AUSTRALIAN COMPANY LAW (LAW1026) EXAM NOTES
Semester 1, 2026

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WEEK 1 – INTRODUCTION, REGISTRATION AND REGULATORY FRAMEWORK

Issue / Trigger	Statute	Authority	Exam Rule
Defining company	s 9	N/A	Must be registered under Act
Defining corporation	s 57A	N/A	Broader category including bodies corporate
Company existence begins	s 119	N/A	Begins at start of registration day
Legal capacity	s 124	*Salomon*	Company has powers of natural person
Limited liability	s 516	*Salomon*	Liability limited to unpaid share capital
Director also employee	s 124	*Lee v Lee's*	One person can act in dual capacities
Ownership of assets	s 124	*Macaura*	Company owns assets
Fraud/facade company	s 588G	*Re Darby*	Veil pierced for fraud
Avoiding restraint	N/A	*Gilford Motor*	Sham company restrained
Avoiding specific performance	N/A	*Jones v Lipman*	Court orders both controller/company
Fiduciary diversion	N/A	*Green v Bestobell*	Company accountable for profits
Intra-group transfers	N/A	*Equiticorp; Walker*	Need derivative benefit
Parent liable for subsidiary debt	s 588V	*Smith, Stone & Knight*	Strict control/agency test
Parent liable in tort	N/A	*CSR v Wren*	Operational control required
Parent not liable in tort	N/A	*James Hardie v Hall*	Financial control insufficient

Definition & regulatory framework	**Company vs Corporation** - 'Company' (s 9): Specifically a company registered under the *Corporations Act 2001* (Cth). - 'Corporation' (s 57A): A broader category. Includes: companies, any body corporate (incorporated/unincorporated). Excludes: public authorities and corporation sole.

	Sources of Company Law
	Primary Sources
	• **Corporations Act 2001 (Cth)**
	• Case law
	• Internal governance rules:
	  o Constitution
	  o Replaceable Rules
	  o Combination of both
	Constitutional Basis
	• Commonwealth power derived after states referred powers under **s 51(xxxvii) Constitution**.

	Regulators
	ASIC — Australian Securities and Investments Commission
	• Primary regulator under the *ASIC Act 2001*.
	• Functions:
	  o Registers companies
	  o Enforces corporations law
	  o Maintains public registers
	  o Regulates financial services
	ASX — Australian Securities Exchange
	• Operates main equities market.
	• Regulates listed companies through Listing Rules.
	• Example: continuous disclosure obligations.
	Takeovers Panel
	• Primary forum for takeover disputes.
	• Replaced courts for most takeover regulation matters.

Corporate Social Responsibility	- A governance theory suggesting companies have obligations to societal interests that may bind behaviour, even at an economic cost. **Tension with Directors' Duties** • Directors' fiduciary duties are primarily owed to **members/shareholders as a whole**.

	• Creates tension between: o Shareholder primacy o Stakeholder/CSR approaches **Contemporary Issues** • Increased scrutiny regarding: o Banking misconduct o Supermarket pricing o Data privacy o Greenwashing • Example: *ACCC v Clorox Australia* **Human Rights Expectations** • Companies increasingly expected to: o Avoid discrimination o Promote sustainability o Use technology ethically o Prevent AI bias
Registration & incorporation Fig 2.1 & 2.2	- A company is incorporated by lodging an application for registration with ASIC using Form 201 and paying the prescribed fee. Once the application satisfies the statutory requirements under the *Corporations Act 2001 (Cth)*, ASIC registers the company and issues both an Australian Company Number (ACN) and a Certificate of Registration.
	Statutory Requirements for Registration — s 117 Under s 117, the application must specify the company's proposed structure and governance arrangements. **1. Type of Company** The application must identify whether the company will be: • a **proprietary company** ("Pty Ltd"); or • a **public company** ("Ltd"). **2. Officers** The company must satisfy minimum officer requirements: • **Proprietary company**: o minimum of **1 director**; and o at least **1 director must ordinarily reside in Australia**. • **Public company**: o minimum of **3 directors**; o at least **2 directors must ordinarily reside in Australia**; and o minimum of **1 company secretary**. **3. Governance Structure** The company must adopt either: • a **constitution**; • the **replaceable rules** in the *Corporations Act*; or • a combination of both. **4. Written Consents** Written consent must be obtained from: • all proposed directors; • secretaries; and • members/shareholders.
	Registered Office Requirement — ss 142–143 Every company must maintain a **registered office in Australia** for the purpose of receiving official communications and notices. Where the company does not occupy the premises itself, it must obtain and retain the **prior written consent of the occupier** (s 143).
	Company Name and Suffix Requirements — s 148 A company name must clearly indicate the company's legal status.

