TABL 2741
BUSINESS ENTITIES

Course Outline
Semester 1, 2016

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PART A: COURSE-SPECIFIC INFORMATION

1 STAFF CONTACT DETAILS
Lecturer-in-charge: A/Professor Anil Hargovan
Room 2054H – Level 2 Quad South Wing
Phone No: 9385 3577
Email: a.hargovan@unsw.edu.au
Consultation Times – By appointment

Other lecturers:
Professor Pamela Hanrahan
Room 2076, Level 2 Quad South Wing
Phone No: 9385 9550
Email: p.hanrahan@unsw.edu.au
Consultation times – By appointment

A full list of tutors will be posted on Course Website.

Communication with Staff
- Students are invited to consult with the lecturer in charge on any aspect of the course.
- Students may contact staff by e-mails regarding course administration matters, using only their official university email address as per University Email Policy. E-mail is not an appropriate medium for learning. It is a poor substitute for personal consultation. Do not expect staff to reply to e-mails which request extensive or substantive answers. Teaching staff will use their discretion when consulted via e-mail and may instead invite students to meet in person during consultation hours to discuss complex questions, solutions to tutorial questions, past exam questions, etc.

2 COURSE DETAILS

2.1 Teaching Times and Locations
Lectures start in Week 1 (to Week 12): There are 2 lecture streams: a Day lecture stream and a Night lecture stream. Students need only attend 1 lecture stream (the stream officially enrolled in).

Times and Location are:

Day Lecture Stream: Thursday 11.00-2.00pm – CLB 8; OR

Night Lecture Stream: Thursday 6.00-9.00pm – CLB 8

Tutorials start in Week 2 (to Week 13). A full list of tutorials, times and tutors will be on the Course Website. It is your responsibility to ensure that you have a formal Tutorial Guide (downloadable from Moodle).

2.2 Units of Credit
The course is worth 6 units of credit.

Summary of Course

The purpose of this course is to examine the main principles of company law. Emphasis will be given to the areas dealing with the legal effects of incorporation, corporate liability, the raising and maintaining of capital; the responsibility for company management and governance
(directors duties and liabilities); the commercial conduct of companies; the protection of shareholders (rights and remedies); liquidation and alternatives for companies in financial distress. Other forms of business structures or organisations will also be referred to in the context of company regulation. The comparative utility of alternative business structures will be assessed. Such utility will be examined from aspects such as personal liability, suitability for property ownership, nature of title to assets and facility for the conduct of commercial operations.

Lecture material will be grounded in contemporary commercial and legal developments to illustrate the practical relevance of topics studied.

2.3 Course Aims and Relationship to Other Courses

Business Entities is the main company law course offered by the School of Taxation and Business Law. CPA Australia and the Institute of Chartered Accountants in Australia (ICAA) have accepted UNSW as an approved tertiary institution for purposes of membership qualifications. Bachelor of Commerce (Accounting) students will generally need to complete the following courses to satisfy profession requirements:

- TABL 1710 Business and the Law
- TABL 2741 Business Entities
- TABL 2751 Business Taxation (for CPA students, it is advisable to do tax law as part of your degree; otherwise you will need to undertake a tax law course at the CPA after you graduate)

Students may choose to study Business Entities as part of a Business Law co-major or a Taxation major.

A Business Law co-major involves completing 7 courses (1 compulsory course LEGT 1710 Business and the Law; 3 options of Level 2 courses and 3 options of Level 3 courses). The school offers, for example, the following options that build upon the knowledge gained in this course.

Business Law
- TABL 3761 Law of Banking and Finance
- TABL 4721 Special Topic in Business Law (for example, corporate governance may be the focus of research as a special topic)

Taxation Law
- TABL 3757 Corporate Tax Strategy
- TABL 3755 Taxation of Business Entities

2.4 Student Learning Outcomes

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

By the end of this course, you should be able to:
1. explain the practical features of various types of non-corporate and corporate business structures and the legal environment in which they operate;
2. explain and apply principles of company law;
3. analyse and evaluate legal problems;
4. apply logical argument, in written or oral form, to legal problems that arise in modern company law;
5. research legal principles that apply to business structures; and
6. identify emerging trends in corporate regulation and corporate governance;
The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all undergraduate students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. ‘be an effective team player’). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. ‘participate collaboratively and responsibly in teams’).

For more information on the Undergraduate Program Learning Goals and Outcomes, see Part B of the course outline.

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**Business Undergraduate Program Learning Goals and Outcomes**

1. **Knowledge**: Our graduates will have in-depth disciplinary knowledge applicable in local and global contexts.
   You should be able to select and apply disciplinary knowledge to business situations in a local and global environment.

2. **Critical thinking and problem solving**: Our graduates will be critical thinkers and effective problem solvers.
   You should be able to identify and research issues in business situations, analyse the issues, and propose appropriate and well-justified solutions.

3. **Communication**: Our graduates will be effective professional communicators.
   You should be able to:
   a. Prepare written documents that are clear and concise, using appropriate style and presentation for the intended audience, purpose and context, and
   b. Prepare and deliver oral presentations that are clear, focused, well-structured, and delivered in a professional manner.

4. **Teamwork**: Our graduates will be effective team participants.
   You should be able to participate collaboratively and responsibly in teams, and reflect on your own teamwork, and on the team’s processes and ability to achieve outcomes.

5. **Ethical, social and environmental responsibility**: Our graduates will have a sound awareness of the ethical, social, cultural and environmental implications of business practice.
   You should be able to:
   a. Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and
   b. Identify social and cultural implications of business situations.

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

<table>
<thead>
<tr>
<th>Program Learning Goals and Outcomes</th>
<th>Course Learning Outcomes</th>
<th>Course Assessment Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>This course helps you to achieve the following learning goals for all Business undergraduate students:</td>
<td>On successful completion of the course, you should be able to:</td>
<td>This learning outcome will be assessed in the following items:</td>
</tr>
</tbody>
</table>
| 1 Knowledge                           | Explain the practical features of various types of non-corporate and corporate business structures. | • Tutorial Problems  
• Assignment  
• In-tutorial Tests  
• Final Exam |

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[Image and text from the original document]
**3 LEARNING AND TEACHING ACTIVITIES**

**3.1 Approach to Learning and Teaching in the Course**

The approach to learning and teaching in this course is premised on the fact that active student involvement in the course will facilitate understanding and deep learning of the course materials. The accompanying tutorial program to this course facilitates this outcome together with the opportunities that will arise from time to time in the lectures. Consequently, students are expected to understand rather than memorise and to apply, rather than regurgitate.

