

MLP331 Corporate Law

Research Document

MLP331

2026 Edition

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Topic 1: Corporate Personality, Separate Legal Entity, Lifting the Corporate Veil, and ASIC

1. Overview

A company is an artificial legal person created by registration under the *Corporations Act 2001* (Cth) ('*Corporations Act*'). Upon registration, a company acquires a legal existence wholly separate from the natural persons who own or manage it, with the capacity to hold property, contract, and litigate in its own name. The foundational doctrine of separate legal entity — confirmed by the House of Lords in *Salomon v Salomon & Co Ltd* [1897] AC 22 — shields shareholders from personal liability for the company's debts and obligations, with limited exceptions at common law and under statute. The *Australian Securities and Investments Commission Act 2001* (Cth) ('*ASIC Act*') establishes the Australian Securities and Investments Commission ('ASIC') as the primary corporate regulator, with broad investigatory and enforcement powers to ensure compliance with the *Corporations Act*.

Reading Guide: First pass — §§1–4, 6, 10 (framework, key cases, procedural steps, quick reference). **Deep revision** — §§5, 7, 8, 9 (substantive analysis, exam technique, tips, cross-references). **Critical thinking** — §5.5 Critical Perspectives (policy arguments for essay-style questions).

2. Key Definitions

TERM	DEFINITION	AUTHORITY
Company	An artificial entity recognised by law as a legal person, with rights and liabilities distinct from its members	<i>Corporations Act 2001</i> (Cth) s 119
Separate legal entity	The principle that a registered company is a legal person distinct from its shareholders, directors, and other participants	<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22
Corporate veil	The legal separation between a company and its participants; protects participants from the company's liabilities	General common law doctrine
Lifting (or piercing) the corporate veil	A court's (or legislature's) disregard of the separate legal personality to impose liability on those behind the company	Common law and <i>Corporations Act 2001</i> (Cth) ss 588G, 588H
Perpetual succession	The company's continued existence irrespective of changes in membership, death, or bankruptcy of any member	<i>Corporations Act 2001</i> (Cth) s 119
Limited liability	Shareholders' financial exposure is limited to the amount unpaid on their shares	<i>Corporations Act 2001</i> (Cth) s 516
ASIC	The Commonwealth statutory body that administers and enforces the <i>Corporations Act</i> and regulates financial services and markets	<i>Australian Securities and Investments Commission Act 2001</i> (Cth) s 1
Insolvent trading	A company incurring debts when unable to pay debts as they fall due	<i>Corporations Act 2001</i> (Cth) s 588G
Sole trader	An individual who carries on business in their own name, with unlimited personal liability	General law
Partnership	Persons carrying on a business in common with a view to profit	<i>Partnership Act 1958</i> (Vic) s 5

3. Legislative Framework

Primary Legislation

ACT	KEY PROVISIONS	PURPOSE
<i>Corporations Act 2001</i> (Cth)	s 119	Company comes into existence on registration as a body corporate
<i>Corporations Act 2001</i> (Cth)	s 124(1)	Legal capacity and powers of a company (to own property, contract, sue and be sued, issue shares, etc.)
<i>Corporations Act 2001</i> (Cth)	s 516	Liability of members in winding up of a limited company
<i>Corporations Act 2001</i> (Cth)	s 588G	Director's duty to prevent insolvent trading — statutory veil-lifting
<i>Corporations Act 2001</i> (Cth)	s 588H	Defences to insolvent trading liability
<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	ss 1, 11–13	Establishment, functions, and powers of ASIC
<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	Pt 3 Div 1	ASIC's investigatory powers
<i>Partnership Act 1958</i> (Vic)	s 5	Definition of partnership

Relevant Provisions in Full

s 119 — *Corporations Act 2001* (Cth) 'A company comes into existence as a body corporate at the beginning of the day on which it is registered.'

s 124(1) — *Corporations Act 2001* (Cth) 'A company has the legal capacity and powers of an individual both in and outside this jurisdiction.' The provision then specifies powers including: owning property, contracting, suing and being sued, issuing shares, granting security interests, and doing anything it is lawfully authorised to do.

s 588G(1)–(2) — *Corporations Act 2001* (Cth) A director of a company contravenes this section if: (a) the company incurs a debt; and (b) at the time the debt is incurred, there are reasonable grounds for suspecting that the company is insolvent, or would become insolvent; and (c) at that time, the director is aware that those grounds exist, or a reasonable person in a like position would be so aware.