	• A **proprietary company limited by shares** must use:
	  ○ "Proprietary Limited"; or
	  ○ "Pty Ltd".
	• A **public company limited by shares** must use:
	  ○ "Limited"; or
	  ○ "Ltd".
	This requirement ensures outsiders can identify the extent of members' liability and the type of company structure.

	Identification Numbers Upon registration, ASIC allocates the company an **ACN (Australian Company Number)** under s 118. If the company carries on business or trades publicly, it will also obtain an **ABN (Australian Business Number)**, administered by the Australian Taxation Office.
	Costs of Incorporation From the tutorial materials: • Fee to register a proprietary company with share capital: **$611**. • Fee to reserve a company name before incorporation: **$62**.
Legal Effects of Registration	Upon registration, a company becomes a separate legal entity (*CA* s 119). Under s 124(1), it has the legal capacity and powers of an individual, which allows it to sue, be sued, and own property in its own name. This principle was affirmed in *Salomon v Salomon & Co Ltd*, which established that the company is a distinct legal 'person' separate from its controllers. **A. Commencement (s 119)** A company comes into existence as a separate legal person at the beginning of the day on which it is registered. The registration process gives the company its 'corporate personality'. This is also known as the 'separate legal entity concept', which effectively puts a 'veil' over the company. Upon registration, a company gains perpetual succession, meaning it continues to exist in perpetuity. **B. Separate Legal Personality (s 124)** A company has the legal capacity and powers of an individual (natural person) and a body corporate. - Individual powers: Can sue/be sued, enter into contracts, and own property. - Body corporate powers: Can issue shares, grant floating charges, and have a common seal. **C. The 'Corporate Veil' (*Salomon v Salomon*)** - Rule: The company is a distinct legal 'person' separate from its shareholders and directors (*Lee v Lee's Air Farming Ltd (1961) AC 12; Macaura v Northern Assurance Co Ltd*). Therefore, any obligations and liabilities belong solely to the company itself, not to the directors or members. • Under s 516 of the *Corporations Act*, a shareholder's liability for the company's debts is strictly limited to the amount (if any) that remains unpaid on their shares. - Consequence: Debts of the company are not the debts of the shareholders (limited liability). ***Salomon v Salomon & Co Ltd* [1897] AC 22** **Principle:** Established the Separate Legal Entity doctrine. Separate legal entity applies even to 'one-person companies' **Facts:** Salomon incorporated business. Held nearly all shares. Company issued him secured debentures. Company became insolvent. Liquidator argued company was a sham. **Held:** Company validly incorporated. Salomon as creditor separate from Salomon as shareholder. Secured debt took priority. *'The company is at law a different person altogether from the subscribers...'* ***Lee v Lee's Air Farming Ltd* [1961] AC 12** **Principle:** A person can function in **dual capacities** (e.g., as both the director/owner and an employee) because the company is a separate legal person. Controller/ director may simultaneously be employee of company.