In order to obtain the potential benefit from the course and to succeed in all aspects of course assessment, students are required to follow the points below:

1. Read the prescribed materials before class lectures. This will make the class material easier to follow and comprehend;
2. Download the lecture handout/slides (available from Moodle) before class lectures. It is essential to bring the handout/slides to class and to supplement it with notes taken from the lecture. It is important to remember that the lecture handouts are not designed to be comprehensive and serve as a substitute for class lectures;
3. Actively participate in class: answer answers and ask your own;
4. Attend classes on time (important announcements are usually made prior to the delivery of lectures);
5. Attempt all the revision questions (in tutorial guide) for self-evaluation; and
6. Make an appointment to see the lecturer(s) during their consultation hours if further clarification regarding the course content is required.
3.2 Learning Activities and Teaching Strategies

The teaching strategies in this course adopts a combination of weekly lectures and tutorials (or seminars) designed to allow the delivery of a body of material and the opportunity thereafter to discuss and contextualise the material. This is done with real life examples to aid student understanding. The teaching strategies adopted aims to encourage critical thinking, deep and positive learning. The course is also designed to cater for the learning needs of a diverse range of students. It incorporates self-review questions, found in the tutorial guide, to facilitate your own assessment of your progress in understanding the course materials.

The tutorial program for this course serves several useful and practical purposes. It is designed to help consolidate, interpret and apply the lecture material. Students are taught to learn by understanding and application, not memorisation and regurgitation. Solutions to tutorial questions are not provided to ensure that students participate actively in class to confirm their understanding, learn from their mistakes and receive feedback on the correct approach to the questions. Students may see the lecturer or tutor during their consultation hours if further clarification regarding the tutorial questions is needed.

Additionally, the tutorial program and assessment is also designed to allow students to develop the skills (both verbal and written) necessary to analyse problems which may arise in practice. The guide is designed to allow each student to reach the goal of being able to apply theory, knowledge and problem solving technique to fact situations that may arise in company law. It is essential that students learn to select the important issues in such fact situations and that they be able to advance, in discussion, a carefully analysed solution aimed at resolution of the factual situation based on both relevant legislation and case law.

This course assumes you have studied TABL 1710 Business and the Law or the equivalent course. If you need to refresh your memory and re-familiarise yourself with the general principles of Australian law, you should read a short introductory book such as Carvan, Understanding the Australian Legal System, latest edition (Law Book Co), or Chisholm and Nettheim, Understanding Law, latest edition (Butterworths).

Reading cases is the best way to gain an understanding of:

- how common law and equity evolve (ie Judge made law, based on previous decisions)
- how the judges interpret the provisions of statutes

4 ASSESSMENT

4.1 Formal Requirements

In order to pass this course, you must:
- achieve a composite mark of at least 50; AND
- achieve a mark of at least 45% (i.e. 27 out of 60) in the final exam; AND
- complete all assessment tasks; AND
- attend at least 80% of the tutorials.

4.2 Assessment Details

ASSessment in this course consists of 3 COMPONENTS:

- FORMAL WRITTEN RESEARCH ASSIGNMENT,
- TUTORIAL QUIZZES AND
- FINAL EXAM

<table>
<thead>
<tr>
<th>Assessment Task</th>
<th>Weighting</th>
<th>Length</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.Formal Written Research Assignment</td>
<td>20%</td>
<td>1,700 words</td>
<td>Wed 20 April by 5.00pm</td>
</tr>
</tbody>
</table>

business.unsw.edu.au
CRICOS Code 00098G
2: Tutorial Quizzes (x3; worth 10 marks each; best of 2)

**Note:** The higher of the two set of quiz marks awarded (out of 20) will automatically be chosen and awarded

| Quiz 1 Week Beginning 21 March [start of Week 4] |
| Quiz 2 Week Beginning 25 April [start of Week 8] |
| Quiz 3 Week Beginning 16 May [start of Week 11] |

3. Final Exam

| 60% | 3 hours | University Exam Period |
| Total | 100% |

### 4.3 Assessment Format

**4.3.1 The written assignment is worth 20% of the course assessment.**

The topic will be released via Moodle in Week 4. This is a formal written assessment which involves individual legal research and analysis. It has a minimum word limit of 1,500 words and maximum word limit of 1,700 words (see style guide and cover sheet attached to tutorial guide for further details).

*It must be lodged in the marked TABL 2741 Assignment Collection Box in the School of Taxation and Business Law [Quad Bld, 2nd Level, South Wing] by 5.00 pm by Wednesday 20 April 2016 (note: No other form of submission is allowed without prior lecturer consent).*

*Unauthorised late submissions will attract an immediate deduction of 20% and thereafter the same deduction per day late. Any assignment submitted 5 or more days late will score 0.*

*Any assignment submitted 5 or more days late will score 0.*

A copy of the assignment must also be lodged at turnitin before the due date and time.

**4.3.2 Tutorial Quiz**

Written quizzes conducted in tutorials are worth 20% of the course assessment.

**Tutorial Quiz**

There will be three (3) quizzes given in tutorials during the session, based on the lecture material [tutorial questions are, indeed, based on lecture material]. Students are advised to use the information below to guide preparation for the tutorial quizzes – it indicates the lecture material (as spelt out in the course outline) that will be assessed in each quiz:

- **Quiz 1:** Lecture Topics covered in Weeks 1-3 inclusive
- **Quiz 2:** Lecture Topics covered in Weeks 4-7 inclusive
- **Quiz 3:** Lecture Topics covered in Weeks 8-10 inclusive

**Quizzes commence from week 4 of session.** Each quiz will consist of short answer questions and/or multiple choice questions and will each be worth 10% of the total mark of the course. These tutorial assessments will be closed book. Further details will be announced in the lectures.

Each quiz will start no earlier than 5 minutes after the hour that the tutorial commences and students arriving late to tutorials will be given only the remaining allotted time to complete the quiz.

Students will be marked on the highest 2 scores attained out of the 3 quizzes held during the session. Students absent in the tutorial on the date of the quiz will have 0 marks recorded for
4.3.3 Final Exam

The final examination is worth 60% of the course assessment and will consist of problem questions and essay questions. It will be 3 hours long and cover the entire course material, unless advised by the lecturer to the contrary in class.

It is a closed book exam (no external materials are allowed into the exam). However, a case list (comprising of cases listed in this Course Outline) and extracts from the Corporations Act will be supplied in the exam room, attached to the question paper. Thus, there is no need to commit case names or section numbers to memory.

The final examination will be held in the regularly scheduled University examination period. Further information concerning the exam and its format will be announced in lectures before the end of the course (around Week 11) and a summary of the key points will be posted to Moodle.

