

Week 1-Article Notes

- What is a corporation - an artificial legal person
- if you register a corporation —> you have given birth to a human being, it is an own being and conduct its own acts - it has all the responsibilities that a normal Australian citizen would have
- corporation bears all its responsibility (bar one or two)
- Economics is the question of how to satisfy unlimited desires with limited resources
- commercial law is the means in which we implement the economic choice
- corporate law is a subset of commercial law
- to understand corporate law and commercial law need to understand context it began with

Adam Smith: The Wealth of Nations (pg. 1 of Unit Reader)

- Seminal work of Adam Smith
- simple propositions that have changed the world in a profound way
- talking about division of labour
- looks into a pin-factory
- someone/individual can make a pin, start to finish, making relatively few pins throughout the day
- but if you have 5 people, which split the process of pin making up
- standing there doing one thing over and over again all day = skill level of the process increased
- this in turn means that more pins are produced
- more things we produce (such as pins), more things are in the world, more unlimited wants we can satisfy from the unlimited wants in the world for which we have limited resources
- labour is the greatest resource of all - limited time to extract it

- Breaking up tasks into managed specialisations
- trying to come up with a system that would structure human behaviour to a productive end
- only reason man will do something is because they will get something in return
- system that can appeal to the average man
- labour is the real measure of the exchangeable value of all commodities
- if above is true: each person possesses their labour and can use it to advance themselves —> each man can either be rich or poor according to the amount of labour they can exert
 - at least until there is a rise of a capitalist class that owns the factory
 - command the labour of other people
 - gain the profits from other people's labour
 - this is Class division
- not the same sense of ownership, and not an appeal to human spirit, when labour is broken up into these segments —> individuals cannot claim they are a pin maker or that they made the pin, only that they made the head of the pin or sharpened the tip
- loss of completeness of what you do — loss of intelligence and creativity

R. Coase (pg.6 of unit reader)

- 1937 writer
- system that Adam Smith proposed has been widely accepted
- advent of the corporation
- wins a Nobel prize for the study
- Quotes Robertson “As long as we appeal to every man's greed, let him follow his own desires —> system will work perfectly”
- what about corporations? - why is it that there is one person that tells others what to do, should we not let the individuals go out, letting them do what they want to do? to produce the best outcome

- goes inside corporation: he doesn't see the market forces in play within the corporation
- distinguishing mark of the firm is the price mechanism
- Reason that one person sits in a larger office than another rarely has anything to do with maximising profit —> when someone is promoting someone it is due to the managers power, politics, impressions and bias'
- why do people use corporations: there is a cost of using the price mechanism —> where does it lie?
-
- too hard to use the price mechanism

Milton Friedman, Capitalism and Freedom (pg. 8)

- Nobel prize winner
- promotes capitalism
- every time anyone enters into a contract, the whole world is a better place
- every time agreement reached/trade then every party involved is much happier for it

J. K Galbraith - New Industrial State

- 1972
- perversion of price mechanism of large firms
- assume voluntary exchange between people - because its in our best interest to do so as Friedman states
- vertical integration
- if you own whole supply chain, surely power lies in consumer —> ultimately consumer has to have interest to buy
- marketing then comes into play ^ - can make people, to a certain extent, buy things they do not desire and do not need by manufacturing a false desire
- way you can control the supply chain, all the way to consumers mind

M Lewis - Liar's Poker

- lot of people want to sell their labour, and few buyers (employers), then price of labour should come down

K Marx (p. 12)

- 1867
- critiques of what adam smith says
- working class citizen: has certain needs (food, water, shelter etc), need to go to the market to sell labour (work) to achieve these things
- offers you enough to survive etc
- marx says lets peer behind curtain - see what happens to these free individuals once contract is signed

J. Vidal "Farmers to the Slaughter"

- British pig industry
- what happens with large corporation comes in with capitalist ideals and imposes its will upon people

fundamental groundwork of corporations law

history/critiques of system of wealth distribution for which corporate law was born and necessitates the corporate form

in corporate law have central issues: one is that we have a corporation, a unique person (that doesn't die, able to transcend national barriers, someone we cant throw in jail etc. IT IS IMMORTAL) How then do you control it?

How do you manage something, where people that own corporation is not in fact the people that control it

deliberate design, necessitated by above readings

looking at what happened when corporation was developed and how did it come to be that the owners rarely control it What problems rise from that?