4. Key Cases

CASE	CITATION	PRINCIPLE	APPLICATION
<i>Salomon v Salomon & Co Ltd</i>	[1897] AC 22	A registered company is a legal entity separate from its members, even where one person effectively controls it	Use when: controller of company is sued for company's debts; company used by a sole trader; question asks whether shareholder is personally liable
<i>Lee v Lee's Air Farming Ltd</i>	[1961] AC 12	A controlling shareholder/director may simultaneously hold multiple legal relationships with the company (e.g., as employee)	Use when: question involves a dominant shareholder seeking to enforce rights against the company, or vice versa
<i>Macaure v Northern Assurance Co Ltd</i>	[1925] AC 619	A shareholder has no proprietary interest in company property; the company alone owns its assets	Use when: a shareholder claims an interest in company property or seeks to insure company property in their own name
<i>Prest v Petrodel Resources Ltd</i>	[2013] UKSC 34	The court's power to pierce the corporate veil at common law is narrow and confined to cases where a person is under an existing legal obligation and deliberately interposes a company to evade it	Use when: asked to critically evaluate veil-lifting; use to argue the doctrine should be confined rather than expanded

Case Summaries

Salomon v Salomon & Co Ltd^[1]

Facts: Mr Salomon operated a shoe and leather business as a sole trader. The *Companies Act 1862* (UK) required seven shareholders, so he incorporated Salomon & Co Ltd with himself as a 99% shareholder and managing director, and six family members holding one share each. He sold his business to the company in exchange for shares and debentures (secured debt) worth £10,000. The company failed; its assets were insufficient to repay both the secured creditor (Mr Salomon, as debenture holder) and unsecured creditors.

Issue: Whether Mr Salomon was personally liable for the company's debts because the company was merely his agent or alter ego.

Held: The House of Lords unanimously held that Salomon & Co Ltd was a separate legal entity from Mr Salomon. The company was not his agent or trustee. As a secured creditor, Mr Salomon was entitled to be paid ahead of unsecured creditors. Lord Macnaghten stated:

'The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided in the Act.'^[2]

Exam Application: Cite *Salomon* whenever the examiner asks whether a shareholder or controller is personally liable for the company's debts. The answer is almost always no, unless one of the veil-lifting exceptions applies.

Lee v Lee's Air Farming Ltd^[3]

Facts: Mr Lee incorporated a company to operate a crop-dusting business. He held virtually all shares and was appointed governing director with full management authority. He also contracted with the company as an employee pilot. Mr Lee was killed in a plane crash while on duty. Mrs Lee claimed workers' compensation, arguing her husband had been an employee of the company.

Issue: Whether the controlling shareholder-director could simultaneously be an employee of the company.

Held: The Privy Council held that the company was a separate legal entity from Mr Lee. There was no reason in principle why a person could not hold multiple and concurrent legal relationships with the same company — as shareholder, director, and employee. Mrs Lee's claim for workers' compensation succeeded.

Exam Application: Use *Lee* to establish that the separate entity principle allows a person to wear multiple legal 'hats' in relation to one company. Relevant where questions involve employment contracts, insurance claims, or dual roles.

| *Macaura v Northern Assurance Co Ltd*^[4]

Facts: Macaura assigned timber rights to a company he controlled and received shares in return. He insured the timber in his own name. The timber was destroyed by fire. The insurer denied the claim on the basis that Macaura had no insurable interest in company property.

Issue: Whether a sole beneficial owner of a company had an insurable interest in the company's property.

Held: The House of Lords held that Macaura had no insurable interest in the timber because it was owned by the company, not by him. Lord Buckmaster stated:

'No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.'^[5]

Exam Application: Use *Macaura* to demonstrate the practical consequence of separate property ownership. Note the caveat: the *Insurance Contracts Act 1984* (Cth) s 17 has modified the strict position in Australia regarding insurable interest.

| *Prest v Petrodel Resources Ltd*^[6]

Facts: In divorce proceedings, a husband deliberately held real property through corporate entities to shield assets from his wife's financial claims. The wife sought an order for transfer of the properties.