4.4 Assignment Submission Procedure

See contents of 4.3.1 above

All students must retain a spare copy of the assignment to be produced, if required, on demand.

4.5 Late Submission

See contents of 4.3.1 above

If you foresee that you will have problems submitting the assignment on time you should contact the lecturer-in-charge immediately. Only the lecturer-in-charge can grant an extension for an assignment.

Do not wait until the due date to ask for an extension. No extensions will be granted on the due date itself.

If circumstances beyond your control mean that you cannot complete an assignment by the due date you should make an application for special consideration (see below at Part B, paragraph 3). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

Extensions will not be granted lightly and may only be granted in exceptional circumstances, supported by detailed documentation.

Quality Assurance

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will be used to inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential.

5 COURSE RESOURCES

The textbooks for this course are:

Note that there are valuable supplementary learning resources accompanying this book, such as quizzes with solutions, available online and accessible by publisher bar-code.


And


**Note:** Students are strongly advised to use the latest edition of prescribed materials to ensure accuracy. Due to a continuous process of law reform and judicial pronouncements in a rapidly changing corporate environment, it is unadvisable to use previous editions of the prescribed materials. If you do so, you undertake a large risk which may have an adverse impact on performance in the variety of assessments for this course.

**Recommended Reference**


**General corporations law texts and/or casebooks**

- Harris, Corporations Law, Questions and Answers, 4th ed., 2013, LexisNexis/Butterworths
- Lipton, Hertzberg & Welsh, Understanding Company Law, 18th ed., 2015, Thomson Reuters

**Professional references**

- Butterworths, Australian Corporation Law Principles and Practice (loose-leaf volumes available online)
- CCH, Australian Corporate News (loose-leaf 1 Volume available online).
- Butterworths, Australian Corporation Law Bulletin (loose-leaf 1 Volume available online)

**Specific topic reference texts [for selected topics only]**

- Austin, Ford & Ramsay, Company Directors-Principles of Law and Corporate Governance, 2005, LexisNexis/Butterworths
- Murray, & Harris, Keay’s Insolvency: Personal and corporate law and practice, 9th edition, 2016, Thomson Reuters

**Online Resources: Moodle**
The website for this course is on Moodle at: http://moodle.telt.unsw.edu.au
Students are encouraged to check the course website at Moodle for announcements and the following resources designed to assist students with their study of this course:

- course outline
- assessment details (format of final exam; some past exam papers)
- relevant lecture slides;
- cases and articles;
- useful links

The following websites are also useful sources:

- Australasian Legal Information Institute (http://www.austlii.edu.au)
- Federal (Commonwealth) Parliament (bills, legislation, committees etc http://www.aph.gov.au
- Australian Securities and Investment Commission: www.asic.gov.au
- www.comlaw.gov.au
- www.camac.gov.au

6 COURSE EVALUATION AND DEVELOPMENT

Each year feedback is sought from students and other stakeholders about the courses offered in the School and continual improvements are made based on this feedback. UNSW's Course and Teaching Evaluation and Improvement (CATEI) Process is one of the ways in which student evaluative feedback is gathered. In this course, we will seek your feedback through end of semester CATEI evaluations.
## 7 COURSE SCHEDULE
### Lecture Schedule
Lectures start in Week 1 and finish in Week 12.

<table>
<thead>
<tr>
<th>Week</th>
<th>Topic</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week 1 29 February Lecturer: (AH)</td>
<td>Course Overview Development, Structure and Administration of Australian Company Law</td>
<td>HHA Chapters 1-2</td>
</tr>
<tr>
<td>Week 2 7 March Lecturer: (AH)</td>
<td>Alternative Business Structures: Part 1 [sole traders, partnerships, joint ventures]</td>
<td>HHA Chapters 3-4</td>
</tr>
<tr>
<td>Week 3 14 March Lecturer: (AH)</td>
<td>Alternative Business Structures: Part 2 [trusts, companies and associations]</td>
<td>HHA Chapters 3-4</td>
</tr>
<tr>
<td>Week 4 21 March Lecturer: (AH)</td>
<td>Legal Effects of Incorporation Separate Legal Personality and its Limits Lifting the Corporate Veil (common law and statutory) Personal Liability for Insolvent Trading</td>
<td>HHA Chapters 5 and 18 [para 18.3; 18.10-22]</td>
</tr>
</tbody>
</table>

**Mid-semester break: Friday 25 March – Sunday 3 April inclusive**

<p>| Week 5 4 April Lecturer: (PH) | • Internal Governance: Corporate Constitution and Replaceable Rules • Corporate Liabilities: Contract, Tort, Crime | HHA Chapters 6-7 |
| Week 6 11 April Lecturer: (PH) | • Promoters • Corporate Fundraising [Shares] and Investor Protection • Debt Capital [Debentures] | HHA Chapters 8-10 and 22 [para 22.3; 22.26-37] |
| Week 7 18 April Lecturer: (PH) | • Shares and Share Capital Transactions • Company Meetings | HHA Chapters 11-12 |
| Week 8 25 April Lecturer: (PH) | Corporate Governance: Directors Duties – Part 1 | HHA Chapters 15-16 |
| Week 9 2 May Lecturer: (PH) | Corporate Governance: Directors Duties – Part 2 | HHA Chapter 17 |
| Week 10 | Shareholders: Rights and Remedies [Note: Weeks 8-10 deals with the | HHA Chapter 19 |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Lecturer</th>
<th>Topic</th>
<th>Reading Material</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 May</td>
<td>(PH)</td>
<td>commercial conduct of the company</td>
<td></td>
</tr>
<tr>
<td>Week 11</td>
<td>(AH)</td>
<td>External Administration: Part 1 [Schemes, Voluntary Administration and Receivership]</td>
<td>HHA Chapter 22</td>
</tr>
<tr>
<td>16 May</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Week 12</td>
<td>(AH)</td>
<td>External Administration: Part 2 [Liquidation/Winding Up and Deregistration]</td>
<td>HHA Chapter 22</td>
</tr>
<tr>
<td>23 May</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Week 13</td>
<td></td>
<td>NO LECTURES</td>
<td>Last Week of Tutorials</td>
</tr>
<tr>
<td>30 May</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PART B: KEY POLICIES, STUDENT RESPONSIBILITIES AND SUPPORT

8 PROGRAM LEARNING GOALS AND OUTCOMES

The Business School Program Learning Goals reflect what we want all students to BE or HAVE by the time they successfully complete their degree, regardless of their individual majors or specialisations. For example, we want all our graduates to HAVE a high level of business knowledge, and a sound awareness of ethical, social, cultural and environmental implications of business. As well, we want all our graduates to BE effective problem-solvers, communicators and team participants. These are our overall learning goals for you and are sought after by employers.

