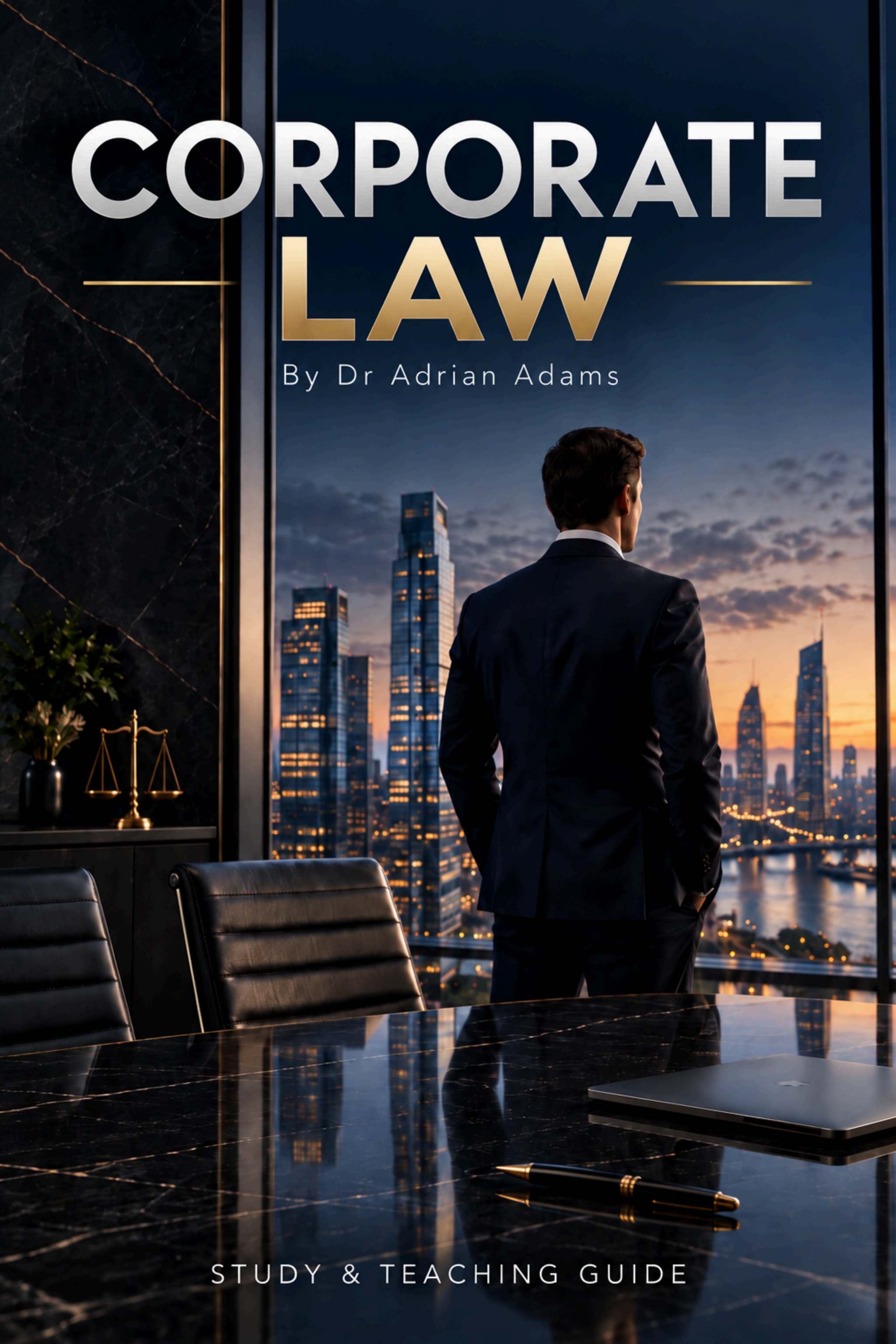
CORPORATE LAW

By Dr Adrian Adams



STUDY & TEACHING GUIDE

PREFACE

Preface

BY DR ADRIAN ADAMS

Corporate law can feel difficult at first because several questions arrive at once. A student may be trying to identify the legal person, the people who control it, the people who own interests in it, the source of authority to act, the source of liability, the regulator, the relevant statutory provision and the case that explains what the provision means. This book is designed to turn that apparent complexity into a method.

This is a study and teaching guide for students undertaking an LLB, JD, LLM, Master of Laws or other legal studies. It is written for students encountering corporate law for the first time, but it is deliberately built to remain useful after university: in legal practice, in-house counsel roles, boards, C-suite leadership, governance, commercial transactions and industries in which corporate legal literacy matters.

The central aim is not to make students memorise isolated rules. It is to teach students how to move from a commercial fact pattern to a legally supported conclusion: identify the actor, identify the relationship, identify the exact statutory rule, read the case that interprets it, apply the facts, identify risk, and explain what should happen next.

THE CORE PROMISE OF THIS BOOK
Do not merely learn what the law says. Learn why it exists, where to find it, what each element means, which authority explains it, how to recognise it in a problem, how to apply it in an exam, and how the same reasoning becomes professional advice.

From law school to professional judgment

Corporate law is unusually well suited to learning through perspective. The same facts may be viewed by a shareholder, director, creditor, employee, regulator, adviser or company itself. A strong student learns to ask whose rights and obligations are actually in issue. A strong lawyer then asks the next questions: what documents should be obtained, what decisions must be recorded, what risks can be reduced, what approvals are required and what remedy or next step is available?

For that reason, each substantive chapter uses four lenses: student learning, exam application, client advice and corporate decision-making. The result is intended to be

a book that helps a student pass an assessment while also building the habits required to become a careful professional adviser and commercially literate corporate leader.

Dedication and acknowledgements

This book is dedicated to Dr Victoria Baumfield and Dr Richard Baumfield, whose teaching and commitment to Corporate Law education contribute to helping students understand not only corporate-law rules, but also the reasoning, commercial context and professional responsibilities that give those rules meaning.

This book encourages law students who are developing the discipline to read legislation precisely, test propositions against authority, distinguish similar legal concepts, and explain legal consequences clearly. That discipline is what ultimately allows legal knowledge to become sound judgment.

The book is an independent study and teaching guide. The acknowledgements above do not imply endorsement by Bond University, any educator, publisher, regulator or other institution.

Publication and Source Note

This is an independent Australian Corporate Law study and teaching guide. It synthesises legislation, cases, regulatory materials, course readings and published legal commentary for teaching and study. It is not an official publication of Bond University, ASIC, ASX, Wiley, Thomson Reuters, LexisNexis, AustLII or any other institution.

The prescribed course text used as a principal reading source for this chapter is Ellie Chapple, Richard Baumfield, Richard Copp, Robert Cunningham, Akshaya Kamalnath, Louise Floyd and Alex Wong, *Company Law* (3rd ed, Wiley, 2024). Week 1 also assigns the historical-development extract in Baxt, Fletcher and Fridman, *Corporations and Associations: Cases and Materials* (10th ed, 2009), and Paul Redmond, *Corporations and Financial Markets Law* (7th ed, 2017), pp 55-61. Those works are used as research and teaching sources; this book does not reproduce them as a substitute for the originals.[1]

Primary law controls
Where a textbook, lecture slide, older commentary or summary differs from current primary law, the current legislation and authoritative judgment control. This book therefore verifies statutory references against current official legislation and uses public judgments or authoritative legal databases wherever possible.

Citation method. Footnotes and the cumulative bibliography follow the Australian Guide to Legal Citation (4th ed) (AGLC4). In the electronic edition, citation text is also hyperlinked to the closest reliable source so students can move from the proposition to the authority.[2]

Electronic edition and hyperlinks

Blue hyperlinks are functional research links. They are designed to take students directly to primary legislation, judgments, regulator material or the relevant research database. Public sources are preferred where a reliable public source is available. Bond University students may also use Lexis+ and Westlaw Australia through institutional access.

1. Ellie (Larelle) Chapple et al, *Company Law* (Wiley, 3rd ed, 2024) 2-7, 10-17, 26-30, 35-37; Robert Baxt, Keith Lloyd Fletcher and Saul Fridman, *Corporations and Associations: Cases and Materials* (LexisNexis Butterworths, 10th ed, 2009) 114-16, 119, 122-23, 126; Paul Redmond, *Corporations and Financial Markets Law* (Thomson Reuters (Professional) Australia, 7th ed, 2017) 55-61.

2. Melbourne University Law Review Association Inc and Melbourne Journal of International Law Inc,

Source	Use in this book
Federal Register of Legislation	Current Commonwealth Acts, regulations and authorised compilations.
Queensland Legislation	Current Queensland legislation, including the Partnership Act 1891 (Qld).
AustLII	Free cases, legislation and legal scholarship; preferred free case-law research source where available.
High Court of Australia	Official High Court judgments and case information.
ASIC	Corporate regulation, registers, guidance, enforcement and regulatory information.
ASX Listing Rules	Listing rules, guidance notes and listed-entity regulatory material.
Lexis+ Australia	Subscription case law, commentary, journals and citators.
Westlaw Australia	Subscription case law, commentary, journals, legislation and practical resources.

Link principle: use the closest reliable destination available. A section-level link is preferred to a generic homepage; a full judgment is preferred to a case summary.

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Chapter 12 · Insolvency Regimes	Coming Soon

HOW TO USE THIS BOOK

How to Use This Book

Corporate Law becomes manageable when you stop treating it as a list of sections and start treating it as a decision process. The first task is to identify *who* is acting and *in what legal capacity*. The next task is to identify the source of power, duty, liability or remedy.

The Corporate Law Method

FACTS → ACTOR → RELATIONSHIP → ISSUE → EXACT LAW → ELEMENTS → CASE / AUTHORITY → APPLICATION → LIABILITY / CONSEQUENCE → DEFENCE → REMEDY → ADVICE → NEXT STEP
Actor means the legal person or role that matters: company, director, officer, shareholder/member, partner, creditor, promoter, agent, employee, regulator, receiver, administrator or liquidator.

How to read a Corporate Law problem

1. Identify the legal vehicle. Is the business a sole trader, partnership, trust, company or hybrid structure?
2. Separate people from entities. Ask whether the company itself, a director, a shareholder, a partner or another person owns the relevant right or owes the relevant obligation.
3. Find the exact source. Start with the Act, Part, Division, section, subsection and paragraph. Then read the case or regulator material explaining how that rule operates.
4. Break the rule into elements. A strong answer does not merely quote a section. It identifies what must be proved or established.
5. Apply every material fact. The application section should explain why a fact satisfies, or may fail to satisfy, a legal element.
6. Finish with consequences. Identify liability, available defences, remedies, penalties, approvals, governance steps and practical advice.

Exam lens
Use issue headings, exact provisions, leading authorities, fact-by-fact application and a reasoned conclusion. Do not recite law without applying it.

Practice lens

Ask what documents you need, who has decision-making authority, what approvals are required, what risk is exposed and what should be done next.

In-house counsel lens
Translate legal requirements into board papers, delegations, conflicts protocols, registers, minutes, approvals and compliance systems.

C-suite lens
Understand how structure, governance, financing, risk allocation, accountability and regulatory obligations affect commercial strategy.

How the learning tools work

Why this matters boxes explain the commercial reason behind a doctrine. Exam lens boxes identify issue-spotting and answer structure. Think like a corporate lawyer boxes convert doctrine into client questions. Boardroom lens boxes show the governance decision a director, executive or in-house lawyer should recognise. Cases are presented as usable authorities: facts, issue, rule, reasoning, outcome and when to cite them.

FUN REVISION RESOURCE

Interactive Glossary of Terms

This glossary is a quick alphabetical revision reference for the Corporate Law concepts introduced in this part of the book. Use each definition as a revision prompt, then follow the blue links to the relevant legislation, case, authority or teaching discussion.

Use each definition as a revision trigger, not as a substitute for reading the exact provision and authority.

A

Agency [primary source[3]] A relationship in which one person has authority to affect another person's legal position. Partnership law makes every ordinary partner an agent of the firm for partnership business.

ASIC [primary source[4]] Australian Securities and Investments Commission, the principal Commonwealth corporate, markets, financial-services and consumer-credit regulator.

ASX [primary source[5]] Australian Securities Exchange. ASX operates financial markets and imposes Listing Rules on listed entities; it is not the same thing as ASIC.

B

Business name [primary source[6]] A name under which an entity carries on business. Registration identifies the entity but does not by itself create property rights in the name.

C

Company [primary source[7]] For the Corporations Act, a company registered under that Act.

Corporation [primary source[8]] A broader statutory concept than company; it includes a company and other bodies described in s 57A.

3. *Partnership Act 1891* (Qld) s 8.
4. Australian Securities and Investments Commission, 'Our Role' (Web Page).
5. ASX Limited, *ASX Listing Rules* (Rules, current 22 September 2026).
6. *Business Names Registration Act 2011* (Cth).
7. *Corporations Act 2001* (Cth) s 9.

Corporate personality [primary source[9]] The legal recognition of an incorporated entity as a legal person distinct from its members. Chapter 2 develops the doctrine in detail.

F

Fiduciary duty [primary source[10]] A duty of loyalty arising in relationships of trust and confidence. Partners owe fiduciary duties, including conflict and profit restrictions.

Firm [primary source[11]] The collective description used for persons who have entered into partnership with one another; an ordinary partnership is not a separate legal person.

H

Hybrid structure [primary source[12]] A commercial structure combining legal building blocks such as companies, trusts, partnerships, joint ventures and contractual arrangements.

I

Incorporated limited partnership [primary source[13]] A statutory partnership form recognised as a separate legal entity, with liability rules different from an ordinary partnership.

J

Joint liability [primary source[14]] Liability shared together. Under Partnership Act 1891 (Qld) s 12, ordinary partnership debts and obligations are joint liabilities.

Joint and several liability [primary source[15]] Liability both together and individually. Under s 15, partners are jointly and severally liable for firm liability arising under ss 13-14.

Joint venture [primary source[16]] A commercial collaboration. The label is not conclusive: depending on substance, an arrangement called a joint venture may legally be a partnership.

9. *Corporations Act 2001* (Cth).
10. *Chan v Zacharia* (1984) 154 CLR 178, 198-9 (Deane J).
11. *Partnership Act 1891* (Qld) s 5.
12. *Corporations Act 2001* (Cth).
13. *Partnership Act 1891* (Qld).
14. *Partnership Act 1891* (Qld) s 12.
15. *Partnership Act 1891* (Qld) s 15.
16. *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131

L

Limited liability [primary source[17]] A limit on the amount for which an investor/ member is personally responsible. The legal source and extent of the limitation depends on the structure.

Limited partnership [primary source[18]] A registered partnership containing general and limited partners. Limited partners receive statutory liability protection subject to the Act.

P

Partner [primary source[19]] A person who participates in the statutory relationship of partnership. Employees and contractors are not partners merely because they work in the business.

Partnership [primary source[20]] The relation between persons carrying on a business in common with a view of profit.

Partnership agreement [primary source[21]] The express or implied agreement regulating partners' internal rights and duties; many statutory rules operate as defaults subject to agreement.

Partnership property [primary source[22]] Property brought into or acquired on account of the firm or for partnership business, held and applied for partnership purposes.

R

Regulator [primary source[23]] A statutory or market body that administers, supervises or enforces rules. ASIC and ASX have different legal roles.

S

Separate legal entity [primary source[24]] An entity recognised by law as distinct from the individuals associated with it. Companies and incorporated limited partnerships provide key examples.

17. *Corporations Act 2001* (Cth).
18. *Partnership Act 1891* (Qld) s 53.
19. *Partnership Act 1891* (Qld) s 5.
20. *Partnership Act 1891* (Qld) s 5.
21. *Partnership Act 1891* (Qld) s 27.
22. *Partnership Act 1891* (Qld) s 23.
23. Australian Securities and Investments Commission, 'Our Role' (Web Page).

Sole trader [primary source[25]] A person carrying on business personally. The business is not legally separate from the individual, so business liabilities are personal liabilities.

T

Trust [primary source] A legal relationship in which a trustee holds property for beneficiaries or permitted purposes. A trust is not automatically a legal person; the trustee normally acts.

U

Unlimited liability [primary source[26]] Exposure without a statutory cap. An ordinary partner may face personal liability for partnership debts and wrongs within the statutory rules.

25. *Business Names Registration Act 2011* (Cth).

Legal Research: Cases, Legislation and Authorities

A Corporate Law answer becomes stronger when the student can move directly from a proposition to the primary source that proves it.

Research hierarchy

1. CURRENT LEGISLATION → 2. BINDING CASE LAW → 3. REGULATOR / MARKET RULES → 4. PERSUASIVE CASES → 5. COMMENTARY

Commentary helps you understand the law. It does not replace the law. For publication and examination work, verify section numbers and current wording rather than trusting an older textbook citation.

Core research links for Corporate Law

Resource	What to use it for	Access
Corporations Act 2001 (Cth)	Principal Australian corporations legislation.	Federal Register · AustLII
ASIC Act 2001 (Cth)	ASIC's statutory basis, objects and powers.	Federal Register
Partnership Act 1891 (Qld)	Queensland partnership formation, authority, liability, management and limited partnerships.	Queensland Legislation · PDF
Constitution s 51	Corporations power s 51(xx) and referral power s 51(xxxvii).	AustLII - s 51
ASIC	Registers, regulatory role, guidance and enforcement.	Role · Powers
ASX	Listing Rules and guidance for listed entities.	Listing Rules · Introduction PDF
AustLII	Free Australian cases, statutes and scholarship.	AustLII
Lexis+ / Westlaw	Subscription judgments, citators, journals and commentary available to eligible university users.	Lexis+ · Westlaw AU

Resource	What to use it for	Access
Acts Interpretation Act 1901 (Cth)	General Commonwealth statutory interpretation, including purposive interpretation and extrinsic materials.	Federal Register
Acts Interpretation Act 1954 (Qld)	General interpretation rules for Queensland Acts, including purpose and extrinsic materials.	Queensland Legislation

How to use a case properly

Do not reduce a case to a slogan. Record: material facts → legal issue → rule → reasoning → order → why the authority matters. Then ask whether the later statutory framework changes the context in which the case is used.

LINK CHECKING RULE
For this book, a direct judgment or section-level link is preferred. If a paid database deep link cannot be made stable outside a user session, the book uses a stable public primary source and separately links to the database entry point.

CHAPTER 1 • BUSINESS FORMS AND THE CORPORATE LAW FRAMEWORK

Business Forms, Historical Development of Company Law, Regulatory Overview and ASIC

Week 1 Forum / Lecture | Tutorial 1 - Week 2 | Queensland partnership law | Australian Corporate Law foundations

Chapter purpose. Corporate Law makes far more sense when students first understand what incorporation changes. This chapter therefore starts before the company exists. We compare the sole trader, ordinary partnership, trusts and other structures, then use the partnership as the main comparator for the company. From there we explain the historical move from royal privilege to incorporation by registration, the constitutional path to the national Corporations Act 2001 (Cth), and the different roles of ASIC and ASX. The goal is not memorising labels. The goal is learning how structure changes ownership, management, authority, liability, continuity, capital and regulation.

Teaching flow: business objective -> legal structure -> who owns -> who controls -> who can bind -> who is liable -> what legislation governs -> what authority explains the rule -> how the rule changes once a company is incorporated.

1.1 Start with the commercial problem, not the company form

A good corporate lawyer does not begin with the sentence, "You should form a company." The lawyer begins by asking what the client is trying to achieve. A small founder may want complete control and low compliance costs. A growing enterprise may need outside capital, continuity after the founder leaves, a way to transfer ownership, professional management and protection from business liabilities. Those objectives can point in different directions.

That is why the first issue-spotting skill in Corporate Law is structural. Before applying a section or citing a case, identify the legal vehicle through which the business is operating. If you misidentify the structure, almost every later conclusion can be wrong: who owns the assets, who entered the contract, who can make decisions, whose property a creditor can reach, whether an investor can transfer an interest, and which statute applies.

Issue-spotting trigger. When a problem says "business", "firm", "practice", "venture" or a trading name, do not assume there is a company. Ask: *what is the legal structure?* A trading name is not a legal person. A partnership is not ordinarily a separate legal person. A company is.

1.2 Choosing a business structure: the questions that matter

Question	Why a corporate lawyer asks it
How many owners are there?	This affects whether a sole trader, partnership, company, trust or hybrid structure is even workable.
Who should control decisions?	Partnerships generally fuse ownership and management; companies can separate shareholders from directors and officers.
How will capital be raised?	A founder may rely on personal borrowing; a partnership pools partner capital; a company can issue shares and debt securities subject to the Corporations Act.
Who should bear business risk?	Sole traders and general partners may face personal exposure. Company members ordinarily receive a limited-liability position, but the company itself bears its liabilities.
Does the business need continuity?	A registered company can continue despite changes in shareholders and directors. That continuity is valuable for long-lived enterprises.
Will ownership need to change?	Shares provide a legal mechanism for transferring participation, while partnership interests are less freely transferable.
How much privacy and compliance is acceptable?	Different structures have different registration, disclosure, accounting and governance burdens.
Are different activities exposed to different risks?	Later chapters show why companies and corporate groups may be used to separate projects, assets and liabilities.

1.3 Sole trader: the baseline comparison

A sole trader is the simplest model because the individual and the business are legally the same person. The individual owns the assets, enters the contracts, receives the income and

bears the liabilities. This gives direct control and simplicity, but it also means that business obligations can become personal obligations.

The sole trader matters in Corporate Law because it shows what incorporation later changes. When a sole trader incorporates, the business is no longer merely the individual acting commercially. Registration creates another legal person. Chapter 2 will show how that new person can own assets, incur debt and contract even with its own founder.

1.4 Partnership: the essential comparator

The Week 1 teaching deliberately spends time on partnerships because a partnership makes the distinctive features of a company easier to see. In a traditional partnership, ownership and management are generally fused. Partners carry on the business, make decisions, can bind the firm through agency principles and may be personally exposed to partnership liabilities. A company disaggregates many of those functions.

Partnership Act 1891 (Qld), s 5(1). Partnership is the relationship that exists between persons carrying on a business in common with a view of profit. Each part matters: there must be persons, a business, carrying on in common, and a profit objective. The provision defines a legal relationship; it is not enough that parties casually call themselves partners or deny that they are partners.

1.4.1 Formation and the importance of substance over labels

An ordinary partnership can arise through an express written agreement, an oral agreement or conduct. Section 6 supplies rules for deciding whether the partnership relationship exists. This is why students should avoid saying that partnership formation is "purely contractual" in an absolute sense. Agreement is central, but the court looks at the substance of what the parties are doing.

Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd (1974) 131 CLR 321

Facts. Two companies entered an arrangement concerning the financing and promotion of concert appearances. Their agreement described the relationship as a "joint venture". Profits were to be divided equally, major policy decisions required joint agreement, and the parties were financially interdependent.

Issue. Did the label "joint venture" prevent the relationship from being characterised as a partnership?

Reasoning and outcome. The High Court looked at the substance of the arrangement rather than the label. The commercial enterprise, profit sharing, joint control and other features pointed toward partnership.

Why it matters. Canny Gabriel teaches one of the most transferable skills in Corporate Law: legal characterisation depends on legal substance, not merely the name parties put on an arrangement.

Exam use. Cite it when facts look partnership-like but the parties use another label, especially "joint venture".

1.4.2 Internal management: who makes the decisions?

Section 27 contains important default rules about partners' interests and duties, subject to agreement. Section 27(1)(e) gives every partner a right to take part in management. Section 27(1)(g) requires all existing partners to consent before a new partner is introduced. Section 27(1)(h) allows ordinary matters connected with the partnership business to be decided by majority, but a change in the nature of the partnership business requires unanimity.

These provisions matter because they show the default fusion of ownership and control. The same partners who own the partnership interests ordinarily manage the enterprise. Chapter 2 contrasts this with the corporate form, where members and directors are distinct legal roles even when the same human being happens to wear both hats.

1.4.3 Authority and agency: can one partner bind everyone else?

This is where students frequently conflate two different questions. First ask whether the firm was bound. Only then ask who bears liability for the resulting obligation.

Sections 8-11. Section 8(1) treats every partner as an agent of the firm and the other partners for partnership business. An act done in the usual way of business of the kind carried on by the firm can bind the firm, subject to the statutory qualifications. Section 9 deals with acts or instruments done in the firm name or otherwise showing an intention to bind the firm. Section 11 is crucial where the partners privately restrict a partner's authority: the restriction does not protect the firm against an outsider who has no notice of it.

Issue-spotting sequence. (1) What business does the firm carry on? (2) Was the act within the usual way of that business? (3) Did the partner have actual or apparent

statutory authority? (4) Did the outsider know of a restriction? (5) Only after that, identify the liability rule.

1.4.4 Liability: ordinary debts are not the same as partnership wrongs

The distinction matters in Queensland. Section 12(1) provides that every partner is **jointly liable** with the other partners for debts and obligations of the firm incurred while that person is a partner. By contrast, ss 13 and 14 deal with wrongful acts or omissions and certain misapplications of money or property, and s 15(1) makes partners **jointly and severally liable** for liabilities arising under those provisions.

So the safe legal answer is not "partners are always jointly and severally liable." For an ordinary contractual debt, start with s 12(1). For a wrong or misapplication falling within ss 13-14, move to s 15.

Plain-English example. If one partner validly orders equipment for the architecture firm, s 8 may bind the firm and s 12 governs the resulting ordinary debt. If a partner negligently injures a client in the ordinary course of partnership business, s 13 can make the firm liable and s 15 can expose partners jointly and severally.

1.4.5 Partnership property and private interests

Section 23 requires partnership property to be held and applied by the partners exclusively for partnership purposes and in accordance with the partnership agreement. This is another reason not to speak loosely about a "firm" as if it were always a company. In an ordinary partnership, the legal structure of property ownership is fundamentally different from the separate-entity model introduced in Chapter 2.

1.4.6 Fiduciary loyalty: partnership is not only about debt

Partnership law also imposes loyalty obligations. Sections 31-33 address accounts, private profits and competition with the firm. These statutory obligations sit alongside equitable fiduciary principles.

Chan v Zacharia (1984) 154 CLR 178

Facts. Two doctors had carried on a medical practice in partnership from leased premises. After the partnership relationship broke down and was being wound up, one doctor obtained a new lease of the premises for himself.

Issue. Could the opportunity connected with the former partnership premises be appropriated personally, or did fiduciary obligations continue to control the opportunity during winding up?

Principle. The High Court's reasoning is a leading explanation of fiduciary conflict and profit principles in the partnership setting. The content of the duty depends on the scope of the relationship and can continue so far as necessary to wind up partnership affairs.

Why it matters. The case teaches students that partnership is a relationship of trust and loyalty as well as agency and liability. It also foreshadows later directors' duties: corporate law repeatedly asks whether a decision-maker used a position or opportunity for personal advantage.

1.4.7 Can partnership risk be reduced?

Yes, but the techniques are not identical to corporate limited liability. Partners can agree internally on authority, contribution and indemnity, but internal agreement does not automatically defeat an outsider's rights. Queensland also recognises limited partnerships. Section 53 limits a limited partner's contribution to the registered amount, while s 60 restricts the limited partner from taking part in management and from binding the firm. The protection is therefore linked to a reduced management role.

For larger enterprises, incorporation may be commercially attractive precisely because it separates the entity's liabilities from the member's ordinary position as investor. That is the bridge into Chapter 2.

1.5 Other structures: trusts, associations and hybrids

A trust separates legal and beneficial interests: the trustee holds and deals with property for beneficiaries or permitted purposes. In commercial practice a company may act as corporate trustee. Incorporated associations and co-operatives are statutory forms used for particular purposes. Real enterprises often combine structures - for example, a trust may own shares in a company, a company may act as trustee, or a holding company may own operating subsidiaries.

The teaching point is not to turn Chapter 1 into a complete trusts course. It is to train students to identify the legal person, the legal capacity in which that person acts, and the statute or general-law rule governing that capacity.

1.6 Why companies developed: from privilege to registration

Historically, incorporation was exceptional. Early corporations such as boroughs, universities, guilds and major trading enterprises existed through royal charter, statute or other public authority. Their corporate status was valuable because property and institutional identity could continue beyond the death or replacement of particular human participants.

As commerce and industrialisation expanded, enterprises needed much larger pools of capital. Joint-stock arrangements emerged to combine investment, transferable interests and centralised management even before general incorporation was freely available. The economic pressure was obvious: railways, factories, shipping and major infrastructure required more capital than a small partnership could easily supply.

The Joint Stock Companies Registration and Regulation Act 1844 (UK) marked the shift toward incorporation by registration; limited liability followed in 1855. The conceptual transformation is crucial: incorporation moved from a special privilege conferred on selected enterprises toward a generally available legal technology for organising capital and risk.

1.7 The Australian constitutional path to the Corporations Act 2001

The Commonwealth Constitution gives the federal Parliament power with respect to "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth" in s 51(xx). The words "formed within" became important. Historically, company formation and regulation remained substantially State-based.

Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330
Why it matters historically. The case was associated with a narrow early understanding of the corporations power. It helps explain why Australia did not simply begin with a single comprehensive federal companies statute.

Australia then experimented with uniform and co-operative schemes. The difficulty was maintaining real national uniformity while the laws remained State-based or relied on complex interlocking arrangements.

New South Wales v Commonwealth (the Incorporation Case) (1990) 169 CLR 482

Issue. Could s 51(xx) support Commonwealth legislation creating trading and financial corporations?

Outcome and significance. The High Court held that the corporations power did not itself extend to the incorporation of those corporations. That meant a fully national scheme could not simply rest on s 51(xx) as a power to create companies.

Why students need it. The case explains why Australia's current national Corporations Act depends on a referral architecture rather than on s 51(xx) alone.

The Queen v Hughes [2000] HCA 22; (2000) 202 CLR 535

Context. Constitutional difficulties arose around the co-operative Corporations Law scheme, including the conferral of State functions on Commonwealth officers and institutions.

Why it matters. Hughes forms part of the constitutional crisis that made a more secure national arrangement urgent. The States then referred relevant powers to the Commonwealth under s 51(xxxvii), supporting the present Corporations Act 2001 (Cth) and ASIC Act 2001 (Cth).

Exam trigger. If a question asks why Australia has a Commonwealth Corporations Act even though incorporation was historically State law, connect: s 51(xx) -> limits exposed by the Incorporation Case -> problems in the co-operative scheme -> referrals under s 51(xxxvii) -> Corporations Act 2001.

1.8 ASIC and ASX: do not confuse the regulator with the market operator

Section 1 of the ASIC Act 2001 (Cth) sets the Act's objects, including establishing ASIC and describing the goals ASIC must pursue when performing its functions. Section 8 provides that ASIC is a body corporate. Section 11 gives ASIC the functions and powers conferred under the corporations legislation, while s 12A confers additional functions, including market-integrity and consumer-protection functions in the Australian financial system.

ASIC's work includes company registration and deregistration, maintaining corporate information, surveillance, licensing functions in relevant areas, investigating suspected contraventions and taking enforcement action. For students, the key point is that ASIC is a **public statutory regulator**.

ASX, by contrast, is a market operator. Listed entities are subject to the Corporations Act and ASIC's regulatory framework, but they also operate within the ASX Listing Rules and associated guidance. A company can therefore be regulated simultaneously by statute, regulator and market rules.

ASIC	ASX
Statutory regulator established under Commonwealth legislation.	Licensed market operator running securities markets.
Administers and enforces laws that confer functions and powers on it.	Applies Listing Rules and market requirements to listed entities and participants.
Registers companies and maintains corporate information.	Does not create a company merely because securities are quoted on its market.

1.9 Sources of Corporate Law: learn the hierarchy

A reliable Corporate Law answer moves from proposition to authority. The core hierarchy is current legislation, binding case law, regulator and market rules where relevant, persuasive authority, then commentary. Textbooks and summaries are excellent teaching tools, but they do not replace the legal source.

> **Research habit.** State the proposition in plain English -> identify the exact Act and section -> read the operative words -> identify the leading case interpreting or illustrating the rule -> explain why that authority matters -> then apply the rule to the facts.

1.10 Issue-spotting method for Chapter 1

Fact trigger	Issue	Law / authority
People run a business together for profit, but deny they are partners.	Does a partnership exist?	Partnership Act ss 5-6; Canny Gabriel.
One partner signs a contract without consulting the others.	Did the partner bind the firm?	ss 8-11; agency before liability.
Supplier seeks payment for ordinary firm debt.	Who is liable?	s 12(1): joint liability.

Client suffers loss from a partner's wrongful act.	Firm liability and partner exposure.	ss 13-15; joint and several liability under s 15.
Partner appropriates opportunity or private profit.	Fiduciary / statutory loyalty.	ss 31-33; Chan v Zacharia.
Question asks why national corporate law required constitutional reform.	Federal constitutional foundation.	Constitution ss 51(xx), 51(xxxvii); Incorporation Case; Hughes.
Question refers to listed company disclosure or market rules.	ASIC or ASX?	ASIC Act / Corporations Act versus ASX Listing Rules.

1.11 Frequently Asked Questions

FAQ 1 - Is a partnership a separate legal person?
No, not an ordinary partnership. The partnership is a legal relationship among the partners. Incorporated limited partnerships are a statutory exception.

FAQ 2 - Does calling an arrangement a joint venture prevent partnership?
No. Canny Gabriel shows that the court examines substance. Shared profit, joint control and the overall relationship may support partnership despite the label.

FAQ 3 - What is the cleanest order for analysing a partner's contract?
First authority under ss 8-11. Then liability under ss 12-15. Do not collapse those questions.

FAQ 4 - Are partnership debts always joint and several?
No. Section 12(1) uses joint liability for ordinary debts and obligations. Section 15 uses joint and several liability for liabilities arising under ss 13-14.

FAQ 5 - Can partners change the statutory rules?
Many internal default rules can be varied by agreement, but private arrangements do not automatically defeat outsider rights.

FAQ 6 - Why learn partnership law in Corporate Law?
Because it exposes what a company changes: separate personality, allocation of management, transferability, continuity, capital formation and limited liability.

FAQ 7 - Why is Chan v Zacharia useful?
It teaches how fiduciary obligations constrain a partner's use of opportunities connected with the partnership and foreshadows directors' fiduciary duties.

FAQ 8 - Why did Australia need State referrals of power?
The Commonwealth's corporations power did not itself provide a secure power to create

all companies. The referral mechanism under s 51(xxxvii) supported the modern national scheme.

FAQ 9 - Is ASIC the stock exchange?
No. ASIC is a statutory regulator. ASX is a market operator with Listing Rules.

FAQ 10 - Is history examinable just because it is in the chapter?
Course emphasis controls assessment, but the history explains why the present legal architecture looks the way it does. It should be used to understand, not merely memorise dates.

1.12 Multiple Choice Questions

1. A and B call their agreement a "joint venture", share net profits equally and jointly decide major policy. What is the best approach?
   A. The label is conclusive.
   B. Apply ss 5-6 and examine substance, including Canny Gabriel.
   C. A partnership only exists after ASIC registration.
   D. A partnership must have a written deed.

   Answer: B. Partnership characterisation turns on the statutory relationship and substance, not the label.

2. Which provision is the starting point for a partner's power to bind the firm in ordinary partnership business?
   A. s 8 Partnership Act 1891 (Qld)
   B. s 12
   C. s 15
   D. s 181 Corporations Act

   Answer: A. Section 8 addresses partner agency and the power to bind the firm.

3. An ordinary contractual debt validly incurred by the firm is governed principally by:
   A. s 12 joint liability
   B. s 15 joint and several liability
   C. s 516 Corporations Act
   D. s 588G

   Answer: A. Section 12(1) is the starting point for ordinary firm debts and obligations.

4. A partner negligently advises a client in the ordinary course of the firm's business. Which combination is most relevant?
   A. ss 13 and 15
   B. ss 8 and 12 only
   C. s 119 Corporations Act
   D. s 51(xx) Constitution

   Answer: A. Section 13 addresses firm liability for the wrongful act; s 15 makes the partners jointly and severally liable for that liability.

5. Why is Chan v Zacharia important here?
   A. It establishes ASIC.
   B. It illustrates partnership fiduciary obligations and opportunities.
   C. It creates companies by registration.
   D. It defines a public company.

   Answer: B.

6. The Incorporation Case is most important for understanding:
   A. dividend taxation
   B. why the Commonwealth needed a referral-based foundation for the national scheme
   C. partnership agency
   D. listed-company disclosure

   Answer: B.

7. ASIC is best described as:
   A. Australia's stock exchange
   B. a statutory regulator with functions under the corporations legislation and other financial-system laws
   C. a private professional body
   D. a court

   Answer: B.

8. The ASX Listing Rules are most directly relevant when:
   A. a sole trader registers an ABN
   B. an entity is listed or seeking listing on ASX
   C. two doctors form a partnership
   D. ASIC prosecutes an offence

Business Structures and the Emergence of Corporate Law

The first forum does something more important than introduce the vocabulary of companies. It teaches how a lawyer decides *whether a company should exist at all*. The lecturer's lemonade-stand discussion deliberately begins without a legal label. A group of students wants to raise money for a class party. The students can sell refreshments, appoint a small management team, borrow from relatives, contribute their own money, and divide the outcome. Only after those commercial questions have been asked is it sensible to select a legal structure. That is the practical starting point for a legal adviser: **the facts and the client's objective determine which law is relevant, rather than a favourite statute determining the advice**.

The client interview begins before the company exists

Imagine that four graduates propose selling fresh lemonade on campus. They expect to contribute $500 each, rent a stall, employ casual workers and perhaps purchase refrigeration equipment on credit. One wants all decisions to be unanimous, one proposes to act as managing partner, and another wants no personal liability if a customer becomes ill. A useful lawyer does not answer by declaring that incorporation is always best. The lawyer asks how much capital is required; whether the money will be loans or equity; whether investors expect voting rights or only repayment; who will have authority to enter binding contracts; how losses will be allocated; whether the founders need a continuing business that survives a departure or death; whether there are public reporting obligations; and how the venture will end.

The lecturer used the lemonade stand because apparently small commercial choices reveal the whole architecture of corporate law. Borrowing $2,000 creates a creditor. Selling an ownership interest creates a question about who owns and controls the venture. Buying goods on thirty-day credit creates a question of who can bind the business. Deciding to shut it down raises dissolution and ownership issues. A class may agree about its general purpose yet disagree about buying sustainable cups, adding cakes, paying staff or setting the price. Lawyers translate these disagreements into governance rules, powers of delegation, authority limits and dispute-resolution mechanisms.

Why this matters in professional practice. A business-structure interview should conclude with a facts table, not a slogan. Identify the intended venture, its owners, its managers, its anticipated creditors, its assets, the material risks and the exit route. Then compare the legal consequences of operating personally, in an ordinary partnership, through a trustee or through a registered company. Corporate law becomes easier to learn because each later doctrine answers one of those original questions about control, ownership, liability or continuity.

A sole trader: simplicity comes with personal exposure

The sole trader is the baseline. One person carries on the business personally: that individual owns its assets, enters its contracts and receives its returns. There is ordinarily no separate incorporated legal person interposed between proprietor and customer. Consequently, a business name alone does not create a separate debtor. If a sole trader signs a supply agreement, it is generally the individual who owes the contractual price; if the proprietor incurs a personal liability for negligent conduct, incorporation cannot be invoked as a defence where there is no company. Business names, tax registration, licensing and employment obligations may still apply: **easy formation does not mean freedom from regulation**.

In the lecturer's class exercise, the sole trader may choose the price of lemonade and whether to operate on Saturday without a shareholder meeting. This flexibility is the attraction. The corresponding weakness is concentration of risk and dependence on one individual. The ability to raise capital by issuing corporate shares is absent; funds normally come from the proprietor's contributions, borrowing or separate contractual arrangements. A bank can require security or a guarantee; the proprietor's assets may be exposed to enforcement. Selling the business involves transferring relevant assets and contracts, rather than selling shares in a distinct incorporated person.

When advising a client, separate **control**, **property ownership** and **liability**. A sole trader enjoys full managerial discretion but bears the consequences of personal contracting. If the client intends a very small, low-risk, temporary activity, that simplicity may be valuable. If significant debt, employee exposure, many owners or continuity is planned, the lawyer should explore alternatives, remembering that incorporating does not erase all personal duties or guarantees.

An ordinary partnership: a relationship that can arise from conduct

Section 5(1) of the *Partnership Act 1891 (Qld)* describes a partnership as a relationship between persons **carrying on a business in common with a view of profit**. The elements operate together. There must be a business, not merely joint ownership of a holiday property; the persons must be carrying it on in common, not merely contracting independently with the same customer; and the activity must have a view to profit. This test concerns the **substance of the relationship**. Calling someone an investor or describing an arrangement as a joint venture will not by itself decide the question.

Section 6(1)(a) makes clear why joint ownership of property, even with shared profits from its use, is not by itself enough. Section 6(1)(b) similarly states that sharing gross returns does not alone create a partnership. The profit-sharing provisions require particular care: a payment varying with profits can be relevant evidence, but the Act does not turn every lender, employee or landlord receiving a performance-related return into a partner. The correct question is whether the arrangement satisfies s 5(1), assessed against the statutory indicia and real working relationship.

A written agreement is useful but not indispensable. In *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321, the High Court's analysis illustrates why courts look to the commercial substance of a shared enterprise rather than exclusively to the labels chosen by those involved. A careful student should state the actual elements, examine decision-making, shared profits and risks, common activity and the apparent joint enterprise, and only then conclude whether the relationship is a partnership. The strongest counterargument often lies in identifying features of a debt, employment or simple co-ownership arrangement inconsistent with carrying on business in common.

The lecturer's phrase 'meeting of the minds' is a useful way to describe commercial agreement, but it should not be mistakenly taught as a separate statutory element that replaces s 5(1). The partnership question is objective and fact-sensitive. That makes it an excellent foundation for the later corporate-law lesson that a person's formal job title may not capture their actual legal role.

The most important partnership distinction: internal agreement versus external authority

In the first hour the lecturer displayed a diagram showing partners connected internally and a third-party client dealing with one partner. The central legal lesson is that an ordinary partnership can expose partners to **acts done by another partner in the usual course of business**. Section 8(1) is the precise starting point: a partner is an agent of the firm and the other partners for partnership business. An act done for carrying on in the usual way business of the kind carried on by the firm binds the firm unless the partner actually lacked authority **and** the outsider knew of that lack of authority or did not know or believe the person was a partner. Both limbs in s 8(1)(a) and (b) must be considered as the legislation requires.

Take an architecture partnership. The partners privately agree that no individual may order equipment costing more than $20,000. One partner orders standard design hardware for $45,000 from a supplier who has previously dealt with the firm and has never been informed of the limit. Asking merely whether the partner breached the agreement is insufficient. The lawyer must ask whether buying the equipment is in the usual course of this architecture firm's business; whether the partner had actual authority; whether the supplier had notice of any restriction; and whether the particular contract is binding externally. A private restriction may produce an internal breach even while the supplier remains able to enforce an authorised or apparently authorised contract.

Sections 9–11 supplement that analysis. Section 9 concerns instruments and acts done by someone authorised to bind the firm, including acts in the firm name. Section 10 is relevant if a partner uses partnership credit for an apparently private purpose outside its ordinary business; it does not automatically protect the firm if special authority exists. Section 11 protects the significance of actual notice to an outsider of an agreed limit on a partner's authority. These provisions must not be collapsed into a general proposition that 'all partners can sign anything'. The kind of transaction and the outsider's knowledge are legally decisive.

In an examination or a client memo, organise the facts into two separate columns: **external claim** (third party against firm/partners) and **internal claim** (partners against one another). The liability analysis usually makes sense only after agency has been established. Internal disciplinary or indemnity rights do not automatically invalidate the

outsider's contract. This division between external authority and internal governance anticipates Chapters 3 and 4: a company's constitution may regulate internal decision-making, while different rules govern the effects of dealings with outsiders.

Partnership debts: do not misstate joint liability as joint and several liability

The lecturer's spoken explanation sometimes referred broadly to partners as being 'jointly and severally liable' for partnership debts. That conveys the very real danger of widespread exposure, but **the statute draws a finer distinction**. Under s 12(1) of the Queensland *Partnership Act 1891*, each partner in an ordinary firm is **jointly liable** with the other partners for debts and obligations incurred while a partner. It is inaccurate to cite s 15(1) as the ordinary contractual-debt rule; that subsection deals with qualifying wrongs under ss 13 and 14. A student who uses the right source for the right category of liability has taken a major step towards lawyer-quality advice.

Suppose a supplier supplies refrigeration goods to a partnership and the firm fails to pay. First test whether the contract binds the firm under ss 8–11. If it does, identify the amount and the partner membership at the time the liability was incurred; then apply s 12(1). The practical enforcement consequences of a joint debt require attention to procedural law and the form of the judgment. Do not substitute a shorthand description of joint-and-several liability for the statutory wording. Conversely, if a customer alleges negligent food preparation, analyse the tort or other wrong and the special regime in ss 13–15, rather than simply calling it another unpaid bill.

The lecturer's example of a wealthy partner being pursued after a client suffers loss highlights a further practical point: exposure can be commercially serious even for a partner who did not personally carry out the negligent act. But a professional answer still identifies the **nature of the cause of action** and the statutory route to liability before describing who can be sued or what remedies may follow. The result depends on whether liability arises from contract, tort, misuse of property or another claim.

Partnership wrongs and misapplied money: sections 13, 14 and 15

Section 13 is directed to qualifying wrongful acts or omissions of a partner acting in the ordinary course of the firm's business or with the authority of the other partners. The firm can be liable for the loss or injury caused. Section 14 deals with specified misapplications of money or property received by a partner acting within apparent authority, or received in the course of business and misapplied while in the firm's

custody. Section 15(1) then makes the partners in an ordinary firm **jointly and severally liable** for everything for which the firm becomes liable under s 13 or s 14 while they are partners. It is this connection—**qualifying wrong first, external personal exposure second**—that students should learn.

Consider the lecturer's client-liability example. One professional partner negligently performs ordinary partnership work; the client suffers an actionable loss; another partner has substantial assets. Analyse (1) duty, breach, causation and recoverable loss under the applicable substantive law; (2) why the conduct occurred in the ordinary course of the firm's business under s 13; and (3) how s 15 attaches joint-and-several exposure for the resulting firm liability. A claimant may have a claim that extends beyond the personally negligent partner, but this does not mean the rich partner committed the tort personally. Distinguish attribution of financial responsibility from proof of personal fault.

Next separate the law governing the outsider from any internal allocation of risk. Section 27(1)(a) supplies a default equal sharing of losses, but it is subject to the partners' express or implied agreement. Section 27(1)(b) requires indemnification for specified proper business payments and liabilities. A negligent partner may face different internal consequences depending on contract, equitable duty, fault and indemnification principles. A lawyer must identify the precise basis for contribution or indemnity, and should not promise that the wealthier partner will automatically obtain one-third back from everyone else. The lecturer uses that possibility to illustrate the internal problem; the final legal remedy depends on the actual facts and governing rules.

Internal governance: default rules are not the same as compulsory rules

An ordinary partnership can usually shape much of its internal governance by agreement. Section 27(1) of the Queensland Act is expressly **subject to any express or implied agreement** between the partners. Under paragraph (a), partners share capital, profits and losses equally by default. Paragraph (e) gives each partner a default right to participate in management. Paragraph (f) provides that no partner is automatically entitled to remuneration for acting in the partnership business. Paragraph (g) addresses admission of new partners and requires consent of all existing partners by default. Later paragraphs address decision-making, access to books and changes in the nature of partnership business; the lawyer should read the exact text before drafting governance arrangements.

The lecturer's example of selling lemonade, cookies or brownies explains why governance needs rules for ordinary management and fundamental changes. A majority may be useful for routine decisions, but changing the nature of the business is a different issue. The firm could choose a managing partner or committee, decide spending thresholds, specify whether an additional partner must be unanimously accepted, and provide dispute-resolution or exit procedures. Those internal choices matter, but do not automatically remove statutory duties owed to outsiders. A well-drafted partnership agreement must therefore deal separately with authority to bind, internal expenditure limits, duties between partners, capital contributions, allocations of profits, succession and indemnities.

Sections 31–33 supply a further reminder that partnership is not only a financing device. Section 31 concerns partners' duties to render true accounts and full information; s 32 addresses accountability for private profits; and s 33 deals with carrying on competing business without consent. *Chan v Zacharia* (1984) 154 CLR 178 is an example of the importance of fiduciary loyalty and accountability when a partner seeks to benefit personally from a partnership opportunity. Explain the factual relationship giving rise to loyalty before assuming that every independent commercial opportunity belongs to the firm.

Leaving a partnership, continuity and the limits of easy transfer

The lecturer asks whether a person would enter a partnership with strangers. The question is not simply about liking one's fellow partners. It concerns having another person able to expose the business to contracts and liabilities, and having to trust others' commercial judgment. The default statutory rules about retirement, dissolution and continuity are one reason partner admission and exit need planning. Part 4 of the *Partnership Act* addresses dissolution and its consequences; ss 35–37 are especially relevant when considering expiry, notice, death, insolvency and certain changes in the relationship. The exact consequences will also depend upon the partnership agreement and whether the firm is an ordinary, limited or incorporated limited partnership.

Unlike a shareholder who may in principle dispose of shares subject to transfer restrictions, an ordinary partner cannot assume an outside investor can simply purchase the entire position of partner with all its managerial and fiduciary incidents. A transferee may obtain an economic interest without automatically becoming a partner vested with

management rights. Where clients hope to admit new investors repeatedly, survive founder departures, or run for decades, the lawyer should examine whether a company offers clearer continuity and transfer mechanisms.

For tutorial purposes, the model answer should not say 'partnerships always end when anyone dies'. The lecturer properly points out that sophisticated firms draft continuity arrangements. State the statutory baseline and then examine the agreement. The broader professional lesson is that **default rules describe what applies in the absence of an effective variation**, not what parties are prohibited from changing.

Partnership-size limits: source, qualifications and historical statements

Section 115 of the *Corporations Act 2001 (Cth)* controls certain large partnerships and associations formed for gain, including prescribed exceptions. The general threshold commonly taught is 20 members, but the legislation and regulations must be read together before deciding that a particular professional practice is impermissible. Under reg 2A.1.01(1) of the *Corporations Regulations 2001*, the prescribed professional numbers include **400 legal practitioners** and **1,000 accountants** (subject to the actual regulation and the character of the partnership or association). The transcript's reference to only four lawyers reflects a verbal inaccuracy or a different historical understanding; it must not be published as the present rule.

The value of teaching this as a legislative problem is that a student learns to follow a cross-reference: **s 115 identifies the statutory restriction and regulation-making framework; reg 2A.1.01 tells the reader which different profession-specific figure applies**. When asked how many people can operate a proposed partnership, start by defining the proposed body, whether its objects bring it within the restriction, and which prescribed category if any is engaged. Do not apply a professional exception by analogy to a wholly different business.

Trusts: the trust is a relationship, not simply a company by another name

After the break the lecturer returns to other legal structures, especially trusts, explaining that Australian clients often consider them in connection with tax planning and asset-holding. A trust typically involves a trustee holding legal title to property subject to obligations owed to beneficiaries or for legally permitted purposes. The **trust itself is generally not a separate legal person in the same sense as a registered company**;

the trustee is ordinarily the person who contracts, holds property and owes relevant duties. Sometimes the trustee is a company. That arrangement combines a corporate legal person with a trust relationship, so the lawyer must analyse both layers.

Suppose the lemonade venture proposes a family trust with a corporate trustee. The lawyer should ask who the trustee is, what powers the trust deed grants, which beneficiaries may benefit, and whether the arrangement lawfully achieves the clients' tax and succession objectives. Calling it a 'trust business' does not reveal who owes a debt to the refrigerator supplier; the supplier's contractual counterparty matters. A director of a corporate trustee may also have company-law duties, while the trustee separately has duties arising from trust law. These are related but not interchangeable legal positions.

The lecturer's broad comments about tax demonstrate why tax can influence structure, but they should be treated as teaching context, **not as a tax opinion**. The choice among sole trader, partnership, company and trust depends on current tax law, distribution rules, anti-avoidance provisions, administrative expense and the particular family's or business's circumstances. A comprehensive client recommendation would be cross-checked with specialist tax advice. This chapter's task is to show that the same commercial activity can have very different legal ownership and liability arrangements.

For-profit, not-for-profit and associations

The lemonade project also illustrates the importance of purpose. A group raising money to distribute to its members is commercially different from one raising money for a public or charitable purpose. 'Not-for-profit' describes restrictions on distributing profits for private benefit; it does **not** necessarily mean the organisation cannot earn surpluses. Surplus funds may be used for its permitted purpose. Moreover, a not-for-profit need not always be a charity, and the legal rules depend on the precise incorporated association, company limited by guarantee, trust or other vehicle selected.

If an organisation is intended to be incorporated, determine whether it should be registered under the *Corporations Act* or a relevant State or Territory associations statute, and examine the eligibility, governance, membership and distribution provisions. The lecturer's party fundraiser is designed to show why purpose should be identified before form. Students should not infer that any group describing itself as charitable can freely distribute profits to its members, or that every not-for-profit is forbidden to undertake commercial activities.

In client advice, define what the organisation actually wants to accomplish. Who receives any money left after expenses? Can members receive benefits, wages or reimbursements? Who owns the assets on winding up? These questions influence the appropriate vehicle and the governing document. They also prepare the student for later company classifications and members' rights.

Historical development: incorporation as legal privilege becomes ordinary registration

The lecturer's historical account begins with the earlier need for incorporation by royal charter or specific legislative grant. A chartered corporation was a legally recognised collective person created or authorised through a special process; being incorporated could confer continuity and powers beyond the capacity of a loose group of individuals. The modern corporate form developed as trade, investment and industrial projects demanded ways to collect capital from many participants and operate across time. Students need not memorise every historical date, but they should understand **what problem the legal invention of incorporation solved**.

Early enterprise often required a group of investors to provide capital and undertake risky commercial activity. The joint-stock technique allowed interests in a venture to be divided into transferable investment units; incorporation and limited liability developed through distinct legislative and commercial steps. Limited liability was not simply the original definition of a corporation. The lecturer's explanations of large projects, wealthy families and early banks are illustrations of the demand for a form that could survive changes in individual participants and attract outside funds.

In Australia, early chartered or specially constituted institutions preceded a general registration approach. The importance of their historical existence is not that current clients should seek charters, but that the contrast clarifies the modern position: **incorporation is now generally obtained through satisfaction of legislation and registration, rather than requiring an individual parliamentary favour**. Today, *Corporations Act 2001* (Cth) ss 117–119 establish a modern registration pathway and the existence of a body corporate. Those provisions are covered in greater detail in Chapter 3. Here they demonstrate the conclusion of the historical story.

Separate personality, limited liability and investment: three separate ideas

Corporate personality means that a registered company becomes a legal person distinct from its members. Limited liability concerns the extent to which members are exposed to the company's obligations, according to the company's type and the statutory rules. Transferable shares concern the ability to dispose of an investment, subject to law and governing documents. The ideas often work together, but should not be treated as identical. A corporation can own property and incur debts; that does not mean it lacks full liability for those debts. Indeed, **it is the shareholder's liability that may be limited**, rather than the company's.

An investor considering a risky trading venture wants to know whether the maximum loss is the agreed investment or whether creditors can pursue personal assets. A company limited by shares generally separates its liabilities from the members' liabilities, but directors or shareholders who personally guarantee borrowing, commit wrongs, or breach separate statutory duties may face their own exposure. The lesson is commercial as well as legal: lower investor risk can make larger-scale financing and more widely dispersed investment feasible. The separate-entity consequences are taught through *Salomon v A Salomon & Co Ltd* [1897] AC 22 in Chapter 2, where students must distinguish company debts from the founder's personal debts.

The lecturer's historical development is therefore not filler: it explains why company law is structured around registration, capital, governance, member rights and external creditor protection. Chapters 2–4 take those questions further by teaching what the company owns, when it comes into existence, and who is authorised to make decisions in its name.

Why national corporate law took a constitutional route

The final part of the Week 1 transcript explains why Australian corporations legislation is national in form but has a constitutional history. Section 51(xx) of the *Australian Constitution* empowers the Commonwealth Parliament to legislate with respect to specified corporations **formed within the limits of the Commonwealth**. The High Court's decision in *New South Wales v Commonwealth* (1990) 169 CLR 482 (the Incorporation Case) illustrates the significance of the word 'formed': the corporations power did not authorise a general federal power to incorporate all companies. Historic company-law systems consequently involved significant State and Territory legislation.

The modern regime was achieved through a cooperative federal solution, including State referrals under s 51(xxxvii) of the Constitution, and the enactment of the *Corporations Act 2001* (Cth) alongside related legislation. *R v Hughes* (2000) 202 CLR 535 provides relevant context for limits and requirements on Commonwealth legislative power under the preceding cooperative arrangements. Rather than treating 2001 as a magical date, a student should understand the sequence: **limited original federal constitutional power; state-based incorporation; problems with national uniformity; cooperative referrals; Commonwealth legislative framework**.

The lecturer uses this history to explain why older judgments may cite State companies legislation, the Corporations Law or different section numbers. That observation is useful, but it is important not to assume that every earlier provision is word-for-word identical to its modern counterpart. In a legal answer, identify the statute governing the time of the actual facts, then ask whether the old authority remains relevant to the current statutory wording. This is especially important when a judgment is used to interpret directors' duties or corporate attribution.

ASIC's role, professional research and the importance of sources

The *Corporations Act 2001* (Cth) regulates company registration, governance and many aspects of corporate dealings. ASIC is the national corporate regulator administering and enforcing relevant statutory regimes; the ASX is a market operator, not another name for the regulator. An ASX-listed company must satisfy applicable companies legislation and relevant listing obligations. A private client forming a small proprietary company faces different practical compliance questions from a company issuing securities to the public.

For research, start with **the precise legislation and its current compilation**, then read the actual judgment for each cited legal principle. The lecturer repeatedly encourages students to open the Act and trace the structure rather than simply memorise section numbers. For example, a business-structure problem sends us to the Queensland *Partnership Act*, not automatically to directors' duties under the Commonwealth *Corporations Act*. Once the client has registered a company, company-registration, constitutional and governance provisions become central. That is how a lawyer chooses authorities that answer the question asked.

The Week 1 class also introduced professional habits: preparation for tutorials, active participation, reading cases, and the later client-interview skills assessment. These are useful because the legal method is not limited to writing an exam. A lawyer must ask focused questions, disclose uncertainty, distinguish what the client assumes from what

documents show, research the governing provisions, and communicate realistic options. The completed chapter should equip the student to make a preliminary recommendation to the lemonade group and explain why, rather than merely recite that partnerships have partners and companies have shareholders.

Bringing the two hours together: a lawyer's worked structural recommendation

A group of five university graduates asks for advice. They will open two food stalls, employ staff, borrow $80,000 secured by equipment, and invite a passive sixth investor in six months. One founder wants to operate day-to-day without requesting every member's approval; another refuses to risk a family home; the business is intended to continue even if one founder leaves. The lawyer should first identify the objective, anticipated revenue, capital, control, risks and exit requirements. The lender may also insist on personal guarantees, so the founders must not treat incorporation as a guarantee that no individual will ever be personally liable.

A sole trader is difficult to reconcile with multiple co-owners. An ordinary partnership could exist under s 5(1) if they carry on business in common with a view of profit, but its agency rules under ss 8–11 and external liability rules under ss 12–15 require the founders to understand how one partner's conduct can expose others. An agreement can adjust internal management and loss allocation under s 27, but it cannot by itself strip an unaware outsider of rights conferred by the statutory agency framework. A trust might be appropriate for particular ownership or tax objectives, but would require analysis of trustee capacity and duties. A registered proprietary company may offer clearer continuity and a structure separating members from the company, while carrying its own costs and duties. Company type, constitution, registration, directors, securities and governance arrangements would require detailed further advice under the *Corporations Act*.

The provisional recommendation may favour exploring a proprietary company, but it should be conditional: inspect the proposed financing terms, personal guarantee requirements, employment and food-safety obligations, tax advice, the founders' ownership agreement, procedures for directors' decisions, and the proposed passive investor's rights. If the venture is short-lived and low risk, a simpler arrangement may be more proportionate. **This is legal reasoning**: identify the relevant legal vehicles, explain the rule for each, test their consequences against the client's actual requirements, consider counterarguments, and make a qualified recommendation with practical next steps.

Legislative map — why each precise provision matters

Provision	The question it answers	How students use it
Partnership Act 1891 (Qld) s 5(1)	Are these persons partners at all?	Test a business carried on in common with a view of profit before discussing liability.
s 6(1)(a)–(c)	Which appearances are insufficient by themselves?	Distinguish co-ownership, gross returns and profit-linked arrangements from partnership formation.
ss 8(1)(a)–(b), 9–11	Did an act of one partner bind the firm externally?	Identify usual business, actual authority, third-party knowledge and notice of private limits.
s 12(1)	What is partners' liability for ordinary debts and obligations?	Use *joint liability* as the statutory starting rule; do not confuse with tort provisions.
ss 13–15(1)	When is the firm liable for wrongs or misapplied property, and who is exposed?	Establish qualifying firm liability under s 13 or s 14, then apply joint-and-several liability under s 15.
s 27(1)(a), (b), (e)–(g)	What are the default internal arrangements?	Discuss profit/loss allocation, indemnification, management rights, remuneration and admission of new partners, subject to agreement.
ss 31–33; ss 35–37	What loyalty, disclosure and dissolution issues arise?	Test private profits, competition and the consequences of partner departure or cessation.
Corporations Act 2001 (Cth) s 115 and *Corporations Regulations 2001* reg 2A.1.01	Is there a size limit or prescribed exception?	Check the actual profession category and the current regulation before giving a number.
Corporations Act ss 117–119	How does a company obtain separate legal existence?	Connect the historical move to registration with the present registration process.
Australian Constitution ss 51(xx), 51(xxxvii)	Why was a national corporate statute constitutionally complex?	Explain the limited corporations power and the referred-powers pathway, with case authority.

What the tutorial requires. Reproduce the original Tutorial 1 handout without rewriting the questions; identify whether a partnership exists before selecting a liability provision; distinguish ordinary debts from wrongful acts; apply agency and notice separately; and

conclude with the available evidence and proper external/internal consequences. The existing original question and model-answer pages follow this full teaching narrative in both the electronic and print editions.

Source distinctions. The spoken lecture is a primary source of curriculum emphasis; its transcribed wording occasionally contains recognition errors and approximate historical or statutory claims. The legal propositions in the expanded narrative have therefore been checked against legislation and identified judgments where possible, and any remaining gaps are recorded for publication review. The full first and second portions of the Week 1 live forum are preserved in the source archive included with this edition.

CHAPTER 1 — COURSE READINGS AND TEACHING INTEGRATION

The practical question at the beginning of company law

The first lecture asks students to choose a business form for a class enterprise. A lawyer must not answer that a company is always preferable. Instead, identify who will own assets, who will manage the venture, who may bind it to contracts, who bears losses if the venture fails, how investors will enter and exit, and the amount of compliance the participants can afford. These questions explain why the course teaches partnerships and trusts before turning to incorporation. These structures are comparators rather than interchangeable legal persons.

The ordinary partnership relationship: s 5(1) and s 6 of the Partnership Act 1891 (Qld)

Section 5(1) defines partnership through persons carrying on a business in common with a view to profit. The inquiry is functional: the parties' relationship and their business activity are more important than the label they use. Section 6 contains interpretive rules relevant to co-ownership, gross returns and profit sharing; a profit-linked payment alone does not conclusively establish partnership. Read the statutory definition before asking about ownership, authority or liability, because those later consequences depend on whether a partnership exists in the first place.

Two distinct questions: agency under ss 8–11 and liability under ss 12–15

Section 8(1) treats each partner as an agent of the firm and the other partners for purposes of the business. This is the starting point when an outsider says the partnership is bound by a contract signed by only one partner. The analysis must examine the business's usual course and the outsider's knowledge of any restriction. Only after deciding whether an obligation is the firm's should a lawyer ask who must pay it. Section 12(1) ordinarily imposes joint liability for firm debts; ss 13–14 identify specified partnership wrongs and misapplications, while s 15 applies joint and several liability to liabilities arising under those sections. These sections are not synonyms, and the tutorial expects students to explain precisely why the distinction matters.

Managing partners, changing the business and agreement-based governance

Section 27(1) supplies default rules for partners' rights and obligations, subject to the partnership agreement. In particular, the statutory management right in s 27(1)(e) is different from a power to bind outsiders under s 8; s 27(1)(h) concerns the difference between an ordinary majority decision and a fundamental change in the nature of the business. A well-drafted partnership deed can allocate decision-making and mitigate internal risks, but it does not automatically deprive an innocent outsider of rights arising through a partner's apparent statutory agency. A lawyer therefore reads the Act, the agreement and the facts together.

Why the lecture also examines trusts, associations and purpose-driven entities

A trust separates legal title in the trustee from beneficial interests, but a trust is not itself a separate corporation; obligations may rest on the trustee subject to trustee indemnity and trust-document terms. An incorporated association has its own legislative framework. A trading trust with a corporate trustee can separate the trustee company's legal personality from the equitable interests under the trust. Cooperatives and not-for-profits have their own regulatory requirements. The lesson is to classify the arrangement accurately before importing the Corporations Act model.

The historical transition: from charter privilege to registration

The lecture tracks the move from historical corporations established by royal charter or specific statute to incorporation by registration under nineteenth-century UK legislation, followed by the emergence of limited liability. These two developments are distinct: being an incorporated legal person does not by itself establish the amount a member must contribute in liquidation. The historical narrative helps explain why modern registration confers separate personality but a lawyer must still identify the applicable company type.

Australian federalism and the national Corporations Act

Section 51(xx) of the Australian Constitution gave the Commonwealth legislative power concerning specified classes of already-formed corporations; the limits surrounding incorporation contributed to a fragmented historical scheme. The lecture discusses Huddart Parker, the Incorporation Case, Re Wakim and R v Hughes as context for reform. The States' referrals of power under s 51(xxxvii)

enabled the national Corporations Act 2001 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth). Students should distinguish this explanatory history from the current statutory steps for registering a company.

ASIC is a regulator, not a securities exchange

ASIC administers and enforces Commonwealth corporate regulation and company registration functions. The Australian Securities Exchange operates markets and sets its listing rules for listed issuers. A corporate lawyer must distinguish a duty arising under an Act, an ASIC-administered instrument and an ASX Listing Rule; the regulator and market operator are not interchangeable. For a new company, company registration and resulting legal personality arise under Corporations Act ss 117–119, developed more fully in Chapter 3.

Reading locations and their proper use

The lecturer identifies Chapple et al, Company Law (3rd ed), Chapter 1 pp 2–7, 26–30 and 35–37, with partnership material pp 10–17 suggested as useful background; Chapter 2 pp 48–50 before section 2.2. The further reading includes Baxt pp 114–116, 119, 122–123 and 126, and Redmond pp 55–61. These are precise course locations. The lecture slides and notes have been examined; the complete contents of the specified printed textbook pages and the Baxt/Redmond extracts are not contained in the attachments, so this section does not purport to quote or verify unseen passages. Its teaching is grounded in the supplied slides and current primary legislation.

Connecting the prescribed reading to the law: choosing the business vehicle

The Week 1 forum asks a question that belongs at the beginning of every corporate-law consultation: what are the clients actually trying to achieve, and which legal vehicle allocates risk, control and rewards in a way that serves that objective? The simple lemonade-stall example is deliberately useful. Although its scale is small, its questions are the same ones faced by a mature business: who supplies capital; who owns the venture's assets; who can contract with customers; who manages; what happens if the enterprise cannot pay a creditor; and how can participants withdraw? A lawyer who recommends incorporation immediately, without first establishing these objectives, has confused a familiar structure with a reasoned recommendation.

The supplied *Company Law* extract is pages 26–37 of the third edition (2023), including the end of the discussion of trusts and the sections introducing companies, cooperatives, incorporated associations and hybrid structures. It does **not** contain all the introductory textbook pages assigned in the course. This teaching explains the supplied material, and connects it with the Week 1 forum and Tutorial 1; it is not a reproduction of the textbook.

The company as an organisation with three relationships

Chapple and co-authors introduce a company by separating three broad relationships: members who provide capital; directors and senior managers who make or implement decisions; and people outside the company such as customers, employees, creditors and suppliers. This is much more than an organisational chart. Each relationship poses different legal questions. A member asks what voting and distribution rights attach to an investment. A director asks where management authority comes from and what duties constrain it. A customer asks which legal person is bound by a supply contract or responsible for harm. An examiner or future adviser should always identify which of these relationships generated the problem before selecting a provision of the *Corporations Act 2001* (Cth).

