

Corporate law:

- **What is corporate law**
- **Company breakdown**
- **Partnership**
- **History of corporations and companies**
- **Corporate theory**
- **Corporate personality**
- **Lifting the corporate veil**
- **Death of a company**
- **Corporate tort liability**
- **Corporate criminal liability – Criminal Code Act Part 2.5**
- **Corporate liability for contracts – s128 and s129**
- **Corporate governance**
- **Who is a director**
- **Decision making organs**
- **Directors meetings – s2G.1**
- **Members meetings – s249C - 251**
- **Liability and enforcement – s1317H and s1324**
- **Civil penalty provisions – s1317E**
- **Directors and officers duties**
 - Answering a director and officers duties question
 - General law duties
 - Statutory breaches – s1317
 - Duty of care, skill and diligence – s180
 - Delegation of authority, not responsibility – s198D and s190
 - Business judgement rule – s180(2)
 - Cases
 - Good faith and proper purpose - s181
 - Conflicts of interest: secret profit and misappropriation – s182
 - Use of information – criminal liability – s184
 - Use of position and information – civil obligation - s182
 - Managing conflicts of interest
 - Related party transactions – Ch 2E
 - Insolvent trading – s95A and s588G
 - Defences - s588H
- **Related party transactions**
- **Insolvent trading**
- **Members remedies**
 - Personal: enforcement of constitution
 - Personal: minority oppression – s232
 - Statutory derivative actions – Part 2F.1A
 - Statutory injunctions – s1324
 - Just and Equitable winding up – s461(1)(k)

What is corporate law?

- Corporate law is the regulation of companies and corporations. Corporate law is to a large extent an internal set of rules; it is not much concerned with how they interact externally – i.e. through Tort or Criminal activity with third parties, to be dealt with by more appropriate areas of law.

Key Elements of a corporation:

1. Decision making 'organ': Board of Directors (s198A of CA)
2. Balance of powers through the making of decisions by passing resolutions in general meetings meaning the board of directors and the members are set out in the company's constitution and the CA.
3. Capital Structure: must be decided at initial formation of a corporation (company constitution)

Companies are made up of:

- Shareholders: 'members' that invest money (capital) into companies and in return receive shares (securities), which entitles to a share of capital and voting rights. Not a guarantee of dividend but a bundle of enforceable rights attached to an item of personal property that reflects the companies overall worth
 - A SHARE is a contract with the company; therefore the relationship between a company and a shareholder is primarily contractual whereby the shareholder is incorporated under the terms of the agreement and their own Constitution (that governs its operation). Ordinary shareholders get paid last because the priority of capital, it is possible to purchase preferential shares where your payment of dividend is prioritised above others after the more senior levels of equity have been paid.
 - Shares: s1070A: A share, other interest of a member in a company or interest of a person in a registered scheme:
 - (a) is personal property; and
 - (b) is transferable or transmissible as provided by:
 - (i) the company's, or scheme's, constitution; or
 - (ii) the operating rules of a prescribed CS facility if they are applicable;
 - (c) is capable of devolution by will or by operation of law.
- Directors: govern companies. More intricately involved in the day-to-day running of a closely held company, but delegate such tasks depending on the size of the company. It is permissible for directors to also be shareholders in the company. S9:
 - (a) a person who:
 - (i) is appointed to the position of a director; or
 - (ii) is appointed to the position of an alternate director and is acting in that capacity;regardless of the name that is given to their position; and
 - (b) unless the contrary intention appears, a person who is not validly appointed as a director if:
 - (i) they act in the position of a director; or
 - (ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.
- Creditors: lend capital to companies and may include financial institutions (banks), other companies or individuals. The money is lent with the understanding it will be received back in full (and probably with accrued interest or other rights)

Key roles in the company:

1. Board of Directors → Management of the company should be made only by the Board of Directors - s198A *Corporations Act*
 - a. Directors may be
 - i. Executive: Employment contract with the company → In insolvency scenarios they will be liable
 - ii. Non Executive: no employment with the company only association is through their role as director by virtue of their membership of the board
2. Chief Executive Officer/Managing Director (C.E.O) takes care of the company day to day
3. Chief Financial Officer: CFO: Left-hand man of the CEO
4. Company secretary: dedicated individual to take care of the administration of the company i.e. recording minutes of meetings, organizing meetings etc

Who owns a company?

Companies capital structure: The companies financial base that allows them to operate → divided into debt and equity

Equity holders: most common type is a shareholder

Types of equity: Convertible, preferential, optional equity

Traditional priority is that debt must be paid before equity → Therefore you cannot pay shareholders if you are insolvent.

Debt holders: creditors. Relationship between creditors and the company is also voluntarily contractual in almost all cases.

→ NO ONE OWNS A COMPANY BECAUSE THE COMPANY IS A PERSON (S124)

Types of companies:

Public companies: Those with more than 50 non-employee shareholders.

- Can raise capital from the public and issue prospectus and products if compliant with 6D

Private companies: Proprietary Company = Pty Ltd. *Corporations Act* s45A

- Are not listed on the stock exchange, cannot issue prospectus or engage in conduct that would require compliance with Ch 6D: s113(3)
- No more than 50 non-employee shareholders s113(1)
- Two different types:
 - Small: Not subject to many of the disclosure obligations of other companies i.e. requirement to lodge audited financial statements to ASIC
 - Must satisfy s45A(2) to be classified as small
 - Large: more onerous if does not satisfy s42a(2)

Corporate groups: Holding companies and their subsidiaries – normally set up for a specific purpose

Sole trader: Not a legal entity separate from its owners and managers, therefore legal liability still lays with the owner.

- Advantages:
 - No specific legal requirements outside of tax and registration

- Almost complete financial privacy because of no legal disclosure requirement
- Able to operate across state borders due to little regulation of structure
- Disadvantages:
 - Owner has *unlimited personal liability* for company debts, failure to meet such would send them bankrupt and leave them pursuable in civil lawsuits
 - Harder to raise finance without changing the business structure to a partnership

Joint ventures: Two or more parties cooperating with each other to undertake a particular project

- Each part contributes specific expertise
- Parties often seek to classify commercial relationships as joint ventures not partnerships to avoid the imposition of fiduciary obligations and the extensive restrictions and liabilities that arise under the Partnership Acts

→ DOES NOT REALLY EXIST: Not a separate legal entity, not regulated under statute, essentially a feature under contract for two parties to work together and no more than that. In order to avoid being ruled a partnership you cannot be working together to create a profit, this must be avoided in order to rule out the fiduciary obligation that arises in a partnership

Trusts: just a legal fiduciary relationship between trustee and beneficiary vis a vis the trust property. Commonly set up via a formal trust deed, but can also be created by implication of law.

Requirements:

1. Trustee
2. Assets (property or funds)
3. Beneficiary

Advantages: allowing large aggregations of assets to be combined for the collective benefit of the beneficiaries. Tax advantages, including ability to split income between beneficiaries although trust tax losses do not flow to beneficiaries and are retained by the trust to offset against future trust losses

Disadvantages: complexity of structure. Trustees incur personal liability as trusts are not separate legal entities and in some cases where trust property is insufficient to pay debts they will be liable for those incurred by them.

Charities: Still a business! If they fail to generate enough funds through donations or otherwise to pay their costs they will be insolvent and wound up