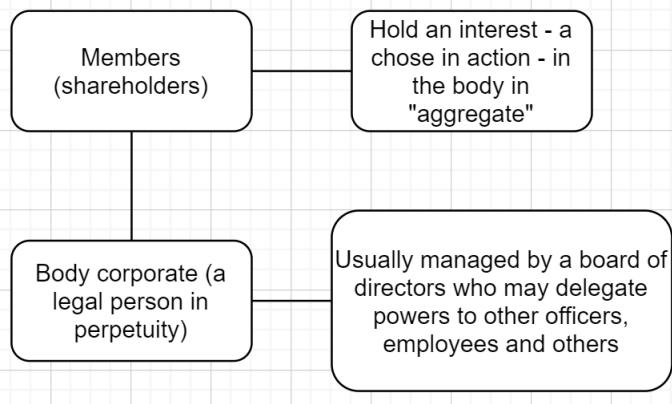


BUSINESS ASSOCIATIONS NOTES

WEEK ONE CLASS ONE / TWO – INTRODUCTION TO BUSINESS ASSOCIATIONS



Powers of the participants (members, body corporate and directors) and the corporation's functions and objects are generally set by the Charter, Statute or Constitution of the corporation.

A corporation sole is a body where the sole shareholder is also the body corporate – very weird situation e.g. the king or a bishop.

The important part about a listed company is that its shares are tradeable at market price without impediment.

Important to understand that corporations can do anything – they are not limited to performing only business or commercial activities.

Only important implications of the history of corporations law:

1. Role of partnerships;
2. Role of trust law;
3. Role of contracts (e.g. corporate constitution).

Types of company under the Corporations Act (s 112):

1. Proprietary companies (s 113)
 1. Limited by shares (Pty Ltd)
 2. Unlimited with share capital (very rare)
2. Public companies
 1. Limited by shares
 2. Limited by guarantee (no shareholders, has members but does not raise capital from members – rather they are guarantors; used for NFPs)
 3. Unlimited with share capital
 4. No liability (only mining companies)

From registration, a company is a corporation (legal person) with a registered name and an ACN (s 119 – this is the important creation by registration provision). No (statutory) need for purpose, Constitution, etc – registration is key.

Shareholders have the most limited liability, but rank last when the company is winding up (residual interest).

Company definitions:

1. Proprietary companies (ss 45A and 113):
 - a. No more than 50 non-employee shareholders.
 - b. No offer of shares other than to existing shareholder or employees (no disclosure under Chapter 6D Fundraising).
 - c. Small if on a consolidated basis:
 - i. Revenue < \$50 million;
 - ii. Gross assets < \$25 million;
 - iii. Less than 100 employees.

otherwise large.

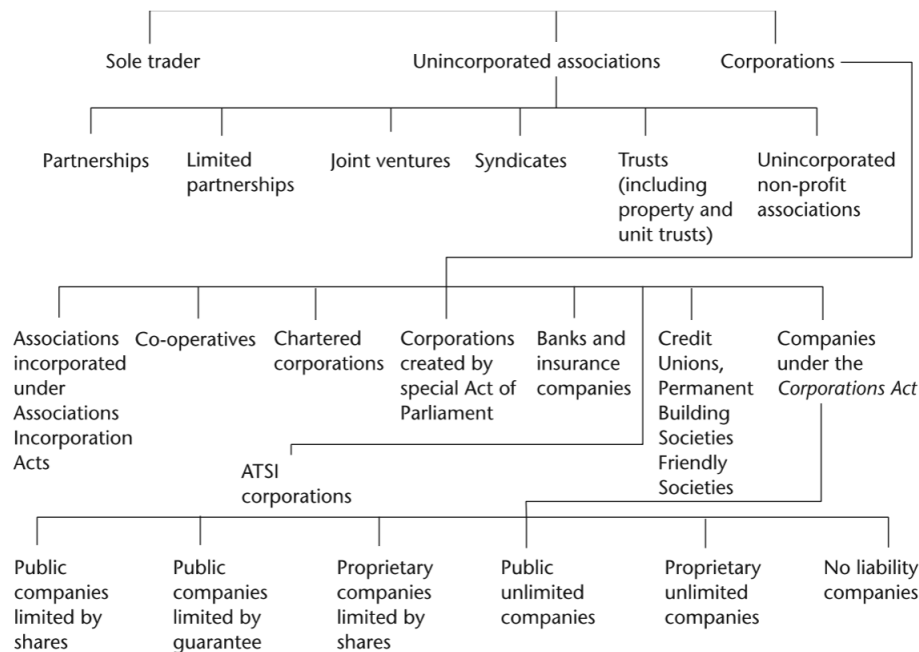
2. Public companies: any company that is not a proprietary company.

