

LAWS2300 EXAM NOTES

1. Business Organisations & the History of the Corporation	3
a) Business structures.....	3
b) Theories of corporate law.....	4
c) History of the Corporation.....	4
2. Corporate Personality & the Process of Incorporation.....	4
a) Separate Legal Entity (Corporate Veil) (SLE).....	4
b) Piercing the Corporate Veil.....	4
c) Limited Liability.....	4
d) Corporate Liability for Civil Wrongs.....	5
e) Registration Process.....	5
f) Proprietary vs Public Companies.....	5
g) Liability of Members – Corporate Forms.....	5
h) Corporate Groups.....	5
3. The Corporate Constitution and Internal Rules.....	5
a) Internal Management Rules (IMR).....	5
b) Corporate Constitution.....	5
c) Replaceable Rules.....	5
d) Statutory Contract.....	6
(a) Company–Member — s 140(1)(a).....	6
(b) Company–Director/Secretary — s 140(1)(b).....	6
(c) Member–Member — s 140(1)(c).....	6
i) Remedies for Breach of Statutory Contract.....	6
ii) Limits & interpretation.....	6
e) Altering the Constitution & Replaceable Rules.....	6
i) General Law Restrictions to Alteration: Gambotto.....	6
ii) Statutory Restrictions to Alteration.....	7
4. Corporate Contracting.....	7
a) Direct Execution.....	7
i) Common Seal.....	7
ii) Execution w/o a Seal – s127(1).....	7
iii) Other Methods & Authority vs Execution.....	7
b) Contracting through Agents (s126).....	7
i) Actual Authority.....	7
ii) Apparent (Ostensible) Authority.....	7
iii) Authority by Ratification.....	7
c) Statutory Assumptions.....	7
d) 7 Assumptions under s129 – need to satisfy s128 to trigger s129.....	8
e) Pre-registration Contracts (ss131-133).....	8
f) Promoters.....	8
g) Strategic Litigation Against Corporations.....	8
5. Corporate Decision-making, Meetings & Reporting.....	8
a) Members' Powers (exercised by voting).....	9
i) Members' Reserve (Default) Powers.....	9
b) Member's Rights.....	9
c) Board of Directors.....	9
i) Appointment of Directors.....	9
ii) Types of Directors.....	9
d) Reporting & Disclosure.....	9
i) Disclosure to members.....	9
ii) Disclosure to ASIC.....	9
iii) Disclosure to Public.....	9

e) Members' Meetings.....	9
i) Types of Meetings.....	10
ii) Procedural Requirements for Meetings.....	10
(1) Convening — Who may call a meeting.....	10
(2) Notice.....	10
(3) Quorum.....	10
(4) Members' Resolutions.....	10
(5) Voting.....	10
(6) Proxy Voting.....	10
(7) Decision-Making w/o a Meeting.....	10
(8) Validation of Incorrect Procedure.....	10
f) Directors' Meetings.....	10
g) ESSAY: Modern Slavery Act 2018 (Cth).....	10
h) ESSAY: Mandatory Climate Reporting.....	10
6. Corporate Finance.....	11
a) Overview: Sources of Corporate Finance.....	11
b) Equity (Share) Finance.....	11
i) Share Types.....	11
c) Debt Finance.....	11
d) Equity vs Debt Finance – Comparison.....	11
e) Internal Finance & Dividends.....	11
f) Capital Maintenance.....	11
i) Prohibition of Self-Acquisition.....	11
g) Reduction of Share Capital.....	11
h) Financial Assistance – s260.....	12
i) Share Buybacks.....	12
i) Types of Buyback.....	12
j) Summary.....	12
k) ESSAY: Critique: Financialisation of the Corporation.....	12
7. Corporate Fundraising.....	12
a) The Standard 3-Step Process – Which offers require disclosure document?.....	12
i) Step 1 – Offer of Securities.....	13
ii) Step 2 – Disclosure Exemptions.....	13
iii) Step 3 – Disclosure Documents Required.....	13
b) Lodgement & Procedural Requirements.....	13
c) Content Requirements – General Disclosure Test.....	13
d) Forecasts / Forward-Looking Statements.....	13
e) Liability for Defective Disclosure.....	13
f) Defences to Defective Disclosure.....	13
g) Misleading Statements & Greenwashing.....	13
h) Roles of ASIC & ACCC.....	14
8. Directors' Duties.....	14
a) Corporate Governance & Directors — Foundations.....	14
b) Duty to Prevent Insolvent Trading.....	14
Defences To Insolvent Trading:.....	14
c) Duty of Care, Skill & Diligence.....	14
i) General (Common & Equitable) Law Duties.....	14
ii) Statutory Duty – s180(1).....	15
iii) Business Judgment Rule (BJR) – s180(2).....	15
iv) Delegation & Reliance Defences.....	15
v) ESSAY: Hutley Opinions: Modern Climate Risk.....	15
d) Good Faith, Proper Purpose & Best Interests (s181).....	15