You can demonstrate your achievement of these goals by the specific outcomes you achieve by the end of your degree (e.g. be able to analyse and research business problems and propose well-justified solutions). Each course contributes to your development of two or more program learning goals/outcomes by providing opportunities for you to practise these skills and to be assessed and receive feedback.

Program Learning Goals for undergraduate and postgraduate students cover the same key areas (application of business knowledge, critical thinking, communication and teamwork, ethical, social and environmental responsibility), which are key goals for all Business students and essential for success in a globalised world. However, the specific outcomes reflect different expectations for these levels of study.

We strongly advise you to choose a range of courses which assist your development of these skills, e.g., courses assessing written and oral communication skills, and to keep a record of your achievements against the Program Learning Goals as part of your portfolio.

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<thead>
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<td><strong>1. Knowledge:</strong> Our graduates will have in-depth disciplinary knowledge applicable in local and global contexts. You should be able to select and apply disciplinary knowledge to business situations in a local and global environment.</td>
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<td><strong>5. Ethical, social and environmental responsibility:</strong> Our graduates will have a sound awareness of the ethical, social, cultural and environmental implications of business practice.</td>
</tr>
</tbody>
</table>
You will be able to:

- Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and
- Identify social and cultural implications of business situations.

9 ACADEMIC HONESTY AND PLAGIARISM

The University regards plagiarism as a form of academic misconduct, and has very strict rules regarding plagiarism. For UNSW policies, penalties, and information to help you avoid plagiarism see: https://student.unsw.edu.au/plagiarism as well as the guidelines in the online ELISE tutorials for all new UNSW students: http://subjectguides.library.unsw.edu.au/elise

To see if you understand plagiarism, do this short quiz: https://student.unsw.edu.au/plagiarism-quiz

For information on how to acknowledge your sources and reference correctly, see: https://student.unsw.edu.au/harvard-referencing

For the Business School Harvard Referencing Guide, see the Business Referencing and Plagiarism webpage (Business >Students>Learning support> Resources>Referencing and plagiarism).

10 STUDENT RESPONSIBILITIES AND CONDUCT

Students are expected to be familiar with and adhere to university policies in relation to class attendance and general conduct and behaviour, including maintaining a safe, respectful environment; and to understand their obligations in relation to workload, assessment and keeping informed.

Information and policies on these topics can be found in UNSW Current Students ‘Managing your Program’ webpages: https://student.unsw.edu.au/program.

10.1 Workload

It is expected that you will spend at least nine to ten hours per week studying this course. This time should be made up of reading, research, working on exercises and problems, online activities and attending classes. In periods where you need to complete assignments or prepare for examinations, the workload may be greater. Over-commitment has been a cause of failure for many students. You should take the required workload into account when planning how to balance study with employment and other activities.

We strongly encourage you to connect with your Moodle course websites in the first week of semester. Local and international research indicates that students who engage early and often with their course website are more likely to pass their course.

Information on expected workload: https://student.unsw.edu.au/uoc

10.2 Attendance

Your regular and punctual attendance at lectures and seminars, as well as in online activities, is expected in this course. University regulations indicate that if students attend less than 80% of scheduled classes they may be refused final assessment. For more information, see: https://student.unsw.edu.au/attendance
10.3 General Conduct and Behaviour
You are expected to conduct yourself with consideration and respect for the needs of your fellow students and teaching staff. Conduct which unduly disrupts or interferes with a class, such as ringing or talking on mobile phones, is not acceptable and students may be asked to leave the class. More information on student conduct is available at: https://student.unsw.edu.au/conduct

10.4 Health and Safety
UNSW Policy requires each person to work safely and responsibly, in order to avoid personal injury and to protect the safety of others. For more information, see http://safety.unsw.edu.au/.

10.5 Keeping Informed
You should take note of all announcements made in lectures, tutorials or on the course website. From time to time, the University will send important announcements to your university e-mail address without providing you with a paper copy. You will be deemed to have received this information. It is also your responsibility to keep the University informed of all changes to your contact details.

11 SPECIAL CONSIDERATION
You must submit all assignments and attend all examinations scheduled for your course. You should seek assistance early if you suffer illness or misadventure which affects your course progress.

General information on special consideration for undergraduate and postgraduate courses:
1. All applications for special consideration must be lodged online through myUNSW within 3 working days of the assessment (Log into myUNSW and go to My Student Profile tab > My Student Services > Online Services > Special Consideration). You will then need to submit the originals or certified copies of your completed Professional Authority form (pdf - download here) and other supporting documentation to Student Central. For more information, please study carefully in advance the instructions and conditions at: https://student.unsw.edu.au/special-consideration
2. Please note that documentation may be checked for authenticity and the submission of false documentation will be treated as academic misconduct. The School may ask to see the original or certified copy.
3. Applications will not be accepted by teaching staff. The lecturer-in-charge will be automatically notified when you lodge an online application for special consideration.
4. Decisions and recommendations are only made by lecturers-in-charge (or by the Faculty Panel in the case of UG final exam special considerations), not by tutors.
5. Applying for special consideration does not automatically mean that you will be granted a supplementary exam or other concession.
6. Special consideration requests do not allow lecturers-in-charge to award students additional marks.

Business School policy on requests for special consideration for Final Exams in undergraduate courses:
The lecturer-in-charge will need to be satisfied on each of the following before supporting a request for special consideration:

1. Does the medical certificate contain all relevant information? For a medical certificate to be accepted, the degree of illness, and impact on the student, must be stated by the medical practitioner (severe, moderate, mild). A certificate without this will not be valid.

2. Has the student performed satisfactorily in the other assessment items? Satisfactory performance would require at least completion of all assessment tasks and meeting the obligation to have attended 80% of tutorials.

3. Does the student have a history of previous applications for special consideration? A history of previous applications may preclude a student from being granted special consideration.

**Special consideration and the Final Exam in undergraduate courses:**

Applications for special consideration in relation to the final exam are considered by a Business School Faculty panel to which lecturers-in-charge provide their recommendations for each request. If the Faculty panel grants a special consideration request, this will entitle the student to sit a supplementary examination. No other form of consideration will be granted. The following procedures will apply:

1. Supplementary exams will be scheduled centrally and will be held approximately two weeks after the formal examination period. The dates for Business School supplementary exams for Semester 1, 2016 are:
   - 12th July – exams for the School of Accounting
   - 13th July – exams for all Schools except Accounting and Economics
   - 14th July – exams for the School of Economics

   If a student lodges a special consideration for the final exam, they are stating they will be available on the above dates. **Supplementary exams will not be held at any other time.**

2. Where a student is granted a supplementary examination as a result of a request for special consideration, the student's original exam (if completed) will be ignored and only the mark achieved in the supplementary examination will count towards the final grade. Failure to attend the supplementary exam will not entitle the student to have the original exam paper marked and may result in a zero mark for the final exam.

