>Incorporations and its Legal Effects (Separate Legal Personality) and Lifting the Corporate Veil</td>
</tr>
<tr>
<td>4</td>
<td>19 March</td>
<td>Corporate Constitution, Replaceable Rules and its Effects; Contractual, Civil and Criminal Liability of Corporations</td>
</tr>
<tr>
<td>5</td>
<td>26 March</td>
<td>Promoters; Corporate Fundraising (Investor Protection); Debt Capital and Receivership</td>
</tr>
<tr>
<td>6</td>
<td>2 April</td>
<td>Shares and Share Capital Transactions</td>
</tr>
<tr>
<td>7</td>
<td>16 April</td>
<td><strong>Mid-Session Break</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Mid-session Exam</em> <em>(Thursday 19 April at 6.00pm sharp for 6.15pm at lecture venue)</em> - Materials examinable - weeks 1 to week 6 inclusive.</td>
</tr>
<tr>
<td>8</td>
<td>26 April</td>
<td>Corporate Governance: Part 1:(Meaning and Content; Best Practice; Current Issues)</td>
</tr>
<tr>
<td>9-11</td>
<td>3 May; 10 May; and 17 May</td>
<td>Corporate Governance Part 2: The Duties of Directors and Officers of the Corporation (Common Law and Statutory Duties)</td>
</tr>
<tr>
<td>12</td>
<td>24 May-31 May</td>
<td>Rights and Remedies of Shareholders</td>
</tr>
<tr>
<td>13</td>
<td>31 May</td>
<td>The External Administration of a Company – Chapter 5 <em>Corporations Act</em> (Schemes of Arrangement; Voluntary Administration; Receivership[see Week 5] and Liquidation)</td>
</tr>
<tr>
<td>14</td>
<td>7 June</td>
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</tbody>
</table>
10. **Session 1 2007, Key Dates**

*It is your responsibility to ensure that:*

1. You are recorded by the University as being correctly enrolled in all your courses. The last day for students to discontinue without financial penalty is **Friday March 30** and the last day to discontinue without academic penalty is **Friday 27 April**.

2. You have successfully completed all prerequisite courses. Any work done in courses for which prerequisites have not been fulfilled will be disregarded (unless an exemption has been granted), and no credit given or grade awarded.

3. You organise your affairs to take account of examination and other assessment dates where these are known. Be aware that your final examination may fall at any time during the session’s examination period. The scheduling of examinations is controlled by the University administration. No early examinations are possible. The examination period for Session 1, 2007 falls between **15 June and 3 July**.

4. When the provisional examination timetable is released (**May 8**), ensure that you have no clashes or unreasonable difficulty in attending the scheduled examinations. The final examination timetable is released on **Tuesday 29 May**.

5. You keep the University informed of all changes to your contact details.

6. You make a copy of all work submitted for assessment, and keep returned marked assignments and essays.

A full list of UNSW Key Dates is located at: [https://my.unsw.edu.au/student/resources/KeyDates.html](https://my.unsw.edu.au/student/resources/KeyDates.html)
LECTURE TOPIC OUTLINE

Week 1

<table>
<thead>
<tr>
<th>Topic: Structure of Australian Company Law and Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Introduction to course, course materials and textbooks.</td>
</tr>
<tr>
<td>• The history of company’s legislation and the constitutional background to the Corporations Act.</td>
</tr>
<tr>
<td>• Corporations Act 2001 (Cth)</td>
</tr>
<tr>
<td>• Administration of the national scheme. Investigations and prosecutions. Role of the Australian Securities and Investment Commission (ASIC).</td>
</tr>
<tr>
<td>• The Corporation Law Simplification process and the Corporate Law Economic Reform Program (CLERP) - An overview of:</td>
</tr>
<tr>
<td>• Company Law Review Act 1998</td>
</tr>
<tr>
<td>• Corporate law Economic Reform Program Act 1999</td>
</tr>
<tr>
<td>• CLERP 9 (passed June 2004)</td>
</tr>
</tbody>
</table>