For instance, suppose three friends lend money to the class lemonade business while five others contribute equipment and labour. The lender is ordinarily a creditor, not an owner. If the venture becomes a company, the shares held by members should not be

mistaken for legal ownership of every asset used by the company. The company is itself the legal person that ordinarily owns assets and owes contractual debts. Compare this with a sole trader, where the human proprietor ordinarily enters into obligations personally; or with a general partnership, where the agency and liability provisions can expose partners to obligations arising from the partnership business. This comparison explains why separate legal personality and limited shareholder liability, explored in Chapter 2, were so significant in the development of the corporate form.

A comparative method, not a list of definitions

A **sole trader** is not a separate incorporated legal person merely because they register a business name. That owner makes decisions directly, receives residual economic returns and normally bears the resulting business obligations personally. This simplicity can be attractive for a low-risk, one-person service business but problematic for large borrowings or substantial personal-injury exposure. **A partnership** permits individuals to combine resources and skills, but it also introduces agency: a partner acting within the relevant actual or apparent authority can bind fellow partners in the partnership business. For a Queensland general partnership, locate the definition in s 5 of the *Partnership Act 1891* (Qld), work through ss 8–11 concerning agents and the effect of partner acts, and distinguish s 12 on joint debts from ss 13–15 concerning qualifying wrongs and joint-and-several liability. Do not tell a client that every contractual liability is governed by precisely the same provision as every tort claim.

A **trust** is a different kind of legal relationship, not necessarily a company or an alternative legal person. A trustee holds or controls trust property subject to duties owed to beneficiaries or to the trust's purposes. The trust deed and relevant State or Territory trust legislation are important: they determine appointments, retirement, replacement, investment and distribution powers, together with the operation of trustee duties. An incorporated corporate trustee may be a company, while the trust itself is not automatically a separate company. When a trustee signs a contract, ask who the contracting party is and what rights of indemnity against trust assets may be available; do not assume the beneficiaries are personally parties to that contract. The supplied textbook extract also discusses what a deed should provide if a sole trustee dies, why a trustee can be removed, and the power to appoint replacements. The student's

technique is to identify the legal holder of property, the equitable interest, and the source of any power to act.

Cooperatives, incorporated associations and Indigenous corporations

The prescribed pages expand the choice beyond a binary question of ‘partnership or company’. A **cooperative** commonly exists so members can collectively obtain or distribute services or products on cooperative principles. Its governing legislation, registration, rules and the particular cooperative's membership arrangements matter. Member benefit is often a more useful analytical starting point than maximising outside shareholder return. An **incorporated association** may suit a club or community organisation: registration under applicable State or Territory legislation can give a separate legal identity, enable property-holding and contracts, and impose governance and reporting obligations. But students must not assume that all incorporated associations can distribute profits like ordinary trading companies. An **Aboriginal and Torres Strait Islander corporation** may instead be governed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), overseen by the Office of the Registrar of Indigenous Corporations, using its own rule-book and regulatory requirements. Its distinctive statutory scheme cannot simply be replaced by the ordinary *Corporations Act* governance rules.

A lawyer advising a community-run cultural enterprise should therefore ask about membership eligibility, purpose, distribution restrictions, land-holding arrangements, relevant registration regime and which regulator has responsibility. That exercise prevents the mistake of selecting a mainstream proprietary company merely because it is familiar. Nor does a not-for-profit automatically mean a registered charity: those descriptions ask different legal and regulatory questions.

Why hybrid vehicles exist—and why complexity has a cost

The supplied reading ends with hybrid business structures. A company may serve as trustee; several companies may operate as subsidiaries within a group; participants may combine contract-based joint ventures, trusts and corporate investment vehicles. These combinations can allocate governance, tax exposure, financing and economic interests differently. They also multiply the questions a lawyer must ask: which entity employs staff, which holds assets, which signs contracts, which grants security, whose board makes decisions, and whose creditors may enforce liabilities? The answer depends on the legal relationships actually established, not merely the group name used on a website or invoice.

A useful professional discipline is to explain each additional layer to the client in one sentence: ‘We are using entity A to own the equipment, entity B to contract with customers, and a trust to hold certain investment interests.’ If the client cannot understand the proposed structure, the complexity itself creates governance and compliance risk. The textbook's underlying teaching is that a structure should be no more complicated than necessary to accomplish legitimate objectives. Students should compare the risks of excess complexity with the risks of personal exposure, absence of continuity or inadequate access to capital.

How this helps answer Tutorial 1

A High Distinction answer begins with **classification**, not with a memorised conclusion. Identify whether the venture satisfies the partnership definition and whether the facts suggest business in common with a view to profit; do not rely solely on the participants' chosen label. Determine whether an alleged partner bound others in a transaction entered into in the ordinary course of the firm's business and what a third party knew about any restrictions. Then separately identify the nature of the claim: contractual debt, wrongful act, misuse of money or property, or internal dispute. The statutory liability provisions differ, and the remedy and parties to proceedings may differ as well. Where the facts are incomplete, specify the actual contract, authority, client representations, partnership agreement and transaction documents needed to advise.

The final question is practical: should this group operate as sole traders, a general partnership, a trust or a registered company? A well-reasoned answer explains the

clients' financing requirements, control preferences, personal liability, profit distribution, regulation, succession and reporting, then states how the recommended vehicle addresses them. This method turns the introductory reading into useful legal advice, and prepares the student for the company-law analysis in Chapter 2.

Source alignment: Chapple et al, **Company Law** *(3rd ed, 2023), supplied extract pp 26–37 (PDF pp 1–12); Bond Week 1 forum and original Tutorial 1. Authorial teaching and examples above are original synthesis, not reproduced textbook text.*

Primary legislative research: Corporations Act 2001, Federal Register of Legislation. For statutory detail, use the provisions identified above and check the version operative on the material date.

ORIGINAL TUTORIAL 1 — QUESTIONS IN FULL

The following questions are reproduced verbatim from the uploaded official tutorial handout, including its own explanatory notes.

Corporate Law Tutorial 1 (Week 2) – Business Forms, Historical and Regulatory Overview

Please read the material listed in the “This Week’s Reading” section of the Week 1 Folder. Then please prepare responses to the following questions. I encourage you to write out complete answers, in sentences, as part of your tutorial preparation. I also encourage you to bring a pen and paper to class because you may find your tutor drawing diagrams on the board to illustrate key concepts.

During the first half of this tutorial, we will do a brief meet and greet. Be prepared to tell the class your name, where you’re from, what you are studying, and something interesting about you that the class would not be able to tell from looking at you!

Partnerships – while you have been introduced only briefly to how partnerships work, contrasting how partnerships and corporations function will help you better understand the key features that make corporations unique. We will be exploring the differences between partnerships and corporations in the Week 2 lecture. To prepare you for that discussion, please attempt to briefly answer the following questions. Please note that for our purposes, short/simple answers are fine. You do not need to supply precise legal authority in support of your answers. You may not be able to answer all of these. You should be able to answer all of them after the Week 2 lecture!

Who owns a partnership?

Is everyone who works within a partnership a partner?

How is a partnership formed?

Where would one look to find the rules governing the functioning of a partnership? (Note – you should identify at least two places!) How do those sources interact? Hint: Consider whether all partnerships follow the same rules. If not, why not?

Who manages/makes decisions for a partnership?

Who can enter into contracts and incur debts in the partnership’s name? What legal concept allows certain individuals to incur debts on behalf of the partnership? (Note: read this question carefully. It is asking something different than the question that follows. Do not conflate the two points!)

Who is liable for debts incurred by the partnership? To what extent are those people liable? What is the legal name for this type of liability?

To be clear, are individual partners liable, or at least potentially liable, for debts incurred by other partners on behalf of the partnership?

Has partnership law devised any means to mitigate the risk identified above?

TUTORIAL 1 — EXTENDED LEGAL REASONING

How does a lawyer decide whether a partnership exists?

Identify the jurisdiction and apply Partnership Act 1891 (Qld) s 5(1): persons, business, carrying on in common, and view to profit. Examine the behaviour of the parties rather than accepting their preferred name. Section 6 assists where the facts concern co-ownership, sharing gross proceeds or profit-linked remuneration. For example, an employee paid a share of sales may remain an employee; inspect decision-making authority, the ability to bind the enterprise, joint venture terms and contributions. State what evidence is missing before concluding.

Management rights versus authority toward third parties

Section 27(1)(e) supplies a presumptive internal right to participate in management, while s 8 deals with a partner's agency to bind the firm externally. Thus an internal rule requiring two partners to approve spending may be breached by a single partner, but the firm may still be bound to an innocent supplier if the partner's apparent statutory authority and the other conditions of ss 8–11 are satisfied. A client needs both an external-liability assessment and an internal-remedy assessment.

Partnership debts and wrongful acts

For contractual debts properly incurred, s 12(1) ordinarily makes partners jointly liable. For a wrongful act within s 13 or relevant misapplication within s 14, s 15 imposes joint and several liability. A lawyer must plead and prove the kind of liability before choosing a subsection. General partners may therefore be exposed to another partner's actions, but the statute also recognises incorporated limited partnership distinctions; avoid applying ordinary partnership liability without classifying the structure first.

Practical protections and limitations

A suitable partnership agreement can allocate voting, spending authority, admission, profit distribution and exit arrangements. Insurance and operational controls can mitigate commercial exposure. An agreement alone does not automatically defeat an outsider's valid claim. Where the client wants to bound its future losses more tightly, compare the incorporated company form, while reminding the client about directors' duties, guarantees and compliance costs.

The detailed original chapter model answers and worked IRAC application remain included in the immediately following existing chapter pages. Read both layers together: the verbatim questions, the reasoning method and the individual worked answers.

Answer: B.

9. A private partnership agreement says Lee cannot spend over $20,000, but an unaware supplier receives a usual-business order for $45,000. Which provision makes the outsider's notice important?
   A. s 11 Partnership Act
   B. s 516 Corporations Act
   C. s 119 Corporations Act
   D. s 51(xxxvii) Constitution

   Answer: A.

10. Which statement best captures the Chapter 1 method?
    A. Memorise case names first.
    B. Identify the legal relationship, then authority, liability and consequence.
    C. Always recommend incorporation.
    D. Treat every business as a company.

    Answer: B.

1.13 Tutorial 1 - Full Questions and Teaching Answers

Question 2A - Who owns a partnership?

The partners collectively carry on the partnership business. An ordinary partnership is not a separate legal person like a company. Partnership property is held and applied for partnership purposes under s 23. In an exam, avoid saying "the firm owns it" without explaining the legal structure.

Question 2B - Is everyone who works within a partnership a partner?

No. Apply s 5(1) and the rules in s 6. Employees, contractors and managers can work in the business without satisfying the statutory relationship. Profit-linked remuneration is relevant but not automatically conclusive.

Question 2C - How is a partnership formed?

It can arise by express agreement, oral agreement or conduct when the statutory relationship exists. Canny Gabriel demonstrates why substance is more important than the label chosen by the parties.

Question 2D - Where do the partnership rules come from?

Start with the Partnership Act 1891 (Qld), then the partnership agreement, and then relevant case law and equitable fiduciary principles. Sections 22 and 27 show that many internal default rules are subject to agreement. But external rights cannot always be contracted away, especially where an outsider lacks notice of an internal restriction.

Question 2E - Who manages a partnership?

By default the partners. Section 27(1)(e) gives every partner a right to participate in management; s 27(1)(h) deals with majority decisions on ordinary matters and unanimity for a change in the nature of the business; s 27(1)(g) requires consent for a new partner. The agreement can modify many of these defaults.

Question 2F - Who can contract for the firm?

Agency is the key. Section 8(1) makes each partner an agent of the firm and other partners for partnership business. Sections 9-11 refine how the firm is bound and how restrictions operate. Always analyse authority before liability.

Question 2G - Who is liable for partnership debts?

For ordinary debts and obligations, s 12(1) imposes joint liability. For firm liabilities arising from the wrongs and misapplications covered by ss 13-14, s 15 imposes joint and several liability. General partners can therefore face personal exposure beyond the value of their investment.

Question 2H - Can one partner expose the others?

Yes. If a partner validly binds the firm under the agency provisions, the resulting liability can extend to the other partners under the relevant liability provision. Section 20 also matters when membership changes because timing affects exposure to obligations.

Question 2I - How can partnership risk be mitigated?

Internal authority limits, indemnities, contribution arrangements and insurance can reduce risk, but they do not necessarily defeat outsider claims. Limited partnerships can cap a limited partner's contribution under s 53, but s 60 restricts the limited partner's management role. Incorporation may be preferable where stronger separation between investor and enterprise liabilities is needed.

1.14 Full Constructed IRAC Model Answer - Partner Authority and Liability

Problem. Lee, one of three partners in an architectural partnership, orders $45,000 of specialist modelling equipment in the firm name. The partnership agreement requires unanimous approval for expenditure above $20,000. The supplier has dealt with the firm before but has never seen that agreement. The firm refuses to pay.

Issue

The main issue is whether Lee had authority to bind the partnership to the purchase despite breaching the internal spending restriction. If the firm is bound, the second issue is which partners are liable for the resulting ordinary contractual debt. A further internal issue is whether Lee breached the partnership agreement and may owe contribution or indemnity to the other partners.

Rule / Law

Under Partnership Act 1891 (Qld) s 8(1), every partner is an agent of the firm and of the other partners for the purposes of the partnership business. A partner's act done for carrying on in the usual way business of the kind carried on by the firm ordinarily binds the firm unless the partner in fact lacks authority and the person dealing with the partner either knows of the lack of authority or does not know or believe the person to be a partner. Section 9 reinforces that acts or instruments relating to the business and done by an authorised person in a manner showing an intention to bind the firm are binding. Section 11 addresses restrictions on a partner's authority: an agreed restriction does not protect the firm against a person dealing with the firm who has no notice of the restriction. If the obligation is an ordinary debt of the firm, s 12(1) makes each partner jointly liable with the other partners for debts and obligations incurred while that person is a partner.

The distinction between authority and liability is essential. Sections 8-11 determine whether the firm became bound. Section 12 then identifies the external liability consequence for an ordinary debt. This two-stage analysis prevents the common error

of assuming that because a partner breached an internal rule, the outsider necessarily loses.

Application

Lee is a partner in an architectural practice. Specialist modelling equipment is closely connected with the ordinary activities of such a firm. On the facts, the purchase therefore appears to be an act of the kind a partner might undertake in the usual way of the partnership business. That supports the supplier's argument under s 8(1) that Lee's act bound the firm.

The partnership agreement imposed an internal limit requiring unanimous approval for expenditure above $20,000. Lee breached that internal rule by ordering $45,000 of equipment without approval. However, the supplier had never seen the agreement and there is no fact suggesting the supplier otherwise knew of the restriction. Section 11 therefore becomes critical. A private restriction does not automatically defeat the rights of an outsider without notice.

If the firm is bound, the $45,000 is an ordinary contractual debt. Section 12(1), not s 15, is therefore the starting liability provision. The partners are jointly liable for that firm debt, subject to any further facts affecting membership or the transaction.

> **Counterargument.** The other partners would argue Lee had no actual authority because the partnership agreement expressly prohibited the expenditure without unanimous approval. That is true internally. The difficulty is that the supplier's external rights depend on the statutory agency rules and notice. Unless the supplier knew of the restriction or the transaction was outside the usual way of the firm's business, the internal breach is unlikely by itself to prevent the firm being bound.

Internally, Lee's breach of the partnership agreement remains significant. The other partners may have contractual and equitable remedies and may seek contribution or indemnity depending on the agreement and circumstances. That internal dispute is distinct from the supplier's external claim.

Conclusion

The supplier has a strong argument that Lee bound the firm under s 8 and that the private spending restriction does not defeat the supplier's claim because the supplier lacked notice. The resulting obligation is an ordinary partnership debt, so s 12(1) joint liability is the starting point. The other partners may separately pursue Lee for the consequences of breaching the internal partnership agreement.

Exam lesson

Spot the issues in order: **relationship -> authority -> notice of restriction -> nature of liability -> internal recourse.** That sequence is the beginning of disciplined Corporate Law application.

CHAPTER 2 • INCORPORATION AND ITS EFFECTS

Separate Legal Personality, Limited Liability, the Corporate Veil, Corporate Groups and Company Types

Week 2 Forum / Lecture | Tutorial 2 - Week 3 | Corporations Act 2001 (Cth)

Chapter purpose. Chapter 1 showed how ownership, management and liability operate when people carry on business personally or in partnership. Chapter 2 asks what changes when the law recognises a new corporate person. We begin with the separation of ownership and control, then build the doctrine from registration through Salomon, limited liability, company property, multiple legal capacities, veil cases, corporate groups and company classifications. Every authority is tied back to a practical issue students must learn to spot.

Teaching flow: why corporate law is needed -> identify members, directors, officers and creditors -> ask "in what capacity?" -> registration creates the company -> company owns assets and contracts -> members receive limited liability -> Salomon proves the separation -> Lee and Macaura show its consequences -> veil cases test misuse -> corporate groups expose the tension between entity law and commercial reality.

2.1 Why Corporate Law exists: separation of ownership and control

The Week 2 Forum opens with a corporate-governance problem rather than a statute. In a large company, the people providing the capital can be different from the people controlling the day-to-day decisions. Shareholders are the members and investors. Directors and senior management exercise corporate decision-making powers. Once ownership and control are separated, incentives can diverge.

The Wall Street example used in class is memorable because it asks a simple question: what happens when managers spend money that economically belongs to an enterprise in which they own only a small stake? A private jet, excessive perks or wasteful expenditure may benefit managers while reducing value available to investors. That is an agency problem. Corporate law therefore does more than create companies. It supplies governance

rules that allocate powers, impose duties and protect participants against the risks generated by separating economic ownership from managerial control.

Contrast the partnership. In an ordinary partnership, the partners are generally both owners and managers, and they also face personal exposure to partnership liabilities. Those features create powerful incentives to monitor the business. The company allows those functions to be separated: capital can come from one group, management from another, and liability can be concentrated in the corporate entity.

> **Issue-spotting trigger.** When a problem involves a shareholder complaining about a director, or a director using company money or opportunities, ask whether the real problem is the separation of ownership and control. Later directors' duties are legal responses to that structural risk.

2.2 Who is who inside and outside the company?

Corporate Law becomes much easier once students stop treating "the company" as a loose collection of people. The company is itself a legal person. Around that person are human beings and other entities occupying different legal roles.

Role	Corporate-law significance
Members / shareholders	Members form one formal organ of the company. In a for-profit company with shares, members are shareholders. They exercise rights such as voting and receiving distributions when lawfully declared, but they do not own each individual asset of the company.
Directors / board	Directors are key decision-makers. The board acts as the company's management organ under the statutory and constitutional framework. Directors owe duties that later chapters examine in detail.
Officers / management	Senior executives and officers may exercise important corporate power even if they are not shareholders.
Creditors	Banks, landlords, suppliers and other creditors are ordinarily outsiders to the internal governance structure. They contract with the company and depend on the company's assets and legal protections applicable to creditors.
The company	The separate legal entity that owns the assets, incurs liabilities, enters contracts and is sued or sues in its own name.

2.3 The most useful question in Corporate Law: "In what capacity?"

One human being can wear several legal hats. A founder may be the sole shareholder, sole director, employee and secured creditor of the same company. Corporate Law does not collapse those roles merely because the same person occupies them.

> **Capacity method.** Before analysing conduct, ask: **In what capacity was the person acting?** Then ask: what powers attach to that role, what duties attach to that role, and what legal consequences follow? This avoids confusing a shareholder's rights with a director's powers, an employee's contract with a member's investment, or a creditor's security with a shareholder's residual interest.

This question becomes the key to Salomon and Lee. It also foreshadows conflicts of interest: the law often cares not merely who a person is, but the legal capacity in which the person acquired information, made a decision, received a benefit or assumed an obligation.

2.4 Company versus corporation

The Corporations Act uses both terms. For most of this subject, "company" and "corporation" can be used conversationally in similar ways, but they are not technically identical. A company is a specific statutory form registered under the Corporations Act. "Corporation" is broader and can include other bodies corporate. That distinction matters whenever a statutory provision applies to a "company" but not necessarily to every corporation, or vice versa.

> **Exam trigger.** If a question turns on statutory scope, read the defined term in s 9 and the broader concept of corporation in s 57A rather than assuming the words are interchangeable in every provision.

2.5 Registration: the legal "birthday" of the company

The Forum describes incorporation as the company's birthday. The metaphor is useful because registration marks the point at which the law recognises a new legal person.

> **Section 119 Corporations Act 2001 (Cth).** A company comes into existence as a body corporate at the beginning of the day on which it is registered. This is the statutory bridge between an application to ASIC and the existence of the legal person.

Section 114 is also important because a company needs at least one member. Modern Australian law therefore accommodates the one-person company: the same individual can be sole member and sole director while the company remains legally distinct.

> **Section 124(1).** The company has the legal capacity and powers of an individual, both inside and outside the jurisdiction, and also the powers of a body corporate. Paragraphs (a)-(c), for example, include powers concerning shares, debentures and options. The practical point is that the company can own property, enter contracts, borrow, lend, issue securities and litigate in its own name.

This is why a founder can contract with the company they control. A sole trader cannot meaningfully contract with themselves as two separate legal persons. A shareholder can contract with the company because the shareholder and company are legally distinct.

2.6 The company as a "pot of funds" and a "nexus of contracts"

The Forum gives two complementary ways to picture the company. First, the company is a **pot of funds**: the legal entity in which the business assets sit. The cash, equipment, intellectual property, vehicles and contractual rights belong to the company. Second, the company can be understood as a **nexus of contracts**: employees, lenders, suppliers, customers and landlords generally contract with the corporate entity rather than with every shareholder and director personally.

These models are useful because they explain why third-party claims ordinarily focus on the corporate entity. If a supplier sells computers to a university company, the contract is with the company, even though human staff negotiated it. If a company is negligent, the company can incur tort liability. Human actors may also be personally liable on independent legal grounds, but the company's legal personality remains the starting point.

2.7 Perpetual succession

A company's existence is not tied to the life of its founder. Shareholders can sell shares, directors can resign or die, and management can be replaced without the corporate person

automatically ending. The company continues until deregistration or another legal event terminates it. This continuity is one reason companies are suited to long-lived enterprises and large pools of investment.

2.8 Limited liability: do not say "the company has limited liability"

This is a precision point emphasised in the Forum. The company itself is fully responsible for its own debts. Limited liability ordinarily protects the **members** from being required to contribute beyond the statutory limit merely because they are members.

> **Section 516.** In a company limited by shares, a member generally need not contribute more on a winding up than the amount, if any, unpaid on the shares for which the member is liable. Fully paid shares therefore normally leave no further contribution merely because the company cannot pay its creditors. Partly paid shares can still be called up to the unpaid balance.

That distinction is easier to understand if we compare a partnership. A general partner may face exposure to partnership obligations extending far beyond the amount initially invested. A shareholder who has fully paid for shares can lose the value of the investment, but ordinarily is not required to satisfy the company's remaining debts merely because of shareholder status.

> **Important qualification.** Limited liability is not universal immunity. A shareholder or director can separately become liable by giving a personal guarantee, personally committing a tort, breaching a duty, entering a contract personally or falling within a statutory liability regime. Always identify the independent legal basis for personal liability.

2.9 Why limited liability matters economically

Limited liability changes the allocation of risk. Investors can commit a defined amount of capital and diversify across enterprises without exposing all personal assets to every company's debts. That can encourage investment, liquidity and entrepreneurship. But the risk does not disappear. If the company fails, creditors may absorb losses.

That trade-off matters especially when comparing sophisticated contractual creditors with involuntary tort creditors. A bank can investigate a company, price risk, obtain security or

demand a guarantee. A person injured by a corporate activity may never have had any opportunity to negotiate risk allocation. Corporate groups intensify that fairness problem.

The Forum also discusses company taxation and franking credits as commercial context. For this Corporate Law chapter, the safe teaching point is that a company is a separate taxpayer and tax policy can influence financing and distribution choices. Detailed tax rates and the personal tax treatment of dividends belong to Taxation Law and should be checked against current tax legislation rather than treated as a fixed Corporate Law rule.

2.10 Salomon: the case that makes the separate entity real

Salomon v A Salomon & Co Ltd [1897] AC 22

Facts. Aron Salomon operated a successful boot and shoe business. He incorporated a company and sold the business to it. At the time, company legislation required seven members. Salomon held almost all the shares while family members held the small number needed to satisfy the formal requirement. Part of the price was represented by secured debentures issued to Salomon, making him both the controlling shareholder and a secured creditor.

What went wrong. The company later became insolvent. Its assets were insufficient to satisfy all creditors. Because Salomon held security, recognising his creditor rights would leave the unsecured creditors with little or nothing.

Issue. Could the court disregard the company and treat Salomon and the company as effectively the same person because he controlled almost everything?

Decision. No. The House of Lords treated the properly incorporated company as a legal person distinct from Salomon. Parliament had specified the incorporation requirements, and they had been met. Salomon could therefore simultaneously be shareholder, controller and creditor. His secured creditor rights were not erased simply because he controlled the company.

Why the case matters. Salomon is not merely a slogan for separate personality. It proves that legal capacity follows the company even when economic control is concentrated in one individual. It also teaches the "multiple hats" method: the same person can hold several legally distinct relationships with the company.

Exam use. Cite Salomon when someone argues that ownership or control alone makes the shareholder personally liable for the company's obligations, or when a controller has entered a genuine contract with the company.

2.11 Lee: one person can be controller and employee

Lee v Lee's Air Farming Ltd [1961] AC 12

Facts. Lee held 2,999 of the company's 3,000 issued shares, was its governing director and also worked as a pilot for the company. He died in an aircraft accident while performing that work, and his widow pursued workers' compensation.

Issue. Could Lee genuinely be an employee of a company he overwhelmingly owned and controlled?

Decision. Yes. The company was a separate legal person capable of entering an employment contract with Lee. His director/shareholder capacities did not prevent him from also acting as employee.

Why it matters. Lee converts the abstract idea of separate personality into an examination technique. Ask what hat the person was wearing at the relevant time.

2.12 Macaura: separate personality can hurt the shareholder too

Macaura v Northern Assurance Co Ltd [1925] AC 619

Facts. Macaura transferred timber to a company but kept the insurance in his own name. The timber was destroyed by fire.

Issue. Did Macaura's ownership of the company's shares give him a legal or equitable ownership interest in the company's timber sufficient for the insurance claim?

Decision. No. The timber belonged to the company, not to Macaura as shareholder.

Why it matters. This case stops students from treating separate personality as a one-way protection device. The shareholder gains limited liability but also loses direct ownership of company assets. A share is an interest in the company under its legal

framework, not a fractional title to every truck, bank account or parcel of timber owned by the company.

2.13 The corporate veil: start with respect for the entity

The "corporate veil" is a metaphor for the legal separation between the company and those behind it. The normal rule is respect for the separate entity. Courts do not disregard incorporation merely because one person owns all the shares, exercises control, or because ignoring the company would appear fairer.

Modern authority warns that "piercing the veil" should not become a loose label for every situation where someone associated with a company is liable. Often the correct explanation is ordinary contract, agency, tort, equity, directors' duties or statute. The legal basis must be identified precisely.

2.14 Gilford Motor and Jones v Lipman: using a company to evade an existing obligation

Gilford Motor Co Ltd v Horne [1933] Ch 935

Facts. Horne was bound by a post-employment restraint preventing specified competitive conduct. After leaving his employer, he carried on the competing activity through a company.

Issue. Could the company form be used to continue conduct Horne had contractually promised not to undertake?

Outcome. Injunctive relief was granted against Horne and the company. The company was being used as the vehicle for the continuing breach.

Why it matters. This is the direct authority for the Stella Designs tutorial problem. The important idea is not that every controlled company loses separate personality. It is that equity will not necessarily allow a company to be interposed as a device for evading a pre-existing obligation.

Jones v Lipman [1962] 1 WLR 832

Facts. Lipman contracted to sell land, then transferred it to a company in an attempt to avoid completing the sale.

Outcome and significance. The court granted relief against both Lipman and the company. The case reinforces the principle that incorporation cannot automatically be used as a device to defeat an existing equitable or contractual obligation.

2.15 Other wrongdoing and the need to identify the real legal basis

The Week 2 materials also refer to Re Darby [1911] 1 KB 95, involving use of a company in a fraudulent scheme, and Green v Bestobell Industries Pty Ltd [1982] WAR 1, where a company knowingly participated in a director's breach. These examples are useful, but students should resist turning them into a broad rule that "bad conduct means the veil is lifted." The stronger method is to identify the specific doctrine - fraud, knowing participation, breach of duty, injunction, statute or another established basis.

2.16 Insolvent trading: a statutory example of personal exposure

Section 588G is introduced in the Forum as an example of Parliament imposing personal responsibility on directors in connection with insolvent trading. The detailed elements and defences belong to the later insolvency/directors' duties material, but the conceptual lesson belongs here: limited liability does not mean directors can knowingly cause the company to incur debts in circumstances where the statutory regime imposes personal consequences.

Do not write: "s 588G pierces the veil." **Better:** "The separate company remains the debtor, but the statute imposes an additional personal liability regime on directors when its elements are satisfied." That language is more precise.

2.17 Corporate groups: why businesses build layers of companies

Large enterprises often use holding companies and subsidiaries to separate geography, intellectual property, finance, business lines and risk. A bank group might have different operating subsidiaries in different countries, a separate intellectual-property entity and a riskier agricultural-finance subsidiary. The commercial logic is risk partitioning: failure in one

business line should not automatically consume the assets of every other company in the group.

But this creates a tension. Commercially, employees and customers may experience the group as one enterprise with one brand and central management. Legally, each company is ordinarily a separate person. That mismatch becomes especially difficult for creditors who do not know which entity they were truly dealing with or for tort victims harmed by an undercapitalised subsidiary.

2.18 Briggs: control of a subsidiary is not enough

Briggs v James Hardie & Co Pty Ltd (1989) 16 NSWLR 549

Context. The litigation arose from an asbestos-related claim involving companies within the James Hardie group and raised questions about whether liability could extend beyond the company that had directly employed the worker.

Key point. Rogers AJA rejected the idea that complete dominion or control by a parent is, by itself, enough to disregard a subsidiary's separate personality. That would be far too broad because parent companies commonly control subsidiaries.

Why it matters. Briggs exposes the policy tension. Strict entity law provides certainty and permits risk partitioning, but it can produce harsh outcomes for involuntary creditors who never negotiated with the group about which corporate "pot" would bear the risk.

2.19 Qintex: commercial reality can become confused when groups ignore their own boundaries

Qintex Australia Finance Ltd v Schroders Australia Ltd (1990) 3 ACSR 267

Context. The case involved dealings across the Qintex group where corporate identities were handled imprecisely in commercial communications and transactions.

Why it matters. The case illustrates the practical tension between strict legal boundaries and business practices that treat a group as one operation. Students should not leap from that tension to a general "group liability" rule. Instead, identify the actual contracting party, the evidence of authority, representations, mistake or other doctrine that determines liability.

2.20 Corporate groups and statutory intervention

The Corporations Act sometimes treats group relationships specially. Sections 588V-588X, for example, create a statutory regime concerning holding-company liability associated with insolvent trading by a subsidiary. That is a targeted legislative exception to the ordinary entity-by-entity starting point, not a general rule that every parent guarantees every subsidiary.

Later directors' duties also require attention to the interests of the particular company whose board the director serves. Group commercial interests can be relevant, but the legal person remains central.

2.21 Company classifications: the information students must attach to the doctrine

Once students understand why the company exists and how separate personality works, classifications become easier because they answer specific questions: what is the member's liability, is the company public or proprietary, how large is it, and how is it related to other companies?

Type / rule	Key provision	Why it matters
Types of company	s 112	Classifies companies by liability and public/proprietary status.
Company limited by shares	ss 112, 516	Standard for-profit form; member contribution on winding up generally limited to unpaid share capital.
Company limited by guarantee	s 9 definition; s 112	Common not-for-profit form; members undertake a specified guarantee payable on winding up rather than holding shares.
No liability company	s 112(2)	Special form connected with mining purposes and statutory conditions.
Proprietary company	ss 45A, 113	Closely held company; s 113 limits non-employee shareholders and restricts fundraising requiring Chapter 6D disclosure, subject to exceptions.
Minimum membership	s 114	A company must have at least one member.
Directors	s 201A	

		Proprietary companies need at least one director, with the residency requirement in the provision; public companies require at least three directors, at least two ordinarily resident in Australia.
Names	ss 148-150	Connects the company's legal type to naming requirements, including "Pty" and "Ltd" and limited exceptions.
Large / small proprietary company	s 45A + Corporations Regulations reg 1.0.02B	Classification affects reporting. Current prescribed thresholds are $50m consolidated revenue, $25m consolidated gross assets and 100 employees; at least two criteria determine large/small status.

Do not memorise these classifications as isolated trivia. Ask what legal consequence the classification carries: fundraising, reporting, director numbers, member liability or naming.

2.22 Issue-spotting map for Chapter 2

Fact trigger	Issue	Law / authority
Founder says "I own 100%, so the company is me."	Separate personality despite control.	ss 114, 119; Salomon.
Controller also works for the company.	Multiple legal capacities.	Lee.
Shareholder claims direct ownership of company property.	Asset ownership.	ss 119, 124; Macaura.
Creditor wants shareholder to pay company debt.	Company debt versus member liability.	Salomon; s 516; identify any guarantee or separate basis.
Company created after an individual becomes bound by a restraint.	Evasion of existing obligation.	Gilford Motor; Jones v Lipman.
Director incurs debts while company is insolvent.	Statutory personal liability.	s 588G and later insolvency provisions.
Parent controls subsidiary and creditor seeks parent assets.	Corporate group separate personality.	Salomon; Briggs; targeted statutory exceptions.
Group communications blur which entity is contracting.	Identity of contracting party / commercial reality.	Qintex; contract and authority principles.

2.23 Frequently Asked Questions

FAQ 1 - Why does Corporate Law separate ownership and control?
It allows investors to supply capital while directors and managers specialise in running the enterprise. The trade-off is an agency problem: managers may not always have the same incentives as investors.

FAQ 2 - What is the company's "birthday"?
The beginning of the day of registration under s 119, when the company comes into existence as a body corporate.

FAQ 3 - Can one person own and direct the whole company?
Yes. Section 114 allows at least one member, and a proprietary company can have one director subject to s 201A. Separate personality still applies.

FAQ 4 - What does "in what capacity?" mean?
Identify whether the person was acting as member, director, officer, employee, creditor or another role. The applicable powers and duties depend on that capacity.

FAQ 5 - Are shareholders the owners of company assets?
No. The company owns its property. Macaura is the classic illustration.

FAQ 6 - Does a company have limited liability?
The company is responsible for its debts. Limited liability ordinarily describes the member's capped contribution merely as member.

FAQ 7 - Why is Salomon more than a case name?
Because it shows that a properly registered company remains separate even when one person overwhelmingly owns and controls it, and that the controller can have a separate creditor relationship with the company.

FAQ 8 - Why is Lee important after Salomon?
It shows the capacity principle in practice: the controller could also be an employee.

FAQ 9 - Why is Macaura important?
It shows the cost of separation: shareholders do not directly own corporate property.

FAQ 10 - When can the corporate veil be ignored?
Only on a recognised legal basis. Do not use "veil piercing" as a general fairness doctrine. Gilford Motor and Jones v Lipman illustrate relief where a company was used to evade an existing obligation.

FAQ 11 - Does parent-company control make the parent liable?
No, not by itself. Briggs is important precisely because control is normal in corporate groups.

FAQ 12 - Why do groups use subsidiaries?
To organise different businesses, jurisdictions, assets, financing and risks. The legal benefit of separation creates the creditor-policy problem discussed in Briggs and Qintex.

FAQ 13 - Are directors protected by limited liability if they breach duties?
Separate personality does not excuse personal wrongdoing. Directors can be personally liable on independent statutory, contractual, tortious or equitable grounds.

FAQ 14 - Why distinguish proprietary and public companies?
The classification affects fundraising, reporting, director requirements, governance and disclosure.

FAQ 15 - Do I need to memorise every company type?
Know the main forms and attach each to its legal consequence. Understanding beats isolated memorisation.

2.24 Multiple Choice Questions

1. The strongest explanation of separate legal personality is:
   A. Directors own the company assets.
   B. Registration creates a legal person distinct from members and directors.
   C. A company is only a contract among shareholders.
   D. The company and its controlling shareholder are always one person.

   Answer: B. Section 119 and Salomon provide the foundation.

2. Why is the question "in what capacity?" so important?
   A. It identifies which legal role, powers and duties attach to the conduct.
   B. It tells you the person's tax bracket.
   C. It determines whether the company is listed.
   D. It makes Salomon irrelevant.

   Answer: A.

3. Which case most directly shows a controlling shareholder/director can also be an employee?

A. Macaura
B. Lee v Lee's Air Farming
C. Briggs
D. Qintex

Answer: B.

4. Which case shows that a shareholder does not directly own company property?
A. Gilford Motor
B. Salomon only
C. Macaura
D. Canny Gabriel

Answer: C.

5. A shareholder has fully paid shares. The company fails owing $4m. With no guarantee or wrongdoing, which statement is best?
A. The shareholder must pay the whole $4m.
B. The company owes the debt; the member's contribution is ordinarily limited under s 516.
C. The directors automatically owe the $4m.
D. The corporate veil disappears on insolvency.

Answer: B.

6. Stella signs a restraint, then creates a company solely to perform the restrained activity. Which authority is closest?
A. Gilford Motor Co Ltd v Horne
B. Lee
C. Macaura
D. Canny Gabriel

Answer: A.

7. Which is the safest statement about veil piercing?
A. Courts ignore companies whenever justice requires.
B. Control alone is enough.
C. A recognised legal basis must be identified; the metaphor should not replace analysis.
D. It only applies to public companies.

Answer: C.

8. Why is Briggs significant?
   A. It says every corporate group is one legal person.
   B. It rejects parent control alone as a sufficient basis to disregard subsidiary personality.
   C. It abolishes limited liability.
   D. It concerns partnership authority.

   Answer: B.

9. Qintex is useful because it illustrates:
   A. how commercial group practice can blur the identity of the contracting company
   B. how a partnership forms
   C. the tax rate on dividends
   D. how ASIC appoints directors

   Answer: A.

10. A company limited by guarantee is most commonly associated with:
    A. a not-for-profit organisation without share capital
    B. a listed mining company
    C. an ordinary partnership
    D. a sole trader

    Answer: A.

11. A proprietary company generally cannot have more than how many non-employee shareholders for s 113 purposes, subject to statutory qualifications?
    A. 5
    B. 20
    C. 50
    D. 1000

    Answer: C.

12. The current proprietary-company size thresholds are found in:
    A. only s 119
    B. s 45A together with Corporations Regulations reg 1.0.02B
    C. s 516 only
    D. Partnership Act s 5

    Answer: B.

CHAPTER 2 — COURSE READINGS AND TEACHING INTEGRATION

The company's birth is a change in legal identity, not merely a trading-name choice

Incorporation creates a distinct legal person: Corporations Act 2001 (Cth) s 119. This matters because the assets and liabilities of a company belong to that company, not automatically to the humans who control it. The practical client question is whose money, property, contract or wrong is in issue. Section 124 supplies the company's legal capacity. A lawyer should not jump from a director's influence to personal liability without identifying a separate legal basis.

Salomon: the cornerstone and its limits

In Salomon v A Salomon & Co Ltd [1897] AC 22, incorporation was not ignored simply because the founder held almost all the shares and controlled management. The company was distinct from Mr Salomon, who could also be its creditor. The authority prevents the court from treating concentrated ownership as sufficient, by itself, to collapse legal personality. It does not give a director immunity for an independent tort, an enforceable personal guarantee or a specific statutory liability. Those are separate analytical questions.

Limited liability is the member's exposure, not the company's exposure

The company itself owes its debts in full. A member's liability merely as a member of a company limited by shares is normally confined to unpaid share capital, including the statutory winding-up rule in s 516. Separate personality identifies whose obligation exists; limited liability limits the shareholder's contributory exposure. A personally guaranteed company loan is a different obligation and is not defeated by this protection.

Macaura and Lee reveal the benefits and risks of separate personality

Lee v Lee's Air Farming Ltd [1961] AC 12 shows how one human may occupy different legal capacities in relation to a company, including shareholder, director and employee. Macaura v Northern Assurance Co Ltd [1925] AC 619 shows the other side: a shareholder did not own the company's insured property merely because he controlled the company. In professional advice, ask whether each contract or asset was actually transferred to the company, not only whether the

beneficial owner intended to conduct business through it.

Stella Designs: analyse the restraint and the company separately

The Stella problem must begin with the contractual rights of Louise Vuilton against Stella, and only then ask whether Stella Designs Pty Ltd could be restrained as a vehicle for evasion. Gilford Motor Co Ltd v Horne [1933] Ch 935 is relevant because an individual bound by a pre-existing restraint used an incorporated entity in a way that undermined that obligation. But the company does not automatically become a party to Stella's contract. A court would first consider the underlying restraint's enforceability, the evidence of purpose and conduct, and the appropriate injunction. The reasoning is more precise than asserting a free-standing veil-piercing power whenever a corporate structure produces an unattractive result.

Corporate groups: why Rogers AJA resists a broad enterprise theory

Briggs v James Hardie & Co Pty Ltd (1989) 16 NSWLR 549 illustrates the conflict between separate group entities and practical control of subsidiary activities, especially for involuntary tort claimants. Rogers AJA cautioned against treating parental control, which is ordinary in corporate groups, as sufficient in itself to pierce the veil. A lawyer should investigate direct parent conduct, assumption of responsibility, contractual or statutory liability, tort duties and admissible evidence, rather than treating group membership as an automatic basis for judgment against every entity in the group.

Involuntary creditors and legal-policy analysis

A tort claimant injured by an undercapitalised subsidiary could not choose the corporate entity with which to contract. That creates a fairness argument for broader group responsibility. Conversely, automatic group liability may weaken predictability for investors, creditors and separately capitalised enterprises. The Week 2 tutorial intentionally invites an argued position; a high-quality discussion separates what existing law provides from what a policy reform might sensibly adopt. The strongest answer explains both the economic advantages and the distributional costs before stating a reasoned view.

Pinpoint assigned readings and verification limits

Week 2 assigns Chapple et al, Company Law (3rd ed) Chapter 2 from p 50 (section 2.2) to p 74; Redmond pp 161–173; and Gilford Motor Co Ltd v Horne [1933] Ch 935. Optional readings include Farrar and Hanrahan pp 39–43 and

53–59, Saul Fridman’s discussion of piercing the veil and Qintex, and Redmond pp 186–192 concerning corporate groups. These locations are preserved as a course-reading map. The slides are available, but the complete text of these additional extract pages is not established by the attached records; teaching built from them has therefore not been claimed as if every passage were examined.

The prescribed company-law reading: personality, classification and legal consequences

The Chapter 2 extract provided from Chapple and co-authors covers book pages 50–70. It develops the categories of corporations, the registration sequence, separate legal personality, corporate groups, and limited liability. The best way to learn these topics is to ask the same question repeatedly: **which legal person has the right, duty, asset or liability?** A company is not simply an administrative label placed over its shareholders. It is a separate legal person capable of holding property and contracting; this is the reason one must not confuse the company's assets with the assets of its controller.

What kind of entity are we advising?

Begin with the legal definitions. Section 9 of the *Corporations Act 2001* defines a company by reference to registration under that Act, while s 57A defines the broader term ‘corporation’ for relevant statutory purposes. Section 112 identifies available types of registration, including companies limited by shares, limited by guarantee, unlimited companies and no-liability companies. Sections 45A and 113 matter when determining whether the vehicle is proprietary and whether the applicable reporting and membership requirements are met. A proprietary company generally cannot have more than 50 non-employee shareholders; one should also check its fundraising restrictions and exceptions before promising investors an ordinary public share offering.

The distinction between **public** and **proprietary** is not the same as **listed** versus **unlisted**. A public company may be unlisted; a listed company must also comply with the rules and standards of its approved financial market. For some public companies, additional investor disclosure, governance and meeting obligations arise. A public company limited by guarantee often serves a non-distribution or community purpose, but its liability structure is different from that of a company limited by shares. A no-liability company is a specialised statutory form and should not be described as a general device for escaping commercial obligations. When advising, state the required liability regime before selecting the type of company.

Small and large proprietary companies: apply both statutory elements and current thresholds

The distinction in s 45A is a classification test, not an opinion about whether a business is ‘large’ in everyday language. The statutory framework uses consolidated revenue, consolidated gross assets and employee numbers, with prescribed amounts under the regulations. For current ASIC guidance, a proprietary company is large for a financial year if it meets **at least two of three criteria**: revenue of $50 million or more, gross assets of $25 million or more, or 100 or more employees (including controlled entities on the prescribed basis). If a company meets only one threshold, it does not become large under this two-of-three test simply because that one figure is very substantial. See ASIC, ‘Company financial reports’ and ‘Are you a large or small proprietary company’. Recheck the thresholds and reporting rules for the particular financial year and any special direction or crowd-sourced-funding condition.

For example, if an organisation has revenue of $58 million, assets of $19 million and 88 employees, **one** threshold is satisfied, not two. The method is arithmetic but the legal significance is regulatory: different financial reporting, lodgement and auditing requirements may follow. In a model answer, identify the year, consolidate the relevant entities, test each paragraph separately, count the criteria reached and only then reach a classification conclusion. It is not enough to write ‘s 45A applies’ without showing the calculation.

Registration creates a new legal person: why ss 117–119 matter

The textbook introduces the steps involved in starting a company, but legal advice requires the actual statutory sequence. Section 117 provides for an application and its prescribed particulars. Section 118 concerns the registration decision and certificate; s 119 identifies the legal significance of registration: the company comes into existence as a body corporate on registration. This timing can decide who is liable under a pre-registration arrangement. A promoter signing before that date cannot assume a non-existent company was already the contracting party. Sections 131–133 address the special consequences of pre-registration contracts, including the circumstances in which persons involved may remain exposed and when a company may ratify. The client should gather the signed contract, registration date, written consents and evidence of ratification rather than merely saying the company later traded under that name.

Once registered, the company normally has broad legal capacity under s 124. That does not mean a director has unlimited authority to deploy that capacity: the next analytical step is internal management, delegated authority and the constitution. Also distinguish a company's *capacity* from the liability rules for an actual transaction. In modern law an objects clause is not generally a simple weapon for denying the company's contractual capacity; see s 125 and the context of any constitutional limitations. Chapter 3 teaches the constitution and replaceable rules that govern this internal allocation of power.

Salomon: facts, issue and reasoning

In *Salomon v A Salomon & Co Ltd* [1897] AC 22, Mr Salomon transferred an existing business to a duly incorporated company in which he held a controlling interest. When the company failed, the attempt to treat it merely as his alias would have denied the legal consequences of registration. The House of Lords upheld the separate personality of the incorporated company. **The principle is not that Mr Salomon had acted fairly in every commercial sense; it is that registration under the governing company statute created a legal person distinct from its members.** This distinction matters in every question asking whether a creditor may recover company debts directly from a member. Begin with separate personality, then identify a separate basis for member liability such as a personal guarantee, wrongdoing or an applicable statutory rule.

In *Lee v Lee's Air Farming Ltd* [1961] AC 12, a controller could also contract with the company in another legal capacity. The case illustrates why the director, shareholder and employee roles are not always mutually exclusive. In *Macaura v Northern Assurance Co Ltd* [1925] AC 619, the company's ownership of property defeated an individual's attempt to claim under insurance of that property in his own name. These authorities reinforce different practical consequences of the same concept: ask **who contracted**, **who employed**, **who owned the insured property**, and **who holds the cause of action**. The answer can change according to the transaction even where one individual controls all the votes.

Corporate groups: different entities, not one enterprise merely because they trade together

The prescribed pages consider corporate groups, which may have one parent controlling several subsidiaries. Sections 46–50 of the *Corporations Act* address certain subsidiary and related-body-corporate concepts, while s 50AA concerns control in relevant contexts. But the existence of group control does not of itself transfer every subsidiary debt or tort obligation to the parent. Legal analysis must identify the defendant, the relevant conduct and an actual legal route to liability. *Briggs v James Hardie & Co Pty Ltd* (1989) 16 NSWLR 549 (check the correct report pagination for the cited passage) is especially useful in asking whether a claimant can bypass separate personality merely because a group operates as an economic unit. A general moral concern for injured involuntary creditors is important policy context but does not automatically supply a legal cause of action.

The distinction is especially practical when a holding company sets group strategy but a subsidiary operates a factory. A claimant needs to know who designed the relevant safety system, who employed the workers, which company owed any statutory duty, and whether the parent itself undertook or controlled relevant actions. The optional Elise Bant article considered in Chapter 3 invites a further, careful question about direct parental conduct through group systems; that is conceptually different from automatically disregarding separate personality. Do not confuse *potential direct liability* with a general ‘group veil-piercing’ doctrine.

Gilford Motor and the limits of veil arguments

In *Gilford Motor Co Ltd v Horne* [1933] Ch 935, a former employee subject to a restrictive covenant used an incorporated business in circumstances supporting an inference that the vehicle was part of evading that contractual obligation. The case is relevant when the facts show a company interposed to mask or facilitate a prohibited act; it is **not** authority for ignoring all companies merely because they have one dominant shareholder. Other doctrines—agency, personal tort liability, statutory liability and injunctions—must be examined according to their own elements. In your Tutorial 2 scenario concerning Stella and Stella Designs Pty Ltd, ask whether the restrictive promise binds Stella personally, what conduct the new company actually undertook, whether there is evidence of deliberate evasion, and which equitable or common-law remedy the plaintiff seeks. The remedy and factual evidence need to be tied to the cause of action, not declared from the case name alone.

The correct contrast is therefore straightforward: *Salomon* is the starting presumption of separate personality; *Gilford Motor* addresses unusual evasion facts; group cases prevent unjustified aggregation of corporate defendants; and individual statutes or tort duties may impose liability on a person in their own right. This is the legal reasoning students need instead of a list of disconnected ‘exceptions’.

Applying the reading to the Retrofit and Tutorial 2 examples

The prescribed reading follows the fictional Retrofit business to illustrate the advantages and burdens of selecting a corporate vehicle. Treat the example as a client conference: Julian should identify the scale of the proposed operation, access to capital, need for continuity, expected creditors, employees, desired control and proposed succession. A single-director proprietary company may suit a controller seeking a separate contracting vehicle, but it does not erase personal guarantees or the obligations attached to being director. If Julian borrows secured money, document who grants security and whether the lender also demands a guarantee. If a worker is injured, identify the duty-bearing operating entity and any person who owed their own duty. If Juliet or another investor buys shares, identify the rights attached to the shares and the constitutional restrictions on transfers.

The concluding advice is reasoned, not categorical: incorporation often facilitates continuity, investment and risk allocation, but also creates governance, disclosure and

maintenance obligations. A company is not the right answer to every business problem. For your original Tutorial 2, use the cases to answer each particular legal claim, and clearly distinguish the company as an entity from its members, directors, employees and affiliated companies. Set out the statutory paragraph, state the case principle, apply the relevant evidence, acknowledge the strongest contrary view and finish with the parties who may be sued and the relief sought.

Source alignment: Chapple et al, **Company Law** *(3rd ed, 2023), supplied extract pp 50–70 (PDF pp 1–21); Lecture Two, original Tutorial 2 and prescribed supplementary readings. Company-size figures are checked against current ASIC guidance, not assumed to be frozen at the book's 2023 publication date.*

Primary legislative research: Corporations Act 2001, Federal Register of Legislation. For statutory detail, use the provisions identified above and check the version operative on the material date.

ORIGINAL TUTORIAL 2 — QUESTIONS IN FULL

The following questions are reproduced verbatim from the uploaded official tutorial handout, including its own explanatory notes.

Corporate Law

Tutorial 2 – Incorporation and its effects

What does it mean that a corporation is a separate legal entity? What are some of the consequences, both in the context of (a) Salomon's case and (b) otherwise?

Describe how 'limited liability' works in the context of companies. What is the interaction between limited liability and the separate legal entity principle?

Stella is head shoe designer at Louise Vuilton (LV), a well-known Australian luxury brand. As part of her employment contract with LV, Stella agreed to a six-month non-compete agreement after leaving LV. During the non-compete period, Stella may not design shoes for a competitor. The purpose of the non-compete agreement is to prevent Stella from designing similar shoes for a competitor before LV releases them.

Stella's popular designs have led to a spike in LV's profits. When LV refuses to give Stella a substantial bonus to reward her for her success, Stella quits. She has copies of her most recent designs on her computer.

Stella incorporates a company, Stella Designs Pty Ltd ("Stella Designs"). Stella and her husband, Evan, are the only shareholders and directors of Stella Designs. Within weeks of leaving LV, Stella enters into an agreement under which Stella Designs will provide shoe designs to LV competitor Christina Diorra (CD). Women's Wear Daily reports rumours that Stella is going to provide CD the LV designs from her computer.

LV wants to apply for an injunction to enforce the non-compete agreement and prevent Stella Designs from providing shoe designs to Diorra. Stella claims that Stella Designs, unlike Stella, is not bound by the agreement not to design shoes for a competitor of LV. Will LV be able to enforce the non-compete agreement against Stella Designs?

Hint: you should use IRAC to answer this question. Think conceptually about what is going on in this question.

Class Discussion -- Corporate Groups: Many large corporations create complex layers of subsidiaries known as "corporate groups". This is done to take advantage of the Salomon principle, although it is often significant on a commercial basis that one

is dealing with a corporate group and all of the resources implied by the group structure. Corporate law is predominantly, however, focused on the individual company level rather than the corporate group level.

In Briggs v James Hardie and Co Pty Ltd (1989) 16 NSWLR 549, Rogers AJA stated (at 577) that:

[I]n my view the proposition advanced by the plaintiff that the corporate veil may be pierced where one company exercises complete dominion and control over another is entirely too simplistic. The law pays scant regard to the commercial reality that every holding company has the potential and, more often than not, in fact, does, exercise complete control over a subsidiary.

Justice Rogers stated this in rejecting the suggestion that he should adopt enterprise theory, which states that in the corporate group context, the legal status of individual subsidiaries should be disregarded because 'the conglomerate is a long way from the original concept of a corporation' (James Hardie at 576). As a renowned company law theorist, Columbia Law professor Adolf Berle, Jr, wrote in his 1947 article, 'The Theory of Enterprise Entity',

The so-called 'artificial personality' was designed to be the enterpriser of a project. Multiplicity of artificial personalities within an enterprise unit would probably have been impossible under most early corporation laws. …

The corporation is emerging as an enterprise bounded by economics, rather than as an artificial mystic personality bounded by forms of words in a charter, minute books, and books of accounts. (all quoted in James Hardie at 576).

Professor Berle's argument was pointing to the reality that a corporate group internally looks upon itself as a single entity, often with little regard for the corporate form except where paperwork is involved. Subsidiaries might be formed for legal reasons (eg, legal rules preventing a company from transacting business in a certain jurisdiction unless incorporated there; tax purposes) that have nothing to do with attempts to ring-fence liability. For tax purposes, in many contexts, corporate groups are looked at on an enterprise basis, and corporate groups must often present consolidated financial statements to provide a true understanding of how the business is doing.

Nevertheless, as Justice Rogers pointed out, the law of corporate groups still reflects the separate legal entity principle of Salomon rather than commercial reality.

I would like you to reflect upon the implications of our system's adoption of the separate legal entity principle in the corporate group context. What do you think are the pros and cons of the law (a) adopting an enterprise liability approach or (b)

sticking with the current strict adherence to the separate legal entity principle in the context of corporate groups? Does the law get it right? Why or why not?

Please also separately consider whether the SLE principle is fair in the context of involuntary tort creditors who have the misfortune of being harmed by the “wrong” company in a corporate group. You may wish to refer to Justice Rogers’ analysis at pp. 578 (bottom paragraph) to 580 in Briggs v James Hardie to assist your thinking about this issue. A PDF of Briggs is posted in the Additional Materials section.

Ultimately, in the Briggs case, the asbestosis victim (Briggs) was given leave to proceed against James Hardie as well as the defunct subsidiary on the basis that James Hardie’s ultimate liability (ie, whether the corporate veil would be lifted in that instance) would be determined at a later date after all of the evidence had been gathered.

Please be prepared to talk about this material provided in class this week. Keep in mind: there is no single right or wrong answer. We really want to hear what YOU think about this stuff, not Chat-GPT. Please do not use AI to write an answer for you.

Reminder: it is a violation of the Student Code of Conduct to upload course materials into AI.

TUTORIAL 2 — EXTENDED LEGAL REASONING

Separate person and limited exposure are two distinct legal propositions

Apply s 119 and *Salomon* when determining the legal owner of a right or liability. Apply s 516 to a member's ordinary obligation to contribute unpaid share capital in winding up. Where someone claims that ownership confers direct ownership of company assets, *Macaura* supplies a useful corrective. A bank guarantee signed personally is an additional source of personal exposure and is not negated by either doctrine.

Stella — the evidence needed before an injunction

Read the restraint agreement and determine whether it is valid as a restraint of trade under the applicable law. Establish dates of termination, creation of Stella Designs, the six-month period, possession and use of confidential designs, decisions by Stella and Evan, contracts with Diorra and the intended remedy. *Gilford Motor v Horne* provides an analogy for interposing a company to evade a pre-existing restraint. *Salomon* remains the prima facie separate-person rule, so there must be evidence justifying equitable restraint against the new company. The final advice should distinguish an order against Stella from an order against Stella Designs and address evidence and urgency.

Briggs — legal rule versus reform preference

The legally sound starting point is each member company's separate personality: parent influence by itself does not automatically make the parent liable for a subsidiary's tort. In *Briggs*, Rogers AJA rejected the simplistic dominion-and-control proposition and allowed factual development of the potential claim. An adviser for an asbestosis claimant must identify any direct duty or act of James Hardie, available statutory causes, and evidence on operational involvement; an adviser for a corporate group must document genuine subsidiary decision-making and contractual allocation. A preference for enterprise liability is a policy argument, not a description of present law.

The detailed original chapter model answers and worked IRAC application remain included in the immediately following existing chapter pages. Read both layers together: the verbatim questions, the reasoning method and the individual worked answers.

2.25 Tutorial 2 - Complete Teaching Answers

Question 1 - What does it mean that a corporation is a separate legal entity? What are the consequences in Salomon and otherwise?

A company is a legal person distinct from its members and directors. Section 119 marks the point of legal birth, while s 124 gives the company the legal capacity and powers of an individual plus corporate powers. The immediate consequences are that the company can own property, contract, sue and be sued, employ people, issue securities and continue despite changes in participants.

Salomon proves that the separation applies even where control is concentrated. Salomon could be shareholder, director and secured creditor because those capacities were legally distinct. Lee extends the logic to employment: a controlling shareholder/director could also be an employee. Macaura demonstrates the reverse consequence: company property is not shareholder property. The correct exam habit is therefore to identify the legal person and then the capacity in which each human actor was acting.

Question 2 - How does limited liability work and how does it interact with separate personality?

Separate personality answers *whose obligation is it?* Limited liability answers *how far must a member contribute merely because they are a member?* In a company limited by shares, s 516 generally caps the member's contribution on winding up at the unpaid amount on the shares. If the shares are fully paid, there is ordinarily no additional contribution solely because the company cannot pay.

The company itself remains fully liable for its debts. Personal liability can still arise on an independent basis - guarantee, tort, breach of duty, contract or statute. This distinction is essential because saying "the company has limited liability" obscures who the law is actually protecting.

Question 3 - Stella Designs: can LV enforce the non-compete against the company?

The starting point is Salomon: Stella Designs is a separate legal person and did not itself sign Stella's employment contract. Stella's ownership and control alone do not make every personal obligation automatically bind the company.

However, the facts closely resemble Gilford Motor. Stella was already subject to the six-month restraint, retained copies of recent LV designs, incorporated a company she and her husband control, and within weeks arranged for that company to supply shoe designs to a direct competitor during the restraint period. LV can argue the company is being used as the vehicle through which Stella proposes to carry out the very activity she promised not to undertake. Assuming the restraint is otherwise valid and enforceable, an injunction against Stella and Stella Designs is strongly arguable. The full IRAC model appears at the end of this chapter.

Question 4 - Corporate groups: enterprise liability versus strict separate personality, and involuntary tort creditors.

Argument for strict separate personality. Entity-by-entity law produces certainty. Each company has identifiable assets, creditors, contracts and governance. Investors and lenders can price risk, and businesses can isolate projects and jurisdictions. If parent control alone created liability, almost every subsidiary structure would become unstable because control is normal in groups.

Argument for enterprise liability. Commercial reality may be very different. Groups can operate with one brand, treasury, management team and strategy while allocating high-risk activities to thinly capitalised subsidiaries. Treating the enterprise as one unit can better reflect who created and benefited from the risk.

Involuntary tort creditors. The fairness argument is strongest here. A bank can demand security or a parent guarantee. An asbestos victim cannot bargain about which subsidiary should injure them. Briggs exposes that difficulty while still rejecting control as an automatic basis for group liability.

Balanced conclusion. Australian law generally preserves separate personality but uses targeted statutory and general-law responses in particular circumstances. Sections 588V-588X are an example of Parliament imposing holding-company consequences in a defined insolvency context. This targeted approach avoids treating every group as one company while recognising that strict entity law can create creditor problems.

2.26 Full Constructed IRAC Model Answer - Stella Designs and the Non-Compete

Issue

The principal issue is whether Louise Vuilton (LV) can obtain injunctive relief preventing Stella Designs Pty Ltd from supplying shoe designs to Christina Diorra during the six-month period in which Stella personally agreed not to design shoes for an LV competitor. The corporate-law sub-issue is whether Stella may rely on the separate legal personality of Stella Designs to do indirectly through the company what she has already agreed not to do personally. A preliminary assumption is that the restraint itself is otherwise valid and enforceable under the applicable restraint-of-trade law.

Rule / Law

The starting point is the separate legal entity principle. Under s 119 Corporations Act 2001 (Cth), Stella Designs came into existence as a body corporate on registration. Under s 124, it has its own legal capacity. Salomon establishes that a company remains legally distinct from its shareholders and controllers even where ownership and control are concentrated. Accordingly, Stella Designs is not automatically bound by every contract Stella has made merely because Stella controls it.

However, equitable relief can extend to a company used as the vehicle for evading an existing obligation. In Gilford Motor Co Ltd v Horne [1933] Ch 935, a former employee subject to a restraint used a company to carry on the prohibited competing activity. The court granted injunctive relief against both the individual and company. Jones v Lipman [1962] 1 WLR 832 similarly demonstrates that a company cannot necessarily be interposed as a device to defeat an existing contractual obligation.

The correct reasoning is narrower than saying the company and Stella are generally "the same person". The company remains separately incorporated. The question is whether equity should restrain the company because it is being used to facilitate the continuing breach of Stella's pre-existing obligation.

Application

Stella has a legitimate starting argument. Her employment contract was with her personally. Stella Designs was incorporated later and did not sign the restraint. Under Salomon, the fact that Stella and Evan are the only shareholders and directors does not by itself collapse the company's separate personality.

However, the factual sequence strongly favours LV. Stella was already bound for six months not to design shoes for an LV competitor. She left LV after a dispute over remuneration, retained copies of recent LV designs, then incorporated Stella Designs. Within weeks, Stella caused Stella Designs to enter an arrangement to provide shoe designs to Christina Diorra, an LV competitor, during the exact restraint period.

Those facts closely parallel the concern in Gilford Motor. The company appears not merely to be an unrelated enterprise in the same market, but a legal vehicle through which Stella intends to perform the very competitive design activity she personally agreed not to undertake. The timing, Stella's control, the identity of the competitor and Stella's possession of recent LV designs reinforce that inference.

> **Counterargument for Stella Designs.** Stella Designs can argue that it is a genuine separate company, Evan is also a shareholder/director, and the company entered its own agreement with CD. It can emphasise that control alone is insufficient to disregard separate personality and that courts should not use veil language simply because the outcome seems unfair.

That counterargument is important but does not fully answer LV's narrower case. LV need not prove that Stella Designs is identical to Stella for every purpose. It can seek equitable relief directed to stopping use of the company as the channel for the continuing breach of the restraint.

The media report that Stella may provide LV's actual designs to CD adds urgency, but it is only a rumour unless supported by admissible evidence. LV would need proper evidence if it relies on threatened misuse of designs or confidential information. Nevertheless, the risk of unreleased designs being supplied may support the argument that damages would be inadequate and that preventative relief is appropriate.

Remedy / Consequence

LV should seek an injunction restraining Stella from breaching the valid restraint and ask that the order also restrain Stella Designs from being used to carry out the prohibited activity. If relief is sought before final trial, LV must also satisfy the requirements governing interlocutory injunctions. The order should be framed around the prohibited conduct rather than making an unnecessarily broad declaration that Stella and the company are one legal person for all purposes.

Strong Conclusion

Assuming the six-month restraint is legally valid and enforceable, LV has a strong argument for injunctive relief against Stella and Stella Designs. Separate personality under s 119 and Salomon remains the starting rule, so Stella's control alone is

insufficient. But the immediate incorporation of Stella Designs, the company's proposed supply of shoe designs to LV's direct competitor during the restraint period and Stella's possession of LV's recent designs make Gilford Motor a close analogy. The stronger conclusion is that Stella should not be permitted to use the company as the vehicle for evading the existing restraint.

Exam lesson

Do not jump straight to "piercing the veil." Write the reasoning in order: **separate personality -> identify the pre-existing obligation -> identify the company's role in the alleged evasion -> apply Gilford Motor -> address the Salomon counterargument -> identify the precise equitable remedy.**

Registration, Corporate Constitutions, Replaceable Rules, Civil Liability and Corporate Criminal Responsibility

Week 3 Forum / Lecture | Corporations Act 2001 (Cth) | Corporate attribution

Chapter purpose. Chapter 2 established that registration creates a legal person separate from its members and directors. Chapter 3 asks what that company looks like internally and how an artificial person can be made legally responsible externally. We move from the mechanics of registration to constitutions and replaceable rules, the statutory contract under s 140, limits on constitutional alteration, corporate capacity, civil attribution and corporate criminal responsibility. The organising question is always the same: *whose act, knowledge or decision does the law treat as the act, knowledge or decision of the company?*

Teaching flow: register the company -> identify the internal rulebook -> determine which rule is replaceable or mandatory -> ask who can enforce the rule -> distinguish internal irregularity from external validity -> identify the human actor -> decide whether liability is vicarious, strict or attributed directly -> identify the mental element -> apply the correct attribution rule.

3.1 Registration is the legal birth of the company

Australian companies are created by registration. This point sounds administrative, but it is doctrinally fundamental because registration is the event that brings the separate legal person into existence. Under Corporations Act 2001 (Cth) ss 117-119, an application is lodged with ASIC, ASIC registers the company if the statutory requirements are satisfied, and the company comes into existence as a body corporate at the beginning of the day on which it is registered.

Students should connect this directly to Chapter 2. Before registration there is no company capable of owning property or being a party to a contract in its own right. After registration there is. That temporal line matters later when we examine pre-registration contracts in Chapter 6.

> **Issue-spotting trigger.** Whenever a problem involves something done "for the company" before incorporation, identify the registration date first. If the purported company did not yet exist, ordinary agency language can be misleading because there was no principal capable of authorising the act at that time.

The Week 3 lecture also emphasises what students do *not* need to memorise: form numbers and the exact dollar amount of ASIC fees. Fees change. The examinable idea is the statutory process and legal consequence of registration.

3.2 Registration choices: type, name, office, members and share structure

A registration application forces the founders to make several legal choices. They must decide what type of company is being formed, settle the proposed name or use the Australian Company Number in the permitted way, identify the registered office, obtain the necessary consents from proposed officeholders and members, and specify the share structure where the company has share capital.

The name rules sit in Part 2B.6 of the Act. For exam purposes, the important skill is not memorising a list of restricted words. It is recognising that the company name is part of the statutory identity of the new legal person and that ASIC controls registration of names through the Act.

3.3 Registration does not end compliance

Incorporation creates the company, but the company remains subject to ongoing statutory obligations. The lecture highlights annual statements, correction of company details, annual review processes and annual solvency resolutions. The precise mechanics depend on the kind of company and the current statutory scheme. The broader corporate-law lesson is that limited liability and separate personality come with continuing public regulation.

Question	Legal source	Why it matters

How is the company created?	Corporations Act ss 117-119	Registration is the point at which the body corporate comes into existence.
What governs internal management?	ss 134-141	Replaceable rules, constitution, or a combination of both.
What legal powers does the company have?	ss 124-125	The company has broad legal capacity; an internal objects clause does not generally invalidate an external act.
How can a constitution be adopted or changed?	s 136 and related provisions	Usually by the statutory mechanisms, including special resolution after registration.
What is the legal effect of the constitution/RRs?	s 140	They operate as a statutory contract between specified corporate participants.

3.4 The internal corporate rulebook: s 134

Section 134 is the gateway provision. A company's internal management may be governed by replaceable rules in the Corporations Act, by a constitution, or by a combination of both. That gives founders flexibility. A small proprietary company may be content to rely heavily on statutory defaults. A larger or specialised enterprise may require a detailed constitution tailored to voting, board structure, share rights or other internal arrangements.

