CORPS LAW STUDY NOTES

THE NATURE OF CORPORATIONS

Introduction

- Corporations and companies are ever-present in our lives. Companies have legal standing, whilst associations are a bit different.
- 69 of the top 100 economies are corporations, including Walmart, China National Petroleum, Royal Dutch Shell and Volkswagen. These companies have a legal basis for their existence and die when they become deregistered.
- Religions can create not-for-profit companies/charities/companies limited by guarantee.
- Companies may overlap with other companies, but each remains a separate legal entity.
- These company structures are important, as they limit individual liability, reduce tax and provide investment opportunities.
- This has created issues for corporations law, as corporations may use offshore locations to establish business in order to avoid paying taxes. The impact of companies on the environment and use of slave labour are also big concerns.
- There are 2.6 million corporations registered in Australia, mostly between NSW and Vic.

Key Business Structures

- Sole Trader structures involve only 1 person, and lack a formal legal structure. This means that the individual is wholly liable for the company's performance and holds all the responsibility. This is not a form of business association.
- Sole Trader arrangements have limited external regulation, easier establishment and running organisation, increased flexibility, and few legal constraints. But there is a higher potential for significant outsiders to impose constraints, full personal liability for debts, difficulty attracting external funding, limited scope for expansion and fewer tax advantages.
- When the sole trader decides to involve other people, other structures become available.

- Partnerships are a contractual agreement between two or more people where each party is an agent for the other. These arrangements are governed by the Partnership Act in each State or Territory. There is no separate legal entity created for multiple people.
- Companies can be members of a partnership. Generally, two companies will form a joint venture instead of a partnership.
- The legal definition of a partnership is uniform across all states and territories and is *'the relation which exists between persons carrying on business in common with a view of profit'*. This applies to; any legally recognised person, including other companies. Any type of business, trade, occupation or profession. And that the organisation is distinct from that of social and non-profit organisations.
- Partnerships can be created verbally, in writing, or inferred from conduct. They are not entities in their own rights, and each partner therefore has unlimited personal liability to third parties for business debts.
- There does not have to be intent to create a partnership.
- Partnerships are limited to 2-20 people in size, unless they are arrangements of 50 actuaries, 100 architects, 400 legal practitioners, or 1000 accountants.

- Companies are separate legal personalities and can be sued, hold property and enter into contracts. They have limited liability for shareholders and directors. Shares may be sold or divided between shareholders or managers. Capital contributions can be diverse.
- These arrangements are covered by the Corporations Act (Cth). They benefit form limited liability, perpetual succession, lower tax rates, easier fundraising, settled rules of operation, separation of ownership and control (positive for directors), distinct legal personality, centralised management, transferrable shares and can create corporate groups.