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)</td>
<td>JG G8</td>
<td>9385-3577</td>
<td><a href="mailto:a.hargovan@unsw.edu.au">a.hargovan@unsw.edu.au</a></td>
</tr>
<tr>
<td><em>(Lecturer in Charge)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conducting Thursday Morning lecture stream</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brian Burnett (Conducting Tuesday Evening lecture stream)</td>
<td>TBA</td>
<td>9385-3293 school office</td>
<td><a href="mailto:bburnett@bigpond.net.au">bburnett@bigpond.net.au</a></td>
</tr>
</tbody>
</table>

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 one 3 hour lecture stream held weekly.

2.1 **Lecture times and Locations**

<table>
<thead>
<tr>
<th>Lectures</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday (stream A)</td>
<td>6.00-9.00pm</td>
<td>BioMed Theatre B</td>
</tr>
<tr>
<td>Thursday (stream B)</td>
<td>9.00-12.00 noon</td>
<td>ElecEng G24</td>
</tr>
</tbody>
</table>

2.2 **Units of Credit**

This course is worth 6 credit points.

2.3 **Parallel teaching in the course**

There are two lecture streams available for this course. Students are strongly advised to attend either one of the lecture streams as appropriate to their enrolment status and not to chop and change streams as it may result in disadvantage. There is a real risk that both streams, and thus lecture content, may not run parallel to each other. *The alternate streams are not designed as make-up classes.*

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

This 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.

The school offers, for example, the following courses that build upon the knowledge gained in this course.

- *Business Law*
  - *Corporate Governance* (research course offered under LEGT 5522 Special Topic in Business Law with prior consent)
  - *Legal Aspects of Finance*

- *Taxation Law*
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 answers and ask your own;
4. Attend classes on time (important announcements are usually made prior to the delivery of lectures); and
5. See the lecturer during his or her consultation hours if further clarification regarding the course content is required.

This course assumes you have studied Legal Foundations of Business (LEGT 5511) or Legal Foundations for Accountants (LEGT 5512) 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 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 (or seminars) designed to allow the delivery of a body of material and the opportunity to discuss and contextualise the material within the lecture. 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 course outline, to facilitate your own assessment of your progress in understanding the course materials.
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 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](http://www.my.unsw.edu.au)

4.4 **Keeping informed**

You should take note of all announcements made in lectures or on the course website. 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 a written assignment, a mid-session exam and a final exam.

**OVERVIEW OF ASSESSMENT REGIME**

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Written Assignment:</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

WRITTEN ASSIGNMENT

The assignment topic, together with a style guide which must be followed, will be distributed in class in Week 4. If absent, it is your responsibility to ensure that you have received a copy of the assignment topic, together with the cover sheet and style guide and that it is submitted by the due date.

The assignment is worth 25 marks and has a maximum word limit of 2,300 words and a minimum word limit of 2,000 words. A word count must be included on the assignment cover sheet supplied (together with the topic in Week 4).

The assignment is due on, or anytime by, Thursday 3 May 2007 (Week 9) and must be placed in the marked collection boxes, together with the cover sheet provided, outside JG G20 before 6.00pm on that day. Assignments are not to be handed in at class or emailed or slipped under the door. All students must retain a spare copy of the assignment to be produced, if required, on demand.

Extensions may only be granted in exceptional circumstances, supported by detailed documentation. A penalty deduction of 10% of marks awarded will apply to unauthorised late submissions.

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 2007 at 6.00pm (ie, in week 7) at Bio Med Lecture Theatre B. 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, unless advised by the lecturer to the contrary in class. 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 11-12 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, 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 original 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.
- Photocopies or downloaded versions of legislation/case list are not allowed.
- Library copies of the legislation are not allowed.
- Infringement of these rules in the final exam will be dealt with in accordance with the University’s academic misconduct policy.
5.3 Assessment Submission Procedure

The written assignment, together with the attached cover sheet (distributed with the topic in class in Week 4) must be lodged for assessment in the marked collection box outside JG 20 (John Goodsell Building) by, or before, 6.00pm on Thursday 3 May 2007.

5.4 Late Submission/Unauthorised Procedure

Late lodgment of the written assignment after clearance of the collection box at 6.00pm, or any other unauthorised method of lodgment (for ex, by email or slipping the assignment under the office door of the lecturer/tutor/secretary), will attract an immediate penalty deduction of 10% of the marks awarded. 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 may 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 Assessment (Written Paper) Format

All students must comply with the instructions in the style guide for written presentation (distributed in class in week 4). Marks will be deducted for non-compliance.