**Text references:**

Prescribed: Lipton and Herzberg (12th ed): Chapters 1 and 21

Recommended: Ford, Austin and Ramsay (12th ed): Chapters 1-3

**Internet references:**

- www.asic.gov.au
- www.treasury.gov.au
Week 2

Alternatives Business Vehicles and Types of Companies

1. Alternative Business Vehicles (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: Lipton and Herzberg: Chapters 2 and 3
Recommended: Ford, Austin and Ramsay (12th ed): Chapter 5 pp 142-164

Cases: Smith v Anderson (1880) 15 Ch D 247
       Checker Taxicab v Stone [1930] NZLR 169
       Long v James Morrison, 13 CLR 1
       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 (1 887-78) 7 Ch.D. 51 1; A.&B. No.24

Essential Reading
on Business Organisations (selected pages on-line at library website/reserve – pp 644-658;691-694;702-718).
Week 3

Topic: Separate Legal Personality and Lifting the Corporate Veil

The meaning, significance and consequences of incorporation.
The corporate veil.
Lifting the corporate veil - exceptions created by statute and by the courts.
The problem of corporate groups and individual corporate personality.

Text references:
Prescribed: Lipton and Herzberg: Chapter 2
Recommended: Ford, Austin and Ramsay (12th ed): Chapter 4

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
Nicol v Allyatch Spars Pty Ltd (1987) 163 CLR 611
Andar Transport Pty Ltd v Brambles Ltd (2004) 204 ALR 387
Gilford 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
Ascot Investments Pty Ltd v Harper (1981) 148 CLR 337
Charterbridge Corp. v Lloyd’s Bank Ltd [1970] Ch 62
Walker v Wimbourne (1976) 137 CLR 1
IEL v Blackburn (1977) 17 ALR 575
Qintex v Schroders (1991) 9 ACLC 109
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
Artemus v Del Casale [2006] NSWSC 146
Week 4

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

- The 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
- Liability of Companies in tort and crime
  - Organic Theory and its application
  - Vicarious Liability and its application
  - Fashioning Rules of Attribution

Text references:

Prescribed: Lipton and Herzberg: Chapters 4 and 5
Recommended: Ford, Austin and Ramsay (12th ed): Chapter 6, pp 178-196
Chapters 13; Chapter 16

Cases:

Ashbury Railway Carriage & Iron Co v Riche (1875) LR 7 HL 653
ANZ Executors & Trustee v Qintex (1990) 8 ACLC 980
Ding v Sylvania Waters (1999) 17 ACLC 531
Hickman v Kent [1915] 1 Ch 881
Forbes v NSW Trotting Club Ltd [1977] 2 NSWLR 515

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 Fiberi Pty Ltd (1994) 12 ACLC 48

Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705
H L Bolton Co Ltd v T J Graham & Sons Ltd [1957] 1 QB 159
Tesco Supermarkets Ltd v Nattrass [1972] AC 153
Brambles Holdings Ltd v Carey (1976) 2 ACLR 176
R v ICR Haulage Ltd [1944] KB 551
S & Y Investments (No 2) Pty Ltd v CUACA Ltd (1986) 82 FLR 130
ABC Developmental Learning Centres Pty Ltd v Wallace [2006] VSC 171
Week 5

Topic: Promoters; Corporate Fundraising; Debt Capital and Receivership

- 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 corporate rescue:
(ii) Debentures and charges. Floating charges. Registration and priority.
(iii) Receivers and Managers. Concept of a “controller” of property of a company privately appointed receivers contrasted with court appointed receivers. Receivers contrasted with receivers and managers s.420A. Functions and duties of receivers.

