2026 LAW3112 Corporations Law Notes

Full Topic List:

Note: These sample pages are taken from Topic 1

Topic 1-Introduction

1.1. Introduction and Overview

1. What is a corporation?

Simple definition:

- Artificial entity recognised by law as a legal person with rights and liabilities.

More complex

- Marshal CJ (in USA), defined a company as:
  - …artificial being, invisible, intangible, and existing in contemplation of the law…a creature of the law… objects or aims are those best calculated in achieve its purposes.

2. Description of a corporation

The corporation is not just a ‘legal fiction’, an instrument for consolidating and protecting capital and limiting liability. In the flesh, corporations are organisations of people, people with (more or less) shared assets and interests. Legally, a corporation may exist apart from its people, but in any meaningful or practical sense a corporation is its people …

Robert C. Solomon, ‘The Corporation as Community: A Reply to Ed Hartmen’ (1994) 4(3) Business Ethics Quarterly 271, 272

3. Key features of a corporation

1. The Corporate Veil: The corporate veil is a foundational concept in corporations law. It refers to the legal distinction between a company and its owners, operators, and employees. In essence, a corporation is treated as a separate legal person, independent of the individuals associated with it. This separation is crucial because it grants the corporation certain rights and abilities:

- **Separate Legal Person:** A corporation is considered a distinct entity with its own legal identity. This means that it can enter into contracts, own property, sue, and be sued in its own name, just like a natural person.

2. Limited Liability: Limited liability is a fundamental principle that safeguards the personal assets of the company's owners (shareholders). Under this principle:

- **Liabilities and Obligations:** The financial responsibilities, debts, and obligations of the corporation are generally not extended to its owners. Shareholders are only liable for the company's debts up to the value of their investment in the company, which is typically the price of their shares.

3. Perpetual Succession: Perpetual succession is a significant advantage of the corporate structure:

- **Continued Existence:** The concept of perpetual succession means that the corporation's existence is not affected by changes in ownership or management. Even if directors or shareholders change, the corporation persists as a legal entity, ensuring continuity of business operations.

4. Transferring Shares: Transferring shares is a natural consequence of the corporate structure and has various implications:

- **Ownership Transfer:** Since a corporation's legal identity is separate from its owners, shareholders can buy, sell, or transfer their shares without affecting the company's operations or existence.
- **Stock Market Listing:** For a corporation to be listed on a stock market, its shares must be freely transferable. This allows investors to easily buy and sell shares on the open market.
- **Share Transfer Restrictions:** While public companies must have free transferability, private companies have more flexibility in restricting share transfers. Many private companies include such restrictions in their governing documents, like the company's Constitution, to maintain control over ownership.

It's important to note that while these features generally hold true, there are situations in which the corporate veil can be "lifted."

5. Corporate Groups:

A corporate group is a collection of companies that are related through ownership. One company, known as the "holding company" or "parent company," owns or controls other companies, referred to as "subsidiaries." This organizational structure is common in business to achieve various strategic and operational goals.

Separate Legal Personality and Limited Liability in Corporate Groups: The concepts of separate legal personality and limited liability play a significant role in the functioning of corporate groups:

I. Separate Legal Personality: In a corporate group, each individual company, including both the holding company and its subsidiaries, maintains its separate legal personality. This means that each company is treated as an independent legal entity, distinct from the others in the group. As a result:

- **Ownership:** The holding company's ownership of its subsidiaries is recognized legally, but the subsidiaries are not considered the same legal entity as the holding company.
- **Operations:** Each subsidiary can enter into contracts, own assets, and engage in business activities independently.

ii. Limited Liability: Limited liability remains a core principle within corporate groups:

- **Subsidiary Liability:** Each subsidiary within the corporate group benefits from limited liability. Its obligations, debts, and liabilities are generally not extended to the holding company or other subsidiaries within the group. This is similar to the principle of limited liability that applies to individual corporations.

iii. Implications of Corporate Groups: The separation of legal personality and limited liability within corporate groups has several implications:

1. **Control and Direction:** The holding company often has control over its subsidiaries' activities and decisions. It can set strategies, policies, and financial goals for the entire group.

Note: These sample pages are taken from Topic 2

2.1– Creating a separate legal entity

1. Incorporation and Registration: Two Key Terms

Incorporation and registration are essential terms in the world of creating separate legal entities through the process of company formation.

Incorporation: This term refers to the creation of entirely new companies. When a new company is established, it undergoes the process of incorporation, essentially giving it legal recognition as a distinct entity.

Registration: On the other hand, registration pertains to the process by which foreign companies gain recognition under Australian law. It's important to note that even for incorporation, a registration process must be followed.

2. The Birth of a Company: Section 119's Role

According to Section 119 of the law, a company officially comes into existence in two stages:

Registration Day: The company's official existence begins at the start of the day when it is officially registered with the appropriate regulatory authority, which in this case is ASIC (Australian Securities and Investments Commission).

The Company's Name: The name specified in the certificate of registration becomes the official name of the company. This name is how the company is legally identified.

3. How does Deregistration work

Once a company comes into existence through the registration process, it remains a separate legal entity until specific circumstances arise. In line with Section 601AD(1), a company remains in existence until it undergoes a process known as deregistration. In simple terms, this means that the company will continue its operations unless it actively goes through a process to dissolve its legal status.

4. Registration process

Overview:

The registration process is the first step in creating an Australian company. It involves submitting an application to register as a company to ASIC (Australian Securities and Investments Commission). This process is initiated by completing Form 201 and paying a nominal fee.

Information Required for Registration (Section 117(2)):

Several details need to be provided in the registration application, as outlined in Section 117(2) of the law. These details are covered in the Form (form 201) and include:

<u>Type of Company:</u> Specify the type of company you intend to create.

<u>Proposed Company Name:</u> Decide on a name for the company, unless you plan to use the ACN (Australian Company Number) in its name.

Note: These sample pages are taken from Topic 9

Remedy 1 – Statutory Derivative Actions (SDA)

Overview of remedy:

- Allows members and other eligible applicants to bring action on behalf of company where company unwilling/unable to do so itself.
- It must be noted that this action is pretty much for shareholders (can be directors, but rarely) who want to bring an action on behalf of the company, when they think the company will not do it. But the benefit and any compensation/rewards given by the court will be given to the company, not the person who brings the action.
- "Derivative" because person bringing action does not rely on cause of action which belongs to them personally but to a cause of action belonging to company.
- Exception to legal principle that person injured by wrongdoer has standing to sue and that another person cannot sue to obtain relief on their behalf.

What does the statutory derivative action do:

- SDA:
  - abolishes general law exceptions: **s236(3);**
  - clarifies that ratification does not automatically bar a claim (ratification cant stop someone bringing an action);
  - makes access to company documents easier - **s 247A**; and
  - gives standing to officers/former officers in addition to members/former members.
- Rights enforced by SDA may be rights company has against directors or third party which company is unwilling to enforce.
- Making it easier for shareholders to bring legal action may inappropriately inconvenience directors (disgruntled SH). The sections therefore require SH obtain leave of the court: **s236(1)(b)**. Only granted if s **237(2)** criteria met.
- Once leave granted: proceedings brought under Part 2F.1 must be brought in the company's name: **s236(2)**

Who can apply?

- **S 236:** the following may apply to bring SDA:
  - A member, former member or any person entitled to be registered as a member; or
  - An officer or former officer.