The key point is that "constitution" and "replaceable rules" are not rival legal systems. They are components of the same internal governance architecture. Section 135(2) allows a constitution to displace or modify a replaceable rule that would otherwise apply.

Professional application. When advising a company, never assume the Act alone answers an internal-management question. Ask for the constitution, identify whether the relevant statutory provision is mandatory or replaceable, and then determine whether the constitution has displaced or modified the default rule.

3.5 Replaceable rules: defaults, not optional law in the loose sense

The replaceable rules are statutory default rules. Their function is to reduce the transaction costs of incorporation: a company need not draft every governance rule from scratch. Section 141 provides the table identifying the replaceable rules. But the student must read the provision carefully because some rules are replaceable for proprietary companies yet mandatory for public companies.

A recurring exam trap is to see the words "replaceable rule" and conclude that every company can contract out of it. That is wrong. The heading and the company type matter. Section 135 must be read before assuming that a constitutional clause is effective.

Example. A clause saying directors alone may remove another director can operate differently depending on whether the company is proprietary or public. The Week 3 lecture uses ss 203C-203E to show

why public-company rules can be mandatory even where the proprietary-company position is replaceable.

3.6 One-person proprietary companies

A special statutory arrangement applies while the same person is both sole director and sole shareholder of a proprietary company. Section 135(1) excludes the ordinary replaceable-rule regime in that situation, while specific provisions such as ss 198E, 201F and 202C deal with governance of that form. The point is not to become lost in exceptions. The point is to recognise that internal-management law adapts to corporate structure.

3.7 Corporate capacity: s 124

Section 124 gives a company the legal capacity and powers of an individual, together with specifically corporate powers such as issuing and cancelling shares and issuing debentures. This provision is a statutory expression of a powerful idea: the company is not merely a bundle of contracts between investors. It is a legal person capable of acting in the legal world.

That broad capacity also explains why modern Australian law no longer makes outsiders bear the old ultra vires risk in the way nineteenth-century company law did.

3.8 Objects clauses and s 125: internal limit, external validity

A constitution may contain restrictions on the exercise of corporate powers and may state corporate objects. Section 125 is deliberately careful about the consequence. An act is not invalid merely because it contravenes a constitutional restriction or falls outside stated objects.

This separates two questions that students often collapse. First, did the company act contrary to an internal rule? Second, is the transaction externally invalid? Modern law can answer yes to the first and no to the second.

The historical comparator is **Ashbury Railway Carriage & Iron Co v Riche (1875) LR 7 HL 653**. Under the old ultra vires doctrine, transactions beyond corporate objects could be void. The Corporations Act rejects that harsh external consequence. The risk of internal non-compliance is now generally dealt with through internal governance and liability rules rather than automatic invalidity of the transaction.

Exam sequence. If facts say the company acted outside its objects, do not conclude "the contract is void". Start with ss 124-125. Then ask whether the conduct creates an internal breach, a directors' duty issue or some other consequence.

3.9 Section 140: the statutory contract

Section 140 gives the constitution and applicable replaceable rules contractual effect in three relationships: between company and member; company and each director/company secretary; and member and member. This is not an ordinary negotiated contract. It is a statutory contract created by legislation.

Its purpose is enforcement of the corporate rulebook. But its scope is defined by the statutory relationships. It does not create a general contract between the company and every outsider who happens to be mentioned in the constitution.

Relationship	s 140(1)	Core point
Company ↔ member	(a)	Constitutional/member rights can be enforced in the member's corporate capacity.
Company ↔ director/secretary	(b)	Officeholders are parties to the statutory contract to the extent the rules apply to them.
Member ↔ member	(c)	Members may enforce applicable constitutional obligations against one another.
Company ↔ outsider	No general s 140 contract	Being named in the constitution does not itself create an ordinary external contract.

3.10 Who can enforce the statutory contract?

The lecture uses older authorities to illustrate the statutory-contract logic. **Hickman v Kent or Romney Marsh Sheep-Breeders' Association [1915] 1 Ch 881** illustrates enforcement in the company-member relationship. **Re Caratti Holding Co Pty Ltd [1975] 1 ACLR 87** illustrates the member-member dimension. **Forbes v NSW Trotting Club Ltd [1977] 2 NSWLR 515** reinforces that an outsider cannot simply invoke the constitution as though it were a contract with them.

The deeper exam point is capacity. A person may wear several hats: shareholder, director, employee, creditor. A constitutional right enforceable in the person's capacity as member does not necessarily become enforceable as an employment right. Older cases such as Ely v Positive Government Security Life Assurance Co demonstrate that distinction.

3.11 The statutory contract is unusual

The s 140 contract differs from an ordinary contract in several ways. It does not depend upon ordinary consideration or signature. Its terms can be altered through the statutory constitutional-amendment mechanism even without unanimous consent. Remedies are shaped by corporate law and the nature of the right being enforced.

Students should therefore avoid mechanically importing every ordinary contract doctrine. Section 140 is best understood as legislation giving contractual force to the internal governance rules for defined corporate relationships.

3.12 Altering the constitution: s 136 and special resolutions

A constitution may be adopted on registration in the manner specified by s 136, or after registration through the statutory process. A central concept is the **special resolution**, generally requiring at least 75% of the votes cast by members entitled to vote on the resolution.

The lecturer expressly identifies this as assessable. Students should know both the threshold and the institutional point: the members in general meeting exercise this constitutional-amendment power. This matters because corporate law divides powers between the board and the members rather than treating "the company" as one undifferentiated group of people.

3.13 Limits on constitutional alteration

Corporate democracy is not unlimited. Section 140(2) protects a member from certain post-membership alterations unless the member agrees in writing, including changes requiring additional shares, increasing liability to contribute or pay money, and certain increased transfer restrictions.

The general law also limits expropriation of shares. **Gambotto v WCP Ltd (1995) 182 CLR 432** is the leading Australian authority. For students, the important function of Gambotto is not simply to remember the phrase "proper purpose". It demonstrates that majority voting power over the constitution is constrained where the amendment is used to compulsorily expropriate minority shares; legality depends upon the recognised purpose and fairness requirements articulated by the High Court.

3.14 The external problem: an artificial person can still commit a civil wrong

Once the company is recognised as a separate legal person, another question follows: how can an entity with no physical body commit a tort? Corporate law answers this through several attribution mechanisms. The first is familiar from Torts: vicarious liability. A company can be responsible for torts committed by employees within the scope of employment even though the employee's act is not treated as the company's own personal act.

This is secondary liability. The employee commits the tort; the law makes the employer answer for it because of the employment relationship.

3.15 Primary liability and organic theory

Different problems require the law to treat a human act, knowledge or state of mind as the company's own. This is the identification or organic theory. The classic authority is **Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705**.

In Lennard's, the relevant managing individual had responsibility for the vessel and its seaworthiness. The House of Lords treated his fault and knowledge as the company's because, for the relevant function, he was the directing mind and will of the corporate owner. This is not ordinary vicarious liability. The law identifies the human decision-maker with the company itself for the purpose of the relevant rule.

HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd [1957] 1 QB 159 famously used the body analogy: some corporate participants are the "hands", while senior decision-makers may constitute the corporate "brain". The metaphor is memorable, but the legal question must remain functional: who had authority to make the relevant decision?

3.16 Tesco: not every manager is the company

Tesco Supermarkets Ltd v Nattrass [1972] AC 153 exposes the limits of traditional identification doctrine. A supermarket promotion was implemented incorrectly at store level. The store

manager had failed to follow Tesco's procedures, but the House of Lords did not treat the store manager as the company's directing mind and will for the relevant purpose.

The exam lesson is not that managers never count. It is that authority matters. A person may be senior in a local operational sense yet remain subject to instructions from higher corporate organs. The traditional test focuses upon whether the person is entrusted with the relevant corporate management power such that, within the scope of that delegation, the person acts as the company rather than merely for the company.

> **Why this became controversial.** In a modern dispersed corporation, important decisions may be delegated to teams or mid-level specialists. A test focused too narrowly on the board or very senior officers can make corporate fault difficult to establish even where the organisation's own systems produce misconduct.

3.17 Meridian: attribution depends on the purpose of the substantive rule

Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500 provides a more functional approach. The question is not always "who is the company's single directing mind?" Instead, interpret the substantive rule and ask whose act, knowledge or state of mind the rule intends to count as the company's for that purpose.

In Meridian, investment personnel had authority to acquire securities. The relevant disclosure obligation would have been undermined if the company could avoid attribution simply because those personnel were not the board. Their knowledge could therefore be attributed to the company for the statutory disclosure rule.

> **Attribution method:** identify the substantive legal rule -> ask what act or mental state it requires -> identify who had authority to perform the relevant corporate function -> determine whether that person's act/ knowledge should count as the company's for the purpose of that rule.

3.18 Corporate criminal liability

Companies can be criminally liable. The conceptual difficulty is mens rea. A corporation has no biological mind, yet many offences require intention, knowledge or recklessness. Different offences solve this in different ways: strict liability may remove the need for mens rea; legislation may impose vicarious criminal responsibility; and attribution rules may identify human states of mind with the company.

The lecture distinguishes three broad categories: vicarious criminal liability, strict or non-delegable statutory liability, and attributed primary criminal liability. Students must identify which model the particular offence uses rather than assuming one general theory applies to every corporate crime.

3.19 Corporate culture and systems

Part 2.5 of the Criminal Code (Cth) contains statutory rules for corporate criminal responsibility, including circumstances in which corporate culture can establish the fault element. The lecture focuses on the idea that a corporation's systems, policies and practices may reveal organisational intention in ways that cannot be reduced to the mind of one executive.

This point connects to systemic misconduct in banks, casinos, education providers and other large organisations. Where decisions are distributed across systems and teams, the question "who is the guilty individual?" may fail to capture the organisational character of the conduct.

3.20 Productivity Partners v ACCC: systems as evidence of corporate intention

The Week 3 lecture uses **Productivity Partners Pty Ltd v Australian Competition and Consumer Commission [2024] HCA 27** as a modern illustration. Captain Cook College used external recruiters in a government-funded vocational-education model. Safeguards designed to identify unwitting or unsuitable students were removed. The removal reduced attrition and dramatically increased revenue.

The High Court's reasoning is important for corporate-law students because the company's systems and the deliberate dismantling of controls were capable of revealing corporate intention. The case

demonstrates a contemporary move away from asking only whether one senior human being personally possessed a particular mental state. Organisational design itself can be evidentiary.

> **Professional lesson.** Governance systems are not merely compliance paperwork. A board that receives evidence that a process is producing unlawful outcomes and chooses not to repair it may create powerful evidence about corporate intention, director responsibility and organisational culture.

3.21 How the doctrines fit together

Problem	Question to ask	Doctrine
Internal management dispute	What rule governs, and is it mandatory or replaceable?	ss 134-141 + constitution
Company acts outside objects	Is the external act invalid, or is the issue internal?	ss 124-125; abolition of ultra vires consequence
Member wants to enforce constitution	Is the right held in a capacity covered by s 140?	Statutory contract
Employee commits tort	Was it within scope of employment?	Vicarious liability
Human state of mind must become corporate state of mind	Who exercised the relevant corporate function?	Identification/ attribution: Lennard's, Tesco, Meridian
		Corporate culture/ systems; Criminal

Systemic corporate misconduct	What do systems, policies and feedback responses reveal?	Code Pt 2.5; Productivity Partners

3.22 Exam attack sequence

Step 1: Identify whether the problem is internal governance, external transaction validity, civil wrongdoing or criminal responsibility.
Step 2: Locate the exact statute and determine whether the rule is mandatory, replaceable or constitutional.
Step 3: Identify the human actor and their corporate role/capacity.
Step 4: If fault or knowledge is required, state the attribution rule before applying facts.
Step 5: Separate vicarious liability from primary attribution.
Step 6: Apply the authority that answers the same functional question - Tesco for the limit of directing-mind theory, Meridian for purpose-based attribution, and modern systems reasoning where organisational design itself matters.
Step 7: State the legal consequence precisely: enforceability, injunction, internal breach, compensation, penalty or criminal responsibility.

3.23 Frequently Asked Questions

Q: Does every company need a written constitution?
No. Section 134 permits internal management through replaceable rules, a constitution or a combination, subject to special statutory situations.

Q: If a company breaches an objects clause, is the transaction automatically void?

No. Section 125 provides that an act is not invalid merely because it is contrary to an express restriction or beyond stated objects.

Q: Is a breach of a replaceable rule automatically a contravention of the Corporations Act?

No. Section 135(3) expressly provides that failure to comply with a replaceable rule is not, of itself, a contravention of the Act. The rules have contractual effect through s 140.

Q: Can an employee enforce a promised employment benefit merely because it appears in the constitution?

Not simply on that basis. The s 140 contract operates only within the statutory relationships and capacity in which the right is held.

Q: Is corporate liability always vicarious?

No. Vicarious liability makes the company responsible for another person's wrong. Identification/attribution can instead treat the act or mind of the relevant human as the company's own.

Q: Why is Meridian so important?

Because it directs attention to the purpose of the substantive legal rule and asks whose act or knowledge should count as the company's for that rule, rather than insisting on one universal "directing mind".

3.24 Multiple-Choice Revision

1. The legal event that creates the company as a body corporate is:
   A. signing the constitution
   B. registration under the Corporations Act
   C. the first board meeting
   D. issuing the first invoice

> **Answer: B.** Sections 117-119 govern registration and the company's coming into existence.

2. Section 134 permits internal management to be governed by:
   A. only a constitution
   B. only replaceable rules
   C. replaceable rules, a constitution, or a combination
   D. only shareholder agreements

> **Answer: C.**

3. A company acts outside an objects clause. The best starting proposition is:
   A. the act is automatically void
   B. the directors are automatically imprisoned
   C. s 125 means the act is not invalid merely for that reason
   D. the company ceases to exist

> **Answer: C.**

4. The statutory contract is principally found in:
   A. s 119
   B. s 124
   C. s 140
   D. s 588G

> **Answer: C.**

5. Which authority most directly illustrates the traditional "directing mind and will" approach in a supermarket context?
   A. Salomon
   B. Tesco Supermarkets v Nattrass
   C. Gambotto
   D. Gilford Motor

> **Answer: B.**

6. Meridian is important because it emphasises:
   A. every employee is the company
   B. the company's constitution is irrelevant
   C. attribution should be tailored to the purpose of the substantive rule
   D. companies cannot commit crimes

   > **Answer: C.**

7. Productivity Partners [2024] HCA 27 is useful in this chapter because it illustrates:
   A. partnership formation
   B. corporate systems as evidence relevant to organisational intention
   C. limited liability of shareholders only
   D. winding up

   > **Answer: B.**

3.25 Short-Answer Practice

Question 1 - Explain the difference between corporate capacity and an internal constitutional restriction.

> Corporate capacity concerns what the company is legally capable of doing. Section 124 gives broad legal capacity and corporate powers. A constitution can restrict the exercise of those powers or state objects under s 125, but the external act is

not invalid merely because the company acted contrary to that restriction. The breach may instead create internal governance consequences.

Question 2 - Why does s 140 require attention to capacity?

Because a person may be a member, director, employee and creditor at the same time. Section 140 creates specific statutory contractual relationships. A right written in the constitution is not automatically enforceable in every capacity the person happens to have. The analysis must identify whether the asserted right is a member right, director/secretary right or member-member obligation covered by the section.

Question 3 - Distinguish vicarious liability from attribution.

With vicarious liability, the wrong remains the employee's wrong but the company is legally responsible because of the employment relationship. With attribution or identification, the law treats the relevant human's act, knowledge or mental state as the company's own for the purpose of the substantive rule.

3.26 Constructed IRAC Problem - Marlin Robotics Pty Ltd

Problem. Marlin Robotics Pty Ltd has a constitution stating that the company must only manufacture industrial robotics. The board nevertheless approves a profitable acquisition of a medical-software business. A member argues the acquisition is void. Separately, a senior compliance manager with delegated responsibility for regulatory reporting learns that Marlin has crossed a statutory ownership threshold in another listed company but deliberately does not report it. The managing director and board are unaware. Advise Marlin on the validity of the acquisition and whether the compliance manager's knowledge can potentially be attributed to the company for the reporting obligation.

Issue

The problem raises two distinct issues. First, whether Marlin's acquisition is invalid because it falls outside a constitutional objects restriction. Second, whether the knowledge and omission of a delegated compliance decision-maker can count as the company's knowledge for a statutory reporting obligation even though the board was unaware.

Rule / Law

Section 124 gives a company broad legal capacity and powers. Section 125 permits a constitution to restrict powers or state objects but expressly provides that an exercise of power or act is not invalid merely because it is contrary to the

restriction or beyond the objects. The old ultra vires consequence illustrated historically by Ashbury Railway has therefore been displaced in modern Australian company law.

For attribution, Lennard's and Tesco represent the traditional identification model, under which a person exercising sufficiently high corporate authority may constitute the company's directing mind and will for the relevant function. Meridian demonstrates that the attribution question is ultimately tailored to the substantive legal rule: the court asks whose act, knowledge or state of mind the rule intends to count as that of the company.

Application - acquisition

The member should not succeed merely by arguing that the acquisition is outside the stated object. Marlin has legal capacity under s 124. Section 125 prevents the acquisition from being invalid merely because it is contrary to an objects clause. The constitutional breach may create internal consequences, including questions concerning directors' authority or duties, but external invalidity does not follow automatically.

Application - regulatory knowledge

The compliance manager is not necessarily the company's universal directing mind. Tesco warns against assuming that any manager is the company. But the facts state that this manager has delegated responsibility for the precise regulatory reporting function. Meridian therefore provides the more useful framework. If the statutory reporting rule is designed to require the corporation to disclose once the person authorised to manage the relevant investment/reporting function knows the

threshold has been crossed, there is a strong argument that the manager's knowledge should be attributed to Marlin for that purpose.

Counterargument. Marlin may argue that the manager was subordinate, acted contrary to policy and withheld information from senior management. Tesco shows that a subordinate's default is not automatically the company's own state of mind. The answer therefore depends on the construction and purpose of the particular reporting rule and the scope of delegated authority.

Conclusion

The acquisition is not invalid merely because it is beyond the constitutional object. The internal breach must be analysed separately. On attribution, the compliance manager's delegated authority over the exact reporting function makes Meridian highly relevant and creates a strong basis for treating the manager's knowledge as Marlin's for that statutory obligation, subject to the precise wording and purpose of the reporting provision.

CHAPTER 3 — COURSE READINGS AND TEACHING INTEGRATION

A single statutory map connects registration and constitutional authority

Part 2A.2 of the Corporations Act includes ss 117–119: application, registration and the company's existence. Part 2B.4 includes ss 134–141 concerning internal governance by constitution and replaceable rules. The lawyer's sequence is to ask whether the entity exists, which governance rules bind its members and officeholders, and whether a disputed resolution complies with the Act and its constitution. These are related inquiries, not interchangeable sections.

Section 117 is a registration application, not proof of existence

Section 117 identifies requirements for applying to register a company. Section 118 concerns the registration steps taken by ASIC. Section 119 fixes the day on which the company comes into existence. The distinction matters when considering whether a pre-registration transaction was made by a person who did not yet have a corporate principal. Do not cite s 117 when the issue is simply the legal date of the company's birth; cite s 119.

Section 134 provides the internal rule sources; ss 135 and 141 identify defaults

Section 134 allows a company's internal management to be governed by replaceable rules, a constitution or both. Section 135 explains their operation and limits; s 141 provides a table identifying the replaceable provisions, and that table must not be treated as a complete standalone code of director powers. Section 136 is the starting point for adopting and modifying a constitution. Section 140 gives statutory-contract effect among specified corporate participants in their defined capacities. A complaint about governance thus requires identification of the actual clause or replaceable rule, a competent applicant and a valid procedure.

Ultra vires in historical comparison

The historic objects-clause approach, illustrated by Ashbury Railway Carriage and Iron Co Ltd v Riche (1875) LR 7 HL 653, could render activities beyond stated objects ultra vires. Today s 124 gives broad corporate capacity and s 125

addresses constitutional limits and their effect on validity. Changing Lemon Aid's business from lemonade to T-shirts is therefore not automatically void because of an historical narrow objects clause. Internal governance consequences must be analysed separately from the validity of transactions with outsiders.

Attribution of conduct and criminal fault: the rule supplies the relevant question

In Tesco Supermarkets Ltd v Nattrass [1972] AC 153, the manager of a particular shop did not constitute the company's directing mind merely because he managed that shop; the statute provided a defence in that particular English regulatory setting. Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500 shows that the purpose of the substantive rule affects attribution. Neither case means any careless employee's state of mind is automatically corporate mens rea. Identify the offence elements and applicable Australian attribution rules before deciding whose conduct or knowledge is legally attributed.

Criminal Code Part 2.5 and system-based proof must not be confused

Part 2.5 of the Commonwealth Criminal Code contains general provisions for corporate criminal responsibility for offences to which it applies. Section 12.2 deals with physical elements attributed through conduct in the scope of employment, authority or agency; s 12.3 concerns fault elements, including routes relating to corporate culture and authorisation or permission. Do not use s 12.3 as an all-purpose rule for every state offence or statutory contravention. The exact regime and any contrary offence-specific provision must be checked first.

Systems intentionality: the lecture's important final-slide explanation

The final Week 3 lecture notes ask students to examine a company's real systems, repeated conduct, incentives, safeguards and feedback loops. In Productivity Partners Pty Ltd v Australian Competition and Consumer Commission [2024] HCA 27, the college's dismantling of enrolment safeguards, despite awareness of recruitment risks, supported findings concerning its intention in that statutory unconscionability context. Elise Bant, "Rethinking Corporate Groups: Insights from Systems Intentionality" (2025) 47 Sydney Law Review, especially pp 1–3, examines how coordinated company systems may evidence states of mind and how such reasoning might illuminate parent-company responsibility. This is a developing interpretive approach: it does not abolish separate corporate personality or create automatic group liability.

What the journal readings contribute to the tutorial

Samuel Walpole and Matt Corrigan, “Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct” (2021) 43 Sydney Law Review 489, assigned Parts II.B–C and IV, contributes the policy question whether legal rules can respond to diffuse organisational misconduct. Penny Crofts, “Three Recent Royal Commissions: The Failure to Prevent Harms and Attributions of Organisational Liability” (2020) 42 Sydney Law Review 395, assigned in the original tutorial and marked as supplementary in the updated reading directions, provides an additional framing of institutional failures. The user supplied the complete Bant PDF and the lecture’s final-slide notes; full copies of the Walpole–Corrigan and Crofts articles have not been located in the supplied sources, so their detailed arguments must not be purported to have been reproduced or verified from full text.

The precise week 3 course reading map

The prescribed textbook locations are Chapter 1 pp 38–40, all of Chapter 3, and Chapter 5 pp 135–139 (section 5.7 on tort and crime). The exact legislative cluster is ss 117–119 and 134–141. The lecturer additionally points to *Tesco* (slide 38 and optional case extract), the final slide 39 notes, and Australian Law Reform Commission reform materials on corporate criminal liability. This map keeps required and optional readings distinct and makes clear which full texts have been supplied versus merely referenced.

The official Tutorial 3 question sheet and complete model answers remain printed in full in the main chapter, immediately before the start of Chapter 4.

Understanding the constitution reading: from internal rules to corporate responsibility

The newly uploaded Chapter 3 *Company Law* PDF contains its learning-objectives page (textbook p 75), not the full prose of that chapter. The six objectives nevertheless supply a valuable structure: why a company needs governance rules; how replaceable rules operate; the function of a constitution and an objects clause; who is bound; and how rules are changed. This section connects those questions with the actual statutory provisions and the user's Week 3 slides, forum and tutorial. It does not pretend the missing textbook pages have been read.

Why an internal rule book matters even when a company has legal capacity

Registration makes a company a distinct legal person and s 124 gives it broad capacity, but a company cannot literally sit in a meeting or sign a document. Human beings must make decisions in recognised capacities. This produces two separate questions. First, **can the company lawfully enter this kind of transaction?** Second, **which person or company organ is authorised to decide and act for it?** Sections 134–141 of the *Corporations Act 2001* provide the main internal governance framework for the second question, read with mandatory statutory provisions, common law and any applicable constitution.

Under **s 134**, a company's internal management may be governed by replaceable rules, a constitution or both. This is an introductory gateway, not itself an answer to who has a particular power. **Section 135(1)** identifies which rules operate as replaceable rules for relevant companies; critically, it makes special provision for proprietary companies with the same sole director and sole shareholder. **Section 135(2)** allows applicable replaceable rules to be displaced or modified by the constitution. **Section 135(3)** says a breach of a replaceable rule, simply as such, is not automatically a contravention attracting the Act's offence or civil-penalty consequences; the rules have statutory-contractual effect through s 140. Explain this qualification in a tutorial rather than saying that any breached company procedure is automatically a civil penalty offence.

Creating and changing the constitution

Section 136(1)(a) addresses adoption on registration with the required pre-registration agreement of the proposed members, while **s 136(1)(b)** permits later adoption by special resolution or by an applicable court order. **Section 136(2)** governs modification or repeal by special resolution unless the legislation provides otherwise. The special-resolution requirements must be applied precisely; students should not equate a mere ordinary majority with the statutory voting threshold. Section 137 addresses when relevant adoption or modification takes effect, and s 139 concerns provision of a constitution to a member on request. The board and company secretary therefore need a reliable current version of the constitution, its resolution history and appropriate lodgement or notification records, rather than relying on an undated PDF circulated years ago.

Section 140(1)(a)–(c) makes the constitution and applicable replaceable rules operate as a statutory contract in specified relationships: company and member, company and director or company secretary, and member and member, so far as the provisions apply to them. Do not extend this automatically to everyone affected by a company. A supplier is not ordinarily made a party to the statutory contract merely because the supplier has read the constitution. Nor is every procedural promise enforceable as an individual's ordinary employment right without first identifying the capacity in which it is relied upon. **Section 140(2)** protects members against some retrospective changes imposing additional share commitments, contribution obligations or share-transfer restrictions without the relevant agreement, subject to the statutory detail. The tutorial's question about who can enforce a rule should identify both the actual claimant and the particular contractual relationship the statute creates.

The **s 141 table** is a research map: it directs a student to the appropriate replaceable rule rather than resolving a factual dispute by itself. Students should find the exact entry about management, meetings, director appointment or other governance issues, and then determine whether that rule applies to the particular company or has been validly replaced. A well-written model answer says why a public-company mandatory rule or a special sole-director provision may prevent uncritical use of a replaceable rule. The constitution is not free to override all mandatory provisions of the Act.

Objects clauses and modern company capacity

Historically, a company's stated objects could be important to whether a transaction was beyond its permitted corporate purposes. Today's **s 125** requires more care. A constitutional restriction on powers or an objects provision does not automatically invalidate a company act merely because the act conflicts with that internal clause. The legal effect of the transaction must be distinguished from whether directors or others breached internal governance obligations. In the Lemon Aid tutorial, if a company set up to sell lemonade later sells T-shirts, the correct question is not simply ‘was T-shirt trading in the original objects?’. Check the current constitutional wording, s 125 and who validly approved the change of business. A separate claim against the decision-makers may arise without the transaction itself being void.

From corporate capacity to attributing wrongdoing

The Week 3 lecture then shifts from rules governing corporate conduct to who bears responsibility when harm occurs. A company cannot have a human brain, but it is capable of civil wrongs and, where the particular legal rules permit, criminal fault. The method is to identify the **elements of the specific offence or cause of action first**, then find the legally applicable attribution rule. The classic English identification approach illustrated by *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 was comparatively restrictive in its focus on an individual's directing mind for a particular kind of liability. It should be taught historically and in context, not presented as the only modern answer to every Australian statutory offence.

For relevant Commonwealth criminal offences, **Part 2.5 of the Criminal Code Act 1995 (Cth)** contains statutory rules addressing corporate criminal responsibility, including physical elements and fault elements. Section 12.3, for example, addresses fault elements other than negligence and the ways authorisation or permission through corporate culture or appropriate actors can become relevant. Which provisions apply depends on the particular offence and governing legislation. A State-law prosecution or a tailored statutory attribution regime may require a different approach. It is a legal mistake to cite a general attribution theory without explaining its applicability to the offence the prosecutor must actually prove.

Scholarly developments: attribution and corporate systems

The Week 3 reading list directs students to Samuel Walpole and Matt Corrigan, ‘Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct’ (2021) 43 *Sydney Law Review* 489. Its significance to legal education is conceptual: it prompts students to ask whether repeated organisational misconduct can be understood only by finding an individually culpable executive, or whether the corporation's processes, incentives, recording systems and decision routines may be relevant to an available statutory pathway to corporate responsibility. This is a research lens; it is not permission to invent liability where no statutory or common-law cause of action exists.

The user also supplied Elise Bant, ‘Rethinking Corporate Groups: Insights from Systems Intentionality’ (2025) 47 *Sydney Law Review*. Bant examines how a company, including a corporate parent, may express knowledge or intention through coordinated systems of conduct rather than merely through one individual's mental state. Her discussion engages with *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission* [2024] HCA 27 and reasoning directed to systemic unconscionable conduct. The careful practical question is whether a parent's own procedures, governance choices or group-wide policies can form part of **its own** contravening conduct or knowledge. That is not the same as declaring the subsidiary and parent a single legal person, and Bant's scholarly proposal should not be misrepresented as a universal statutory rule already enacted for all corporate offences.

The prescribed optional Penny Crofts reading on organisational attribution provides a further critical perspective on why formal individualist models can fail to account adequately for organisational harm. Students should identify whether a quotation is a legislative rule, a court holding, an academic criticism or proposed reform. The first two may provide operative law; the latter two deepen understanding, illuminate policy and potentially support arguments where legal doctrine leaves room, but do not substitute for the elements of the relevant offence.

Tutorial method: keep the two problem families distinct

For **Lemon Aid**, the questions concern registration, internal governance, contractual enforcement and objects. Apply ss 117–119 to the act of creating the company; ss 134–141 to the rule framework; s 140 to the relevant parties' enforcement rights; and s 125 to the effect of an objects restriction. For the **corporate-criminal-liability** question, start anew: identify the exact offence, the applicable attribution regime, the fault or physical elements, which persons or systems supplied evidence, and possible defences. Bring *Tesco*, the modern statutory approach, Walpole–Corrigan and Bant into the discussion for the distinct analytical jobs each can actually perform. The model answer should finish by saying what documents—board minutes, internal policies, training records, approvals, complaints, incident histories or audits—the lawyer would seek before advising on a corporation's liability.

The broader connection to Chapter 4 is profound: a governance rule allocates responsibility to a board, but real organisations act through processes. The board must understand who can act and how lawful supervision and reporting systems function. This is why a student who has carefully understood constitutional rules and attribution is much better prepared to study directors' responsibilities.

Source alignment: Chapple et al, **Company Law** *(3rd ed, 2023), Chapter 3 learning-objectives page 75 (only supplied textbook page); Bond Week 3 lecture, final-slide notes, Tutorial 3 and transcript; the separately supplied Bant article. The full body text of the textbook's Chapter 3 was not included in the supplied extract.*

Primary legislative research: Corporations Act 2001, Federal Register of Legislation. For statutory detail, use the provisions identified above and check the version operative on the material date.

Connecting registration, governance and corporate responsibility

Registration • constitutions • replaceable rules • civil and criminal attribution • corporate systems

1. Four questions that make Chapter 3 understandable

Imagine that classmates agree to operate **Lemon Aid Pty Ltd**. At first glance, the plan looks simple: agree on a name, choose directors and sell lemonade. A future lawyer must see four legally distinct questions. First, **has a separate legal person actually come into existence?** This is the registration question. Secondly, **which rules govern the relationship between the company, members and directors?** This is the internal-governance question. Thirdly, **does the company have capacity to make the proposed transaction, even if the company has broken its own internal rules?** This is the corporate-capacity question. Finally, **if a person causes harm while operating the business, on what basis can the act or mental state be treated as the company's?** This is the external-liability and attribution question.

The lecturer's recurring triangle makes this distinction visual: the company is the legal entity; the directors exercise management functions; members hold shares and relevant voting rights. Those components are connected, but they are not interchangeable. This explains why a company can remain bound to a third party even though its directors have disobeyed a constitutional restriction. It also explains why an employee's wrongful conduct can sometimes create liability for the company even though the company has no natural body or mind of its own.

2. Registration: ss 117, 118 and 119 are a sequence, not synonyms

The relevant legislation is *Corporations Act 2001* (Cth), **Chapter 2A, Part 2A.2**. Under **s 117(1)**, a person seeking to register a company must lodge the application with ASIC. The remaining provisions of s 117 deal with the information and consents involved in that application. When advising clients, check the intended company type, proposed members and share structure, registered office and director consents. The lecture rightly says that

students should know the *general process*, but not memorise filing prices or form numbers, which change over time.

Section 118 concerns ASIC's registration step: ASIC gives the company an Australian Company Number (ACN), registers it and issues a certificate. **Section 119** is the decisive legal event: a company comes into existence at the beginning of the day on which it is registered, takes the registered name and becomes capable of performing all the functions of a body corporate. The sequence matters: making a plan or lodging an application is not the same thing as having a registered corporation. In a problem question, identify the precise day of registration and whether any transaction occurred before it. Contracts entered into before registration may require separate analysis under **ss 131–133**.

Practical advice. A client who signs a supply agreement on Monday but registers the company on Thursday should not simply assume that the company was a contracting party on Monday. First identify the counterparty and the governing pre-registration-contract rules. The question is not resolved by calling the business "Lemon Aid Pty Ltd" in the negotiations.

3. What governs the company's internal relationships? Start with s 134

Section 134 is the gateway. It explains that internal management may be regulated through **replaceable rules**, a **constitution**, or a **combination**. The distinction is fundamental. A replaceable rule is a statutory default. A constitutional provision may displace or modify the default, but not a mandatory provision of the Act. Therefore, finding an apparently relevant rule in the Act is only the beginning. Ask whether the provision is a replaceable rule, whether a constitution exists, whether that constitution changes it, and whether another mandatory rule overrides the proposed arrangement.

Section 135(1) identifies when the replaceable rules apply and makes distinctions between company types; **s 135(2)** permits a constitution to displace or modify an applicable replaceable rule. **Section 135(3)** is especially examinable: failure to comply with a replaceable rule does not, *of itself*, amount to a statutory contravention attracting the Act's ordinary civil or criminal consequences. This does **not** make the rules pointless. Through **s 140**, the constitution and applicable replaceable rules operate as a statutory contract. Students must distinguish an internal contractual claim from a statutory civil-penalty offence.

Section 141 contains the *table* locating the replaceable rules. The lecturer warns that the leftmost item numbers are merely table numbers: identify the actual **Act provision** in the right-hand column. For example, the management rule is found at **s 198A**; appointment by members at **s 201G**; appointment by directors at **s 201H**; and proprietary-company director

removal at **s 203C**. Each may be displaced if genuinely replaceable; **public-company director removal under s 203D** is not replaced by an inconsistent constitutional rule. These connections also bridge directly to Chapter 4.

The narrow rule for a one-director, one-shareholder proprietary company deserves separate attention: **s 135(1)** has a specific exception for applicable replaceable rules in those circumstances, while **ss 198E, 201F and 202C** provide special rules. Never assume that a rule designed for an ordinary multi-person board applies unchanged to a single-person company.

4. A company's constitution: creation, alteration and limitations

Section 136(1)(a) addresses adopting a constitution on registration, with the requisite agreement of the proposed members. **Section 136(1)(b)** allows a company to adopt a constitution after registration by **special resolution**. **Section 136(2)** provides the usual method to modify or repeal the constitution: a special resolution. The concept of a special resolution must be tied to **s 9**, including the requirements for notice and at least **75 per cent of votes cast by members entitled to vote**. A 75 per cent threshold is not a requirement that 75 per cent of all issued shares support a proposal irrespective of voting.

The company constitution can allocate internal procedural powers, but must coexist with mandatory law. **Section 136(3)** addresses additional constitutional requirements for constitutional alteration in the circumstances it specifies. **Section 140(2)(a)–(c)** limits the binding effect of later alterations on an existing member unless the member agrees in writing where the alteration requires additional shares, increases relevant contribution or payment liabilities, or restricts transfer rights (subject to stated exceptions). A lawyer must read each paragraph and any exception before asserting that a majority can bind all members to an increased obligation.

In **Gambotto v WCP Ltd (1995) 182 CLR 432**, the High Court addressed constitutional amendments enabling compulsory acquisition of minority shares. The principle is not that all constitutional alterations affecting investors are invalid. The analysis asks whether expropriation is for a permissible purpose and whether it is fair in all the circumstances. Apply *Gambotto* when a change forces a member to surrender an ownership interest, not mechanically whenever a company amends a constitution.

Teaching example. If Lemon Aid's members want the class representatives to approve future share transfers, ask first whether that provision can validly be adopted or amended. Then ask who is entitled to enforce it as a membership-related right. Only after those

questions should you examine whether the clause conflicts with the Act or other applicable legal principles.

5. The statutory contract: s 140 contains three relationships

Section 140(1)(a) creates the statutory contractual relationship **between the company and each member**. **Section 140(1)(b)** concerns **the company and each director and company secretary**. **Section 140(1)(c)** concerns **members as between themselves**. These are separate statutory relationships, not interchangeable descriptions of one contract. In any tutorial problem, write the relevant paragraph out and explain **why that plaintiff is a party entitled to enforce the particular right**.

The leading authorities concerning rights conferred by constitutions, including **Hickman v Kent or Romney Marsh Sheep-Breeders' Association** [1915] 1 Ch 881, **Eley v Positive Government Security Life Assurance Co Ltd** (1876) 1 Ex D 88 and **Bailey v NSW Medical Defence Union Ltd** (1995) 184 CLR 399, distinguish member rights from merely personal or outsider rights. A clause mentioning a person does not necessarily confer an enforceable right on that person in every capacity. Class representatives who are not members or officers cannot assert statutory-contract standing merely because they are named in the constitution. Consider their actual legal relationship and whether a separate enforceable bargain exists.

The practical sequence is **identify the clause → identify the intended right → identify the claimant's capacity → identify the relevant s 140 relationship → consider any statutory or equitable qualification → state the available relief**. Relief for breach may include a declaration or injunction in suitable circumstances; a private-party contractual remedy cannot be assumed without establishing standing, breach and the court's power.

6. Corporate capacity is not the same as internal permission: ss 124–125

Section 124(1) broadly confers on a registered company the legal capacity and powers of an individual, together with specified body-corporate powers such as issuing shares. The old doctrine of *ultra vires* allowed objects clauses to invalidate transactions outside the company's objects. **Ashbury Railway Carriage & Iron Co Ltd v Riche** (1875) LR 7 HL 653 illustrates the historical doctrine; it does not state the current Australian statutory result.

Section 125(1) states that exercise of a power is not invalid merely because it breaches an express constitutional restriction or prohibition. **Section 125(2)** similarly provides that an act is not invalid merely because it goes beyond stated objects. A limited corporate purpose is therefore not necessarily an external obstacle to a valid contract. It may instead create an **internal governance problem** concerning whether directors acted within their authority and duties. This reflects the lecturer's policy question: which is more efficient and fair, forcing outsiders to police internal objects clauses or protecting transactions while enforcing internal discipline?

Tutorial example. Lemon Aid's constitution refers to selling lemonade. Its directors subsequently order t-shirts. Start with **ss 124 and 125(2)**, not with an automatic assertion that the t-shirt purchase is void. Then consider internal allocation of decision-making power, relevant director duties and any other independently applicable statutory or contractual constraints. Do not substitute a constitution's internal restriction for a lack of corporate capacity.

7. Civil wrongdoing: primary attribution and vicarious liability are different routes

A corporation is a separate legal person, but its activities occur through human beings and organisational systems. A claimant must identify **the duty or wrong** before selecting a method of attribution. **Vicarious liability** is secondary responsibility for qualifying conduct of another person: the relationship and connection between the wrongdoing and employment or another recognised basis are critical. **Primary or direct liability**, by contrast, treats conduct or knowledge attributable under the applicable rule as the company's own. The mere fact that an employee works for the company does not prove every form of direct corporate fault.

The traditional **organic theory**, taught through **Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd** [1915] AC 705 and **HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd** [1957] 1 QB 159, asks whether a particular human decision-maker operated as the company's **directing mind and will** for the relevant activity. In *Lennard's*, the ship-owner company's ability to invoke the statutory exemption depended on actual fault or privity. The executive's management role in relation to the ship made his relevant knowledge attributable to the corporation. The lesson is not that the managing director is automatically the company's mind for every conceivable issue; ask **who had entrusted responsibility for the function at issue**.

Tesco Supermarkets Ltd v Nattrass [1972] AC 153 is the lecturer's critical counter-example. A store manager failed to follow promotional pricing procedures, leaving

customers exposed to misleading pricing. The House of Lords considered a defence under the particular UK *Trade Descriptions Act* scheme and distinguished a manager carrying out instructions from a person acting as the corporation's controlling mind. The store manager was **not**, on those facts and in that statutory setting, the company's directing mind. This does not give every company blanket immunity for failures by local managers. The result depends on the **wording, purpose and structure of the relevant substantive law**, and on which form of liability is being claimed.

Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500 provides the necessary modern qualification. Attribution rules must be selected in light of the **purpose of the rule to be applied**. A disclosure obligation could be defeated if knowledge held by the relevant employees could never count as knowledge of the corporation. Thus, do not teach *Tesco* as an eternal, universal rule that only board members' minds may be attributed. Ask what the particular legislature or rule is trying to make the corporation do and whose knowledge is relevant to that function.

8. Corporate criminal responsibility: identify the offence before the attribution test

The lecturer's slides distinguish **criminal offences that do not require proof of fault** from offences involving **intention, knowledge or recklessness**. That distinction controls your answer. Do not assume that every corporate offence requires an identifiable individual with a guilty mind. Conversely, do not assume that a company commits an offence solely because wrongdoing occurred somewhere within its workforce. Start with the statute creating the offence: identify its **physical elements**, **fault elements** and any **defence**, including any objective or strict-liability formulation.

For offences governed by the **Commonwealth Criminal Code**, corporate responsibility is addressed in **Part 2.5, Division 12** of the Schedule to the *Criminal Code Act 1995* (Cth). **Section 12.1** establishes the application of that Part; **s 12.2** addresses attribution of **physical elements** performed by employees, agents or officers acting within actual or apparent employment or authority. **Section 12.3(1)** governs specified fault elements—intention, knowledge or recklessness—by requiring corporate authorisation or permission in the terms of that provision. It is not enough to recite 'corporate culture' without identifying the particular offence and how the fault element is said to have been established.

The alternative methods in **s 12.3(2)(a)–(d)** matter individually. Paragraph **(a)** concerns action or authorisation by the board; **(b)** a high managerial agent, subject to the **due-diligence defence in s 12.3(3)**; **(c)** a corporate culture that directed, encouraged, tolerated or led to non-compliance; and **(d)** a failure to create and maintain a culture requiring

compliance. **Section 12.3(4)** identifies relevant considerations for the culture pathways, and **s 12.3(6)** defines 'corporate culture' and 'high managerial agent'. The lecturer's notation **'s 12.3(c), (d)'** is shorthand; for accurate statutory referencing use **s 12.3(2)(c)–(d)**. The Code's specific application requirements must be satisfied; it is not a universal template for every State crime or regulatory offence.

The slide discussion of a childcare-service prosecution is an example of why a court may focus on the breach of a **direct statutory obligation** rather than attempt to prove a senior manager's guilty mind. Before using it in an answer, identify the enactment and whether the offence is strict liability, absolute liability or subject to a specific defence. Each is legally different. Do not infer that a company's only possible consequences are fines, or that criminal liability automatically follows from civil compensation.

9. Why organisational systems now matter

Traditional 'find the guilty individual' approaches can struggle with dispersed decision-making. A large company may generate harm through a combination of recruitment incentives, computer processes, customer scripts, targets, audits, complaints handling and management responses. There may be no single employee who designed the entire sequence. The lecturer's final slide therefore asks students to analyse **systems of conduct, policies, practices and feedback loops**. This is not rhetoric: the organisation's operational architecture may be evidence of what it actually intended or tolerated.

In **Productivity Partners Pty Ltd v Australian Competition and Consumer Commission** [2024] HCA 27, concerning Captain Cook College, the High Court examined the operation of a VET enrolment system and the dismantling of safeguards that had prevented unsuitable students from being enrolled. The case arose under **s 21 of the Australian Consumer Law** concerning unconscionable conduct, not a prosecution under Criminal Code s 12.3. The evidence about corporate practices and their foreseeable effect supported the legal analysis under the ACL. A particularly important idea is **responsiveness**: an organisation may learn that its practices cause harm and then either correct the system or decide to retain it because it is profitable. The latter can be probative of its attitude and purpose. Yet bad outcomes alone do not prove a specific mental element; an uncorrected mistake must be evaluated in context.

The assigned article by **Elise Bant**, 'Rethinking Corporate Groups: Insights from Systems Intentionality' (2025) 47 *Sydney Law Review*, explains how corporate groups may operate through coordinated systems and why the parent's own system design can be relevant to direct responsibility. An article is **scholarship**, not a newly enacted rule. Do not present its proposals as automatic piercing of the corporate veil. If advising a claimant, identify an

established cause of action against the relevant legal entity, then ask whether the evidence of group systems proves **that defendant's** own elements of liability.

Samuel Walpole and Matt Corrigan, 'Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct' (2021) 43(4) *Sydney Law Review* 489, examines **system-of-conduct offences as a reform proposal**. The course directs students to Parts II.B–C and IV. **Penny Crofts**, 'Three Recent Royal Commissions: The Failure to Prevent Harms and Attributions of Organisational Liability' (2020) 42 *Sydney Law Review* 395, provides further policy context. **ALRC Report 136, Corporate Criminal Responsibility (2020)** contains reform recommendations, which must not be confused with enacted offences. Use these resources to critique older attribution approaches, not to replace exact statutory elements.

Worked example. A retailer's billing algorithm overcharges customers. At first, the error may be a systems failure. Once the business receives repeated complaints and authoritative reports, continuing to run the flawed process for financial advantage changes the evidential picture. A lawyer asks: what did the relevant officers know, when did they know it, what did the company do in response, what legal obligation governed the conduct, and does the evidence satisfy the precise fault test? That is the teaching value of systems intentionality.

10. The two original Tutorial 3 question families — why the chosen provisions differ

Lemon Aid (Question 1) is principally a problem about legal formation and internal allocation of rights. For registration, cite **ss 117–119** and say why each is a different stage. For whether class representatives can approve company decisions, find the constitutional clause and the statutory **s 134 / s 135 / s 140** framework, identifying exactly **who** can enforce the relevant clause and **in which capacity**. For moving from lemonade to t-shirts, explain **s 124(1)** and **s 125(2)**, and why a conflict with a company's objects is **not itself** an invalid transaction. Where amendment is needed, explain **s 136(1)–(2)**, the special-resolution definition in **s 9**, and any limits under **s 140(2)**. Use *Gambotto* only if the actual change warrants that analysis.

Corporate criminal liability (Question 2) begins at a different location. Identify the statutory offence and the relevant legal person; separate strict or absolute liability from offences requiring fault; then explain **Criminal Code ss 12.1–12.3** if applicable. Use *Lennard's*, *Tesco* and *Meridian* to explain the history and limits of personal attribution, but keep each tied to its own legal context. Use *Productivity Partners* and Bant to explain why systems may evidence corporate intention, remembering that the High Court case concerns

ACL unconscionability. Use Walpole–Corrigan and the ALRC as **reform and policy discussion**, not freestanding liabilities.

The following original tutorial questions and their full model answers now test these connected principles. A successful answer explains why each statutory provision and authority is relevant, identifies the facts that must be proved, addresses the strongest counterargument and reaches a reasoned conclusion.

11. Key legislation summary — what provision answers which question?

- **Corporations Act ss 117(1), 118, 119:** application; ASIC registration/ACN/certificate; legal existence.
- **Corporations Act s 134; s 135(1)–(3); s 141:** constitution and replaceable-rule sources, displacement, statutory-contract rather than automatic civil/criminal penalty, and the replaceable-rule locator table.
- **Corporations Act s 136(1)–(3) and s 9:** adopting/changing a constitution and special resolutions.
- **Corporations Act s 140(1)(a)–(c), (2)(a)–(c):** three statutory-contract relationships and member-protection limits on later alterations.
- **Corporations Act ss 124(1), 125(1)–(2):** corporate capacity and the consequences of objects/powers restrictions.
- **Criminal Code Part 2.5, ss 12.1–12.3:** when this Commonwealth corporate-attribution regime applies, how conduct is attributed, and the distinct means of proving specified fault elements, especially **s 12.3(2)(c)–(d)**.
- **Australian Consumer Law s 21:** the substantive unconscionability provision considered in *Productivity Partners*, which is **not** Criminal Code s 12.3.

12. Week 3 research resources and reading guide

The designated *Company Law* (3rd ed, 2023) pages are **Chapter 1, pp 38–40; entire Chapter 3; and Chapter 5, pp 135–139 (s 5.7)**. The supplied 'Chapter 3' PDF contains the **learning-objectives page only**, so the surrounding textbook content is not presented as directly verified. The lecture, final-slide notes, original tutorials, primary legislation and the

following verified public references have been used to create this original additional explanation:

- Corporations Act 2001 (Cth), latest authorised compilation — Federal Register — locate ss 117–119, 124–125 and 134–141 in Volume 1.
- Criminal Code Act 1995 (Cth), current legislation — Federal Register — Schedule, Chapter 2, Part 2.5, especially ss 12.1–12.3.
- Commonwealth Criminal Code, s 12.3 — Attorney-General's Department practitioner guide — a direct provision-focused explanatory source.
- Productivity Partners Pty Ltd v ACCC [2024] HCA 27 — High Court judgment page — the actual Australian Consumer Law decision and its reasoning.
- Walpole and Corrigan, 'Fighting the System' — Australian Law Reform Commission-hosted original PDF — Parts II.B–C and IV are required reading.
- Bant, 'Rethinking Corporate Groups' — university research record and DOI — assigned pp 1–3, with discussion of the systems framework.
- ALRC Report 136, *Corporate Criminal Responsibility* — reform proposals and policy context.

The optional *Tesco* case extract and the Crofts paper remain recommended further reading. The lecturer's notes on slides **37–39** are essential because the recorded forum ended before that explanation was completed. A precise citation identifies the relevant legal provision; a blue research link takes the student to the authoritative source. Where a reliable deep link to a subsection is not available, the link goes to the official Act and the subsection is spelled out in full rather than presenting an invented URL.

CHAPTER 3 — TUTORIAL 3

Registration, Corporate Constitutions and Corporate Civil and Criminal Liability

The following tutorial belongs to **Chapter 3 (Week 3 teaching)** and was discussed in **Week 4**. The original university question passages are reproduced from the supplied Tutorial 3 handout. The answers distinguish what the question actually asks from supplementary explanations students should know as prospective lawyers. The discussion uses the *Corporations Act 2001* (Cth), the *Criminal Code Act 1995* (Cth), the cases taught in Chapter 3 and the specified scholarly readings. References to legislation concern the law relevant to the hypothetical, not a finding that the fictional company has committed an offence.

The legal reasoning map: three different questions

Company lawyers must avoid treating incorporation, governance and liability as one rule. The first question is whether a legal person exists: **ss 117–119** answer how a company is registered and when it comes into existence. The second is how that legal person governs itself: **ss 134–141**, along with its constitution and replaceable rules, tell us which internal arrangements operate and which legal relationships are enforceable. The third question is how the company incurs liability in civil or criminal law: its separate existence does not itself prove fault, and the answer depends on the substantive obligation, attribution and the applicable statutory offence.

The company is not identical to its directors or shareholders. The directors are normally the management organ, but the company has its own legal personality. An action by a director may be authorised internally, unauthorised internally but externally effective, or attributable to the company for a particular legal purpose. Students must keep those distinctions separate. The Lemon Aid scenario deliberately tests **registration, replacement rules, the constitution as a statutory contract, and the modern treatment of corporate capacity**. The later criminal-liability question asks a deeper theoretical question: can wrongdoing committed across a corporate system be regarded as the company's own culpability even where the fault cannot neatly be located in one senior employee?

THE ORIGINAL TUTORIAL QUESTIONS — REPRODUCED IN FULL

Question 1

Assume that our tutorial section has decided to form a class lemonade business as a proprietary company, Lemon Aid Pty Ltd (“Lemon Aid”), using the example we have discussed in the lectures this semester. Please give BRIEF answers to the following questions:

How do we legally create the company? (Please answer this at a general level only (1-2 sentences); for our purposes, you do not need to descend into the minutiae of the process.)

We register Lemon Aid before discussing our mutual expectations regarding the internal rules as to how the company will be governed. Assume that a dispute arises over whether and how the class can remove the first directors who were named to the board when we created the company. Where, if anywhere, can we look to figure out what needs to be done?

Note: Please do not discuss HOW to do this. This question is merely asking where to look! We will discuss the mechanics of how to do this later in the semester.

Our class decides that we want our company to have a rule that the Corporate Law class representatives must approve all removals of directors from Lemon Aid board. Is there any way to make this expectation legally binding? What procedure (if any) would need to be followed to do this?

Assuming that there is a way to do this, who would be able to enforce that provision, and what is the legal authority that creates the right to do so?

Halfway through the semester, we decide to change our business focus from selling lemonade to selling t-shirts. Is there any legal restriction on our ability to do so? What is the legal concept at issue here? Consider how this issue was approached historically compared to now. What has changed? Who gains and who loses under the old versus modern approaches? Which approach is better?

Question 2

Corporate criminal liability. Note: we will not study the many specific rules that impose criminal liability on corporations (the separate legal entity, as opposed to the human beings acting through the corporation). I want you to focus on the big picture conceptual considerations relevant to this area.

What are the arguments for and against imposing corporate criminal liability on companies themselves, rather than (or in addition to) on the individual human beings who used the corporation to engage in misconduct or who allowed it to take place? Do you agree with the concept of imposing criminal liability on the separate legal entity (the corporation itself)? Why or why not?

Where a crime has a mens rea requirement, how do we figure out whose mental state is treated as the company's mental state for purposes of satisfying that element of the crime? What are the problems with the older approaches to doing this and what modern approaches are being used (or considered) to supplement them? Do you think the modern approaches are a good idea? Why or why not? See Tesco Supermarkets Ltd v Nattrass in the Library Resource List for additional context.

Note: to help you answer Question 2(a), please read the assigned selections from the two extremely interesting law review articles provided in the class's Library Resource List for Week 3:

Parts II.B and C and Part IV in the following article: Samuel Walpole and Matt Corrigan, 'Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct' (2021) 43 Sydney Law Review 489.

Introduction (Part I) and Part II of the following article: Penny Crofts, 'Three Recent Royal Commissions: The Failure to Prevent Harms and Attributions of Organisational Liability' (2020) 42 Sydney Law Review 395.

HIGH DISTINCTION TEACHING ANSWERS

Question 1 — Lemon Aid Pty Ltd: registration, governance and corporate capacity

Question 1(a): How do we legally create Lemon Aid Pty Ltd?

Issue. A collection of students cannot create a company merely by calling their lemonade venture “Lemon Aid Pty Ltd”. They must incorporate under the applicable statute. The name identifies the intended legal form, but it is the formal registration that creates the legal person.

Exact law and its function. The *Corporations Act 2001* (Cth) makes registration an Australian Commonwealth process. **Section 117(1)** allows an application to ASIC for registration of a company. The application must contain the information required by the balance of s 117, including the company’s proposed type, name and particulars of relevant officeholders and members. **Section 118** concerns ASIC’s registration of the company and its issue of a certificate. **Section 119** answers the decisive legal question: a company comes into existence as a body corporate at the beginning of the day on which it is registered, with the name specified in the certificate and subject to the Act.

Why use these provisions? Section 117 identifies the procedure; s 118 is the regulator’s action; s 119 establishes the moment the separate legal entity exists. Without the s 119 step, a student may confuse the agreement to start trading with the birth of the incorporated company. The company’s later capacity and ownership of property depend on the existence of this separate legal person.

Tutorial-ready answer, matching the requested brevity. Apply to ASIC under **s 117** to register Lemon Aid as a proprietary company and provide the required particulars and consents. ASIC registers the company under **s 118**, and **s 119** establishes its separate corporate existence on the registration day. The finer administrative details were expressly not requested.

Professional note. Before giving real client advice, verify the preferred company type, availability of name, shareholder arrangements, director eligibility and whether the intended business needs specific licences. Those due-diligence matters are different from the narrow registration question.

Question 1(b): We forgot to negotiate how first directors may be removed. Where do we look?

Issue. The tutor deliberately asks *where the rule can be found*, not for a full director-removal procedure. The problem is to identify the company's applicable internal rulebook.

Law. **Section 134** provides the organising framework for internal management: a company's internal management may be governed by replaceable rules, a constitution, or a combination of the two. **Section 135(1)** identifies the companies and circumstances to which replaceable rules apply, and **s 135(2)** permits constitutional provisions to displace or modify replaceable rules. **Section 141** contains the table of replaceable rules. The relevant default provision for a proprietary company's member removal of directors is **s 203C(a)–(b)**, allowing members by resolution to remove and replace a director. It is a replaceable rule rather than the mandatory public-company regime under **s 203D**. **Section 203CA**, however, imposes a separate statutory limit where the proposed removal would leave a proprietary company without a director; this must not be mistaken for a replaceable rule that can simply be switched off.

Application. Lemon Aid was formed before the classmates negotiated a tailored governance arrangement. The lawyer should obtain its registration documentation and any constitution. If no relevant constitution was adopted or if it does not displace the rule, inspect **ss 134–135, the s 141 table and s 203C**, subject to applicable mandatory provisions. Do not automatically apply the public-company removal procedure to a proprietary company.

Direct answer. Look first at **Lemon Aid's constitution (if it has one)** and then at the **applicable replaceable rules in the *Corporations Act*, especially s 203C**, read with ss 134–135 and 141. The exact procedural steps were not requested, so a competent answer identifies the sources without diverting into meeting notices and voting calculations.

Question 1(c): Can approval by the Corporate Law class representatives become legally binding?

Issue. Students want a governance restriction requiring class representatives to approve removal of Lemon Aid directors. The question is not whether that sounds fair; it is how to create and enforce a legally operative rule, and whether mandatory statutory law constrains it.

Law. Under **s 136(1)(a)** a constitution may be adopted on registration if the persons to become members agreed in writing before the application was lodged. Lemon Aid did not settle its expectations before registration; **s 136(1)(b)** therefore provides the principal route: a company may adopt a constitution *after* registration by **special resolution**, or under an

applicable court order. **Section 136(2)** similarly permits modification or repeal of a constitution by special resolution unless the Act provides otherwise. Section 9 defines a **special resolution** and its notice/majority requirements; normally at least **75% of votes cast** by members entitled to vote on the resolution is necessary, in accordance with the statutory meeting and notice rules. That is 75% of the relevant votes **cast**, not automatically 75% of all shares on issue.

The company's constitution may displace or modify the replaceable director-removal rule under **s 135(2)** and **s 203C**. A member-only shareholders' agreement may also embody contractual voting arrangements, but that is a different instrument and cannot be treated as the company's constitution. Statute still prevails over inconsistent internal rules: for example, **s 203CA** protects against a proprietary-company member resolution that would leave no director, subject to statutory exceptions; a constitution cannot make an otherwise prohibited act valid.

Application. The class should first draft a precise approval provision. Who exactly are the "class representatives"? How are they chosen and replaced? Is approval to be given in writing? What if the representatives cannot agree or have left the course? Does the clause cover all removals or only removals proposed by members? Does it purport to give veto rights to non-members? These questions matter because a badly defined clause may create costly disputes over whether valid approval occurred. If a company constitution is adopted or amended in the required way, its provisions can have legal effect under **s 140**, within the statutory framework. The students should distinguish a provision obliging the members to vote only upon an approval process from a vague promise that a non-member outsider will possess an automatically enforceable constitutional right.

Counterargument and qualification. A student might answer, "Put the veto into the constitution and it is binding on everybody." That is too broad. Section 140 defines particular contracting relationships, not a contract between the company and every stranger who happens to be mentioned. Further, if the proposed veto is inconsistent with a mandatory rule, the statute controls. The question is about a **proprietary** company, so students should not copy the public-company override in **s 203D(1)** without explaining why it does or does not apply.

Conclusion and drafting advice. Yes, Lemon Aid can pursue a carefully drafted constitutional approval rule by **special resolution under s 136**, displacing an inconsistent replaceable rule insofar as the Act permits. The class should identify the beneficiaries, voting threshold and procedure precisely, and separately consider whether an enforceable members' agreement is desirable. Do not promise that the clause can override mandatory provisions or bestow direct contractual rights on every non-member representative.

Question 1(d): Who can enforce the approval clause, and why?

Issue. Once a constitutional clause is adopted, a lawyer must ask **who sues whom and in what legal capacity**. A right being mentioned in a constitution is not enough; identify the precise statutory-contract relationship.

Section 140(1) provides that a company's constitution and applicable replaceable rules take effect as a contract: **s 140(1)(a)** between company and each member; **s 140(1)(b)** between company and each director and company secretary; and **s 140(1)(c)** between each member and the other members. Each contracting person agrees to observe the relevant rules **so far as they apply to that person**. **Section 140(2)** also protects existing members against specified after-acquisition changes requiring extra shares, greater payment obligations or restrictions on transfers without their written consent, subject to its stated qualifications. It is important not to recite s 140 as if it covers unlimited outside rights.

Cases and why they matter. *Hickman v Kent or Romney Marsh Sheep-Breeders' Association* [1915] 1 Ch 881 is used to teach that the constitution creates enforceable relations in the relevant member/company capacity. *Eley v Positive Government Security Life Assurance Co* (1876) 1 Ex D 88 is the classic warning that a clause giving a person a role as solicitor does not necessarily allow that person to sue on the constitutional clause **as solicitor**, an outsider capacity. The modern statutory analysis must still turn on the Australian text in **s 140**, which is controlling; these older cases illustrate rather than override the statutory relationships.

Application. A Lemon Aid shareholder whose membership rights are engaged may seek to enforce an applicable approval requirement against the company, and another member may have corresponding obligations in the member/member relationship under s 140(1)(c). If a director or secretary invokes a genuinely applicable rule, consider s 140(1)(b) and the person's capacity. However, the class representatives, **if they are not members, directors or company secretaries**, cannot simply assume an independent right under s 140 because the constitution names them. A separate contractual arrangement or an appropriately structured member-based right may be necessary. Remedy depends on standing, the threatened breach and the substantive clause: declaratory or injunctive relief may be relevant, but not automatic.

Conclusion. Enforcement is through the **specific statutory contract created by s 140(1)(a), (b) or (c)**, only to the extent the rule applies to the person in the relevant capacity. This is why the identity and capacity of each party are essential facts in a lawyer's advice.

Question 1(e): Lemonade to t-shirts — the ultra vires problem and why modern law changed

Issue. Is Lemon Aid legally disabled from changing its business from lemonade to t-shirts? The issue is **corporate capacity** and the historical *ultra vires* doctrine, not simply the directors' commercial wisdom.

Historical law. In *Ashbury Railway Carriage and Iron Co Ltd v Riche* (1875) LR 7 HL 653, a company established for specified objects purported to enter a contract outside those objects. The traditional *ultra vires* doctrine could treat such a contract as beyond the company's capacity and void. The rule aimed to protect investors and creditors by preventing deployment of pooled funds beyond the company purpose, but it created insecurity for outsiders who might have no practical way to verify or control the company's internal objects. That historical rule must not be quoted as the current law for an Australian company.

Present Act and pinpoint provisions. **Section 124(1)** gives a company the legal capacity and powers of an individual and additional powers of a body corporate, subject to the Act. **Section 125(1)** allows a constitution to restrict or prohibit the exercise of powers, but states that an act is **not invalid merely because** it is contrary to such a restriction. **Section 125(2)** likewise allows the constitution to state corporate objects but provides that an act is **not invalid merely because** it is contrary to or beyond those objects. These two limbs address different drafting techniques: one restricts powers, the other states purposes. Neither simply resurrects the historical external-invalidity rule.

Application. If Lemon Aid did not adopt a restrictive constitution, switching from lemonade to t-shirts is not prohibited merely by its incorporation as a company. Even if it has an objects clause focused on lemonade, the sale of t-shirts is **not automatically void** under s 125(2). The new business may nevertheless trigger internal questions about directors' authority, constitutional compliance and duties, and external requirements such as licences or trade-mark law. Those matters must be analysed separately from corporate capacity.

Who gained and who lost? Under the old approach, an investor who assumed the company would never stray from its objects gained a rigid legal protection, but an innocent trading counterparty could lose the bargain because of undisclosed objects. Under the modern framework, trading counterparties and companies gain transactional certainty. Members still have constitutional, statutory and governance rights, but cannot generally avoid a corporate transaction simply because it goes beyond an objects statement.

Reasoned evaluation. The modern approach is preferable for commercial reliability because it separates the company's capacity to transact from accountability for unauthorised decisions. That preference is a reasoned policy evaluation, not a statement that governance restrictions or directors' duties have disappeared.

Conclusion. The subject is *ultra vires*. Historically an outside-objects act could be void; today **ss 124(1) and 125(1)–(2)** prevent external invalidity merely from a constitutional restriction or objects clause. Lemon Aid can generally change business activity, while internal compliance and other laws remain relevant.

Question 2 — Corporate criminal liability: why organisations, and whose guilty mind?

Question 2(a): Arguments for and against corporate criminal responsibility

Issue. This is a question about the separate corporation's possible criminal responsibility in addition to, or sometimes instead of, responsibility of individual offenders. It is not satisfied by saying that "companies cannot think", nor by treating every employee crime as automatically the company's crime. A criminal conviction requires an **actual applicable offence** and proof of its elements under the relevant regime. The tutorial specifically asks for the conceptual architecture rather than an exhaustive list of offences.

Why corporate responsibility is recognised. A large company can organise and profit from conduct through authority hierarchies, IT systems, product design, purchasing targets, incentive schemes and reporting structures. Harm may be produced by the interaction of those arrangements even where no single employee designs the entire course of misconduct. If law prosecuted individuals only, a profitable corporate system could survive their departure; the entity that controls the processes and receives the benefit might have insufficient incentive to reform. Treating a body corporate as a possible defendant can better align deterrence and remediation with the organisational source of the risk.

Arguments in favour. Corporate criminal liability can deter directors and senior executives from designing unlawful operating systems; create incentives to fund training, controls and reliable reporting; provide a formal public condemnation of serious organisational wrongdoing; enable sanctions directed at the corporate entity rather than an unlucky low-level worker; and make it possible to investigate aggregate, repeated patterns of harm. It also addresses the practical problem of employee turnover: the organisation persists even if the human agents leave.

Arguments against. A fine imposed on the corporation may ultimately harm innocent employees, pension funds, shareholders or customers rather than those who chose the conduct. Large companies may pay fines as a business cost; criminal proof and culpability concepts designed for natural persons can be stretched unconvincingly; and there is a serious risk of over-attribution if a rogue employee acting secretly is assumed to embody the organisation. Criminal liability must not replace personal accountability for decision-makers, and it must satisfy legality, procedural fairness and the applicable prosecution

standard. Effective enforcement may sometimes require civil remedies, compensation, administrative sanctions and governance changes rather than relying on a criminal label alone.

The two assigned scholarly readings. In *Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct* (2021) 43(4) *Sydney Law Review* 489, **Samuel Walpole and Matt Corrigan**, especially Parts II.B–C and IV, analyse why offences organised around a pattern or system of corporate conduct may respond more effectively to misconduct dispersed across the organisation than models requiring a single individual guilty mind. This is a discussion of **proposed or alternative offence design**, not a licence to assume that every repeated compliance failure is already a general criminal offence. In *Three Recent Royal Commissions: The Failure to Prevent Harms and Attributions of Organisational Liability* (2020) 42(4) *Sydney Law Review* 395, **Penny Crofts**, particularly the Introduction and Part II, examines serious institutional harms and the inadequacy of attribution models that fail to recognise organisational structures as a source of culpable risk. She discusses failure-to-prevent approaches as a reform direction. The two readings complement each other: one focuses strongly on *systematic conduct offences*; the other on institutional harms and *failure-to-prevent* responsibility.

Law versus policy. Students must explicitly distinguish existing Australian criminal law from reform proposals. The Commonwealth **Criminal Code**, Part 2.5 (Division 12), provides a statutory attribution framework, including corporate culture. Its reach depends on the particular offence and applicable law. It does not follow that Part 2.5 is an automatic answer to every State, Commonwealth or common-law offence. That jurisdictional qualification is essential in a competent legal opinion.