Text references:
Prescribed: Lipton and Herzberg: Chapters 6, 7, 11 and 23
Recommended: Ford, Austin and Ramsay (12th ed): Chapter 5 pp 166-174
Chapter 15 pp 796-801
Chapter 22
Chapter 19 pp 899-925
Chapter 26

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
Bay v Illawarra Stationary Supplies (1986) 4 ACLC 429

Fraser v NRMA Holdings Ltd (1995) 13 ACLC 132
Re Media World Communications Ltd; Crosbie v Naidoo (2005) 216 ALR 105
Cadence Asset Management Pty Ltd v Concept Sports Ltd [2005] FCAFC 265
Johnston v McGrath [2005] NSWSC 1183

Reynolds Bros Pty Ltd v Esanda Ltd (1983) 1 ACLC 1333
Fire Nymph Products Ltd v The Heating Centre Pty Ltd (1992) 10 ACLC 629
Expo International Pty Ltd v Chant [1980] 2 NSWLR 820
Reiffel v ACN 075839226 Ltd (2003) FCA 194
Week 6

Topic: Shares and Share Capital Transactions

(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) The new share capital rules
- No par value shares
- Removal of share premium accounts

(b) Impact on doctrine of capital maintenance

(c) New 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

(d) Consequences of breach
- Failure to comply with Chapter 2 J

Text references:
Prescribed: Lipton and Herzberg: Chapter 8
Recommended: Ford, Austin and Ramsay (12th ed): Chapter 17
Chapter 11 pp 636-641
Chapter 20 pp 970-972

Cases:
Re Fowlers Vacola [1966] VR 9
Trevor v Whitworth (1887) 12 App Cas 409
Gambotto v WPC Holdings (1995) 13 ACLC 342
Residues Treatment v Southern Resources (1988) 6 ACLC 976
ASIC v Adler (2002) 20 ACLC 576
Weeks 8-11
Note: Week 7: Mid-Session Exam (No lectures/tutorials this week)

**Mid-session Exam** (Thursday 19 April at 6.00pm sharp for 6.15pm at lecture venue) - Materials examinable - weeks 1 to week 6 inclusive.

<table>
<thead>
<tr>
<th>Topic: Corporate Governance: The Duties of Directors and Officers of the Corporation</th>
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<tbody>
<tr>
<td><strong>Part 1:</strong></td>
</tr>
<tr>
<td>- Meaning and content of corporate governance</td>
</tr>
<tr>
<td>- Best Practice (ASX recommendations)</td>
</tr>
<tr>
<td>- Current Issues in Corporate Governance</td>
</tr>
<tr>
<td><strong>Part 2:</strong></td>
</tr>
<tr>
<td>Definition of “director” in s.9 and “officer” in s. 9</td>
</tr>
<tr>
<td>The duty at <strong>COMMON LAW</strong>: - the <strong>FIDUCIARY DUTY</strong>.</td>
</tr>
<tr>
<td>1. The &quot;duty of honesty&quot; or the &quot;duty to act bone fide in the interests of the company as a whole&quot;.</td>
</tr>
<tr>
<td>- Concept of &quot;interests of the company as a whole&quot; and its problem areas: different classes of shares, nominee directors, company groups, creditors, employees.</td>
</tr>
<tr>
<td>- Duty to exercise power for the proper purpose, especially power to issue shares.</td>
</tr>
<tr>
<td>- 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.</td>
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<tr>
<td>- Duty to retain discretion.</td>
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<tr>
<td>2. The duty of care, skill and diligence.</td>
</tr>
<tr>
<td>3. Forgiveness (ratification, exoneration or exculpation) by the company of a director's breach of fiduciary duty.</td>
</tr>
<tr>
<td>4. Remedies available to the company in common law for breach of fiduciary duty:</td>
</tr>
<tr>
<td>- compensation, damages, account of profit, rescission, constructive trust</td>
</tr>
</tbody>
</table>

**Text references:**

Prescribed: Lipton and Herzberg: Chapter 12 (important background)
Chapter 13
Recommended: Ford, Austin and Ramsey: (12th ed): Chapter 8
   Chapter 9 pp 416-489
   Chapter 20 pp 942-961