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 original 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**.
- Photocopies or downloaded versions of legislation/case list are **not allowed**.
- Library copies of the legislation are **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
• 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
• Baxt, Fletcher & Fridman, Corporations and Associations – Cases and Materials, 9th ed., 2003, Butterworths
• Hanrahan, Ramsay, Stapledon, Commercial Applications of Company Law, 6th ed., 2004, CCH
• Hargovan, Company and Incorporated Associations Law, 2nd ed., 2000, Eastern House
• Ford, Austin & Ramsey, An Introduction to the CLERP Act 1999, Butterworths
• Redmond, Companies and Securities Law – Commentary and Materials, 4th ed., 2005, Thomson/LawBookCo
• Donelly and Harris, Corporations Law Questions and Answers, 2nd ed., 2003, Butterworths

Professional references
• CCH Australian Corporations & Securities Law Reporter (loose-leaf volumes or CD-ROM).
• Butterworths, Australian Corporation Law (loose-leaf volumes or CD-ROM)
• CCH, Australian Corporate News (loose-leaf 1 Volume 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
- 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 addition, it is important that all students are familiar with University policies and procedures in relation to such issues as:


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 cteil process.cfm](http://www.ltu.unsw.edu.au/ref4-5-1 cteil 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.
## COURSE SCHEDULE: S1 - 2007 (Overview)

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

Week 1

Topic: Structure of Australian Company Law and Administration

- Introduction to course, course materials and textbooks.
- The history of company’s legislation and the constitutional background to the Corporations Act.
- Corporations Act 2001 (Cth)
- The Corporation Law Simplification process and the Corporate Law Economic Reform Program (CLERP).
  - Corporate law Economic Reform Program Act 1999
  - CLERP 9 (passed June 2004)

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

**Topic: Alternative 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**

**Self Review Questions**

1. *What factors are taken into account in determining whether or not a partnership exists?*
2. *What is “joint liability” and how does it differ from “joint and several” liability in a partnership?*
3. How can a retiring partner avoid future liability?
4. Why is agency an important concept in partnership law?
5. Explain what a limited partnership is?
6. Identify four major differences between a public and proprietary company.
7. What requirements must a proprietary company satisfy to be classified as a small proprietary company?
8. What types of companies may be registered under the Corporations Act?
9. What is a discretionary trust and its primary purpose?
10. What is a trading trust and what structure does it generally take?
11. What are the duties, powers, rights and liabilities of trustees?
12. What is meant by “the rule against perpetuities”?
13. What are the features of an unincorporated joint venture?
14. Compare and contrast a partnership with a joint venture

Class Discussion: Business Planning and Structures

Question 1
You have the task of advising clients as an accountant. Amongst your clients’ is a family – with a mother and father both aged 50 (and with considerable wealth), and 4 children, aged 21, 18, 17 and 10. The parents wish to involve their children in their next business venture. The parents anticipate contributing $2 million of their own capital and having the venture borrow a further $2 million. The parents seek your advice as to how the venture should be structured.

The investments under considerations are:
♦ a retail business
♦ a farm
♦ a speculative mining venture
♦ a long term investment portfolio

Examine the relative advantages and disadvantages of the structures available in law for acquiring and conducting these proposed investments.

Issues to examine will include the relative complexity, flexibility, aspects of liability and suitability for financing purposes for each particular structure contemplated.
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  
*Creevey 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 Wimboumre* (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  
*Artedomus v Del Casale* [2006] NSWSC 146

**Recommended References**


Self Review Questions

1. What does the expression “separate legal personality” mean?
2. What are the consequences of treating the company as a separate legal entity?
3. In what circumstances have courts pierced the corporate veil?
4. In what circumstances does the Corporations Act piece the corporate veil?
5. What is the Australian judicial and legislative approach to lifting the veil in corporate groups?
Class Discussion: Consequences of Registration

Eric White, a farmer, is the inventor and holder of a patent in a cattle prodding product which he named “electroBraid”. Together with his wife, Jenny, they devised a business plan to form a company and market the product to other cattle farmers. A friend and inexperienced business investor, David, was admitted as a business partner. On David’s recommendations, EBF Manufacturing Ltd (EBFML) was incorporated. David owned 50 per cent of the issued share capital, and Eric and Jenny each owned 25 per cent of the shares.

David’s suggestion led to the incorporation of a new entity, ElectroBraid Fence Ltd (FENCE), with the same ownership structure as EBFML. FENCE has no employees, insignificant assets other than its inventory and limited capitalization. It was decided that EBFML would own all the business assets and that FENCE would market and sell all of EBFML’s products and act as a buffer between EBFML and its customers. The company intended to market its products in the United States. Owing to the perception that the United States is a more litigious market, the business structure chosen was designed to offer a shield against potential lawsuits.