i) Bona fide / Good Faith Test.....	15
ii) Proper Purpose Test.....	16
1) Statutory Duty.....	16
iii) Duty not to fetter (limiting) of discretion.....	16
e) Conflicts of Interest & Misuse of Position/Info.....	16
i) General Law.....	16
1) No conflict Rule (Loyalty).....	16
2) No profit Rule (Accounting for Benefits).....	16
3) Defences to breaches of No-Conflict & No-Profit Rules.....	16
ii) Statutory Duty — s182 misuse of position.....	16
iii) Statutory Duty — s183 misuse of information.....	17
iv) Remedies & s184 criminal offences.....	17
v) Disclosure of material personal interest (ss191-195)..	17
f) Exoneration & Relief for Directors.....	17
i) Ratification by members in general meeting.....	17
ii) Relief by the court.....	17
iii) Indemnification & Insurance.....	17
g) ESSAY: Emerging Duties: HR Due Diligence (HRDD)...	17
9. Members' rights and remedies.....	17
a) Terminology.....	17
b) General Law Remedies to Minority Shareholders.....	18
i) Expropriation of shares.....	18
ii) Infringement of personal rights.....	18
c) Statutory Framework.....	18
i) The Oppression Remedy – s232-235 Pt 2F.1).....	18
(a) Meaning of key statutory terms (ss232/233)...	18
(b) Oppressive conduct criteria: 3-step process (exam structure).....	18
ii) Statutory Derivative Action — ss236-242 (Pt 2F. 1A)..	19
d) Shareholders & Directors: Different Actors.....	19
10. Process for receivership, schemes of arrangements, voluntary administration & winding up.....	19
a) Insolvency.....	19
i) Indicators of Insolvency: ASIC v Plymin (2003).....	19
b) Receivership.....	19
c) Schemes of Arrangements (SOA).....	20
i) The process of approval of SOA (set out in s411-412).	20
d) Voluntary Administration (VA).....	20
i) 4 Stages of the VA process.....	20
e) Winding Up & Liquidation.....	20
i) Compulsory Liquidation.....	20
(a) Consequences of Liquidation.....	20
(b) Liquidators: Appointment, powers and duties.	20
(c) Secured vs Unsecured Creditors.....	21
(d) Priority of Payment (How funds are distributed) — s556 CA.....	21
ii) Voluntary Liquidation.....	21
f) ESSAY: Critiques of Corporate Law.....	21
g) Recovery of Assets: Voidable Transactions.....	21
h) Deregistration & Reinstatement of Companies.....	21
ESSAY.....	21

1. Greenwashing & ESG Disclosure Enforcement.....	21
2. Mandatory Climate Reporting vs Modern Slavery Act — Which Disclosure Model Works Better?.....	21
3. Shareholder Primacy vs Stakeholder Governance.....	22
4. Limited Liability & the Corporate Veil — Efficient Tool or Structural Irresponsibility?.....	22
5. Directors' Duties & ESG/Climate Literacy — Individual Accountability Debate.....	22
6. Human Rights Due Diligence (HRDD) — Hard Law vs Soft Law for Supply Chains.....	22
7. Oppression Remedy vs Statutory Derivative Action — Which Better Protects Minorities?.....	22
Quick-Use Essay Skeleton.....	23

