Tutorial 2 – Lecture 3&4

Q1

1. **GreenFields Pty Ltd → proprietary company limited by shares (s 112).**
    a. Per s 198A ('default' rule; replaceable rule), the business of the company is to be managed by or under the direction of the directors, except so far as the CA or CC requires the company to exercise a power in a general meeting.
        i. Shareholders have governance power i.e. rights to vote on specific but material items, e.g. amending the CC (**s 136**).
2. **Meeting at sports bar – was this a valid directors' meeting?**
    a. Who called the meeting? Notice?
        i. Unclear as to who called the meeting. Any director can convene; each director is entitled to notice (s 248C; RR).
        ii. However, GreenFields has a **mandatory (non-replaceable, since it is a written constitutional term overriding the replaceable rules) requirement** of at least 7 days' notice for any directors' meeting (Article 1).
            1. No such notice was given for the 'Shots' gathering, which appears to have been an **impromptu social occasion rather than a convened meeting.**
    b. Location?
        i. A directors' meeting requires at least an **intention** that the occasion be a directors' meeting and an awareness by those present that they are concurring, in their capacity as directors, in the management of the company's affairs (Poliwka v Heven Holdings Pty Ltd (1992) 7 ACSR 85 at 91).
        ii. No fixed venue (e.g. boardroom) is required — an informal venue such as a bar can suffice if that test is met.
            1. The facts provide that they met at 'Shots' for the purpose of watching a major playoff games; unlikely for there to have been awareness that it was a directors' meeting.
            2. Here, A and B are speaking about proposed expansion of the company etc., but C only follows 'parts of the discussion' and is distracted by the game – requirements in *Poliwka* not met.
    c. Quorum met (per s 248F).
    d. Voting?
        i. Regardless of the informality, the document signed only by A and B purporting to record board approval could not itself constitute a valid board resolution, because s 248G requires that the board meeting make a decision **by way of a resolution approved by the majority entitled to vote**.
        ii. BUT, no formal vote at a properly constituted meeting occurred.
            1. A 'resolution' presupposes that there has been a proposal put forth to the meeting – but no such proposal on the facts → no valid decision-making outside of a board meeting
    e. No valid board meeting.
    f. **Could the Duomatic/unanimous assent doctrine cure this?**
        i. No — that doctrine applies only to informal decision-making by members in general meeting, not to directors' meetings (Re Duomatic Ltd [1969] 2 Ch 365). It cannot validate an informal directors' decision.
3. **Was the general meeting valid?**
    a. Who called the meeting?
        i. Directors may call and arrange to hold a GM (s 249C) – A is a director; no issue.
    b. Proper purpose?
        i. Shareholders requesting a meeting under s 249D are constrained by the division of powers doctrine (s 249Q). Per *ACCR v CBA*, the meeting must have been called for a proper purpose.
            1. Here, the meeting was called for a proper purpose (s 249Q) as it was for the purpose of amending the CC (2 resolutions) – which is a power available to shareholders per s 136.