	Facts: - Mr. Lee formed a company for his aerial spraying business. - He was the Governing Director, majority shareholder, and the chief pilot (employee). - He died in a work-related plane crash. His widow claimed worker's compensation. - Dispute: The insurer argued Mr. Lee could not be an 'employee' of a company he fully controlled. **Held:** Valid employment relationship existed. ***Macaura v Northern Assurance Co Ltd* [1925] AC 619** **Principle:** Shareholders have no legal/equitable interest in company property. Share ownership ≠ ownership of company assets. **Facts:** - Macaura transferred timber to company. - Insurance remained in personal name. - Timber destroyed by fire. **Held:** No insurable interest. Assets belonged to company. **Reasoning:** Applying *Salomon*, the timber belonged to the company, not Macaura. Even though he owned all the shares, he had no 'insurable interest' in the company's specific assets. ***MacLeod v The Queen* [2003] HCA 24** **Principle:** A sole director and sole shareholder can be found guilty of stealing or misappropriating property from their own company. Complete ownership and absolute control do not entitle an individual to treat company funds as their own personal money. **Fact:** The defendant was the sole director and shareholder of a company. He used a massive volume of company funds to purchase an expensive residential property and a collection of luxury items for himself, arguing that because he *was* the company, he could consent to his own actions. **Held**: The High Court rejected his argument. Under the separate legal entity doctrine (*Salomon*), the money belonged strictly to the corporate entity, not the individual. He lacked the legal right to apply corporate wealth for personal, non-corporate purposes to the detriment of the entity. **Significance:** "*If I own 100% of the shares, I still **cannot** my own money*" The High Court found that because the company is an entirely separate legal person (**s 124**), taking corporate funds for an unauthorised personal use without a valid board resolution or dividend declaration constitutes theft from a distinct legal entity. *****Exam tip** - Use *Lee* to argue that a director can also be an employee for the purposes of statutory benefits (insurance, leave, etc.). - Use *Macaura* to argue that assets must be strictly separated. Ownership of shares/ ownership of company property.
Corporate Veil	**Defining the Corporate Veil** The foundational principle of Australian company law is that a company is a separate legal entity, distinct from its directors and shareholders (s 124 *Corporations Act 2001* (Cth); *Salomon v Salomon & Co Ltd*). This 'corporate veil' ensures that the company's rights, acting as a 'legal person', are its own (*Walker v Wimborne (1976)* and *Adams v Cape Industries plc [1990])*; it can contract with its own controllers (*Lee v Lee's Air Farming Ltd*), and its assets belong to the entity rather than the members (*Macaura v Northern Assurance Co Ltd*). However, the courts may 'pierce' or 'lift' this veil at either statutory or common law where the corporate structure is being used as a vehicle for or a mask for improper conduct.
Piercing the Veil by Statute	The corporate veil can be lifted under statute, typically when directors or shareholders engage in wrongdoing or exploit the separate legal personality doctrine. **Under the *Corporations Act 2001*:** **- Insolvent trading (s 588G, 588V, 596AC):** Directors are personally liable if they allow the company to continue incurring debts while knowing it is insolvent. **- Uncommercial transactions (s 588FB-588FF):** Directors can be liable if found to have made uncommercial transactions just before the company is wound up.

	- Security interests (s 588FP): Veil pierced regarding security interests given to a company officer. **- Financial assistance (s 260D(2)):** Veil pierced regarding certain financial assistance provisions. **Under Other Legislation:** **- Fair Work Act:** Directors are personally liable for knowingly contravening the Act. **- Occupational Health and Safety (OHS) laws:** Directors may become personally liable for breaches. **- Tax Administration Act:** Directors are personally liable for outstanding unpaid taxes on employee wages, as well as unpaid superannuation that remains outstanding after three months. **- Other regimes:** Piercing can also occur under environmental protection laws and various other regulatory regimes.
Piercing the Veil at Common Law	Common law courts will only pierce the veil in rare, exceptional cases. **A. Fraud/ dummy structure** Where a company is used as a 'facade' to perpetrate a fraud, the courts will look behind the entity to hold the individuals accountable. In *Re Darby*, the court lifted the veil because the company was a 'dummy' created solely to hide secret profits and mislead investors. *Re Darby; Ex parte Brougham* [1911] 1 KB 95 **Rule:** Veil pierced where company formed to perpetrate fraud or conceal secret profits. **Facts:** Quarry licence resold at inflated value through shell company. Public investors misled. **Held:** Controllers personally liable. **Note:** Use *Re Darby* in an exam answer when: 1. A person is trying to use a company structure to evade a legal obligation or hide a breach of duty. 2. Need to argue for piercing the corporate veil at <u>common law</u> 3. The facts involve a 'dummy' or 'shell' company used specifically for dishonest purposes. **Contrast with *Salomon*:** • In *Salomon*, the company was a legitimate business and there was no intent to defraud (even though it failed). The veil stayed closed. • In *Darby*, the company was a tool for dishonesty. The veil was pierced. **B. Avoiding an existing legal obligation:** The court will not allow the Salomon principle to be used as a 'cloak' to evade pre-existing contractual or legal duties. In *Gilford Motor Co Ltd v Horne*, the court granted an injunction against a company formed specifically to breach a non-compete clause. Similarly, in *Jones v Lipman*, the veil was pierced where a vendor transferred land to a company he controlled solely to defeat a purchaser's right to specific performance. *Gilford Motor Co Ltd v Horne* [1933] Ch 935 **Principle:** Company cannot be used as cloak/sham to evade restrictive covenant. **Facts:** Former employee formed company to solicit former employer's clients. **Held:** Injunction granted against both Horne and company. **Reasoning:** The company was a 'device' used to mask the effective carrying on of a business by Horne in breach of his agreement → Veil pierced to prevent avoidance of contractual restraints. *Jones v Lipman* [1962] 1 WLR 832 (**defeating a court order**) **Principle:** Veil pierced where company formed to avoid specific performance. **Facts:** Land transferred to company to avoid sale contract. **Held:** Court ordered both Lipman and company to transfer land. **Reasoning:** The company was a 'facade' and a 'device' created solely to defeat the rights of the purchaser. Since Lipman had absolute control over the company, the court treated them as one for the purpose of the remedy.