As part of the shareholder’s agreement between the parties and both companies (ie, EBFML and FENCE), Eric granted EBFML an exclusive licence to all patents relating to the manufacture of braided electrical fencing products in exchange for a royalty payment equal to 2% of the company’s gross revenues.

Tensions in the business relationship of the three shareholders resulted in David purchasing the shares of Eric and Jenny. As a result, David has become the sole shareholder, officer and director of EBFML and FENCE. Shortly thereafter, the payment of royalties ceased.

Eric wishes to pursue the royalty’s payment. David, on behalf of EBFML, offers Eric payment of royalties from the business generated by EBFML. Eric is dissatisfied and wants the gross revenue of FENCE to be included in the calculation of royalties payable to him, thus yielding a more accurate and higher amount.

Advise Eric, with relevance to relevant legal principles, on his chances of success.
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
- *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 Turquan* (1856) 119 ER 886
*Northside Developments Pty Ltd v Registrar-General* (1990) 8 ACLC 611
*BNZ v Fiberi Pty Ltd* (1994) 12 ACLC 48

*Lenard’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
Recommended references

- *ABC Developmental Learning Centres Pty Ltd v Wallace* [2006] VSC 171 (available either at [www.austlii.edu.au](http://www.austlii.edu.au) or from course website)
Week 5

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Promoters; Corporate Fundraising; Debt Capital and Receiverships</th>
</tr>
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</table>

- 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
Recommended references


Self Review Questions

1. What are the main aims of Chapter 6D of the Corporations Act?
2. What types of disclosure documents can a company issue?
3. When is a disclosure document required?
4. What are some of the policy considerations for exempting the need for disclosure documents for certain offers of securities?
5. In general terms, what information must a prospectus contain?
6. What type of activities can give rise to civil and criminal liability during corporate fundraising?
7. What is meant by “due diligence” and why is it significant during corporate fundraising?
8. What is the role of ASIC and what powers does it have during corporate fundraising?
9. How does the Corporations Act ensure that disclosure documents remain reliable and up to date?
10. What are the main statutory obligations on the borrowing company when issuing debentures?
Flywell Ltd is the owner of an Australian domestic airline. The Australian travel market is very competitive. The management of Flywell Ltd is concerned about the plans of a rival airline company that intends to expand its Australian domestic operations. The Board of Directors of Flywell Ltd decides to revamp its fleet of aircraft and to purchase extra planes, but the company does not have the capital. The company prepared, at great cost, a glossy brochure designed to induce each investor to invest $200,000 with the company in the form of either shares or debentures. The company aims to raise approximately $10 million in new funds using the brochure. The company has approached you for advice before it dispatches the brochure to its targeted investors. You read the brochure carefully and are surprised by some of the seemingly extravagant claims the auditor makes about its forecasted revenue.

(a) Advise Flywell Ltd of its fund-raising obligations under the *Corporations Act*, paying particular attention to the specified facts.

Refer to the facts above. Despite your concerns about the extravagant claims made by the auditor, Flywell Ltd went ahead with the glossy brochure prospectus, which was lodged with ASIC. In April 2005, 50 investors each invested the $200,000 sought by the company, and received shares. Flywell Ltd’s expansion was a disaster because market demand for domestic travel slumped.

The investors have commenced proceedings on the basis that the extravagant claims were false and misleading. Assuming this to be the case, advise the following parties on their respective rights and liabilities:

(b) the investors of Flywell Ltd;

(c) Flywell Ltd;

(d) Flywell Ltd’s directors;

(e) Friendly Bank International (Australia) Ltd (FBIA), the merchant bank which advised Flywell Ltd generally on the glossy brochure prospectus and associated share offering.
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 8-10
Note: Week 7: Mid-Session Exam (No lectures this week)

**Mid-session Exam** *(Thursday 19 April at 6.00pm sharp for 6.15pm at Bio Med B)* - 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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</table>

**Part 1:**
- Meaning and content of corporate governance
- Best Practice (ASX recommendations)
- Current Issues in Corporate Governance

**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: 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 ACLC 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) 9O 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 [1843-6O] 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. Croppe (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 350.

