

LLH305 CORPORATE LAW

SEMESTER 2 2021

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1 FUNDAMENTALS OF CORPORATE LAW

1.1 (WK 1) INTRO AND CONTEXT OF AUSTRALIAN CORPORATE LAW

1.1.1 Overview

OVERVIEW

At the end of this topic you should understand the nature of companies, the history of company law in Australia, the Constitutional position with respect to Australian companies, sources of company law in Australia, the basis of the operation of the *Corporations Act 2001* (Cth), and the role and function of the Australian Securities and Investments Commission (ASIC) in administering the Act. In addition, you should have a basic understanding of the essential features of companies, types of companies, and issues that arise prior to incorporation.

The sub-topics you will cover are:

- 1.1 An Introduction to Companies and Company Law
- 1.2 Company Law in Australia: Where it Started, how its going.
- 1.3 The Nature of Companies
- 1.4 Types of Companies
- 1.5 Companies and Business Planning
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Required readings

- 1.1 A Hargovan, M Adams and C Brown, *Australian Corporate Law* (LexisNexis Butterworths, 7th ed, 2021), chapter 1. This is your **prescribed textbook**.
- 1.2 Chapter 2 of your prescribed textbook to consolidate your understanding of the role of ASIC.
- 1.3 Chapter 3 paragraphs 3.57-3.83 of your **prescribed textbook**.
- 1.4 **NA**
- 1.5 Chapter 3, [3.1] – [3.56] of your **prescribed textbook**.

1.1.2 Outline of week

Part 1: An Introduction to Companies and Company Law

- I. What is a company?

Part 3 Companies and Business Planning

II. What is company law?	X. When forming a business what other business forms are available and how to they compare to companies?
III. How is company law policed and enforced?	
IV. History of companies and company law	
V. Sources of Company law	
VI. Key terminology	XI. What are the advantages of forming a company?
Part 2: The Nature of Companies	XII. When a business decides to incorporate what influences their decision as to what corporate form to take?
VII. Essential features of companies	
VIII. What are companies like in Australia today?	
IX. Types of companies	

1.1.3 PART 1: AN INTRODUCTION TO COMPANIES AND COMPANY LAW

I. What is a company?
II. What is company law?
III. How is company law policed and enforced?
IV. History of companies and company law
V. Sources of Company law

I. WHAT IS A COMPANY?

A device created by law to encourage economic activity	<i>A company is a device; a vehicle that can be used conduct a business, to own assets, and manage liabilities.</i> <i>The business may have founders, investors and managers that run the business. The law recognises that all companies are separate from those founders, investors and managers.</i>
Companies are separate legal persons. This means they have a legal identity of their own.	
Theories of the firm help to understand the purpose of forming a company.	<i>Theories of the firm help to explain the purposes that can be served by forming a company. People form companies because of what companies make possible that other business forms do not. We consider these other business forms later in this topic.</i>
Companies provide a legal structure that allows for the pooling of ideas, capital and skills.	<i>Companies are economic entities that allow for the pooling of ideas, capital, and skills. The idea might be too large or complex for an individual to carry out on their own. Exploiting the idea to its full potential might require teaming with others – and corporate forms are ideal for this. Exploiting the idea to its full potential might require attracting investment from others – and given the legitimacy our society confers on the corporate form, forming a company may help to attract investors. Creating a separate legal person to hold property and incur the rights and obligations of the business, simplifies, and legitimises dealings between the business and those with whom it conducts business.</i>

II. WHAT IS COMPANY LAW?

Company law regulates
The formation of companies

The attributes that companies have (such as for eg separate legal personality and limited liability)
Internal management of companies (eg between management and investors) <i>When we say that company law governs the internal management of companies, this means that it provides laws and procedures for the appointment of officers, how decisions will be made, the duties of officers and the rights of members, and relationship between officers and members and the company.</i>
External relations (eg facilitating dealings with “outsiders” such as customers and creditors) <i>Company law also facilitates external relationships, that is, dealings between the company and outsiders such as customers and creditors.</i>
How companies can raise capital <i>Note - Capital is the fund of money from which the company's commercial activities or business is operated. Raising capital is sometimes called fundraising. Company law regulates what types of security companies are able to offer to secure access to credit or the other unique ways in which companies raise capital.</i>
Reorganisation, takeovers, liquidation, winding up and deregistration. <i>Note that in corporate law, terminating a company means winding up the company up and deregistering it.</i>

Company law aims to:

- encourage economic activity
- foster trust and confidence in financial markets

Companies must abide by the law. This includes company law as well as many other laws such as environmental law, mining law, criminal law, consumer protection law, property laws etc.

It is an essential feature of all companies that they are separate legal entities. One consequence of this is that a company that breaches a law, the company can suffer the penalty for doing so.