

Lecture 1: Alternative Business Structures

Legal personality

- Individuals
- Separate corporate identity
- Registered Company

Types of business structures

1. Sole Trader

- Carrying business as an independent individual
- Owns and controls the business
- Unlimited Liability
- No formal establishment process
- If trade in name other than own: need to register
 - **Business Names Registration Act 2011 (Cth)**

| Advantages | Disadvantages |
|--|--|
| Simplicity, flexibility + controllable | Unlimited liability: personally liable for all debts |
| No disclosure of profits + financial affairs (only to ATO) | Limited funding: obtain through personal savings + loans |
| Business loss offset with taxable income | Tax up to 45% opposed to 30% company tax |

2. Partnerships

- **Partnership Act (NSW) 1892**
 - **Relation** which exists between persons carrying on a business with a common view of profit
 - Relation: created by contract (orally, partly/ wholly in writing or implied)

Canny Gabriel Castle Jackson Advertising Pty Ltd vs. Volume Sales (Finance) Pty Ltd (1974)

- Fourth Media Management = Promotor | Cilla Black & Elton John = Entertainers
- Volume Sales (Finance) Pty Ltd = agreed to finance the tours
- Written Agreement = Fourth Media Management assign to Volume Sales a half interest in the contracts and described as basis on Joint Venture.
- Finance by Volume Sales = loan to JV
 - Net profits of JV = divided at end of contract, losses not shared on same basis as profits.

RESULT:

- Fourth Media and Volume Sales = partnership
- Basis that profits were shared equally between the parties
- *Contract indicated partnership except it was not described as one.*
- *Did not provide expressly of sharing of losses*

Establishment

- Under a contract which sets out rights & obligations of the partners
- Can have silent partners who are not actively involved in the management.

- Maximum of 20 partners

Liability – Partners & Outsiders

- Each partner is a principal and agent of the business
- Each partner may incur liabilities behalf of the business & liable for debts & obligations incurred on behalf of the business by other partners.

Lecture 3: Internal Operations of the Company

The Constitution – Company Structure

- Before July 1998: Memorandum of Associations; also Articles of Association – model Articles were in Table A of the Act
- From 1 July 1998: Replaceable Rules in the Act or/and Corporate Constitution
 - Offered the following advantages for introduction of replaceable rules:
 1. Reduction/ elimination of expenses in keeping corporate constitutions up to date
 2. Relevant replaceable rules located in relevant place in Act, rather than in a table
 - If company decides not to draft own constitution, replaceable rules proves basic standards required for company to function

Section 249

- Minimum number is two members required to be present at a shareholders' meeting (quorum) → replaceable rule
- Corporation could have own constitution to set the quorum
- **S249X**: replaceable rule = member's right to appoint a proxy (an authorized agent) → compulsory for public companies

Section 141

- Offers convenient summary of the replaceable rules which are located through the Corporations Act
- Replaceable rules = bias towards proprietary companies rather than public companies

Section 134

- Regulate internal management
- Must comply with replaceable rules, the corporate constitution or combination of both.

Section 198A: "Powers of Directors"

- Members given rights but not attempt to take away management responsibilities & powers from board

Automatic Self-Cleansing Filter Syndicate Co Ltd vs. Cuninghame (1906)

- Majority shareholder passed resolution directing company to sell asset to another company he controlled
 - Director refused, majority shareholder sought court orders.
- Court = making orders will take away the management power of board of directors.
 - *Can only through altering constitution, requires special resolution & did not have 75% of votes.*
- Once directors were given power of management, **simple resolution** passed at member's meeting can't take away that authority
 - Only taken away = amending the corporate constitution

The Constitution – Statutory Contracts: Section 140(1)

Section 140: Statutory Contract – between company and each member

- Binding the company the its members with terms of a deemed special statutory contract
- Constitution sets distribution of powers, common to adopt replaceable rule **198A** managerial authority of corporation onto board of directors.
 - Once company formed with provision, members not permitted to tell directors to manage company
 - Members given up power by purchasing shares in company with a constitution (provides for directors to exercise managerial power)

| CASES | FACTS | AREA OF LAW/ RELATED CASES | COMMENT |
|---|--|--|---|
| VALIDITY OF DIRECTORS' MEETINGS | | | |
| Summerdowns Rail Ltd vs. Stevens 2015 | <ul style="list-style-type: none"> - Meeting discussed another urgent issue, ¼ did not attend - Claim by Summerdowns against company secretary and director in relation to payment to another company - <u>Board resolution approving payment = invalid as director (overseas at time), not given notice</u> | <p>S1322: unable to decide dispute, due to possible application of irregularity</p> <p>S248C: reasonable notice → can be reasonable that no notice is given</p> | <ul style="list-style-type: none"> - Justified not being reasonable that no notice given to director = invalid meeting - Perceived urgency of matters may occur for meeting |
| OBLIGATION AS DIRECTOR | | | |
| Grimaldi vs. Chameleon Mining NL 2012 | <ul style="list-style-type: none"> - G = former director of Chameleon used funds for Murchison Metals where he was director. - Chameleon claimed G = 'de facto' & breached duties by favouring. | <p>S181(1): Acting in good faith & proper purpose</p> <p>S182(1): Obligation to not use to gain advantage for themselves</p> | <ul style="list-style-type: none"> - Acting as 'consultant' can still be director if 'unconstrained'. - Fiduciary duty even if not de facto director due to certain transactions |
| EMPLOYEES: LAW OF FIDELITY | | | |
| Holyoake Industries Pty Ltd vs. V-Flow Pty Ltd 2011 | <ul style="list-style-type: none"> - Brown, Matkovic & Aloe involved in commercial negotiations relating to proposed purchase by Holyoake of competing business Variflow. - No offer to Variflow - Matkovic & Aloe incorporated V-Flow & purchased Variflow. - Concealed activities related to purchase from Holyoake directors & management. - Brown contacted Holyoake's customers aiming to secure business for V-flow | <p>S182(1): Used to gain advantage for themselves & detriment corporation</p> <p>S183(1): Used info to gain advantage for themselves & detriment corporation</p> | <ul style="list-style-type: none"> - Contravened fiduciary duties & obligation to serve with fidelity - V-Flow liable as third party with knowledge of fiduciaries' dishonest conduct |