

CORPORATE LAW NOTES

Prepared by Jaclyn Ying

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VARIATION OF CLASS RIGHTS**(1) Variation of class rights?****General law?***Greenhalgh v Arderne Cinemas**White v Bristol Aeroplane Co*

No variation to strict legal rights

246C: Deemed variation?

Variation		Classes varied	SR required
(1) splitting a class into two	246F(1)(a) lodge notice with ASIC	All holders of share in the original class	Company Each class existing after the division
(2) varying the rights of some members only		All holders of share in the original class	Company Members whose rights were varied Members whose rights were not varied
(5) company with 1 class of shares issues new shares	(a) new share rights are not the same (b)(i) constitution (b)(ii) lodged with ASIC	Holders of existing shares	Company
(6) new preference shares ranking equally	(a) terms of issue (b) constitution 254A(2) & 254G(2)	Holders of existing preference shares	Company Holders of existing preference shares

Crompton v Morrish Hall Pty Ltd

Members with different share rights are treated as being in different classes

(2) Procedure? Contingent on being considered a variation

246B(1): constitution sets out procedure

246B(2): constitution does not set out procedure or provision for class rights

(c) SR (*See table*)

(d) written consent of members with > 75% votes in the class

246B(3): notice to members must be given within 7 days of variation or cancellation

246F(3): Ltd must lodge notice with ASIC regarding variation

(3) Unfair prejudice? Contingent on variation actually occurred

246D(1): without unanimous support of class

(a) variation or cancellation of their rights

(b) modification of the company's constitution to vary or cancel their rights

Members with > 10% of the votes may apply to the Court to have the variation, cancellation or modification set aside246D(2): application must be made within 1 month of variation246D(5): Court may set aside if satisfied it would unfairly prejudice applicants

CORPORATE LAW NOTES: LECTURE AND TEXTBOOK SUMMARY

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Lecture 1: Company overview

Company: artificial legal person

1. Separate legal personality:
 - Incur obligations and hold rights
 - Sue and be sued in its own name
 - 119: come into existence as a body corporate
 - Contract with controllers and others
 - Perpetual succession
 - Participants have no proprietary interest in company's property
 - Separate taxpayer
2. Legal capacity
3. Limited liability

Salomon v Salomon & Co Ltd

The company and its controller are separate legal entities

Industrial Equity Ltd v Blackburn

Walker v Wimbourn

The company and its controller are separate legal entities (corporate groups)

Macaura v Northern Assurance Co Ltd

Insurable interest for timber plantation transferred to company

Participants have no proprietary interest in company's property

Lee v Lee's Air Farming Ltd

Workers compensation insurance for husband's death

Contract exists between company and its controller as separate legal entities

124(1)(a): a company has the power to issue and cancel shares in the company

Sydney Future Exchange Ltd v ASX Ltd

Share: right to a specified amount of the share capital of a company, carrying with it rights and liabilities when the company is a going concern and in the course of its winding up

254B(1): a company may determine

- (a) terms on which its shares are issued
- (b) rights and restrictions attaching to the shares

RR 250E: how many votes a member has

- (1) at a meeting of members
 - (a) show of hands, each member has 1 vote
 - (b) poll, each member has 1 vote per share
- (3) chair has casting vote