

# **MLL221 – Corporate Law**

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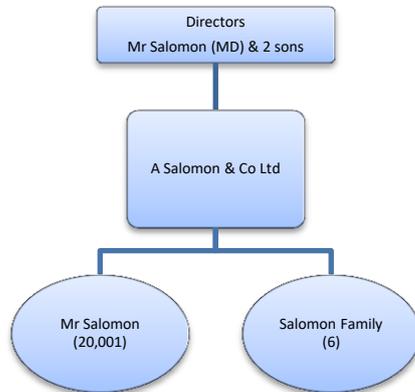
## **Prescribed Cases for Each Topic**

# Chapter 2 – Registration and Its Effects

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## Salomon v Salomon [1897] AC 22

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### Facts:

- Mr S was the sole trader of a shoe and leather business
- Co Act 1862 (UK) required 7 shareholders
- Salomon & Co Ltd incorporated
- Mr S 99% shareholder and managing director
- Mr S sold business to Co for shares and secured debt
- Business failed, assets of Co insufficient to repay secured (Mr S) and unsecured creditors

**Argument:** Liquidator argued that because the business operated by the Company was the same as that operated by Mr S, and because Mr S had effective control of the Company, the court should hold Mr S liable for the loss suffered by the Company

### House of Lords:

- A company is a separate legal entity even though a single person manages and controls it
- A company can contract with its controlling participants

**Lord Macnaghten (51):** “The company is at law a different person altogether from the subscribers to the memorandum [shareholders]; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided in the Act.”

## Macaura v Northern Assurance Co Ltd [1925] AC 619

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### Facts:

- Macaura assigned right to timber to a Company, received shares in consideration
- Timber destroyed in fire
- Macaura claimed insurance – policy was in his individual name, not in name of the Company

### House of Lords

- Shareholders do not have a proprietary interest in a company's property
- Insurance legislation required policy holder to have an 'insurable interest' in the property
- The company was the owner of the timber, not Macaura (meaning he did not have an 'insurable interest' and so could not claim on the insurance for the damaged timber)

**Lord Buckmaster:** No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

## CEPU v Queensland Rail (2015) 256 CLR 171

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**Primary Legal Question:** What is a 'corporation' for the purpose of s51(xx) of the Constitution?

### Facts:

#### QRTA Act 2013 (Qld)

- Established the Queensland Rail Transit Authority
- All the powers of an individual: Specifically including power to enter into contracts, acquire, hold, dispose of, and deal with property, employ staff, appoint agents and engage consultants.
- May sue and be sued in the name it is given
- "***is not a body corporate***".

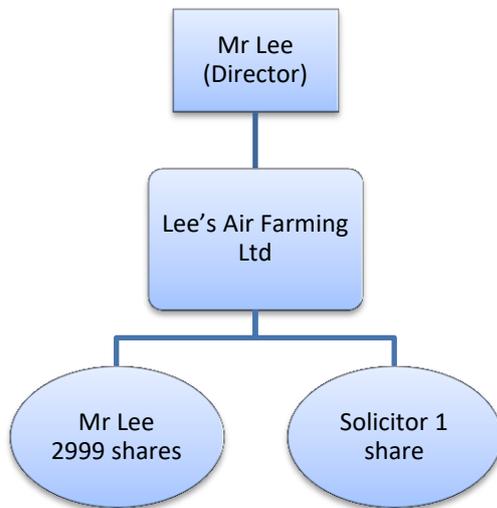
**Why:** If QR is not a 'constitutional corporation', it would not be subject to commonwealth industrial relations laws (*Fair Work Act*).

**High Court (6 Justices):** 'the [Queensland Rail Transit] Authority is created as a separate right and duty bearing entity. It may own, possess and deal with real or personal property. It is an entity which is to endure regardless of changes in those natural persons who control its activities and, in that sense, has "perpetual succession". Its constituting Act provides for mechanisms by which its assumption of rights and duties may be formally recorded and signified. The Authority has "the full character of a corporation"' [38].

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

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### Facts

- Company operated a crop dusting business
- Mr Lee was the main shareholder and managing director of the company
- Mr Lee was also an employee pilot
- While working, Mr Lee was killed in a plane crash
- Mrs Lee claimed she was entitled to workers compensation because Mr Lee was an employee
- Insurer argued Mr Lee could not be an employee and employer

### Held

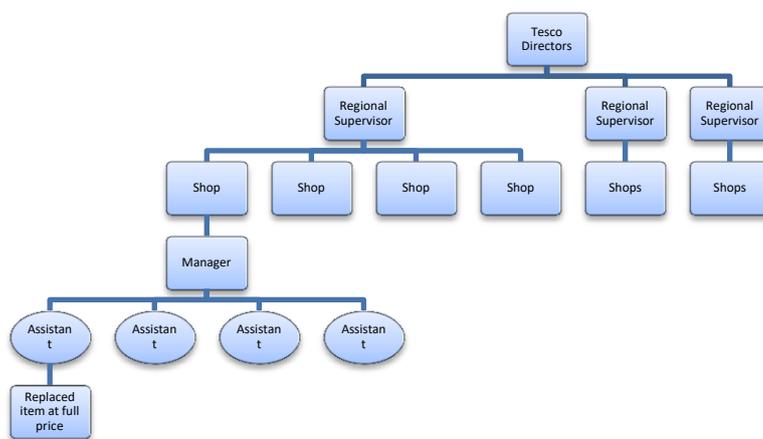
- A company is a separate entity from its controller – who may also be its sole employee
- A company is a separate legal entity and a person may concurrently have a variety of legal relationships with that company

## Gageler J:

- 'the statutory declaration that Queensland Rail is not a body corporate ... is ineffective to prevent Queensland Rail answering the constitutional description of a corporation. It answers that description because it is an entity established by law with capacity to own property, to contract and to sue' [49].
- 'Queensland Rail has legal personality because it is legislatively conferred with capacity to own property, to contract and to sue. It is unnecessary to consider whether any lesser subset of those attributes might suffice. The statutory declaration that Queensland Rail is not a body corporate does not deprive Queensland Rail of any of those attributes' [67].

## Tesco Supermarkets Ltd v Nattrass [1972] AC 153

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## Facts:

- Radiant washing powder advertised at sale price
- Sale items all sold, shop assistant restocked items, but at full price
- Shop manager not aware of this
- Offence under legislation to sell products at higher price than as advertised
- Defense available if due to act or omission of another person
- Tesco argued that the shop manager and shop assistant were 'another person'

## House of Lords

- Court applied the 'organic theory' to the shop manager and shop assistant and held that neither represented the directing mind and will of the company
- Accordingly, the acts of the shop manager and shop assistant were not the acts of the company