My reasoned position. Corporate criminal liability is justified for offences in which the company itself, through its agents and governing systems, can fairly be shown to satisfy the governing legal test. It should be coupled with personal accountability where individual guilt is proved, and sanctions should be designed to repair institutional controls rather than simply transfer money from innocent shareholders. A serious lawyer also asks whether the evidence proves criminal fault rather than assuming the seriousness of an adverse outcome establishes guilt.

Conclusion. A coherent system should allow corporate criminal responsibility where a legally defined offence and its elements are proved, especially where the misconduct reflects organisational systems or culture. But it should not convict by association, conflate civil regulation and criminal culpability or dispense with the separate analysis of individual liability and possible remedies.

Question 2(b): Mens rea — whose state of mind is attributed to the company?

Issue. Many crimes require a **physical element** (*actus reus*) plus a **fault element** such as intention, knowledge or recklessness (*mens rea*). A company has no brain, so the legal question is whether the knowledge or intent of one or more natural persons, or features of the corporate system recognised by statute, satisfy that particular fault requirement for that company and offence.

Traditional identification doctrine. In *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705, the court treated the conduct of a sufficiently senior controlling person as capable of being the company's own act. In *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153, the House of Lords considered the dividing line between the company's directing mind and an employee performing delegated work within a system of supervision. The employee's wrong did not automatically prove the company's own mental state. Students use *Tesco* to demonstrate the **limitation of locating a corporate guilty mind only among particular senior individuals**: modern businesses frequently decentralise decisions, so serious corporate harm may be distributed across workers, departments and software processes.

Purpose-specific attribution. *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 demonstrates that attribution should be analysed by reference to the language and purpose of the substantive legal rule. The relevant manager's knowledge may be attributed for a particular disclosure obligation if the rule would be defeated by insisting on knowledge only at board level. It does not follow that the same manager's knowledge becomes the corporate mind **for every offence or civil duty**. Always identify the statute or substantive obligation first.

Commonwealth statutory model — exact sections. Part 2.5 of the Criminal Code Act 1995 (Cth), Schedule, includes: **s 12.1(1)–(2)**, recognising corporate criminal responsibility with necessary modifications; **s 12.2**, attributing physical elements committed by employees, agents or officers acting within actual or apparent scope of employment or authority; and **s 12.3(1)**, concerning attribution of intention, knowledge and recklessness where the corporate body expressly, tacitly or impliedly authorised or permitted the offence. The non-exhaustive means in **s 12.3(2)(a)–(d)** include board conduct or authorisation, relevant high-managerial-agent conduct or authorisation, the existence of a corporate culture directing, encouraging, tolerating or leading to noncompliance, and failure to create and maintain a culture requiring compliance. **Section 12.3(3)** and associated definitions and qualifications must be considered where reliance is placed on high managerial agents. **Section 12.4** contains the framework for negligence, including assessment through corporate conduct; it must not be casually substituted for proof of intention. **Sections 12.5–12.6** address particular defences or intervening matters. The section must be read with the text and application of the offence alleged, and with any contrary legislative intention.

Why the subsections are not interchangeable. Section 12.2 is about the **physical act or omission**. Section 12.3 is about **specified fault elements**, not negligent conduct generally. Within s 12.3(2), the board/high-managerial-agent pathways are more person-centred, while the corporate-culture pathways engage the organisation's policies, practices and accepted way of operating. An examiner may provide evidence of ignored safety warnings, deliberately impossible productivity targets or systematic falsification. That evidence must be matched to the legal pathway it actually supports, rather than being treated as automatic proof of each one.

Worked lawyer's method. Suppose a logistics company routinely instructs employees to conceal a legally reportable safety incident. Begin by identifying the exact reporting offence, whether it applies to a body corporate and its elements. Prove the physical element and examine whether the employee acted within employment or authority for **s 12.2**. If knowledge is required, use **s 12.3(1)** and identify available evidence supporting board or senior-agent permission or the corporate-culture limbs under **s 12.3(2)**. Policies, emails, risk reports, executive minutes, staff instructions, whistleblower complaints and enforcement histories are probative of what the organisation authorised or tolerated. Defences and qualifications must then be separately analysed; the mere presence of a safety policy in a handbook is not necessarily proof of a compliant operational culture.

The problem with older models. A business may be deliberately structured so that no single executive knows every element of the offence. A strict identification-only model may reward fragmentation of knowledge and fail to capture organisational misconduct. Yet the opposite approach—pooling everyone's knowledge without legal authority—risks manufacturing a guilty mind. Modern purpose-specific attribution and legislation recognising corporate culture are attempts to avoid both errors.

Reform and academic connection. *Walpole and Corrigan* argue that a system-of-conduct or pattern-of-behaviour offence can address sustained wrongdoing where classical individual-focused elements fit poorly. *Crofts* explores regulatory and criminal approaches that focus on organisational failure to prevent harm, drawing on institutional evidence. Their proposals are reasons to scrutinise how an offence is framed; they should not be described as if each suggested offence has been enacted in Australia.

Counterarguments, consequences and remedies. The company may argue that an employee acted secretly outside actual or apparent authority, that the relevant corporate-culture evidence does not prove the particular mental element, or that the legal rule does not contemplate that attribution. Prosecutors must prove the actual offence and the necessary mental elements; corporate culpability is not established simply because an incident was serious. Possible consequences include corporate fines and offence-specific orders, regulatory directions or civil liability, depending on the legislation. Individual employees or officers may separately face proceedings if their own statutory or common-

law obligations are satisfied. Whether disgorgement, compensation or management disqualification is available depends on its own source of law: do not invent a universal remedy.

Conclusion. Start with the specific offence and the correct jurisdiction. Explain *Tesco* as the restrictive older identification model, *Meridian* as purpose-sensitive attribution, and **Criminal Code Pt 2.5 ss 12.1–12.4** as a possible Commonwealth statutory framework separating physical elements, subjective fault and corporate culture. Compare reform literature without confusing proposals with enacted rules. Only then make a conclusion grounded in proved facts.

Chapter 3 — Statutory and case cross-reference for revision

Corporate existence — *Corporations Act 2001* (Cth), ss **117(1), 118, 119**. Question: when did Lemon Aid become a separate person? Their practical role is administrative application → ASIC registration → corporate legal existence.

Internal management — ss **134, 135(1)–(3), 136(1)(a)–(b), 136(2), 140(1)(a)–(c), 140(2), 141, 203C(a)–(b), 203CA(1)–(2)**. Question: whose internal rule governs? Can a constitution change the default? Who can enforce the rule and what non-replaceable statutory limits remain?

Company capacity and ultra vires — ss **124(1), 125(1)–(2)** and *Ashbury Railway Carriage v Riche*. Question: is the company legally incapable of the transaction, or did someone merely breach an internal restriction? Do not treat those as equivalent.

Attribution and corporate wrongdoing — *Lennard's Carrying*, *Tesco Supermarkets v Nattrass*, *Meridian Global Funds* and the specific substantive civil or criminal rule. Question: whose act, knowledge or intention counts **for this legal purpose**? Do not confuse company liability with automatic personal director liability.

Commonwealth corporate criminal responsibility — *Criminal Code* Pt **2.5**, ss **12.1–12.6**, especially **12.2** (physical element), **12.3(1)–(3)** (specified fault elements and available attribution pathways) and **12.4** (negligence). Do not assume this Part decides every State criminal offence.

Academic and reform sources — Samuel Walpole and Matt Corrigan, 'Fighting the System: New Approaches to Addressing Systematic Corporate Misconduct' (2021) 43(4) *Sydney Law Review* 489, specified Parts II.B–C and IV; Penny Crofts, 'Three Recent Royal Commissions: The Failure to Prevent Harms and Attributions of Organisational Liability' (2020) 42(4) *Sydney Law Review* 395, Introduction and Part II. Their arguments help evaluate the strengths and limitations of established legal doctrine.

Final exam method: (1) classify the company and legal issue; (2) identify governing legislation at the subsection level; (3) distinguish internal governance, corporate capacity, attribution and criminal responsibility; (4) explain the case that gives meaning to the legal rule; (5) apply every relevant fact and strongest counterargument; (6) identify additional facts and documents needed; (7) advise on the conclusion and lawful remedy with qualifications. This method is more persuasive than listing cases without explaining why they apply.

Authoritative online source links

- Corporations Act 2001 (Cth), compilation effective 19 September 2026, Federal Register.
- Criminal Code Act 1995 (Cth), current legislation, Federal Register.
- Walpole and Corrigan (2021) — published scholarly article (Sydney Law Review PDF).
- Crofts (2020) — published scholarly article (Sydney Law Review PDF).

Publication accuracy note: Authorities and statutes should be checked in the edition's final legal-source audit. Where a hypothetical lacks facts, conclusions are conditional; an academic discussion of reform is not treated as proof that a proposed offence has been enacted.

CHAPTER 4 — DIRECTORS AND MANAGEMENT

Corporate Governance and the Division of Corporate Powers

A shareholder is an investor in a company, but does not automatically possess authority to manage its daily operations. Equally, a person need not have been validly appointed to the board before the statutory definition of director can become relevant. The lawyer's task is therefore to identify the correct legal person, the decision-maker, the source of power, and the evidence of how that power was exercised.

Under the *Corporations Act 2001* (Cth), s 124 concerns the company's capacity, while s 198A (as a replaceable rule subject to the constitution) addresses the directors' power to manage its business. Section 203D assigns members of a public company a particular director-removal power. Sections 9AC and 9AD identify directors and officers by statutory tests, including functions that a person performs in fact. These provisions answer different legal questions; they must not be substituted for one another.

The text that follows examines those provisions, the leading judgments, how boards make decisions, and the legal consequences of appointments, removal, resignation and delegation. Its examples show students how to identify missing evidence, evaluate both sides of an argument, and provide clear client advice.

1. The corporate triangle: entity, board and members

A lawyer should never use the expression "the company wants" without considering how that desire was legally formed. The company, its board and its members are different things. The company is the continuing legal person. Directors are natural persons who exercise decision-making authority through properly constituted board processes or authorised delegates. Members have financial, informational, voting and other statutory rights associated with their shares. Legal questions are misanswered when those categories are collapsed. For instance, the shareholders of a large listed retailer may be unhappy with an automation strategy, but their dissatisfaction is not itself a corporate instruction. They require a power that allows the general meeting to produce the legal consequence they want.

To identify the source of a power, work down a hierarchy. First, identify mandatory statutory requirements: an example is the public-company director removal provision in s 203D, which overrides inconsistent constitutional and contractual terms. Secondly, identify the company's constitution and the replaceable rules applicable by operation of ss 134–135. Thirdly, identify the particular procedure by which a corporate organ can exercise its power. Fourthly, distinguish an internal-authority question from the different issue whether an outsider can rely on an officer's representation or statutory assumptions. That fourth question can involve ss 128–129 and agency principles, which are relevant to corporate transactions but not required to decide whether HBC can instruct FreshFoods to staff its checkouts.

Section 124 must be read in its proper setting. Its concern is corporate capacity and powers, including the broad legal capacity of an individual and particular corporate powers. It is not a grant to every shareholder to direct every transaction. Section 125 is a useful contrasting provision: restrictions or prohibitions in a constitution may affect internal authority without automatically invalidating the exercise of corporate powers. This distinction between corporate capacity and internal corporate power is a recurring transactional question. When advising a client, specify whether the complaint is that the corporation lacked legal capacity, that the wrong person decided, that a required procedure was not followed, or that an outsider had reason to rely on an apparently authorised representative. They require different legal analysis and potentially different remedies.

Practise with a hypothetical. If FreshFoods has capacity under s 124 to purchase automation software but the constitution requires board approval for contracts above $20 million, the question is not whether the company is legally capable of buying the software. It is whether the relevant constitutional approval occurred. If 110 shareholders voted to instruct the procurement director to sign the contract, another question arises: does the general meeting have the power to give that direction? The same facts can involve company capacity, internal management authority and external contractual enforceability. Good lawyers isolate each before applying an authority.

Why the lecturer describes a “tug of war”: a corporation can have a legally recognised power to do something but it must exercise that power through a human organ. Section 124 concerns the company’s legal capacity to own assets, contract, sue and issue shares. It does not answer whether one shareholder, the directors collectively or the members in general meeting decide to undertake the transaction. Section 198A allocates management;

s 203D separately allocates a public-company removal power to members. The rights are not an undifferentiated pool from which whichever side is louder can draw.

In a client problem, identify the legal person first. Ask whether it is a public company or proprietary company; whether the replaceable rules apply; whether a tailored constitution reallocates any power; and whether the proposed decision is operational policy, appointment/removal, amendment of constitution, a meeting procedure or a transaction specifically reserved to members by the Act or other regulation. This is a sequence of legal questions, not an instinctive referendum on fairness.

An incorporated company is a separate legal person. It can own property, enter contracts and incur obligations. But it has no natural body or mind. It acts through human decision-makers and through legal rules attributing conduct to it. Corporate law therefore asks two separate questions: what can the company do, and who is authorised to decide that it will do it? The first question concerns the powers of the corporation; the second concerns allocation of those powers among directors, shareholders and other agents.

This distinction is particularly important because being a shareholder is not the same as owning the company's supermarket buildings, stock, bank accounts or contracts. Members have rights attached to their shares and specific statutory or constitutional powers. Directors manage or direct the company's business. A shareholder who owns only two shares still possesses the rights attaching to those shares; a group of 110 such holders may have statutory participatory rights but not an entitlement to become management.

The core legal rule is the replaceable rule in Corporations Act 2001 (Cth) s 198A(1): the business of a company is managed by or under the direction of the directors. Section 198A(2) permits directors to exercise the company's powers other than powers the Act or constitution reserves for exercise in general meeting. Section 198A is a replaceable rule; always inspect s 134, s 135 and the constitution rather than declaring s 198A universally unalterable. Compare s 124, which concerns the legal capacity of the company itself; do not use s 124 to answer who within the company may order staffing or automation.

A good corporate lawyer does not begin by asking, "Does the shareholder proposal sound desirable?" That is a commercial or moral question, and it may be important, but it is not the legal issue. The lawyer begins by identifying whose legal decision is at stake. FreshFoods itself is the incorporated person; the directors are the organ ordinarily entrusted with managing its business; the members are holders of shares who exercise rights given by statute, constitution and the terms of their securities. These relationships

operate at different legal levels. A company's capacity is not a licence for any particular member to act on its behalf. Equally, a board's ordinary authority to manage does not permit it to ignore the express statutory powers of members to select or remove directors.

Imagine FreshFoods enters a ten-year agreement with a technology supplier. Section 124 establishes that a company has the legal capacity of an individual and certain corporate powers, subject to applicable law. But a contract can still raise separate questions: did the board approve the commitment under the constitution; did an officer have actual authority; did the supplier rely on statutory assumptions concerning corporate dealings; did a conflicted director participate improperly; and was the contract executed in a legally effective way? The same commercial transaction therefore invites a sequence of analyses rather than one broad statement that "the company has power." Students who identify these layers can give precise client advice even when the facts are complex.

The statute does not equate share ownership with title to the company's individual assets. HBC's 110 members purchase a total of 220 shares; they acquire whatever member and voting rights attach to those shares, but not ownership of FreshFoods' physical supermarket property or control over each checkout. If HBC has 220 votes out of, for example, ten million votes entitled to be cast, its voting position would be $220 \div 10{,}000{,}000 \times 100 = 0.0022\%$. That ten-million denominator is purely a classroom illustration: the tutorial does not provide the actual shares on issue or class voting terms, so students must not state an actual voting percentage. This is the difference between practising the arithmetic and inventing a legal fact.

The most useful question to ask each time a power dispute appears is: "What is the source of this power, and does anything displace it?" Begin with the Act. Next examine the constitution and replaceable rules under ss 134–135. Then ask whether an express statute reserves the decision to members. Only then select a case to interpret the power allocation. This prevents a common error: beginning and ending with s 198A when the matter involves a public-company member right under s 203D, or beginning and ending with s 203D when the proposal is actually an attempted direction about operational staffing.

2. Why directors exist: long-term strategy, external accountability and control

Directors are not simply prestigious officeholders. They constitute the organ through which the company must set strategy, supervise management and make decisions that belong to the board. The board may appoint managers and use specialists, but delegation of tasks must be distinguished from the allocation of ultimate management authority. Section 198D, a replaceable rule, permits directors to delegate powers to specified persons

and requires the delegate to exercise the power in accordance with any directions of the directors. The existence and scope of a delegation become decisive in a director-status problem: a consultant who merely exercises a defined delegated function may be different from a consultant who independently determines matters ordinarily reserved to the board.

At the client-advice stage, inspect records rather than infer control from a job title. Ask for board agendas, minutes, written resolutions, management authorisations, consulting agreements and correspondence with lenders. Compare each person's power on paper with what occurred. If the board honestly evaluates proposals, requests revisions and sometimes rejects recommendations, this supports continued board supervision. If proposals are rubber-stamped, the evidence may support a different inference. That inference can matter to the de facto and shadow tests even though the two statutory limbs address different conduct.

The lecturer separated board functions into accountability (financial statements, monitoring compliance and reports to members), strategic thinking (setting long-term direction and evaluating strategic choices), supervision (scrutinising the performance of executives and controls) and corporate policy (budgets, senior pay and company culture). These categories are interlocking: a director who never reviews the financial information cannot sensibly set a restructuring strategy; a board that formulates strategy but refuses to supervise its execution has not completed its governance function.

“Managed BY or UNDER THE DIRECTION of the directors” in s 198A(1) is deliberate. The directors are not expected to buy every packet of office supplies, negotiate every grocery supplier contract or personally oversee every checkout. They may employ managers and delegate appropriate decisions, subject to the company constitution and the statutory delegation framework in s 198D. Yet delegation does not transmute an ordinary store manager into a director automatically: s 9AC requires a more exact functional inquiry.

The Week 4 slides distinguish four dimensions of board function. “Accountability” covers reports to shareholders, audit scrutiny and legal/regulatory compliance. “Strategic thinking” covers setting direction and reviewing major opportunities and threats. “Supervision” covers performance and budget oversight. “Corporate policy” covers approving major budgets, senior remuneration policies and corporate culture. Boards are not simply a collection of people who attend meetings. They have a continuing governance responsibility to decide, monitor and, where appropriate, delegate.

Applied to FreshFoods: replacing checkout staff with automation is a business strategy, labour-allocation policy, budget and long-term competitiveness decision. Even a policy with substantial social effects ordinarily remains a matter for the board if management powers have been allocated to directors. Members might disagree strongly, mobilise support, ask questions, publish arguments or vote on matters properly reserved to them; none of those facts automatically grants them the power to issue legally binding management instructions.

The reason we study directors is that incorporation separates the provision of risk capital from everyday authority to run the enterprise. A supermarket may be owned through a dispersed share register: thousands of investors can buy and sell small amounts of equity without becoming managers. The company still needs coherent decisions on capital expenditure, staff, technology, supply contracts, regulatory compliance and long-term strategy. A board creates an identifiable governing organ that can make those decisions and be answerable for its stewardship. It is tempting to describe the board as "the boss," but that obscures an equally important proposition: directors are subject to duties, constitutionally structured powers and member accountability rather than possessing personal dominion over company property.

Take the automation strategy through each of the four functions in the lecturer's slide. At the strategic stage, directors consider whether automated technology creates sustainable value and what it does to service quality, employment and reputation. At the policy stage, they determine an investment budget and objectives: pilot stores, implementation dates, customer safeguards and metrics. At the supervisory stage, they demand reports comparing expected and actual savings, complaint rates and system failures. At the accountability stage, they must ensure the organisation reports and complies with applicable law. The point is not that corporate law dictates a particular balance between efficiency and jobs. It dictates the legal architecture within which an appropriately informed decision is to be taken.

Management by delegation is not abandonment of management. A lawful delegation under s 198D can place certain decisions with an executive or expert, and s 190 deals with the responsibility of directors in respect of delegated acts. A lawyer must examine the terms and existence of a delegation and the conditions for any statutory defence instead of assuming either that every delegated decision is invalid or that the board is automatically absolved. The practical record matters: board delegations and limits, management authority schedules, minutes, decision papers and reporting lines. In the BlueWave facts,

consulting status and delegated tasks are real counterarguments to director classification; they must be evaluated, not dismissed because Leah was influential.

A useful governance comparison is the difference between a direction and a recommendation. “We recommend adopting a three-month pilot, subject to board approval” presents options for a governing organ to decide. “We have closed the Queensland plant; the board will ratify the paperwork” suggests the person giving the instruction may already be exercising substantive corporate authority. The same individual can perform both kinds of work on different occasions. A lawyer investigates what happened, not only what the engagement agreement said was meant to happen.

3. Who counts as a director? Labels cannot defeat substance

The structure of s 9AC(1) should be analysed element by element. Paragraph (a) captures persons appointed to the director position and alternate directors while acting as alternates, regardless of the title attached to the position. Paragraph (b) extends the definition, unless the contrary intention appears, to persons not validly appointed. Subparagraph (b)(i) concerns action in the position of director; subparagraph (b)(ii) concerns the directors' habitual compliance with another's instructions or wishes. The reference to persons not validly appointed is essential: the extended definition is designed to prevent a formal defect, absence of appointment, or strategically chosen label from concealing the actual exercise of corporate power.

The two functional limbs may coexist, but they require distinct proof. It is not enough to say that Leah ‘controlled BlueWave’ and therefore tick both boxes. For de facto status, identify decisions she made, whether she represented herself as authorised to make them, what the board allowed her to do and whether the functions were appropriate for a director of this particular manufacturer. For shadow status, identify directions or wishes, the actual members of the board who followed them, the regularity and causal influence of that pattern, and whether the professional/business advice exclusion applies. One limb is primarily about Leah acting; the other is primarily about the board following.

There is also a methodological qualification: the extended definition does not apply identically to every provision merely because s 9AC(1)(b) is established. Its opening words ‘unless the contrary intention appears’ and the section's examples require the lawyer to identify the particular obligation or statutory power in question. Treat status as an entry point to the next question—what statute and duty applies—not as a conclusion that every conceivable director power or liability automatically follows.

Read the structure of s 9AC(1), not only the label "director". Paragraph (a)(i) deals with appointment to the position, while (a)(ii) adds an appointed alternate actually acting as such. Paragraph (b), unless contrary intention appears, extends director status to a person not validly appointed, first where that person ACTS IN THE POSITION (subparagraph (i)), and second where the directors are ACCUSTOMED TO ACT according to the person's instructions or wishes (subparagraph (ii)). Those are distinct proofs. A consultant can give influential advice without being either category; a person can also satisfy more than one category on strong facts.

This is a liability-and-accountability rule, not a reward for seniority. Its purpose is to prevent functional company controllers evading relevant director duties because their papers say "consultant", "major shareholder", "founder" or "adviser". Conversely, do not equate all powerful creditors, employed CEOs or professional advisers with shadow directors. The professional-capacity and ordinary-business-relationship wording at the end of s 9AC(1)(b)(ii) must be applied, not ignored.

Section 9AC(1)(a)(i) covers a person appointed to the position of director, whatever the title used. Section 9AC(1)(a)(ii) additionally includes an alternate director appointed and acting in that capacity. Section 9AC(1)(b)(i) includes, subject to context, a person not validly appointed who actually acts in the position of director: the de facto director. Section 9AC(1)(b)(ii) concerns the shadow director: a person on whose instructions or wishes the directors are accustomed to act, excluding advice properly given in a professional capacity or business relationship. The statutory distinctions are not mere vocabulary; they identify the facts the litigant must prove.

A de facto director is recognised because the person functions as a director in reality. Typical indicators may include participation in major negotiations, making decisions ordinarily reserved to directors, controlling significant corporate policy, acting for the company at the highest level and being permitted to do so by the board. No single indicator is conclusive. A consultant who advises but does not take over board functions may remain a consultant; a former director whose conduct shows real governing authority may be a de facto director notwithstanding the end of a formal appointment.

A shadow director is different. Their status rests on the board's habitual compliance with their instructions or wishes. The person may remain offstage. Ask: whose instructions were given, to whom, concerning which decisions, how often and with what causal effect? The board or governing majority must be accustomed to follow, not merely sometimes accept useful advice. A bank or major supplier may drive a hard commercial bargain

without becoming a shadow director. The professional/business relationship exclusion must be analysed rather than assumed.

A key skill is to read a statutory definition grammatically. Section 9AC(1)(a) deals with a person appointed to the position of director and an alternate appointed and acting in that capacity. Paragraph (b) extends the definition, unless the contrary intention appears, to persons who were not validly appointed but whose conduct satisfies one of two different descriptions. Subparagraph (b)(i) turns on acting in the position of director; subparagraph (b)(ii) turns on the formal directors being accustomed to act in accordance with a person's instructions or wishes. The words doing the work are different because the mischief is different. The first prevents evasion through defective appointment or informal control of functions; the second prevents evasion through control of an ostensibly independent board.

Consider three contrasting people at BlueWave. Its formally appointed chair signs a board resolution and acts as a director: classification under s 9AC(1)(a) is usually straightforward. Its external accountant supplies cash-flow forecasts and points out that a bank covenant will be breached: that ordinarily remains professional advice, not director status. But a restructuring adviser who determines which business lines will shut, negotiates the company's survival financing as the person in charge, instructs executives directly and presents decisions to a compliant board may fall within s 9AC(1)(b)(i), even where the consultancy agreement says the adviser has no governance power. Whether the external accountant becomes a shadow director, by contrast, requires proof about the board's habitual obedience, not simply that the advice was excellent or influential.

Evidence analysis must track the statutory words. To assess “acts in the position,” request the formal organisational chart, executive delegations, signatory limits, board papers, emails, minutes, financial commitments, documents describing how the person held themselves out, and testimony identifying who made major decisions. To assess “accustomed to act,” build a chronology of the alleged instructions or wishes and what the directors subsequently did; identify who was involved and whether a governing majority followed the pattern. One approval, one urgent decision or merely asking an expert for guidance should not be turned into a conclusive finding of habitual compliance.

Do not treat de facto and shadow classifications as mutually exclusive legal labels. A person may exercise director functions directly and also cause a board habitually to follow their wishes. But neither conclusion should be reached by repeating the other: each needs a distinct finding supported by the facts required by its subsection. A law student's answer becomes professional-grade when it states the factual evidence needed to resolve

uncertainty and recognises that lawyers do not have to produce a categorical answer on incomplete instructions.

4. Director versus officer: a vital alternative analysis

A student needs to read s 9AD(1) as several alternatives, not as one vague definition. Paragraph (a) includes directors and secretaries. Paragraph (b)(i) addresses a person who makes, or participates in making, decisions affecting the whole or a substantial part of the company's business. Paragraph (b)(ii) addresses capacity significantly to affect its financial standing. Paragraph (b)(iii) addresses habitual director compliance with the person's wishes or instructions, subject to the specified advice exclusion. Other limbs include particular officeholders and persons administering corporate property. For Leah, the model's elimination of a boat line and proposed closure of a facility raise (b)(i), while restructuring financial facilities and negotiating with the bank point to (b)(ii). Do not mis-cite the officer definition as 's 9AC'; that is the wording of the original tutorial prompt, not the location of the current statutory definition.

Distinguish capacity from successful action. Under s 9AD(1)(b)(ii), the question is whether the person has the capacity significantly to affect financial standing; a specific loss or an actual change in financial statements is not necessarily required to meet the definition. Yet an ordinary employee may affect revenue or expenses within a narrow portfolio without becoming an officer. The legal evaluation must examine the company's size, financial structure, the person's real authority, and the significance of the decisions. This functional assessment is reinforced by ASIC v King [2020] HCA 4: the definition is not confined to people who hold a named office or have a conventional corporate title.

The spoken lecture emphasises that liability may attach because the person is an "officer" even if difficult evidentiary issues defeat a director allegation. In current legislation that definition belongs to s 9AD(1), whereas the historical Grimaldi judgment discusses the previous s 9 terminology. Section 9AD(1)(b)(i) reaches participation in decisions affecting the whole or a substantial part of the business; s 9AD(1)(b)(ii) concerns capacity significantly to affect financial standing; s 9AD(1)(b)(iii) concerns directors being accustomed to follow instructions, subject to the professional/business relationship exclusion. Test each limb on separate factual evidence.

For BlueWave, negotiating for survival financing, directing the cessation of one of three product lines and overseeing the closure of a manufacturing facility may be enough to examine officer status under both (b)(i) and (ii) even if Leah's actual board-like status remains disputed. However, officer status is NOT a reason to skip the expressly requested

director classification. State it after the director answer as a subsidiary risk supported by the precise limbs.

The current Corporations Act places the definition of "officer" in s 9AD, not s 9AC. Under s 9AD(1)(a), a director or secretary is an officer; under s 9AD(1)(b)(i), an individual participating in decisions affecting the whole or a substantial part of the corporation's business can also qualify; paragraph (b)(ii) covers capacity significantly to affect its financial standing; and paragraph (b)(iii) addresses a person whose instructions or wishes directors customarily follow, with the same type of proper professional/business-relationship exclusion. Read the actual statutory paragraph applicable to the specific fact, not merely a bare reference to "s 9".

Why have this wider category? A commercially influential person may escape the narrow de facto-director test but still have real power over fundamental strategic and financial decisions. In Grimaldi the Full Court observed at [143] that officer status provided a more straightforward alternative. ASIC v King [2020] HCA 4 illustrates that a person need not occupy a formal named office of the particular company to be an officer where the functional statutory test is satisfied. Determining status does not itself establish misconduct: an additional breach, causation and applicable remedy must be proved.

Why does the Act define both a director and an officer? Because some powerful corporate decision-makers may not occupy or control the board, yet their functions place them within the class to whom statutory duties can attach. The officer definition in s 9AD(1) is therefore a separate entry point into responsibility. It includes, among others, a director or secretary and a person who makes, or participates in making, decisions that affect the whole or a substantial part of the business; a person with capacity to affect significantly the corporation's financial standing; and a person whose instructions or wishes the directors are accustomed to act upon, with the statutory professional/business-relationship qualification. Distinguish these alternatives and apply the one that fits the evidence.

The phrase "participates in making" is particularly important. It need not be confined to the person who signs the final resolution. Suppose the board formally approves Leah's proposal, but all commercially meaningful options were eliminated by Leah before the meeting, and the board merely records the outcome. Her contribution may be substantial even though the minutes show a director's signature. Conversely, if Leah merely provides a report and a genuinely independent board evaluates competing choices, she may have contributed advice rather than participated in determining the company's business. The level of responsibility and scope of the decisions are therefore central facts.

The High Court's reasoning in ASIC v King [2020] HCA 4 warns against an overly formal account of corporate power. Officer status under the financial-standing limb is concerned with actual capacity significantly to affect the company's position and is not confined to people holding particular office titles. Students should identify the specific limb of s 9AD(1)(b) relied upon rather than writing loosely that an influential person is "like an officer." In Leah's case the banking, product-line and plant-closure decisions provide different bases for examining each limb, without proving that any statutory duty was necessarily breached.

5. De facto director authorities: Drysdale and Grimaldi

The correct way to use Corporate Affairs Commission v Drysdale is as an illustration that a person who persists in performing director functions after formal office has lapsed can be treated as occupying that position for statutory purposes. Do not reduce the case to the false proposition that doing any act connected to a company makes one a director. Ask what the person actually did in a position of governance and the statutory problem the court addressed. The lesson for Leah is to avoid relying exclusively on her statement of resignation when actual corporate conduct points the other way.

In Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6, the Full Federal Court at [133]–[143] rejected any rigid single test. Its analysis was sensitive to the circumstances of a particular company and the types of functions its directors actually performed. At [141] the Court reasoned that Grimaldi had been given, or had assumed with the acquiescence of executive directors, significant functions that would properly be expected of a director in that company's circumstances. Paragraph [142] shows the relevance of acts taken on his own initiative as well as acts authorised by others. A legal answer should identify those findings, then compare the candidate's significant functions, autonomy and apparent integration with governance.

Do not misapply Grimaldi by requiring that the de facto director attend every board meeting or purport to hold every formal power. The law accommodates corporate reality, including informal governance structures and overlapping consultancy and director functions. Equally, do not conclude that a professional who negotiates a loan is necessarily a director. A restructuring consultant can lawfully carry out negotiations within authority conferred by the board. The differentiating question is whether the work was, in context, the assumption of a director's position rather than performance of the functions of a specialist adviser. In a client interview, ask who actually chose the outcome, who could reject it, and whether the consultant proceeded without board authorisation.

Drysdale is pedagogically simple: the purported director previously held the position, the formal entitlement became defective/expired, yet he continued participating as a director. The law looks beyond the defect to continuing performance. The lecturer's practical "shut the door" advice follows: document an actual resignation, cease acting as a director, stop signing board resolutions and clarify authority. Merely telling friends or business colleagues that one has left does not settle how one functioned afterwards.

Grimaldi requires closer analysis than "he made important decisions". In [133] the Full Court rejected the proposition that a functioning formally appointed board necessarily rules out a de facto director. At [141], the scale, significance and director-character of functions assumed with executive-director acquiescence were central. At [142], some acts were authorised and some done independently. At [143], officer status was an alternative basis. The proper question is whether, in the context of THIS company and its actual governance arrangements, the person was doing the things that directors of that company would ordinarily be expected to do. A senior employee's routine delegated duties are insufficient by themselves.

Corporate Affairs Commission v Drysdale [1978] HCA 52; (1978) 141 CLR 236 involved a person acting as a director despite defects in formal status. The High Court rejected a reading of directors' obligations that could be evaded merely by an invalid appointment. The underlying policy is to attach responsibility to persons who actually occupy and exercise director functions. Use Drysdale to explain why historical formal defects do not automatically exempt a controlling person from directors' legal duties.

Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 [133]–[143] is the central assigned modern authority. Grimaldi was not formally appointed as a director of Chameleon, but undertook extensive and significant company affairs, including commercial activity ordinarily performed by directors; some activities were authorised by the board and others were initiated by him. At [141] the Full Court considered the extent and significance of his functions sufficient to treat him as acting in the director's position. At [142] it considered the mix of authorised and independent conduct; at [143] it highlighted the independent importance of officer status. Use this reasoning to compare what the alleged director actually DID, rather than the wording of their consulting contract.

Legal history matters here because cases decided under an earlier statutory definition must be translated into the current language, not cited as though Parliament has never changed the section number. Corporate Affairs Commission v Drysdale (1978) 141 CLR 236 was concerned with a person performing director functions despite the lack of a valid

formal appointment. The High Court treated the de facto status as sufficient for application of the relevant directors' obligations under the predecessor legislation. The enduring idea is accountability through functions actually performed. The specific older statutory duty was not current s 180 or s 181; a careful student explains the historical context and then uses s 9AC(1)(b)(i) as the operative present definition.

In Grimaldi, the Full Federal Court's reasoning is more subtle than the shorthand "high-level influence makes a director." The judgment surveyed authority on de facto directors, recognised that modern corporate functions vary with the company, and resisted a rigid universal list of activities that only a formally appointed board member can undertake. It examined both the kind of work Grimaldi performed and the way Chameleon allowed him to perform it. His activities involved matters of real corporate significance, including fundraising, major transactions and negotiating on the company's behalf. At [141] the Court concluded that the nature and extent of the functions, some exercised with substantial independence, justified treating him as acting in the position of a director. At [142] the judgment addressed the relevance of how the formal officers treated the arrangement. The inquiry is functional and contextual.

Now connect the authority to BlueWave without silently equating the facts. Leah's bank and supplier negotiations could be perfectly consistent with consultancy. Their significance rises when combined with the statement that she decided which boat model would cease production and oversaw the factory-closure strategy. Those are decisions materially affecting BlueWave's business direction. Her relationship with the formal board is also relevant: it habitually adopted her recommendations and allowed her to carry them out. Whether these facts cross the legal boundary depends on the real allocation of decision-making power. A professional answer would compare the functions undertaken in Grimaldi and then ask how much independent authority BlueWave actually entrusted to Leah.

6. Shadow director authorities: Buzzle and Antico

Buzzle is particularly valuable because it warns against equating creditor pressure with governance control. Apple had a powerful commercial relationship with the Buzzle business. The Court examined whether Apple's requirements and negotiating stance amounted to instructions which Buzzle's directors were accustomed to follow as members of a board. It was not sufficient that Buzzle was heavily dependent on Apple or that Apple's terms were economically difficult to refuse. The evidence must establish the director-level pattern and the required connection between the instructions or wishes and

the directors' actions. In your answer, separate a supplier saying ‘these are our contractual terms’ from an outsider effectively instructing the board ‘make this governance decision’ and the board habitually doing so.

The common-law formulation examined in Buzzle also requires attention to the board's collective action or governing majority. It is not always enough to show that one individual director listens to the supposed controller, or that isolated recommendations happen to be accepted. The court looks at the way decisions are actually made and the evidence of an established practice. Relevant material would include minutes recording decisions made without independent deliberation, repeated emails containing detailed directions, contemporaneous evidence that board members treated those directions as binding, and examples where the board departed from or rejected the advice.

Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290 is often used as an illustration of effective influence associated with a corporate group and substantial shareholding. The lesson is not that a specified percentage of shares creates automatic shadow status. It is that a substantial shareholder or parent may, on detailed evidence, cross from protecting an investment into directing the subsidiary's board. Compare the level of influence, the overlap of appointments, the substance of board proceedings and the capacity of the subsidiary's board to act independently. For Leah, her prior board role and intimate financial knowledge can explain her influence, but do not replace proof of habitual compliance.

The lecturer’s “puppet master” image captures an evidentiary pattern: A instructs, B is the formal board, and the board habitually follows A. The court must look at a pattern of governance conduct, not one instance when A gave correct advice or the board yielded to commercial pressure. Ask which directors followed the wishes, whether that group constituted the board or its governing majority, which decisions they followed, how often, and whether their compliance was attributable to A’s directions rather than independent analysis.

Buzzle [228]–[250] provides the limiting principle. Apple’s relationship with the Buzzle business gave it bargaining leverage and influence. White J distinguished that kind of arm’s-length commercial pressure or advice from habitual directors’ governance compliance with Apple’s instructions. The company’s own directors retained their own legal decision-making. Contrast a hypothetical lender sending a loan covenant requiring expense controls (commercial condition) with a controlling investor effectively issuing repeated instructions on board decisions that are accepted without independent thought (potential shadow direction).

Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290 supplies a more affirmative illustration: substantial shareholding, nomination/control of the board and actual influence over board conduct supported shadow-director analysis in its factual setting. The precise percentage of ownership is not a magic threshold. The case illustrates actual domination, not a rule that a parent automatically becomes shadow director whenever it owns a subsidiary.

The lecturer recounted an experience from US practice involving a mortgage business, restructuring, bankruptcy and individuals allegedly exercising shadow-level control, with a substantial financial settlement. That is a teaching anecdote rather than a verified Australian authority. The transcription does not establish an identifiable case citation; this edition does not invent one. The legal lesson is why claimant lawyers investigate functional control: directors' duties, potential personal liability and insurance coverage can have serious financial consequences, but policy coverage must be checked rather than presumed.

Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2010] NSWSC 233 [228]–[250] is the assigned analysis of the shadow-director limb. Apple had commercially powerful dealings with Buzzle, but the court rejected the proposition that Apple was a shadow director merely because Buzzle faced compelling commercial incentives to meet Apple's terms. Critical distinctions are between negotiating an arm's-length trading relationship and actually directing board decisions; between a company accepting conditions for obtaining commercial benefits and the board becoming accustomed to obeying an outside decision-maker. Look for a proven pattern of causal instruction and compliance by the board or governing majority.

Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290 demonstrates the contrasting danger of profound control by an influential corporate shareholder or financier, depending on the actual pattern of control exercised. It does not create a rule that every parent company or lender is automatically a shadow director. Use the contrast with Buzzle: participation in the machinery of management and routine compliance is more probative than mere financial pressure or a contractual veto.

The shadow-director problem asks a different, relational question: did the person's wishes or instructions become the pattern by which the appointed directors governed? In Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290, the evidence concerned substantial control exercised by a major corporate shareholder and financier over another company's affairs. The case demonstrates that a corporation, not only a natural person, can fall within the shadow-director concept when the statutory facts are

made out. It does not mean that a 42% shareholder or large creditor automatically becomes a director. The shareholding, financing arrangements, appointment of nominee directors, involvement in major policy and board response must be considered together.

Buzzle offers a useful contrast. Apple's position as a commercially powerful supplier and financier gave it strong leverage over the restructuring and future of a reseller business. Yet White J did not find the necessary habitual director-level compliance with Apple's wishes or instructions. In the specified teaching passage, the judgment addresses the need for directors (or their governing majority) to be accustomed to act, the causal link to instructions or wishes and the limitations of treating arm's-length commercial constraints as board commands. The holding matters because otherwise almost any demanding bank, franchisor or major customer might acquire board duties simply by imposing conditions in a negotiated commercial relationship.

Imagine BlueWave's bank tells Leah and the board that new finance will be conditional on closing an unprofitable factory. This does not, by itself, show the bank is a shadow director. It may simply be bargaining over the bank's willingness to lend. Now change the facts: the bank's officers regularly direct what BlueWave's board must vote on, the directors habitually vote as instructed and there is documentary evidence of a standing practice of obedience on governance matters. That begins to raise the shadow inquiry. The difference is not how harsh the lender's terms are; it is whether the board is habitually acting according to the person's governance instructions or wishes.

Leah occupies an intermediate and factually difficult position. She is embedded inside BlueWave's restructuring process, and the directors regularly seek her wishes before making major decisions. That is stronger evidence of a shadow relationship than a stranger's one-off commercial condition. Yet the words “consultant,” “recommendations” and “formal board approval” cannot be ignored. The statutory professional/business advice qualification asks whether the conduct was properly advice within that relationship. Board papers explaining an independent choice would support her defence. Repeated minutes documenting automatic adoption of her instructions, with evidence she was effectively directing the votes, would support a finding against her.

7. Division of powers and shareholder activism: the leading line of cases

The distinction between an ordinary management instruction and an exercise of a power reserved to shareholders is best taught by focusing on legal competence. Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34 established that, where the company's governance arrangements assigned management to directors, a general

meeting could not simply override that allocation through an ordinary resolution directing a transaction. The case did not deny the members' legitimate rights; it required them to use the powers the law and governance documents actually confer. In contemporary Australian advice the statutory gateway is s 198A, read with ss 134–135 and the particular constitution.

In National Roads & Motorists' Association v Parker (1986) 6 NSWLR 517, the court addressed the legal competence of proposed resolutions in the light of powers vested elsewhere under the association's constitutional structure. This assists the distinction between having a procedure for asking that a resolution be considered and having a substantive power to pass it. A lawyer should not use a procedural section to create a management power that no substantive rule grants. In FreshFoods, the fact that 110 people have purchased shares is not enough to turn checkout staffing into member business.

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 is essential because it deals with the tempting alternative argument that shareholders should at least be able to pass a non-binding opinion resolution. In that case, activists wished to place climate-related resolutions before the bank's shareholders. The Full Court rejected the proposition that a shareholder general meeting has a free-standing power to pass resolutions expressing an opinion on management without a statutory or constitutional source of power. It explained, particularly at [22] and [25], that a resolution of members as an act of the company requires authority. At [32]–[35], the court declined to find an implied power. This is a more exact proposition than merely stating that such a resolution would not bind the directors.

The ACCR decision must not be overextended. Shareholders can still communicate views, campaign, ask questions and make comments in settings contemplated by law. Section 250S requires a reasonable opportunity at an AGM to ask questions about or comment on management. It is conceptually different from compelling a formal resolution to be put and voted on. The court did not rule that directors may never solicit shareholder views. It held that these members could not demand a formal resolution where they lacked the necessary power. Distinguish the right to be heard from the right to require a corporate act.

Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34: company constitutional rules committed management to directors. A majority of members wanted a sale the directors refused. The court respected the allocation in the articles, so the members could not force the board to carry out the management decision merely by

ordinary resolution. The case is not about whether selling would have been economically wise. It is about WHO was authorised to decide.

NRMA v Parker (1986) 6 NSWLR 517: members sought a meeting to impose their preferred voting procedure upon an election/returns officer who had authority under internal rules. The court treated the proposed intervention as beyond members' competence and accepted that a meeting need not be called solely to put an ineffectual resolution. This supplies the "meeting cannot cure an invalid object" step in the FreshFoods analysis.

Stanham v National Trust of Australia (New South Wales) (1989) 15 ACLR 87: members sought resolutions concerning management of Trust property and a change in board composition. A proposed resolution that trespassed on management authority was incompetent, but a separately proper director election/removal purpose could not be rejected simply because some other part of the requisition was improper. This is a close analogy to HBC's two proposals; it explains why the board may reject Proposal 1 but not assert a blanket substantive veto over Proposal 2.

ACCR v CBA [2016] FCAFC 80: shareholder activists sought climate-related disclosure/action by proposing management-focused resolutions, including purportedly advisory wording. The Federal Court Full Court rejected the assertion of an independent shareholder right to put non-binding advisory motions to a general meeting. An advisory label alone does not overcome lack of substantive competence. The live forum recording cuts off before the instructor finishes the outcome, and the JUNI summary mistakenly says shareholders COULD hold the advisory vote. That summary claim is corrected here using the actual reported holding and reliable case reporting.

How to use the cases as an argument chain: begin with the company's constitution and s 198A (the source of management allocation); prove that staffing and automation are business management; cite Cuninghame for the allocation principle; use NRMA/Stanham to explain meeting/requisition consequences and the separation of mixed valid and invalid requests; use ACCR to defeat the suggestion that softening Proposal 1 into a non-binding advisory vote necessarily makes it competent. Contrast s 203D for Proposal 2. The cases are connected, not interchangeable.

Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34 is a foundational statement: when the constitution places business management in directors, members cannot ordinarily order the directors to perform a particular management act simply by ordinary resolution. The case concerned members seeking to force a sale that

management allocation. The case teaches that the company's constitutional division of responsibilities has legal effect.

NRMA v Parker (1986) 6 NSWLR 517 illustrates that directors need not convene a meeting solely to consider resolutions on matters outside members' decision-making competence. Stanham v National Trust of Australia (NSW) (as identified in the lecture) is used for the narrower situation in which valid and invalid proposed resolutions are mixed: an otherwise proper meeting may proceed while the improper resolutions need not be included. The reported citation (1989) 15 ACLR 87 is corroborated by a published barrister case list, but the full original judgment has not been compared line-by-line against the course extract. Apply the lecturer's teaching point with that qualification.

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 is particularly close to FreshFoods. A shareholder advocacy group proposed motions pressing for corporate climate-risk reporting and argued for the right to place advisory expressions of opinion before members. The Full Court held that shareholder resolution-making still required a statutory or constitutional foundation: an expression of opinion about management was not itself an unrestricted general-meeting power. The lesson is that obtaining enough signatures to trigger a procedural notice mechanism does not turn an ultra vires/incompetent proposed resolution into a substantively valid one.

There are exceptions. Powers expressly reserved to general meetings by the Act or constitution remain exercisable by members: for example removal of a public-company director under s 203D, certain constitutional changes under s 136 and, subject to applicable internal rules, appointment under s 201G. Some statutory schemes expressly require member approval and a particular board conflict can bring special provisions into play. The answer must first classify the decision before selecting a procedure.

The historical background should not be collapsed into a slogan. Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34 considered a corporate allocation of management authority and the attempt of shareholders to require a contrary transaction by ordinary resolution. The court respected the division of powers created by the articles: the authority committed to directors could not simply be overridden by a member majority operating outside the constitution's allocation. The modern Australian analysis asks how the Corporations Act and applicable constitution distribute the relevant power. It is not a claim that members are powerless in every circumstance, but that an ordinary meeting vote cannot seize authority reserved elsewhere.

NRMA v Parker (1986) 6 NSWLR 517 is especially useful for advising whether a board needs to put a proposed resolution to a meeting. The substance of the proposed resolution concerned management arrangements vested in the directors. The decision illustrates why a requisition for a meeting does not create a valid purpose merely because the requisite number of members signs it. A lawyer separates the statutory right to requisition a meeting or resolution from the legal competence of the thing proposed. A meeting to pass an incompetent direction does not become effective through proper paperwork. That is why the FreshFoods handout expressly tells students to assume procedural compliance for Proposal 1 and focus on whether the resolution is substantively within members' power.

ACCR v CBA adds the modern activist dimension. A group of CBA shareholders sought member resolutions concerning environmental risk disclosure. The Full Federal Court considered whether members had the power to move ordinary resolutions expressing opinions on a matter of company management. The appeal was dismissed: a statutory right to give notice of a proposed resolution did not, without more, supply the power to put an incompetent motion. The fact that some proposals were non-binding advisory motions did not rescue them. Importantly, the case also recognises distinctions between shareholder statements, genuine constitutional changes and an attempt to direct the board; those are different legal mechanisms. It would be incorrect to teach the case as establishing a general right to force any advisory ESG resolution onto the AGM agenda.

Suppose HBC changes its proposal from “the board must maintain 50% staffed checkout lanes” to “shareholders express concern about job losses.” The modification may change the political character but does not automatically confer a legal power to insist on a non-binding resolution. ACCR asks about the source of authority for that resolution. On the other hand, a properly framed proposal to amend the company's constitution or exercise an express statutory member right raises a different question. Whether a particular proposed constitutional amendment is valid is a further question, not an automatic solution that students should assert without examining s 136 and the limits of constitutional power.

The conclusion should be as precise as the facts. FreshFoods has strong grounds to refuse to include an ordinary motion compelling a staffing policy where management authority remains with its directors. HBC is nevertheless free to advocate, engage other members and pursue lawful accountability mechanisms. Proposal 2—removal and appointment—does not pretend to exercise the board's operational authority; it invokes an express member governance power. That is why a seemingly small difference in drafting can be

the difference between an invalid resolution and a legitimate exercise of corporate democracy.

8. The board makes decisions through legally constituted procedures

Consider three ways a director might appear to approve a transaction: a formal board resolution, a circulating resolution and a conversation at lunch. These may not have the same legal consequences. Section 248A sets the conditions for circulating resolutions in companies with more than one director, including the required approval process under the replaceable rule. Sections 248C–248G address who may call board meetings, notice, technology, quorum and votes. Section 248G includes the ordinary majority rule and, subject to the constitution and the statutory rule, the chair's casting vote. Section 251A concerns the keeping of minutes. Every practitioner should request the relevant notice, agenda, meeting record, attendance and vote details, not simply accept an officer's assertion that 'the board agreed'.

An example connects these rules to Leah. Suppose BlueWave's consultant proposes closing its principal factory. The directors formally vote at a properly constituted meeting after receiving financial modelling and taking independent advice. That makes it easier to characterise Leah as an adviser. Suppose instead Leah announces the closure to employees before any meeting and afterwards sends a single-line email requiring the directors to endorse her decision. The subsequent board minutes then become important evidence both of her actual conduct and of whether the directors were accustomed to follow her instructions. Proper corporate process is therefore simultaneously a governance requirement and a source of evidence for legal status.

A directors' meeting and a general meeting are different organs. Sections 248A–248G mainly provide replaceable/default procedures for directors: circulating resolutions for proprietary companies, the calling and conduct of directors' meetings, technology, chair and votes. Section 248A is the default unanimous written-circulation route for proprietary-company directors, not a licence to treat every email as an approved public-company board resolution. Section 248G generally gives one vote per director and a majority of votes cast; its replaceable casting-vote arrangement can empower the chair subject to applicable modifications.

For a proof problem, inspect quorum, proper notice, conflicts/entitlement to vote, written resolution requirements, constitution and minutes under s 251A. The absence of careful minute taking may matter when the court asks whether an alleged consultant truly

determined strategy while the formal directors simply rubber-stamped it. This links board procedures directly to the factual evidence in Leah's problem.

Sections 248A–248G set default structures for meetings and resolutions, with several expressly operating as replaceable rules. Under s 248A(1), a multi-director board can pass a circulating resolution without a meeting if all directors entitled to vote sign; s 248A(3) fixes passage when the last director signs. Under s 248B(1), a sole director of a proprietary company may record and sign a decision. Section 248C permits a director to call a meeting on reasonable individual notice; s 248D permits appropriate technology. Under s 248F the default quorum is two, unless the directors determine otherwise. Section 248G(1) uses a majority of votes cast by directors entitled to vote, and s 248G(2) gives the chair a casting vote, subject to applicable restrictions. Minutes must be maintained under s 251A.

The important exam contrast is that a board resolution concerns directors' internal exercise of management power; a members' resolution concerns a matter within the general meeting's authority. Do not confuse the two votes. The source slides also name committees, delegation under s 198D and remuneration. Delegation can enable management teams to operate the business, but it does not turn shareholders into line managers.

A decision may be commercially sensible and still be invalidly adopted if corporate procedures are disregarded. The Act contains replaceable rules for directors' meetings and resolutions, supplemented by the constitution and any valid rules made by directors. Section 248A deals with circulating resolutions for multi-director companies where each director entitled to vote signs the document and the statutory requirements are met; this is not the same as a simple majority of informal email replies. Sections 248C–248G govern calling meetings, the use of technology, chairing, quorum and voting. The chair does not have a free-standing power to impose a decision just because they preside over the meeting; the applicable voting and casting-vote provisions and constitution matter.

Suppose FreshFoods' directors exchange messages about purchasing automated equipment, but one director entitled to vote never approves the circulating resolution. Before pronouncing the purchase authorised, a lawyer must examine whether the board instead held a valid meeting, whether s 248A's requirements were satisfied, and whether delegated management authority was available. Minutes under s 251A are evidence of corporate action and must comply with the relevant record requirements. The connection to director status is practical: formal board records may show genuine scrutiny of Leah's proposals—or may reveal repeated ratification without critical examination, relevant to the question of whether she was exercising board functions.

Students should avoid treating a company meeting as theatre. Quorum, notice, participation, proper agenda and recorded decisions exist partly to make corporate power traceable. In litigation, they help identify who decided, when the decision was made, what information was available, what conflicts existed and whether the required decision-makers participated. Those details often determine both whether a corporate act was authorised and whether an individual may be exposed to duties or liability.

9. Types, appointment and validity of directors

Section 201A is not an abstract examination number. For a public company it establishes the minimum of three directors, including at least two ordinarily resident in Australia. For a proprietary company it ordinarily requires at least one director ordinarily resident in Australia. These requirements matter directly when HBC proposes to remove all three named directors from an ASX-listed company. A prudent adviser must know how many other directors FreshFoods has, who will remain or be validly appointed, and whether residence requirements will remain satisfied. Never infer from the hypothetical that Priya, Marcus and Daniel are the company's only directors, although the facts allow that possibility.

Section 201B(1) provides the basic individual age and natural-person requirements. Section 201D requires a person to consent in writing before appointment and addresses retention of the consent. Section 201G is the replaceable rule by which a company may appoint a director through a resolution in general meeting; a special constitutional appointment regime may affect how the mechanism operates. Section 201H concerns appointments by the existing board and, under subsection (3), the required confirmation at the next AGM for a public company. These provisions need to be taught together because a person cannot become an effective replacement simply by being named in a campaign leaflet.

Section 201E is a particularly important protection against forced slate voting. For a public company, separate appointment resolutions are required unless the relevant unanimous decision permits appointment of two or more people together. Therefore, in HBC's problem, propose an individual appointment resolution for each nominee, not one omnibus resolution to appoint all three. The reason is institutional: members should be able to assess and vote on each individual's suitability, rather than having to accept or reject an entire slate.

Section 201M provides an important but limited validity rule: acts done by a director can remain effective despite a defective appointment or the invalid continuation of the

appointment resulting from noncompliance with the constitution or the Act. Do not misstate the section as a rule that the individual therefore owes no duties, is unquestionably validly appointed, or has authority to bind outsiders in every situation. Section 201M distinguishes effectiveness of acts from the separate questions of whether a dealing binds the company or makes it liable to someone else. That distinction is why the lawyer should check s 201M while separately considering internal authority and the statutory assumptions in ss 128–129 when external contractual relations are at issue.

The lecturer distinguished executive and non-executive directors (both owe relevant duties; their roles and knowledge may affect application of the objective care standard); a managing director appointed under s 201J and given powers under s 198C; alternate directors under s 201K; the chair under s 248E; and nominee directors representing a constituency. A managing director may have broad delegated management authority, but it is inaccurate to say every CEO automatically has unrestricted power to bind a company and all other directors categorically lack authority. Actual delegated and apparent authority still need proper legal analysis.

Nominee directors are central to an interesting lecturer example: an investor may bargain to have a nominated person appointed to a company board, but the nominee is still a director with obligations to the company, not a puppet who can lawfully disregard those duties. Under the final sentence of s 203D(1), removal of a public-company director appointed to represent particular shareholders or debenture holders does not take effect until a replacement to represent those interests has been appointed. In a question, identify the source of the nominee entitlement, then test this statutory protection and any shadow-director risk for a nominating controller who dictates the nominee's or board's actions.

The lecturer also explained defective appointments: s 201M prevents acts from being invalid merely because a director's appointment was defective, and s 204E similarly deals with secretaries. Do not confuse validating an ACT with automatically resolving whether someone was validly APPOINTED, or whether duties attach under s 9AC. Formal governance and functional accountability are separate questions.

Director identification numbers (DINs) are a practical anti-identity-fraud requirement. For corporations-law directors, ABRS requires an intending director to apply before appointment. Crucially, the 2026 position differs from the JUNI summary: ASIC advises that director IDs are not currently entered on the ASIC companies register, nor ordinarily provided in present appointment-change lodgments; a later reporting requirement begins 1 July 2027. Distinguish the director's ABRS application obligation from the company's

ASIC notice of appointment or cessation. Authority: ASIC "Director identification numbers", ABRS "Who needs to apply and when" (both official).

Executive directors also perform senior operational work; non-executive directors typically focus on oversight; a managing director has particular authority granted by the board, with s 201J governing appointment under the replaceable rule. A chair presides over meetings (s 248E), and an alternate director may be appointed within s 201K. Nominee directors represent particular interests but still must respect duties owed to the company. These labels do not negate statutory duties.

For every appointment, ask first whether the company is public or proprietary. Under s 201A(2) a public company requires at least three directors and at least two ordinarily resident in Australia. Section 201B(1) requires an individual aged at least 18. Section 201D requires written consent and appropriate company records; director identification requirements also apply. Section 201G (replaceable rule) permits appointment at a general meeting; s 201H (replaceable rule) permits board appointment subject, for a public company, to confirmation at the next AGM under s 201H(3). Check the constitution and whether a candidate satisfies any other applicable limits. Section 201M protects the effectiveness of certain acts despite defects in appointment, but does not automatically decide whether an act binds the company.

"Executive", "non-executive", "managing", "nominee", "alternate" and "chair" describe different practical functions or appointment arrangements, but not different species of person entirely outside company law. An executive director often combines employment management with board office. A non-executive participates in governing and supervising but may not run daily operations. A managing director has delegated management authority as permitted by the governing rules. A nominee director may have been put forward by a significant shareholder or another stakeholder. None of these labels, without statutory or constitutional support, erases applicable statutory duties to the company. A nominee may legitimately understand the appointor's commercial interests, but must still act within their own duties.

The appointment provisions are not interchangeable. Under s 201A(2), a public company must satisfy the minimum number of directors and ordinary Australian residence requirements. Section 201B deals with eligibility, including the requirement that a director be a natural person aged at least 18. Section 201D requires the prospective director's signed consent before appointment. Section 201G contains a replaceable rule for appointment by members; s 201H allows additional board appointments under the replaceable rule, subject to the particular public-company confirmation requirements.

Section 201E is particularly important for FreshFoods: subject to its statutory exceptions, a public company cannot validly combine the appointment of several directors in one motion without the separate, unanimously supported procedural decision required by that section.

Why insist on individual appointments? Because the members should be able to accept one candidate while rejecting another rather than being forced to approve a bundled slate. In the HBC tutorial, the safest ordinary drafting is three separate appointment resolutions, naming each nominee and ensuring each has consented and is eligible. If HBC instead proposes one resolution to appoint all three, the lawyer must analyse s 201E before discussing political support. Likewise, if HBC proposes to remove all existing directors, the sequence and effective time of removal and appointment must be managed so the public company does not end up below the statutory minimum even briefly. These are not unimportant drafting details; they affect the validity and lawfulness of a board transition.

Defective appointments raise another distinct issue. Section 201M contains statutory provisions supporting the effectiveness of acts by directors despite certain defects in appointment or disqualification. Do not turn that protection into a claim that all appointments are valid or directors are immune from responsibility. The section addresses the efficacy of corporate acts in specified circumstances. An internal defect in appointment, the legal capacity of the company to contract and the liability of a person acting as director are three distinct questions requiring separate analysis.

10. Removing a director: public-company protection and procedural fairness

The structure of s 203D should be explained as a sequence, not memorised as one general rule. Subsection (1) confers the removal power on the company acting by member resolution and overrides specified inconsistent contractual or constitutional provisions. It also contains a qualification for a director appointed to represent particular securityholders. Subsection (2) sets the special notice period: notice of intention must ordinarily reach the company at least two months before the meeting, with an exception for certain company-called meetings following receipt of that notice. Subsection (3) makes the company responsible for promptly forwarding the notice to the affected director. These are different duties performed by different participants.

Subsections 203D(4)–(6) provide the affected director's participation and written-representation protections, together with limits on circulation and reading of representations. These are not favours conferred by a sympathetic chairman; they are procedural protections embedded in statute. Subsection (7) addresses timing relevant to

certain directors whose appointment or reappointment interacts with the removal process; subsection (8) identifies strict-liability offences for specified contraventions. The full statutory language must be checked before a lawyer claims an actual criminal consequence or states that a particular representation must be distributed. In the tutorial, explain the framework and identify the facts needed without guessing what the company has actually done.

Four dates must be separated in the 18 November problem. (1) The relevant members' notice of intention to move a removal resolution under s 203D(2) ordinarily needed to be received no later than 18 September 2026, two calendar months before the AGM. (2) The company must provide that notice to each director as soon as practicable; the Act does not substitute a fictional fixed date. (3) As a listed company, FreshFoods ordinarily owes its members at least 28 days' meeting notice under s 249HA: 21 October 2026 is the 28-day backward calculation. (4) Any additional rights to give notice of a proposed member resolution under ss 249N–249O are a separate statutory question. Importantly, the tutorial directs you to focus on Week 4 and director removal, not to pretend procedural sections yet to be taught answer whether Proposal 1 is substantively competent.

A two-month interval is not always interchangeable with 60 days, and 28 days is not two calendar months. A lawyer should place the two requirements on an actual calendar and obtain evidence that the appropriate notice was RECEIVED on time, rather than merely drafted or mailed. Also establish when FreshFoods actually called the AGM. The narrow exception in s 203D(2) may affect the outcome if the company called the meeting after receiving the proposed removal notice. That calling date is not stated. It is a genuine legal uncertainty, not a gap the writer should fill with invented facts.

For listed/public companies, s 203D overrides inconsistent director contracts and constitutions. Section 203E invalidates attempted removal by other directors. For proprietary companies, s 203C is a replaceable rule allowing members to remove and replace a director, but a constitution can displace that default; s 203CA protects against removal leaving the company without any directors. These rules matter precisely because the lecturer told client-interview students to ask “public or proprietary?” before they announce a statute.

Section 203D must be read in sequence. Subsection (1) creates the substantive member power. Subsection (2) requires notice of intention to the company at least two calendar months before the meeting, except where the company calls a meeting after the notice. Subsection (3) requires forwarding it to the targeted director promptly. Subsection (4) gives the director both a written-statement right and the right to speak. Subsection (5)

explains circulation or distribution-and-reading. Subsection (6) limits that circulation duty for statements over 1,000 words or defamatory statements. Subsection (7) deals with the substituted director's retirement timing. Subsection (8) marks strict-liability offences for particular company defaults. A High Distinction answer applies every relevant stage to each of Priya, Marcus and Daniel.

The distinction between s 203C and s 203D is fundamental. Section 203C is a replaceable rule for proprietary companies. Section 203D(1) provides the compulsory public-company rule: members may remove a director by resolution despite contrary constitutional provisions and contractual protections. Under s 203E, other directors cannot remove a public-company director merely by board action. This makes appointment and removal a significant shareholder accountability mechanism, though shareholders still have to win a vote.

Section 203D(2) requires notice of intention to move a removal resolution to be given to the company at least two calendar months before the meeting. An exception permits a meeting called by the company AFTER the company receives the removal notice to pass the resolution even where the meeting occurs within two months. This is not the same as saying that a meeting already called can automatically dispense with the normal two-month requirement. Section 203D(3) then requires the company to notify the affected director as soon as practicable. Sections 203D(4)–(6) give the affected director a written-statement and oral speaking right; the statement need not be circulated if longer than 1,000 words or defamatory. The appointment of a replacement and the director's retirement cycle also require consideration under s 203D(7).

For the 18 November 2026 AGM, the normal two-month notice date was 18 September 2026. If HBC only decides to act after Week 4 in October, the ordinary window for that AGM has closed. A lawyer must obtain the actual notice of meeting and the date FreshFoods formally CALLED the AGM: the statutory exception is sensitive to that fact. A publicly listed company also has member meeting notice rules, but the tutorial directs the removal question primarily to s 203D. Membership proposal rights under ss 249N–249O are explored in the next tutorial and must not be conflated with the separate s 203D removal-notice requirement.

Director removal is a useful lesson in reading every subsection of a statutory provision rather than only the first sentence. Section 203D(1) is the substantive source of members' power in a public company. Its "despite" language protects that power against inconsistent terms in the constitution or relevant agreements. But the power exists within a process intended to protect both corporate democracy and the affected director's

opportunity to respond. A removal resolution is therefore not simply "50% plus one and the director leaves": the proper notice, meeting, voting and procedural rights must be respected, and the special position of any director appointed to represent particular security holders must be considered.

The first key question is what document HBC must send and when. Under s 203D(2) a notice of intention to move the resolution ordinarily needs to reach the company at least two months before the meeting. For 18 November 2026, counting backwards two calendar months produces 18 September 2026. A notice delivered on 12 October would miss that ordinary deadline. But the same subsection contains an exception where a meeting is called by the company after the notice. It is therefore professionally careless to stop at "too late" without asking when the AGM was formally called, and whether the company called it after receiving the relevant notice. Merely telling the class that the AGM has been "scheduled" does not answer that issue.

The second question is what FreshFoods must do after receiving the intention notice. Section 203D(3) requires it to give the affected director a copy as soon as practicable. Section 203D(4) provides an opportunity to put the director's position to members in writing and to speak to the motion; the associated provisions address circulation or reading of the statement, the time for communication and relevant limits. This fairness does not give the director a veto. Nor should a student infer that failure to observe any single rule necessarily voids every company action without examining statutory consequences and applicable general provisions. Identify the particular subsection, identify the particular failure and research the specified consequence.

The third question is meeting notice. A listed public company ordinarily must provide at least 28 days' notice under s 249HA, separate from the director-removal intention notice. Counting 28 days back from 18 November produces 21 October. That does NOT turn 21 October into HBC's s 203D deadline: different provisions govern different persons, documents and purposes. The calculation for an ordinary 21-day public-company notice floor under s 249H is 28 October, but FreshFoods is listed, so the 28-day rule is the relevant ordinary floor. Questions of delivery, constitution, public-company removal restrictions and the date the meeting was called still require checking.

The legal drafting lesson is to prepare a chronology with columns for event, responsible person, governing subsection, necessary proof and legal consequence. For HBC it would include notice of intention (HBC to company, s 203D(2)), copies to directors (company, s 203D(3)), response opportunity (each affected director, s 203D(4)–(6)), meeting notice (company, s 249HA and other meeting provisions) and member votes on separate named

removal and appointment motions. A client can then see what can still be done and what evidence is needed before anyone promises a successful board replacement.

11. Resignation: why the ASIC filing matters in Leah's problem

When someone announces 'I resigned last month', begin with documents. Section 203A is a replaceable rule allowing resignation by written notice to the company at its registered office. Whether Leah complied with the applicable constitution and rule must be established before applying the later ASIC timing rule. Section 203AA(1)(a) provides for effectiveness from the cessation date when ASIC is properly notified within 28 days. Section 203AA(1)(b) provides a different effective date if that period is not met: the day written notice is lodged with ASIC. An administrative failure is therefore not safely dismissed as an insignificant paperwork error.

Section 203AA(2) provides a mechanism to seek fixing of an earlier resignation day when the statutory conditions are established. Subsection (3) directs the Court to consider whether backdating is just and equitable. Subsection (4) governs ASIC's consideration of the applicant's conduct and reasons for delay. Subsection (5)(a) concerns an application to ASIC within 56 days of the cessation day, in the prescribed form; subsection (5)(b) concerns an application to the Court within 12 months, or a longer period allowed by the Court. Subsections (6)–(7) concern lodging a court order and strict liability for a specified failure. These are distinct procedural routes, not an automatic right to backdate merely because the person insists that the resignation was genuine.