	C. Breach of fiduciary duty: If a director uses a company to knowingly participate in a breach of their duties to another party, the distinction between the director and the company is disregarded. In *Green v Bestobell Industries*, the company was ordered to account for profits because it was the vehicle through which a manager diverted a business opportunity away from his employer. *Green v Bestobell Industries Pty Ltd* [1982] WAR 1 **Principle:** The corporate veil can be lifted where a company is used to facilitate or 'knowingly participate' in a director's breach of fiduciary duty. **Facts:** Manager created company to divert tender opportunity. **Held:** Company jointly liable to account for profits. Conclusion: To successfully pierce the veil, it must be demonstrated that the individual exercised complete dominion and control over the company and used that control not for legitimate business purposes, but as a device to facilitate a wrong or avoid an obligation. Without such evidence of a 'sham' or 'facade,' the protection of limited liability and separate personality under *Salomon* remains the default position of the law.
Corporate Groups & Parent/Subsidiary Liability	While a corporate group is generally not recognised as a single entity, directors owe a fiduciary duty to act in the best interests of their specific company (not the group as a whole) (*Walker v Wimborne*). **Pathway A: Directors acting for the Group** **Trigger:** Use when a director moves money or assets between companies to save the group. - Under *Equiticorp Finance Ltd v Bank of New Zealand*, a transaction benefiting the group is valid if it provides a 'derivative benefit' to the individual company. The test is whether the transaction protects the company's own financial stability (e.g., maintaining group bank support). If the transfer only aids a sibling company to the detriment of the transferring entity, it can constitute a breach of duty. **The 'Derivative Benefit' Test**: To defend a director's decision to move money between group companies, ask: 'If this transaction didn't happen, would it have caused a 'domino effect' that hurt the specific company transferring the money?' + If the transfer only helps the group and leaves the individual company with nothing but debt, it is a breach (*Walker*). + If the transfer helps the group and protects the individual company's own financial stability/funding, it is likely valid (*Equiticorp*). *Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50 **Principle:** While directors must act in the best interests of their specific company (not just the group), a transaction that benefits the group as a whole may be valid if it provides an indirect or derivative benefit to the individual company. **Facts:** Two solvent companies transferred funds to BNZ to repay debts owed by another group company. After the group collapsed, the liquidator argued the transfers breached directors' duties because the transferring companies received no direct benefit. **Held:** No breach of duty. Repaying BNZ preserved the bank's continued support for the entire group, indirectly benefiting the transferring companies. → A transfer between related companies may be valid if the transferring company gains a genuine indirect or derivative benefit from the transaction. **Pathway B: Agency (disregarding the Veil)** **Trigger:** A parent company wants to claim a benefit (tax/compensation) belonging to a subsidiary, or a creditor wants to sue the parent for the subsidiary's debts. - The court may disregard the separate entity principle if a subsidiary is found to be an agent of the holding company. According to *Smith, Stone & Knight Ltd v Birmingham Corporation*, this requires a high threshold of 'effectual and constant control'. The court applies a six-factor test, primarily assessing whether the holding company is the 'head and

brain' of the venture, decides the capital, and treats the subsidiary's profits as its own. Without meeting these strict criteria, the *Salomon* principle remains the default.

Smith, Stone & Knight Ltd v Birmingham Corporation [1939] 4 All ER 116

Principle: AA subsidiary may act as an agent of its parent company where the parent exercises "effectual and constant control" over the subsidiary's business.

Facts: A subsidiary occupied land and operated a waste business on behalf of its parent company. After compulsory acquisition of the land, the parent argued the subsidiary was acting as its agent so the parent could claim compensation for business disturbance.

Held: The court found an agency relationship existed because the parent exercised substantial control over the subsidiary's operations.

Six Factors (Atkinson J)

1. Subsidiary profits treated as parent profits.
2. Parent appoints persons conducting the business.
3. Parent is the "head and brain" of the venture.
4. Parent controls governance and capital.
5. Profits made through parent's skill and direction.
6. Parent exercises effectual and constant control.

→ A parent company may be liable for a subsidiary's activities where the subsidiary operates merely as the parent's agent under the six-factor control test.

