

Corporate Law Lecture Notes

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1-COMPANY LAW

s 516	If the comp is limited by shares, a member need not contribute more than the amount (if any) unpaid on the shares in respect to what the member is liable as a <u>present or past member</u>
s 254B (1)	A company can determine the terms by which shares are issued and the rights and restrictions attached to the shares
s 198A	Directors are to manage the business of the comp
s 254M (1)	Liability comp If shares are partly paid, the shareholder is liable to pay calls on the shares in accordance w/ terms on which shares are on issue
s 254M (2)	No liability comp Acceptance by a person of a share does not constitute a contract by the person to pay calls in respect of the share or any contribution to the debts and liabilities of the comp
s 254A (2)	Comp can issue preference shares only if the right attached w/ respect to <i>Repayment of capital, Participation in surplus assets and profits, Cumulative and non-cumulative dividends, Voting, and Priority of payment of capital and dividends over other shares</i> are set out in comp's constitution (if any) or approved by special res of the company (by shareholders)

WHAT IS COMPANY LAW?

A set of rules describing how to set up companies, run them and end them

Stakeholders: The Company is itself an entity, directors, officers, shareholders and creditors (and also outside stakeholders i.e. the community and environment)

Law regulates who liable for what – what responsibility and rights people have

Who can bind a person in a contract

PURPOSES OF COMPANY LAW

Investor protection – shareholders and lenders

Companies are risk taking vehicles – no certainty in investing in them

Protected against fraud and corruption rather than failures in products

Company law protects people by warning them to protect themselves

Commercial stability and consumer confidence

Company liability is limited

Balancing competing interests

Gov't looking at corporate regulation and removing undue compliance measures

Encouragement of companies to take risks to try and succeed

Certainty

Standard form rules – consistent set of rules governing companies

OPERATION OF COMPANY LAW

Private rights

- Shareholders vs the company
- The company vs shareholders

The company is a *separate legal being* and has rights against shareholders and creditors just as shareholders and creditors have rights against the company

Give rise to civil actions against companies – e.g. negligence

Public rights

Breach of provisions of corporations act can be criminal offence or subject to other state sanction

SOURCE OF RULES

- Corporations Act 2001
- Case law – precedents (know the cases but don't need to state facts of it in detail)
- Other sources – corporate regulations, ASIC Act etc. (don't need to know for exam)

INTRODUCTION TO COMPANIES

99% are proprietary limited (pty ltd) – generally small in number of shareholders

Others are public – sub divided into listed and unlisted

Traditional idea of companies – to bring people and capital together to run a business

Minimum share capital - \$1 in proprietary limited company

Securities exchange – ASX (public listed company) – regulated by ASIC – 2000 listed companies

CAPITAL STRUCTURE

Debt capital

- Money owed to people other than shareholders

Equity capital

- Money acquired by shareholders

Some companies don't hold shares, so they are referred to as members rather than shareholders therefore members are shareholders – member used in the Corp Act meaning shareholders

Board of directors and shareholders in general meeting – decision-making organs of companies – the company made by resolution (means the shareholders decision as they decide on behalf of the company)

PBL: Contracts – offer and acceptance

There is a statutory contract made when shareholders buy shares from another shareholder as if they were bought from the company itself