Mordecai v. Mordecai (1988) 12 NSWLR 58

ASIC v Vizard [2005] FCA 1037

South Cross Mine Management Pty Ltd v Ensham [2005] QSC 233

Re City Equitable Fire Insurance Co. [1925] 1 Ch. 407

Lister v Romford Ice and Cold Storage Co Ltd [1957] AC 555

Statewide Tobacco Sevices 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 Adler (2002) 20 ACLC 576

Kirwan v Cresvale Far East Ltd( in Liq) [2002] NSWCA 395

ASIC v Vines [2005] NSWSC 738

Recommended references

- CAMAC: The Social Responsibility of Companies (Report: December 2006) [Read Chapter 3 of CAMAC’s reply to the Federal Government – you may wish to skim read the rest of the report available at www.camac.gov.au ]

Self Review Questions

1. Who enforces a breach of director’s fiduciary duties?
2. What are the company’s civil remedies for a director’s breach of common law duties?
3. Who enforces a breach of director’s duties under the Corporations Act?
4. Can directors be criminally liable under the Corporations Act?
5. What are the limits to forgiveness for breaches of directors’ duties?
6. What are the limits to insurance and indemnification (under the Corporations Act) for breach of directors’ duties?

Class Discussion: Directors Duties: To whom are they owed? Corporate Social Responsibility Issues

Question 1

The Commonwealth government had written to the Corporations and Markets Advisory Committee (CAMAC) in March 2005 to consider and advice on the following issue:

“… the extent to which the duties of directors under the Corporations Act 2001 (Cth) should include … explicit obligations to take account of the interests of certain classes of stakeholders other than shareholders. Under both the Corporations Act and the common law, directors have a duty to act in the best interests of the corporation …

In modern society, a great deal of business and other activities are conducted by corporate entities. Given the broad economic, social and environmental impact of these activities, there is an understandable interest in the legal framework in which corporations make decisions. A question that has been raised from time to time is whether the current legal framework allows corporate decision makers to take appropriate account of the interests of persons other than shareholders.”

With reference to the above quote:

1. Which stakeholders can currently be considered to be part of “the company” for the purposes of the director’s duty to act in the best interests of the corporation? Discuss with reference to relevant precedents.

2. Should directors duties, and corporate responsibilities, be extended to a wider group of stakeholders? What are the lessons from the James Hardie experience?
Weeks 8-10 (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
Marsden Pty Ltd v. Pressbank Pty Ltd (1989) 7 ACLC 733

Metal Manufacturers Ltd v Lewis (1988) 6 ACLC 725
Statewide Tobacco Services 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 Cecattini (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

Recommended references

- Coburn, Coburn’s Insolvent Trading (2nd ed, LBC)

Self Review Questions

1. What is the source of the duty to avoid conflicts of interest?
2. How may the risk of breaching the duty to avoid conflicts of interest be reduced?
3. What are examples of conflict of interest?
4. How may directors be excused and given relief for breach of directors’ duties?
5. What is the significance of the decisions in Regal Hastings Ltd v Gulliver [1942] 1 All ER 378 and in Queensland Mines Ltd v Hudson (1978) 18 ALR 1 for company law?

6. What are the sources of a director’s duty of care?

7. What basic skills are directors expected to possess?

8. How are directors expected to discharge the element of “diligence”?

9. Can the same standard of care be expected of both executive and non-executive directors?

10. To what extent can directors delegate and rely on others inside the company to do their job properly?

11. Identify two important limitations which apply to the business judgment rule.


Self Review Questions

1. Who is director for purposes of the duty to prevent insolvent trading?

2. Can a creditor automatically sue the directors for insolvent trading?

3. Are directors automatically liable if the requirements of s 588G are satisfied?

4. What does “debt” mean for purposes of s 588G?

5. How does the Corporations Act assist in determining insolvency?

6. What are the consequences of contravening s 588G of the Corporations Act?

7. What is the significance of the decisions in Deputy Commissioner of Taxation v Clark (2003) 45 ACSR 332 and in ASIC v Plymin, Elliot & Harrison (2003) 21 ACLC 1237 for company law?
Class Discussion: Directors Duties

Lee is a successful chemical engineer with expertise in petroleum products. In November 2002, upon request by, and as a favour to, his friend Alex, Lee became a non-executive director of NSW Service Stations Ltd, a company which owned and operated a number of services stations in New South Wales. Alex is the managing director of the company.

By agreement, Lee did not take a director’s fee for sitting on the board of NSW Service Stations Ltd. Lee rarely attended board meetings and relies on Alex, who has qualifications in accounting, for information about the financial affairs of NSW Service Stations Ltd. Lee explained to Alex that he saw his role as non-executive director to be confined to “planning and policy-making” and, besides, Lee also said to Alex that “I’m an expert in chemical engineering, not in financial matters.”