If you attend the regular final exam, you are extremely unlikely to be granted a supplementary exam. Hence if you are too ill to perform up to your normal standard in the regular final exam, you are strongly advised not to attend. However, granting of a supplementary exam in such cases is not automatic. You would still need to satisfy the criteria stated above.

Special consideration and assessments other than the Final Exam in undergraduate courses:

Apply to the Lecture in Charge in writing before the due date of the assessment.

12 STUDENT RESOURCES AND SUPPORT

The University and the Business School provide a wide range of support services for students, including:

- **Business School Education Development Unit (EDU)**
  [https://www.business.unsw.edu.au/students/resources/learning-support](https://www.business.unsw.edu.au/students/resources/learning-support)
  The EDU provides academic writing, study skills and maths support specifically for Business students. Services include workshops, online resources, and individual consultations. EDU Office: Level 1, Room 1033, Quadrangle Building. Phone: 9385 5584; Email: edu@unsw.edu.au.

- **Business Student Centre**
  [https://www.business.unsw.edu.au/students/resources/student-centre](https://www.business.unsw.edu.au/students/resources/student-centre)
  Provides advice and direction on all aspects of admission, enrolment and graduation. Office: Level 1, Room 1028 in the Quadrangle Building; Phone: 9385 3189.

- **Moodle eLearning Support**
  For online help using Moodle, go to: [https://student.unsw.edu.au/moodle-support](https://student.unsw.edu.au/moodle-support). For technical support, email: itservicecentre@unsw.edu.au; Phone: 9385 1333.

- **UNSW Learning Centre**
  [www.lc.unsw.edu.au](http://www.lc.unsw.edu.au) Provides academic skills support services, including workshops and resources, for all UNSW students. See website for details.

- **Library training and search support services**
  [http://info.library.unsw.edu.au/web/services/services.html](http://info.library.unsw.edu.au/web/services/services.html)

- **IT Service Centre**
  Provides technical support for problems logging in to websites, downloading documents etc. [https://www.it.unsw.edu.au/students/index.html](https://www.it.unsw.edu.au/students/index.html) Office: UNSW Library Annexe (Ground floor). Ph: 9385 1333.

- **UNSW Counselling and Psychological Services**
  [https://student.unsw.edu.au/wellbeing](https://student.unsw.edu.au/wellbeing) Provides support and services if you need help with your personal life, getting your academic life back on track or just want to know how to stay safe, including free, confidential counselling. Office: Level 2, East Wing, Quadrangle Building; Phone: 9385 5418; Email: counselling@unsw.edu.au

- **Student Equity & Disabilities Unit**
  [http://www.studentequity.unsw.edu.au](http://www.studentequity.unsw.edu.au) Provides advice regarding equity and diversity issues, and support for students who have a disability or disadvantage that interferes with their learning. Office: Ground Floor, John Goodsell Building; Phone: 9385 4734; Email: seadu@unsw.edu.au
13 LECTURE TOPIC OUTLINE

Class 1

**Topic:** Structure of Australian Company Law and Administration

- Introduction to course, course materials and textbooks.
- The history of company's legislation and the constitutional background to the Corporations Act.
- Corporations Act 2001 (Cth)
- Corporate Law Reform – continuous process
- Overview of The Corporation Law Simplification process and the Corporate Law Economic Reform Program (CLERP):
  - Corporate law Economic Reform Program Act 1999
  - CLERP 9 (passed June 2004)
- Other key reforms include:
  - Corporations Legislation Amendment (Simpler Regulatory System) Act 2007
  - Personal Property Securities ( Corporations and Other Amendments) Act 2010
  - Corporations Amendment (Sons of Gwalia) Act 2010
  - Business Names Registration Act 2011 (Cth)
  - Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2015 (Cth)
  - Insolvency Law Reform Bill 2015

**Text references:**


**Internet references:**

- [www.asic.gov.au](http://www.asic.gov.au)
- [www.treasury.gov.au](http://www.treasury.gov.au)
Class 2 -3

Topic: Alternative Business Vehicles and Types of Companies

1. Alternative Business Vehicles (sole trader, partnership, joint venture, company and trusts).
2. Comparative assessment of the legal structures available for carrying on business – with reference to:
   (i) formalities and expense
   (ii) size
   (iii) management
   (iv) fundraising
   (v) management
   (vi) liability
   (vii) holding property
   (viii) taxation
   (ix) duration of existence
3. Types of companies, the differences between public and proprietary companies and the distinction between small and large proprietary companies.

Text references:

- Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed, (LexisNexis/Butterworths, 2013) – Chapters 4 and 3

Cases: Smith v Anderson (1880) 15 Ch D 247
Checker Taxicab v Stone [1930] NZLR 169
Long v James Morrison. 13 CLR 1
Keith Spicer v Mansell [1970] 1 WLR 333
Canny Gabriel v Volume Sales (1974) 131 CLR 321
Mercantile Credit v Garrod (1961) 3 All ER 1103
United Dominions Corp. v Brian (1985) 157 CLR 1
Re Megevand: Ex parts Delhasse (1878) 7 Ch.D. 51 1
Khan v Miah [2000] UKHL 55
Goudberg v Herniman Associates Pty Ltd [2007] VSCA 12
AM Marketing Pty Ltd v Howard Media Pty Ltd [2010] NSWSC 803
Class 4

Topic: Separate Legal Personality and Lifting the Corporate Veil

The meaning, significance and consequences of incorporation.
Concept of corporate veil.
Lifting the corporate veil - exceptions created by statute and by the courts.
The problem of corporate groups and individual corporate personality.

