

Commercial Law

Topic 1 Company's part one

Summary of information below:

1. Separate legal entity- Section 124 (1)
2. Lifting the Corporate veil
3. By statute (insolvent trading- section 588G)
4. Limited Liability
5. Registration

6. Corporate Constitution and Replacement rules
7. Dealing with Outsiders

1. A Company is a separate Legal entity in the eyes of the law.

Case- Salomon v Salomon 1879.

Section 124 of the Corporations ACT 2001

Under this the company is separate from its members/shareholders, directors, officers, managers.

A company can enter contracts and all debts/Liability's the company is responsible for.

Under section 124 (1) Corporations act

"A company has the legal capacity and powers of an individual"

Case – Macaura V Northern Assurance (1925)

Court held that A company's property is owned by the company not by its members.

Case – LEE v Lee's Air Farming 1960

Court held – a company is a separate legal entity distinct from its shareholders. Furthermore, the company could therefore enter a contract of employment.

2. Lifting the Corporate veil

E.g. when you think you have a separate legal entity.

If the company was set up to defraud members.

Case – Re Darby (1911)

If a company is a mere cloak or sham to avoid contractual obligations.

Case – Gilford Motor V Horne (1933)

3. By Statute

Corporations ACT 2001: Duty to prevent Insolvent trading. Section 588G

Directors must prevent the company from incurring debts if they are aware that the company is insolvent or have reasonable grounds to suspect that the company is insolvent. Objective test "if a reasonable director of a similar company in the same circumstances would be so aware."

Section 95A (1) :

A person is solvent if and only if the person can pay all the persons debts, as they fall due and payable.

4. Limited Liability

Limited liability is different from separate legal entity.

Section 516 – Company limited by shares

A member need not contribute more than the amount if any unpaid shares. Any debt of the company does not affect the shareholders.

5. Registration Page 17 of reader

Section 117(1)- Must lodge an application with ASIC

This application has fees.

6. Corporate Constitution and Replacement Rules Page 13 (More info on page 13)

Companies can have the choice to write their own constitution which must be lodged with ASSIC, adopt the replacement Rules in the Corporations Act or adopt a combination of both (constitution and certain RR)

Confirmed in Section 134 CA

Alerting the constitution- a company may modify or repeal its constitution by special resolution."

Section 136 (2) CA

Effects of the constitution and Replacement rules

A company's constitution and RR have the effect as a contract between the company and director/members and between member and member.

Section 140 (1) – page 14

Case – Hickman V Kent or Romney sheep breeders (1915)

A company can take action against members to enforce the constitution. Members can take action against the company or other members to enforce their rights under the constitution.

7. Dealing with outsiders

At common law third parties dealing with a company are deemed to be aware of the contents of the company's public documents at ASIC. **Case – Ashbury Railway carriage V Richie (1875)**

Section 130 Corporation ACT - A person is not taken to have information about a company merely because the information is available to the public from ASIC.

Section 125 (1) and (2) which abolish the doctrine of ultra vires.

“ the exercise of a power by a company is not invalid merely because it is contrary to or beyond the company's state objects or contrary to an express restriction in the company's constitution.”

Topic 2 Companies part 2

Summary (Promoters, pre-registration contracts, company contracts)

1. *Dealing with outsiders (Page 20 course reader)*
2. *Promoters (page 16 course reader)*
3. *Pre-registration contracts*
4. *Contracting Indirectly, directly (page 18)*

1. Dealing with outsiders

Doctrine of constructive notice : Third parties who deal with a company are deemed to be aware of the contents of the company's public documents.

Case- Ashbury Railway Carriage Co V Richie 1875: Doctrine of ultra vires; means that an act of the company which went beyond its intended object or purpose would be void.

Now days: **Section 130 Corporations Act:** A person is not taken to have info about a company even though its publicly available. **S125(1)** abolished the doctrine of ultra vires.