1. Business Organisations & the History of the Corporation

- **Ltd liability:** a member/shareholder's liability is capped at their capital contribution; the company (not the shareholder) owns its own debts. Essential for attracting passive investment.
- **Director vs shareholder:** director = paid to manage the company; shareholder = owns shares, no management right (but can be a director too, just legally distinct roles)
- **Sole trader** = default, simplest business form – no separate legal entity (legal personhood), unlted personal liability
- **Perpetual existence & succession:** unaffected by changes in ownership, shares tradeable in perpetuity, supports long-term ventures
- **Proprietary company:** ltd liability + separate legal personhood unlike sole trader/partnership structures. Best suited to entrepreneurs wanting to limit exposure to future expenditure/risk
- **CSR:** Dodd (1932): corps = social entities, directors owe duties beyond shareholders, as a "good citizen" (vs Berle). Friedman: "the social responsibility of business is to increase its profits."
 - Critics: CSR = "window dressing." Australia has no equivalent to UK law—exception is **CA s299(1)(f)** (environmental performance in directors' report) + ASX Governance Principle 3. Global soft law: OECD Guidelines, UN Global Compact, UN Guiding Principles on Business & Human Rights (non-binding).

a) Business structures

Structure	Definition/features & Notes	Liability
Sole Trader	One person conducting business in their own name. • No separate legal personhood • Only needs an ABN (and ASIC registration if trading under a different name + GST registration if turnover > \$75K/year) • PROS: Simplest, cheapest, most private, least regulated • CONS: hard to sell/scale, riskiest, can push individual to higher tax bracket (up to ~45%) vs being an employee	Unlted
Partnership	• "The relation which exists between persons carrying on a business in common w a view to profit" (s1, Partnership Act 1892 (NSW)) • Each partner is an agent of the firm • Needs: ○ A relation between persons; ○ Carrying on business, ○ In common, ○ With a view to profit • Max 20 partners, hard to transfer interests, can be wholly/partly oral or implied from conduct • General partnership (s24): no registration, all partners manage, unlted liability • Ltd partnership: min 1 general partner and min 1 ltd passive partner (liability capped to their contribution, but they can't manage) • Incorporated Ltd Partnership (ILP): a special type of ltd partnership, min 1 general partner w ltd liability, used for high-risk venture capital to attract passive equity investors	Unlted, joint and several – one partner can bind the others
Joint Venture (JV)	Contractual arrangement where 2+ parties (can be individuals, sole traders or corporations) contribute skill/property to a specific, usually time-ltd project, each seeking individual (not shared) profit/output, w/o forming a partnership. • Courts may still find a JV to actually be a partnership on the facts — United Dominions Corporation v Brian (1985) (HCA): "joint venture" has no fixed technical meaning; where parties act w a view to mutual profit, contributing money/property/skill, "such a joint venture will often be a partnership" — on the facts in that case, the JV was in substance a partnership agreement for one • PROS: no liability for co-venturer's acts, more flexible tax treatment, freer transfer/assignment of interests without others' consent, some protection from being sued in the JV's name	Parties remain separate legal entities, not liable for co-venturers' acts
Trust	Not a business entity – an equitable relationship: trustee holds trust property for beneficiaries . • 3 parties: ○ Settlor (creates the trust) ○ Trustee (holds property on behalf of beneficiary)	

- **Beneficiary** (benefits)
- Governed by **Trustee Act 1925 (NSW), Charitable Trusts Act 1993 (NSW)**
- Used for family businesses, asset protection, tax/estate planning etc.
- Types:
 - **Express**
 - **Discretionary:** trustee is given discretion in relation to the operation of trust (eg: who the beneficiaries are, how much they get)
 - **Fixed:** trustee doesn't exercise any discretion regarding the interest or portion the beneficiary will take (eg: unit trusts, whereby the beneficiaries' interest in the trust are utilised)
 - **Executed & executory:** intentions of the settlor have been completely declared so that the trustee's main duty is to carry out the terms of the trust
 - **Non-express** → arise by operation of law
 - **Implied/presumptive:** if there's an implied intention on the part of a person to create a trust in respect of a particular trust property
 - **Resulting:** interest in the property returns to the trust creator
 - **Constructive:** arise out of the operation of law bc it would be inequitable to allow a person to hold the property or interest for themselves
 - **Public & private:** can be for priv individuals and/or the benefit of the public
 - **Business Trading Trust**
 - Designed to hold and manage business assets and revenue
 - Unlike other types of trusts, bus trading trusts allow for ongoing trading activities and are typically used by businesses that generate income thru trading or investment activities
 - In a trading trust, a bus and its goodwill & assets are transferred to the trustee, either on the death of the trader or during their lifetime. The bus is then conducted by the trustee for the trust and its beneficiaries
 - **Types of Bus Trading Trusts ;**
 - Bus Trading Discretionary Trust: flexible, single-family use
 - Bus Trading Unit Trust: fixed utilised entitlements, suits multiple investors
 - Bus Trading Hybrid Unit Trust: combines both, suits multiple families

