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Applied Company Law – Final Exam Notes

Topic 4 – Corporate Governance and Decision Making

Constitution

- Company Constitution – implemented in 1998 when companies could either use the existing memorandum and articles of association as a constitution, repeal the constitution and use the replaceable rules or adopt a corporate constitution by passing a special resolution (can include replaceable rules)
- Section 124 – allows a constitution to restrict certain company actions (**objects clause**)
- Section 141 – table of replaceable rules that are used if the company does not have a constitution (or can be used in part with a constitution) (**replaceable rules**)
- Section 140 – binds the company and its members, the company and its directors/secretaries and between the members themselves (**statutory contract**)
 - Hickman v Kent or Romney Marsh Sheepbreeders' Association [1915] – a stay on proceedings was granted as the constitution required any dispute first be referred to arbitration as opposed to litigation (**company v member disputes**)
 - Andrews v Queensland Racing Ltd [2009] – injunction granted as the company was not appointed directors in accordance with the constitution (**company v member disputes**)
 - Eley v Positive Government Security Life Assurance Co [1875] – corporate constitution can only be enforced by a member in so far as it effects their membership status, therefore solicitor/member was not granted an injunction as the breach only impacted his status as solicitor (**company v member disputes in another capacity**)
- The following cases discuss the restrictions on amending the constitution
 - Ding v Sylvania Waterways Ltd [1999] – unable to require members to take up additional shares or increase liability to contribute capital and are only bound if they agree in writing under Section 140(2) (**amending the constitution**)
 - Bailey v New South Wales Medical Defence Union Ltd [1995] – unable to avoid requirement to indemnify doctor for patient claim when incident occurred before the change in the constitution (**amending the constitution**)
 - Gambotto v WCP Ltd [1995] – states that if the alteration to the constitution seeks to take away member rights, the tests apply of; was the amendment for a proper purpose and was the amendment fair in all circumstances (**proper purpose test**)

Corporate Governance

- Directors and officers duties
 - Hard Law – directors' duties under Section 180 to 184, 588G etc.
 - Soft Law – Codes of Conduct
 - Hybrid Law – enforced self-regulation (i.e. ASX Listing Rules)
- Members rights and remedies
- Internal management rules – constitution