Section 114: one-member companies.

See ss 117-121 for incorporation and registration.

Key terms in corporations law

Figure 3.1 The forms of business association



Six types of company can be registered under *Corps Act*:

1. Proprietary company limited by shares
2. Proprietary company unlimited with share capital
3. Public company limited by shares
4. Public company limited by guarantee
5. Public company unlimited by share capital
6. No liability public company

Proprietary companies: No more than 50 non-employee shareholders, constrained in distribution of securities

Public companies: Registered non-proprietary companies

A share is a bundle of rights (a chose in action) to participate in (a) the financial distributions made by the company and (b) corporate governance decisions. Power to issue shares is usually vested in directors.

Sole traders:

- Unlimited liability
- Limited life (dies with sole trader)
- One person involved in business

Partnerships:

1. No separate legal personality
2. Partners owe fiduciary duties to each other (*Chan v Zacharia*)
3. Unlimited joint liability of partners for contract (s 9)
4. Unlimited joint and several liability of partners for tort and crime (s 10)

Canny Gabriel Castle Jackson v Volume Sales: Determined by ‘total arrangement’ objectively, not by intentions of partners.

Must be **carrying on a business** in common **with a view to profit**.

Business: s 1B every trade, occupation or profession.

Carrying on: a repetition of transactions which constitute a business (*Re Griffin; Ex parte Board of Trade*)

Joint ventures: distinguished from partnerships by the sharing of product rather than profit (*UDC Ltd v Brian Pty Ltd*)

Unincorporated associations:

1. No separate legal personality
2. Must be not for profit
3. Note issues with liability for contract: *Peckham v Moore*

Incorporated associations:

1. Separate legal personality
2. Must be not for profit

Note also **cooperatives** and **ATSI corporations**.

Common financial distributions rights include:

1. Right to receive dividend payouts
2. Right to payout in winding up of companies

Common corporate governance rights include:

1. Right to receive notice of general meetings

2. Right to attend, speak at and demand a poll at general meetings
3. Right to elect and remove directors
4. Right to vote, in some cases by proxy, at general meetings on matters within the competence of the general meeting to determine
5. Right to derivative suit on behalf of the corporation

Corps Act sections:

45A Proprietary companies if registered as or converts to proprietary company; max 50 non-employee shareholders; cannot engage in activities requiring disclosure to investors

112 Lists types of companies and requirements for each type

113 Proprietary companies 2.0

114 Company must have at least one member

117 Applying for company registration

118 ASIC response to applications

119 Company exists upon registration

119A Jurisdiction of incorporation and registration

120 Members, directors, company secretary appointment

121 Registered office of corporation

WEEK TWO CLASS ONE – LIMITED LIABILITY AND SEPARATE LEGAL PERSONALITY

LIMITED LIABILITY AND SEPARATE LEGAL PERSONALITY

Separate legal personality and limited liability are conceptually distinct, but functionally linked. Separate legal personality effectively partitions corporate assets from stakeholder assets; limited liability prevents access to non-corporate assets.

Arguments in favour of limited liability:

1. Encourages investment by passive investors
2. Relieves shareholders of the burden of monitoring the wealth of fellow shareholders
3. Hence encourages free liquidity of share capital, reducing cost of capital to the company and creating a performance incentive to management (as the company can easily be acquired and management replaced)
4. Market pricing mechanism for shares relies upon price reflecting worth of share irrespective of holder, which requires limited liability
5. Encourages entrepreneurial risk taking as companies may safely invest in high-risk high-return projects

Separate legal personality means that corporations may be civilly or criminally liable, and may sue in its own name. General interpretation of statutes presumes 'person' includes corporations (*Acts Interpretation Act 1901* (Cth) s 22; *Interpretation Act 1897* (NSW) s 21(c)).