Association	Group of persons joined for a common lawful, usually not-for-profit purpose (eg: sport, social etc) • Can be incorporated/unincorporated • Governed by Associations Incorporation Act 2009 (NSW) • Structurally analogous to a corporation	Depends on whether incorporated or not
Social Enterprise	Umbrella term: a bus producing profit but driven strongly by a social impact goal • Usually operates via existing structures: Pty Ltd companies, companies limited by guarantee etc.	Varies by structure used

b) Theories of corporate law

Concession /privilege theory	• Corp exists only bc the state grants it that status • Nicholson v Permakraft: strong version of the theory. Ltd liability is a privilege. Corp must continually justify itself. • Salomon v Salomon [1897]: mild version, presumed once registered • Criticism: outdated + authoritarian now bc incorporation = simple registration.
Aggregate Theory	• Corporation = nothing but its members (shareholders) • Constitution is just a contract between members (Automatic Self Cleansing Filter Syndicate v Cuninghame). • Law shouldn't regulate it more than any other contract.
Economic theories	• Corp as a 'nexus of contracts' (Jensen & Meckling) • Legal personhood = "convenience not reality" (Easterbrook & Fischel)
Team production theory	• Corp is a vehicle for a team (shareholders, employees, managers, creditors) to jointly produce output • board = independent "mediating hierarchy" (Blair & Stout)
Natural entity theory	• Corps are natural, not state-created, law just recognises them • "Organic theory" version: corp= human body, directors = "brain," employees = "hands" (Lord Denning, HL Bolton v TJ Graham)

Organisational perspective	rejects corp-as-black-box; large corporations are messy internal bureaucracies where decisions reflect politics/compromise, not clean rational choice (Jackall's Moral Mazes).
Feminist perspective	corporate law/language as inherently masculine (takeover "raiders," "white knights"). Three strands: liberal (equality within existing structures), socialist (corporatism devalues women's labour), radical (corporate form itself reflects patriarchal values). Norway's board gender quotas (≥40%) as an example reform

c) History of the Corporation

- Corps required a Royal Charter (Crown-approved monopoly) – eg: **East India Company (1600)**, first for-profit/limited-liability corporation; funded overseas trade, became a colonial power (slave trade), eventually disbanded for being too powerful.
 - Charters were costly/rare, so traders used informal joint stock companies instead — speculative mania (**South Sea Company**) crashed the market → **Bubble Act 1720** banned them.
 - Lawyers got around this w **deed of settlement companies** (trust-based, recognised only in equity).
 - Industrialisation (esp. railways) needed mass capital → 1844/1856/1862 Companies Acts replaced charter-approval w incorporation by registration → made ltd liability (1855) standard.
 - **Salomon v Salomon [1897]** confirmed even a one-person company gets full limited liability.
- Australia:**
- Inherited the English system via the colonies, but each state legislated separately → inconsistency.
 - Push for a national scheme (1989), but struck down by HCA — reaffirmed in **NSW v Commonwealth (1990) ("Incorporation Case")** — Constitution doesn't give the Cth power to incorporate companies.
 - Solution: states refer power to the Commonwealth under s51(xxxvii) → **Corporations Act 2001**.
 - ASIC enforces it (vs ACCC for consumer-facing conduct); greenwashing is a current priority.

