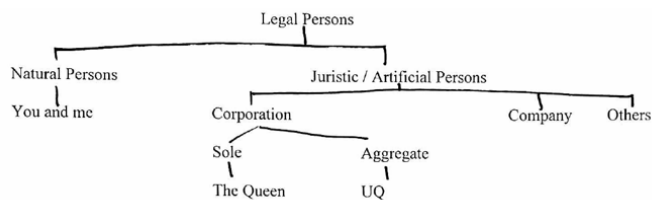


LAWS3702: Corporate Summary

Week 1: Nature and History of the Company	Relevant Cases
<u>What is a 'company'?</u>	
<p>a) A legal person, separate from the individuals involved in its operation</p> <ul style="list-style-type: none"> • Two types of legal persons: <ul style="list-style-type: none"> ○ Natural persons ○ Juristic <ul style="list-style-type: none"> – Non biological. A legal entity/concept that the law says is a legal person. – A company is a juristic person – it can own property, interact in the legal system, the law applies to it. – Corporations are another category of juristic person (e.g. Brisbane City Council, sports corporations, incorporations associations, University – a Body Corporate, the Queen). – Anything the law is going to say is a legal person, and is therefore the subject of rights and duties (conceptually, no limit to what the law can confer legal personality on). <p>b) 'Company' or 'corporation'?</p> <ul style="list-style-type: none"> • Don't usually bother drawing a distinction. However, there is a technical distinction. • Corporations: <ul style="list-style-type: none"> ○ Limited to Govs, Unis, Foundations etc. (public in nature) ○ Separate legal entity. • Company <ul style="list-style-type: none"> ○ Every company must have ltd in Aus. In USA, it's 'inc'. in Aus you're warning people that they might not pay you. In USA, they're warning you that you're dealing with an artificial body. ○ Created 19th century as commercial trading entities. ○ A company can enter into a contract (separate from the people who run it). ○ The person running the company (director or shareholder) is not personally responsible for what the company does. ○ That's why you have 'ltd'. It shows that you're dealing with an abstract legal entity of whom the person is a representative. <p>c) A brief history of the corporate form</p> <ul style="list-style-type: none"> • Currently, the Corps Act deals 99% with companies. • 1844: 'they' not 'it' – no legal personality. Minimum 50 people needed for a company. • 1855: companies get ltd liability • 1897: Salomon <ul style="list-style-type: none"> ○ Established that one person could create a company 	<ul style="list-style-type: none"> • Salomon v A Salomon & Co Ltd [1897] AC 22 <ul style="list-style-type: none"> ○ The case established the principle of separate legal personality, which is a fundamental concept in modern company law. ○ The case involved Mr. Salomon, who was a boot and shoe manufacturer. He incorporated his business as a limited liability company, with himself, his wife, daughter, and four sons as the only shareholders. Mr. Salomon transferred his business to the company in exchange for all the shares, and the company issued a debenture to him for the amount owed to him. The company then went into liquidation, and its assets were insufficient to pay off its creditors. ○ The liquidator argued that the company was a sham and that Mr. Salomon should be held personally liable for the debts of the company. However, the House of Lords held that the company was a separate legal entity from its shareholders, and therefore, Mr. Salomon could not be held liable for the company's debts. ○ The decision in Salomon v A Salomon & Co Ltd established the principle of separate legal personality, which means that a company is a legal entity in its own right, separate from its shareholders. This principle has significant implications for Australian corporate law, as it means that companies are responsible for their own debts and obligations, and their shareholders are generally not personally liable for those debts. ○ However, the case also highlighted the potential for abuse of the separate legal personality principle, as in the case of Salomon, where the company was essentially a one-man show. As a result, Australian corporate law also includes provisions that allow courts to pierce the corporate veil and hold shareholders personally liable for the debts of the company in certain circumstances, such as where the company is used to perpetrate fraud or other illegal activities.