Cases:

CAC v Drysdale (1978) 141 CLR 236
DFC of T v Austin (1998) 16 ACLC 1555

Re Smith & Fawcett (1942) Ch. 304
Greenhalgh v. Arderne Cinemas [1951] Ch 286
Darvall v North Sydney Brick & Tile Co Ltd (1988) 6 ACLC 154

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

Mills v. Mills (1938) 6O CLR 15O
Re Scottish Co-op. Wholesale Society v. Meyers [1958] 3 All ER 66
Re Broadcasting Station 2GB Pty Ltd [1964-1965] NSWR 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
Winkworth v Edward Baron Development Co Ltd [1987] 1 ALL E.R. 114
Nicholson v Permakraft (NZ) Ltd [1985] 1 NZLR 242
Kinsela v Russell Kinsela Pty Ltd (1986) 4 NSWLR 722
Spies v The Queen (2000) 201 CLR 603

Ngurli Ltd. v. McCann (1953) 90 CLR 425
Harlowe's Nominees Pty Ltd v. Woodside (Lakes Entrance) Oil N.L. (1968) 121 CLR 483
Australian Metropolitan Life Assurance Co Ltd v Ure (1923) 33 CLR 199

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. Cropyer (1966) 58 DLR (2nd) 1
Green v Bestobell Industries Pty Ltd [1982] WAR 1
Queensland Mines Ltd. v. Hudson [1978] 18 ALR 1
Industrial Development Consultants Ltd. v. Cooley [1972] 2 All ER 162
Hivac Ltd. v. Park Royal Scientific Instruments [1946] 1 All ER 35O.
Mordecai v. Mordecai (1988) 12 NSWLR 58
ASIC v. Vizard [2005] FCA 1037

Re City Equitable Fire Insurance Co. [1925] 1 Ch. 4O7
Lister v. Romford Ice and Cold Storage Co Ltd [1957] AC 555
Statewide Tobacco Services v. Morley (1990) 8 ACLC 827 Ormiston, J
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
Weeks 7 - 11 (Continued)

Topic: The 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
Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.
- Liability: s. 588G, 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: Lipton and Herzberg: Chapter 13
Recommended: Ford, Austin and Ramsey (12th ed) Chapter 8
Chapter 9
Chapter 20

Ford, Austin and Ramsey – An Introduction to the CLERP Act 1999 (“CLERP 1999”): Chapter 1 (background)
Chapter 2 (skim read)

Cases: ASIC v Adler (2002) 20 ACLC 576
Whittam v ASIC (2003) 21 ACLC 1259
Australian Growth Resources Corp. Pty Ltd v. van Reesma (1988) 6 ACLC 529
McNamara v. Flavel (1988) 6 ACLC 802
Chew v. R (1992) 10 ACLC 816

Metal Manufacturers Ltd v Lewis (1988) 6 ACLC 725
Statewide Tobacco Sevices v. Morley (1990) 8 ACLC 827 Ormiston, J
Morley v Statewide Tobacco Services Ltd (1992) 10 ACLC 1233 (Vic Court of Appeal)
Group Four Industries Pty Ltd v. Brosnan (1992)10 ACLC 1437 (SA)
Commonwealth Bank of Australia v. Freidrich (1991) 9 ACLC 946 ("Eise's case")
Metropolitan Fire Systems Pty Ltd v Miller (1997) 23 ACSR 699
Bryon v Southern Star Group Pty Ltd (1997) 15 ACLC 191
Kenna & Brown Pty Ltd v Kenna (1999) 17 ACLC 1183
Tourprint International Pty Ltd v Bott (1999) 17 ACLC 1543
Powell and Duncan v Fryer (2000) 18 ACLC 480
Manpac Industries Pty Ltd v Ceccattini (2002) 20 ACLC 1304
James v Andrews (2002) NSWSC 716
Woodgate v Davis (2002) 20 ACLC 1,314
Deputy Commissioner Taxation v Clark (2003) 45 ACSR 332
ACIC v Rich & Ors (No2) (2003) 21 ACLC 672
ASIC Rich & Ors (2003) 21 ACLC 450
ASIC v Vines [2005] NSWSC 738
Week 12