THE RISE OF THE MANAGERIAL POWER ELITE

A D Chandler “The Visible Hand”

- invisible hand —> adam smith refers to —> not a free market hand
- central proposition of Chandler = the large corporations are controlling activity of economy, not directed by supply and demand that capitalism requires
- who directs corporations? —> certain people good at certain things: just because someone can afford to buy a factory is not necessarily the best at running it
- best person to run corporation is someone without any money —> division of power means you hire the best person for it - people became specialised in managing, they do not own it they only control it
- gives great opportunity for lower and middle classes to train and take control of capital
- as we trace what happens, separation of power and control, and ownership and control
- with one owner and one manager the two can compete, owner can step in at any time and stop manager
- most corporations are now not owned by one person
- huge number of people (stockholders) - no longer allowed to confront managers about running corporation HENCE manager, the person running the corporation, has no economic vested interest in it
- ^ essential problem for corporate law
- how do you align interest of manager and shareholders

- berl and means study
 - how it came to be that owners no longer were great entrepreneurs of the past
 - classic entrepreneur has virtually disappeared
 - transcendent management has replaced entrepreneur
 - managers = all of the control but none of the ownership
 - Company law is there to make sure that the shareholders are looked after - but why? because shareholders own property
 - starting point for inquiry: is it possible that every company law is solely designed to protect those with property from those without it?
 - Study of ownership of corporations
 - concept that as capitalism progresses more and more of the money of the world is going to land in the hands of fewer and fewer
 - almost exact opposite happened ^ — instead of one person ending up with all of the money, we had a large amount of people that had little ownership of any company (shareholders)
 - micro-percentages of corporations owned by lots and lots of people
 - managers = disembodied entrepreneurs
 - people owning company have no legitimate claim to propriety rights
 - propriety ownership = rights to a property
 - 3 reasons to legitimate property in this way: 1. because we got there first 2. Lockian conception of property: all of the earth is given equally to every person in equal measure (only thing you own that everyone else doesn't is your own labour). If i go out to a patch of land and i dig it and plant a seed, everyone owns the tree that grows there BUT equal share + labour = you have greater share of the tree (used to legitimise property ownership in western world) 3. Benthamite conception of property: property is property because the law says it is, and if you disagree with the law you will be punished. (no logic other than the fact it is reality)

- people that own the shares- move beyond idea of 1., want to find moral/ethical reason for ownership of shares —> stuck. Go to Lockean conception - if you mix labour with something you can have it. There is a manager in corporation that is mixing their labour, directing it etc. both you (the shareholder: sell apple that grew from tree and money you received from that is the embodiment of your labour, use money to buy a share) and the manager can claim ownership under this theory. Who has the better claim to proprietary ownership over the company?
- when you buy shares, put money into shares and expect a return, but do not accept any responsibility of the corporation = usury OR A LOAN
- managers and shareholders may not get along - corporate law must make sure they line up

Hessen

- if we have corporation and it is not answering to market forces, and it doesn't answer to traditional logic of property rights = loss of efficient allocation of resources, lack of return and efficiency
- reality isn't really as drastic as above ^
- if you are manager of corporation and it is publicly listed (people can buy and sell shares) —> there is law says that 'if you are a manager and you become aware of something that could affect price of company, by means of a reasonable person, you immediately need to tell the world about it' —> even if not direct control, there is still information being told
- just because there are many shareholders doesn't mean they are not having a say - shareholders get together and appoint a director
- one vote per share: director(s) are charged with making sure that managers are acting in the best interest of shareholders
- live in a democratic society —> to say that directors cannot represent shareholders goes against our society (like saying the prime minister cannot represent Australians)
- however, not everyone gets equal votes (plutocracy: because it's one vote per share not per shareholder)

- shareholders are able to exert a certain amount of control over managers
- working class person able to climb the ladder —> productive input
- arguing otherwise is to argue against capitalism and separation of labour
- everyone is free - should be able to choose what they do with their money

C.S. Beed

- if you own 15% of shares, that may be enough to appoint yourself director and hence in charge of company
- huge amount of interest based on shareholder pattern
- separation of ownership and control is not an issue: can get together (minority shareholders) to overturn manager, owners can come together as a collective
- why do we assume there is a separation of ownership and control? - if I a director there is a likely chance invested in company, if manager also likely to be invested
 - How do we know this? a lot of managers paid in share options = if i want directors and managers to do what i want them to do, you go to them and say i will pay you money, but part of your salary will be shares. Aligns interest of manager to yours - because they are now part owners of it
 - idea that people control company has no interest in it is false in many cases — shadowing doubt on berle and means
- What about institutional investors?
 - own all these shares through superannuation fund: but you never personally get involved in shareholder meetings, superannuation fund will do this on your behalf
 - institution investors will end up with majority of share investment in majority of companies

Pahl and Winkler

- rebuttle of berle and means
- managers have a job, and want another job after finished at their company

- no one is ever going to hire a lazy manager —> pressure to return profit to the owners
- if there is a problem, managers will be far greater capitalists — they don't have to answer morally, they are just doing their job, fight for every last dollar etc
 - when she goes for next job - can say look at the amount of profit i returned

Marx “Capital: Volume 3”

- problem he raises =
- Formation of joint-stock companies
- work becomes a social enterprise
- everyone involved in corporation is having labour stolen from them
- inevitable outcome - necessary transitional phase

Jackal “Moral Mazes”

- gone into corporation and asked what is going on here
- doesn't look at economic level
- simply looks at who the people are in the corporation
- small political groups within corporation - what types of people are these
- public social order that corporation sends to the world - once you go into it, you are trained to be hypercompetitive, ruthless ambition and accumulation of wealth