Issue: Whether the court could pierce the corporate veil to treat company property as the husband's property.

Held: The UK Supreme Court held that the power to pierce the corporate veil at common law is limited and should be used only where a person is under an existing legal obligation or liability and deliberately interposes a company to evade it — not merely to produce a just result. Lord Sumption articulated a clear restriction on the doctrine.

Exam Application: *Prest* is the leading modern authority on the limits of veil-lifting. Use it in any essay or problem question that asks how far courts will go to disregard corporate personality. The case supports a narrow, principled approach.

5. Substantive Content

5.1 The Company as Artificial Legal Person

A company is an artificial entity created by statute. It has no physical existence but is recognised by law as a person with legal rights and liabilities.^[7] The *Corporations Act* s 119 provides that a company comes into existence as a body corporate at the beginning of the day on which it is registered. Section 124(1) confers on a company the legal capacity of an individual, including the capacity to:

- own real and personal property;
- enter into contracts;
- sue and be sued in its own name;
- issue shares and grant security interests;
- do anything it is lawfully authorised to do.

The company is distinct from its shareholders, directors, officers, and employees. Company obligations and liabilities belong to the company alone, not to its participants.

5.2 Characteristics of a Company

CHARACTERISTIC	DESCRIPTION	CONSEQUENCE
Separate legal entity	Company is a legal person distinct from its members	Members generally not liable for company debts
Perpetual succession	Company continues to exist despite changes in membership, death, or insanity of members	Stability and continuity of the enterprise
Limited liability	Members' liability limited to the amount unpaid on their shares	Encourages investment and risk-taking
Share transferability	Shares may be transferred to other persons (subject to company constitution)	Liquidity of investment; enables capital markets
Contractual capacity	Company may contract with its own members, directors, and employees	Enables multiple legal relationships with same person

5.3 Effects of Registration

Registration creates a body corporate under s 119. The consequences are immediate and automatic:

1. **Separate legal personality** — the company is a person at law, capable of holding rights and bearing liabilities in its own name.
2. **Property ownership** — company property belongs to the company, not its shareholders (*Macaura v Northern Assurance Co Ltd* [1925] AC 619).
3. **Contractual capacity** — the company may enter contracts with third parties and with its own participants (*Lee v Lee's Air Farming Ltd* [1961] AC 12).
4. **Litigation capacity** — the company may sue and be sued in its own corporate name.
5. **Perpetual succession** — the company continues to exist regardless of changes in shareholders or directors.
6. **Limited liability** — shareholders are not liable for company debts beyond the amount unpaid on their shares (*Corporations Act* s 516).

5.4 Lifting the Corporate Veil

The corporate veil is the legal separation between a company and its participants. It is the general rule that courts will respect the separate entity principle established in *Salomon v Salomon & Co Ltd* [1897] AC 22. However, in exceptional circumstances, the veil may be disregarded — this is referred to as 'lifting', 'piercing', or 'penetrating' the corporate veil.

5.4.1 Common Law Grounds

The common law recognises a narrow set of circumstances in which courts may look behind the corporate structure:

- **Fraud or device:** Where the corporate form is used as a mechanism to perpetuate a fraud or as a sham designed to deceive creditors or the court. Courts will not permit the corporate form to be used as an instrument of fraud.
- **Avoidance of existing legal obligation:** Where a person deliberately interposes a company as a device to evade a pre-existing legal duty or liability owed to another person. This is the ground confirmed and narrowly defined in *Prest v Petrodel Resources Ltd* [2013] UKSC 34.
- **Agency or façade:** Where the company is operated as the agent of its controller, or where the company is a mere façade with no genuine independent existence, courts may attribute the company's acts and liabilities to the controller. Under-resourced companies with no real separate operation may be found to be agents of their controllers.

The modern approach after *Prest* is that the power to pierce the corporate veil is a 'last resort' doctrine, available only where no other legal remedy can address the evasion. Courts will not pierce the veil merely because doing so would produce a just result.

