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TOPIC 1 - INTRODUCTION TO CORPORATIONS LAW

The development of Australian company legislation and its constitutional basis

New South Wales v Commonwealth (1989) 169 CLR 482

RELEVANCE:

- History of the *Corporations Act*

HELD:

- 1989 COMMONWEALTH LEG - CORPORATIONS ACT CMTH
- Introduced (independently of the states) and struck down
- HCA held that the commonwealth did not have the power under s.51xxx of the const to pass laws providing for the incorporation of trading and financial corporations
- So the commonwealth could not take over corporate regulation in Australia

Re Wakim (1999) 17 ACLC 1055

RELEVANCE:

- History of the *Corporations Act*

HELD:

- HCA held that the cross vesting of jurisdiction was unconstitutional because it conferred jurisdiction on the federal court with respect to matters under the corporations law of a state

TOPIC 2 - REGISTRATION AND ITS EFFECTS

The separate legal entity doctrine & limited liability

Salomon v Salomon & Co Ltd [1897] AC 22

RELEVANCE:

- Generally cited as establishing the separate legal personality of the company, and hence the corporate veil
- Most famous of all company law cases
- As a result of this decision, the one man company was born (note that it had already previously been established that a company is a separate legal person)
- The decision was controversial

IS THE DECISION A GOOD ONE?

- Limited liability means that shareholders do not have to constantly monitor the management of the company with the fear that they might lose all their assets should the business fail
- Limited liability contributes to an efficient share market - the value of the shares would vary according to the wealth of the individual shareholder, but with limited liability all the shares are of equal value, so this simplifies the transfer of shares
- These benefits of conferring LL on shareholders need to be weighted against the detriment to creditors caused by transferring the risk of business failure

FACTS

- Aaron Salomon had been conducting his leather business as a sole trader and decided to use a company to do so instead
- So in 1892 A Salomon & Co Ltd was formed
- S sold the assets of this business to the newly formed company for \$38 682, this price was later challenged as being excessively generous to Salomon
- To secure \$10 000 of the amount owed, the company granted S a charge over its assets
- The company ultimately wound up and was unable to pay its creditors
- The liquidator launched proceedings in an effort to protect the position of the unsecured creditors
- S, relying on the debentures, claimed priority as a secured creditor, the liquidator attacked this claim
 - The excessive sale price of the business was fraudulent or at least constituted a breach of duty owed by him to the newly formed company

ISSUE

- Should Salomon - the beneficial owner of the debentures, be given priority over the unsecured creditor?
- If Salomon's claim succeeded the unsecured creditors would receive nothing

HELD

- The price charged by S was high, but it was not fraudulent
- The argument that the sale constituted a breach of his promoter's duties was dismissed on the basis that the company, through the unanimous acceptance of the shareholders, had approved the price
- First trial - Vaughan Williams J held that the company should be seen as an agent of S, this meant that the debts incurred by the company to the unsecured creditors were incurred on behalf of S
- English Court of Appeal - the court was very conscious of the significance of the case, specifically what was the then recent emergence of 'one man companies'
 - It was unqualifiedly against this development
 - It considered that it would be 'lamentable if a scheme like this could not be defeated' & 'to legalise such a transaction would be a scandal'

- Dismissed appeal on the grounds that the company had been formed illegally because the stakeholders were part of his family and not independent
- House of Lords - a company is either a legal person or it is not, if it is, then it is liable for its own debts and it is not a trustee or an agent
 - A company is thus able to enter into contracts such as the debenture agreement with S, with its shareholders or controllers
- REACTIONS
 - Encouraged investment by those who didn't want to be in management - but problem with this argument is it doesn't apply to tightly held family companies (don't raise capital but used for limited liability)
 - Shifted too much risk on creditors - but banks are always in a good position with this so it doesn't matter too much for them

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

- RELEVANCE
 - Demonstrates that the Salomon decision is well entrenched
- FACTS
 - 1 man company - Lee had 2999 of 3000 shares
 - Lee was a pilot and the business was to spray crops
 - While flying during the course of business, Lee was killed
 - His widow claimed under worker's compensation insurance
 - The insurer denied liability on the ground that Lee was not a 'worker' within the meaning of the relevant legislation - this depended on whether Lee was in a contract of service with the company as an employer
 - Insurer argued that there could not be a true master servant relationship in a case such as this because Lee was both the master and the servant
- HELD
 - Privy council held that (referring to Salomon) even in this case, the company was a separate legal person from its governing director and so it could enter into an employment relationship with him
 - Logical consequence of the decision in Salomon's case that 1 person may function in dual capacities
 - No reason why contract of service could not be negotiated
 - There would be difficulty because the deceased could not both be under the duty of giving orders & also be under the duty of obeying them
 - BUT this approach does not give effect to the circumstance that it would be the COMPANY and not the deceased giving the orders e.g. control would remain with the company whoever might be the agent of the company to exercise it
 - Held that the insurer had to pay - and had to show that Lee was employed by the company ie have a contract - this is possible because the company is a separate legal entity

Macaura v Northern Assurance Company Limited

- FACTS
 - Macaura incorporated a new company and sold his timber farm to that company
 - He received all of the shares in the company as consideration
 - Macaura took out insurance policies over the timber in his own name
 - There was a fire and the insurance claim was denied on the basis that only the company had an insurable interest in the timber farm and it was not the holder of the policy (because it was in his name)