- Salomon absolved himself from personal liability.
- Question of whether he could do it, HoL said yes.
- 1900: Aus become federation
 - All states have separate company law regimes.
- 1990s: Fed gov attempt to pass corps Act through ACT. Then, each State adopted it as their legislation.
 - Issue: tried to cross vest jurisdiction for corporate matters to federal courts. This was stuck down.
- Late 1990s: each State refers its power re Corporations to the Cth Parliament.
 - Corps Act 2000 is established by a referral of power from each State.
 - Referrals expire. It's possible that a party doesn't renew referral (unlikely).
- Currently: National regime. Jurisdiction jointly in State Supreme and Federal Court



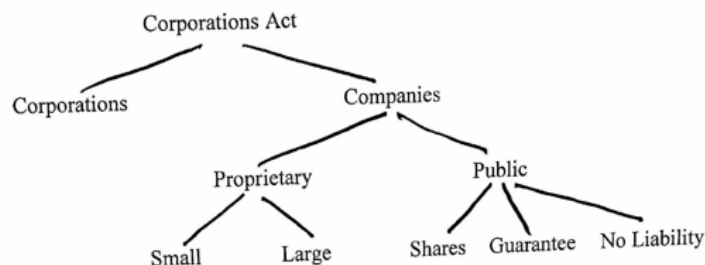
Stakeholders in the Company

- Shareholders
 - Members. People who buy shares in the company/invest in the company.
 - Get rights. Rights to change constitution, appoint/remove directors (big ticket, nuclear, infrequently used rights).
 - Many companies exist for the purpose of shareholders (disputed view)
- Directors
 - People who manage the company or govern the company, or both.
 - Small companies – both
 - Big companies – divide between board (who oversee the managers and set the strategic direction) and management.
 - **Relationship Between Shareholders and Directors:** The relationship has changed over time, and different conceptions apply to different companies.
- Employees
 - Have a stake in the conduct of the company's business.
 - Generally, not part of the company. The only people 'inside' the company (corporate personality wise) are the shareholders and maybe directors.
- Creditors
 - Acquire rights against the company but are not part of the company.
- The public
 - Do the public get a say in the way companies operate?
- Ways to think about the relationships between the company and the stakeholders
 - Conceptions
 - Companies are created by shareholders who hire expert management and the company is conducted for this shareholder benefit.

• "Capital hires Expertise" ←————→ "Entrepreneur hires Capital"

Types of Companies

- One size fits all (in Aus, CAN, UK) regardless of purpose/size etc.
 - Proprietary companies limited by shares
 - Proprietary company just means small company. 'Pty Ltd'. Advantage? Regulatory obligations are reduced.
 - Proprietary companies unlimited by share capital
 - Public companies limited by shares
 - Public companies limited by guarantee
 - Public companies unlimited by share capital
 - No liability public company (confined to pure mining companies)
 - 'NL' not 'LTD'. Unique to Australia.
 - Don't worry about this.
 - Listed company
- The corporate group



Company Formation

- How does one bring a company into existence?
- Historically, by Royal Charter or special Act of Parliament – difficult.
- Since 1844, formation is by registration

Formation by Registration

Step 1: Classification & type of company required: ss 112, 113

Step 2: Company name (optional): ss 147 – 152: A company must have either an available name chosen by its promoters or the ACN (Aust. Co Name) together with the identification of the company's legal status eg Pty Ltd.

Steps 3 & 4: Application for registration & lodgement: s 117, **Form 201**: ASIC requires details about the following:

- Classification and type of company
- Proposed name unless ACN will be used
- Name and address of each person who consents to be a member
- Names, addresses and date and place of birth of persons consenting in writing to be directors and company secretary
- Address of proposed company's registered office and hours of opening
- Address of proposed company's principal place of business
- Details of the number of shares each member agrees in writing to take up
- For a public company limited by shares or an unlimited company, if the shares are to be issued for a non-cash consideration, prescribed particulars about that issue.
- <http://www.asic.gov.au/for-business/starting-a-company/>

Other forms of business vehicle

Sole Trader: A one person business that is not registered as a corporation. There are no special formalities except that if the business is carried on in a name other than their own, the trading name must be registered under the Business Names Act. Liability is personal and unlimited.

Partnership: Business is carried on by two or more owners, sharing in profits and losses. No particular formality is required. Partnership Act regulates the relationships in the absence of agreement. Partners have personal liability for all business debts and obligation, the right to participate in the management of the business, and an individual partner can bind the whole partnership.