5.4.2 Statutory Grounds

The *Corporations Act* contains several provisions that impose personal liability on directors, effectively lifting the veil by operation of statute:

PROVISION	GROUND	EFFECT
<i>Corporations Act</i> s 588G	Director's duty to prevent insolvent trading	Director personally liable for company debts incurred while there were reasonable grounds to suspect insolvency
<i>Corporations Act</i> s 588H	Defences to insolvent trading	Director may avoid liability if they had reasonable grounds to expect solvency, or relied on information from a competent person, or took reasonable steps to prevent the debt
<i>Corporations Act</i> — taxation and other provisions	Various	Directors may be made personally liable for unpaid taxation obligations of the company

The insolvent trading provision (s 588G) is the most significant statutory lifting of the veil. A director contravenes s 588G if:

1. the company incurs a debt;
2. at the time of incurring the debt, there are reasonable grounds to suspect the company is insolvent or would become insolvent by incurring the debt; and
3. the director is aware of those grounds, or a reasonable person in a like position would be so aware.

The director becomes personally liable for the amount of the loss suffered by unsecured creditors as a result of the debt incurred.

5.5 Critical Perspectives

Shareholder Primacy vs Stakeholder Model

PERSPECTIVE	PROPONENT / SOURCE	ARGUMENT	COUNTER-ARGUMENT
Shareholder primacy	Traditional corporate law model; Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (1970)	The purpose of a company is to maximise returns to shareholders; directors owe duties to shareholders and must act in the shareholders' best interests; external costs should be managed through regulation, not corporate law	Ignores the interests of employees, creditors, consumers, the environment, and the broader community; encourages short-term thinking and risk externalisation; the <i>Corporations Act</i> itself acknowledges multiple stakeholder interests (e.g., creditors' interests when insolvent)
Stakeholder model	R Edward Freeman, <i>Strategic Management: A Stakeholder Approach</i> (1984); broader corporate social responsibility movement	Companies should consider the interests of all stakeholders — employees, creditors, customers, the community, and the environment — not just shareholders; long-term value creation requires sustainable relationships with all constituencies	Difficult to operationalise; directors cannot serve multiple masters without clear hierarchy; may reduce accountability and enable directors to justify any decision by appeal to an unspecified stakeholder interest
Pluralistic/refined stakeholder model	Modern corporate governance reforms; ASX Corporate Governance Principles and Recommendations	A middle position: directors owe duties primarily to the company (not shareholders personally), but the company's long-term interests include sustainable stakeholder relationships; ESG (environmental, social, governance) considerations are increasingly mainstream	Does not resolve the fundamental tension about whose interests prevail in a conflict; uncertain how courts would enforce a pluralistic duty

Veil-Lifting Policy Tensions

PERSPECTIVE	ARGUMENT	COUNTER-ARGUMENT
Strict Salomon principle	Legal certainty and commercial confidence depend on absolute respect for separate corporate personality; investors, creditors, and commercial actors price risk on the assumption of limited liability; unpredictable veil-lifting would undermine the corporate form	Permits abuse: controllers can extract value and leave creditors with an empty shell; the principle was never intended to shield deliberate wrongdoing
Flexible, discretionary veil-lifting	Justice demands that courts look behind the corporate form where the structure is used oppressively or to defraud; company law has always contained equitable exceptions	Unpredictability: discretionary veil-lifting creates uncertainty for legitimate transactions and corporate planning
Post- <i>Prest</i> restrictive approach	<i>Prest v Petrodel Resources Ltd</i> [2013] UKSC 34 provides a principled, narrow rule: only pierce where (i) a person is under an existing legal obligation and (ii) deliberately interposes a company to evade it; other remedies (agency, trust, constructive trust) should be exhausted first	The restrictive rule may still allow sophisticated actors to evade liability by ensuring no pre-existing obligation exists at the time of interposing the company