Pathway C: Tort Liability (Negligence Claims)

Trigger: When a problem involves an injured person suing a 'wealthy parent company'

- In tortious claims, the court may be more willing to pierce the corporate veil because victims are 'involuntary creditors' who cannot negotiate for parent company guarantees (*Briggs v James Hardie*). Liability is determined by the degree of operational control. Under *CSR Ltd v Wren*, a parent company owes a direct duty of care if it provides the actual management and operational staff for the subsidiary. Conversely, per *James Hardie & Co v Hall*, mere financial influence or the power to 'insist on standards' is insufficient to establish liability if the parent does not directly manage workplace safety.

Step 1: Apply *Salomon* (Separate entities = No liability).

Step 2: Apply *Briggs* (Argue that tort victims are 'involuntary' and the veil is more flexible) Under *Briggs*, the court may be more willing to pierce the veil in tort than in contract because the plaintiff could not 'negotiate' their risk. (distinguish between contract (voluntary creditors) and tort (involuntary creditors))

Step 3: look for control

- If the Parent sent their own managers to the site → Apply *Wren*.
- If the Parent just owned the shares and let the subsidiary run itself → Apply *Hall*.

Case	Result	Key Factor for the Court
CSR v Wren	Liable	Parent company provided the actual staff/managers who ran the site.
CSR v Young	Liable	Parent exercised total operational control over the entire area/township.
James Hardie v Hall	Not Liable	Parent only had 'financial influence.' No direct involvement in safety management.

Briggs v James Hardie & Co Pty Ltd (1989) 7 ACLC 841

Principle: The approach to piercing the corporate veil may be more flexible in tort law than in contract law because tort victims are "involuntary creditors" who do not choose to deal with the company.

Facts: Briggs developed asbestosis while working for a subsidiary of James Hardie and sued both the subsidiary and the parent company. The parent argued it was a separate legal entity and not liable for the subsidiary's negligence.

Held: The court did not definitively pierce the veil but held that parent company liability in tort was arguable and should proceed to trial.

Key Reasoning

- Contracting parties can investigate financial risk or seek guarantees.

- Tort victims generally cannot choose the tortfeasor or protect themselves against insolvency risk.
- Employees have limited control over workplace management and safety systems.
- "Complete dominion and control" is not the sole test; policy considerations protecting victims may justify parent company liability.

→ In tort cases, courts may adopt a more flexible approach to parent company liability where the parent exercises substantial operational control and the plaintiff is an involuntary creditor.

CSR Ltd v Wren (1997) 44 NSWLR 463

Principle: A parent company owes a direct duty of care where it exercises hands-on operational control over the subsidiary's workplace and management.

Facts: Wren was employed by a CSR subsidiary and developed asbestos-related injuries. Although the subsidiary was the formal employer, operational management and workplace control were exercised by CSR staff.

Held: CSR owed a direct duty of care because it controlled the working conditions and failed to provide a safe system of work.

→ A parent company may be directly liable where it actively manages workplace operations or safety systems of the subsidiary.

CSR Ltd v Young (1998) 16 NSWCCR 56

Principle: A parent company may owe a duty of care to third parties where it substantially controls the subsidiary's overall operations.

Facts: Young developed mesothelioma after exposure to asbestos around Wittenoom, where a CSR subsidiary operated a mine. CSR controlled the overall operations of the site.

Held: CSR owed a duty of care because the subsidiary operated merely as a conduit or facade for CSR's activities.

→ A parent company may be liable to third parties where it exercises extensive operational control over the subsidiary's activities.

James Hardie & Co Pty Ltd v Hall (1998) 43 NSWLR 554

Principle: A parent company is not liable merely because it can impose standards or exercise general oversight over a subsidiary.

Facts: Hall worked for a New Zealand subsidiary of James Hardie and contracted mesothelioma. The Australian parent company could insist on standards but did not directly manage the plant or employ safety managers.

Held: The parent company was not liable because it lacked direct operational involvement in workplace safety.

→ General financial oversight or the power to impose standards is insufficient; direct hands-on operational control is required for parent company liability.

Others:

- **Insolvent Trading (s 588V-X):** Holding companies can incur liability if they fail to prevent a subsidiary from trading while insolvent.
- **Liquidation:** The pooling of group assets for distribution during liquidation is permitted.

Pros & Cons of the Company Structure

Advantages	Disadvantages
Limited Liability: Members generally only liable for unpaid share capital.	Personal Liability Risks: Corporate veil can be pierced (Common Law/Statute).
Perpetual Succession: Entity survives changes in owners/directors.	High Compliance Costs: Expensive setup, ongoing audits, and winding-up.
Transferability: Ownership (shares) easily sold/transferred.	Public Disclosure: Financials and details must be lodged with ASIC/ASX.
Capital Raising: Can issue shares; Public companies have unlimited reach.	Strict Regulation: Heavy oversight and penalties from ASIC.