Over the last twelve months, from October 2003 to October 2004, NSW Service Stations Ltd experienced several episodes of cash flow shortages in its business operations. In November 2004, a liquidator is appointed to NSW Service Stations Ltd. The company has suffered loss in excess of a million dollars. An investigation of the affairs of NSW Service Stations Ltd by the liquidator found the following:

- that NSW Service Stations Ltd had to replace petrol pumps at a net cost of over $800,000 due to the board’s decision to import these items, from Techno Pty Ltd, which were non-complaint with Australian safety standards. The company’s contract with Techno Pty Ltd was in the sum of $400,000. An independent expert’s report to the Board had earlier recommended, in preference, the purchase of locally manufactured petrol pumps which complied with Australian standards. Alex is a major shareholder in Techno Pty Ltd;

- that the interim financial accounts presented at the monthly Board meeting in December 2003 correctly indicated a cash flow problem. The minutes of the meeting records Lee’s attendance at this meeting.

The liquidator seeks your advice as to whether any legal action may be taken against Lee and/or Alex to recover money as a result of a breach of their duties as directors of NSW Service Stations Ltd, other than arising out of insolvent trading, under:

a) common law

and

b) pursuant to the Corporations Act

Your answer should also advise the liquidator of NSW Service Stations Ltd as to his chance of success for probable cause(s) of action identified.
Weeks 11-12

**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 HW 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
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

Recommended references
Corporations Act: Part 2F.1; 2F.1A; 461; 1324

**Self Review Questions**

1. What is the current legal status of the rule in Foss v Harbottle?
2. What are potential sources of a member’s personal rights?
3. Who can bring proceedings under the oppression remedy?
4. What conduct is covered by s 232?
5. What remedies are available under the oppression remedy?
6. Who can bring proceedings under a statutory derivative action?
7. Explain the difference between a member’s derivative rights and personal rights.
8. Who may apply for a statutory injunction and under what circumstances can the application be made?
9. What conduct is caught by s 1324?
10. Explain, with examples, the concept of ‘fraud on the minority’.
11. Explain, with examples, when is it ‘just and equitable’ to wind up a company?
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:  Australasian Memory v Brien [2000] HCA 30
Re Ansett Australia Ltd and Mentha (No 3) [2002] FCA 2
Spencer Constructions Pty Ltd v Aldridge Pty Ltd (1997) 76 FCR 452
David Grant & Co Pty Ltd v Westpac (1995) 13 ACLC 1,572
Sons of Gwalia Ltd (admin appt) v Margaretic (2007) HCA 1

Recommended references

- O'Donovan, Company Receivers and Administrators (Lawbook Co Online)
- Anderson and Morrison, Crutchfield's Corporate Voluntary Administration, 3rd ed. Lawbook Co 2003

Self Review Questions (Alternatives to liquidation)

1. Who may appoint an administrator?
2. What powers does the administrator have?
3. How is the company’s property protected during administration?
4. What is the purpose of the first and second meeting of creditors?
5. How is the deed put in place during administration?
6. Who is bound by the deed?
7. What is the role of the court during voluntary administration?
8. How are schemes of arrangement initiated?
9. How do schemes of arrangement become binding?
10. What are the pitfalls in using a creditors’ scheme of arrangement?

Self Review Questions (liquidation)

1. What is the aim of liquidation and how can it be initiated
2. What is the impact of liquidation on unsecured creditor
3. How is a creditors’ voluntary winding up initiated?
4. What are a liquidator’s functions and powers?
5. What are voidable transactions?
6. How are the funds distributed when a company is being wound up?
Sanscash Ltd has recently been experiencing an unusual business downturn. Business in the last month has not been generating enough revenue for pay for some of Sancash Ltd’s liabilities. The company is not sure that it can continue solvent trading. This is the first time that this has happened in the company's 10-year history. The company hopes to win some big contracts that will provide it with vital cashflow.

The creditors of Sanscash Ltd are worried because the company has not been making regular payments on their liabilities. One of the creditors, NewSouth Bank, has a loan contract with Sanscash Ltd, which is secured by way of a first registered mortgage on the factory and land owned by Sanscash Ltd. NewSouth Bank is very concerned about preserving their security immediately.

Supplyco is another creditor of Sanscash Ltd who is owed $30,000 for unpaid goods that have been supplied to Sanscash Ltd. They are concerned about obtaining at least some of their money back.

Sanscash Ltd also has over 100 employees who are owed at least $10,000 each in worker's entitlements and are concerned that they will not get paid if the company becomes insolvent.

With reference to relevant sections of the Corporations Act 2001 (Cth), advise each of the following parties which form of external administration would be most appropriate to satisfy their needs:

a) NewSouth Bank;

b) Supplyco; and

c) the employees of Sanscash Ltd.