6. Procedural Steps / Decision Trees

Analysing a Separate Legal Entity Problem

1. **Identify the legal relationship:** Who is seeking to hold whom liable — a creditor suing a director/shareholder, or vice versa?
2. **Confirm registration:** Is the entity registered as a company under the *Corporations Act* s 119? If yes, the separate entity principle applies as the starting point.
3. **Apply the *Salomon* principle:** Confirm that, as a matter of general law, the company's liabilities are its own and do not automatically attach to its members or directors.
4. **Check for veil-lifting grounds:**
 - **Common law:**
 - Is there evidence of fraud, sham, or device? — If yes, the court may pierce.
 - Is the company being used to evade a pre-existing legal obligation? (*Prest*) — If yes, narrow veil-lifting possible.
 - Is the company operating purely as the agent or façade of its controller? — If yes, agency principles may apply.
 - **Statutory:**
 - Has a director caused the company to incur debts while there were reasonable grounds to suspect insolvency? (*Corporations Act* s 588G) — If yes, director is personally liable for resulting debts.
 - Do any other statutory provisions impose personal liability?
5. **Consider defences:** For insolvent trading, assess the defences in s 588H.
6. **State the outcome:** If no exception applies, the separate entity principle stands. If an exception applies, state the effect: personal liability on the director/controller, or the company's acts attributed to its controller.

Analysing Whether to Lift the Veil — Nested Decision

Is the company properly registered under the *Corporations Act*?

Yes → *Salomon* principle applies; separate legal entity is the default position

Is there evidence of fraud or sham? **Yes** → Common law exception: court may pierce the veil

No → Continue

Is the company being used to evade an existing legal obligation?

Yes → *Prest* exception: narrow veil-lifting possible

No → Continue

Is the company purely an agent/façade of its controller with no genuine independent existence?

Yes → Agency exception may apply

No → Continue

Does s 588G apply (insolvent trading by director)? **Yes** → Statutory veil-lifting: director personally liable

No → Veil is not lifted; separate entity protected

No → Not a company; no corporate veil analysis required

7. Common Exam Questions

Common Fact Patterns

FACT PATTERN	ISSUE TRIGGERED	KEY AUTHORITY
Sole trader incorporates a company, sells their business to it for shares and secured debt; company fails; unsecured creditors suffer loss	Separate legal entity; is the controller personally liable?	<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22
Controlling shareholder/director also contracts with the company as an employee; seeks to enforce employment rights	Multiple legal relationships with a single company; separate entity	<i>Lee v Lee's Air Farming Ltd</i> [1961] AC 12
Shareholder insures company property in their personal name; property destroyed; insurer denies claim	Shareholder has no proprietary interest in company property	<i>Macaura v Northern Assurance Co Ltd</i> [1925] AC 619
Director continues to cause the company to incur debts knowing the company cannot pay them	Insolvent trading; statutory lifting of veil	<i>Corporations Act 2001</i> (Cth) s 588G
A person, subject to a court order or obligation, puts assets into a company to shield them from the obligee	Veil-lifting to prevent evasion of existing legal obligation	<i>Prest v Petrodel Resources Ltd</i> [2013] UKSC 34
Parent company and subsidiary operate as a group; creditor of subsidiary attempts to sue the parent	Separate entity principle applies to corporate groups; no group liability	<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22
Company formed with no real business activity, no assets, and no commercial purpose other than to hold liability	Sham/façade exception to separate entity	Common law fraud/agency exception
Question asks to advise whether someone should structure their business as a company, sole trader, or partnership	Comparison of business structures: liability, succession, capital, tax	<i>Corporations Act 2001</i> (Cth) s 119; <i>Partnership Act 1958</i> (Vic) s 5

Question Type 1: Problem Question — Separate Legal Entity and Personal Liability

Approach:

- Identify the relevant parties (shareholder/director vs creditor or claimant).
- State the general rule from s 119 and *Salomon*: the company is a separate legal person; its debts are its own.
- Identify whether any of the recognised exceptions to the principle exist on the facts (fraud, evasion of obligation, agency/façade, insolvent trading under s 588G).
- Apply each relevant exception to the facts with supporting authority.
- Conclude on liability.

Key Points to Include:

- The *Salomon* principle as the starting point — always state it before any exception.
- Precise identification of which exception is being argued.
- *Prest* as the modern authority limiting the scope of common law veil-lifting.
- For s 588G: articulate all three elements — debt incurred, reasonable grounds to suspect insolvency, director's actual or constructive knowledge.
- Defences under s 588H if s 588G is raised.
- The conclusion must clearly state whether the corporate veil stands or is lifted.

