

Intro and Alternative Business Structures

- **Re Megevand; Ex Parte Delhasse (1887-78) HHA 4.20**
 - Delhasse lent money to Megevand and Schoepi for their partnership business.
 - In return, Delhasse was entitled to 25% share in profits & losses. Delhasse could also examine partnerships books when he chooses, receive quarterly statement, make further loans on equivalent terms and terminate agreement by notice.
 - Issue: Was real status of Dellhasse, creditor or partner?
 - Result: Court considered Dellhasse to be a partner as he had right to control property, right to receive profits, and the liability to share in losses.
- **Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd HHA 3.15, 3.33**
 - Fourth media management – promoter then managed tours e.g. Elton John
 - Volume Sales agreed to finance the tours
 - Written agreement between Fourth Media Management to transfer to Volume Sales a half interest in the contracts
 - This was described by the parties involved as a joint venture
 - Net profits at the end of the contract were to be divided
 - Result: High Court stated that the arrangement was a partnership regardless of the joint venture provided by the parties. This was on the basis of profit splitting
- **Birtchnell v Equity Trustee, Executors and Agency Co Ltd (1929) HHA 4.32**
 - Plaintiff discovered that their deceased partner in a real estate business had been running a profitable land development business on the side with one of the partnerships clients. The plaintiffs sued for an account of the deceased partners share of profits in the business.
 - Plaintiff was entitled to an account of profits. The deceased partner had made the profits by using a business connection of the partnership- one of its clients, in breach of his fiduciary duty to the partnership.

Characteristics of a Company

- **Salomon v Salomon & Co Ltd (1897) HHA 5.1**
 - Inc. company is a separate legal entity from founder, shareholders and directors
 - Sole trader (boot manufacturer) sold his business to a Ltd (Salomon & Co) he formed himself
 - He had 20,001 and his wife and kids had one each total shares = 20,007
 - Company went into liquidation
 - Company's assets were insufficient to pay both debenture holder (Mrs. Salomon) and ordinary unsecured creditors
 - Debenture holder received priority
 - Liquidator argued Salomon should pay the company for its debts
 - Result: Debenture given was valid and therefore Mr. Salomon succeeded.
- **Macaure v Northern Assurance & Co Ltd (1925) HHA 5.5**
 - Macaure owner of timber plantation, sold his business to a company he formed
 - Prior to the sale he had insured the timber in his own name as a sole trader
 - Did not transfer insurance policy to company
 - Timber was destroyed by fire
 - Insurance co. refused to pay under his insurance policy as it was a company asset and belonged to the company