Director’s duty to prevent insolvent trading by the corporation [see Class 4]
Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.
Personal Liability: s. 588G,[Parent Company liability] 588V
• Defences: s. 588H, 588X
• Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

Text references:
• Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapter 5

Cases:
Salomon v Salomon & Co. Ltd [1897] AC 22
Lee v Lee’s Air Farming [1961] AC 12
Macaura v Northern Assurance [1925] AC 619
Nicol v allyatch Spars Pty Ltd (1987) 163 CLR 611
Andar Transport Pty Ltd v Brambles Ltd (2004) 204 ALR 387
Gilford Motor v Horne [1933] Ch 935
Creasey v Breachwood Motors Ltd 10 ACLC 3052
Re Darby [1911] 1 KB 95
Green v Bestobell Industries Ltd [1982] WAR 1
Ascot Investments Pty Ltd v Harper (1981) 148 CLR 337
Walker v Wimbourne (1976) 137 CLR 1
IEL v Blackburn (1977) 17 ALR 575
Smith, Stone & Knight Ltd v Birmingham Corporation [1939] 4 All ER 116
Dennis Wilcox Pty Ltd v FC of T (1988) 14 ACLR 156
Adams v Cape Industries plc (1990) BCLC 479
Spreeg v Paeson (1990) 94 ALR 679
Briggs v James Hardie (1989) 7 ACLC 841
Pioneer Concrete Services v Yelnah (1987) 5 ACLC 467
ACN 007 528 207 Pty Ltd (In Liq) v Bird Cameron [2005] SASC 204
Commissioner of Taxation v BHP Billiton Finance Ltd [2010] FCAFC 25
Prest v Petrolif Resources Ltd [2013] UKSC 34

Insolvent Trading Cases
Playspace Playground Pty Ltd v Osborn [2009] FCA 1486
Edwards v ASIC [2009] NSWCA 424

Morley v Statewide Tobacco Services Ltd (1992) 10 ACLC 1233 (Court of Appeal)
Metropolitan Fire Systems Pty Ltd v Miller (1997) 23 ACSR 699
Tourprint International Pty Ltd v Bott (1999) 17 ACSR 1543
Manpac Industries Pty Ltd v Ceccattini (2002) 20 ACLC 1304
Deputy Commissioner Taxation v Clark (2003) 45 ACSR 332
Williams v Scholz [2007] QSC 266; affirmed [2008] QCA 94
Hall v Poolman (2007) 65 ACSR 123
**Class 5**

**Topic:** Corporate Constitution, Replaceable Rules51 and its Effects; Contractual, Civil and Criminal Liability of Corporations

- The process of incorporation (overview).
- The Company’s Constitution (Memorandum and Articles of Association) and Replaceable Rules and its legal effect
- The legal capacity and powers of a company—the doctrine of *ultra vires*—ss 124-125 Corporation Act.
- Agency and Company Contracts. Authority of a company’s officers and agents—ss 128-129
- Liability of Companies in tort and crime
- Organic Theory and its application
- Fashioning Rules of Attribution
- Vicarious Liability and its application

**Text references:**

- Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapters 6-7

**Cases:**

- *Ashbury Railway Carriage & Iron Co v Riche* (1875) LR 7 HL 653
- *Ding v Sylvania Waters* (1999) 17 ACLC 531
- *Hickman v Kent* [1915] 1 Ch 881
- *Bailey v NSW Medical Defence Union Ltd* (1995) 185 CLR 399
- *Andrews v Queensland Racing Ltd* [2009] QSC 338
- *Gambotto v WCP Ltd* (1995) 182 CLR 432
- *Freeman and Lockyer v Buckhurst Park Properties Ltd* [1964] 2 QB 480
- *Royal British Bank v Turquan* (1856) 119 ER 886
- *Northside Developments Pty Ltd v Registrar-General* (1990) 8 ACLC 611
- *BNZ v Fiberi Pty Ltd* (1994) 12 ACLC 48
- *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705
- *H L Bolton Co Ltd v T J Graham & Sons Ltd* [1957] 1 QB 159
- *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153
- *Brambles Holdings Ltd v Carey* (1976) 2 ACLR 176
- *R v ICR Haulage Ltd* [1944] KB 551
- *S & Y Investments (No 2) Pty Ltd v CUACA Ltd* (1986) 82 FLR 130
- *ABC Developmental Learning Centres Pty Ltd v Wallace* [2006] VSC 171
Class 6

**Topic:** Promoters; Corporate Fundraising; Debt Capital and Receiverships

- Promoters of companies. Identifying the promoters. An examination of the legal duties of promoters and of the remedies available for breach of those duties
- Pre-registration contracts and liability — s 131.

Funding the corporation, securities and corporate rescue:
  - Personal Property Securities (Corporations and Other Amendments) Act 2010 – in effect from 30 January 2012;

**Text references:**
- Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapters 8-10 and 22

**Cases:**
- Twycross v Grant (1877) 2 CPD 469
- Erlanger v New Sombrero [1878] 3 AC 1218
- Gluckstein v Barnes [1900] AC 240
- Tracy v Mandalay (1953) 88 CLR 215
- Re Leeds and Hanley Theatres of Varieties Ltd [1902] 2 Ch 809
- Kelner v Baxter (1866) LR 2 CP 174
- Black v Smallwood (1966) 117 CLR 52
- Bay v Illawarra Stationary Supplies (1986) 4 ACLC 429
- Fraser v NRMA Holdings Ltd (1995) 13 ACLC 132
- Re Media World Communications Ltd; Crosbie v Naidoo (2005) 216 ALR 105
- Cadence Asset Management Pty Ltd v Concept Sports Ltd [2005] FCAFC 265
- ASIC v Axis International Management Pty Ltd (No 5) [2011] FCA 60
- ASIC v Axis International Management Pty Ltd (No 6) [2011] FCA 811
Class 7

Topic: Shares, Share Capital Transaction and Company Meetings

(i) Shares:
- Equity financing v Debt financing (overview)
- The legal nature of shares
- Reasons for classes of shares
- Classes of shares (ordinary v preference shares)
- Alteration of class rights and statutory protection – s 246

(ii) Impact of Company Law Review Act 1998:

(a) The new share capital rules
- No par value shares
- Removal of share premium accounts

(b) Impact on doctrine of capital maintenance

(c) Simplified Procedure for Share Transactions (Chapter 2 J of Corporations Act):
- Protection of creditors and shareholders
- Reduction of capital – s 256
- Financial assistance – s 260
- Share buy backs – ss256; 257

Consequences of breach: Failure to comply with Chapter 2 J

(iii) Meetings
- Rules and procedure
- Notice
- Quorum
- Chairperson
- Voting
- Proxy
- Minutes
- Irregularities

Text references:
Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapters 11-12

Cases:
- Re Fowlers Vacola [1966] VR 9
- Trevor v Whitworth (1887) 12 App Cas 409
- Gambotto v WPC Holdings (1995) 13 ACLC 342
- Residues Treatment v Southern Resources (1988) 6 ACLC 976
- ASIC v Adler (2002) 20 ACLC 576
- Beck v Weinstock [2013] HCA 15
- Weinstock v Beck [2013] HCA 14
Class 8-9

Topic: Corporate Governance: The Duties of Directors and Officers of the Corporation

Part 1:
- Meaning and content of corporate governance
- Best Practice (ASX recommendations)
- Current Issues in Corporate Governance
  - ASIC v Macdonald [No 11] [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision)
  - ASIC v Hellicar [2012] HCA 17; Shafron v ASIC [2012] HCA 18 (James Hardie High Court case)
  - Gillfillan v ASIC [2012] NSWCA 370 (James Hardie case – NSW Appeal Court Penalty decision)

Part 2:
Definition of “director” in s.9 and “officer” in s. 9
The duty at COMMON LAW: the FIDUCIARY DUTY.