Dot-Point Answer Plan:

- Identify: Who is suing whom, and for what liability?
- State *Salomon* principle: company is separate legal entity under s 119; members not liable for company debts (cite *Salomon*)
- Ask: Does any exception apply?
 - Fraud/sham? → Identify evidence on facts; if yes, veil may be pierced
 - Evasion of existing obligation? → Apply *Prest* test; identify pre-existing obligation + deliberate interposition
 - Insolvent trading? → Apply s 588G elements; address defences under s 588H
 - Agency/façade? → Is company a genuine independent entity or purely controlled instrument?
- If no exception: conclude that separate entity stands; controller not liable
- If exception applies: state the consequence and quantify (e.g., director liable for the amount of the debt under s 588G)

Question Type 2: Essay Question — Critical Evaluation of the Corporate Veil Doctrine**Approach:**

- Define the doctrine and its purpose.
- Trace the development from *Salomon* through to *Prest*.
- Identify the policy tensions (certainty vs justice; enabling commerce vs preventing abuse).
- Present the competing models (strict *Salomon*; flexible judicial discretion; *Prest* restrictive approach).
- Evaluate the post-*Prest* position — is it principled and workable?
- Consider statutory solutions (s 588G insolvent trading) as an alternative to judicial veil-lifting.
- Reach a reasoned conclusion.

Key Points to Include:

- Acknowledge both sides of the shareholder primacy/stakeholder debate.
- *Prest* as a principled limitation — but note its limits (does not address pre-arrangement to avoid future obligations).
- Statutory lifting as a targeted and more predictable response.
- The tension between commercial certainty (investors, creditors, commercial actors relying on limited liability) and justice (creditors of undercapitalised companies; abuse of the corporate form).

Dot-Point Answer Plan:

- Introduce: the corporate veil doctrine and its importance
- State the foundational rule: *Salomon* [1897] AC 22; s 119 *Corporations Act*
- Identify the policy purpose of separate legal entity: encourages investment, mobilises capital, enables entrepreneurship
- Tension: the same doctrine enables abuse — asset-stripping, insolvent trading, evasion of obligations
- Common law responses: fraud, evasion, agency exceptions — examine scope
- *Prest* [2013] UKSC 34: narrows the doctrine to cases of evasion of existing obligations; eliminates discretionary justice-based piercing
- Statutory response: s 588G — more targeted, clearer elements, more predictable
- Stakeholder model critique: should company law itself reflect stakeholder interests rather than relying on ad hoc veil-lifting?
- Conclusion: current law (post-*Prest* + s 588G) achieves reasonable balance but leaves gaps for sophisticated evasion arrangements

Question Type 3: Problem Question — ASIC Powers and Regulatory Framework

Approach:

- Identify the regulatory context: which conduct may breach the *Corporations Act*.
- Identify ASIC as the relevant regulator and its source of power (ASIC Act).
- Outline the specific powers available to ASIC on the facts (investigation, civil proceedings, criminal prosecution).
- State whether ASIC would be likely to exercise those powers.

Dot-Point Answer Plan:

- Identify the alleged breach: which provision of the *Corporations Act* is potentially breached?
- Identify ASIC as the primary regulator: established under the *ASIC Act*; empowered to ensure compliance with the *Corporations Act*
- Investigatory powers: ASIC may investigate suspected contraventions under *ASIC Act* Pt 3 Div 1; includes powers to require production of documents and examine persons under oath
- Enforcement options:
 - Civil proceedings (ASIC initiates civil penalty proceedings)
 - Criminal prosecution (concurrent with Director of Public Prosecutions)
 - Administrative action (banning orders, licence cancellations)
 - Referral to DPP for serious criminal conduct
- Advise the client on the risk and likely ASIC response

Question Type 4: Advisory Question — Choice of Business Structure

Approach:

- Identify the client's needs: liability protection, capital raising, management control, succession, tax.
- Compare company, sole trader, and partnership across these criteria.
- Recommend the appropriate structure with reasons.