Section 203AB adds a separate safeguard, including restrictions affecting resignations that would leave the company with no director. Because BlueWave has several board members in the stated facts, the last-director issue may ultimately be immaterial, but it should be checked rather than assumed. Most importantly, if Leah remained formally appointed when she acted as consultant, she may already be a director under s 9AC(1)(a)(i), before one reaches de facto or shadow status. A complete answer addresses the formal route first and only then explains the alternatives if resignation was effective.

Section 203A (replaceable rule) permits resignation by written notice to the company at its registered office. Section 203AA(1)(a) provides that if ASIC is notified within 28 days of the person stopping being a director, the resignation takes effect on the day they stopped; otherwise s 203AA(1)(b) makes it effective on the day written notice of cessation is lodged with ASIC, subject to the corrective mechanism in ss 203AA(2)–(5). Section 203AB generally prevents a resignation taking effect if the company would be left with no directors, subject to an exception related to winding up. An administrative record left

unchanged at ASIC therefore can matter to FORMAL status; it does not by itself answer whether a person later acts as a de facto director.

This issue is deliberately placed in Leah's facts. "She informed the company" does not establish that she delivered the legally required written notice to the registered office, and the dates of cessation and ASIC notification are not specified. Do not invent them. Analyse, first, whether Leah ever stopped being a formally appointed director and, second, if she did, whether her later conduct creates an independent statutory basis for director or officer status.

Resignation is a distinct legal issue from whether somebody later behaves as a director. Before applying de facto or shadow doctrine to Leah, ask whether she ceased being a formally appointed director at all. The scenario says she "informed" the company of her intention to resign; it does not say whether she served the written notice required by the applicable replaceable rule, whether BlueWave's constitution changes the process, exactly when the ASIC notification was made or whether Leah was the last remaining director. A lawyer cannot fill those gaps by imagination. The status timeline must be established first.

The statutory focus is ss 203A, 203AA and 203AB. Section 203A is the replaceable written-resignation rule. Section 203AA contains effective-date and late-notification provisions linked to the ASIC reporting process. Under the general design, timely ASIC notification can mean the resignation takes effect on the cessation day, while late notification can cause the effective date to be the later filing date unless the statutory correction procedure is properly invoked and succeeds. Section 203AB addresses attempted departures that would leave a company without directors, subject to statutory qualifications. Leah's belief that she was no longer a director is relevant to her state of mind, but cannot itself conclusively determine the legal effect of the resignation.

Suppose, hypothetically, Leah delivered a compliant written notice on 1 August 2026 and ASIC received the required notification within 28 days: that supports the earlier cessation date under s 203AA's relevant pathway. If the notification was not made until 15 September and no correction was granted, her formal status might extend into the consultant period. The exact result depends on the correct statutory preconditions, so the example illustrates the issue rather than proving anything about the tutorial's incomplete facts. The lawyer's first requests should be the resignation notice, registered-office service evidence, company secretary correspondence, ASIC form and lodgment receipt, register extracts, board composition and any ASIC/court rectification documents.

12. Other parts of the slides and their exam weighting

The lecturer's distinction between assessable doctrine and wider professional context does not mean the latter can be misstated. Director ID requirements are administered through the Australian Business Registry Services, and a new director generally needs a director ID before appointment. A director ID is distinct from the company's ordinary ASIC officeholder notice. Do not turn a statement in an automated summary about 2026 filing into the proposition that every director ID must already appear on the ASIC companies register. For statutory details outside the Week 4 tutorial, explain the proposition as an administrative context topic and refer students to ABRS and ASIC guidance for the up-to-date process.

The Week 8 client interview is more than a performance of speaking confidently. The student must elicit the facts necessary to determine legal elements. A good consultation separates identity and authority, then timeline, documents, commercial purpose and potential harm. For Leah, that means the precise resignation notice, lodgement, consultancy contract, board minutes and decision chronology. For HBC, that means the constitution, shareholder entitlements, the exact resolution wording, notice receipts and meeting-calling date. Ask open questions first, test particulars second, summarise the client's instructions and identify the documents that must be obtained before final advice. Professional duty questions such as conflicts and cost disclosure must be addressed according to the exercise instructions, but cannot substitute for substantive legal reasoning.

“N/E” in the lecture slides means the subject is NOT EXAMINABLE in the client interview or final written assessment according to this forum: company secretary functions; some director disqualification and remuneration rules; details of two-strikes remuneration voting. The lecturer nonetheless gave their broad context, so the chapter records them without treating them as the primary study priority. The core assessed matter is the division of powers, director identification and related director removal. Do not spend scarce revision time memorising non-assessed administrative detail ahead of s 9AC, s 198A, s 203D and the leading cases.

For completeness: public companies generally require a company secretary (s 204A), which may act as a principal administrative officer; directors’ eligibility and disqualification are addressed by ss 201B, 206B–206G; default director remuneration is addressed by s 202A; listed company reporting can engage s 300A and other provisions; resignation engages ss 203A, 203AA and 203AB. Record these links because they matter in professional work, but distinguish the course’s expressly stated assessment weighting

The lecture's informal speaking statements about insurance, management power and director IDs are illustrative, not substitutes for the current statutory wording.

The slides also introduce: company secretaries (s 204A and related rules); director disqualification under ss 206B–206G; remuneration under s 202A, member remuneration-information rights under s 202B and later oppression issues under s 232; listed-company remuneration reports under s 300A and "two strikes" mechanisms; and the forthcoming Week 8 client interview assessment. The lecturer marked some of these items "N/E" (not examinable or not emphasised in this week's slides); this edition records them without replacing the four central examinable themes: statutory director definitions, allocation of power, public-company removal, and the substantive Tutorial 4 cases.

The Week 8 client interview accounts for 30% of the final mark according to the Week 4 slides. The slides state that it covers both interviewing skill and the law through Week 6, so tomorrow's tutorial is foundational. Preparation should involve explaining the law to a lay client with practical recommendations, not reciting case names without analysis.

The lecturer deliberately distinguishes examinable doctrine from the slides that broaden professional awareness. That distinction should guide study priorities without leading the textbook to silently omit what was taught. The company secretary's statutory and practical role, appointment disqualification regimes, remuneration and the two-strikes rule are not all equally central to this particular tutorial, but they belong on the student's conceptual map. It is enough to treat them here as orientation if the lecturer marked them non-examinable; they should not be presented as the primary solution to FreshFoods or BlueWave.

The lecturer also connects substantive company law with the Week 8 client interview. An assessment interview is not simply a spoken law exam: a future lawyer must establish who the client is, the business objective, the facts and instructions, the identity of potential conflicts, and what documents are needed. Instead of announcing an outcome at the beginning, ask targeted questions, explain what the law does in words a client can understand, identify uncertainty and specify the next step. For HBC the first question could be, "Are you trying to secure a binding employment policy or change the board?" For Leah it could be, "Please show me the written resignation, ASIC notification and board minutes from the weeks when you advised BlueWave." Each question is justified by a specific statutory element.

Before any simulated interview, review the course's instructions and legal-professionalism requirements. Do not invent a universal cost-agreement process simply from the forum's

assessment briefing; distinguish the lecturer's described simulation checklist from legal obligations that may vary with the retainer and jurisdiction. For the actual classroom exercise, the strongest candidate is conversational, evidence-conscious and clear about what is known, what remains to be established and how the client should proceed.

STATUTORY INTERPRETATION AND PINPOINT PROVISION GUIDE

ss 124; 134–135; 198A(1)–(2)

WHY THESE PRECISE SECTIONS ARE LINKED. Section 124 gives a registered company broad legal capacity, but does not distribute decision-making among corporate organs. Section 134 explains how a company's internal management can be governed by replaceable rules, a constitution or a combination. Section 135 explains the statutory status and application of replaceable rules and the ability to displace them through a constitution where legally permitted. Section 198A(1) allocates business management to or under the direction of the directors; subsection (2) permits exercise of company powers except those reserved to members by the Act or constitution. The correct chain is therefore capacity → internal governance source → identity of the empowered organ → lawful procedure. Use it when a purported shareholder resolution tells the board to operate the business in a specific way.

PRECISION NOTE: s 124 establishes legal capacity of the company; ss 134–135 allow the replaceable rules to interact with constitution; s 198A(1) allocates the business to directors' management or direction; s 198A(2) confers exercise of corporate powers except those reserved to general meeting. Why apply them in this order? Because a dispute over WHO makes a company decision cannot be solved just by proving that the company has capacity to do it.

Company legal capacity is not identical to authority within the company. Section 124 concerns the company itself. Sections 134–135 let you determine the internal governance rules. Section 198A, where operative, assigns management to the board. Trigger: members wish to command an operational business decision.

READ THE STATUTES AS A SYSTEM. Section 124 gives company capacity and powers; it deals with the corporate legal person. Section 134 states how replaceable rules and a constitution can govern internal management. Section 135 explains replaceable rules and their capacity to be displaced as permitted; it also involves the special position of a company with a sole director/shareholder. Section 198A is a replaceable management rule with the critical distinction between managing the business by or under directors' direction in subs (1), and the directors' capacity to exercise corporate powers not otherwise reserved to a general meeting in subs (2). In a worked answer, apply these in that order. First establish that a company can act; then identify the organ legally entitled to decide.

WHY THE CASES ARE USED. Automatic Self-Cleansing explains the constitutional allocation of management. NRMA v Parker applies that allocation to a proposed member meeting purpose. ACCR v CBA applies it to modern member resolution proposals, including advisory resolutions. Together they interpret the significance of the statutory and constitutional structure; they do not replace it. The correct examiner-facing sentence is: "Because this is a substantive operational direction and, on the assumptions, management authority is vested in the board under s 198A and the constitution, the proposed ordinary member resolution is outside the general meeting's competence."

s 9AC(1)(a)(i)–(ii); (1)(b)(i)–(ii)

WHY EACH LIMB MATTERS. A valid director appointment belongs in s 9AC(1)(a)(i); an alternate director appointed and acting in that capacity is addressed by s 9AC(1)(a)(ii). For a person without valid appointment, s 9AC(1)(b)(i) asks whether that person acted in a director's position: prove functions and conduct. Section 9AC(1)(b)(ii) asks whether the directors were accustomed to follow that person's instructions or wishes: prove habitual direction and board response. In that latter limb the statute expressly excludes advice properly given in the relevant professional or business relationship. Do not apply the exclusion as a blanket immunity from de facto status, where the separate acting-in-position test remains the question.

PINPOINT TEST: s 9AC(1)(a)(i) = formal appointed director; (a)(ii) = appointed alternate acting in that capacity; (b)(i) = no valid appointment but acting in the position (de facto); (b)(ii) = board accustomed to act per instructions or wishes (shadow), subject to the proper professional/business advice exclusion. The lecturer explicitly said that de facto/shadow are teaching labels rather than words appearing in the statute. Each fact must be placed against its own limb; never cite merely "s 9AC" without explaining the limb.

Formal and alternate directors; de facto directors; shadow directors; professional/business advice exception. Trigger: a person calls themselves a consultant or adviser but may really control governance.

HOW TO APPLY EACH LIMB. Under s 9AC(1)(a)(i), find the appointment document. Under para (a)(ii), identify the alternate appointment and whether the alternate was acting in that capacity at the relevant time. Under para (b)(i), identify actual functions and ask whether they amount to occupying the position of director in this company: use Drysdale and Grimaldi. Under para (b)(ii), identify the instructions or wishes, the affected appointed directors, evidence of habitual compliance, causal connection and the express

professional/business relationship exclusion: use Buzzle and, where relevant, Antico. You must not prove para (b)(ii) by citing only evidence of the alleged controller's own activities or para (b)(i) by citing only the board's willingness to listen.

THE LEAH SEQUENCE. The facts say Leah was appointed, purportedly resigned, then worked as consultant. Start with formal appointment. Next determine statutory resignation effectiveness. If formal status truly ended, examine de facto and shadow director positions independently. If formal status did not end, record that conclusion rather than mechanically applying de facto labels to someone who may still be a de jure director. The law is a conditional decision tree; demonstrating that tree is what makes an answer convincing.

s 9AD(1)(a); (1)(b)(i)–(iii)

A USEFUL COUNTEREXAMPLE. A company's finance controller could have substantial independent authority to negotiate refinancing and might therefore be an officer within s 9AD(1)(b)(ii), even if there is insufficient proof that the person acted as a director under s 9AC(1)(b)(i). Conversely, a formally appointed director is an officer through s 9AD(1)(a) even when they do not manage daily finances. The tests overlap in some situations but are not identical. A well-written opinion states the conclusion under each relevant subsection and resists the unsupported assumption that officer status automatically resolves the directorship question.

SOURCE CORRECTION: The original tutorial preamble says officer is in s 9AC. That was not silently rewritten in the quoted question. In the legislation applicable as at October 2026, s 9AD defines officer; earlier judgments will often refer to s 9 because the definitions were formerly located there. Include this temporal citation reconciliation when using Grimaldi or ASIC v King.

Independent officer definition. Trigger: a person affects decisions for a substantial part of the company or its financial standing, even without clear board membership.

WHY THE DEFINITION MATTERS. The wider officer definition addresses influential individuals who may not be classified as directors. Under s 9AD(1)(b)(i) ask what decisions the person makes or participates in and whether those decisions concern the whole or a substantial part of the corporation's business. Under (b)(ii) ask whether their actual capacity significantly affects its financial standing. Under (b)(iii) ask about habitual following of instructions or wishes and the relevant statutory advice qualification. These are alternative paths and should not be combined into an imprecise claim that the person was "important." ASIC v King is a leading authority for a functional understanding of the

financial-standing limb; Grimaldi reinforces the need to understand real organisational functions.

PRACTICAL CONSEQUENCE. If status is established, consider which specific director/officer duties apply; do not assume every possible breach is already proved. For example, s 180 concerns care and diligence, whereas ss 181–183 address different standards and forms of misuse. Solvency and debt-incurrence provisions are separate issues. A textbook must explain this sequence or it will teach readers to confuse who owes a duty with whether they have violated it.

ss 201A(1)–(2); 201B(1); 201D

APPLY THE REQUIREMENTS TO PEOPLE, NOT TO ABSTRACT HEADCOUNTS. FreshFoods is a public listed company. Before recommending the dismissal of three board members, identify how many directors the company will have at the time the removal becomes effective, whether at least two remaining directors are ordinarily resident in Australia, and whether replacement nominees are natural persons at least 18 years old who have provided the necessary written consent. If the exercise does not reveal the total board, describe these checks as conditions rather than declare the post-removal board legally defective.

Minimum director complement and residence, adult individual qualification, written consent. Trigger: replace the entire board of a public company.

WHY THE NUMBERS MATTER. A proprietary company generally needs at least one director ordinarily resident in Australia under s 201A(1). A public company needs at least three directors (other than alternates), at least two ordinarily resident in Australia, under s 201A(2). If FreshFoods removes all three currently named directors, the statutory minimum is a crucial practical consideration for drafting and sequencing their replacement. Section 201B concerns eligibility, including the age and individual-person requirements; s 201D requires written consent before appointment. Check disqualification provisions as a separate issue. A proposed replacement is not automatically an effective director merely because HBC endorses them.

WHY THIS ADDS TO THE TUTORIAL. A strong corporate lawyer does not say merely "pass the removal resolution." They ask for signed candidate consents, age and identity confirmation, director IDs under applicable registry law, the company's director register, the residence position and the constitution. If candidate qualifications are absent, state that the legality of a final replacement cannot yet be assured. The voting procedure and threshold are different from the substantive validity of candidate appointments.

ss 201G; 201H(1) and (3)

APPOINTMENT MECHANICS MUST BE SEPARATE FROM REMOVAL. A proposed resolution removing Priya from office under s 203D addresses the status of the incumbent. A different resolution appointing nominee A under s 201G addresses who will occupy the position. An appointment proposed by other directors under s 201H has its own statutory operation and confirmation mechanism, so it cannot be silently assumed to be the same as an appointment made by shareholders. For a public company the confirmation requirement in s 201H(3) is at the next AGM. A lawyer maps both vacancy and succession, not one or the other.

IMPORTANT ADDITION FOR FRESHFOODS — s 201E(1): where a public company proposes a single resolution to appoint or confirm two or more directors, that resolution is void unless members first resolve that the appointments may be voted on together and NO VOTES are cast against that procedural resolution. Abstentions do not themselves constitute votes against. Section 201E(2) deals with defined exceptions, including a ballot/poll enabling independent choice between candidates. Thus the safest normal approach for HBC is THREE SEPARATE appointment resolutions, one for each candidate, rather than a bundled slate. Section 201G is a replaceable rule: first inspect FreshFoods' constitution. The 201E safeguard is statutory for public companies, not simply a replaceable rule.

CLARIFY s 201A(2) and 201D(1)–(2): FreshFoods is a public company and must maintain at least three directors other than alternates, at least two ordinarily resident in Australia. Each candidate must be a natural person at least 18 and not disqualified (s 201B). A signed consent must be received BEFORE appointment and retained by the company; check director ID obligations separately. These are practical requirements before the removal/appointment package can safely take effect.

Member appointment by general-meeting resolution; board appointments and public-company ratification at next AGM (replaceable rules). Trigger: HBC nominates replacement directors.

SEPARATE APPOINTMENT POWERS. Section 201G is a replaceable rule through which members may appoint directors. Section 201H supports appointment by directors as an additional board member in the conditions stated, with subsequent public-company confirmation rules. A lawyer must not assume the members' and directors' routes operate identically or that a board can simply install a permanently self-selected director in a

public company without regard to subsequent statutory/constitutional controls. Always look at the company's actual constitution and the number of board vacancies.

WHY s 201E IS ADJACENT. The special public-company rule about bundled appointment resolutions is a useful trap. Where the section applies, members should have a real opportunity to vote separately on each candidate unless the stated procedural permission and exceptions apply. HBC's three proposed directors must not automatically be treated as one inseparable team for voting. An exam answer can demonstrate commercial awareness by saying what the resolutions would look like: remove Priya, remove Marcus, remove Daniel; appoint nominee A, appoint nominee B, appoint nominee C—each clearly named and subject to lawful appointment conditions and the meeting notice.

ss 203C; 203CA; 203D(1)–(8); 203E

HOW TO CHOOSE BETWEEN THE REMOVAL PROVISIONS. Start with the company's public/proprietary classification. Section 203C is a replaceable rule for proprietary companies, whereas s 203D is the mandatory public-company route. Section 203CA adds a protective proprietary-company rule against leaving the company without a director in specified circumstances. Section 203E addresses a different problem: directors of a public company cannot remove one of their fellow directors merely by board resolution or notice. FreshFoods is listed and therefore public, so start with s 203D, not s 203C. An answer that cites s 203C because it says 'removal' applies the wrong legal branch.

DETAILED STATUTORY WALK-THROUGH — s 203D(1): members of a PUBLIC company may remove a director by resolution despite the constitution, company–director contract, or members–director contract. A director appointed to represent specified shareholders or debenture holders is subject to the express replacement qualification in the final sentence of subsection (1). That exception must be checked before saying that every director is instantly removed.

s 203D(2): notice of intention to move a removal resolution must normally REACH THE COMPANY at least TWO CALENDAR MONTHS before the meeting. For 18 November 2026 the ordinary last date is 18 September 2026. This is a special notice of intention, distinct from the formal notice by the listed company convening the meeting. Exception: if the COMPANY CALLS A MEETING AFTER receipt of the removal intention, the resolution can be passed at that company-called meeting even less than two months later. We need the actual date on which the company called the AGM; a calendar booking alone does not establish that fact.

ss 203D(3)–(6): FreshFoods must transmit each removal notice promptly to the affected director [sub (3)]. The director can circulate a statement and speak at the meeting [sub (4)(a)–(b)]. The company must send the statement with meeting notice if time permits, or provide it to those attending and read it before voting [sub (5)(a)–(b)]; a statement longer than 1,000 words or defamatory does not need to be circulated [sub (6)]. These are procedural protections, not veto powers.

ss 203D(7)–(8): when a person replaces a removed director, calculate the replacement's retirement timing as if that replacement became director when the replaced director was last appointed [sub (7)(a)–(b)]. An offence based on noncompliance with sub (3) or sub (5) is an offence of STRICT LIABILITY [sub (8)], not a strict-liability offence applying to every subsection of s 203D.

ADDITIONAL MEETING NOTICE DISTINCTION — ss 249H(3) and 249HA(1)–(3): although public-company director removal/replacement resolutions cannot use shorter-than-21-day notice under s 249H(3), FreshFoods is LISTED, and s 249HA requires at least 28 days' meeting notice, overriding s 249H. For the AGM on 18 November 2026, 28 days earlier is 21 October 2026. Neither the 21 October date nor the ordinary s 249N member agenda procedure replaces the special s 203D(2) 18 September date. Whether meeting-notice requirements were actually complied with cannot be decided from the hypothetical.

REMOVAL VOTING: ordinary resolutions are normally determined by a majority of votes cast unless the statute or constitution imposes a different rule. The 110 HBC members possess 220 shares between them (110 × 2), not 110% of the voting entitlement or automatic control of the AGM. You cannot calculate the percentage of votes that HBC holds without the total eligible voting share capital and relevant voting rights. The tutorial Q1(1) expressly instructs you to ASSUME procedural requirements and instead assess substantive competence.

Distinguish proprietary removal (replaceable) from public removal (mandatory), no removal by fellow directors and fairness/deadline safeguards. Trigger: Proposal 2 and the date problem.

STEP-BY-STEP LEGISLATIVE READING. First identify the kind of company. Section 203C is a replaceable removal rule for proprietary companies; s 203CA addresses a proprietary-company no-director problem. FreshFoods is ASX-listed and hence a public company, so s 203D—not s 203C—is the operative removal source. The opening rule in s 203D(1) authorises member removal notwithstanding contrary constitutional or

contractual arrangements, subject to express statutory qualifications. It is paired with s 203E: in a public company fellow directors ordinarily cannot remove a director by a board resolution. These sections together distinguish the board's management powers from a member governance power that the board cannot simply confiscate.

Then examine the process one limb at a time: s 203D(2) (two-month notice of intention, plus the company-called meeting exception); s 203D(3) (company transmits notice to the affected director as soon as practicable); s 203D(4)–(6) (director's opportunity to make a statement and speak, circulation/reading and specified limits); s 203D(7) (replacement director retirement timing); and s 203D(8) (strict liability for the specified offences). A law student's citation to s 203D in general misses the key point if the alleged error is, for example, failure to give a director the relevant notice under subs (3). Pinpoint citation shows which legal duty and factual event are engaged.

ss 203A; 203AA(1)–(5); 203AB

HOW TO ADDRESS THE MISSING DATE IN LEAH'S QUESTION. Write a chronology with five blank entries: purported resignation delivered; first day Leah actually ceased director functions; ASIC notification received; consulting agreement signed; first significant restructuring decision. The first three dates determine the statutory resignation issue. The later entries help assess de facto and shadow status even if the original resignation succeeded. This avoids treating the legal effective date as the end of the analysis: a genuinely former director can subsequently act in a director's position or control the board.

RESIGNATION RULE IN FULL — s 203A is a replaceable rule allowing resignation by WRITTEN notice to the registered office. Under s 203AA(1)(a), where ASIC is notified under s 205A(1) or s 205B(5) within 28 days after a person stopped being a director, the resignation takes effect on that earlier cessation day. Otherwise under s 203AA(1)(b), its effective date is ordinarily the date written notice is lodged with ASIC. Therefore a late administrative filing can change the effective period of formal directorship.

RECTIFICATION — s 203AA(2) allows ASIC or the Court to fix the earlier resignation date if the prescribed application and proof are satisfied. Subsection (3) requires the Court to be satisfied this is just and equitable. Subsection (4)(a)–(b) requires ASIC to consider the applicant's conduct and reasons for delay. s 203AA(5)(a)(i)–(ii): ASIC application within 56 days of cessation and in prescribed form. Subsection (5)(b)(i)–(ii): Court application within 12 months, or longer if allowed. Section 203AB(1) normally prevents a resignation taking effect if it leaves a company without directors (subject to stated exceptions). For

Leah, request the resignation letter, delivery proof, ASIC lodgment, any correction application, current register and constitution before concluding she had ceased to be a formal director.

Resignation method and effective dates, late ASIC notification and sole-director prohibition. Trigger: Leah believes she resigned but ASIC records were not updated.

RESIGNATION IS NOT AN INFORMAL ASSUMPTION. Check whether s 203A's replaceable rule governs and whether compliant written notice was given. Under s 203AA, the date on which the departure takes effect can depend on the timing of notification to ASIC and the statutory correction procedure for late notification. Distinguish the existence of the resignation decision from the formal effective-date rule. Section 203AB protects against specified situations where a company would otherwise have no directors. Because the facts say only that BlueWave records were not properly updated, neither an effective departure nor an ineffective one can responsibly be stated as certain without records.

A CAREFUL CLIENT QUESTIONNAIRE. Ask Leah: Did you sign and date a resignation notice? To which address or officer did you send it? What does the company's constitution say? Was there at least one remaining director? When did the company notify ASIC and was the notice accepted? Was an application made to ASIC or the Court to fix an earlier date? When did you commence consultancy? These facts determine whether the correct opening issue is formal director status under s 9AC(1)(a), not only de facto status under s 9AC(1)(b)(i).

ss 248A(1)–(3); 248B(1); 248C–248G; 251A

EVIDENCE IS THE BRIDGE BETWEEN RULE AND ADVICE. Obtain the company's rules on circulating resolutions, whether all directors entitled to vote agreed where the rule requires it, proper meeting notice, quorum and a vote record. Section 251A requires appropriate recording and maintenance of minutes. The same documents are especially informative where a consultant alleges that the board independently made every major decision. Evidence of actual deliberation supports independence; standardised approval without discussion, combined with a regular pattern of consultant direction, may support a contrary inference. One must not assume, merely from a written resolution, that the board did or did not exercise independent judgment.

BOARD DELEGATION AND LIABILITY — s 198D(1) permits delegation (unless constitution restricts) to a directors' committee, director, employee or any other person; a delegation is recorded in the company minute book. Section 190 deals with directors'

responsibility for exercises of delegated power, with relief only if the requirements of s 190(2) are met. Do not infer from s 198D that delegation automatically eliminates director obligations. In Leah's case, the board's ability to employ a restructuring consultant is legally plausible; the decisive issue is whether her real conduct moved beyond merely exercising delegated advisory tasks into occupying the director's position or controlling the board.

Board meeting quorum, majority, circulating resolutions, recording and signing of decisions. Trigger: how a board validly makes and proves decisions.

THE LOGIC OF BOARD PROCESS. Directors ordinarily decide by properly constituted board action. The circulating-resolution mechanism in s 248A is more demanding than an informal majority text conversation; meeting provisions then regulate calling meetings, participation, quorum, chairing and voting, subject to their replaceable-rule status and company constitution. Minutes under s 251A create a record of decisions. These details protect governance certainty and provide evidence of who truly governed.

APPLICATION TO LEAH. A board minute may say "the directors resolved to discontinue Model C"; that does not necessarily end the inquiry. A lawyer asks what material the directors examined, whether Leah was instructed to report or had already committed the company, whether directors tested alternatives and who communicated the final decision externally. Section 248G explains formal voting outcomes; s 9AC tests what the substantive arrangement reveals about status. Formal corporate procedure and functional corporate reality must be read together.

ss 249N–249O (next week's procedure)

A CAUTION ABOUT THE 110 MEMBERS. The original Question 1(1) expressly assumes that procedural requirements are satisfied, so avoid writing two pages about s 249N instead of addressing legal competence. Later procedural analysis may ask whether the proponents satisfy the members' resolution thresholds and what notice the company must give under s 249O. The number 110 is obviously designed to draw attention to potential member-number thresholds, but meeting rights never convert a substantively incompetent management instruction into a valid exercise of power. On the facts, total HBC shares = 110 × 2 = 220; their percentage of votes cannot be calculated without the company's total voting rights and class structure.

Members' notice-right and timetable distinct from substantive power and from the s 203D removal notice. Trigger: asked to get a resolution onto an already-scheduled AGM;

excluded from Tutorial 4 Q1(a)–(b), but useful to distinguish and will be covered in Tutorial 5.

THE LEGAL DISTINCTION IS BETWEEN PROCEDURE AND POWER. Sections 249N and 249O regulate aspects of members' proposed resolutions and notice, and other Chapter 2G provisions govern meeting calls and communication. They do not silently create an unlimited right of shareholders to run business operations. ACCR v CBA shows why the legal competence of a proposed motion must be assessed before the statutory meeting machinery can do meaningful work. For Tutorial Question 1(1), the handout expressly directs the student to assume procedural compliance and analyse substance, so an answer that spends two pages counting requisition signatures while overlooking the staffing mandate misses the assessed issue.

For Questions 1(2)–(3), procedure becomes relevant because removal is substantively within member power. But even then the special notice of intention in s 203D(2) is a different event from the listed-company meeting notice under s 249HA. This distinction is the core of the date calculation for 18 November. You can know one deadline precisely without knowing whether HBC actually met it; do not mistake legal arithmetic for evidence of actual service.

ss 180–184; 588G (future topics)

Illustrative duty and insolvent-trading provisions; not proven merely by establishing statutory director status. Trigger: a later problem asks whether conduct actually breached a duty and what civil/criminal consequences follow.

STATUS BEFORE BREACH. Director and officer classification matters partly because statutory duties can attach to persons falling within those definitions. But a person becoming a director by operation of s 9AC does not automatically mean their decisions were negligent, dishonest or insolvent trading. Section 180 concerns care and diligence; ss 181–183 concern good faith/proper purpose and misuse of position or information; s 184 contains criminal offences requiring proof of its particular mental and conduct elements. Section 588G is associated with the company's incurring debts when insolvent and imposes its own distinct conditions and defences. These topics are developed in later weeks; they are signposted here so students understand why classification matters without prematurely deciding liability.

A PROPER REMEDIES ANSWER. If later facts establish a breach, ask who may pursue statutory civil penalty consequences or compensation, what the breach caused, whether ASIC or the company seeks relief, whether an injunction or director disqualification may

be relevant, and whether other equitable or common-law remedies apply. The specific statutory provisions and available relief must be checked for the particular claim. In Leah's scenario we have no proved debt date, solvency status, quantified loss or identified misuse. Therefore the responsible answer is to preserve and investigate evidence, not to invent a penalty or damages figure.

THE AUTHORITIES IN DEPTH — LEGAL REASONING, NOT JUST CASE NAMES

Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34

DEEPER LEGAL SIGNIFICANCE. The company had constitutional arrangements giving managerial authority to directors. A majority of shareholders sought to procure a sale of assets, while directors resisted the instruction. The judicial issue was not whether the shareholders had a commercial reason for preferring the sale, but whether an ordinary resolution could require directors to exercise a constitutionally allocated management power as directed. The Court of Appeal held that it could not. For a modern Australian problem, use the case as a foundational statement of corporate organ competence, then connect the principle to the Australian statutory management rule in s 198A and to the constitution under ss 134–135. Do not mechanically treat an English decision from 1906 as replacing the current Australian Act.

A member group favoured a transaction resisted by directors, while management was constitutionally assigned to the board. The majority could not simply command the sale by ordinary resolution. Use for separation of shareholder voting power from management authority; apply to staffing rules in FreshFoods.

FACTUAL SETTING. Members of the company sought to compel a transaction through an ordinary resolution despite articles that committed management to the directors. The directors did not agree with the proposed action. This produced the foundational question: where governing rules give directors the relevant power to manage, can an ordinary majority of shareholders simply instruct them to pursue a contrary course? This is why the authority is indispensable in an examination about board/shareholder disagreement. The case is not about whether the directors' chosen transaction was economically superior; it is about how the company's constitutional allocation of authority operates.

LEGAL REASONING AND OUTCOME. The court treated the management allocation in the articles as legally meaningful. The general meeting could not override the directors' authority merely by an ordinary resolution inconsistent with that allocation. Shareholder power remains important, but must be exercised through the legal routes provided by the constitution and law rather than assuming general-meeting omnipotence. It is especially important to state that this is an older English corporate-articles case. When advising on a 2026 Australian company, its proposition should be connected expressly to the present

Corporations Act ss 134–135 and 198A and the actual constitution, instead of being treated as a free-standing replacement for those provisions.

HOW TO USE IT. In FreshFoods Proposal 1, the controlling issue is management of checkout staffing and investment in automated technology. The case supports the proposition that an ordinary resolution cannot displace the powers validly committed to the board. Immediately pair the authority with s 198A and explain the qualification: a valid constitution or statutory reservation of member powers could change the analysis. Do not cite the case to suggest shareholders cannot remove directors; the express public-company statutory removal right in s 203D is the opposite example of a specific power that members may exercise.

NRMA v Parker (1986) 6 NSWLR 517

EVIDENTIAL USE. The important methodological idea from the decision is that a proposed vote must be capable of creating an authorised corporate act. The court examined how the association's governance arrangements allocated decision-making authority, rather than finding that a sufficient group of members could force the organisation to act outside those powers. In an exam answer, use this case when the facts show that a requisitioned resolution directs an officer or board to perform a function entrusted elsewhere; follow it with ACCR to address the non-binding opinion argument. Avoid confusing the court's power to restrain the putting of an incompetent resolution with a blanket principle that the chair can exclude any topic on which directors disagree.

A requisition sought to put a matter reserved for directors before members. The case is taught as allowing rejection of a meeting sought only to pass a resolution beyond member competence. Use for whether FreshFoods must even submit Proposal 1 to a vote.

FACTUAL SETTING. The dispute arose from member attempts to use the meeting machinery to change administrative arrangements concerning the NRMA's election process. The management of the relevant arrangements was allocated to directors under the organisation's governance rules. Although members sought a general meeting, the proposed purpose was a management direction outside what the members could decide by that method. The issue was therefore not simply whether the members were sufficiently numerous or sincerely concerned about an electoral process, but whether their proposed resolution was one the meeting had the legal competence to pass.

HOLDING AND RATIONALE. The court treated the company's allocation of management powers as significant when assessing the propriety of requiring a general meeting for the proposed purpose. Where a resolution is outside the members' power

compliance with meeting-requisition formalities cannot make that substantive resolution effective. This provides the bridge between the abstract division of corporate powers and the concrete question "Must the company put the proposal to a vote?" The case should not be over-generalised: the precise wording of the governance rules and the precise resolution matter.

APPLICATION METHOD. Use this authority after identifying the source of the board's management powers. First quote or paraphrase FreshFoods' proposed staffing mandate. Second explain that it purports to command staffing levels and prescribe a six-month implementation timetable. Third identify s 198A and the assumed governance allocation. Fourth cite NRMA v Parker to explain why a member-initiated meeting process cannot compel consideration of an otherwise incompetent management instruction. Finally address the different status of a removal resolution under s 203D. In legal advice, that distinction is more valuable than memorising the facts without their relationship to statutory power.

Stanham v National Trust of Australia (NSW), as cited in supplied slides

The lecture uses this case for mixed valid/invalid resolutions: a company need not put an incompetent resolution on the agenda even where proper resolutions remain. Full authoritative citation not independently confirmed; do not invent it.

CASE AND STATUS. Stanham v National Trust of Australia (NSW) (1989) 15 ACLR 87 is identified in the lecturer's materials as part of the board-versus-members line of authorities. It involved disputes about the governance and members' rights of the National Trust. Its appropriate educational use here is contextual: it is one of the Australian authorities informing whether corporate meeting procedures can be used for decisions that the constitutional structure allocates elsewhere. It should not be presented as standing for a novel mandatory outcome in the FreshFoods facts without a close comparison of the resolutions and governance rules.

LIMIT OF VERIFIED DETAIL. The previous version of this chapter lacked a checked full judgment extract for Stanham. Accordingly this expanded edition will not invent judicial quotations, exact factual detail or pinpoint passages. What we can safely teach is the methodology. Obtain the authoritative decision; identify its actual members' proposal, the constitutional provisions and what the court decided about the scope of the meeting power; then compare those facts with HBC. Until that full comparison is complete, give primary analytic weight to s 198A, Automatic Self-Cleansing, NRMA v Parker and the Full Federal Court judgment in ACCR v CBA, whose relevant propositions are available

and independently corroborated. This limitation is a model of careful legal research, not an excuse to omit the case.

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80

THE ACTUAL HOLDING AND WHY IT MATTERS. An activist group acting for more than 100 members tried to compel the bank to put climate-related resolutions to its AGM. Their argument included that the resolutions could be advisory and were a means for shareholders to express views. The Full Federal Court nevertheless held that the company need not submit a resolution absent a statutory or constitutional power vested in the members to pass it. The reasoning expressly distinguishes the individual and collective freedom of shareholders to express opinions from the powers of the members in general meeting as a corporate organ. The court rejected a general implied opinion-resolution power. The case supplies a direct answer to the common but incomplete suggestion that Proposal 1 would become valid if HBC merely changed ‘must retain’ to ‘the shareholders recommend retaining’.

EXAM APPLICATION. First, quote or paraphrase the exact mandatory language of HBC's motion. Secondly, identify that staffing, checkout configuration and implementation are management decisions. Thirdly, ask whether the constitution reserves that decision to members. Fourthly, state that the 110-person threshold, even if procedural conditions are assumed satisfied, is not a substantive grant of authority. Finally, recognise that HBC may still communicate policy concerns and use a lawful removal-and-appointment mechanism. The outcome is conditional on the constitution and any other specific grant of power, but the Act's ordinary management allocation makes HBC's stated Proposal 1 incompetent.

The Full Federal Court refused to recognise a general shareholder power to submit advisory management resolutions simply to express an opinion. A procedural requisition under s 249N does not create an unrestricted substantive power. Use especially for HBC’s attempted staffing mandate.

FACTS AND CONTEXT. Australasian Centre for Corporate Responsibility represented more than 100 members of Commonwealth Bank and invoked the statutory machinery for proposed members' resolutions at the Bank's AGM. The proposed measures concerned disclosure and management of environmental risks associated with the Bank's activities. The controversy was not that members lacked opinions on climate or that boards have a right to disregard ethical issues. It was whether a general meeting had the legal

competence to pass the proposed motions, including resolutions framed as non-binding expressions of opinion about matters of management. The Act's meeting provisions had to be interpreted against the company's separate legal personality and the allocation of management functions.

LEGAL ISSUE. The Full Federal Court asked whether the statutory ability to give notice of a proposed resolution under s 249N amounted to a substantive right to propose and have voted on any motion members wished to express, even where the subject matter was vested in the board. That is a fundamentally different question from whether a shareholder is entitled to communicate with fellow shareholders, ask questions or make public representations. An advisory resolution without coercive effect still purports to be an act of the corporate meeting. Its legal competence must be assessed.

DECISION AND REASONING. The Full Court dismissed ACCR's appeal. It did not accept the proposition that the statutory notice mechanism converted a general meeting into a forum entitled to pass any non-binding statement of opinion about management. A proposed resolution must be capable of validly being moved; ss 249N and related machinery do not supply the missing substantive power. The decision's treatment of company personality and managerial powers is why it should be taught with s 198A, rather than as a narrow rule about environmental campaigns. Students must not repeat a misleading summary suggesting the Full Court upheld a general right to put any advisory resolution. That would reverse the important result.

APPLICATION TO FRESHFOODS. HBC has deliberately assembled more than 100 shareholders, mirroring the activism structure that makes ACCR especially relevant. But 110 signatures or 220 shares do not answer Proposal 1. Its mandatory wording makes it even clearer than the non-binding motions in ACCR that HBC is trying to direct an aspect of business management. The resolution therefore faces a strong substantive objection. If HBC proposed a constitutional amendment or genuine member-governance motion instead, a fresh legal inquiry would be required. The lawyer should explain the limits of the current resolution without incorrectly telling the client that campaigning, meeting statements or director elections are prohibited.

Corporate Affairs Commission v Drysdale [1978] HCA 52; (1978) 141 CLR 236

The High Court treated the actual performance of director functions as important despite an invalid formal appointment. Use for why Leah cannot rely solely on termination paperwork.

FACTUAL AND LEGAL SETTING. Drysdale involved a person functioning as a director despite the absence of a legally effective appointment, in a statutory setting that imposed obligations on directors under the then-applicable company law. The litigation tested whether a person who had assumed director functions could avoid statutory accountability simply because of the formal deficiency. The High Court's approach recognised that the relevant definition and duties could extend to a de facto director. Historical context must be respected: the legislation considered in 1978 was not the currently numbered Corporations Act, so a teaching book must connect the underlying reasoning to the present Act rather than misquote present-day subsections as though they appeared in the original judgment.

WHY THE CASE MATTERS. Formal appointment is an obvious path to being a director, but an exclusive focus on valid paperwork would let a person perform board functions while denying the consequences associated with those functions. Drysdale explains why the law may recognise governance conduct despite formal defects. It is not a blanket rule that anyone described by co-workers as "a director" automatically becomes one. The evidence still has to establish occupancy of the relevant position in the circumstances, and the relevant present statutory provision remains s 9AC(1)(b)(i).

HOW TO USE IT IN PRACTICE. Start with the actual appointment and resignation documentation. If Leah was never effectively removed, she may remain a formal director, and no de facto analysis is needed to establish that status. If her formal office genuinely ended, ask whether the company nevertheless permitted her to resume director-like functions. Drysdale is the foundation for why a de facto status theory is legally possible; Grimaldi supplies a more contemporary, contextual method for examining the functions she actually performed.

Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 [133]–[143]

PINPOINT THE COURT'S LOGIC. At [133]–[143], the Full Federal Court asked whether Grimaldi was acting in the director's position in that corporation rather than searching for one mechanically decisive badge of office. Paragraph [141] is central because functions that would be expected of a director were entrusted to, or assumed by, Grimaldi with the executive directors' acquiescence; their nature and significance justified treating him as a director. Paragraph [142] is important because some actions occurred on his own initiative and some with approval. For Leah, analyse decisions to discontinue a model or close a production facility, her implementation authority and the board's acquiescence. Those

facts are stronger than a bare statement that she negotiated with a bank, a task many external professionals can perform lawfully.

A person lacking valid director appointment exercised major corporate functions, partly with board acquiescence, and was found a de facto director; officer status was also available. At [141] discuss substantial, significant director-like functions; [142] note initiative versus authority; [143] use the fallback officer limb.

FACTUAL SETTING. Chameleon Mining's business and financing transactions involved Grimaldi, a person who was not formally appointed to the company's board but exercised extensive and important functions. The evidence included involvement in capital raising, company transactions, instructions to professional advisers and dealings materially affecting the company's business and finances. A major issue was whether his real role in Chameleon attracted statutory director or officer responsibility. The outcome required the Court to look beyond his formal title and examine the corporate reality. Because the same proceedings also involved fiduciary and statutory misconduct issues, students must distinguish a finding that he was acting as a director from separate allegations of breach and remedies.

RELEVANT PRINCIPLE. The Full Federal Court stressed that the assessment is contextual. Companies differ in size, activities, management practices and internal organisation; therefore a universal catalogue of “tasks only directors perform” can be misleading. The question is whether, evaluated in the setting of the actual company, the person was acting in the position of director. The court recognised overlap between de facto and shadow concepts without collapsing them into one test. In its conclusion at [141], the Court gave weight to the importance, scope and sometimes independent performance of the functions entrusted to Grimaldi. The tutorial's [133]–[143] pinpoint range should be read in that wider framework.

LAWYER'S FACTUAL INQUIRY. Students should ask what decisions were made, whether Grimaldi or the board actually made them, the nature and importance of the authority assumed, how executives and directors treated the person, and whether that authority was exercised on an ongoing basis. A consultant's attendance at meetings is not enough. A series of significant independent governance decisions may be. Corporate emails using “we” language, appointment letters and signature authority can be evidence, but their value depends on how they fit the overall conduct. Do not substitute an itemised checklist for a holistic evaluation.

APPLICATION TO LEAH. Leah's bank negotiations and investor presentations resemble functions consultants commonly perform, so those facts cannot establish de facto status alone. But a determination that one of BlueWave's three boat models would cease production, coupled with developing and controlling implementation of a plant closure, is closer to the strategic authority examined in Grimaldi. The habitual board rubber-stamping strengthens the inference she was carrying out substantive director functions. The right conclusion is that de facto status is a substantial risk on the stated facts, not that every restructuring consultant is necessarily a director. The defence remains that the board retained real ultimate responsibility and Leah was an adviser or delegate rather than occupying the governing position.

Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2010] NSWSC 233 [228]–[250]

PRECISE ANALYTICAL USE. Buzzle did not hold that a powerful commercial counterparty is immune from shadow-director status. Rather, the claim failed on its evidence. The court distinguished arm's-length contractual pressure from instructions and wishes that the directors became accustomed to follow in carrying out governance functions. It considered the directors' collective decision-making, the regularity of any alleged compliance, and the necessary factual link between the supposed controller and the directors' acts. Use the case as a discipline: identify exactly which director decisions were supposedly caused by which outsider instructions and whether a pattern existed. In Leah's problem, compare the routine endorsement of her major restructuring proposals with the directors' retained discretion in ordinary expenditure. Both facts matter; neither may be discarded to force a categorical answer.

Apple’s powerful commercial bargaining position was insufficient to make it a shadow director of Buzzle. An external party’s conditions and pressure are not the same as board members being habitually accustomed to obey its corporate directions. Use for Leah’s defence that her inputs were advice rather than governance commands.

FACTUAL SETTING. Buzzle was formed in a retail consolidation involving Apple resellers. Apple Computer Australia was a powerful supplier and commercial counterparty whose commercial approval and bargaining position mattered to Buzzle's plans. The business later suffered financial failure and litigation raised whether Apple had acquired the legal responsibilities associated with corporate control, including whether it was a shadow director. The specific reading passage asks students to understand how to distinguish commercial pressure from habitual board compliance with instructions or

wishes. Unlike an artificially simple example, the real case involved complicated financing and commercial negotiations.

STATUTORY PROBLEM. The shadow-director definition focuses on whether the company's directors were accustomed to act on the alleged controller's instructions or wishes. This is a pattern of conduct by the directors. Evidence that a counterparty imposes difficult terms, has veto rights under contract, or is economically indispensable does not itself establish that the board has surrendered its decision-making role. The causal relationship matters: are the directors taking governance action because the outsider directs them, or are they independently choosing among unattractive commercial options? The statutory professional and business-relationship exclusion also protects advice properly given in those capacities; its precise application still depends on the actual nature of the conduct.

HOLDING AND REASONING. White J rejected the shadow-director contention against Apple. The evidence did not establish the required customary board compliance with Apple's governance instructions. A commercial entity can apply substantial pressure without becoming the company's shadow board. The ratio should not be paraphrased as "outsiders can never be shadow directors" or "a trading relationship automatically excludes liability." Instead, the case identifies the necessary proof and explains why the particular commercial influence shown was insufficient.

APPLICATION TO LEAH. Leah's case is not exactly Buzzle: she is not merely an arm's-length supplier asserting its own contractual interests; she is engaged to advise BlueWave and closely involved in restructuring. Her board routinely seeks her views and approves her substantive proposals without debate. That is affirmative evidence of a potentially habitual following of her wishes. Yet the pattern still may reflect trust in competent expert advice rather than deference to an outsider's governance instructions. A strong answer identifies minutes where the board critically evaluated advice, occasions when it rejected her recommendations, documents evidencing autonomy and the precise communications by which Leah sought to direct decisions. Conclude that the shadow-director allegation is arguable but more fact-sensitive than her de facto classification.

Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290

Evidence of profound influence and control by a major investor provides the contrasting example of potential shadow directorship. Use carefully: ordinary shareholding or financial support is insufficient on its own.

FACTS. The litigation arose in the context of a company whose finances and board were subject to substantial influence by a major corporate shareholder and financier. Pioneer International held a significant stake in Giant Resources and was deeply involved in financial and operational arrangements; it also had links to board appointments. The case addressed statutory director and management responsibility in a financial-distress setting. Students should avoid teaching it as though a large shareholding alone creates a shadow director or that the later Corporations Act text was already in force when the judgment was delivered.

RATIONALE. The significance of the authority is its willingness to examine the substance of an entity's actual control and the appointed directors' response. It shows why a person or body corporate can be considered for shadow-director responsibility where the board has in reality become accustomed to acting under that entity's directions. Mere influence or the right to negotiate funding conditions is not the complete analysis. When the alleged controller is also a major shareholder, it is easy to confuse shareholder rights with shadow governance; the court requires evidence of the role actually played.

HOW TO USE IT. Compare it with Buzzle. Antico shows why a corporate shareholder/financier may be exposed when its influence is exercised through the board in the requisite way. Buzzle shows why even strong leverage is not necessarily enough. Apply the comparison to BlueWave by asking whether Leah merely offered expert recommendations or whether her wishes effectively directed the appointed board's major restructuring votes. The case does not establish that Leah breached any duty, and it is not the main assigned pinpoint authority for Question 2; keep Buzzle [228]–[250] as the tutorial's primary shadow case.

ASIC v King [2020] HCA 4

High Court held that officer status concerning significant financial capacity cannot be restricted to formally named officeholders. Use as supporting current authority for s 9AD, but identify that the historical judgment cited the definition then located in s 9.

FACTUAL CONTEXT. The High Court considered whether a person with significant corporate influence, but without a conventional formal office title at the relevant company, could be an officer under the definition concerned with capacity to affect a corporation's financial standing. The litigation arose from the collapse and administration of parts of the MFS group and the movement of substantial funds. The central interpretive issue was not whether the person had the exact job title the Act might ordinarily suggest, but whether the statutory functional description was satisfied.

THE LEGAL LESSON. The officer definition can reach a person whose real position gives them capacity to affect financial standing materially; it is not confined to board members or a narrow class of persons with a formal named office. This is the reason s 9AD(1)(b)(ii) needs independent treatment alongside s 9AC. A lawyer must still prove the particular capacity and its relation to the corporation, rather than inferring officer status from any evidence of influence. The High Court's interpretation is useful when a person has authority over financial resources, capital decisions or material transactions.

APPLICATION. Leah is negotiating survival financing and substantially shaping BlueWave's restructuring. Even if the court concludes she was a consultant rather than de facto or shadow director, her role may raise a substantial question under s 9AD(1)(b)(i) (participating in decisions affecting a substantial part of the business) and s 9AD(1)(b)(ii) (capacity materially to affect financial standing). Do not state she is an officer solely because she negotiated with a bank: evaluate her actual decisional and financial capacity. And do not use King to avoid answering the director-specific issues required by Tutorial Question 3.

Forge v ASIC — supplementary authority referred to in the slides (citation requires confirmation)

The Week 4 material refers to shareholder ratification and director accountability. The specific Forge pinpoint has not been independently verified against the reported judgment; do not rely on the earlier numerical pinpoint as an authenticated citation. This authority is contextual and not necessary to resolve the supplied tutorial questions. An editor should check the actual assigned extract before publication.

RESEARCH LIMIT. The lecturer's material refers to “Forge v ASIC”, but the title alone has not been matched to a sufficiently reliable, relevant full judgment and pinpoint for this chapter. It would be irresponsible to invent a citation or say that the case decided a proposition we have not verified. For this Week 4 tutorial, the assigned director cases are Grimaldi and Buzzle, supplemented by the recognised leading line including Drysdale and Antico. Those provide ample supported law to answer the questions correctly. A final publication proof should compare the lecturer's slide, prescribed case list or edited extract to identify the exact Forge reference before adding a substantive authority note.

NEW TEACHING INTEGRATION — THE WEEK 5 LIVE TUTORIAL, EDITED JUDGMENTS AND REQUIRED READINGS

This part integrates the new first-hand teaching sources after the Week 4 forum: the complete Week 5 tutorial transcript, its JUNI summary, the lecturer's edited Buzzle and Grimaldi judgments, Pieter Oomens' four-page article, the Governance Institute/McGuirk remuneration survey, and the supplied company-secretary article. The university question text remains unchanged later in this chapter. The discussion below teaches students how these additions alter the meaning, application and evidentiary support of the answers. Where the machine transcript incorrectly records a section number or case name, the controlling statutory text and supplied judgment extract are separately identified.

A. First learn the lawyer's question: what kind of power is being exercised?

The live tutorial began not with a case citation but with the exact words of FreshFoods Proposal 1. The lecturer drew particular attention to the conjunction "and": FreshFoods would keep human staff in at least 50% of operating checkout lanes AND its board "must implement" that policy within six months. Why does that wording matter? Because it makes a decision about staffing and technological deployment, then directs the organ ordinarily responsible for business operations to perform it. The proposal is not simply the expression of an investor concern. It attempts to exercise the board's business-management power.

The first legal enquiry is the distinction between a company's capacity and the organ authorised to exercise a particular power. Section 124(1) gives a company the legal capacity and powers of an individual and the powers of a body corporate. That does not answer who within the company can decide how those powers are used. Sections 134 and 135 explain the governance significance of a constitution and replaceable rules. Subject to the company's actual constitution, s 198A(1) places management of the business with or under the direction of the directors, while s 198A(2) allocates other corporate powers to the directors except those reserved to the company in general meeting. Section 198A is a replaceable rule; do not say that every company is bound by its text in identical terms without examining its governing constitution.

The tutor's "puppies and kittens" metaphor is a memory device for the division of power, not a replacement for legal analysis. A lawyer must move from the metaphor to the precise legal instrument: identify FreshFoods as a public listed company; locate the governance rule; determine whether the relevant proposal falls within board management

or member power; compare the proposed form of resolution with the controlling authorities; then advise whether a vote is legally required. The fact that HBC obtained 110 members does not confer a substantive management power. Voting eligibility and the threshold to propose resolutions are procedural matters considered separately.

B. Four cases, four links in one continuous argument about shareholder powers

Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34 is a constitutional allocation case. A general meeting purported to direct the directors about company property, but the constitution vested the relevant management authority in the board. The shareholders could not supersede that allocation by ordinary resolution. Use this case after s 198A and the constitution: it explains why a majority's preference cannot automatically substitute for the board's valid decision. It does not mean a board is above the statute or can resist every valid member resolution.

National Roads & Motorists' Association v Parker (1986) 6 NSWLR 517 extends the analysis to the competence of the proposed resolution and the purpose of convening a meeting. Where the proposed business is beyond members' power, procedural meeting provisions do not create an entitlement to force an incompetent resolution to a vote. The tutor distinguished a meeting demanded only for an invalid purpose from FreshFoods' AGM, which already has other lawful business; the company cannot simply cancel its AGM because one proposed item is incompetent.

Stanham v National Trust of Australia (NSW) (1989) 15 ACLR 87 was singled out in the live tutorial as especially apt to a mixed-agenda AGM. Its practical role is to show why an invalid management-related item may be excluded without invalidating an otherwise properly convened meeting containing valid member business. Accordingly, in FreshFoods, the board could omit Proposal 1 while still considering competent director-removal and appointment resolutions, provided the independent procedural requirements for those resolutions are satisfied.

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 establishes the further limit that admitting a proposed opinion resolution is non-binding does not, on its own, supply the statutory or constitutional power needed to move it as a company resolution. The Full Federal Court rejected the unrestricted advisory-resolution argument. The lecturer's narrated follow-on slides expressly correct the incomplete recording and explain the outcome. The separate JUNI summary of the earlier forum that suggested advisory votes could be required was mistaken and must not be carried into the textbook. Application: HBC cannot cure an

otherwise incompetent management resolution merely by changing "must implement" into "shareholders advise" without identifying an independently available member power.

C. Why Proposal 2 is a different question, not a contradiction

Proposal 2 changes the legal object. It does not order the directors to employ staff; it seeks to remove members of the board and appoint new members. The source of substantive shareholder authority is s 203D(1), which permits members of a public company to remove a director by resolution despite contrary constitutional or contractual arrangements, subject to the special representative-director proviso. Section 203E prevents the existing board from itself removing a director of a public company. These rules do not guarantee the activists enough votes; they establish the legal competency of the proposed resolution.

For new appointments, s 201G is the replaceable rule permitting appointment by the company in general meeting, while s 201H permits director appointments subject to its own restrictions and confirmation rules. For a public company, s 201E(1) prevents appointment of two or more directors by a single resolution unless the meeting first passes a resolution without any votes cast against it approving the multiple appointment resolution. That is why the lecturer's practical answer identified three separate removals and three separate appointments: six individual resolutions is the safe, clearly specified structure on the stated facts. Check the constitution and eligibility of each candidate, including s 201A(2) (at least three directors, two ordinarily resident in Australia), s 201B, s 201D and director-ID requirements as applicable.

A company lawyer must distinguish legal capacity to propose director removal from the procedural ability to place that motion before the scheduled meeting. The tutorial instruction for Question 1(1) expressly brackets the procedural rules, but Question 1(3) unambiguously asks for the s 203D removal procedure and dates. Different subquestions therefore require different degrees of procedural discussion. A High Distinction answer obeys those instructions instead of flooding every paragraph with unrelated meeting law.

D. Notice, the calendar and procedural fairness: teach every limb of s 203D

Section 203D(2) places the notice of intention to move a removal resolution on the proposing members: the company must receive notice at least two months before the meeting, ordinarily 18 September 2026 for a meeting on 18 November 2026. The subsection contains an exception: if the company calls a meeting after the notice has been

given, that company-called meeting may vote on removal even if fewer than two months pass. The problem identifies the AGM date but not necessarily the formal date the company called it. Ask for the meeting-call documents before assuming the exception does or does not apply.

Section 203D(3) separately obliges the company—not HBC—to give the affected director a copy of the notice as soon as practicable after the company receives it. Section 203D(4)(a) entitles that director to give the company a written case for circulation; s 203D(4)(b) also allows the director to speak to the motion, whether or not the director is a member. Section 203D(5)(a) ordinarily requires circulation with the meeting notice if time permits, while paragraph (5)(b) deals with distribution and reading out when there is insufficient time. Subsection (6) provides that the company need not circulate a statement exceeding 1,000 words or containing defamatory matter. The 1,000-word limit belongs to s 203D(6), not s 252B, which concerns managed investment schemes.

Section 203D(7) addresses the retirement timing of an appointed replacement in the specified circumstances; s 203D(8) concerns strict-liability offences for contraventions of specified procedural obligations. A lawyer does not treat those provisions as empty footnotes. Explain who owes each obligation and what can go wrong. A further, conceptually distinct, listed-company meeting notice provision appears in s 249HA (generally 28 days), but that is not interchangeable with the two-month members' notice of removal under s 203D(2). For precise real-world deadlines, cross-check the Acts Interpretation Act 1901 (Cth) and calendar computation; the tutor accepted 18 September for the class problem but rightly warned that practising lawyers should check the calculation rather than rely on guesswork.

E. Directors may delegate powers: ss 198C–198D; directors do not thereby escape responsibilities

The narrated slide distinguishes ordinary board committees from the board itself. Under s 198C(1), directors may confer powers they can exercise on a managing director; subsection (2) permits them to vary or revoke that conferral. The title "managing director" is not a free-standing authority to do anything: the relevant act must be authorised by the statutory/constitutional allocation, board conferral and applicable external contracting rules. A proposed routine purchase and a proposed major factory sale can require different scrutiny; a title alone answers neither question.

Under s 198D(1), unless the constitution provides otherwise, directors may delegate powers to (a) a committee of directors, (b) a director, (c) an employee, or (d) another

person. Under s 198D(2), the delegate must exercise those powers in accordance with directors' directions. Under s 190(1), directors generally remain responsible for exercise of a power delegated under s 198D as though they had exercised it themselves. The specific qualification in s 190(2) requires reasonable grounds for believing the delegate would comply with the law and constitution, and an informed good-faith belief, after appropriate inquiry if needed, in the delegate's reliability and competence. These are precise statutory conditions, not a generic slogan that directors have liability for every delegate act.

Section 189 separately regulates directors' reliance on advice or information, including who gave it, the reasonable-grounds belief in competence, good faith, independent assessment and the corporation's circumstances. Link this to the tutorial's hypothetical about a board taking sound legal advice: following competent professional advice is not proof the lawyer has become a shadow director. But an uncritical board cannot treat the engagement letter as permission to abdicate all judgment. In both delegation and shadow-director questions, investigate what the board understood, what it evaluated, and who made the effective decisions.

The three common committees in the slide—an audit committee, a remuneration committee and a nomination committee—serve different governance functions. An audit committee scrutinises financial reporting and audit risks; a remuneration committee examines pay structures and incentives; a nomination committee considers board composition and succession. They assist and may exercise delegated powers as authorised, but directors cannot outsource their personal duties of care, good faith or proper purpose. When drafting minutes, identify whether a committee recommended an action, had delegated power to decide, or merely compiled background information. Those are legally different events.

F. Company secretary: the supplied Zajicek–Sherburn article taught as governance, with legal boundaries

Courtenay Zajicek and Kate Sherburn, "The What and the What Not: Key Considerations Before Becoming Company Secretary", explains why governance administration is substantive work, not clerical decoration. A secretary coordinates board papers and meetings, reminds directors of conflicts and independence expectations, maintains official company records and records decisions and responsibility for implementation. Minutes are not a verbatim transcript: effective minutes capture deliberation, material conflicts, the resolution actually passed and assigned action items. This connects to s 251A, under

which the company must record directors' and members' meeting proceedings and resolutions within the statutory period, and to the evidentiary significance of reliable minutes in a *Grimaldi* or *Buzzle* dispute.

Under s 204A(1), a proprietary company need not have a secretary, but if it appoints one at least one must ordinarily reside in Australia. Under s 204A(2), a public company must have at least one secretary who ordinarily resides in Australia. Section 204B imposes the adult individual and disqualification requirements; s 204C requires prior signed consent and retention; s 204D provides for appointment by directors. Section 205B concerns notifications to ASIC; s 188 places responsibility on secretaries for specified corporate filing and compliance contraventions, with a reasonable-steps defence. Do not equate "the company secretary files documents" with "all filing liability always belongs solely to the secretary": the allocation varies by company type and statutory provision.

The authors identify four special watch-outs when an in-house lawyer also acts as company secretary. First, conflicts of interest may arise between governance administration and privileged legal advice. Secondly, both offices require substantial time and adequate support. Thirdly, legal professional privilege turns on the legal character and purpose of particular communications, not automatically on the recipient's title as general counsel or secretary; record carefully when advice is legal versus commercial/administrative. Fourthly, access, indemnity and insurance arrangements should be reviewed, subject to statutory limits including ss 199A–199C. Deeds or D&O insurance do not extinguish legal duties or guarantee cover for every contravention.

The article recommends training, templates, adequate preparation, understanding the directors' working preferences, and reading the constitution before taking office. These are professional-practice recommendations, not statutory conditions of appointment. The lecture labels company-secretary material "non-examinable" for that forum. It nonetheless belongs in a serious teaching book: non-examinable is not synonymous with legally irrelevant. Students should learn both its practical governance value and the distinction between teaching scope and legal source authority.

G. Oomens is a required reading: four pages connecting directors' status to recoveries and creditor protection

Pieter Oomens, "Identifying de facto and shadow directors" (Australian Insolvency Journal, October–December 2007, 11–14), asks why it matters that responsibility can reach people who are not registered at ASIC. His answer is insolvency and creditor protection. A person who functions as a director may be exposed to statutory duties and, where the

separate elements are proved, insolvent-trading or recovery claims. Oomens refers to ss 588G, 588FDA, 588FE(4) and 588FC as examples. These are avenues requiring proof of their own conditions; the article does not support an automatic order against every informal adviser.

His de facto illustration, Mistmorn Pty Ltd (in liq) v Yasseen (1996) 14 ACLC 1387, concerns a non-appointed individual who dealt as the company's principal representative with landlords, insurers, suppliers, lawyers and regulators, exercised practical control over security and staff, and negotiated the sale of the business. The importance lies not in a job title but in a pattern of significant company-wide functions. A consultant engaged for limited specialist tasks is different from someone who effectively manages the company's general affairs. Use this distinction in Leah's problem.

Oomens' second illustration, Deputy Commissioner of Taxation v Austin (1998) 28 ACSR 565, concerns a person said to have resigned but who continued negotiating taxation, supplier-payment and business-sale matters, as well as signing or controlling financial instruments. The article reports a finding that his substantive post-resignation functions supported de facto status. This is exceptionally useful for the Leah facts: asking what a person did after the supposed resignation often matters more than the document's label. Because the article is a secondary source, a publication-quality edition should separately verify the judgment before expanding beyond the account Oomens provides.

For shadow directors, Oomens discusses Standard Chartered Bank of Australia Ltd v Antico (1995) 38 NSWLR 290. His account concerns a substantial shareholder's influence over Giant Resources through nominee directors and strategic financial decisions. It illustrates why directors appointed on a constituency's nomination must still decide for the company rather than merely implement that constituency's will. The issue is effective decision-making and whether the board's independent judgment was displaced, not whether a large shareholder possessed bargaining strength alone.

Oomens also discusses Ho v Akai Pty Ltd (in liq) [2006] FCAFC 159. The proceeding concerned allegations of strategic control in a distressed corporate group. Its procedural posture is important: the reported appeal addressed a prima facie case in an interlocutory setting, not a final trial finding of liability on every allegation. The article's discussion of high-level strategy, refinancing and restructuring nevertheless provides a useful factual comparison for Leah and for the breadth of shadow-director activity that may matter in insolvency. The older article must be read alongside the later, directly supplied judicial reasoning in *Buzzle* and *Grimaldi*, rather than substituted for those judgments.

H. What the lecturer's edited Buzzle judgment actually adds — [228]–[250]

White J's analysis begins with whether a body corporate can be a shadow director. At [228]–[231], the Court distinguishes the requirement that a formally appointed director be an individual, reflected in s 201B(1), from the wider reference to a "person" in the de facto/shadow limbs. A corporate supplier was therefore not excluded merely because a company itself could not be formally appointed as a director. This is a statutory-interpretation point: read each limb in its own text rather than importing conditions from another limb.

At [232]–[237], the judgment rejects the proposition that shadow directors are conceptually incapable of engaging liabilities directed at directors merely because they remain in the shadows. It explains that de facto and shadow categories can overlap: a person may personally exercise director functions and also have the appointed directors habitually follow their instructions or wishes. In a strong Leah answer, analyse both tests separately even if the same evidence is relevant to both; do not conclude the categories are mutually exclusive.

At [240], White J explicitly warns against colourful metaphors that fail to identify actual legal criteria. At [242]–[243], the Court distinguishes directors obeying an outsider as directors from a commercial board deciding to accept contract terms offered by a powerful supplier. Apple's insistence on protective conditions in an arm's-length trading relationship did not itself establish that Apple was taking over board decisions. This is the lecturer's commercial-pressure point applied to a precise factual distinction.

At [244]–[247], the Court addresses causation: it is not enough for an outsider's expressed preferences and a board's ultimate decision merely to coincide. The evidence must support the required connection between the instruction or wish and the directors' conduct. The board need not lose all discretion in every matter, but the purported controller must be linked to the habitual compliance. At [248], the time dimension matters: one or two isolated instances do not normally establish being "accustomed" to act in that way. At [249], the proper performance of professional functions or a business relationship matters for the statutory qualification. At [250], compliance by a governing majority of the board can suffice; obedience only by non-director employees is not enough. These five elements—board level, relevant instruction, causal connection, habitual practice, proper-advice qualification—should be worked through individually in every shadow-director problem.

I. What the lecturer's edited Grimaldi judgment adds — [133]–[143]

Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 supplies the companion functional analysis. At [133], the Full Federal Court emphasises that an apparently functioning, formally constituted board does not preclude a different individual being a de facto director. The Court examined informal governance and significant transactions with missing formal approvals. The issue is not simply whether the person attended meetings, but whether they undertook functions properly expected of a director in that corporation's real circumstances.

The evidence considered included the person's participation in company-wide decisions, significant dealings, the character of financial and transactional functions and the degree of acquiescence of executive directors. At [141], the Court concluded that Grimaldi performed director functions of sufficient extent and significance to be treated as acting in that position. At [142], some conduct was board-authorised and some undertaken on his own initiative: both could matter. At [143], the Court noted that officer status can be an independently sufficient route where the relevant duty or remedy requires proof of officer status rather than director status. The Act's current structure locates the director definition in s 9AC and the officer definition in s 9AD; older judgments citing s 9 must be mapped to the revised location rather than treated as invalid authorities.

The critical difference between the cases is the direction of the inquiry. De facto analysis follows the individual's actual performance of governance functions. Shadow analysis follows the formal directors' patterned response to someone else's instructions or wishes. A board's "rubber stamping" may be relevant to both questions, but it proves neither automatically: for de facto status ask which decisions the outsider actually took; for shadow status identify directions and habitual, causally connected compliance by directors or their governing majority.

J. Remuneration, accountability and the evidence limits of the 2024 Australian Board Remuneration Survey

The supplied Governance Institute of Australia / McGuirk Remuneration 2024 Abridged Australian Board Remuneration Survey is an empirical governance resource. Its introduction reports remuneration data for 1,089 boards, drawn from 667 online contributors, 225 continuing contributor boards and 197 client boards. It states that 845 of the boards (about 78%) remunerate all directors, a chair or another director. That sample statistic is not a legal rule, is not a national census of all companies and does not prove the market value of an individual director's services.