1. The "duty of honesty" or the "duty to act bone fide in the interests of the company as a whole".
   - Concept of "interests of the company as a whole" and its problem areas: different classes of shares, nominee directors, company groups, creditors, employees.
   - Duty to exercise power for the proper purpose, especially power to issue shares.
   - Duty to avoid conflicts of interest; especially contracts with the company, personal profits, bribes and undisclosed benefits, usurping corporate opportunities, use of confidential information and competition with the company.
   - Duty to retain discretion.

2. The duty of care, skill and diligence.

3. Forgiveness (ratification, exoneration or exculpation) by the company of a director’s breach of fiduciary duty.

4. Remedies available to the company in common law for breach of fiduciary duty:
   - compensation, damages, account of profit, rescission, constructive trust

Text references:
Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapter 14 (skim read), 15-17

Cases: CAC v Drysdale (1978) 141 CLR 236
DFC of T v Austin (1998) 16 ACLC 1555
Emanuel Management Pty Ltd (in liq) v Foster’s Brewing Group Ltd [2003] QSC 205
Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2011] NSWCA 109
Re Smith & Fawcett (1942) Ch. 304
Greenhalgh v. Arderne Cinemas [195] Ch 286
Percival v. Wright [19O2] 2 Ch. 42I
Coleman v. Meyers [1977] 2 NZLR 225

Mills v. Mills (1938) 60 CLR 150
Re Scottish Co-op. Wholesale Society v. Meyers [1958] 3 All ER 66
Re Broadcasting Station 2GB Pty Ltd [1964-1965] NSWLR 1648
Whitehouse v. Carlton Hotel Pty Ltd (1987) 5 ACLC 421

Parke v. Daily News Ltd [1962] Ch 927
Walker v. Wimborne [1976] 3 ACLR 529; 137 CLR 1
Kinsela v Russell Kinsela Pty Ltd [1986] 4 NSWLR 722
Spies v The Queen (2000) 201 CLR 603


Ngurli Ltd. v. McCann (1953) 90 CLR 425
Harlowe’s Nominees Pty Ltd v. Woodside (Lakes Entrance) Oil N.L. (1968) 121 CLR 483

Hospital Product Ltd v US Surgical Corp (1984) 156 CLR 41
Teck Corp. Ltd v. Miller (1972) 33 DLR 3rd 288
Aberdeen Railway Co. v. Blaikie Brothers [1843-60] All ER Rep 249; (1854) 1 Macq. 461
Boardman v. Phipps [1966] 3 All ER 721
Regal Hastings Ltd. v. Gulliver [1942] 1 All ER 378
Furs Ltd. v. Tomkies (1936) 54 CLR 583
Cook v. Deeks [1916] 1 AC 554
Peso Silver Mines v. Cropper [1966] 58 DLR (2nd) 1
Green v Bestobell Industries Pty Ltd [1982] WAR 1
Queensland Mines Ltd. v. Hudson [1978] 18 ALR 1
Industrial Development Consultants Ltd. v. Cooley [1972] 2 All ER 96
ASIC v Vizard [2005] FCA 1037
Grand Enterprise Pty Ltd v Aurium Resources Ltd [2009] FCA 513
Canberra Residential Developments Pty Ltd v Brendas [2010] FCAFC 125
Streeter v Western Areas Exploration Pty Ltd (No 2) [2011] WASCA 17
Downer EDI Ltd v Gillies [2012] NSWCA 333
Class 8-9 (Continued)

Topic: The Duties of Directors and Officers of the Corporation (continued)

**STATUTORY DUTIES** of directors and officers of the corporation.

Part 2D.1:

- **Care and diligence (civil)** s. 180 (1)
- **Business Judgment Rule defence** s. 180 (2)
- **Reliance** s. 189
- **Delegation** s. 190

- **Good faith and proper purpose** (civil) s. 181
  - **(criminal)** s. 184(1)

- **Improper use of position** (civil) s. 182
  - **(criminal)** s. 184(2)

- **Improper use of information** (civil) s. 183
  - **(criminal)** s. 184(3)

- **Interaction of s. 180 – 184 with other laws**, (operation in addition to the common law) s. 185

- **Disclosure of Material Interests** s. 191 - 196

**Director’s duty to prevent insolvent trading by the corporation** [see Class 4 on lifting Corporate Veil]

- Defences: s. 588H, 588X
- Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

**Related Party Transactions**: Part 2E, s. 207 - 230

**Civil penalty provision regime**: Part 9.4B

**Text references**: Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapters 15-18


LexisNexis/Butterworths – pp 4, 6, 7, 12, 13, 26, 44, 60, 71,

**Cases**:

- *Re City Equitable Fire Insurance Co.* [1925] I Ch. 407
- *A.W.A. Limited v. Daniels (trading as Deloitte Haskins & Sells)* (1992) 10 ACLC 933 Rogers, CJ

- *South Australia v Clark* (1996) 14 ACLC 1019
- *Sheahan v Verco* [2001] SASC 91
- *ASIC v Vines* [2005] NSWSC 738
- *Vines v ASIC* [2007] NSWCA 75
- *ASIC v Rich & Ors* (No2) (2003) 21 ACLC 672
- *ASIC Rich & Ors (No3)* (2003) 21 ACLC 450
ASIC v Citofresh International Ltd (No 3) [2010] FCA 292 civil penalty decision]; ASIC v Citofresh International Ltd (No 2) [2010] FCA 27 [liability decision],
ASIC v Maxwell (2006) 59 ACSR 373
ASIC v Adler (2002) 20 ACLC 576
ASIC v Adler (2002) 20 ACLC 1146
ASIC v Adler (2003) 21 ACLC 1810
Whitlam v ASIC (2003) 21 ACLC 1259
Chew v. R (1992) 10 ACLC 816

- **James Hardie Litigation:** ASIC v Hellicar [2012] HCA 17; Shafron v ASIC [2012] HCA 18 (High Court liability decisions); Gillfillan v ASIC [2012] NSWCA 370 (civil penalty decision by Court of Appeal); ASIC v Macdonald [No 11] [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision);