Dot-Point Answer Plan:

- Identify the client's priorities from the facts
- Sole trader: simple, no separation of liability, no separate legal entity, unlimited personal liability
- Partnership: two or more persons; no separate legal entity in general law; partners jointly and severally liable; governed by *Partnership Act 1958* (Vic)
- Company: separate legal entity (s 119); limited liability; perpetual succession; can raise capital via shares; regulatory obligations under *Corporations Act*
- Apply the criteria to the facts
- Recommend a structure and explain why it best meets the client's needs

8. Exam Tips and Traps

Do:

Always state the *Salomon* principle first in any separate legal entity question before considering exceptions.

Cite s 119 *Corporations Act* when establishing that a company exists as a separate body corporate.

Distinguish between common law and statutory veil-lifting — they are different in operation and scope.

For s 588G, articulate all three elements before concluding that the director is personally liable.

Use *Prest* to argue that common law veil-lifting is narrowly confined.

Acknowledge that *Macauram* must be read subject to the *Insurance Contracts Act 1984* (Cth) s 17 in Australian practice.

In essay questions, engage with both the shareholder primacy and stakeholder model debates.

Do Not:

Do not conflate 'lifting the veil' with any situation where a director is held liable — the grounds for each exception are specific.

Do not assume that merely because one person controls a company, the corporate veil can be lifted — *Salomon* expressly rejected this.

Do not treat *Prest*

as if it opens up broad judicial discretion to pierce whenever justice demands — it does the opposite.

Do not apply s 588G without addressing all three elements and considering the defences in s 588H.

Do not describe ASIC's role without reference to its source of power in the *ASIC Act*.

Watch Out For:

The distinction between the company's obligations and the obligations of its controllers — the separate entity principle means they are not automatically the same.

Corporate groups: each subsidiary is a separate legal entity; the parent is not automatically liable for a subsidiary's debts.

The *Macaura*

caveat: while the case remains good authority for the separate property rule, its insurance application is modified in Australia.

The insolvent trading defence in s 588H — failure to address defences in an exam problem is a common error.

Essay questions may ask you to 'critically evaluate' the doctrine — this requires engagement with the policy tension, not merely a description of the law.

ASIC's concurrent criminal prosecution power alongside the DPP — ASIC does not have the sole authority to prosecute; this is a common source of confusion.

9. Connections to Other Topics

RELATED TOPIC	CONNECTION	CROSS-REFERENCE
Directors' Duties	Duties owed by directors to the company (not to shareholders personally); reinforces separate entity	<i>Corporations Act 2001</i> (Cth) ss 180–184
Insolvent Trading	The most significant statutory veil-lifting mechanism; directors personally liable for company debts incurred while insolvent	<i>Corporations Act 2001</i> (Cth) ss 588G–588H
Corporate Groups	Separate entity applies to each company in a group; no automatic group liability	<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22
Company Registration	The mechanism by which corporate personality is created under s 119	<i>Corporations Act 2001</i> (Cth) s 119
Shareholder Rights	Shareholders own shares, not company property; rights are to dividends and surplus on winding up	<i>Macaura v Northern Assurance Co Ltd</i> [1925] AC 619
ASIC and Regulation	ASIC enforces the <i>Corporations Act</i> ; understanding ASIC's role and powers is prerequisite to understanding enforcement of all other corporate law topics	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)
Partnership Law	Contrast with company: no separate entity; unlimited liability; no perpetual succession	<i>Partnership Act 1958</i> (Vic) s 5

10. Quick Reference Card

Key Tests

TEST / RULE	ELEMENTS	AUTHORITY
Separate legal entity	Company registered under s 119 → automatically a separate legal person with full legal capacity under s 124	<i>Salomon v Salomon & Co Ltd</i> [1897] AC 22; <i>Corporations Act 2001</i> (Cth) ss 119, 124
Common law veil-lifting (evasion)	(i) Person under existing legal obligation; (ii) deliberately interposes company; (iii) to evade that obligation	<i>Prest v Petrodel Resources Ltd</i> [2013] UKSC 34
Insolvent trading (s 588G)	(i) Company incurs a debt; (ii) reasonable grounds to suspect insolvency at time of incurring debt; (iii) director aware or a reasonable director would have been aware	<i>Corporations Act 2001</i> (Cth) s 588G
Insolvent trading defences (s 588H)	Reasonable grounds to expect solvency; reliance on competent person's information; steps taken to prevent incurring debt; absence from management due to illness	<i>Corporations Act 2001</i> (Cth) s 588H
No proprietary shareholder interest	Shareholders have no legal or equitable interest in company assets; entitled only to dividends and surplus on winding up	<i>Macaura v Northern Assurance Co Ltd</i> [1925] AC 619
Multiple concurrent relationships	A controlling shareholder may simultaneously be director and employee of the same company	<i>Lee v Lee's Air Farming Ltd</i> [1961] AC 12