Section 202A is the replaceable rule dealing with directors' remuneration; it must be considered with the actual constitution, any employment/service contract and additional public-company or listed-entity requirements. A director's fee and an executive's employment remuneration are analytically distinct even though one person may hold both roles. In the two-strikes governance system, the statutory remuneration-report and spill-resolution provisions, including ss 250U–250W, concern specific listed-company circumstances. The professional lesson is to distinguish who sets pay, what approvals and disclosure are required, what the survey data can legitimately benchmark, and how conflicts are managed. Do not infer from the remuneration survey that a particular fee complies with the law.

K. Disqualification and resignation: separate status from liability

The forum slides identify three avenues of management disqualification: automatic statutory disqualification under s 206B in specified circumstances; court-ordered disqualification under ss 206C–206E subject to their individual criteria; and ASIC disqualification under s 206F where its statutory company-failure conditions are met. Section 206G addresses leave to manage in relevant circumstances. These were designated non-examinable in the week's slides but remain important in legal practice. A lawyer must never conclude that an allegation or merely a corporate financial loss itself triggers automatic disqualification; the exact statutory trigger and any exception must be proved.

For Leah, distinguish the legal effectiveness of her resignation from her later functional status. Section 203A is a replaceable rule concerning written resignation; s 203AA addresses effective timing including notice to ASIC, and s 203AB may defeat a resignation that would leave a company without directors. These are threshold questions. Even if Leah was no longer a formally appointed director, later conduct may separately meet s 9AC(1)(b)(i) and/or (ii). Avoid treating an incomplete ASIC record as conclusive proof of either continuing formal office or valid resignation. Obtain the resignation notice, dates, ASIC communications and company constitution.

L. Source hierarchy and further research required

Source priority in this chapter is: (1) current legislation at the Federal Register of Legislation; (2) the lecturer's supplied original edited judgments for their precise paragraphs, with verified full judgments as needed; (3) the Week 4/5 firsthand transcripts for lecturer emphasis and application; (4) Oomens' secondary analysis and the supplied practical governance readings for interpretive and professional context; (5) the 2024 remuneration survey for its stated empirical observations. The separate Chapter 7

PRESCRIBED TEXTBOOK AND WEEK 4 SOURCES

The complete supplied extract from Chapple et al, Company Law (3rd ed, 2023), Chapter 7, pp 177?202, has now been reviewed and integrated into the teaching narrative that follows. The lecturer-edited Buzzle and Grimaldi judgments, Oomens article, company-secretary reading, remuneration survey, Week 4 forum and Week 5 tutorial remain part of this chapter?s research foundation. Current statutory definitions are in ss 9AC (director) and 9AD (officer). Academic resources support interpretation and context; current legislation and the controlling judgments supply operative rules.

Corporate governance in action: teaching from the complete prescribed Chapter 7 extract

Chapter 7 of Chapple and co-authors' *Company Law* (3rd edition, 2023), supplied here at textbook pages 177–202, supports a considerably richer treatment of governance than a simple list of types of directors. Its four learning outcomes concern governance theories and principles, the legal concept of an officer, the division of power between directors and members, and the appointment, remuneration and removal of directors. The prescribed *Retrofit* case study adds a continuing client's perspective: Julian wants to appoint capable managers, respond to a director's temporary absence, consider the history of a potential appointee, and decide how the company's governance should operate. This section synthesises that material in original student-facing prose and integrates the lecturer's Week 4 forum and Week 5 tutorial analysis. It is not a reproduction of the textbook.

Governance is a problem of information, incentives and lawful authority

The first question is why corporate governance rules exist at all. In a small business the owner may directly supervise every employee and inspect each invoice. Growth changes the problem: ownership, management and the economic consequences of decisions become separated. **Agency theory** identifies the danger that managers controlling decisions might pursue goals diverging from those of members who supplied capital. Monitoring, transparent reporting, independent review, incentives, defined delegations and director accountability attempt to reduce these agency costs. A student should be able to explain an example: a manager receives a bonus for short-term turnover and therefore accepts risky contracts that later burden the company. Governance systems must address the incentive, the approval threshold and the information received by directors—not merely declare that the board ‘should act properly’.

Stakeholder theory offers a complementary, wider lens. Corporate activity affects workers, communities, customers, creditors and the environment, not just the members' immediate return on capital. These interests can be economically material

to long-run corporate performance and sometimes also engage enforceable legal duties. The theory does not mean directors may disregard the company's legal obligations or that every person affected by a board decision has an enforceable shareholder right. The lawyer must distinguish an ethical governance commitment, an ASX reporting expectation, a statutory duty and a legally enforceable individual entitlement. The difference is central to the FreshFoods tutorial: the labour impacts of automation may be relevant to board policy and stakeholder engagement, but they do not automatically give shareholders a right to make day-to-day management decisions by ordinary resolution.

The textbook also situates governance principles in regulatory context: a company's constitution and mandatory law, ASIC oversight, corporate reporting, and where relevant the ASX Corporate Governance Council's recommendations and Listing Rules. Listed companies may need to explain governance practices publicly. Students must check which recommendations apply to the company in question and distinguish recommendations operating on an ‘if not, why not’ basis from mandatory Act or Listing Rule obligations. Those sources perform different legal functions and should not be cited as though they are interchangeable.

Begin by classifying the actor: director, officer, secretary, member or adviser

The correct current statutory definitions are **s 9AC** (director) and **s 9AD** (officer) of the *Corporations Act 2001* (Cth). Older textbook wording may quote definitions formerly contained in s 9; a final exam or practice answer should cite the provisions in their current location. Section 9AC captures a person validly appointed, an acting alternate director as the provision specifies, and persons who satisfy the statutory de facto or shadow categories despite defects in appointment or absence from the register. Section 9AD extends the concept of officer to specified directors and secretaries and to persons satisfying functional decision-making or financial-influence criteria, among other categories. Status depends on statutory elements and evidence, not merely on the label in an employment or consultancy contract.

A **de facto director** performs functions characteristic of a director without effective formal appointment. The Full Federal Court in *Grimaldi v Chameleon Mining NL (No 2)* [2012] FCAFC 6 at [133]–[143] considered the substantial, director-like functions actually undertaken and how the company's real governance operated. A **shadow**

director, by contrast, is relevant where appointed directors are accustomed to following another person's instructions or wishes. In *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* [2010] NSWSC 233 at [228]–[250], White J emphasised that extensive commercial influence or contractual leverage is not automatically the habitual board-level following contemplated by the statute. Compare the board's actual patterns of decisions, the identity of the source of instructions, causation and whether the professional/business-advice qualification applies. The Oomens article's examples help sharpen the difference. Neither title, personal wealth nor a consultant's self-description resolves the test.

The designation **officer** is especially useful for clients who exercise financial or strategic influence from behind a formal governance chart. In *ASIC v King* [2020] HCA 4, the High Court emphasised the importance of the statutory functional test. A person may face officer duties through actual significant participation in business decisions or capacity to affect financial standing; whether the test is satisfied requires evidence about their role. For Leah in the BlueWave tutorial, the proper sequence is: test whether her resignation became effective; analyse de facto status from the functions she undertook; separately analyse shadow status from the directors' habituated compliance; and consider officer status even if the director tests are not met. Each status test has its own evidentiary focus.

The company secretary: why this role is more than organising a meeting

The textbook includes the company secretary among important company officers. Section **204A** provides that a public company must have at least one secretary, with the required residency qualification; a proprietary company is not generally under the same requirement. Section **204B** deals with secretary eligibility and consent; **s 204D** concerns appointment by directors as a replaceable rule, subject to the corporate circumstances. The statutory governance duties cannot be reduced to typing minutes. A competent secretary ensures notices, agendas, conflict disclosures, records, lodgements and governance timelines are recognised and communicated; the board still makes the decisions allocated to it.

The course's Courtenay Zajicek and Kate Sherburn article on accepting the company-secretary role adds practical depth. When an in-house lawyer doubles as company secretary, distinguish legal advice given in professional capacity from

organisational governance administration. The same meeting may contain legally privileged advice and ordinary board information; confidential handling, instructions, records and legal professional privilege require role clarity. A secretary should also ask about insurance, any legally permissible indemnity, sufficient time and resources, constitution requirements, board and committee procedures, and whether reporting systems allow directors to act on timely information. Professional diligence is not satisfied by simply preparing an attractive board pack.

How directors obtain management authority

The starting governance provision is **s 198A(1)**, under which the business is managed by or under the direction of directors where the replaceable rule applies. **Section 198A(2)** allows directors to exercise company powers except those the Act or constitution requires the company to exercise in general meeting. First decide whether the replaceable rule governs this particular company, then read the constitution and any mandatory applicable provisions. A member's economic interest in shares is not equivalent to an unlimited legal power to manage employees and operations. Section **198E** supplies special powers for the same person acting as sole director and sole shareholder of a proprietary company and should not be ignored in those circumstances.

This is why the ownership-management cases matter. *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34 is foundational for the proposition that a shareholder majority does not itself displace management powers validly assigned to directors. *NRMA v Parker* (1986) 6 NSWLR 517 and *Stanham v National Trust of Australia (NSW)* (1989) 15 ACLR 87 are useful in identifying whether proposed member resolutions are legally within the meeting's competence. *Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* [2016] FCAFC 80 did not grant shareholders a free-standing right to put any advisory motion to a vote. These cases are not blanket assertions that shareholders have no power. Rather, they teach the lawyer to identify the exact source and limit of the proposed meeting power.

A **counterexample** makes the distinction memorable: s 203D confers a statutory power on members of public companies to remove directors through the specified procedure. The shareholders may not normally order the supermarket manager to retain a specified number of staffed checkouts; they may, however, pursue the legally competent governance remedy of replacing directors, provided the statutory notice,

director response and meeting requirements are met. Both conclusions follow from the same method of allocating powers rather than from contradictory attitudes toward shareholder democracy.

Delegation, committees, reliance and responsibility

The textbook discusses managing directors, executive committees, audit and remuneration committees. **Section 198C** addresses appointment of managing directors and the relevant delegation powers, while **s 198D** allows directors to delegate powers to persons and committees within the statutory framework. Delegating a power to authorise a supplier payment does not simply delegate away a director's legal duties. **Section 190** governs the responsibility of a director for the exercise of delegated powers, including the conditions for any relevant relief; **s 189** concerns reliance on information or advice of others and requires attention to the statutory preconditions. **Section 180** establishes the civil duty of care and diligence, and the business-judgment provision in s 180(2) has its own elements. A board should document the authority delegated, the matters reserved, the information it receives and the supervisory steps taken.

Suppose Retrofit's director Julian delegates daily purchasing to Tom and bank negotiations to a committee. A supplier challenges an unauthorised guarantee while accounts show escalating liquidity pressure. The advice must separate (1) the authority Tom or the committee actually possessed, (2) whether the company became bound to an outsider under contract or statutory assumptions, (3) the directors' continuing standard of care and supervision, and (4) whether any particular statutory duty or defence is engaged. It would be wrong to conclude ‘delegation is permitted; therefore no director is liable’ or to conclude ‘any adverse outcome proves negligence’. The provisions ask different questions.

Conduct of board meetings: the legal value of process

Directors exercise governance through valid board processes, rather than through unrecorded private conversations where the statute or constitution requires collective action. **Sections 248A–248G** contain relevant replaceable rules on circulating resolutions, calling meetings, technology, quorum and voting. **Section 251A** concerns minute books and the recording of resolutions and meetings. Precise requirements depend on the company's form, constitution and which rules apply. Students should ask whether a valid notice went to the relevant directors, whether the quorum existed when a decision was made, whether a conflicted director could participate, whether a majority of eligible votes supported the resolution, and whether the minutes fairly evidence what happened.

A minute is not a transcript. It is an authoritative business record of the matters considered, decisions reached, significant dissent or interests disclosed, and responsibility for implementation. The connection to directors' duties is substantive: when ASIC or a court later asks whether the directors exercised independent judgment, obtained adequate information or monitored delegates, contemporaneous board papers and accurate minutes may be decisive evidence. The governance theory learned at the start of the chapter becomes observable corporate practice in the record of a meeting.

Appointment, qualifications and director identification

Section 201A sets minimum director numbers and relevant Australian residency requirements, distinguishing proprietary and public companies; a public company ordinarily needs at least three directors with at least two ordinarily resident in Australia. **Section 201B** includes baseline eligibility and disqualification requirements. **Section 201E** is particularly important for public companies: appointments of more than one director by a single resolution are subject to the provision's special requirements. **Section 201G** is the replaceable rule for member appointments. **Section 201H** addresses director appointments by other directors subject to the governing procedure and, in relevant cases, subsequent member confirmation. The constitution may regulate nomination or qualification requirements, but it cannot simply override mandatory legislation.

Modern director-identification requirements exist under the statutory director-ID regime, including **s 1272C**, subject to commencement and administrative rules. A director should not be told that receiving an internal appointment letter is alone enough. Appropriate consent, eligibility, identification requirements, ASIC notification and an actual board or member appointment process must be checked. The user-supplied 2023 textbook is valuable for conceptual teaching but cannot be assumed to reflect every 2026 administrative commencement, threshold or procedural change.

The Retrofit scenario makes this issue concrete. If Julian wants Tom appointed because he knows the business, the solicitor should ask who is empowered to appoint, whether Tom consents, whether Tom is disqualified, which written resolutions and identity checks are needed, and whether the constitution imposes additional processes. If Andy has previously been associated with insolvencies or a fine, neither ‘insolvent company’ nor ‘fine’ alone establishes every element of disqualification. Examine **ss 206B–206F** and the precise judgment, offence or order and any applicable duration. If a director is absent overseas, consider the governing rules on alternate directors, quorum and valid technology-assisted meetings rather than treating temporary travel as automatically terminating office.

Removal of directors: identify the company type before the section

Under **s 203C**, a proprietary company ordinarily may remove a director by member resolution where that replaceable rule applies, subject to constitution and other applicable law. **Section 203D(1)** instead provides an express statutory member-removal procedure for public companies. Its subsections matter independently: **s 203D(2)** requires advance notice of intention subject to the statutory company-called meeting exception; **s 203D(3)** places an obligation on the company to provide the notice to the affected director; **ss 203D(4)–(6)** protect the director's opportunity to make a written statement and speak, including specified exceptions or limits; and the remaining statutory text requires further reading for the concrete facts. **Section 203E** restricts public-company directors from removing a fellow director by their own resolution or notice. This procedural fairness protects against abrupt board changes without depriving members of their substantive statutory power.

In the FreshFoods tutorial, if the AGM is on 18 November 2026, the ordinary two-month s 203D(2) deadline is 18 September 2026. That calendar date is different from a listed company's normal meeting notice under s 249HA. A separate analysis must establish when the company called the meeting, whether the statutory exception applies, whether the relevant notice reached the company, who was required to send it to the affected directors, and whether director representations were handled correctly. The removal of Priya, Marcus and Daniel and appointment of three replacements should be analysed as separate proposed resolutions, with **s 201E** considered for appointment resolutions. The 110 shareholders' possession of 220 shares is not, by itself, proof of any particular voting percentage; check total issued shares and any separate requisition rules before asserting they can compel a meeting.

Resignation and late ASIC notification

Section 203A provides a replaceable resignation rule, while **s 203AA** includes rules relevant to the effective date of a director's resignation and notification to ASIC. **Section 203AB** limits resignation or removal leaving a company without directors in the circumstances covered. A student must not reason that ‘Leah sent a resignation letter; therefore she is certainly not a director’ or that ‘ASIC still lists her; therefore every resignation was necessarily ineffective’. Obtain the letter, the date it reached the correct corporate address, the applicable constitution, the date ASIC was notified, records of attempts to notify and evidence relating to any statutory correction or application. Only then can the formal-status question be resolved.

Even if Leah validly resigned, her subsequent conduct at BlueWave raises de facto, shadow and officer questions. The correct conclusion in the problem is qualified: major strategic and financial decisions made with board acquiescence are significant evidence of possible de facto or officer status; habitual board compliance with her actual instructions supports a separate shadow theory; professional restructuring advice and genuine independent board deliberation can weigh against that shadow inference. A lawyer must obtain board minutes, bank correspondence, the consultancy agreement, project decision records and evidence of who held ultimate authority before predicting the court's finding. Remedies and statutory consequences then depend on identifying a particular duty and breach, not merely describing a person as influential.

Remuneration, disclosures and board accountability

The source chapter also addresses director remuneration and the role of committees. **Section 202A** provides a relevant replaceable rule concerning remuneration and its approval mechanism; public-company remuneration disclosure and voting have additional statutory rules, including aspects of the reporting and meeting regimes. A committee can investigate market comparisons and recommend pay structures, but its authority must come from the constitution, board terms of reference or an applicable rule. If directors set their own remuneration, conflicts and relevant statutory restrictions must be considered. The course's Australian Board Remuneration Survey is useful as empirical information about practice; it is not the source of a statutory entitlement to any particular fee.

Good remuneration advice must also consider actual incentives. A short-term bonus for rapid automation might encourage management to disregard operational risks, while an entirely inflexible compensation scheme might struggle to recruit specialised executives. Directors must decide how remuneration supports lawful objectives, disclose what law requires and keep appropriate conflict and committee records. The proper legal answer states who has power to approve, any mandatory procedures, applicable disclosure and what risks the proposed incentive creates. It does not simply quote a market-average amount from a survey and call the question solved.

Putting the entire chapter to work in legal advice

The fresh governance reading improves all three original tutorial problems. In **FreshFoods**, the student must identify the management power first, distinguish advisory from operative resolutions, explain why *ACCR v CBA* and *Stanham* matter, then apply ss 203D and 201E to the separate route of changing directors. In **Question 2**, the student must explain *Buzzle*'s requirements for habitual board-level action on instructions separately from *Grimaldi*'s focus on functions undertaken as a director, including the possible alternative officer test. In **Leah**, the student must construct a factual timeline for resignation and then analyse the two statutory director limbs independently, with evidence and counterarguments before making a reasoned conclusion.

The common method is to identify the actual corporate actor, ask where power comes from, locate the precise statutory subsection, explain the case's operative reasoning,

apply facts for and against every element, identify missing documents and evidence, and conclude with a realistic legal or governance next step. That is the bridge from the prescribed reading to professional advice—and the reason these materials belong within the chapter's teaching narrative, not merely in a reading-list appendix.

Source alignment: Chapple et al, **Company Law** *(3rd ed, 2023), Chapter 7, supplied pp 177–202; Bond Week 4 live forum and Week 5 live tutorial; lecturer-edited* **Buzzle** *and* **Grimaldi** *extracts; Oomens shadow/de facto directors article; company-secretary article; board remuneration survey. The corporate-law statements above are original synthesis, with current provisions distinguished from the 2023 textbook's historical references.*

Primary legislative research: Corporations Act 2001, Federal Register of Legislation. For statutory detail, use the provisions identified above and check the version operative on the material date.

ORIGINAL TUTORIAL 4 (TAUGHT IN WEEK 5) — QUESTIONS VERBATIM

The tutorial's substantive question text is reproduced from the supplied university Tutorial 4 (for Week 5) handout in the original order, including its reference to the officer definition in s 9AC. Editorial correction: since the current legislative reorganisation, "director" is in s 9AC and "officer" is in s 9AD. The original question has NOT been silently altered. Substantive High Distinction answers commence on a following page, not immediately after the questions.

Question 1

FreshFoods Ltd ('FreshFoods') is an ASX-listed company that operates a large chain of supermarkets throughout Australia. FreshFoods has recently announced plans to introduce fully automated checkout and shelf-stocking technology across most of its stores. The board believes that the technology will substantially reduce operating costs and allow FreshFoods to compete more effectively with online retailers.

A community organisation called Humans Behind the Counter ('HBC') campaigns against the widespread replacement of retail employees with automated technology. HBC argues that FreshFoods should commit to retaining a minimum level of human employment in every store.

FreshFoods' annual general meeting is scheduled to take place on 18 November 2026.

HBC persuades 110 of its members to become shareholders of FreshFoods. Each purchases two FreshFoods shares.

HBC wants FreshFoods' shareholders to vote at the AGM on the following resolution:

'That FreshFoods Ltd must retain sufficient human employees so that at least 50% of all checkout lanes operating in each FreshFoods supermarket are staffed by human employees, and that the board must implement this policy throughout the company within six months.' [Proposal 1]

The directors of FreshFoods oppose the proposal. They believe decisions about staffing levels, automation and the operation of individual supermarkets should be made by the board rather than by shareholders. They also believe HBC's policy would significantly increase the company's operating costs.

After meeting with the board and learning that it will not voluntarily adopt the policy, HBC considers another strategy. It wants the shareholders to remove the existing

directors, Priya, Marcus and Daniel, and replace them with three candidates supported by HBC, all of whom have promised to reconsider FreshFoods' automation strategy. [Proposal 2]

Advise HBC on the following:

1. Assuming HBC complies with the relevant procedural requirements (which we will discuss next week, so do not consider them), would FreshFoods be required to put Proposal 1 to shareholders at the AGM? Why or why not?

In answering this question:

identify the underlying legal issue raised by HBC's first resolution;

consider whether there is any substantive problem with the proposed resolution; and

use the relevant case law considered in the Week 4 materials to support your reasoning.

Restrict your answer to material covered in the Week 4 Forum and readings. Do not consider doctrines that have not yet been covered in the course.

2. Could FreshFoods have a legal basis for refusing to put resolutions concerning HBC's Proposal 2 to the AGM? Why or why not?

What specific resolutions would HBC need to propose if it wanted to:

remove the existing directors; and

appoint HBC's preferred candidates in their place?

Again, restrict your analysis to concepts covered in the Week 4 Forum.

3. HBC decides to pursue Proposal 2. Focusing specifically on the rules governing the removal of directors of a public company, identify the steps that must be taken:

by HBC/the relevant shareholders; and

by FreshFoods.

In your answer, calculate the relevant dates and deadlines on the assumption that the AGM will take place on 18 November 2026.

Question 2

Consider the definitions of 'director' and 'officer' in s 9AC of the Corporations Act 2001 (Cth), together with the case law considered in the prescribed reading.

Explain what is meant by:

1. a shadow director. Consider Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2010] NSWSC 233 at [228]-[250]

2. a de facto director. Consider Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 at [133]-[143].

Question 3

Leah was formally appointed as a director of BlueWave Marine Pty Ltd, a company established by several of her former university friends to manufacture electric recreational boats.

After serving on the board for approximately a year, Leah decided that she no longer wished to be a director. She informed the company that she was resigning and believed that her resignation had taken effect. Because of an administrative error, however, the company's records relating to her position were not properly updated with ASIC.

Several weeks later, BlueWave began experiencing serious financial difficulties. The company engaged Leah as a 'strategic restructuring consultant'. Her consulting agreement stated that she was not a director and that her role was limited to advising the board.

In practice, however, Leah became deeply involved in BlueWave's affairs.

Among other things, she:

negotiated with BlueWave's bank concerning an extension of its loan facilities;

negotiated payment arrangements with several major suppliers;

represented BlueWave at meetings with potential investors;

decided which of BlueWave's three boat models should cease production; and

developed a plan under which one manufacturing facility would be closed.

Formally, Leah presented her recommendations concerning product lines and the factory closure to BlueWave's board. The directors, however, habitually approved her recommendations without substantive discussion and then allowed Leah to oversee their implementation.

The directors continued to make some decisions independently, particularly concerning ordinary day-to-day expenditure. Nevertheless, when significant questions concerning BlueWave's financial restructuring arose, they routinely sought Leah's views before acting.

A dispute subsequently arises as to whether Leah was a director during the period in which she believed that she was acting only as a consultant.

Advise Leah whether, despite her purported resignation and the terms of her consulting agreement, she may fall within the statutory definition of a director as:

a de facto director; and/or

a shadow director.

In your answer, identify the factual matters that a court would regard as significant and apply the principles from the cases considered in this week's materials.

HIGH DISTINCTION MODEL ANSWERS — APPLYING LAW TO FACTS

QUESTION 1(1) — FRESHFOODS: MANDATORY CHECKOUT STAFFING RESOLUTION

THE STUDENT'S FIRST TASK: CLASSIFY THE RESOLUTION, NOT THE CAMPAIGN. HBC is campaigning about employment and automation. The proposal may raise strong economic, ethical and social concerns. But the legal instrument it has chosen is a direction that FreshFoods must retain enough human employees to staff at least 50% of checkout lanes operating in each supermarket, and that the board implement the policy company-wide within six months. Each component matters. The 50% rule prescribes an operational result in every store; the six-month rule prescribes the timetable; the word “must” removes any suggestion that the board may make its own decision. A lawyer who describes this merely as a “shareholder discussion” has omitted the operative legal command.

THE ISSUE STATED AS A LEGAL QUESTION. Assuming all meeting notice and requisition procedures have been satisfied—as the handout instructs—is the subject matter of Proposal 1 a decision that members in general meeting can make by the proposed resolution? If it is, FreshFoods may be required to follow the appropriate meeting procedure. If it is not, compliance with procedural thresholds cannot create a competence the members otherwise lack. That is why the question asks students to consider a substantive problem. The correct answer must not recite s 249N as though 110 signatories necessarily settle the outcome.

WHY s 124 IS NOT THE FINAL ANSWER. FreshFoods as a separate legal person can generally enter contracts, buy technology and employ staff within the lawful scope of its capacity. Section 124 concerns capacity and corporate powers. It does not decide whether an ordinary member meeting may prescribe the staffing configuration. Section 124 is relevant as the background distinction between powers of the entity and powers of internal organs; the more direct rule is s 198A and the applicable constitution. Cite s 124 to prevent conceptual confusion, not as a false source of HBC's authority.

WHY ss 134–135 AND THE CONSTITUTION COME NEXT. Company governance is determined through replaceable rules, the constitution or a combination permitted by the Act. Section 198A is a replaceable rule. A competent answer therefore states its management allocation and acknowledges the need to examine FreshFoods' actual constitution. If an applicable constitution expressly reserves a decision to members, that may affect the result. The problem does not provide such a rule, so a student should not

invent one. Explain the assumption: “On the ordinary allocation, and absent a special constitutional reservation, the board exercises this management function.” That single qualification is the difference between legally careful advice and overconfident generalisation.

WHY s 198A(1) MATTERS. It specifies that the business is to be managed by or under the direction of the directors. A decision about checkout technology and minimum staffing is part of managing FreshFoods' retail business: it affects wages, store costs, customer service, purchasing capital equipment and operational policy. Section 198A(2) confirms the directors can exercise powers not reserved by the Act or constitution to a members' meeting. The subsection distinction matters: (1) tells you who manages the business; (2) helps you work out the scope of the directors' powers against member-reserved powers. The tutorial is primarily a (1) management problem, but (2) supports the broader allocation.

WHY AUTOMATIC SELF-CLEANSING IS USED. That authority supports a proposition about the effect of the corporate constitution: where management is allocated to directors, an ordinary general meeting resolution cannot simply take over that power. Compare the reason for the rule with FreshFoods' problem. If every campaign of small shareholders could compel a detailed staffing and technology decision by ordinary vote, the board's legal management authority would be displaced. That is a legal structural point, not an argument that automation is better for society or profits. The board is not guaranteed to be correct in business judgment; it is the organ normally authorised to make the decision.

WHY NRMA v PARKER IS USED. Automatic Self-Cleansing explains the allocation; NRMA v Parker addresses whether a resolution outside the members' substantive power must nevertheless be processed through meeting-requisition procedures. The NRMA dispute concerned a proposed decision in an area controlled by its directors under governing rules. The court's treatment shows that a procedurally supported request does not oblige a corporation to convene or entertain an incompetent management resolution. Connect the case to the exact question, “Would FreshFoods be required to put Proposal 1 to shareholders?” rather than citing it vaguely as a statement that directors are important.

WHY ACCR v CBA IS ESPECIALLY STRONG. ACCR also involved activism organised by a group of more than 100 members and proposed corporate motions concerning public-interest risks. The Full Federal Court rejected the argument that the meeting notice machinery itself authorised the relevant advisory management resolutions. The attempted motions did not become competent merely because they were framed as expressions of opinion rather than binding directives. HBC's proposal is more directly prescriptive than

ACCR's advisory proposals because it expressly says the board "must" implement its employment quota. Therefore the case strongly reinforces the substantive objection. Do not reverse ACCR's holding by saying that courts required companies to provide advisory votes; that would be a serious doctrinal error.

STRONGEST ARGUMENT FOR HBC. The group could say it has a genuine stake, has acquired shares lawfully, is seeking a vote at a properly convened AGM, and is concerned about the company's community relationships, workforce and long-term reputational value. It might further argue that shareholder democracy should allow members to communicate strong preferences. These points show that the campaign is legitimate as advocacy. But they do not identify a statute or constitutional clause empowering an ordinary resolution to dictate managerial staffing levels. The strongest legal counterargument would be a particular provision of the company's constitution conferring the necessary member power; without it, sentiment and procedural compliance alone do not overcome s 198A.

DO NOT MISSTATE THE COMPANY'S OPTIONS. A company can voluntarily consult members, obtain feedback or introduce an advisory proposal through a legally appropriate mechanism; that is not the same as HBC possessing an unrestricted right to require such a motion. HBC might also pursue a separate strategy of proposing valid constitutional change, but that would require analysis of s 136 and the proposed amendment's own validity; the tutorial specifically tells students not to speculate about doctrines outside Week 4. The simplest fully responsive answer stays with the motion actually drafted.

CONCLUSION AND CLIENT ADVICE. FreshFoods has a strong legal basis to refuse to place Proposal 1 before members as a resolution capable of binding the board, because it is an operational management direction ordinarily outside the powers of a general meeting. A compelling answer explains the exact route: ss 134–135 identify internal governance arrangements; s 198A(1)–(2) allocates management to directors; Automatic Self-Cleansing, NRMA v Parker and ACCR v CBA explain why procedural requisition rights cannot confer substantive management power on members. Advise HBC that the current drafting is unlikely to achieve its objective and that any lawful alternative must be assessed on its own legal basis. No shareholding percentage or AGM outcome can be invented from 220 shares alone.

POST-TUTORIAL EXPLANATION — WHY STANHAM IS PARTICULARLY IMPORTANT

In the live Week 5 tutorial, the lecturer expressly agreed that Stanham is the most apt meeting-context analogy because the FreshFoods AGM is already scheduled. Start with the incompetence of the subject matter: Proposal 1 sets a staffing rule and commands implementation. Section 198A(1) deals with management; s 198A(2) addresses the exercise of other company powers. Read both subject to the actual constitution. Automatic Self-Cleansing explains why a member majority cannot substitute its view for the board on management matters. NRMA v Parker establishes that a meeting need not be convened solely to vote on incompetent business. Stanham shows that a valid AGM may proceed without an improper item. ACCR v CBA prevents the proposed item from becoming competent merely because it is recast as non-binding. These cases have distinct functions; do not cite them as interchangeable propositions.

The tutor emphasised how to write an IRAC: issue = whether members may direct staffing and compel implementation; rule = management power in the Act/constitution interpreted by the four cases; application = 50% requirement for every supermarket plus a six-month instruction to the board; conclusion = absent an unusual member power in the constitution or specific statute, no obligation to put Proposal 1 to vote. The facts do not establish the contents of the company's constitution, so state that qualification rather than claiming to have read it. The 110 members and 220 shares are deliberately not the answer to the substantive competence question; technical requisition issues are reserved by the question instructions.

QUESTION 1(2) — FRESHFOODS: REMOVAL AND REPLACEMENT OF DIRECTORS

BEGIN AGAIN WITH THE WORDING AND THE NATURE OF THE LEGAL POWER. Proposal 2 differs from Proposal 1 in its legal object. HBC is no longer asking the general meeting to fix staffing ratios or impose a six-month operational implementation. It seeks to exercise the governance power to remove and appoint those who are entrusted with management. That difference matters because corporate law distributes responsibilities: the directors decide management questions, while members retain certain structural rights concerning who serves as directors. A board cannot defend itself by asserting that every resolution it dislikes is an intrusion into management. Identify the express statute before deciding which organ prevails.

SECTION 203D(1) — THE SUBSTANTIVE RIGHT. FreshFoods is an ASX-listed company, therefore a public company. The appropriate source is s 203D, not the proprietary-company replaceable rule in s 203C. Section 203D(1) authorises members of a public

company to remove a director by resolution even if the constitution or relevant agreement otherwise says something inconsistent. The “despite” wording is crucial: the board cannot insist that its management powers under s 198A generally entitle it to override an express member removal power. The two provisions operate on different decisions. If a director has been appointed to represent holders of particular shares or debentures, the specific qualification in s 203D(1) must be considered; the handout does not provide those facts, so acknowledge the reservation and investigate.

SECTION 203E — THE REVERSE LIMIT. For public companies, the statute restricts directors removing fellow directors by a board resolution. This helps students see the structural separation more clearly. Directors ordinarily manage operations, but do not have an automatic collective right to dismiss a fellow public-company director. The prescribed member resolution is the route for removal under s 203D. FreshFoods could not lawfully object merely that the incumbent board does not approve of HBC's replacements. The board may insist on statutory compliance, but not invent a substantive veto over an express member power.

SEPARATE RESOLUTIONS TO REMOVE EACH DIRECTOR. HBC should propose properly identified resolutions concerning Priya, Marcus and Daniel individually, each accompanied by required special notices and director-specific procedural protections. A legal draft must clearly identify each director, the intended action and the meeting at which it is proposed. It should not misdescribe HBC as the entity that can itself remove the directors: HBC may organise members, but the operative vote belongs to the company's members in general meeting. The handout gives 110 members with a combined 220 shares, not majority control of the company.

SECTION 201G — WHO CAN APPOINT. Members may appoint directors under the relevant replaceable rule where applicable, but the constitution must be inspected. The power to remove under s 203D does not, by itself, make every HBC nominee automatically eligible or appointed. The company must satisfy s 201A(2)'s public-company minimum and residence requirements; candidate eligibility under s 201B; signed consent under s 201D; and relevant constitutional and director-ID requirements. These details matter even where the examination focuses predominantly on the division of corporate powers. The lawyer should not promise the client a new board without verifying whether the named nominees can lawfully take office.

SECTION 201E — A HIGH-LEVEL PUBLIC-COMPANY DRAFTING TRAP. Where s 201E applies, a single appointment resolution dealing with two or more directors is void unless the statutory precondition for voting on appointments together has been met

subject to the section's specified exceptions. That is why three separately named appointment motions are the safest ordinary method for HBC. The purpose of the safeguard is to ensure shareholders are not forced to approve or reject a slate when they might support one candidate and oppose another. This provision answers "how should we frame the appointment resolutions?" rather than "do shareholders have a power to remove directors?" It belongs next to s 201G, not in place of it.

THE DRAFTING CAN BE EXPLAINED IN ORDINARY LANGUAGE. Motion A: members resolve to remove Priya from the office of director of FreshFoods Ltd. Motion B: remove Marcus. Motion C: remove Daniel. Motion D: appoint the fully identified first nominee, subject to a valid appointment mechanism and their acceptance. Motion E: appoint the second nominee. Motion F: appoint the third. In real drafting, counsel would consider sequencing and conditional operation so that the company does not inadvertently fall below its minimum statutory board. The facts do not state all the existing directors or nominees' eligibility; do not assume the three named incumbents are necessarily the complete board without confirmation.

NO GUARANTEE OF AUTOMATION POLICY AFTER SUCCESSFUL REMOVAL. HBC's nominees may have promised to reconsider automation, but the members' appointment power does not transform the nominees into legally bound agents of HBC. Once appointed, directors must exercise their own corporate powers and comply with applicable director duties. A nominee may have a political or commercial mandate to reconsider a decision, but cannot be directed to breach statute or ignore independent judgment. This is an important lesson in advising clients: achieving control of governance offices is not the same as guaranteeing a particular future management outcome.

COUNTERARGUMENTS AND CONDITIONS. FreshFoods may legitimately argue that HBC has missed special notice deadlines, the AGM does not have a competent appointment item on its agenda, proposed candidates lack valid consent, the member appointment rule has been altered by the constitution or a specific protected director-representative qualification applies. These are not mere excuses; they are genuine legal issues where the facts support them. Yet those arguments are different from saying shareholders lack substantive authority to remove public-company directors. The handout asks whether the board could have a legal basis for refusal, so the sophisticated answer distinguishes invalid procedure or appointment from an impermissible substantive veto.

CONCLUSION. Proposal 2 invokes a member power that Proposal 1 lacked. Subject to strict statutory notice, protected-director qualifications, valid meeting procedures, properly framed individual removal and appointment motions, and candidate eligibility

members may remove the incumbents and elect replacements. A lawyer should advise HBC to plan the motions precisely, secure suitable nominees, assess its likely voting support, inspect the constitution, and treat s 203D and s 201E as independent but connected safeguards. The board's managerial discretion under s 198A does not itself defeat this governance route.

POST-TUTORIAL EXPLANATION — SIX DISTINCT DECISIONS AND WHY EACH MATTERS

The tutor explained Proposal 2 as two actions: remove Priya, Marcus and Daniel; then appoint three named substitutes. The substantive statutory routes differ: s 203D(1) authorises removal in a public company, whereas s 201G concerns member appointments under a replaceable rule. The public-company safeguard in s 201E means separate appointments are ordinarily needed unless the meeting first unanimously approves a joint appointment resolution. Therefore prepare six specifically identified resolutions rather than one vague motion "replace the board". Examine eligibility, candidate consent, relevant constitutional terms, the s 201A public-company minimum and whether any incumbent represents particular security holders under the proviso to s 203D(1). An incumbent director's commercial disagreement is not a power to veto a procedurally competent removal motion.

The recommendation to "replace the board" is not the same as obtaining a binding commitment to implement HBC's staffing policy. If elected, replacement directors must exercise their own corporate judgment and comply with their duties. HBC's 110 supporters are not proof of sufficient voting power: 110 × 2 = 220 shares, but the total votes eligible at the AGM are unspecified, and a majority threshold cannot be computed. State the absence of the denominator and the need for lawful member notice, meeting and voting compliance rather than assuming success.

QUESTION 1(3) — REMOVAL STEPS, NOTICE, RIGHTS AND EXACT DATES

A PRACTICAL LAWYER'S TIMELINE BEGINS WITH THE ACTUAL MEETING DATE. The AGM is 18 November 2026. The statutory reference point for the ordinary special notice of intention to remove directors is s 203D(2), which generally requires notice at least two calendar months before the meeting. Counting backwards produces 18 September 2026. It is crucial that the notice must reach the company within the required time; drafting the document by that date or discussing it with a campaign group is not the same as effective receipt. The record should show the intended resolution, the person or persons giving notice, the manner of delivery and evidence the company received it.

THE NECESSARY EXCEPTION. The words following the ordinary two-month requirement address an instance in which the company calls a meeting after receiving the notice. In that situation the removal resolution may be passed at that meeting despite less than two months having elapsed. This is an exception students must explain, not simply overlook after performing the date calculation. The problem says an AGM is “scheduled” but does not tell us when the company legally called it or on what date any HBC notice was received. A solicitor must therefore obtain the formal AGM calling resolution, the notice of meeting and the relevant receipt chronology. Without those facts, it is not sound advice to assert that a notice first given now absolutely cannot be voted on at the AGM, or that the exception necessarily applies.

HBC'S FIRST ACTION. It must procure notice of intention to move the particular director-removal resolutions. There are three proposed directors to be removed, so each affected person and proposal should be unambiguous. HBC itself is described as a community organisation, and its 110 members are the shareholders; ensure the notice is given through persons lawfully entitled to give it rather than assuming the campaign organisation has corporate membership merely because it organised the purchases. As the handout focuses on s 203D, detailed member meeting-requisition thresholds should be kept distinct from the removal-specific procedural obligations.

FRESHFOODS' FIRST RESPONSIBILITY. Under s 203D(3), once the removal notice is received, the company must give each affected director a copy as soon as practicable. The purpose is obvious: shareholders are being asked to dismiss a person holding corporate office, and that person must be given an opportunity to learn of the grounds or proposal and to answer it. There is no need for students to invent grounds or establish misconduct: s 203D removal by members is not generally predicated on proving a breach. The legal task is to respect the statutory process, not to conduct a disciplinary trial without facts.

THE DIRECTOR'S RESPONSE. Section 203D(4) deals with the director's statement and opportunity to speak to the motion. The following subsections prescribe how the statement is communicated, including circulation with meeting notices where appropriate or, in the relevant circumstances, making the statement available or reading it at the meeting, subject to statutory limits. Why is this relevant? Because a fair and informed shareholder vote requires that members can hear the director's response before deciding. The right to respond is not a right to prevent a lawful removal vote. A strong tutorial answer assigns each step to the proper actor: HBC/members initiate; the company promptly notifies the director; the director may respond; the company facilitates the statutory communication; then members vote at a properly convened meeting.

THE LISTED-COMPANY NOTICE TIMETABLE. Section 249HA ordinarily requires at least 28 days' notice for a listed-company general meeting. Counting 28 days back from 18 November produces 21 October 2026. The distinct 21-day public-company floor in s 249H(3) would give 28 October 2026, but it is not the controlling ordinary floor where the longer listed-company requirement applies. Make the arithmetic explicit: two calendar months is not always 60 days; 28 days is exactly four weeks; both are calculated from the identified meeting date, but for different types of notice. The statute's rules on sending and receiving documents must be considered where exact service dates are disputed.

THE DATE CALCULATIONS ARE NOT A VOTE FORECAST. HBC's 110 members × two shares each = 220 shares. It cannot obtain “220 votes out of 220” simply because that is its collective shareholding. The total votes capable of being cast, any different share classes, proxies, voting exclusions and actual turnout remain unknown. In an ordinary resolution, the usual issue is whether more than half of the votes validly cast in the relevant count favour it, subject to the Act and constitution. HBC must therefore canvass wider support. A client should be told candidly that a legally valid proposal can still fail because members do not support it.

WHAT ABOUT s 203D(7)? Students often overlook the replacement retirement rule. If a replacement director takes office following removal, the Act has specific provisions for treating that director's retirement timing in relation to the predecessor's last appointment. The object is to prevent an ordinary change of personnel from distorting relevant turnover arrangements. This is not the main obstacle to the AGM vote, but it is part of teaching the complete provision. Section 203D(8) then identifies strict liability for the specified offences under particular subsections; do not describe every possible procedural defect or statutory subsection as automatically carrying strict criminal liability.

WHAT IF THERE IS NON-COMPLIANCE? A lawyer distinguishes three possible problems. A resolution beyond the members' substantive powers is incompetent even if its notice is impeccable. A resolution within member competence may nonetheless be procedurally defective, and the effect of that defect depends on the particular statutory requirement and applicable rules concerning irregularities. A resolution may be validly proposed and passed yet fail to achieve HBC's preferred commercial outcome because newly appointed directors act independently. Each situation has its own possible advice, and none should be conflated with an automatic claim for damages.

PROFESSIONAL CONCLUSION. For the 18 November AGM, the ordinary s 203D(2) deadline was 18 September; the ordinary listed-company meeting notice date under s 249HA is 21 October. FreshFoods must promptly send each affected director the special

notice and afford the statutory response opportunities. The company-called meeting exception requires investigation of the legal calling date. The affected candidates' appointment and nomination requirements must be verified. Advise HBC to obtain the AGM timetable and constitution immediately, draft separate named motions, preserve evidence of service and calculate real voting support. This gives the client an actionable route instead of a false assurance of legal success.

POST-TUTORIAL EXPLANATION — ALLOCATE NOTICE DUTIES TO THE CORRECT PERSON

The lecturer repeatedly insisted that students track WHO GIVES notice and WHO RECEIVES it. Under s 203D(2), HBC or the participating members give the company notice of intention to move each removal resolution at least two months before the meeting; using 18 November 2026, the ordinary class deadline is 18 September 2026. Under s 203D(3), FreshFoods then gives each targeted director a copy as soon as practicable. Under s 203D(4), each director may send the company a written statement for members and speak at the meeting, even if not a shareholder. Under s 203D(5), the company must circulate the written statement with notices if time permits, otherwise distribute and read it out before the vote. Under s 203D(6), a statement over 1,000 words or defamatory need not be circulated. The teacher mentioned both word count and defamation because the company could be a publisher of the circulated material; neither is an invented limitation.

The statute also addresses representative directors, retirement timing and strict-liability contraventions in s 203D(1), (7) and (8). Distinguish that two-month period from the listed-company meeting-notice requirement under s 249HA. The exceptions matter: s 203D(2) allows a company-called meeting to pass the removal motion with a shorter interval where it was called after receiving the notice. The facts do not provide the precise calling date, so do not assume the exception automatically operates. The lecturer accepted 18 September as the tutorial calculation but warned that a solicitor handling the real transaction would check the Acts Interpretation Act and the actual receipt date; a missed date can invalidate the proposed course.

QUESTION 2(1) — SHADOW DIRECTOR: s 9AC(1)(b)(ii) AND BUZZLE

BEGIN WITH THE STATUTORY WORDS. The tutorial directs you to consider the definition of “director” and “officer” and to use Buzzle at [228]–[250]. The operative shadow-director definition is s 9AC(1)(b)(ii). The claimant must identify a person, even though not validly appointed as a director, on whose instructions or wishes the company's directors are accustomed to act. The provision also contains an exclusion

addressing advice properly given in a professional capacity or business relationship. Saying “an outsider with influence” is too vague. The precise question is about the behaviour of the appointed board in response to instructions or wishes and whether that behaviour has become habitual.

EXAMINE THE COMPONENTS SEPARATELY. First, identify the appointed directors or relevant governing majority whose behaviour is being examined. Second, identify the alleged instruction or wish, not merely a general economic influence. Third, identify the specific subsequent board decisions said to have been made in accordance with the person's position. Fourth, show that following was customary or established rather than episodic. Fifth, consider whether the board made its own judgment in an ordinary advisory or commercial relationship. The quality of the evidence matters. Board votes, records of contrary decisions, communications insisting on particular resolutions and testimonies about real autonomy are more useful than vague descriptions such as “she was influential.”

THE FACTS OF BUZZLE. Buzzle arose from consolidation of Apple-product resellers and commercial dealings in which Apple occupied a powerful role as supplier and financier or commercial counterparty. After business failure, Apple faced allegations seeking to characterise it as a shadow director and related responsible party. The claim was not a simple personal adviser situation: it concerned a strong contractual and commercial relationship in which Apple had important influence over what Buzzle could realistically do. The court considered whether this commercial power had actually become control of the directors in the statutory sense.

THE JUDICIAL CONCLUSION. White J did not find that Apple was a shadow director. The evidence failed to establish that Buzzle's directors, or the relevant governing majority, were accustomed to act in accordance with Apple's governance instructions or wishes. Strong bargaining power and hard contractual requirements do not by themselves establish that the board acts at the counterparty's direction. An independent board may accept tough conditions because refusing would be commercially disastrous; choosing an unattractive option can still be the board's own judgment. That distinction is the heart of the case.

THE POLICY REASON. Modern corporations depend on advice, financing, underwriting, trade credit and strategic expertise. If every major counterparty became a shadow director merely because its views matter, legitimate commercial relationships would be transformed into corporate governance appointments without the statutory proof. Conversely, the business-relationship label cannot shelter someone who actually turns the

appointed directors into a compliant instrument of the outsider's decisions. The legal test is functional and evidentiary, not a blanket immunity for advisers or banks.

APPLY TO A NEW EXAMPLE. Suppose a food retailer signs an exclusive supply arrangement requiring 30 days' inventory reporting. It chooses to comply because it needs its supplier; that fact alone is not shadow control. Suppose instead the supplier regularly dictates the exact board resolutions on pricing, staffing and capital expenditure and the directors habitually sign them without discussion; that could support a different result. Ask whether the decision was independent implementation of a commercial bargain or habitual obedience to another's instructions on matters for the board. The distinction is what Buzzle teaches.

STATUTORY CONNECTION AND CONCLUSION. Cite s 9AC(1)(b)(ii) for the status rule, Buzzle [228]–[250] for its interpretation and factual limits, and s 9AD(1)(b)(iii) only where discussing separate officer status rather than casually mislocating the director definition. A shadow director need not be publicly known or formally appointed, but habitual board compliance must be established. The consequences of classification are exposure to relevant statutory duties—not automatic proof of breach, dishonesty or insolvency.

POST-TUTORIAL EXPLANATION — WHITE J'S ACTUAL ELEMENTS, NOT THE "PUPPET MASTER" SHORTCUT

The Week 5 discussion described a shadow director as the effective controller whose wishes a board habitually follows. That is an introductory illustration only. The edited Buzzle case supplies the exact proof requirements: the relevant instructions or wishes; conduct by directors in their capacity as directors, or at least a governing majority; habitual compliance over time; an adequate causal connection; and evaluation of the professional/business-advice qualification. White J expressly warns at [240] that metaphor may obscure the test. At [231], the Court declined to limit shadow-director status to natural persons merely because formal appointment under s 201B requires an individual. At [236], the Court accepted conceptual overlap between de facto and shadow status. At [247]–[250], it refined causation, board majority, habitual practice and the advice qualification.

Apply the test fact by fact to Apple. Apple imposed commercially protective terms on a distressed reseller. Although Buzzle depended on Apple's products, the board chose whether to accept those trading conditions because the reseller's business needed continuity. Commercial dependence and hard bargaining were not evidence that Apple

had usurped effective company-wide management. In *Leah*, by contrast, a pattern of directors routinely accepting restructuring decisions without independent consideration may support a stronger inference of substituted judgment. Yet the lawyer must prove more than simple agreement: obtain evidence of board-level instructions, decision chronology, considered alternatives and independent financial advice.

QUESTION 2(2) — DE FACTO DIRECTOR: s 9AC(1)(b)(i) AND GRIMALDI

THE PRECISE STATUTORY ENTRY POINT. Section 9AC(1)(b)(i) concerns a person who is not validly appointed but "acts in the position of a director." This definition does not simply ask whether the company ignored a form or failed to notify ASIC; it asks what position the person actually occupied in substance. The key words are "acts in the position." Students must assess real functions, the company-specific context, actual decision-making authority and the way the formal directors and officers treated the person. An inability to produce a board appointment resolution may make the definition relevant; it does not itself prove or disprove de facto status.

WHY GRIMALDI IS THE ASSIGNED CASE. Chameleon Mining was involved in substantial corporate transactions in which Grimaldi performed extensive functions without a formal board appointment. The Full Federal Court examined whether those functions, in the company context, amounted to him acting as director. The tutorial asks for [133]–[143] because that discussion and the conclusion give a way to analyse real governance functions instead of relying on superficial labels. In particular, at [141] the Court examined the significance, breadth and independence of the functions undertaken. The case is not a formula that says "any important consultant becomes a director."

THE TWO-LEVEL REASONING. At the first level, identify tasks and their consequences. Grimaldi's involvement in capital raising, significant transactions, professional advice instructions and corporate negotiation went beyond routine support in the specific circumstances. At the second level, ask how the business actually worked: did he act with substantial independence; did appointed directors permit him to exercise significant authority; was he treated as one of those directing the corporate enterprise? This second step is essential because many executive employees and lawyers also perform tasks that are important. Their performance of delegated work does not automatically convert them into directors.

THE CORRECT COMPARATOR IS THE COMPANY IN QUESTION. A large listed company may have a senior executive who regularly negotiates very large contracts without occupying a director's position because the board retains strategic authority and

controls the mandate. A small distressed company may hand an adviser effective control over virtually all strategic business questions. The same type of negotiation might therefore have different implications in context. This is why “high value” is evidence but not the legal test. Grimaldi favours a real-world evaluation over an inflexible list of supposedly exclusive director tasks.

COMPARE THE TWO DIRECTOR DEFINITIONS. A de facto director acts in the director position; a shadow director causes the appointed directors habitually to act on their instructions or wishes. Evidence of board rubber-stamping may be relevant to both inquiries, but not in exactly the same way. For de facto status it may show the person exercised functions of the governing organ. For shadow status it may show the board habitually responded to their directions. A candidate can satisfy one definition, both, or neither. Do not confuse this issue with officer status under s 9AD: a person may be an officer without being a director.

APPLY TO A LAWYER'S CLIENT FILE. The de facto inquiry requires appointment records, titles, contracts, signature authority, board minutes, correspondence to third parties, details of who made decisions about finance, operations and major assets, and evidence of whether decisions were merely recommended or already made. If the board is genuinely independently supervising a restructuring adviser, that may defeat the inference. If the adviser makes company-wide strategic decisions, holds themselves out as leading the company and implements those decisions with the board's passive acquiescence, the case for de facto status strengthens.

CONCLUSION. Grimaldi teaches that the relevant statutory word “director” is not exhausted by the appointment register. The factual inquiry is whether the person's actual duties, authority and conduct amount to acting in the director's position in the particular company. Cite s 9AC(1)(b)(i) as operative law, Grimaldi [133]–[143] as the controlling factual and legal discussion, and Drysdale as the historical foundation. The resulting classification opens consideration of relevant obligations, but breach and remedies must still be proved separately.

POST-TUTORIAL EXPLANATION — READ GRIMALDI WITH OOMENS’ AUSTIN EXAMPLE

The tutor highlighted significant management functions and the viewpoint of outsiders dealing with the company, while the judicial test remains broader and context-dependent. *Grimaldi* [133] makes clear that a formally functioning board does not rule out de facto directorship; [141] concerns functions properly expected of a director in that company and sufficiently significant to justify director status; [142] recognises that both board-requested

and self-initiated acts can count; [143] explains the potentially independent route through officer status. Oomens' account of *Austin* shows why someone who believes they resigned may nevertheless assume substantial financial and management functions thereafter. *Mistmorn* supplies a contrast between specific consultant work and running the general affairs of a company.

Do not make "outsiders thought the person was a director" an indispensable legal element: holding out is evidence, not the exclusive test. Ask who negotiated with creditors, who approved strategic transactions, whose approval the board sought, whether that person could determine the company's direction and how the arrangements operated in practice. The original *Grimaldi* case dealt with the old s 9 definition; the operative 2026 statutory references are s 9AC for directors and s 9AD for officers.

QUESTION 3 — LEAH: FULL FACTUAL ANALYSIS AND PROFESSIONAL ADVICE

ISSUE SPOTTING — START WITH THE TIMELINE. A quick answer might say "Leah is a shadow director because the board rubber-stamped her," or "she is a de facto director because she closed the factory." Both may be arguable, but neither is an adequate first step. Leah was originally formally appointed to the board. She informed the company that she was resigning. There was an ASIC record problem. Weeks later she entered a consulting agreement and undertook extensive restructuring activity. Therefore the legal status question involves at least two periods: the end of her formal appointment and the later consultancy. The lawyer must determine the legal date on which her appointment ceased before considering whether she occupied a director role without formal appointment.

FORMAL APPOINTMENT AND RESIGNATION LAW. Leah's original appointment is capable of placing her within s 9AC(1)(a)(i). Section 203A is a replaceable rule on written resignation and requires attention to the relevant company documentation. Section 203AA concerns the effective date of a director's resignation and the ASIC notification process. The facts do not provide the resignation letter, the date of notice, the ASIC lodgment date, the constitution or the identity of the remaining directors. Section 203AB also requires consideration if the departure would leave the company without any directors, although the scenario refers to several directors who continued making decisions. Accordingly, do not infer either that a mere oral statement automatically ended her office or that a record error conclusively kept her in office forever. These facts must be proved.

WHAT A LAWYER MUST ASK ABOUT THE REGISTRY. Exactly when did Leah give notice and to whom? Was it written, signed or otherwise compliant with the governing

process? Who had responsibility for lodging the company notification? Did ASIC actually receive a notification and, if so, when? Was an effective-date rectification sought under the statutory procedure? How many other directors were in office at the relevant time? Request the company constitution, registers, director consents, the resignation notice, ASIC correspondence and any relevant application for correction. Only after reviewing those materials can counsel fix the boundary between formal and potentially de facto status.

DE FACTO ISSUE AND RULE. Assume for analysis that Leah's formal appointment effectively ended before the restructuring. Under s 9AC(1)(b)(i) the question is whether she nevertheless acted in the position of director. In Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6, particularly [133]–[143], the Full Federal Court evaluated the practical nature and importance of a person's corporate functions. The inquiry is company-specific and not confined to whether the person attended formal board meetings or had the word “director” on business cards. In Drysdale the High Court recognised that functions undertaken without formal office can attract relevant director accountability. The consultant label is evidentiary but not determinative.

DE FACTO APPLICATION — BANK AND FINANCE. Leah negotiated with BlueWave's bank about extending loan facilities when the company was experiencing serious financial difficulty. This could be executive or consultant work; corporate lenders frequently speak to advisers and authorised negotiators. Yet in BlueWave's situation, financial survival may be central to its commercial future. Ask whether Leah merely reported financing options for the board's decision or actually agreed terms or made commitments that the board accepted automatically. Her authority to negotiate is evidence of importance; her power to decide or effectively commit the company would be more persuasive evidence of director-like governance. The bank's records and the board's approval chronology are crucial.

DE FACTO APPLICATION — SUPPLIERS AND INVESTORS. Leah also negotiated payment arrangements with major suppliers and represented BlueWave at investor meetings. Again, lawyers should not assert that either task necessarily belongs exclusively to directors. A CFO, adviser, chief executive or lawyer might perform these functions. But combined with her leading position in a financially distressed company, they contribute to the picture of a person who may have assumed an unusually broad and authoritative role. Examine whom investors understood to be the decision-maker, whether Leah represented herself as acting subject to instructions and who settled or approved the essential financial terms.

DE FACTO APPLICATION — PRODUCT LINE. The hypothetical states that Leah "decided which of BlueWave's three boat models should cease production." The word "decided" is materially stronger than "recommended." Choosing to eliminate a product line changes the company's business model, revenue potential, stock and employment commitments. It is a strategic decision likely to affect a substantial part of a small manufacturing company. Ask who authorised the decision, whether it had already been implemented and whether the directors genuinely considered alternatives. If Leah made the strategic determination and the board simply accepted it, that strongly supports the inference that she acted in the position of director rather than only supplying analysis.

DE FACTO APPLICATION — FACTORY CLOSURE. Leah developed a plan to shut one manufacturing facility and oversaw implementation. Preparing a detailed restructuring plan may be normal consultant work, but directing the decision and implementation of a factory closure could indicate very significant corporate authority. The factual distinction is between formulating options and controlling the decision. The words "developed a plan" alone are not conclusive; the associated facts that the board habitually approved proposals without substantive discussion and left implementation to Leah strengthen the inference of director-like governance. A full answer must give both sides of that comparison.

DE FACTO APPLICATION — BOARD RELATIONSHIP. The directors continued to decide some ordinary day-to-day expenditure independently. That matters: it shows they had not surrendered every part of business management to Leah. But it is not decisive if the major strategic areas—the ones most central to corporate survival—were effectively directed by Leah. Under Grimaldi the court evaluates the real content, significance and authority of her activities, not just the numerical proportion of every company decision she took. The board's dependence on her in crises and its pattern of passive assent may be more significant than independent choice of relatively routine expenses.

THE STRONGEST DE FACTO COUNTERARGUMENT. Leah's consulting agreement expressly denies director status and states that she gives advice. The directors received her recommendations, and formally approved them. Many organisations lawfully rely on specialist restructuring advice. Section 198D recognises directors' ability to delegate appropriate powers, and those entrusted with important tasks do not necessarily occupy the board position. The counterargument becomes stronger if independent minutes show that the directors questioned Leah, obtained different advice, rejected some significant proposals or set her authority limits. The legal answer should acknowledge these

possibilities and then explain why the given facts—particularly the explicit strategic product decision and habitual rubber-stamping—may support the opposite conclusion.

DE FACTO CONCLUSION. On the stated facts there is a substantial risk that Leah could be characterised as a de facto director during the consultancy period if her formal appointment had actually ceased. Her strategic role was wide-ranging and apparently exercised with board acquiescence. The evidentiary question is whether she assumed director functions, not whether her consulting agreement used an exclusionary label. It would be defensible to conclude the risk is strong, but inappropriate to claim a court must necessarily find de facto status without testing the actual powers and board decisions.

SHADOW ISSUE AND RULE — START FRESH. For shadow directorship apply s 9AC(1)(b)(ii), not merely the de facto discussion again. Ask whether BlueWave's formally appointed directors were accustomed to act in accordance with Leah's instructions or wishes. In Buzzle [228]–[250], commercial influence was not enough because the necessary established pattern of director-level compliance was not proved. The provision has a professional/business advice qualification, important because BlueWave engaged Leah precisely as a restructuring consultant. The test focuses on how the board behaved because of her communications, not on whether she personally signed a contract for BlueWave.

SHADOW APPLICATION — HABITUAL COMPLIANCE. The hypothetical uses highly significant language: the directors “habitually approved” Leah's recommendations “without substantive discussion” and routinely sought her views before deciding significant restructuring questions. These facts support a pattern of accustomed following in matters of substantial business importance. The company did not merely consult Leah once. If the decisions made by the board tracked her preferred outcomes because the directors treated her wishes as commands, the statutory condition may be met. Examine the number, importance, repetition and causal pattern of those instances rather than relying on the word “habitually” in isolation.

SHADOW APPLICATION — BUSINESS ADVICE QUALIFICATION. Leah can argue the directors sought her views because they hired her to supply restructuring expertise, not because they accepted her as a hidden governing authority. Her recommendations were formally submitted to the board, and the directors continued deciding ordinary expenses. Buzzle indicates the danger of treating commercially influential advice as shadow control. But it is not a categorical shield for a consultant: if the arrangement in substance involved habitual obedience to her instructions on the board's core strategic functions, the label “adviser” may not reflect what occurred. The issue is whether the advice was properly

given within the relationship and the board exercised its own judgment, or whether board control had shifted.

THE DIFFERENCE FROM BUZZLE. Apple was largely a powerful commercial counterparty protecting its own position in trading and financial arrangements, and the court did not establish Buzzle's customary compliance with Apple's governance instructions. Leah, by contrast, sat inside the company's restructuring process and was repeatedly involved in guiding company-wide decisions. That could make a shadow allegation stronger. But a difference in closeness does not automatically decide the law. There still must be evidence of instructions or wishes and the board's accustomed response. A board can reasonably accept professional advice many times; the issue is whether acceptance remained independent.

WHY INDEPENDENT ORDINARY EXPENDITURE DOES NOT SETTLE SHADOW STATUS. The problem expressly says the directors acted independently in some day-to-day expenditure decisions. That is material evidence of retained judgment and must be addressed. But shadow status need not necessarily involve controlling every petty decision or every aspect of the company's business. Repeated submission on significant restructuring matters may be more telling than control over daily stationery purchases. Conversely, if the directors genuinely evaluated major restructuring proposals despite reaching the same conclusion, their routine acceptance might still be advice rather than obedience. The weight of the evidence must be explained in the application.

SHADOW CONCLUSION. The case is plausible but genuinely contestable. It would be stronger with minutes showing that the board repeatedly followed Leah's explicit directions and did so without independent assessment. It would be weaker with documents showing the board made autonomous strategic decisions after reasoned evaluation. A precise conclusion therefore states that Leah may be a shadow director but the outcome requires proof of an established pattern and careful consideration of the professional/business advice qualification. This should be a separate conclusion from the stronger de facto risk.

ALTERNATIVE OFFICER STATUS. Section 9AD(1)(b)(i) captures participation in decisions affecting the whole or a substantial part of BlueWave's business. The factory-closure and product-line decisions plainly raise that issue. Section 9AD(1)(b)(ii) concerns capacity significantly to affect financial standing: bank negotiations and survival restructuring may be relevant. ASIC v King supports a functional rather than purely titular approach. However, the question expressly asks for de facto and shadow director status, so this analysis should follow—not replace—the two principal answers. The

litigation may plead alternative statuses, but each has to be supported by its own statutory elements.

CONSEQUENCES, LIABILITY AND REMEDIES — DO NOT OVERCLAIM. Leah could owe director/officer duties if her status is established. That is not a conclusion that she breached ss 180–184 or insolvent-trading provisions. The handout says BlueWave is in financial difficulty; it does not establish statutory insolvency, the date a particular debt was incurred, a breach of care, misuse of position or information, losses causally linked to conduct, or the ingredients of a criminal offence. If any later claim arises, examine each element separately and the actual statutory and equitable remedies then available. Potential regulatory consequences may include civil penalty proceedings or compensation in a properly proved case, but no specific penalty, damages or disqualification order should be stated without the applicable claim and supporting facts.

FINAL WRITTEN ADVICE TO LEAH. First, obtain the original resignation document and ASIC records to determine whether formal director status continued into the relevant period. Second, review the company's constitution, delegations, board minutes and bank/supplier/investor dealings to establish who genuinely exercised governing authority. Third, advise that her significant strategic decision-making creates a real de facto-director risk under s 9AC(1)(b)(i) and Grimaldi; the board's repeated compliance creates a possible shadow-director risk under s 9AC(1)(b)(ii) and Buzzle, subject to the professional advice qualification. Fourth, investigate officer status separately under s 9AD. Fifth, avoid admitting any statutory breach until duty, conduct, causation and loss are analysed. This is the balanced advice of a careful corporate lawyer rather than a blanket assertion of guilt or immunity.

POST-TUTORIAL EXPLANATION — LEAH REQUIRES TWO SEPARATE IRAC ANALYSES

The lecturer directly instructed students not to merge the de facto and shadow tests. Analyse Leah first as a potentially continuing formal director under ss 203A, 203AA and 203AB because the resignation date and ASIC notification are uncertain. Then write an independent de facto IRAC under s 9AC(1)(b)(i), using *Grimaldi* [133]–[143] and Oomens' accounts of *Austin* and *Mistmorn*. Finally write a separate shadow IRAC under s 9AC(1)(b)(ii), using *Buzzle* [240]–[250], *Antico* and the *Ho v Akai* illustration. Add a separately labelled officer-status observation under s 9AD, not as a substitute for the requested two director analyses.

For de facto status, the strongest evidence is Leah's choice of discontinued product model, manufacturing-facility closure plan, creditor refinancing and investor-facing role: these go

to the company's survival and overall business strategy. The counterargument is that a specialist consultant can undertake demanding work within a lawful board mandate. For shadow status, the strongest evidence is habitual board approval of significant recommendations without substantive discussion; that suggests decisions may actually have been taken by Leah. The counterargument is that the board independently controlled day-to-day expenditure and may have accepted sound restructuring advice after a genuine evaluation. The inquiries are not mutually exclusive: *Buzzle* [236] explains a person may satisfy both categories in different respects.

To advise the client, request the resignation letter, its delivery and ASIC filing dates, the current constitution, board and committee minutes, restructuring engagement contract, bank and supplier correspondence, investor presentations, decision papers, evidence of alternatives considered and the identities of those who actually exercised final authority. The outcome is fact-dependent, not established by the word "consultant" or by a missing ASIC update alone. Only after status is established should a lawyer investigate distinct contraventions—such as ss 180–183 or s 588G—through their own elements and available civil or regulatory consequences. Do not assert damages, disqualification or insolvency liability without proof of a duty, breach, causation and the specific remedial requirements.

FURTHER LEGAL REASONING, REMEDIES AND MODEL-ANSWER CHECKS

WHY s 203D DOES NOT AUTOMATICALLY PRODUCE DAMAGES

The remedy sought in Question 1 is primarily a lawful corporate governance decision: properly proposing and voting on removal and replacement resolutions. If the directors withhold a validly requisitioned item, members may need to consider the correct procedural relief under the Corporations Act, depending on the precise default and standing. That is distinct from proving a civil penalty contravention or personal damages. The question contains no proved economic loss to HBC caused by a director's breach, and it would be a mistake to promise damages. If notice is late, the appropriate response may instead be to use a later lawful meeting, examine the company-called meeting exception in s 203D(2), or obtain advice on statutory meeting procedures. A practising lawyer recommends only steps supported by the facts and statutory cause of action.

WHY s 203AA IS A SEPARATE ISSUE IN LEAH'S CASE

An ASIC administrative omission is not automatically equivalent to continued appointment or effective resignation. The statutory timing mechanism is in s 203AA and must be applied to the actual resignation notice, notification date, and any rectification

process. Section 203A supplies a replaceable-rule resignation method, while s 203AB prevents some departures that would leave no remaining directors. The problem lacks the dates needed to conclude which effect occurred. Explain these provisions first, then undertake the alternative de facto and shadow tests under s 9AC. This avoids the logically impossible conclusion that a person must be an unappointed director at precisely the same time as their formal appointment has conclusively continued.

PROPER USE OF STATUTORY PINPOINTS

In Question 1, use s 198A(1) for the rule that directors manage the business, s 198A(2) for their ability to exercise powers not reserved elsewhere, s 203D(1) for the contrasting removal power, s 203D(2) for the two-month notice and exception, s 203D(3) for the company's prompt notification of the director, s 203D(4)–(6) for the director's response and its treatment, s 201E for individual appointment voting and s 249HA for the 28-day listed-company notice. In Question 2, s 9AC(1)(b)(ii) is the shadow test and s 9AC(1)(b)(i) the de facto test. In Question 3, identify s 9AC(1)(a)(i) for Leah's initial appointment, ss 203A–203AB for resignation and, if necessary, s 9AD for the alternative officer route. Each provision has a different job: accuracy means never citing them as if interchangeable.