2. Corporate Personality & the Process of Incorporation

a) Separate Legal Entity (Corporate Veil) (SLE)

- **s57A CA**: a "corporation" INCLUDES (a) a company; (b) any body corporate; (c) an unincorporated body.
- **s9 CA**: a "company" means a company registered under this Act.
- "Corporation" = **umbrella term for all artificial legal entities w separate legal personality**; "company" = a particular type of corporation.
- **Separate Legal Entity: legal construct** w/ own 'legal personhood', distinct from shareholders; creates the '**corporate veil**' — protects shareholders from co. claims & co. from shareholder claims.
- **Corporate veil**: legal separation between a company and its shareholders that shields shareholders from the company's liabilities

Salomon v A Salomon & Co Ltd [1897] – separate legal person

- **Facts**: Salomon sold his sole-trader business to his own newly-incorporated company, taking cash & debentures as a secured creditor → company later failed, unsecured creditors were left unpaid.
- **Principle**: A *validly incorporated company is a separate legal person distinct from its members*, even if one person effectively controls it.
- **Held**: House of Lords: Salomon & company were separate entities.

b) Piercing the Corporate Veil

- **Piercing**: courts **reluctant** since Salomon; pierced only if company is '**mere façade**' concealing true facts — high bar, rare; courts prefer other remedies.
- **Underlying test**: company interposed to evade an existing legal obligation.

Gilford Motor Co v Horne [1933]

- company formed to evade trade-restriction clause → veil pierced.

Jones v Lipman [1962]

- **corporate veil may be pierced** where a company is created to **avoid specific performance** of an existing contractual obligation.

Macaura v. Northern Assurance [1925]

- A shareholder has no insurable interest in company property bc the property belongs to the company, not its members.

Lee v Lee's Air Farming [1961]

- A controlling shareholder can validly be an employee of company bc the company is a separate legal person capable of contracting w/ him.

Andar Transport Pty Ltd v Bramble (2004)

- Directors and shareholders are not personally liable for company obligations unless liability arises through recognised doctrines such as agency, assumption of responsibility, or statute.

c) Limited Liability

- **Ltd Liability**: shareholders in a company limited by shares are not liable to contribute additional money to meet the company's debts, beyond the amount initially agreed to be paid for the shares (**s516 CA**).
- Shareholders are **not personally liable** for company's debts and the risk of business failure is transferred from the shareholders to its creditors
- **Benefits**: encourages investment; facilitates diversification; reduces monitoring costs; enables large-scale capital aggregation. Shareholders do not guarantee corporate debts — creditors bear insolvency risk.
- **Economic justifications**: incentivises efficient management; assists efficient markets; facilitates optimal investment decisions; encourages investment; enables risk-taking (bounded by ethics/stakeholder impact).
- **Shareholder primacy** = corps should/must be run in shareholders' interests.
 - **BUT shareholders do not own the company** — it is a **separate legal person** capable of self-ownership.

Bligh v Brent

- shares held to constitute only an intangible right to future profit — the money is an investment in a separate legal entity, not ownership of it.

- **Shareholders**: no management role; no legal/moral obligation for the corp's activities; but a legal right that the corp be run **in their interest** (subject to statutory constraints/other stakeholder protections).
- **Corporate groups**: corps are often part of a parent/subsidiary structure; each co in the group remains its own SLE — creates scope for liability-shielding strategies.

d) Corporate Liability for Civil Wrongs

- **Organic / primary / direct liability** — **Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915]**: a corp has "a mind" and "hands"; when these commit wrongs, the company is directly liable.
- **Vicarious liability (secondary/indirect/employer liability)**: corp liable for the conduct of individuals acting as its agents, w/ its authority, or in service of its interests.

e) Registration Process

- **s117 CA**: provides that application for registration is made to **ASIC** (content requirements in **s117(2)**).
- **s118 CA**: provides that **ASIC registers the company** — **allocates an ACN**, includes it on the registration record, and issues a **certificate of registration**.
- **s119 CA**: provides that a company **comes into existence at the start of the day it is registered** — no SLE exists before this.
- **Consequences of registration**: corp can sue/be sued in its own right; has perpetual succession; can acquire, hold & dispose of property; can enter and be bound by contracts. Registration also fixes the initial internal management structure — later changes must follow the rules set at this time.