Key Distinctions

CONCEPT	COMPANY	SOLE TRADER	PARTNERSHIP
Legal personality	Separate (s 119)	No — individual trades in own name	No — partnership is not a separate legal entity at general law
Member liability	Limited to unpaid shares	Unlimited personal liability	Partners jointly and severally liable
Perpetual succession	Yes	No	No — dissolution on death or exit of partner
Capital raising	Shares, debentures	Self-funded / borrowings	Capital contributions from partners
Regulatory obligations	<i>Corporations Act 2001</i> (Cth)	Minimal	<i>Partnership Act 1958</i> (Vic)
Management	Board of directors	Sole trader	Partners (unless limited partnership)

ASIC Powers Summary

POWER	SOURCE	DESCRIPTION
Registration of companies	<i>Corporations Act 2001</i> (Cth)	ASIC receives and processes applications for registration (Form 201)
Investigation	<i>Australian Securities and Investments Commission Act 2001</i> (Cth) Pt 3 Div 1	Power to investigate suspected contraventions; require document production; examine persons
Civil proceedings	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	ASIC may initiate civil penalty proceedings for contraventions of the <i>Corporations Act</i>
Criminal prosecution	Concurrent with DPP	ASIC may refer matters for criminal prosecution; concurrent power with the Director of Public Prosecutions
Administrative action	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	Banning orders; licence suspensions or cancellations; enforceable undertakings
Advisory role	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	ASIC advises the government on necessary changes to the <i>Corporations Act</i>
Educational role	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	ASIC undertakes public education and market guidance

11. References

Legislation

Australian Securities and Investments Commission Act 2001 (Cth).

Corporations Act 2001 (Cth).

Insurance Contracts Act 1984 (Cth).

Partnership Act 1958 (Vic).

Cases

Lee v Lee's Air Farming Ltd [1961] AC 12.

Macaura v Northern Assurance Co Ltd [1925] AC 619.

Prest v Petrodel Resources Ltd [2013] UKSC 34.

Salomon v Salomon & Co Ltd [1897] AC 22.

Secondary Sources

R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Pitman, 1984).

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Footnotes

[^1]: *Salomon v Salomon & Co Ltd* [1897] AC 22.

[^2]: Ibid 51 (Lord Macnaghten).

[^3]: *Lee v Lee's Air Farming Ltd* [1961] AC 12.

[^4]: *Macaura v Northern Assurance Co Ltd* [1925] AC 619.

[^5]: Ibid (Lord Buckmaster).

[^6]: *Prest v Petrodel Resources Ltd* [2013] UKSC 34.

[^7]: *Corporations Act 2001* (Cth) ss 119, 124.



Sample Preview

This is a preview of the complete study guide.
The full edition contains all **10 topics** across **~220 pages**.

TOPICS INCLUDED IN THE FULL EDITION:

1. Corporate Personality, Separate Legal Entity, Lifting the Corporate Veil, and ASIC
2. Classification of Companies, Registration, Corporate Constitution & Replaceable Rules
3. Company Actions, Promoters, Pre-Registration Contracts & Corporate Fundraising/Disclosure
4. Share Capital, Classes of Shares, Membership Rights & Dividends
5. Debt Finance, Debentures, PPSA & Directors — Types, Appointment, Removal
6. Directors' Duties Part 1 — Corporate Governance, Duty of Care & Business Judgment Rule
7. Directors' Duties Part 2 — Fiduciary Duties, Proper Purpose, and Conflicts of Interest
8. Insolvent Trading, Director Duty Remedies & Shareholder Meetings
9. Members' Remedies & ASIC Investigation Powers
10. External Administration — Receivership, Voluntary Administration & Liquidation