JUDGMENT-TO-FACT COMPARISON

Use ACCR v CBA when the substantive competence of an attempted shareholder resolution is in issue. The Full Court dismissed the appeal: having sufficient members to request notice of a resolution did not supply a freestanding power to require the company to put an advisory management motion. Use Buzzle only after explaining the statutory "accustomed to act" criterion: Apple's commercial leverage was not proved to amount to governance control. Use Grimaldi where an outsider actually performs director-character functions: substance, breadth, board acquiescence and independent initiatives matter. In Leah's problem, the same "habitually approved" fact can be relevant to both tests, but the legal inference differs for each.

WHAT THE STUDENT SHOULD SAY IN THEIR FINAL CONCLUSION

HBC's mandatory staffing policy is probably incompetent under the ordinary division of powers, subject to the constitution; replacing directors is a recognised member route if all statutory requirements are met, but 220 shares alone establish no realistic voting majority. The usual removal-intention deadline for 18 November was 18 September, with the company-called meeting exception to be checked. Leah's resignation status remains fact-dependent; she has a substantial de facto-director risk and a serious but contestable

shadow-director issue. No breach, insolvency, compensation or criminal penalty may be assumed from these facts. That is an honest, properly qualified, High Distinction-style conclusion.

PUTTING THE LAW INTO PRACTICE — REVISION AND CLIENT ADVICE

OPEN-QUESTION SCRIPT FOR THE WEEK 8 CLIENT INTERVIEW

Before the law: "To make sure we advise the correct legal entity, would you tell me the company's name and whether it is proprietary or public? Please talk me through the events in the order they happened." Then check constitution and documentation: "Does the company have a constitution? Could you send us the current copy? Who are its directors and shareholders? What board or shareholder resolutions were passed? Who sent each notice, to whom, and on what dates?" This shows issue-spotting and gathers the statutory facts.

If director-status facts emerge: "Was the person ever appointed? Was the appointment valid? Did they resign in writing? What was lodged with ASIC and when? What decisions did they personally make? When did board members follow their directions? Were those directions or independent advice? Which board members complied? What minutes and emails confirm that?" Then state the alternative classifications: s 9AC(1)(a)(i), (b)(i) and (b)(ii), with s 9AD as an additional officer question.

If a powers dispute emerges: "What exactly are the shareholders asking the company to do? Is it an operational instruction or a proposed change in directors? Does the company constitution give the general meeting the relevant power? Is it a mandatory rule, such as s 203D? When is the meeting? When did the company receive the notice?" Then explain one principal authority for the decisive rule and one authority addressing the main counterargument.

To conclude: "My preliminary view, based on the facts you have given me, is ... The result could change if the constitution, notice dates or board minutes show ... The next documents I would need are ... We will verify those and provide a considered recommendation." That is more professional than giving an unqualified yes/no on incomplete material.

LECTURE-TO-TUTORIAL ALIGNMENT MATRIX

EXAM CALCULATIONS — EXPLAIN EVERY NUMBER

HBC holdings: 110 members × 2 shares each = 220 shares. This proves quantity held by the group, not the percentage voting interest, because the total eligible shares and any class-specific voting entitlements are not supplied. One may say HBC has 110 members,

but a procedural 100-member threshold (if relevant in a DIFFERENT question) does not determine whether Proposal 1 is substantively competent.

18 November 2026 AGM — special director removal notice under s 203D(2): move backward two CALENDAR months from 18 November to 18 September 2026. A company called AFTER receiving such notice might use the narrow statutory timing exception. The legal calling date is missing from the facts; do not assume it.

18 November 2026 AGM — listed-company meeting notice under s 249HA: count 28 days backward to 21 October 2026. Contrast s 249H(3) 21 days (28 October 2026), which is not enough because FreshFoods is listed. Never confuse the notice that the activist sends to the company with the notice the company sends to its shareholders.

Leah — resignation periods under s 203AA: 28 days governs notification to ASIC and ordinary relation-back of effectiveness; 56 days is the ASIC application window for fixing an earlier effective day; 12 months is the ordinary Court application window (the Court can allow longer). The starting date for these is Leah's actual cessation date, which the question has NOT supplied, so exact calendar dates cannot be calculated. Do not fabricate one.

EXAM CONSEQUENCES AND PRACTICAL REMEDIES — LIMIT YOUR CONCLUSION TO PROVED FACTS

FreshFoods/HBC: Members may pursue lawful governance mechanisms such as proposing competent appointment/removal resolutions and, where requirements are met, appropriate declaratory or injunctive court relief. A flawed or incompetent proposed resolution is not made valid merely by 110 signatures; nor does an unjustified refusal necessarily imply that an injunction is automatically available. Identify the actual contravention and the court's statutory or equitable jurisdiction before advising relief.

Leah: A director/officer status finding may trigger duties but is not a finding of breach. Depending on the facts, later consequences may include civil remedies, regulatory action, compensation and possible disqualification or penalties. Disqualification under ss 206C and related provisions and relief under s 1324 are separate legal questions, requiring additional statutory elements and evidence. For client advice, preserve documents and clarify the exact period of formal office, when decisions were made, solvency and loss rather than announce a dollar figure.

Topic 1: statutory company identity and management organ → ss 124, 134–135 and 198A → Cuninghame and ACCR → FreshFoods Proposal 1. Topic 2: shareholders' reserved

removal power → ss 201A, 201B, 201D, 201G, 203D–203E → Stanham → FreshFoods Proposal 2 and date calculation. Topic 3: functional status and de facto director → s 9AC(1)(b)(i), s 9AD → Drysdale and Grimaldi [133]–[143] → Leah. Topic 4: shadow governance → s 9AC(1)(b)(ii) → Buzzle [228]–[250] and Antico → Leah and potentially controlling nominee appointors.

READING AND PRIMARY SOURCES — WHAT YOU HAVE AND WHAT REMAINS

SUPPLIED AND REVIEWED: complete Week 4 forum transcript; Week 4 JUNI Summary; Week 4 32-slide lecture; Corporate Law 263 Tutorial 4 (for Week 5) source handout; "This Week's Reading" EPUB listing Chapter 7 of the textbook and the assigned edited Buzzle/Grimaldi extracts; a separate EPUB that points to the non-uploaded narrated slide video. The pasted markdown was cross-recognised as a transcript-like source, not a separate worked solutions document.

READING STATUS: The full textbook Chapter 7 and the narrated-slide MP4 remain unavailable for direct comparison. The lecturer·s edited Buzzle and Grimaldi judgment extracts and Oomens· four-page article were subsequently supplied and reviewed. The Week 4 forum transcript, Week 5 live tutorial transcript and slides were also reviewed. Key legal propositions were checked against the legislation and available reported judgments.

AUTHORITY LINKS: Corporations Act current text https://www.legislation.gov.au/C2004A00818/latest/text ; ASIC replaceable rules https://www.asic.gov.au/for-business-and-companies/companies/register-a-company/the-replaceable-rules-for-company-governance ; ABRS director ID requirements https://www.abrs.gov.au/director-identification-number/who-needs-apply-and-when ; Grimaldi reported text https://casechat.au/cases/au/grimaldi-v-chameleon-mining-nl-no-2 ; Buzzle reported text https://casechat.au/cases/au/buzzle-operations-pty-ltd-in-liq-v-apple-computer-australia-pty-ltd-2 ; ACCR case https://casechat.au/cases/au/australasian-centre-for-corporate-responsibility-v-commonwealth-bank-of-australia . Third-party access and changing websites may affect availability; citation propositions have been independently checked but not every URL can be guaranteed permanently.

The best corporate-law answer answers four questions in sequence. First, WHAT IS THE LEGAL STATUS? (public/proprietary company; member/director/officer; formal/de facto/shadow). Second, WHICH ORGAN HOLDS THE POWER? (s 198A or a specific

member power such as s 203D). Third, WHAT EXACT ELEMENTS AND PROCEDURES APPLY? (such as habitual compliance under s 9AC(1)(b)(ii) or the two-month notice and response rights under s 203D). Fourth, WHAT DO THE ACTUAL FACTS PROVE, AND WHAT DO THEY NOT PROVE? Put counterarguments and qualifying facts next to the element they affect.

For FreshFoods, resist the urge to jump from 110 shareholders straight to s 249N; start with competence under s 198A and the actual director-removal power in s 203D. For Leah, resist the urge to conclude "a shadow director" simply because her recommendations were adopted; distinguish genuine independent advice, habitual governance direction, the separate de facto test and the alternative officer category. Always conclude conditionally when the problem withholds a critical event or date.

Three memory sentences: (1) "Having shares does not give a shareholder authority to manage the supermarket." (2) "Changing the board is different from ordering the board." (3) "Corporate status follows real functions and control, not merely job titles."

POST-TUTORIAL CASE AND LEGISLATION SOURCE MAP — FOR EXAM AND PRACTICE

ACT (operative research starting point): Corporations Act 2001 (Cth), Federal Register compilation C2026C00432 (effective 19 September 2026): https://www.legislation.gov.au/C2004A00818/latest/details

WEEK 4 FORUM: original live transcript and supplementary narrated-slide transcription; WEEK 5 TUTORIAL: full live classroom transcript and JUNI summary. The tutor transcript is a noisy automatic transcription; section references such as "s 19"/"s 190A" describing the management rule are corrected to s 198A after checking the legislation.

UNIVERSITY CASE EXTRACTS: Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2010] NSWSC 233 [228]–[250]; Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 [133]–[143]. These were directly supplied; the legal analysis here works from their reasoning, not from a short online abstract.

REQUIRED SECONDARY READING: Pieter Oomens, "Identifying de facto and shadow directors", Australian Insolvency Journal (Oct–Dec 2007) 11–14. The reading discusses Mistmorn, Austin, Antico and Ho v Akai; older secondary summaries should not be mistaken for the full judgments, and references to statutory provisions must be checked against the 2026 Act.

ADDITIONAL GOVERNANCE READINGS: Courtenay Zajicek and Kate Sherburn, “The What and the What Not: Key Considerations Before Becoming Company Secretary” (ACC); McGuirk Remuneration / Governance Institute of Australia, Australian Board Remuneration Survey Abridged Report (2024), 35 pages. The secretary article contains practical recommendations; the survey contains remuneration benchmarking observations, not legal rules.

PRESCRIBED TEXTBOOK LIMITATION: “Chapter 7: Corporate governance and company management” is listed in the course directions but its complete authorised text was not included in the available materials. The manuscript therefore identifies the reading and does not claim page-by-page verification of unseen material.

REFERENCES AND VERIFICATION NOTES

Primary legislation: Corporations Act 2001 (Cth), official Federal Register of Legislation, https://www.legislation.gov.au/C2004A00818/latest/text . Section structure was checked against official 2026 compilations including the September 2026 compilation for the current s 9AC (director), s 9AD (officer), s 198A, ss 203A–203E and associated governance provisions. Current law and assigned course content are distinguished where necessary.

Assigned / related case texts: Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 (available via casechat.au/cases/au/australasian-centre-for-corporate-responsibility-v-commonwealth-bank-of-australia); Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2010] NSWSC 233 (casechat.au/cases/au/buzzle-operations-pty-ltd-in-liq-v-apple-computer-australia-pty-ltd-2); Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 (casechat.au/cases/au/grimaldi-v-chameleon-mining-nl-no-2); Corporate Affairs Commission v Drysdale [1978] HCA 52; ASIC v King [2020] HCA 4 (official High Court site). Court decision sources should be checked again when direct primary judgment links are inserted into the book.

COURSE-SOURCE STATUS: Prescribed textbook Chapter 7 and the narrated-slide MP4 still require direct review. The edited Buzzle and Grimaldi case extracts and Oomens article were supplied and reviewed. The Week 4 forum and Week 5 tutorial transcripts were also integrated. Course EPUBs list readings; they are not copies of the full textbook chapter or video.

WORKING SOURCE LINKS — FOR DIRECT RESEARCH

Corporations Act 2001 (Cth) — Official current Act

Corporations Act · Official current text (19 September 2026 compilation)
https://www.legislation.gov.au/C2004A00818/latest/text

Australasian Centre for Corporate Responsibility v CBA [2016] FCAFC 80

Buzzle v Apple [2010] NSWSC 233

Grimaldi v Chameleon Mining [2012] FCAFC 6

Corporate Affairs Commission v Drysdale [1978] HCA 52

ASIC v King [2020] HCA 4 — High Court of Australia

CHAPTER 5 · CORPORATE LAW — NEXT EDITION

Membership, Members' Powers, Shareholder Meetings & Dividends

A professional Australian corporate-law teaching chapter for LLB, JD and LLM students and practising business decision-makers.

Source alignment: Week 5 Forum lecture and first live-transcript portion, Week 5 narrated-dividends transcript and JUNI summary, Week 6 Tutorial 5 (all original questions reproduced), and the required reading, *Company Law* (3rd ed, 2023), Chapter 6, pp 145–176. Legislation checked against the *Corporations Act 2001* (Cth), compilation No 149, 19 September 2026.

PUBLICATION CONTROL

This is a **self-contained Chapter 5 addition**; it does not modify the existing Chapters 1–4 archive. It uses original explanatory prose rather than reproducing the protected textbook chapter. Only the first received portion of the Week 5 live Forum has been integrated here. The remaining live Forum recording and any separate Intrepid Mines documents are not represented as having been reviewed.

THE CORE TEACHING METHOD

Facts → identify company type and membership → locate control of management and meeting powers → apply the exact procedure and voting thresholds → explain the case law → assess legality, commercial consequences and remedies → give a reasoned recommendation. For dividends, always move through: **s 254SA** → **s 254T** → **s 254U** → **s 254V** → **s 254W**.

How the prescribed textbook and tutorial fit together

Chapter 6 of the prescribed text introduces shareholder rights, the significance of the register of members, evidence of share ownership, share transfers, shareholder decision-

Chapter 5 — Deep teaching expansion: shareholders, meetings and dividends

Shareholder votes and rights

Valid meeting and resolution

Dividend duties and creditor protection

Reader's orientation (Week 5, LAWS75-310). This new teaching section expands the existing Chapter 5 without replacing or removing the original 104-page chapter. Bond's Week 5 reading screenshot prescribes **Chapple et al, Company Law (3rd ed, 2023), Chapter 6, whole chapter**, a survey of **Corporations Act 2001 (Cth) ss 249A–250S**, and close reading of **ss 254SA–254W**. The textbook Chapter 6 PDF was **not supplied with this upload**; its precise propositions have not been represented as read or independently checked. The explanations below are original teaching, derived from the course reading instructions, existing manuscript themes, official legislation and ASIC guidance.

1. Why shareholders have rights but do not run the company

Imagine you and four friends buy shares in a surfboard company. Each share is an ownership **interest** in the company, not ownership of a particular surfboard, vehicle or bank account. Under Australian company law, the company is a separate legal person. The company's assets belong to that legal person. A shareholder's interest usually gives economic rights (such as the prospect of dividends), governance rights (voting on certain matters) and procedural rights (such as receiving notices of meetings). The exact bundle depends upon the class of shares, the constitution, the Corporations Act and any relevant agreements. Start by asking: **who is on the members register, what kind of shares are held, and what rights attach to them?**

This matters because people frequently confuse three different propositions. **Control of directors** is not the same as **ownership of all company property**. **A majority vote** does not cure non-compliance with an express statutory procedure. And **a profitable company** is not automatically obliged, or even permitted, to pay a dividend. An accurate adviser separates governance, finance and statutory conditions rather than collapsing them into the idea that a majority can do whatever it wishes.

A simple governance map

Members/shareholders → elect or remove directors when the applicable law permits → directors manage the company → company acts through valid decisions → members receive prescribed information and exercise voting and dividend rights. Directors ordinarily manage the business under **s 198A** (where applicable as a replaceable rule); members exercise particular powers reserved by the Act, constitution or valid resolution. Analyse each decision's legal source before deciding who has the last word.

2. Read the entire meeting procedure as a timeline, not a wall of sections

The Week 5 reading says to skim the meeting provisions from **s 249A through s 250S** to understand the architecture. The reason is practical: a boardroom conflict rarely raises just one provision. The student must trace the process from a request to a legally effective resolution.

Stage A — Can the decision be made without a meeting? Under **s 249A(1)–(4)**, a proprietary company with more than one member may pass a qualifying circulating resolution if **every member entitled to vote signs** the same resolution (identical copies are allowed); it passes when the last person signs. This is unanimity, not a 75% special-resolution shortcut. The statutory auditor-removal exception must also be considered. For a single-member company, **s 249B(1)** provides for the member to record and sign the resolution. Always check the exact company type.

Stage B — Who can require a meeting? Under **s 249C**, a director may call a members' meeting as a replaceable rule, while listed companies have the special statutory rule in **s 249CA**. Crucially, **s 249D(1)** requires directors to call and arrange a meeting when members holding **at least 5% of the votes capable of being cast** request it. The written request must set out the proposed resolution, bear the requesting members' signatures and be given to the company: **s 249D(2)(a)–(d)**. Calculate the vote percentage at the midnight before delivery: **s 249D(4)**. The directors must **call within 21 days**, with the meeting **held within two months**: **s 249D(5)**. The time limits are distinct. Do not confuse calling a meeting with holding it.

Stage C — What if the directors ignore the request? Section 249E(1) gives members holding more than half of the requesting members' votes a route to call the meeting where the directors have not called it within 21 days, with statutory expense provisions to examine. **Section 249F(1)** offers an independent avenue for members with at least 5% of the votes to convene a meeting themselves, generally at their expense. **Section 249G** permits court intervention where calling a meeting otherwise is impracticable. These are

alternative legal pathways with distinct conditions; describe which one your client qualifies for.

Stage D — What does proper notice involve? Section 249H(1) generally sets **at least 21 days' notice**, with listed companies generally requiring **at least 28 days under s 249HA**. Shorter notice and special cases have specific statutory rules; never announce that 21 days applies to all meetings. **Sections 249J and 249L** deal with giving notice and its contents. When a proposal concerns removing a director, check the specific removal provisions separately; ordinary meeting requirements alone may not be enough.

Stage E — Can members put forward resolutions or circulate arguments? Sections 249N–249P provide mechanisms for members' proposed resolutions and circulation of statements, subject to eligibility and procedure. A shareholder's ability to demand a meeting under s 249D should not be confused with their entitlement to place a resolution on the agenda. Read the applicable provision's precise threshold, notice and timing requirements before giving advice.

Stage F — Will the meeting itself be valid? The sequence continues through **ss 249Q–249W** (purpose, meeting formats, participation, quorum, chairing and adjournment), **ss 249X–250D** (proxies and representatives), and the subsequent provisions concerning votes, polls, records, and AGMs up to **s 250S**. Check whether a replaceable rule has been modified by the constitution. Consider technology access and meaningful participation, not merely whether an online link was sent. Under **s 250R**, ordinary AGM business can include reports, director elections and appointment of auditors, with **s 250S** protecting members' opportunities to ask questions and make comments on management at an AGM. Apply the right provision to the right kind of company and meeting.

3. An original worked meeting calculation — understanding what 5% means

Illustrative facts (not a reproduced university tutorial). Coastline Energy Ltd has 2,000 votes capable of being cast at a general meeting. Shareholders Grace, Priya and Omar together hold 110 of those votes, and want a meeting to discuss board accountability. The board refuses to engage with them.

Step 1: Identify the denominator: **2,000 votes**, not 2,000 shareholders. **Step 2:** Count the requisitionists' votes: **110**. **Step 3:** Divide **110 ÷ 2,000 = 0.055**. **Step 4:** Multiply by 100: **5.5%**. That meets **s 249D(1)**'s **at least 5%** rule, if the voting entitlement and timing are verified. **Step 5:** Draft a written request stating each proposed resolution, obtain signatures and serve it: **s 249D(2)**. **Step 6:** Record the date and check the **21-day call** and **two-month hold** deadlines under **s 249D(5)**.

Suppose directors fail to call the meeting. Grace has 60 of the requisitionists' 110 votes. She controls **60 ÷ 110 × 100 = 54.55%** of the requesting group's votes. She may satisfy the **more-than-50%** rule for action under **s 249E(1)**, if the other statutory conditions are met. This is not a majority of all 2,000 company votes; it is a majority of the votes belonging to the original requisitioning members. Explain that denominator explicitly in an exam.

Counterarguments and client advice: The company could dispute the voting entitlement at the statutory measurement time, the adequacy of the written request or whether the proposed matter is properly within member power. The client should preserve the members register, share terms, requisition, delivery evidence, constitutional clauses, notices and minutes. A procedurally successful request does not guarantee that the proposed substantive resolution will be legally effective.

4. Dividend law in ordinary English: why cash in the bank is not the answer

A dividend is a transfer of value from the company to holders of shares under their legal dividend rights. It is **not** wages, interest on a loan, an automatic refund of share capital or an entitlement to take cash from the corporate account whenever a shareholder asks. Directors must first check the company's legal capacity, cash position, financial statements, obligations and the statutory rules.

Section 254SA generally prohibits a company limited by guarantee from paying dividends to members (with special statutory treatment for some mutual entities). **Section 254T(1)** sets out **three cumulative requirements**. (a) Immediately before the relevant declaration, **assets must exceed liabilities by at least the amount of the dividend**. (b) Payment must be **fair and reasonable to the shareholders as a whole**. (c) Payment must **not materially prejudice the company's ability to pay creditors**. **Section 254T(2)** requires the assets and liabilities calculation to follow the applicable accounting standards. Do not replace this test with the unsupported shorthand, “companies may pay dividends only out of profits”. Profit, cash flow and the asset/liability position are not the same thing.

Section 254U(1) (a replaceable rule) permits directors to determine the dividend's amount, payment time and method, which may include cash or non-cash methods. **Section 254V** answers a different question: **when does the company incur a debt to the shareholder?** Ordinarily, merely fixing amount or payment time does not create the debt; it generally arises at the time fixed for payment, and the decision may be revoked beforehand: **s 254V(1)**. But where the constitution provides for the **declaration** of dividends, debt can arise on declaration: **s 254V(2)**. **Section 254W** addresses the dividend rights of shares, including class-specific rights. It is a mistake to ignore preference rights or assume every class receives the same payment.

A step-by-step dividend example — all three statutory checks

Illustrative balance sheet. Harbour Design Pty Ltd has assets of **$1,200,000** and liabilities of **$900,000**, assessed under the relevant accounting standards. Directors propose a **$150,000** dividend. First compute net assets: **$1,200,000 − $900,000 = $300,000**. Next compare: **$300,000 ≥ $150,000**, so the amount can clear the **s 254T(1)(a)** numerical threshold on those assumptions. The calculation alone proves **nothing** about fairness or creditors. If a $400,000 bank loan falls due next week, available cash is $80,000 and refinancing is uncertain, paying $150,000 could materially prejudice payment of creditors: **s 254T(1)(c)**. If directors propose paying only a favoured shareholder despite equal class rights, they must examine **s 254T(1)(b)** and the terms of issue and **s 254W**. A profitable year does not automatically change these conclusions.

A dividend decision diagram

Identify shareholder classes and constitution → obtain reliable current financial statements → compute the assets-minus-liabilities cushion → test fairness across all affected members → forecast cash payments to creditors → determine proper board authority and method → determine when payment creates a legal debt → document the decision and retain evidence.

5. Professional application — advice changes depending on who your client is

For a **minority shareholder**, the practical objective might be a properly convened meeting or scrutiny of preferential dividends. Obtain their voting records, class rights, the constitution and any shareholder agreement. For a **director**, the goal is to avoid invalid corporate action and personal exposure: insist on board papers, credible forecasts, documented deliberation and written professional advice. For a **creditor**, focus on cash pressure, existing financing obligations and whether distributions may undermine repayment. A **majority shareholder** may have substantial voting power but cannot bypass the statutory rules. In each case separate the legal rule, the evidence and the client's commercial preferences.

6. FAQs — explanations before memorisation

FAQ 1 — Does 5% mean 5% of the number of shareholders?

No. **Section 249D(1)** measures **votes that may be cast** at the meeting. Five people holding 1% of votes between them are not the same as one person holding 5% of votes. Check voting rights, share class and the prescribed measurement time.

FAQ 2 — If the directors ignore a meeting request, can we vote them out immediately?

Not automatically. Use **s 249E** or **s 249F** when the conditions are satisfied, and separately check the legal rules governing removal, appointment, notice and voting. Successfully requisitioning a meeting establishes a procedural right; it does not itself change the directors.

FAQ 3 — Can 75% of members approve a circulating resolution under s 249A?

Not under that mechanism. **All members entitled to vote must sign** a qualifying circulating resolution under **s 249A(2)**. The 75% concept relates to particular **special resolutions**, whose legal pathway may require a properly held meeting or another applicable mechanism. Different numbers answer different questions.

FAQ 4 — Does the company owe a dividend as soon as directors announce one?

Not necessarily. **Section 254V(1)** generally distinguishes fixing a dividend from creating a debt. **Section 254V(2)** contains an important exception where the constitution provides for declaration of dividends. Read the company's actual constitution before advising on a payment claim.

FAQ 5 — Why is a bank balance of $200,000 not proof that a $100,000 dividend is legal?

Because the legal tests also require the **assets/liabilities calculation**, **fairness** and **protection of creditors**, including anticipated obligations. The bank balance is only one piece of evidence. A company can have cash today but a much larger debt due tomorrow.

FAQ 6 — Where does the Lloyd Miller / Intrepid Mines example fit?

The Week 5 reading recommends examining a real shareholder requisition for an extraordinary general meeting at Intrepid Mines Ltd. The educational value is tracing an actual request, proposed resolutions, meeting documents and board contest through **ss 249D–249P** and associated procedural rules. **The original document packet was not included in this upload**; no assertions are made about the precise contents or outcome of those documents beyond the screenshot's description.

7. Multiple-choice questions — answers with explanations

MCQ 1. Members holding 5.2% of eligible company votes request a meeting in the prescribed written form. Directors must: A. ignore it if they disagree; B. call within 21 days and arrange the meeting within two months; C. hold it within 21 days; D. pay them a dividend. **Answer: B.** This distinguishes the two statutory deadlines in **s 249D(5)**.

MCQ 2. A proprietary company has four voting members. Three sign the same circulating resolution. Under s 249A the resolution: A. passes by 75%; B. passes if directors agree; C. does not pass under s 249A until all entitled members sign; D. passes by share majority. **Answer: C.** This route requires unanimity of entitled signatories.

MCQ 3. A company passes the net-assets dividend calculation but may miss its next payroll and loan instalment if it pays. The best answer: A. payment is automatically lawful; B. s 254T(1)(c) still requires creditor-prejudice analysis; C. every profit must be distributed; D. directors have no discretion. **Answer: B.** The statutory requirements are cumulative.

MCQ 4. Directors determine a dividend payable in four months, and there is no constitution provision for declaration. The general debt rule is: A. debt arises on any media announcement; B. the time fixed for payment controls under s 254V(1); C. a member can demand immediate payment; D. a dividend becomes wages. **Answer: B.** The separate declaration exception is **s 254V(2)**.

MCQ 5. A member wants an urgent meeting and considers calling it themselves under s 249F. Which issue is crucial? A. 5% voting threshold and member-paid costs; B. ownership of 5% of assets; C. unanimous board approval; D. company profit. **Answer: A.** Compare the different expense consequences under **ss 249E and 249F**.

8. Short-answer questions — High Distinction-style responses

SAQ 1 — Why does the law separate a right to requisition a meeting from a right to pass the proposed resolution?

A requisition protects shareholder participation in corporate governance, particularly where directors control the usual meeting process. **Section 249D** ensures qualifying members can trigger a meeting, but the validity of the **proposed decision** still depends on its substantive legal source, the voting threshold, notices and any specific statutory conditions. A board removal proposal, for example, should be independently tested under the provisions governing director removal, rather than presumed lawful merely because 5% requested a meeting. This distinction protects the minority's opportunity to be heard without treating procedural initiation as substantive supremacy.

SAQ 2 — Explain in simple terms how dividend law protects shareholders and creditors simultaneously.

A dividend moves company value to shareholders, so the law guards both **who receives it** and **whether value can safely leave the business**. **Section 254T(1)(a)** imposes a financial margin measured using relevant accounting standards; **s 254T(1)(b)** requires fairness and reasonableness across shareholders; and **s 254T(1)(c)** protects the company's ability to meet obligations to creditors. **Sections 254U–254W** then answer

further questions about who decides, when a debt arises and what rights attach to shares. A sound adviser does not reduce the statutory test to one accounting number.

SAQ 3 — Why do constitution and share classes matter in a dividend dispute?

Different share classes can carry different distribution entitlements, and the constitution may affect how dividends are declared and become payable. **Section 254W** makes share rights relevant, while **s 254V(2)** makes constitutional declaration machinery decisive to debt timing in qualifying cases. Therefore obtain the constitution, original issue terms, later variations, minutes, members register and financial accounts before concluding that one shareholder was entitled to the same payment as another.

9. Original tutorial-style IRAC problem and full model answer

Question. Oceanview Labs Ltd has 4,000 votes capable of being cast. Members with 230 votes submit a signed written request identifying a resolution to replace two directors. The board responds that members may not call meetings and takes no action for 30 days. The company also proposes a $220,000 cash dividend. Its accounting-standard assets are $900,000 and liabilities $740,000. Directors say the company earned profits last year, and therefore the payment is lawful. Advise the requisitionists and the board.

Issue. There are two distinct legal questions: (1) whether the requisitionists satisfied the requirements for forcing a general meeting, and the consequences of director non-action; and (2) whether the proposed dividend can lawfully be paid. The director-replacement proposal also requires an independent inquiry into removal and appointment powers.

Rule. Section 249D(1) requires directors to call a meeting on the request of members with at least 5% of the votes. **Section 249D(2)** prescribes writing, proposed resolutions, signatures and delivery; **s 249D(4)** determines when voting power is measured; and **s 249D(5)** requires a call within 21 days and a meeting within two months. **Sections 249E, 249F and 249G** provide potential routes following director default or in other prescribed circumstances. **Section 254T(1)(a)–(c)** imposes three cumulative dividend conditions; **s 254T(2)** governs accounting. Board power, payment timing and dividend rights also require attention to **ss 254U–254W**.

Application. The members hold **230 ÷ 4,000 × 100 = 5.75%** of the relevant votes, which is above the **5%** threshold, assuming correct voting entitlements and timing. Their written signed request identifies the resolution; if duly given, the statutory obligation arises. After **30 days**, the board's failure to call within **21 days** indicates non-compliance. Whether a subset of the requisitionists may act under **s 249E** depends on its own more-than-half-of-requesting-votes rule; alternatively the members can evaluate **s 249F** with its ordinary cost burden. They must follow the specific rules for removing and appointing directors; they have

not automatically removed anyone. For dividends, subtract liabilities from assets: **$900,000 − $740,000 = $160,000**. That amount is **less than** the proposed **$220,000** distribution, so the numeric **s 254T(1)(a)** requirement is not met on the stated figures; the shortfall is **$60,000**. The assertion of past profits is legally inadequate. Even if the figures changed, the board would still need to consider fairness to all shareholders and creditor prejudice under **s 254T(1)(b)–(c)**.

Counterarguments. The company might challenge whether all 230 votes were eligible at the measurement point, whether the written requisition was delivered correctly, or whether replacing the specific directors is within the resolutions lawfully open to the meeting. On the dividend, directors might seek updated compliant accounts showing a larger cushion, but they cannot simply ignore the numerical test or creditors. These issues require evidence rather than assumption.

Conclusion and advice. Preserve the signed request and the members register; immediately calculate statutory deadlines and select the proper meeting pathway; verify independent director-removal requirements. Do **not** proceed with the $220,000 dividend on the stated balance sheet. Request current accounting-standard financials, a creditor cash-flow forecast, class-rights review, constitution and full board reasons before any reconsideration.

10. End-of-chapter revision and reading pathway

Read in this order: First, your Bond Week 5 reading instructions. Next, independently read **Chapple et al, Company Law (3rd ed, 2023), Chapter 6** through Bond's licensed library (a PDF of that chapter was not supplied in the present upload). Then skim **ss 249A–250S** for the meeting sequence; deeply read **ss 249D–249G**, **249H–249P** and **254SA–254W**. Use ASIC's public guidance on company meetings and shareholder rights for practical context. If available, review the **Intrepid Mines Ltd shareholder requisition document packet** against the meeting timetable. Finally, attempt the original Week 5/Week 6 tutorial questions in the preserved chapter before reading the model answers. The independent publisher's examples in this section are additional practice and **do not replace the original university tutorial**.

Verified official source: Corporations Act 2001 (Cth), compilation 19 September 2026. **ASIC:** Company meetings and resolutions; Shareholder rights and responsibilities. *Study text only; verify current legislation and source cases before formal publication or legal advice.*

making, general meetings and dividend distributions. Its running Retrofit example illustrates Julian's desire to retain control while issuing shares to Bev. These concepts are applied in the university's more difficult FreshFoods/HBC problem: activist shareholders want to influence management, remove directors and exploit formal meeting rights without possessing significant voting power.

The apparent contradiction is the central lesson. Shareholders *own shares in the company*, but they do not individually own the company's stores, bank accounts or operating assets. Management ordinarily belongs to the board. Shareholders exercise specific powers conferred by legislation and constitution: electing/removing certain directors, amending constitutions and invoking meeting rights. A sophisticated answer does not equate having a right to speak at a meeting with having power to dictate commercial operations.

Learning outcomes

At the end of Chapter 5, students should be able to explain how membership arises and ends, why registers and certificates matter, how the company distinguishes transferred shares from the company's underlying assets, when activist shareholders may requisition meetings, put resolutions on an agenda, distribute persuasive statements, cast votes and appoint proxies, and why a dividend may be unauthorised or revocable despite earlier profits and board announcements.

Part I · Membership and the nature of a share

1. A share is property, not a piece of company property

When a person buys shares in FreshFoods Ltd, they acquire the legal and economic rights attached to those shares: potentially voting, dividends, transfer and participation in surplus assets on winding up. They do *not* acquire the right to remove food from a FreshFoods warehouse or order staff around. The separate corporate personality and statutory allocation of powers matter. A share is personal property; consider **s 1070A** and the contractual force of the constitution under **s 140**.

2. Becoming a member under s 231

Section 231(a) deals with becoming a member on registration. Under s 231(b), a person must agree to join after registration and have their name entered in the register of members; s 231(c) provides a special case on conversion. In practice a person may subscribe for new shares, take a transfer or exercise an option; the register remains

critically important in confirming membership and the associated ability to vote. A minority investor should not assume that payment alone establishes every incident of registered membership.

Example: HBC has 110 supporters who have each purchased two FreshFoods shares. Before executing an activist campaign, counsel should check that each of the 110 is the registered member, entitled to vote on the relevant resolution. Beneficial interests held through a nominee may not count the same way when the Act uses the number of *members*. That factual check is more important than merely knowing the combined 220-share holding.

3. Why the register of members matters

Sections **168–169** require a company to maintain a register of members and relevant share details. The register records identities and addresses, entry dates, numbers and classes of shares and paid-up status. Sections **173** and **177** deal with inspection and appropriate uses of register information; access is not a licence to obtain personal contact details for unrelated marketing. Section **176** gives the register evidentiary force; s 175 permits rectification in appropriate circumstances. Counsel advising HBC must be precise about what shareholder records may lawfully be obtained and used.

> **CASE ILLUSTRATION — REGISTER AND ITS LIMITS**
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> *IMF (Australia) Ltd v Sons of Gwalia Ltd* [2005] FCAFC 75: the Court considered restrictions on using company register information to contact shareholders about litigation concerning purchase of shares. The example teaches the difference between rights relevant to *holding* shares and external aims connected merely with having purchased shares. The case belongs next to s 177, not in an unrelated case list.
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> *Re Clifton Springs Hotel Ltd* [1939] VLR 27: the registration of partly paid shares furnished evidence of the holding and liability; the lesson is to inspect the statutory register when ownership or obligations are disputed. The register is strong evidence but can be corrected under s 175 where justified.

4. Share certificates: evidence, not magic

Section **1070C** concerns share certificates, which provide prima facie evidence of title. Certificates do not cure every defect in transfer or underlying title. Under s **1071H** timing obligations apply when relevant securities are allotted or transferred. The textbook's *Re*

Bahia and San Francisco Rail Co (1868) LR 3 QB 584 illustrates reliance on incorrect corporate certificates and estoppel. The real-world point is that a company may face a damages claim when its representations about title mislead an innocent purchaser, even when the wrongful transfer itself was defective.

SPECIMEN — SHARE CERTIFICATE

SAMPLE EDUCATIONAL COMPANY PTY LTD · ACN 000 000 000

Certificate No. SC–0007

This certifies that **Jordan Example** is the registered holder of **500 fully paid ordinary shares** in Sample Educational Company Pty Ltd, subject to the company's constitution and applicable law.

Class	Number	Paid per share	Unpaid
Ordinary	500	$1.00	$0.00

Director signature: _____ Date: _____

Original illustrative template — not a copy of the publisher's sample; not legal evidence of actual shares.

5. Transferring shares and refusing registration

Under s 1070A, shares are transferable as provided in the constitution or applicable statutory framework. Listed securities are generally settled electronically, including through CHESS. Proprietary companies can have pre-emptive rights or director discretion under their constitutions or the replaceable rules. Section **1072G** permits directors of proprietary companies to refuse registration of a transfer under the replaceable rule, but the proper use of a discretion and the company's interests remain relevant. Section **1071E** prescribes notice of refusal, and s **1071F** provides for Court intervention when refusal lacks just cause.

CASE ILLUSTRATION — REFUSAL OF TRANSFERS

Roberts v Coussens (1991) 25 NSWLR 171 and *Beck v Tuckey* [2007] NSWSC 1065 are useful when examining the discretion to refuse a transfer and the availability of a statutory remedy under s 1071F. Do not advise that a director's refusal is unchallengeable merely because the constitution uses broad words.

6. Cessation of membership

Membership can cease after a properly registered transfer, transmission on death or bankruptcy, compulsory acquisition, valid forfeiture, or operation of company lien provisions when properly engaged. These pathways have different conditions and should not be treated as automatic synonyms. A lawyer checks the constitution, register, statutory route and evidence of the claimed change.

Part II · Shareholder meetings: from minority status to effective action

APPLYING CORPORATE PROCEDURE · WEEK 5 LIVE FORUM

Who can call the shareholders together? A practical guide to the meeting rules

Imagine that you advise a group of shareholders who disagree profoundly with the direction of a company's board. They do not have control of the company and cannot simply instruct the directors to change an operational decision. Their immediate question is therefore a practical one: *how can they lawfully bring the matter before the shareholders?* A capable corporate lawyer first identifies the decision-making organ, then the substantive power to be exercised, and only then the meeting procedure. It is a serious error to begin with a notice form before asking whether the proposed resolution can lawfully be passed.

> **Use the statute as a map, not a list to memorise.** Chapter 2G is divided into *Part 2G.1* (directors' meetings and resolutions, ss 248A–248G) and *Part 2G.2* (members' meetings and resolutions, beginning at s 249A). The latter includes the 249-series rules about convening and conducting a general meeting and the 250-series rules about voting, proxies and annual general meetings. Thus a question about a *board* quorum points to s 248F; a *shareholder* quorum points to s 249T; and how votes are cast and counted takes you into the 250 series.

Start with the legal power: s 249C and s 249CA

Often, the simplest course is for a director to call the meeting voluntarily. Under s 249C, a director may call a meeting of the company's members. Because s 249C is a replaceable

rule, its application requires examination of the company's constitution and the statutory rules on replaceable rules. A different provision, s 249CA(1)–(3), preserves the director's meeting-call power in a *listed company* despite contrary constitutional provisions. Do not write in an exam that s 249C itself is invariably mandatory for every company: the listed-company protection is in s 249CA.

A shareholder might request a meeting informally. If the board agrees and has authority to call it, that can avoid a contested requisition. A shareholder may also have a nominee director on the board, but that director must still discharge duties owed to the company and cannot be treated as a messenger who automatically obeys the nominating shareholder. The notice, timing, proper-purpose and other meeting requirements remain applicable even when directors voluntarily call the meeting.

When agreement fails: s 249D is a formal statutory requisition

A *requisition* is a formal request that, if valid, engages a duty on the directors. Section 249D(1) requires directors to call and arrange a general meeting when members with at least **5% of the votes that may be cast** at the meeting request it. This is a *voting-power* test, not a 5%-of-members test. It is not interchangeable with the alternative 100-member route for *proposing a resolution* under s 249N.

Section 249D(2)(a)–(d) requires the requisition to be written, to state any resolution proposed, to be signed by the requesting members, and to be given to the company. Identical wording may appear on separate signature copies under s 249D(3). The percentage of voting power is measured at midnight before the request is given, under s 249D(4). Under s 249D(5) the directors must **call the meeting within 21 days** and arrange for it to be **held within two months** after receipt. Calling the meeting means issuing the necessary meeting notice; it does not mean the members must actually assemble within 21 days.

1 · Power	2 · Votes	3 · Request	4 · Notice	5 · Meeting
Lawful member resolution?	At least 5%?	Signed written requisition	Call within 21 days	Hold within two months

> **Always check two clocks.** Section 249D(5)'s requisition deadlines do not displace the separate minimum notice period. For a listed company such as FreshFoods, s 249HA ordinarily requires 28 days' notice. Accordingly the board needs a lawful meeting date that fits both the notice rules and the two-month outer limit. The

agenda and any director-removal or appointment procedure may impose additional requirements, notably s 203D.

Section 249E — what happens when the directors default?

If the directors do not call the meeting within the statutory 21 days, s 249E(1) allows members holding **more than 50% of the votes held by all of the original requisitionists** to call and arrange it. That is more than half of the *requisitioning votes*, not more than half of the company's total votes, and not simply more than half the number of individual signatories. Under s 249E(2) the meeting must be called in substantially the normal way and held not later than three months after the original request was given.

Section 249E(3) enables requisitionists to obtain a copy of the register of members free of charge for this purpose, notwithstanding the ordinary charging provision. Under s 249E(4), the company must pay reasonable expenses incurred because directors failed to call and arrange the meeting. Under s 249E(5), the company may recover those expenses from directors, with an important statutory safeguard for a director who proves they took all reasonable steps to cause compliance. Subsection (4A) concerns the strict-liability character of offences based on subsections (3) and (4). For client advice, describe expenses as *reasonable and causally connected to the default*, not as a blank cheque.

Section 249F — a direct route, but the members bear the expense

Under s 249F(1), members holding at least 5% of the votes that may be cast at the meeting can call and arrange it themselves without first using s 249D. Unlike the s 249E default route, **those members must pay the expenses**. Section 249F(2) requires the same general calling procedures, so far as possible. Section 249F(3) calculates the percentage of votes at midnight before the meeting is called. This distinction matters commercially: for a listed company, shareholder communications, legal documentation, venue arrangements and meeting logistics may be expensive.

Advice comparison. If FreshFoods shareholders reach the 5% threshold, a properly prepared s 249D requisition is usually a sensible starting point because the company must arrange a valid meeting if the request and purpose satisfy the law. The shareholders do not obtain extra substantive voting powers merely by using s 249D. A direct s 249F meeting may be considered where the group wishes to organise matters itself and accepts the cost and procedural responsibility. If

directors default on a valid s 249D request, s 249E is the separate statutory response. Both routes involve compliance with notice and other meeting rules.

Proper purpose and the division of powers — why *NRMA v Parker* matters

Case explanation: *National Roads & Motorists' Association v Parker* (1986) 6 NSWLR 517. NRMA members sought to use a general meeting and proposed resolutions concerning the distribution of voting papers, a matter falling within the board's management function under the governing rules. The court considered whether members could compel a meeting to decide something beyond the legal power of the general meeting. McLelland J held, in substance, that shareholders could not use resolutions to take over directors' management authority. The decision is particularly important when evaluating whether a proposed requisition is directed to a matter members may legally decide. It is *not* a rule that shareholders are forbidden to express opinions: the legal objection concerns the attempted formal exercise of a power not vested in the general meeting.

Case explanation: *Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* [2016] FCAFC 80**.** An activist group with more than 100 bank shareholders sought to place resolutions at the bank's AGM expressing opinions about climate-related management matters. The Full Federal Court held that, without a supporting statutory or constitutional power, the proposed formal advisory resolutions were not resolutions shareholders were entitled to compel the company to put to a vote. The Full Court endorsed the central principle in *NRMA v Parker*. Crucially, the result does not prevent shareholders asking questions, making comments, campaigning or properly proposing a resolution that *does* fall within their powers, such as removing directors subject to the correct legal procedures.

How to use these authorities in an exam: First identify the wording and legal effect of the proposal. Next identify who has the substantive power under the Act and constitution. Apply *NRMA v Parker* and *ACCR v CBA* if members seek to direct the company's ordinary management through a binding or legally unauthorised advisory resolution. Then independently test whether a meeting may be requisitioned and whether the notices and timelines are valid. This prevents the common mistake of equating compliance with meeting procedure with a valid substantive resolution.

FreshFoods / HBC — step-by-step solicitor's advice

HBC has 110 registered shareholders holding two shares each: 220 shares. Before advising that HBC can requisition an extraordinary general meeting, verify FreshFoods' total voting power and the voting rights attaching to HBC's shares. There is **not enough information from 220 shares alone** to establish the 5% voting threshold under ss 249D or 249F. The separate 100-member pathway under s 249N concerns proposing a resolution at a meeting and does not itself give HBC the power to call a new meeting.

HBC's proposed compulsory human-checkout staffing policy is likely to run into the board-management principle, because it tells directors how to operate the business. A campaign to remove and replace directors is different: for a public company, director removal is a statutory member power under s 203D, subject to its detailed notice and procedural requirements. Distinguish the validity of the proposed resolution, the persons qualified to initiate the meeting, and the meeting's procedural validity.

> **Advice to the supervising partner or client.** "We should review the constitution and voting register; calculate voting power at the statutorily prescribed time; obtain the signed requisition and precise draft resolutions; verify whether the proposed matters are within shareholders' powers; apply ss 249D–249F and 249Q; comply with s 249HA and the director-removal requirements of s 203D; and budget for the financial consequences of choosing s 249F rather than the requisition route. We should not assert that 110 shareholders can force an EGM unless they meet the voting-power threshold."

Check your understanding — two short questions

> **Question A.** Five shareholders requisition a meeting with 6% of the votes. The board does nothing within 21 days. Two of the requisitionists hold 4% voting power between them; the other three hold 2%. Who can call the meeting under s 249E?
>
> **Question B.** A listed company agrees to call a shareholders' meeting. May it issue notice today and hold the meeting tomorrow merely because the requesting shareholders want an immediate vote?

Answer A. Section 249E(1) tests whether the members taking over hold *more than half of the votes of all the requisitionists*. The two members holding 4% collectively hold more than half of the original 6% and can use the statutory default route, subject to proper procedures. The three members holding 2% do not satisfy that test, despite outnumbering the other two. This demonstrates why the statute counts votes, not heads.

Answer B. No. The power to call a meeting does not bypass the notice provisions. Section 249HA ordinarily requires a listed company to give at least 28 days' notice; relevant specific exceptions must be checked. The meeting must also satisfy the content-of-notice rules and any special procedures for the resolution proposed.

Publication and research checkpoint. This teaching section integrates the additional live Forum explanation and uses the statutory provisions as the governing rules rather than repeating transcription slips. The prescribed course materials help identify the question, while the *Corporations Act 2001* (Cth), the company constitution and the judgments govern the legal answer. The external links and case pinpoints require the separate final publication link audit.

Statutory masterclass: directors' meetings (Pt 2G.1), members' meetings (Pt 2G.2), voting and AGMs (Pt 2G.2)

A board and a general meeting are separate organs of a company. The board manages the business where the law and constitution give it that function; members use the particular powers conferred upon them by the *Corporations Act 2001* (Cth), share rights and the constitution. The three statutory groups below are therefore not interchangeable. A board quorum problem calls for s 248F; a shareholder quorum problem calls for s 249T; the number of votes cast on a poll calls for s 250E and the rules governing the poll.

Study route from the Week 5 live Forum: (1) identify who is deciding; (2) identify the procedural route; (3) check who can vote and whether the resolution is legally within that organ's powers; (4) check formal requirements, signatures, dates, quorum,

notice and voting method; (5) evaluate defects, challenges, costs and remedies. For FreshFoods, do not confuse 110 members with 5% voting power.

Which statutory group applies?

BOARD DECISION	SHAREHOLDER PROCESS	VOTE + AGM
ss 248A–248G	ss 249A–249Z	ss 250A–250S
Directors, chair, quorum	Meetings, requisitions, notices	Proxies, polls, votes, audit

Original educational diagram. Always ask who is legally exercising the power.

A. Directors' resolutions and board meetings — ss 248A–248G

These provisions occupy Part 2G.1. Many are *replaceable rules*, which means a company constitution may displace them unless the Act makes a provision mandatory. Board procedures must also be read with directors' powers under s 198A, conflict provisions including s 195 for public companies, and the minute-keeping rules in s 251A.

Section 248A — circulating board resolutions

What the law does: Subsection (1) allows a resolution without a meeting where every director entitled to vote signs a document favouring it. **Subsection (2)** permits separate identical copies. **Subsection (3)** makes the decision effective when the last director signs.

Why it matters: This is a unanimous paper decision, not a mere majority email poll. The minutes still need appropriate recording under s 251A.

> **Student or practitioner application:** Three directors approve the issue of shares: two signatures do not satisfy the statutory circulating-resolution route if all three are entitled to vote.

Section 248B — one-director proprietary companies

What the law does: Subsection (1): a sole director can pass a resolution by recording and signing it. **Subsection (2)**: the sole director can similarly make a statutory declaration that otherwise would have been made at a board meeting.

Why it matters: A one-director proprietary company need not convene an imaginary two-person board.

> **Student or practitioner application:** Use the signed written record of the sole director rather than the s 248F default quorum rule.

Section 248C — calling directors' meetings

What the law does: A director may call a board meeting by giving **reasonable notice individually to every other director**. This is a replaceable rule.

Why it matters: A board decision can be challenged if a director was not given a reasonable opportunity to attend; reasonableness depends on context.

> **Student or practitioner application:** Check the company constitution and the means/timing of notice before treating an urgent board decision as procedurally effective.

Section 248D — technology and remote board meetings

What the law does: Subsection (1) permits technology to call or hold a board meeting. **Subsection (2)(a)–(c)** recognises physical, hybrid or wholly virtual arrangements. **Subsection (3)** requires the technology to be reasonable.

Why it matters: Modern directors may be geographically dispersed; lawful digital participation must still make the decision-making process workable.

> **Student or practitioner application:** A connection that cuts a director off from proceedings raises a different legal issue from the mere use of video technology.

Section 248E — board chair

What the law does: Subsection (1) enables directors to choose a chair and the chair's term. **Subsection (2)(a)–(b)** requires election of a director present if no chair exists or the chair cannot or will not act.

Why it matters: The board needs an authorised presiding officer; the rule is distinct from the chair of a members' meeting under s 249U.

Section 248F — quorum for directors

What the law does: The default quorum is **two directors** unless directors determine otherwise; a quorum must remain present throughout. Special conflict-of-interest rules (including s 195) and sole-director rules affect the analysis.

Why it matters: The fact that two members attend a shareholder meeting does not prove that the board has a quorum. The two tests apply to different organs.

> **Student or practitioner application:** If three directors start a board meeting but two leave before the vote, test whether quorum persisted throughout.

Section 248G — majority voting and casting vote

What the law does: Subsection (1) generally requires a majority of votes cast by directors entitled to vote; **subsection (2)** gives the chair an additional casting vote if required, subject to disqualification or the constitution.

Why it matters: An invalidly participating or conflicted director may change the majority analysis. This is a replaceable board rule, not a shareholder special-resolution rule.

B. Members' decisions and meeting procedures — ss 249A–249Z

Part 2G.2 is the principal procedural home for general meetings. Students need not reproduce every word of every subsection in an exam; they must locate the precise operative requirement and apply it to the correct facts. The numerical thresholds, notice dates and member-versus-voting-power distinctions are frequently decisive.

Section 249A — circulating resolutions of multi-member proprietary companies

What the law does: (1) confines the mechanism to qualifying proprietary-company member resolutions and excludes removal of an auditor under s 329; **(2)** requires all voting members (and each joint holder) to sign in favour; **(3)** allows identical copies; **(4)** fixes passage when the last signs; **(5)(a)–(c)** deals with supplying required documents and ASIC lodgement substitutes; **(6)** deems meeting requirements met; **(7)** preserves general-law assent rules.

Why it matters: This is not a shortcut for a public, ASX-listed FreshFoods shareholder resolution.

> **Student or practitioner application:** A family proprietary company can pass a unanimous written resolution without booking a meeting room, but an ASX-listed company generally cannot use this section.

Section 249B — one-member companies

What the law does: (1) permits the only member to record and sign a resolution; **(2)** addresses documents required to be lodged with ASIC.

Why it matters: Distinguish the sole *member* decision here from the sole *director* decision in s 248B.

Section 249C — director-initiated general meetings

What the law does: A director may call a meeting of members (replaceable rule).

Why it matters: A board director calling a shareholder meeting under s 249C is different from a director calling a board meeting under s 248C.

Section 249CA — listed-company director meetings

What the law does: (1) directors may call members' meetings; **(2)** confines the provision to listed companies; **(3)** makes it operate despite contrary constitutional terms.

Why it matters: FreshFoods is listed: this mandatory statutory route matters even if the constitution suggests otherwise.

Section 249D — the formal shareholder requisition

What the law does: (1) gives the right to members with at least **5% of votes that may be cast**; **(2)(a)–(d)** requires a written, signed request stating proposed resolutions and given to the company; **(3)** permits identical separate signature copies; **(4)** measures voting percentages at midnight before giving the request; **(5)** requires directors to **call within 21 days** and hold within **two months**.

Why it matters: The 100-member alternative does **not** apply to s 249D. That alternative belongs to the separate notice-of-resolution procedure under s 249N.

> **Student or practitioner application:** HBC has 110 members, each with two shares, but only 220 known shares. Without the company's total relevant votes, counsel cannot conclude it possesses the required 5%.

Section 249E — default after failure to call a requisitioned meeting

What the law does: (1) if directors fail to call within 21 days, members holding more than **50% of the votes among the original requisitionists** may arrange the meeting; **(2)** requires substantially ordinary procedures and a meeting within three months of the original request; **(3)** permits a free register copy for that purpose; **(4)** requires company payment of reasonable expenses; **(4A)** provides strict-liability offences; **(5)** allows recovery from responsible directors subject to their reasonable-steps safeguard.

Why it matters: This is a remedial right flowing from an original, valid s 249D request. It does not create a new 100-member calling threshold.

> **Student or practitioner application:** Document both the requisition delivery date and the directors' compliance; if necessary, identify which requisitionists hold over half the original requisitionists' votes.

Section 249F — members call meeting themselves

What the law does: (1) members with at least 5% of relevant votes may call and arrange a meeting but *must pay the expenses*; **(2)** requires usual calling procedures as far as possible; **(3)** measures voting power at midnight before the meeting is called.

Why it matters: An aggressive campaign may proceed without waiting for the board, but an ASX-listed issuer's meeting costs may be significant.

> **Student or practitioner application:** For HBC, seek lawful coalitions or additional shares if voting percentage falls short; weigh the cost advantage of a valid s 249D requisition.

Section 249G — Court-ordered meeting

What the law does: (1) where another method is impracticable, the Court may order a meeting; **(2)(a)–(b)** allows application by a director or member entitled to vote.

Why it matters: Use in genuine impracticability, not simply because activists dislike the board's response.

Section 249H — notice for non-listed general meetings

What the law does: (1) sets a 21-day general minimum, unless the constitution specifies longer; **(2)(a)** allows an AGM on shorter notice only with agreement of all entitled members and **(2)(b)** another general meeting with 95% of votes agreeing, subject to exceptions; **(3)(a)–(b)** protects the 21-day minimum for public-company removal/ replacement of directors under s 203D; **(4)** protects auditor-removal meetings.

Why it matters: Do not assume a 95% waiver can override every special statutory notice constraint.

Section 249HA — listed-company 28-day notice

What the law does: (1) at least 28 days for listed-company members' meetings; **(2)** limits to listed companies; **(3)** prevails over the constitution.

Why it matters: FreshFoods' listed status means that 21 days is not the controlling baseline.

Section 249J — who receives notices and when

What the law does: (1) each voting member and director receives individual written notice (one joint member sufficient); **(2)** notice goes to first named joint holder by default; **(3)(a)–(d)** sets permitted personal, post, electronic and constitutional channels; **(4)** supplies default deemed-receipt timing, including postal and electronic rules.

Why it matters: Time calculation turns on when notice is legally given, not simply the date someone drafted it.

Section 249K — auditor notice and communications

What the law does: (1)(a)–(b) entitles the auditor to general meeting notice and related communications on the same basis as members; **(2)** creates strict-liability consequences.

Why it matters: Auditors are part of formal corporate accountability, not optional invitees.

Section 249L — essential content of notice

What the law does: (1)(a)(i)–(iii) requires meeting time/location and technology participation details where relevant; **(1)(b)** general nature of business; **(1)(c)** full notice of any special resolution; **(1)(d)(i)–(iii)** prescribed proxy information; **(2)(a)–(b)**

remuneration-report and second-strike disclosures for listed AGMs; **(3)** clear, concise, effective presentation.

Why it matters: A vague notice can mislead shareholders about the decision they are being asked to make.

> **Student or practitioner application:** If HBC seeks director-removal resolutions, name each director and clearly identify the proposed vote.

Section 249LA — regulatory exemptions in meeting notices

What the law does: (1) permits regulations to omit specified meeting-notice information subject to conditions; **(2)(a)–(b)** contemplates distinctions among kinds of information and companies; **(3)** deems compliant omissions included.

Why it matters: Do not presume an omission is fatal without checking applicable regulations.

Section 249M — notice of adjourned meeting

What the law does: If a meeting is adjourned for **one month or more**, new notice of the resumed meeting must be given (replaceable rule).

Why it matters: Adjournment does not always remove the original notice requirements.

Section 249N — member-proposed resolutions

What the law does: (1)(a)–(b): at least 5% of votes on the resolution **OR** at least 100 members entitled to vote; **(1A)(a)–(b)** allows prescribed adjustments to the 100-member number; **(2)(a)–(c)** requires written notice, exact resolution wording and member signatures; **(3)** permits identical signature counterparts; **(4)** measures voting percentage at midnight before giving notice.

Why it matters: A right to get a resolution *considered* is not a right to force directors to exercise management powers that legally belong to the board.

> **Student or practitioner application:** 110 registered, voting HBC members ordinarily satisfy the member-count alternative (subject to relevant regulations), but their proposed human-staffing directive separately faces the *NRMA v Parker* division-of-powers issue.

Section 249O — company notice and timing of proposed resolutions

What the law does: (1) sends a s 249N resolution to the next general meeting occurring **more than two months** after notice is given; **(2)** requires company circulation; **(3)** company ordinarily pays if notice arrives in time for the standard meeting notice; **(4)** members bear late separate-circulation costs unless the company resolves otherwise; **(5)(a)–(b)** permits refusal of a defamatory or over-1,000-word resolution, or non-prepayment of valid costs.

Why it matters: The 1 October 2026 notice cannot compel inclusion at an AGM on 18 November 2026: less than two months have elapsed.

> **Student or practitioner application:** Count calendar dates precisely, distinguish whether the company elects to cooperate voluntarily, and avoid advising that a timely s 249N form overrides s 249O.

Section 249P — member statements and advocacy

What the law does: (1)(a)–(b) allows a supporting/opposing statement about a proposed resolution or other proper meeting business; **(2)(a)–(b)** applies the 5% or 100-voting-member alternatives; **(2A)** allows regulations to change the member number; **(3)(a)–(c)** requires written, signed delivery; **(4)–(5)** permits counterparts and fixes timing for vote percentage; **(6)** requires circulation; **(7)–(8)** allocate costs depending on timing; **(9)(a)–(b)** permits refusal for defamation, over 1,000 words or nonpayment of applicable expenses.

Why it matters: This is the statutory advocacy tool that allows HBC to seek support beyond its own small holding. It is not restricted to the exact shareholders who proposed a resolution.

> **Student or practitioner application:** Prepare a concise and factual campaign statement explaining proposed changes, director candidates and the commercial consequences of automation.

Section 249Q — proper purpose

What the law does: The general meeting must be held for a **proper purpose**.

Why it matters: Connect the procedural power with substantive competence. Courts may refuse to compel futile or legally incompetent resolutions.

> **Student or practitioner application:** Use *NRMA v Parker* and *ACCR v Commonwealth Bank* in the FreshFoods staffing proposal; distinguish a valid vote to remove directors under s 203D.

Section 249R — physical, hybrid and virtual meetings

What the law does: Paragraphs (a)–(c) permit one or more physical venues, hybrid meetings, and wholly virtual meetings only if expressly permitted or required by the company constitution.

Why it matters: A video link alone is not proof that every purely virtual meeting complies with the Act.

Section 249RA — place, time and participation

What the law does: (1)(a)–(c) fixes legal venue for physical/hybrid/virtual meetings; **(2)** fixes meeting time by the venue; **(3)** treats online attendance as presence in person for relevant purposes.

Why it matters: These rules matter for jurisdiction, quorum, attendance and meeting procedures.

Section 249S — reasonable opportunity to participate

What the law does: (1) demands a reasonable overall opportunity for entitled members; **(2)–(6)** addresses time, physical venue and multi-venue technology; **(7)(a)–(b)** requires reasonable virtual technology that lets online participants exercise rights to ask questions or comment **orally and in writing**.

Why it matters: A one-way webcast that prevents participation cannot simply be treated as equivalent to full virtual attendance.

> **Student or practitioner application:** When advising on a contested meeting, preserve attendance records, technical logs and any recorded failures to enable questions.

Section 249T — quorum at general meeting

What the law does: (1) default two members throughout; **(2)** counts proxies and corporate representatives under special rules; **(3)** adjourns if no quorum within 30

minutes; **(3A)(a)–(c)** allows directors to set reconvening arrangements; **(3B)(a)–(d)** provides defaults; **(4)** dissolves resumed meeting if no quorum in time.

Why it matters: Contrasts with the s 248F board quorum. Review the applicable constitution and member count.

Section 249U — chair at general meeting

What the law does: (1) directors may elect an individual chair; **(2)** directors at the meeting elect a chair if required; **(3)(a)–(b)** provides for members to elect a chair if no board-appointed chair is available; **(4)** requires adjournment where a majority of votes present directs it.

Why it matters: The chair's role includes voting administration; it is not an independent power to ignore valid member rights.

Section 249V — auditor's speaking rights

What the law does: (1) auditor may attend; **(2)** may speak on auditor business; **(3)(a)–(b)** preserves that right if retiring or removed; **(4)** permits written authorisation of a representative.

Why it matters: Protects accountability where members challenge financial reporting or audit quality.

Section 249W — adjourned meeting

What the law does: (1) a resolution is passed on the date it is actually adopted at the resumed meeting; **(2)** ordinarily only unfinished business may be transacted (replaceable rule).

Why it matters: Do not back-date a resolution to the date of the original meeting.

Section 249X — who may appoint a proxy

What the law does: (1) permits a voting member to appoint another person; **(1A)** proxy may be individual or corporate; **(2)** number/proportion of votes may be specified; **(3)** permits two proxies for members with at least two votes and supplies a default equal split; **(4)** disregards fractional votes.

Why it matters: Allows dispersed investors to participate even when they cannot attend personally.

Section 249Y — rights and limits of proxies

What the law does: (1)(a)–(c) speaking, voting within appointment and demanding polls; **(2)** a constitution may restrict proxy voting on a show of hands; **(3)** the constitution determines the effect of a member's attendance, otherwise proxy authority is suspended while the member is present.

Why it matters: Read actual appointment terms; not every appointed proxy can act however they choose.

Section 249Z — equal treatment in circulating proxy material

What the law does: (1)(a)–(b) requires forms or willing-proxy lists to be made available to comparable eligible members, with different consequences for material sent on request or unsolicited; **(2)** strict-liability offence.

Why it matters: Prevents selective manipulation of proxies through company communications.

C. Proxy validity, voting, polls and AGMs — ss 250A–250S

Part 2G.2 continues past the 249 series. For a listed company, the distinction between a show of hands and a poll is especially consequential: a poll ordinarily reflects shares/votes rather than headcount. Several newer provisions override historical replaceable rules, and remuneration-related proxy votes have special restrictions.

Section 250A — valid proxy appointments

What the law does: (1)(a)–(d): signed/authenticated appointment, member name/address, company, nominated proxy or office, and meetings covered; **(1A)** authentication regulations; **(2)** constitution may relax some content; **(3)** undated appointment defaults to date given; **(6)** witness not required; **(7)** later inconsistent appointment supersedes earlier one.

Why it matters: A proxy form is a legally operative document, not merely a convenient attendance pass.

> **Student or practitioner application:** Check the shareholder identity, named proxy, meeting date, authority and any vote directions.

Section 250B — delivery deadlines for proxy documents

What the law does: (1)(a)–(b) appointment and attorney authority received at least **48 hours** before meeting; **(2)** comparable rule for resumed meetings; **(3)(a)–(b)** receipt by permissible physical, fax or electronic means; **(5)** company constitution or meeting notice may reduce the 48-hour window.

Why it matters: Do not state that 48 hours is an irreducible minimum: subsection (5) expressly permits reduction.

Section 250BA — listed-company receipt arrangements

What the law does: (1)(a)–(b) notice must give a physical receipt place or electronic information for proxy documents; **(2)** listed-company limitation; **(3)** prevails over constitution.

Why it matters: A listed company must give shareholders a real means of appointing proxies.

Section 250BB — directed proxies

What the law does: (1)(a)–(d) regulates how a proxy follows specified directions on show of hands or a poll, with distinct duties of the chair versus non-chair proxy; **(2)–(4)** identify offence situations; **(5)** strict liability.

Why it matters: A proxy who was directed to vote against removal cannot simply vote in favour because they personally support the board.

Section 250BC — automatic transfer of directed proxy to chair

What the law does: (a)–(d) where a directed non-chair proxy is absent or fails to vote in a poll, the chair is treated as proxy for voting on that resolution.

Why it matters: Designed to stop directed votes from disappearing just because the nominated proxy fails to cast them.

Section 250BD — restricted remuneration-related proxy voting

What the law does: Contains voting prohibitions and carefully defined exceptions involving key management personnel and their closely related parties, particularly for remuneration-linked resolutions.

Why it matters: Before advising on a listed company remuneration vote, check who is appointed, whose remuneration is affected, directions, express authority and the detailed statutory exceptions.

Section 250C — validity despite changed circumstances

What the law does: (1) permits some directed proxy votes even where proxy could not vote in personal capacity; **(2)(a)–(e)** generally preserves proxy votes despite member death, incapacity, revocation, revocation of appointing authority or transfer, unless written notice reached the company before the meeting.

Why it matters: Ensures meeting results are not upset by undisclosed events outside the company's knowledge.

Section 250D — corporate representative

What the law does: (1)(a)–(d) a body corporate can appoint a human representative for member, creditor, debenture or proxy powers; **(2)** permits restrictions and office-based appointments; **(3)** multiple representatives possible but only one exercises the body's powers at a time; **(4)** default full authority.

Why it matters: A shareholder company is not a human: its authorised individual representative must have appointment evidence.

Section 250E — votes on hands versus poll

What the law does: (1)(a)–(b) generally one vote per member on a show of hands, one vote per share on a poll, subject to share-class rights; **(2)** one vote per member without share capital; **(3)** chair casting vote as replaceable rule.

Why it matters: An investor with one million shares and another with two shares may each show one hand; a poll correctly reflects voting shareholdings.

> **Student or practitioner application:** The FreshFoods campaign requires both a threshold analysis and an eventual poll-vote strategy.

Section 250F — jointly held shares

What the law does: Under this replaceable rule only the first-listed holder's vote counts where multiple joint holders vote on a share.

Why it matters: Registration order may matter when checking disputed votes.

Section 250G — challenging vote entitlement

What the law does: (a)–(b) challenge must occur at meeting and the chair decides it (replaceable rule).

Why it matters: Raise evidence of disqualified or improperly registered votes at the meeting, not as a mere afterthought.

Section 250H — split and partial poll votes

What the law does: (a)–(b) a person with multiple votes need not use them all and can divide them among choices on a poll.

Why it matters: A large investor may vote some shares for a director and others against, subject to applicable directions and rights.

Section 250J — conducting a vote

What the law does: (1) generally allows hands unless a poll is demanded; **(1A)** requires chair disclosure of received proxy votes and voting directions before vote; **(2)** concerns the chair's declaration and its conclusiveness on a show of hands.

Why it matters: Must be qualified by **s 250JA**: listed-company votes cannot simply be decided by show of hands in many cases.