**Topic: Shareholders’ 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: Lipton and Herzberg: Chapter 17

**Cases:**  *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 I; 13 ACLC 342
Cook v. Deeks [1916] 1 AC 554 (P.C.)
Menier v Hooper's Telegraph Works (1874) 9 Ch App 350
Ngurli Ltd. v. McCann (1953) 9O CLR 425

Re HR Harmer [1958] 3 All ER 689
Re Bright Pine Mills Pty Ltd [1969] VR 1002
Re Overton Holdings Pty Ltd (1984) 2 ACLC 777
Re East West Promotions Pty Ltd (1986) 4 ACLC 84 (1985) 3 ACLC 799;
Re Spargos Mining N.L. (1990) 8 ACLC 1218
Sanford v Sanford Courier Services Pty Ltd (1987) 5 ACLC 394
Re H W Thomas (1984) 2 ACLC 610
Hannes v MJH Pty Ltd (1992) 10 ACLC 400
Shamsallah Holdings Pty Ltd v CBD Refrigeration & Aircon Services Pty Ltd
[2001] WASC 8
ACLR 349; (1985) 61 ALR 225 (H. Ct.)
Morgan v 45 Flers Avenue Pty Ltd (1987) 5 ACLC 222

Karam v ANZ (2000) 18 ACLC 590
Swansson v Pratt [2002] NSWSC 583

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

Re William Brooks & Co Ltd [1962] NSWR 142
Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Yenidje Tobacco Co Ltd [1916] 2 Ch 426
Re Tivoli Freeholds Ltd [1972] VR 455
Weeks 13-14

**Topic:** The External Administration of a Company –

Chapter 5 *Corporations Act*

1. Alternatives to the immediate winding up of a company
   A. Amalgamations and reconstructions
      - Procedure and notices (s. 411 and 412)
      - Powers of court to facilitate (s. 413)
      - Mopping up (s. 414)

   B. 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, winding up or release from administration; effect of deed of company arrangement

   C. Receivership (Overview: see week 5)

2. Winding up or liquidation of companies
   A. 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

   B. 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 (s. 459C).
        Procedure for statutory demand (s. 459E and F).
        Procedure to determine disputed debts in statutory demands (s. 459 G – N)

3. Effect of external administration on:
   - Company
   - Directors
   - Creditors
   - Employees
Text references:

Prescribed: Lipton and Herzberg:
   Chapter 22
   Chapter 24
   Chapter 25

Recommended: Ford, Austin and Ramsey (12th ed):
   Chapter 24 – pp1200-1215
   Chapter 26 (skim read to review)
   Chapter 27
   Chapter 28 pp 1331-1344
   Skim read pp 1345-1374

Cases:

- *Brash Holdings Ltd v Shafir* (1994) 12 ACLC 619
- *Re Ansett Australia Ltd and Mentha (No 3)* [2002] FCA 2
- *Re New England Agricultural Corp Spencer Constructions Pty Ltd v Aldridge Pty Ltd* (1997) 76 FCR 452
- *Re Crusader Ltd* (1995) 13 ACLC 1008
- *Re West Australian Gem Explorers Pty Ltd* (1994) 13 ACSR 104
- *Domino Hire Pty Ltd v Pioneer Park Pty Ltd (in liq)* (2000) 18 ACLC 13
- *Advance Housing Pty Ltd v Newcastle Classic Developments Pty Ltd* (1994) 14 ACSR 230
- *David Grant & Co Pty Ltd v Westpac* (1995) 13 ACLC 1,572
- *Sons of Gwalia Ltd (admin appt) v Margaretic* (2007) HCA 1