- **ASIC v Healey [2011] FCA 717 [Centro case - liability decision]
  ASIC v Healey (No 2) [2011] FCA 1003 [Centro case- penalty decision]

- **ASIC v Mariner Corporation Ltd [2015] FCA 589

  Insolvent Trading Cases [see Class 4]
Class 10

**Topic: Shareholders’ Remedies**

1. **Common law** obligations of majority shareholders to minority shareholders.
   - The concept of the rule in Foss v Harbottle and its exceptions, now abolished (s. 236(3)), save for right to enforce personal actions.
   - Concept of fraud on the minority involving:
     - Expropriation of the company's property
     - Ratification (forgiving or exoneration or exculpation) by the company of a director’s breach of fiduciary duty
     - Expropriation of a shareholder’s property

2. **Statutory rights** of shareholders of the corporation.
   - **Derivative Action** (Proceedings on behalf of a company): Part 2F.1A, Sections. 236 - 242
   - **Oppression** – Chapter 2F, Part 2F.1, Sections 232 - 235
     - History and background of statutory relief for oppressive conduct
     - Who may apply: s. 234
     - Concepts and judicial consideration of meaning in s. 232 of: "oppression", "unfair prejudice", "unfair discrimination" and "contrary to the interests of the members as a whole".
     - Remedies available: s. 233
   - **Statutory Injunction** for breach of Corporations Act - Section 1324
   - **Inspection** of company records – Part 2F.3, Section 247A
   - **Winding Up** of company in the event of:
     - directors acting in own interests or unfairly or unjustly - Section 461(e)
     - oppressive conduct of affairs of the company - Section 461(f)
     - oppressive act or omission by or on behalf of company - Section 461(g)
     - it being just and equitable - Section 461(k)

**Text references:**
- Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapter 19
- LexisNexis/Butterworths – pp 17, 22, 31, 25, 36, 50, 67, 73, 78

**Cases:**
- ACCR v CBA [2015] FCA 785
- Foss v. Harbottle (1843) 2 Hare 461; Ch 12 LJ 319
- Residues Treatment & Trading Co. Ltd v. Southern Resources Ltd (1988) 6 ACLC 1160
- Peters' American Delicacy Co. Ltd v. Heath (1939) 61 CLR 457 (H.Ct.)
- Gambotto v. WPC Ltd (1995) 16 ACSR I; 13 ACLC 342
- Cook v. Deeks [1916] 1 AC 554 (P.C.)
- Menier v. Hooper's Telegraph Works (1874) 9 Ch App 350
- Ngunluj Ltd. v. McCann (1953) 9O CLR 425
- Re HR Harmer [1958] 3 All ER 689
- Re Bright Pine Mills Pty Ltd [1969] VR 1002
- Re Overton Holdings Pty Ltd (1984) 2 ACLC 777
- Sanford v Sanford Courier Services Pty Ltd (1987) 5 ACLC 394
Re H W Thomas (1984) 2 ACLC 610
Hannes v MJH Pty Ltd (1992) 10 ACLC 400
Shamsallah Holdings Pty Ltd v CBD Refrigeration & Aircon Services Pty Ltd [2001] WASC 8
(1985) 61 ALR 225 (H. Ct.)
Morgan v 45 Flers Avenue Pty Ltd (1987) 5 ACLC 222

Karam v ANZ (2000) 18 ACLC 590
Swansson v Pratt [2002] NSWSC 583
Campbells v Backoffice [2008] NSWCA 95
Chahwan v Euphoric Pty Ltd [2008] NSWCA 52

BHP Ltd v Bell Resources Ltd (1984) 2 ACLC 157
Mesenberg v Cord Industrial Recruiters Pty Ltd (1996) ACLC 519
Airpeak Pty Ltd v Jetstream Ltd (1997) 15 ACLC 715

Re William Brooks & Co Ltd [1962] NSW 142
Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Yenidje Tobacco Co Ltd [1916] 2 Ch 426
Re Tivoli Freeholds Ltd [1972] VR 455
ASIC v Storm Financial Ltd [2009] FCA 269
Class 11-12

Topic: The External Administration of a Company – Chapter 5 Corporations Act

Part A: Alternatives to the immediate winding up of a company

1. Amalgamations and reconstructions
   - Procedure and notices (s. 411 and 412)
   - Powers of court to facilitate (s. 413)
   - Mopping up (s. 414)

2. Voluntary Administration
   - Procedure: commencement of administration, conduct of administration, administrator’s duties and powers, creditor’s rights and obligations
   - Effect of administration: protection of company’s property during administration and exceptions
   - Termination of administration at creditor’s meeting by selection of deed of company arrangement [DOCA], winding up or release from administration; effect of deed of company arrangement

3. Receivership (Overview: see Class 6)

Part B: Winding up or liquidation of companies

1. Voluntary winding up
   - Members voluntary winding up (Part 5.5 Divisions 1 & 2) Procedure and test of solvency
   - Creditors voluntary winding up (Part 5.5 Divisions 1 & 3) Procedure

2. Compulsory winding up
   - On grounds other than insolvency (s. 461-464), especially the just and equitable ground (s. 461(k)); standing to apply for winding up (s. 462)
   - On grounds of insolvency (Part 5.4) Application for winding up (s. 459P) and power to wind up (s. 459A -459B). Test of insolvency (s. 95A) and presumptions of insolvency (s459C). Procedure for statutory demand (s. 459E and F). Procedure to determine disputed debts in statutory demands (s. 459 G – N)
   - Liquidators duties and powers

3. Effect of external administration on:
   - Company; Directors; Shareholders; Creditors and Employees

4. Corporations Amendment (Sons of Gwalia) Act 2010 – reversed the effect of the High Court’s decision in Sons of Gwalia v Margaretic (2007) HCA 1 in which it was found that s 563A of the Corporations Act did not subordinate certain compensation claims by aggrieved shareholders below the claims of other creditors.

Text references: Prescribed: Harris, Hargovan and Adams: Australian Corporate Law, 4th ed (LexisNexis/Butterworths, 2013) – Chapter 22


- Cases: Australasian Memory v Brien [2000] HCA 30
  - Re Ansett Australia Ltd and Mentha (No 3) [2002] FCA 2
  - David Grant & Co Pty Ltd v Westpac (1995) 13 ACLC 1,572
  - Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corp Ltd [2008] HCA 9
  - Sons of Gwalia Ltd (admin appt) v Margaretic (2007) HCA 1
  - ASIC v Storm Financial Ltd [2009] FCA 269
  - Lehman Brothers Holdings Inc v City of Swan [2010] 240 CLR 509