Section 250JA — mandatory poll in listed companies

What the law does: (1)(a)–(c) a poll is compulsory for resolutions in the meeting notice, s 249O member-notified resolutions or when a poll is demanded; **(2)** overrides s 250J and the constitution.

Why it matters: Critical to FreshFoods: a listed company must ordinarily determine formally noticed resolutions by poll.

Section 250K — when poll demands are permitted

What the law does: (1) poll may generally be demanded on any resolution; **(2)(a)–(b)** constitution may limit polls for electing chair or adjournment; **(3)** permits withdrawal.

Why it matters: The subject of the motion may affect procedural scope.

Section 250L — who may demand a poll, and when

What the law does: (1)(a)–(c) five voting members, 5% of votes, or chair may demand; **(2)** constitution can lower threshold; **(3)(a)–(c)** demand may precede vote/declaration or follow immediately; **(4)** fixes voting power at midnight before demand.

Why it matters: The threshold to demand a poll is **five members**, not the **100 members** alternative for proposing a resolution.

Section 250M — how and when poll taken

What the law does: (1) chair controls ordinary poll timing and manner; **(2)** poll on chair-election or adjournment is taken immediately.

Why it matters: A delay ordered by the chair must be checked against this distinction.

Section 250MA — special resolution test

What the law does: (a) notice must include special-resolution information under s 249L(1)(c); **(b)** at least **75%** of votes cast by members entitled to vote; **(c)** resolution must otherwise be valid.

Why it matters: Compare to ordinary resolutions, generally more than 50% of relevant votes cast.

> **Student or practitioner application:** Changing a company constitution under s 136(2) ordinarily requires a valid special resolution.

Section 250N — mandatory public-company AGMs

What the law does: (1) first AGM within 18 months after registration; **(2)** at least one per calendar year and within five months of financial-year end; **(2A)** strict-liability provision; **(3)** AGM is additional to other meetings; **(4)** exception for a one-member public company; **(5)–(6)** particular crowdfunding-related exceptions.

Why it matters: The lecturer's general statement that public companies hold AGMs every year has statutory exceptions.

> **Student or practitioner application:** For a 30 June year end, the standard five-month deadline is 30 November, subject to applicable exceptions/extensions.

Section 250P — ASIC extension of AGM period

What the law does: (1) company application to ASIC; **(2)** application before ordinary deadline enables written extension; **(3)–(4)** compliance with extended period/conditions; **(5)** strict liability.

Why it matters: Company cannot assume an AGM extension merely because convening is difficult.

Section 250PAA — class exemptions for external administration

What the law does: (1)(a)–(e) ASIC legislative instruments may exempt relevant winding-up, administration, deed or restructuring classes; **(2)** conditions; **(3)** Gazette publication.

Why it matters: Insolvency regimes can affect otherwise normal AGM requirements.

Section 250PAB — individual externally administered exemptions

What the law does: Permits applications from appropriate liquidators, administrators and restructuring practitioners, with ASIC written exemptions and possible conditions.

Why it matters: Distinguish case-specific exemption from an exemption for a class of companies.

Section 250PA — written questions to auditor

What the law does: (1)(a)–(b) listed-company member can send relevant audit question at least five business days before AGM; **(2)–(3)** company may examine and must forward it; **(4)–(8)** auditor/lead-auditor question list and limits; **(9)** company makes list available at AGM.

Why it matters: Members can exercise information rights without controlling daily management.

Section 250R — ordinary AGM business and remuneration report

What the law does: (1)(a)–(d) reports, director election, auditor appointment/ remuneration may be AGM business without individual notice; **(2)–(3)** listed-company remuneration-report advisory vote; **(4)–(10)** restrictions, proxy exceptions and operation against conflicting rules.

Why it matters: Unlike a vote removing directors, an advisory remuneration vote ordinarily does not itself bind the board.

Section 250RA — auditor attendance for listed AGMs

What the law does: (1)–(4) ensures individual auditors, audit firms or company audit teams are appropriately represented to answer questions, including strict-liability offences.

Why it matters: An AGM is an accountability forum, not just a formality.

Section 250S — questions about company management

What the law does: (1) chair must afford members as a whole a reasonable chance to ask questions or comment on management at an AGM; **(2)** strict-liability offence.

Why it matters: This gives HBC an avenue to criticise human-checkout automation at the AGM even if HBC cannot require directors to obey an ordinary shareholder motion about day-to-day operations.

> **Student or practitioner application:** Prepare careful questions about costs, customer impact, workforce strategy and disclosures without confusing questions with a binding operational resolution.

D. How the live Forum links to membership, documentary proof and NL mining companies

The lecturer begins with the foundations of membership to show why the precise identity of a shareholder matters when members later attempt to vote or requisition a meeting. Under s 231, consent and entry on the members' register determine the acquisition of membership in the relevant ordinary case; ss 168–169 prescribe the register's information, while ss 173, 176–177 govern access, evidentiary status and improper use. The live Forum's illustration of a dealer using share-register addresses for unrelated car marketing is precisely the kind of misuse the restrictions seek to prevent.

A share certificate under s 1070C is *prima facie* proof of title, but it does not simply override the register of members. A validly registered holder and an unregistered transferee may have different rights even when the transferee has paid consideration. In a proprietary company, the replaceable rule granting directors broad power to refuse a share transfer is **s 1072G**, not the misheard "207A(1)(G)" from the rough summary; actual legal duties and s 1071F relief still require careful consideration. Under s 1071E, notice of refusal must normally be provided within two months.

> **No-liability (NL) mining company:** A special kind of public company with mining-only objects; it cannot contractually recover unpaid share calls from a shareholder who refuses to pay. Forfeiture procedures may instead operate under the Act. Distinguish that position from a usual company limited by shares, in which members' exposure generally includes unpaid share capital. Under s 254W(3), a due, unpaid call on an NL share affects the shareholder's dividend entitlement. **Why useful:** this connects Chapter 2 company classification with Chapter 5 paid-up status, membership rights, financial distributions and cessation of membership.

The forum also mentions transfer, death, bankruptcy, compulsory acquisition, forfeiture and lien as pathways affecting shareholding. Each works differently: the transfer or transmission and entry in the register, any constitutional restrictions, directors' duties and separate takeover/insolvency legislation determine the particular consequence. Do not assert that every 90% acquisition automatically gives the acquirer an unconditional power to compulsorily acquire shares; the relevant statutory regime and conditions must be checked.

E. The FreshFoods legal workflow — teach students how to apply the provisions

Client problem	Correct law to apply	Advice and evidence
Can HBC require a *new* EGM?	s 249D(1)–(5); ss 249E–249F	Obtain register, total votes and share rights; verify 5% and written signed requisition. 110 members alone is not enough.
Can it propose a motion at an *existing* AGM?	ss 249N(1)(a)–(b), (2)–(4); 249O(1)–(5)	Verify 100 voting members or 5% voting power; check exact AGM timing and 1,000-word constraints.
Can it campaign to other shareholders?	s 249P(1)–(9); ss 173, 177	Prepare legitimate factual statement, written signatures and reasonable distribution expense plan.
Can it order the board to keep human checkouts?	s 198A; s 249Q; *NRMA v Parker*; *ACCR v CBA*	A management directive may be substantively invalid; investigate director-removal route under s 203D.

Client problem	Correct law to apply	Advice and evidence
Which notice rules apply to a listed AGM/EGM?	ss 249HA(1)–(3); 249J–249L	Allow 28-day minimum; explain business, each removal/appointment, virtual attendance and proxy rights.
How are the resolutions voted on?	ss 250A–250D, 250E, 250J–250MA	Check valid proxy appointments; poll under s 250JA for formally noticed listed-company resolutions; count voting rights.
May shareholders ask about checkouts even without binding motion?	ss 249S(1)–(7), 250S(1)–(2)	Confirm a real opportunity to ask questions and make comments orally and in writing when virtual.

Exam-style model answer: 110 HBC shareholders versus 5% voting power

Issue. Does HBC have a statutory right to compel the FreshFoods board to convene a meeting and can it place its preferred motions before shareholders?
Rule. Section 249D(1) requires at least 5% of voting power for a requisitioned meeting, together with formalities in s 249D(2)–(4) and the 21-day/two-month timetable in s 249D(5). Section 249N(1) separately permits at least 100 eligible members to propose a resolution; s 249O determines when that proposed resolution must be considered.
Application. HBC's 110 registered voting members, who together hold 220 shares, do not establish 5% of the relevant votes absent total voting-power evidence. Nonetheless, the 110-member figure ordinarily satisfies the separate s 249N member-count path (subject to applicable regulations). HBC gave notice on 1 October 2026 for an AGM on 18 November 2026: the AGM is fewer than two months after notice, so s 249O(1) does not compel inclusion at that meeting. Further, a binding resolution dictating human checkout levels is vulnerable as it concerns board management, whereas a properly framed removal of directors may fall within s 203D, subject to its requirements. *NRMA v Parker* and *ACCR v CBA* explain the substantive distinction.
Counterargument. HBC may press that procedural rights and substantial public interest justify a vote. That does not independently convert management policy into shareholder power; it does support the strategy of campaigning, asking AGM questions and seeking election/removal of directors.
Conclusion and advice. Verify the register and votes, seek support to meet 5%,

use a valid s 249N notice and s 249P statement where available, and preserve the director-removal notice timetable. Do not advise the company that it must hold an invalid management-policy vote.

F. Original document examples: what the student should recognise

Board written resolution (ss 248A/248B): company name and ACN; exact board decision; date of last required signature; director signatories; minute-book recording. **Shareholder requisition (s 249D):** company/addressee; exact proposed resolutions; members' names; signatures and identical counterparts; date of delivery; evidence of 5% of voting power. **Member-proposed resolution (s 249N):** full wording; signing members; 5% vote or 100-member eligibility basis; submission date. **Proxy (ss 249X, 250A–250B):** member identity, company, appointed proxy, meeting details, directed voting instructions, signature/authentication and receipt deadline. These are original teaching descriptions, not actual lodged company documents.

G. Revision questions — review first, then check the next-page answers

Question 1. Which section governs quorum if an HBC director asks whether a board decision can be made with one director present? Which section applies to quorum at an HBC shareholder meeting?

Question 2. Explain three differences between s 249D, s 249N and s 249P.

Question 3. An ASX-listed company proposes a director-removal resolution on its notice. Does the vote proceed by show of hands or by poll? Identify the statute.

Question 4. Distinguish the 48-hour proxy deadline from the alternative permitted by statute.

Question 5. What use can HBC make of s 250S even if it cannot legally compel directors to retain staffed checkouts?

Revision questions — fully explained model answers

Answer 1. The default board quorum is governed by s 248F (ordinarily two directors unless changed), subject to conflicts and other legal rules; the members' meeting quorum is s 249T(1), ordinarily two members with the special counting requirements in s 249T(2). A single-director proprietary company uses s 248B for a signed record of its resolution.

Answer 2. Section 249D requires at least 5% of votes and compels directors to call a new general meeting if its written requisition formalities are met; s 249N permits a 5%-of-votes group *or* at least 100 voting members to propose resolutions at a general meeting; s 249P uses comparable thresholds to require distribution of a statement about an appropriate meeting matter. Timing, permissible wording and cost rules then differ under ss 249D–249P.

Answer 3. Under s 250JA(1)(a), a listed company must decide by *poll* a resolution set out in the meeting notice. Section 250JA(2) prevails over the show-of-hands replaceable rule in s 250J and contrary constitutional terms. A poll is important because s 250E(1)(b) generally allocates a vote to each share, subject to share rights.

Answer 4. Under s 250B(1), appointment and any requisite attorney authority normally must be received 48 hours before the meeting. Under s 250B(5), the company's constitution or the meeting notice may reduce the 48-hour period. Read the notice, determine the legal receipt point and verify electronic delivery if applicable.

Answer 5. Section 250S(1) requires the AGM chair to allow a reasonable opportunity for the members as a whole to question or comment on management. HBC may ask about automation, workforce effects or strategy and seek a response,

WEEK 5 FORUM · PART 3 · INTEGRATED TEACHING

Live Forum masterclass: meetings, requisitions, votes and real corporate advice

When you open Chapter 2G of the *Corporations Act 2001* (Cth), you are not looking at a random collection of rules. You are looking at the operating instructions for corporate democracy. Imagine standing before a room of 1,000 future lawyers: the first question is not “Which section can I memorise?” It is “Who is legally permitted to make this decision, and what must happen before it becomes valid?” This chapter answers those questions in the order a student, company secretary or practising solicitor would use them.



Statutory map: distinguish board decisions, shareholder meeting procedures and voting mechanics.

Lesson 1: a decision without a meeting is not an informal shortcut

For a board with more than one director, s 248A ordinarily permits a circulating resolution if *every director entitled to vote* signs the same resolution wording. Under subsection (2), signatures may appear on different identical copies. Under subsection (3), the resolution takes effect when the last eligible director signs. The record must be kept in the minute books under s 251A. This is not an ordinary majority vote: one missing signature prevents the circulating resolution taking effect through this statutory mechanism.

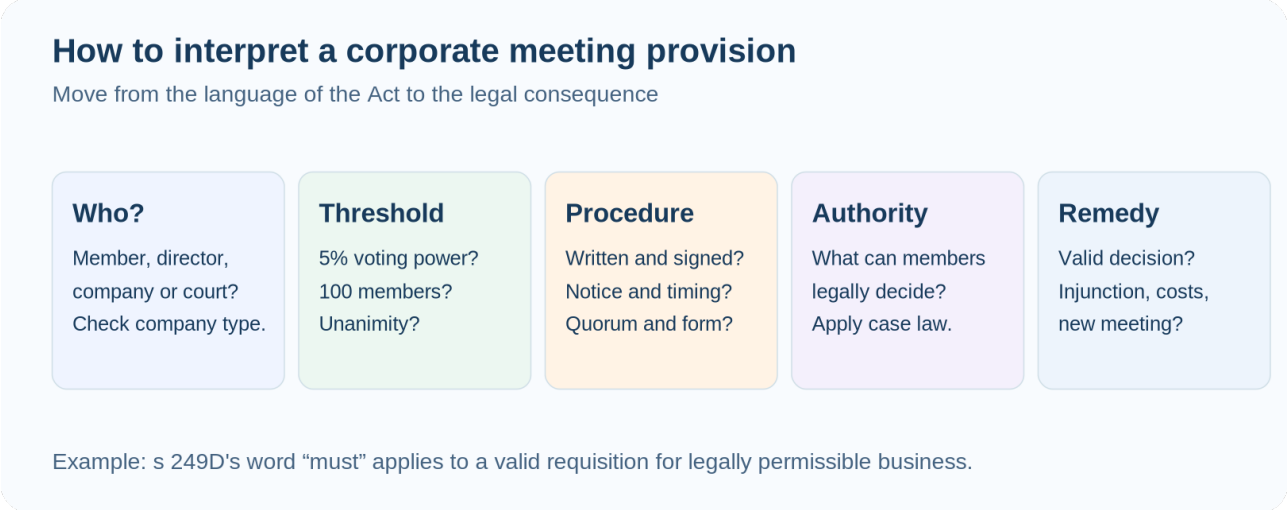
Now change the facts. The company has one director and one member. Section 248B governs the sole director’s recorded decisions, while s 249B permits a company with one member to pass a members’ resolution when that member records and signs it. Two separate capacities are involved: the same human might be the sole director and sole shareholder, but a decision to approve a board transaction is legally different from a

decision requiring shareholders' approval. The correct record must identify which capacity is being exercised.

Lesson 2: shareholders do not necessarily have the power to manage

A shareholder owns shares, not a fractional right to command store employees. Under the replaceable rule in s 198A, the business is managed by or under the direction of directors. Shareholders retain statutory and constitutional powers such as particular director-removal decisions, constitutional change and lawful meeting requisitions. That allocation must be understood before preparing any formal resolution.

Interpretation lesson: the word *must* in s 249D does not mean the directors must convene any meeting on any topic merely because enough shareholders have signed. Section 249Q requires a proper purpose, and the authorities require scrutiny of whether the proposed resolution concerns business the members can lawfully determine. Likewise, *may* often confers a discretion, not an unlimited personal licence; the constitution and directors' duties remain relevant.



Five-question statutory interpretation sequence to use in a client interview and examination.

Lesson 3: two notices, two clocks, and one valid meeting

The formal *requisition* is a shareholder demand delivered to the *company*. Under s 249D(1)–(5), the requesting members collectively need 5% of voting power, not necessarily 5% of the number of shareholders. Their signed document must state the actual proposed resolutions, use identical wording across multiple signature copies, and be received by the company. The voting-power calculation uses the statutory reference time: midnight before the request is given.

Once a valid requisition for lawful business is received, directors must call the meeting within 21 days and it must be held within two months of receipt. The *notice of meeting* is different: it is the communication issued to members identifying when and how the

meeting will take place. For most meetings the notice period under s 249H is at least 21 days; for listed companies, s 249HA generally requires 28 days. The company must comply with both the call deadline and the minimum period between meeting notice and meeting date, subject to any applicable exception. The word “call” must never be confused with “hold”.



Timeline illustrating the requisition, meeting notice, 21-day deadline, two-month meeting deadline and the separate s 249E response.

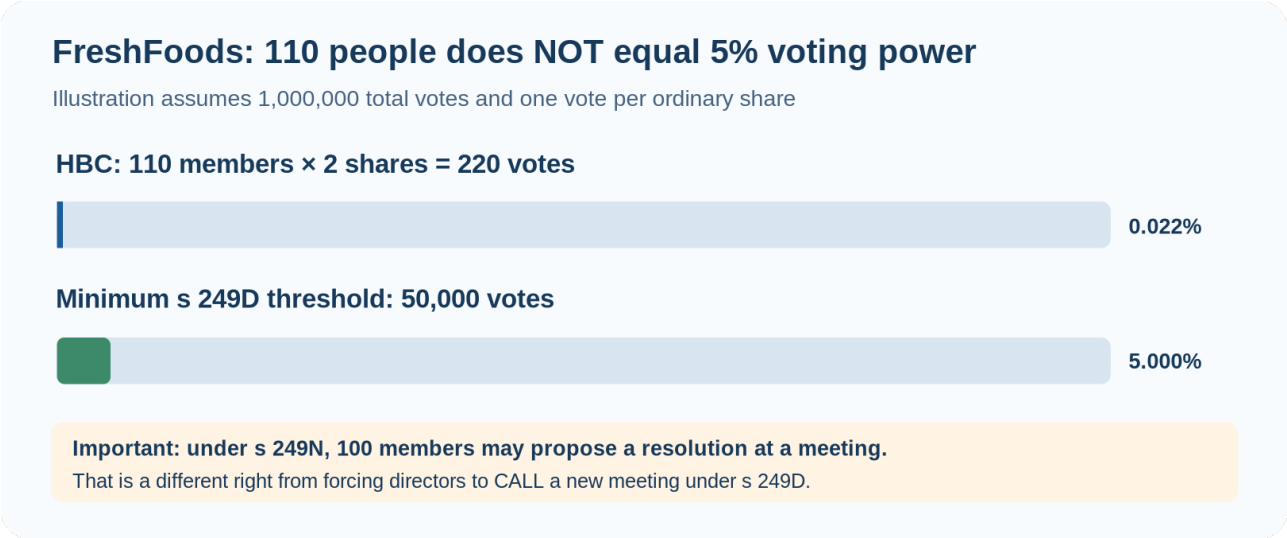
Lesson 4: what the directors’ failure actually costs

If directors fail to call a validly requisitioned meeting within 21 days, s 249E(1) allows members holding *more than 50%* of the votes of the *original requisitionists* to arrange the meeting. This is not 50% of all company members or all company votes. Section 249E(2) requires the meeting to be called in substantially the usual way and held within three months after the original request. Under subsections (3)–(4), the company must supply the register for this purpose and reimburse reasonable costs attributable to the default. Subsection (5) allows cost recovery from directors, with a protection for directors who establish they took all reasonable steps to make the board comply. The statutory rules about strict liability and deduction from directors’ fees must also be checked before advising on enforcement.

The alternative in s 249F is commercially different. Qualifying shareholders with 5% of the relevant votes can call a meeting directly, but ordinarily bear its expense. This does not let them ignore notice provisions, alter shareholders’ substantive powers or bypass a requirement for lawful proposed business. A careful solicitor normally compares both routes and advises on cost, speed, enforceability and procedural risk.

Lesson 5: 110 investors cannot manufacture 5% from their headcount

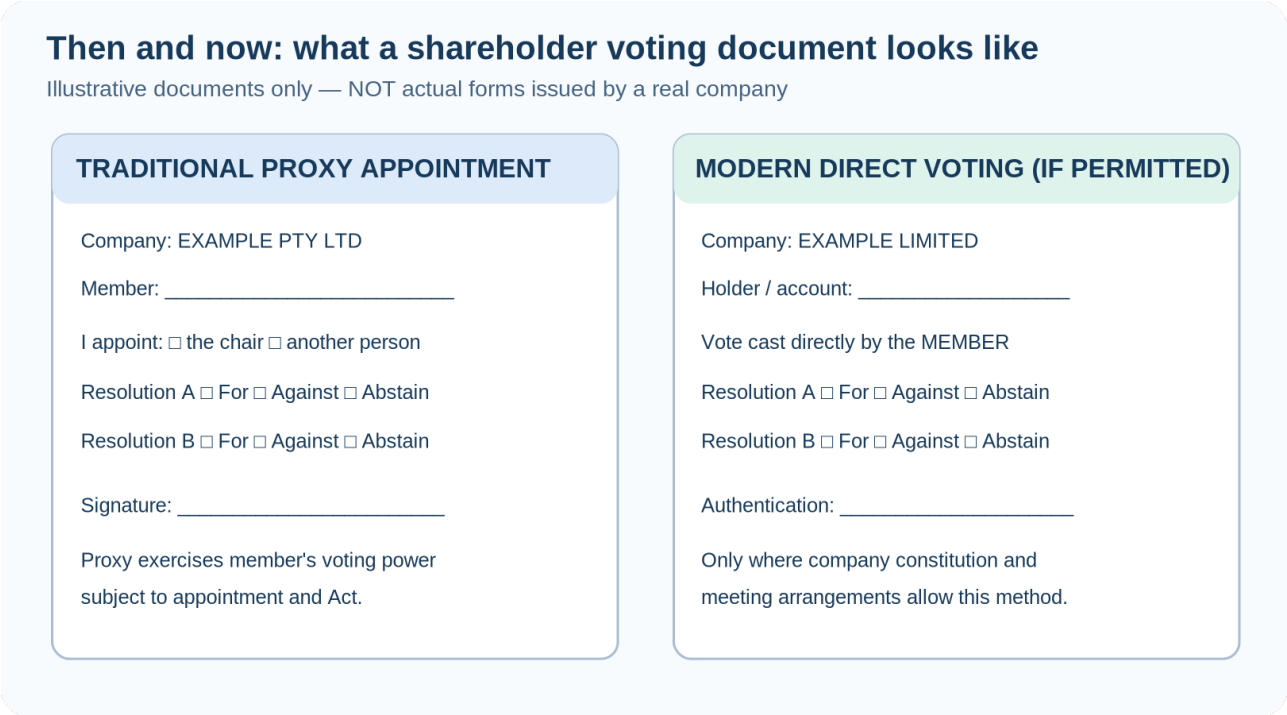
In FreshFoods, 110 activists purchase two shares each. That is 220 shares. Whether they satisfy s 249D depends upon the total votes that could be cast, not how many supporters have joined HBC. If the company hypothetically has 1,000,000 votes and each HBC ordinary share carries one vote, the activists have 0.022%, a long way below the statutory 5%. Under s 249N(1)(b), however, 100 qualifying voting members may give notice of a proposed resolution for a general meeting (subject to s 249N(1A) and other rules). Section 249O(1) concerns the next general meeting *more than two months after* notice is given. Neither procedure converts an invalid substantive proposal into a valid one.



Illustrative voting-power comparison showing why the 100-member alternative in s 249N differs from the 5% in s 249D.

Lesson 6: written resolutions, voting, polls and proxies are four different mechanisms

A circulating resolution under s 248A or s 249A is passed *without* holding the relevant meeting and requires the statutory signatures. A shareholder voting *at* a meeting can generally vote through the approved meeting procedure. A *proxy* is a separate person appointed to act for a shareholder under ss 249X–250C. *Direct voting* is a meeting arrangement in which the member casts a vote personally in advance if the constitution and procedural framework support it; it is not automatically the same as using a proxy or signing a circulating resolution. Whether a particular company offers such a facility must be checked from its constitution and notice materials.

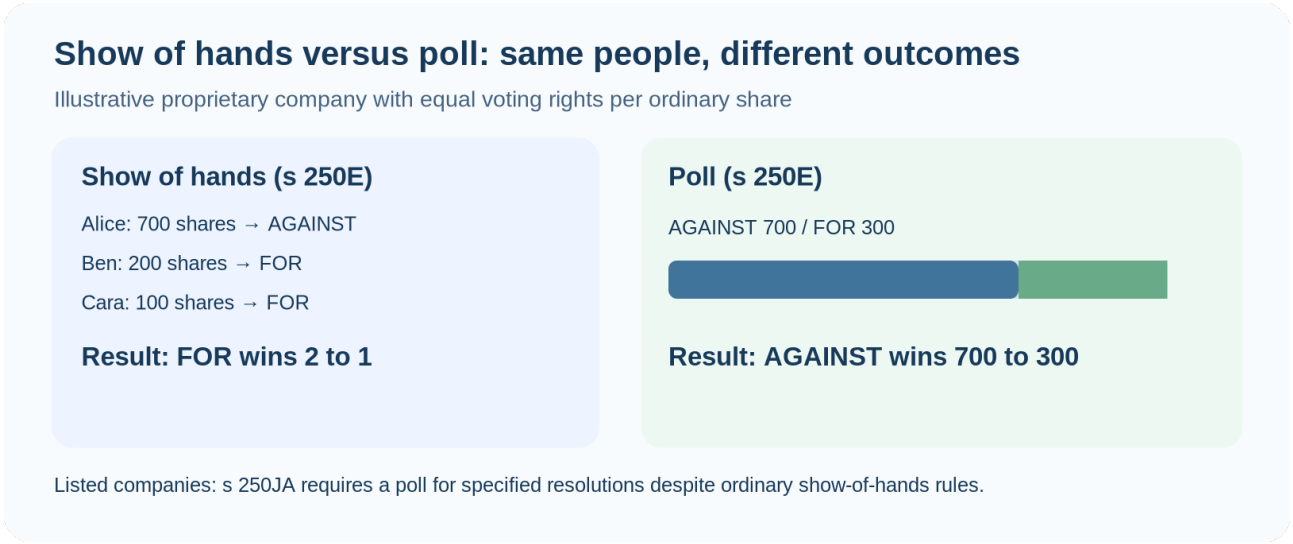


Side-by-side teaching specimens: traditional proxy appointment (voting by representative) and modern direct voting if authorised by company rules.

In a *directed proxy*, the shareholder specifies the instructions on a given resolution. In an *undirected or open proxy*, the proxy has discretion subject to the governing law and appointment; restrictions matter especially on remuneration-related resolutions under s 250BD. The relevant documents must be properly signed or authenticated and lodged by the statutory and meeting-notice deadlines. For listed companies, additional proxy and poll protections apply.

Lesson 7: one person/one hand is not one share/one vote

Under the replaceable rule in s 250E, a member of a share-capital company generally has one vote on a show of hands but one vote per share on a poll, subject to share-class rights and other restrictions. Listed-company resolutions specified by s 250JA must use a poll even where the constitution suggests otherwise. A demand for a poll has its own rules under ss 250K–250M; it is not a casual request that anyone can make at any time. The chair and qualifying voting members have defined powers to demand a poll, and the request must comply with timing requirements.



Numerical voting illustration: a show of hands can differ from a poll because voting power follows shareholding.

Lesson 8: meeting participation must be real, not theatrical

Sections 249Q–249S require a proper purpose and meaningful member participation. Under s 249R(a), a meeting may occur at physical venues; under s 249R(b), hybrid meetings are permissible; wholly virtual meetings under s 249R(c) require express constitutional permission or requirement. It is incorrect to assume all post-2022 companies automatically obtain an unrestricted online-only option. A passive livestream is not necessarily equivalent to a meeting at which members can participate. ASIC guidance emphasises the rights to ask questions and make comments orally and in writing through technology. Quorum (s 249T), chair (s 249U), vote counting and records must all be satisfied.

Lesson 9: special resolutions require more than 75% confidence

An ordinary resolution normally requires a simple majority of votes cast by those entitled to vote. A special resolution under s 250MA requires the specified notice under s 249L(1)(c) and the statutory supermajority: at least 75% of votes cast by members entitled to vote, subject to any applicable higher constitutional threshold. Common uses include constitutional alteration under s 136. Do not use the 75% figure without examining the notice and the relevant meeting procedure.

Lesson 10: shareholder activism in a complete practical example

Suppose HBC asks for a meeting to order FreshFoods to retain staffed checkouts and, alternatively, to remove two directors. A lawyer should first interpret the precise text of both proposals. The operational order is vulnerable under the allocation-of-power authorities. The removal proposal engages s 203D and can be within shareholder competence, but that does not eliminate meeting-requisition thresholds, notice periods or specific removal procedures. A sophisticated opinion separates the validity of the *subject matter*, the right to *call a meeting*, the ability to *put a resolution on an existing agenda*, and the votes needed to *pass* the resolution.

Active learning: final Week 5 Forum problems

Tutorial-style problem 1 — meeting threshold

FreshFoods Ltd has 12 million ordinary votes. HBC comprises 110 registered shareholders with two ordinary votes each. The AGM is in six weeks. HBC wishes to force a new EGM, require an advisory vote directing directors to close automated checkouts, and obtain a binding vote removing a director. Advise HBC on the statutory pathways and the governing cases.

Tutorial-style problem 2 — failed requisition

A qualifying coalition with 6% of voting power delivers a signed requisition specifying a valid director-removal resolution. Twenty-three days later the directors have not called a meeting. Of the original coalition, members holding 3.1% of total company voting power seek to call a meeting. Advise on the applicable conditions, timing and expenses.

Tutorial-style problem 3 — circulating resolution and poll

Four voting members of Blue Coast Pty Ltd attempt to amend its constitution by circulating a resolution. Three sign. The fourth refuses. At a subsequent meeting, two members vote in favour on a show of hands, while a member holding 75% of shares votes against. Discuss the legal effect of the circulating document, voting methods and any special-resolution implications.

High Distinction model answers — final Forum problems

Answer 1 — issues, law, cases, application and advice

Issue: distinguish power to requisition an EGM from the ability to propose a resolution at an already scheduled meeting; determine whether either proposed resolution is substantively competent. **Rule:** s 249D requires members with at least 5% of votes that may be cast, a signed written document setting out proposed resolutions and delivery to the company. Section 249N separately allows qualifying members to propose a resolution, including through the alternative 100-member pathway (subject to the regulations), while s 249O directs attention to the next general meeting more than two months after notice. Under s 198A and *NRMA v Parker*, reinforced by *ACCR v CBA*, a general meeting cannot compel directors to carry out ordinary management functions without authority. Section 203D provides a shareholder power concerning removal of directors of a public company, subject to its own process.

Application: HBC has only 220 votes out of 12 million, approximately 0.00183%, far below 5%. The group cannot force an EGM on that basis. Although 110 registered voting members may satisfy the separate s 249N member threshold, an AGM in six weeks does not meet s 249O(1)'s more-than-two-month timing rule; the next qualifying meeting must be considered. The proposed binding order to close automated checkouts intrudes on management under s 198A. A properly framed director-removal resolution is different: it concerns a recognised shareholder power. Counsel should check the directors' appointment terms, s 203D notices and the constitution.

Recommendation: verify the register and classes, identify additional holders willing to join a coalition, prepare lawful resolution wording, consider member statements under s 249P and check timing and costs. Avoid representing s 249N as a power to force an immediate EGM.

Answer 2 — directors fail to act

Issue: whether requisitionists may exercise s 249E and recover expenses. **Rule:** under s 249D(5), directors must call a validly requested general meeting within 21 days and arrange for it to be held within two months. Once they fail, s 249E(1) allows members with *more than 50% of the votes of the original requesting members* to call and arrange it; subsection (2) requires the meeting within three months of the original request. The company must generally reimburse reasonable expenses arising from the directors' failure under s 249E(4), with potential recourse against directors under subsection (5) subject to its protection.

Application: the new group holds 3.1% of total voting power, more than half of the original 6% requisitionists' votes (half is 3%). Provided those members actually formed

part of the original requisition, the s 249E(1) threshold is met. Day 23 follows the directors' day-21 default. The members must still prepare compliant meeting notices, allow the prescribed notice period and complete the meeting within three months measured from the original request date, not day 23. **Conclusion:** they can ordinarily proceed under s 249E and seek reasonable costs; counsel should document the original signatures, voting power and costs carefully.

Answer 3 — unanimous signatures versus majority voting

Issue: whether a circulating decision was completed and whether show-of-hands support legally amends the constitution. **Rule:** s 249A requires every member entitled to vote to sign a relevant multi-member proprietary-company circulating resolution; the resolution passes when the last such member signs. An ordinary show of hands differs from a poll under s 250E, subject to the constitution and share rights. Constitutional amendment under s 136 ordinarily requires a special resolution, satisfying s 250MA's notice and voting requirements. **Application:** three signatures out of four do not complete a circulating resolution. The meeting's apparent 2–1 support on hands cannot be equated to the necessary special resolution, particularly where a shareholder with 75% of shares opposes the change. The applicable procedure and ability to demand a poll must be considered. **Conclusion:** no amendment is established on these facts; advise on correct meeting notice, voting rules and alternative consensual drafting.

Final FAQs — apply the rules correctly

Does 100 shareholders let us demand an EGM?

No. Section 249D uses the 5% voting-power threshold. Section 249N retains an alternative 100-member route for proposing resolutions at a qualifying general meeting, subject to any applicable regulations and the powers of the meeting.

Do directors have to hold the requisitioned meeting within 21 days?

No. They must call it within 21 days. The meeting is to be held within two months from receipt of the valid request, while notice rules independently apply.

Can a member send a single signature sheet without the resolution?

The statutory request must state the proposed resolutions. Multiple identical copies can be signed, but each must meet the statutory wording and signature requirements.

Is a proxy the same as direct voting?

No. A proxy is a representative appointed to attend or vote for the member. A direct vote is cast by the member personally in accordance with any constitutional and meeting arrangements enabling that facility.

Can shareholders force a formally advisory vote on the board's staffing policy?

Not automatically. The proposed resolution must fall within members' powers. Apply NRMA v Parker, ACCR v CBA, s 198A and the company constitution.

Is the company always required to hold a completely virtual AGM?

No. Hybrid meetings are permitted under the statutory scheme, but wholly virtual meetings ordinarily require express authorisation in the constitution; meaningful participation remains necessary.

Final MCQs — answer before turning the page

MCQ 1. The s 249D meeting requisition threshold is:

A. Any 100 shareholders

B. At least 5% of votes which may be cast

C. A majority of members

D. All directors

MCQ 2. The board receives a valid s 249D requisition on Day 0. The directors must:

A. Hold the meeting within 21 days

B. Call the meeting within 21 days and hold it within two months

C. Send 28 days' notice in every company

D. Call only if they approve the proposal

MCQ 3. Under s 249E, after failure by directors the persons entitled to call the meeting are:

A. Any one initial signatory

B. More than 50% of the original requisitionists by headcount

C. Original signatories controlling more than 50% of requisitioning votes

D. 50% of all company shareholders

MCQ 4. A meeting of FreshFoods resolves to instruct the board to redesign store operations. The main concern is:

A. Any 5% can issue directions to directors

B. It may be beyond shareholders' substantive powers

C. Members cannot speak at AGMs

D. The meeting must always use a show of hands

MCQ 5. A company wants to hold a wholly virtual general meeting. Under s 249R(c), it ordinarily needs:

A. Express constitutional permission or requirement

B. A simple board email

C. Approval by any single shareholder

D. No special condition

MCQ 6. For a multi-member proprietary company circulating resolution under s 249A:

A. Two-thirds sign

B. A simple majority signs

C. Every eligible voting member signs the same resolution wording

D. It must always be passed by poll

MCQ answers with explanations

MCQ 1 — B

Section 249D concerns voting power; the 100-member alternative belongs to s 249N and is not a power to force a new meeting.

MCQ 2 — B

The 21 days concerns calling; two months concerns holding. Listed-company notice timing under s 249HA is separate.

MCQ 3 — C

The statutory threshold refers to more than half the votes held by those who made the initial s 249D request.

MCQ 4 — B

NRMA v Parker and ACCR v CBA require separating the meeting procedure from the authority to make the decision.

MCQ 5 — A

The statute and ASIC guidance distinguish hybrid meetings from wholly virtual-only meetings.

MCQ 6 — C

Unanimity of eligible signatories is essential for the circulating statutory mechanism.

Short-answer questions — try them yourself

Short-answer 1

Write the four elements of a valid shareholder requisition under s 249D(2).

Short-answer 2

Explain the distinction between s 249D, s 249E and s 249F, including who pays the meeting expenses.

Short-answer 3

Explain how the two separate notices operate in a requisitioned meeting.

Short-answer 4

Explain the difference between a shareholder proxy, a direct vote, and a circulating resolution.

Short-answer 5

A group has 110 voting members but less than 1% of votes. Explain two lawful commercial strategies a solicitor might consider.

Short-answer model responses

Short-answer model response 1

The request must (a) be in writing, (b) state any resolutions to be proposed, (c) be signed by members making it, and (d) be given to the company. Check the 5% threshold under s 249D(1), identical copies under (3), the midnight calculation under (4) and the deadlines under (5).

Short-answer model response 2

Section 249D enables shareholders holding at least 5% of voting power to require directors to call the meeting. Section 249E lets original requisitionists holding more than half the requesting votes act after a failure within 21 days; the company pays reasonable expenses caused by the default, with possible recovery from directors. Section 249F permits a 5% coalition to call directly, with those members bearing expenses.

Short-answer model response 3

First, requesting shareholders give the requisition to the company under s 249D. The directors then call a meeting by giving a notice to the members under ss 249H–249L and 249HA where applicable. The directors' 21-day deadline to call is not itself the general meeting's 21- or 28-day minimum notice period. The meeting also has a separate two-month outer deadline.

Short-answer model response 4

A proxy under ss 249X–250C is a representative appointed by the member to act at the meeting. Direct voting, where validly authorised, is the member's own vote cast under the company's constitutional/meeting voting facility. A circulating resolution under s 248A or 249A is a resolution passed without a meeting through the statutory signature mechanism; eligible signatories must satisfy the applicable unanimity rule.

Short-answer model response 5

Check whether qualifying holders can collectively reach 5% and, if not, lawfully contact shareholders through the register subject to ss 173 and 177 and applicable privacy/use limits. The group may also consider an appropriate s 249N proposal for a later general meeting using its 100-member route, provided the resolution is legally competent, timely under s 249O and formally compliant. If necessary, consider acquiring further voting interests only after proper commercial and regulatory advice.

> even if ordinary members cannot compel the board to accept an operational instruction inconsistent with s 198A and the company's constitution.

H. Legislative reference and legal accuracy notes

The key legislation for this chapter is the *Corporations Act 2001* (Cth), Federal Register of Legislation. The detailed provision summaries above are grounded in the published Commonwealth compilation, and should be read with the official statute: Chapter 2G, Parts 2G.1–2G.2 (official authorised HTML text, 19 December 2025). A 19 September 2026 compilation is identified by the chapter's earlier source checkpoint, but a full paragraph-by-paragraph reconciliation between all editions has not been independently certified for this new insertion. The publication authority audit must be completed before making a full-certification claim.

> **Transcription corrections retained in the teaching narrative:** The broad share-transfer refusal replaceable rule is **s 1072G**, not "207A(1)(G)"; the share-register inspection rule is **s 173**, not "s 208A"; director removal under **s 203D** remains a separate substantive and procedural question; Pts 2G.1 and 2G.2 must never be treated as interchangeable. The source is the first supplied portion of the Week 5 live Forum; any further recording was not yet received when this update was prepared.

Suppose 110 HBC supporters hold two shares each in a major listed supermarket. They are numerous as *people*, but their 220 shares are a tiny part of the company's voting capital. Australian corporate law deliberately uses two different measuring devices. Some rights are reserved to members holding a percentage of voting power. Others also give a voice to a fixed number of individual members, even where their aggregate votes are small. Confusing those thresholds is the principal pitfall in the Week 6 tutorial.

7. Division of powers: a proposed staffing mandate is not a board instruction

The starting point is s **198A**, the replaceable rule giving management of the company to or under the direction of directors, and empowering directors to exercise company powers other than those reserved to the general meeting. In a listed company, check the actual constitution. Directors manage strategy and operations; shareholders vote on matters the Act or constitution allocates to them.

LEADING AUTHORITY — MANAGEMENT CANNOT BE USURPED

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 (Full Court). Shareholder activists sought to advance resolutions relating to the bank's management and climate-related practices. The Court held that a resolution requires a statutory or constitutional foundation; the shareholders did not obtain a general right to vote on management directions simply because they could raise concerns. Why this case matters to FreshFoods: a mandatory resolution ordering the board to keep human checkout staff is not within members' ordinary management powers. It is quite different from removing and electing directors under an applicable statutory power.

Further historical support for the division of powers appears in *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34 and *John Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB 113. *NRMA v Parker* (1986) 6 NSWLR 517 is particularly important in analysing whether a proposed member resolution is something that may properly be put to a corporate meeting.

8. Calling a meeting: ss 249C–249G

Sections 249C and 249CA: a director may call a meeting; s 249CA gives listed-company directors this power despite contrary constitutional provision.

Section 249D: members holding at least **5% of the votes that may be cast at the meeting** may make a formal written requisition stating proposed resolutions, signed and delivered to the company. The voting percentage is measured at midnight before the request is given. Directors must *call* the meeting within **21 days** and ensure it is *held* within **two months**. Note these are two separate deadlines.

Section 249E: if the directors fail within 21 days, members holding **more than 50% of the votes held by all requisitionists** may call the meeting. It must be held within three months of the requisition; reasonable expenses fall on the company, with possible recovery from directors. This is not a free-standing right for any arbitrary minority of shareholders.

Section 249F: holders of at least 5% of the votes can call the meeting themselves without first requisitioning it, but must pay its expenses. For a large listed company these costs can be commercially considerable. Section 249G allows a Court-ordered meeting if convening one otherwise is impracticable; it is not an easy alternative whenever a 5% threshold is missed.

110 supporters × 2 shares each = **220 shares**
220 shares is *not* proof of 5% voting power.

To reach 5%, HBC needs reliable information on voting rights and the voting capital relevant to the proposed resolution, not a guess based on the headcount of its campaign.

9. Member-proposed resolutions: ss 249N–249O

Section 249N permits a notice of proposed resolution from either members holding **5% of the votes on the resolution** or at least **100 voting members** (subject to any valid prescribed variation). Here the headcount route matters: 110 qualifying HBC members can meet the latter threshold even with a very small shareholding. A written notice must state the resolution exactly and be signed by the proposing members. Section 249O provides that the resolution is to be considered at the next general meeting that takes place **more than two months after notice is given**. This is not a statutory right to demand inclusion in an AGM less than two months away.

Example: Notice given on 1 October for an AGM on 18 November leaves less than two months. Section 249O does not compel FreshFoods to place it on that AGM's agenda. HBC can seek voluntary cooperation or plan for the next qualifying meeting. But the resolution must also be substantively within shareholder competence; procedural eligibility alone cannot make the human-checkout policy binding.

10. Members' statements: s 249P

Section 249P gives members a campaigning instrument separate from s 249N: 5% voting power or 100 voting members may request circulation of a statement about a proposed resolution or another matter properly considered at a general meeting. The request must be in writing, signed and delivered. A statement over 1,000 words or defamatory need not be distributed. The company normally bears the distribution cost when it receives the statement in time to accompany the meeting notice; late statements may put costs on the requesting members, together with an advance-cost requirement. Crucially, the right is *not restricted to the same shareholders who originally proposed a resolution*.

> **WHY S 249P MATTERS STRATEGICALLY**
>
> HBC's 110 shareholders can satisfy the numerical member threshold to communicate a persuasive business case to other investors, even though their own votes cannot carry the resolutions. They could explain evidence of customer dissatisfaction, reputational risk, operating costs and alternative staffing

arrangements. The statement must remain lawful and must not imply that an unenforceable management direction has become binding.

11. Notice, meeting mechanics and voting

Sections **249H–249HA** distinguish the general 21-day minimum meeting notice from the 28-day minimum for listed companies, subject to relevant qualifications. Section **249L** describes information that a notice must contain. Sections **249Q–249S** require a proper meeting purpose and meaningful opportunity for members to participate, including applicable rules for physical, hybrid and wholly virtual meetings. Provisions such as ss 249T–249U cover quorum and chairing. It is not enough simply to send an email saying 'meeting next week' or run a one-way webcast labelled as a valid virtual meeting.

Where a public-company director is to be removed, **s 203D(2)** generally requires at least two months' notice of the intention to move the removal resolution, but includes an exception where the company calls a meeting after receiving that notice. The company must also comply with the statutory rights of the affected director. This is legally distinct from the usual 28-day listed-company meeting notice under s 249HA. An adviser must map *both* timeframes, not treat one as replacing the other.

Voting: s 250E deals with voting rights under replaceable rules. For listed companies, s 250JA requires polls on specified resolutions. Under a poll, voting usually reflects the number of voting shares rather than one vote per person. Section 249A provides a circulating-resolution procedure for qualifying proprietary companies, and s 249B a one-member resolution procedure. Neither is a shortcut for passing an ASX-listed company resolution without properly convening members.

FIVE PROVISIONS TO SEPARATE IN AN EXAM

s 249D: 5% — force the directors to call a new meeting.
s 249E: requisitionists act after the directors fail; their internal >50% rule applies.
s 249F: 5% — call the meeting directly, generally paying the expenses.
s 249N: 5% *or* 100 members — propose a resolution for a qualifying general meeting.
s 249P: 5% *or* 100 members — request circulation of a lawful member statement.

12. Using a proxy: representation when a shareholder cannot attend

Section 249X deals with the right to appoint a proxy; s 249Y explains rights including speaking, voting according to the appointment and joining a demand for a poll. Sections 250A–250B govern appointment formality and lodging documents. A proxy can be *directed* (for example instructed to vote FOR removing a director) or *open* (with discretion subject to applicable law and form terms). For an activist campaign, valid proxies are often more consequential than the number of shareholders attending physically: votes must actually be collected and cast correctly.

EXAMPLE SHAREHOLDER PROXY FORM

FRESHFOODS LTD — illustrative educational form only

Member name: _____ Holder reference: _____

I appoint: [ ] the Chair of the Meeting [ ] _____ as my proxy for the general meeting on _____

Proposed resolution	FOR	AGAINST	ABSTAIN
Remove Priya as director (if lawfully proposed)	☐	☐	☐
Remove Marcus as director (if lawfully proposed)	☐	☐	☐
Elect candidate X as director (if lawfully proposed)	☐	☐	☐

Signature _____ Date _____

Illustration only. Use the company's actual meeting notice, form and statutory requirements. This is not an official FreshFoods document or filing.

13. Requisition timeline: an applied guide

Day 0	Valid s 249D signed requisition delivered by members holding at least 5% votes.
Within 21 days	Directors must call the meeting (issue the necessary notice). If they do not, s 249E may be used by the qualifying majority of requisitionists.
At least 28 days	Listed-company meeting notice under s 249HA (subject to interaction with other procedural requirements).

Within 2 months	Directors must hold the requisitioned meeting under s 249D(5).
Within 3 months	Meeting called by qualifying requisitionists under s 249E must be held within this separate statutory outer limit.

Do not calculate a precise calendar date for a removal resolution without checking s 203D(2), the date valid notices were delivered and how the meeting was called.

PART III · THE LECTURER'S MUST-READ DIVIDEND PROVISIONS

Dividends — ss 254SA–254W

Chapter 5 now connects your lecturer's full Week 5 narrated dividend explanation to the precise statutory tests and the FreshFoods tutorial problem. The questions are distinct: **lawful payment**, **authority to determine it**, **revocability and debt formation**, and **share rights**.

14. What exactly is a dividend?

A dividend is a distribution made by a company to its shareholders in accordance with their relevant rights and the corporate law governing distributions. If a company has more resources than it needs to operate safely, it may choose to return value to shareholders instead of retaining every dollar for expansion, acquisitions or reserves. The key word is *may*. Profitability, by itself, ordinarily does not entitle shareholders to force payment.

The company has general corporate powers under s 124(1)(d), including the power to distribute company property among members in kind or otherwise. That general power is constrained by the more specific dividend provisions, the constitution, share rights and directors' duties. A reference in the supplied automated JUNI summary to "s 120" as the general dividend power should therefore be corrected to **s 124(1)(d)**.

How dividends are paid

Section 254U(1) expressly contemplates several methods: cash, newly issued shares, options and transferring assets. For example, a business holding valuable property might propose an in-kind dividend, while a listed company might operate a dividend-reinvestment arrangement that issues shares instead of distributing all dividends in cash. The precise terms of any scheme matter.

2,000 shares × $0.25 per share = **$500 dividend**

This calculation illustrates a basic equal per-share dividend. It does not establish that the company has met the statutory conditions for payment.

15. Section 254SA — prohibition for companies limited by guarantee

Section 254SA states the general rule that a company limited by guarantee must not pay a dividend to members. Such entities are commonly used where people join as members without holding ordinary share capital, including certain clubs and community organisations. The rule prevents members from using dividends to extract assets as though they were holders of ordinary shares in a commercial company.

Example: A company limited by guarantee has accumulated a $400,000 surplus. Its members cannot simply vote themselves dividend cheques. The company type is the threshold issue. There is a specialised carve-out under s 254WA for qualifying mutual capital instruments issued by certain mutual entities. An answer saying “never, under any circumstances” would miss this exception.

16. Section 254T — three conditions before paying dividends

Of all the provisions in this group, s 254T(1) is the most immediately useful for analysing a planned distribution. It is drafted as a prohibition: a company must not pay a dividend unless **all three statutory limbs** are satisfied. It is not an invitation to pick whichever limb is easiest to meet.

(a) The asset–liability excess must be sufficient

Immediately before a dividend is declared, the assets must exceed liabilities, and the excess must be sufficient to fund the payment. Under s 254T(2) the asset and liability figures must be worked out according to accounting standards in force at the relevant time, even where a standard otherwise would not apply to a company's financial year. This is not simply the cash balance in the bank.

Assets − liabilities = asset surplus
$3,000,000 − $2,200,000 = **$800,000**

A proposed $500,000 dividend falls within that hypothetical $800,000 excess. But passing this first numerical test does not authorise payment unless the remaining two tests are also satisfied. A $900,000 proposed dividend fails this test on those assumptions.

(b) Fairness and reasonableness to shareholders as a whole

Section 254T(1)(b) examines the effect of the dividend on the shareholders collectively. A shareholder cannot necessarily demand identical money to every other shareholder: different share classes may carry different dividend rights. Rather, the decision needs a proper legal and commercial basis, considering the actual share rights and the overall effect on shareholders.

Example: A company's controllers want to benefit themselves through a selective distribution that excludes equivalent minority investors without a proper basis. That raises questions under this fairness limb and potentially, depending on the facts, the oppression provisions considered later in the course.

(c) No material prejudice to creditors

Section 254T(1)(c) asks whether payment would materially prejudice the company's ability to pay creditors. Suppose a company owns $4 million in buildings but has only $50,000 in cash while $200,000 in supplier invoices fall due within days. An otherwise valuable company may be *illiquid*: it cannot access enough money quickly enough. Directors must examine payment timing, financial forecasts and actual access to funds, not just asset valuations.

> **Do not use the wrong statutory test.** The slide's and JUNI summary's references to fraud are not the operative wording of paragraph (c). The statutory issue is *material prejudice to the ability to pay creditors*; it does not require an intention to defraud.

The "balance sheet solvency" label is a convenient teaching shorthand, but the statute imposes **both** an asset-surplus requirement and separate fairness and creditor-protection requirements. The principal amendment to s 254T replacing the old profits rule occurred in **2010**; the transcript's reference to approximately 2012 is an understandable chronological approximation, not the date to publish as settled law.

17. Section 254U — directors' power to determine dividends

Section 254U(1) is a replaceable rule (see s 135): if applicable, it empowers the directors to decide that a dividend will be payable and to settle three essential matters — **amount**, **payment date** and **method of payment**. The directors do not obtain an unrestricted power to distribute assets in defiance of s 254T or the rights attached to shares.

Example: On 16 October, a board determines that shareholders will receive 20 cents per ordinary share on 15 December, paid electronically. This is a decision determining a dividend under the s 254U model. As a general rule, a shareholder resolution is not an additional condition under that model. A company's particular constitution can change the governance analysis, so advisers must read it.

Under s 254U(2) interest is not payable on a dividend under this statutory rule. This should not be confused with the separate question of when a payable dividend becomes a legally enforceable debt.

The older constitutional approach — what your lecturer is contrasting

Historically, many companies followed *Table A* articles under which directors recommended an amount but members formally declared the dividend. Some companies continue to operate under constitutions providing for declaration. This matters because s 254V(2), unlike s 254V(1), makes the *declaration* a debt-creating event. It would be inaccurate to say that a company falls into one system purely because it was registered before or after a particular calendar year. The correct starting point is the actual constitution.

18. Section 254V — the crucial issue: when a dividend becomes a debt

The most important connection in your Week 5 narration is the connection between a board's dividend decision and the company's exposure to a debt. A *debt* is an enforceable obligation to pay, although not every debt gives rise to an immediate right to demand payment. When it arises may affect a shareholder's recovery rights and the company's solvency analysis.

Section 254V(1): the later debt — and revocation before the due date

Section 254V(1) provides that merely fixing a dividend's amount or payment date does not create the debt. The debt arises when the fixed date arrives. Until then, the company can revoke the decision. This is why your lecturer emphasised a change in financial circumstances between announcing a dividend and the scheduled date of payment.

Section 254V(2): the earlier debt created by declaration

If the company has a constitution that provides for the *declaration* of dividends, s 254V(2) instead treats the dividend as a debt when declared. That can occur well before the

stated date of payment. The statutory right of pre-payment revocation in subsection (1) must not simply be assumed to apply in this different situation.

Question	s 254V(1)	s 254V(2)
Trigger	Board determines a dividend	Dividend declared under a constitution providing for declaration
When debt arises	When fixed payment date arrives	When dividend declared
Can decision be revoked beforehand?	Yes, before the debt-creation date	Not under the revocation mechanism in s 254V(1)
Why material?	Opportunity to respond to a financial crisis	Earlier enforceable obligation and insolvency consequences

Worked company scenario — what happens if disaster strikes?

16 October: Bayside Trading Ltd proposes a dividend of $1 million, with payment set for 15 December. **20 November:** its largest customer enters insolvency; the company loses expected receipts and cannot safely pay the planned dividend. **15 December:** the intended payment date arrives.

16 OCT
Dividend decided

→

20 NOV
Financial crisis

→

15 DEC
Payment date

If s 254V(1) governs: the decision can be revoked before 15 December. Proper revocation prevents that proposed dividend becoming a debt on the specified date. Directors must still consider any separate contractual promises, published representations and other legal obligations on the actual facts.

If s 254V(2) governs: debt arose when the dividend was declared. Later cash flow trouble does not transform that debt into an optional payment. Directors must analyse how the obligation interacts with the company's ability to pay debts and the available restructuring or administration options.

Professional accuracy: Non-payment does not automatically prove insolvency, and directors do not automatically become personally liable for the entire dividend. Insolvency under s 95A generally involves inability to pay debts when they become due; a s 588G claim has further statutory requirements, including the incurring of a

relevant debt, insolvency or insolvency caused by incurring it, reasonable grounds for suspicion, and the applicable director-related conditions, subject to statutory defences or exceptions. Your lecturer used a simplified warning about directors' exposure; a published legal textbook must teach the qualifying elements.

Practical board advice

A careful adviser would obtain the constitution, details of the dividend decision, class rights, the minutes, the payment date, current management accounts, solvency forecasts, debtor recoverability, banking facilities and creditors' due dates. Advisers should not sign off merely because the previous year's financial statements show a profit. All three s 254T conditions require active assessment and documentation.

19. Section 254W — dividend rights by company type

Section 254W concerns who is entitled to dividends and on what basis. It does not itself authorise a company to disregard the payment restrictions in s 254T.

Public companies — s 254W(1)

Each share within a class of public-company shares has the same dividend rights *unless* the constitution provides different rights or a special resolution provides different rights. The correct comparison is between shares of the same class; preference shares, for instance, need not have identical rights to ordinary shares. The slide saying "everyone receives the same amount per share" works as an illustration for equal rights, but is not an unconditional rule covering all share classes and exceptions.

1,000 ordinary shares × $0.10 = **$100**
5,000 ordinary shares × $0.10 = **$500**

Proprietary companies — s 254W(2)

The directors of a proprietary company may pay dividends as they see fit, **subject to the terms on which its shares were issued**. This provides flexibility, but directors must still examine the constitution, equal-treatment expectations, conflict-of-interest concerns, oppression risk, and the mandatory s 254T conditions. Freedom to exercise discretion is not freedom to act capriciously or unlawfully.

No-liability companies — s 254W(3) and (4)

Under subsection (3), a person is not entitled to a dividend on a share where a call on that share is due and unpaid. Under subsection (4), dividends are generally paid proportionally to the number of shares held, regardless of amounts paid up, but the section is expressly subject to constitutional provisions concerning shares other than ordinary shares.

Specialised mutual entities — s 254WA

Section 254WA addresses qualifying MCI mutual entities that are companies limited by guarantee. It modifies the ordinary s 254SA prohibition in relation to mutual capital instruments and adds a fairness requirement. This is a technical exception worth knowing exists even if the course concentrates on ordinary companies limited by shares.

20. Dividend decisions, directors' duties and remedies

The legislative dividend conditions do not operate in isolation. A board that authorises an improper payment may expose the company, and in some circumstances the directors, to remedies or regulatory consequences under other provisions. Depending on the facts, a practitioner should consider *unlawful reductions of share capital* (including s 256D where relevant), *insolvent trading* (s 588G), duties of care and good faith (including ss 180–183), shareholder *oppression* (s 232), and injunctive relief (s 1324). These are separate causes of action with distinct thresholds, not automatic consequences of every dividend dispute.

For an exam problem, identify the conduct first, state the matching elements and then apply the facts. Do not write "directors liable" simply because a dividend was later unaffordable. Ask who decided, what they knew, what date the debt arose and what company records supported the decision.

CHAPTER 5 • CASE-LAW AND STATUTORY INTERPRETATION MASTERCLASS

Shareholders and Dividends: From Statute to Legal Advice

A connected teaching expansion, read after the core Chapter 5 narrative and before the Week 6 tutorial. This section adds deeper practical reasoning to the existing chapter; it does not replace the original lecture notes or university tutorial.

Imagine you are advising the chair of a public company. Your client receives a letter signed by a small but organised group of members demanding an extraordinary general meeting. The directors believe the campaign is disruptive, the proposed resolution concerns operational policy, and the activists say they will arrange the meeting themselves. What should the lawyer do first? Not simply say *yes* because a meeting power exists, or *no* because directors normally manage the business. We must work methodically from the wording of the legislation, then test the proposed business against the company's constitutional division of powers.

1. Reading the legislation as a practising lawyer

Chapter 2G of the *Corporations Act 2001* (Cth) divides meeting rules between decision-makers. **Part 2G.1 (ss 248A–248G)** regulates directors' meetings and decisions. **Part 2G.2 (the 249 and 250 series)** regulates members' meetings and their procedures. When a client says that “the company has voted”, ask *who* voted: the board, members at a general meeting, or a single-member company? Different provisions apply.

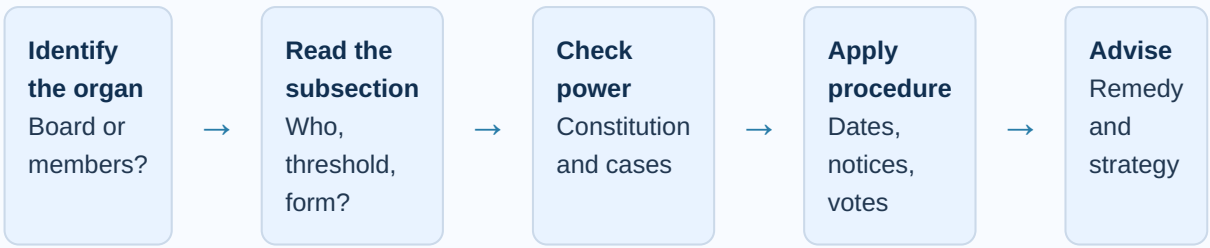


Figure 1. The five-stage statutory-interpretation method for client interviews and examinations.

First, distinguish **mandatory** provisions from **replaceable rules**. Section 135 explains the replaceable-rule mechanism; a company's constitution may displace an applicable replaceable rule, but it does not ordinarily displace a mandatory statutory obligation. Thus

s 249C is ordinarily a replaceable rule empowering a director to call a general meeting; **s 249CA** separately secures a director's calling power for listed companies. Second, identify the particular decision the members are trying to make. The director-management replaceable rule, **s 198A**, and the constitution may allocate ordinary commercial management to the board. Third, make each procedural step legally effective: otherwise a legitimate commercial campaign may fail on form or timing.

Say it aloud: “A procedural right to request or propose a meeting does not confer a new substantive power to control management.” The distinction is crucial in *NRMA v Parker* and *ACCR v CBA*.

2. Circulating resolutions: the three questions students confuse

Suppose three directors unanimously agree to purchase new computer equipment. They are all travelling, and there is no commercial reason to convene another board meeting. Section **248A**, where applicable, provides a written circulating-resolution mechanism, requiring the signatures of the directors entitled to vote on the resolution. Separate documents may be used if their wording is identical. This is different from **s 248B**, which addresses decisions by a company with one director in the circumstances to which that provision applies.

Now imagine a proprietary company has four voting members. **Section 249A** gives a written member-resolution procedure: every member entitled to vote must sign documents stating that they favour the resolution; ordinarily it passes when the last required member signs. A company with a **single member** uses **s 249B**, under which that member records and signs the resolution. These procedures should not be casually transferred to a widely held public company. Always check the company's type, the specific section and any exceptions.

Worked example: A proprietary company's three members hold 90, 9 and 1 shares. A proposed s 249A resolution needs all three required signatures, not merely the owner of 90 shares. Contrast an ordinary poll at a properly convened meeting: voting rights are then counted under the applicable voting rules, not the unanimity requirement for this written procedure.

3. A requisition creates two documents and two clocks

A **requisition** under **s 249D** is a formal request by members with at least 5% of the votes that may be cast at the general meeting. It is not enough to say that a group contains 100 people: the 100-member alternative was removed from this particular provision in 2015. Critically, the word “members” means that votes may be aggregated among a coalition. A shareholder with 2%, another with 2% and a third with 1.2% can satisfy the 5% voting threshold if their holdings carry the required votes and their requests are valid.

Section 249D(2)(a)–(d) supplies the formal checklist: writing; the proposed resolutions; signatures of the requesting members; and delivery to the company. Section **249D(3)** permits separately signed identical documents. Under **s 249D(4)**, voting percentages are worked out at midnight immediately before the request is given. Under **s 249D(5)**, directors must call the meeting within 21 days of the request and arrange for it to be held not later than two months after the request.

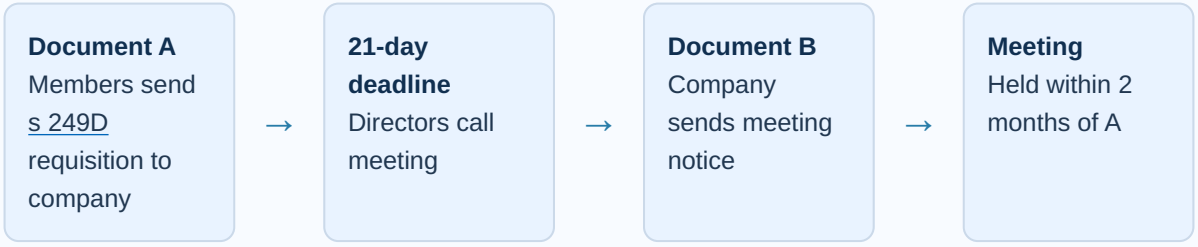


Figure 2. Do not confuse the requisition delivered to the company with the subsequent meeting notice to members.

The two documents have different legal functions. The **requisition** activates the directors' duty to arrange the meeting. The **notice of meeting** informs members of when the meeting will occur and what business will be considered. Under **s 249H**, most non-listed general meetings require at least 21 days' notice, subject to statutory qualifications. Under **s 249HA**, listed-company meetings generally require at least 28 days. Section **249L** regulates notice content, including the place, time, technology, general business and additional information for special resolutions. The notice period must fit inside the overall meeting deadline unless some lawful exception applies.

What if the directors do nothing? **Section 249E(1)** permits members with *more than 50% of the votes held by the original requesting members* to take over calling the meeting after the directors' 21-day failure. It is not 50% of the company's total votes; and “more than” does not mean “at least”. Under **s 249E(2)** the meeting must be held not later than three months after the original requisition. Section **249E(3)** addresses access to the register for

that purpose. Section **249E(4)** makes the company liable for reasonable expenses caused by the default, while **s 249E(5)** enables the company to recover expenses from liable directors, with protection for those who prove they took all reasonable steps to cause compliance.

Under **s 249F**, members with at least 5% of the votes may call their own meeting without first using s 249D, but the convening members must pay the expenses. This is not a shortcut around the 5% threshold, minimum notice or the need for a proper purpose. It may nevertheless be strategically useful where timing and control of arrangements justify the cost.

4. Where 100 members *does* still matter: s 249N

A group that cannot force a new meeting may be able to have a resolution considered at an already scheduled meeting. Under **s 249N(1)(a)–(b)**, the eligible proposing group is members holding at least 5% of the votes on that resolution *or* at least 100 voting members, subject to the regulation-making qualification in s 249N(1A). The proposed notice must comply with **s 249N(2)(a)–(c)**; the voting percentage timing rule is in **s 249N(4)**.

Section 249O(1) directs attention to the *next general meeting occurring more than two months after the notice*. “More than two months” matters: if an AGM is in six weeks, do not assume a company is obliged to distribute and consider the proposal at that AGM. Section **249P** separately governs eligible members' statements to be distributed, with content and cost rules to be checked on the actual facts. Neither section magically turns an unauthorised management instruction into valid shareholder business.

FreshFoods calculation: 110 HBC members × 2 shares = 220 shares. If FreshFoods has, for illustration, 20 million votes, HBC controls only 0.0011% of votes. Their headcount may assist under s 249N, but their 220 shares do not on their own establish the 5% voting power needed by s 249D or s 249F.

5. What happens at the meeting?

Section 249Q requires a proper purpose. Under **ss 249R–249S**, meeting format and participation matter: an entirely virtual meeting requires express constitutional permission; a hybrid meeting may be permissible even without that express permission. Technology is not satisfactory merely because people can watch a one-way stream—members must

have a reasonable opportunity to participate. ASIC's current guidance on virtual and hybrid meetings explains the practical requirements.

Sections 249T and 249U address the default quorum and meeting chair. Voting requires a separate analysis under **ss 250E–250M**. On a show of hands, voting ordinarily reflects persons voting; on a poll, votes reflect the applicable voting rights attached to shares, often one vote per fully paid ordinary share. In listed companies, **s 250JA** requires a poll for relevant resolutions rather than allowing the result to turn on a mere show of hands.

Shareholder	Shares held	Show of hands (illustration)	Poll (assuming one vote/share)
Major investor	900	1 vote	900 votes
Five small holders combined	5	5 votes	5 votes

Figure 3. Five hands may outnumber one hand, but on a poll 900 votes outweigh five. Real outcomes depend on class rights, proxies and the Act.

A **proxy** is an authorised representative appointed to attend and/or vote for a member. Sections **249X–249Y** establish proxy rights, with mechanics in **ss 250A–250B** and further protections for listed-company proxies in **ss 250BA–250BD**. A *direct vote* under a constitutionally authorised system is different: the member votes before the meeting without appointing another person as proxy. The book's historic proxy and modern direct-voting specimen illustrations should be labelled as educational samples, not actual legal forms, and students should be taught which fields, authentication and cut-offs need confirmation.

6. Four cases that make the statute work

A. *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34

Facts and procedural setting. A company's constitution vested management powers in the board. Members attempted, by ordinary resolution, to require a commercial course of action contrary to the directors' decision. The issue was not whether

shareholders were important; it was whether they could override powers constitutionally vested elsewhere.

Decision and principle. The Court of Appeal treated the allocation of powers between the board and the members as binding under the constitution. Members could not simply seize management powers by an ordinary resolution where those powers were conferred on directors. **Why it matters:** it is the foundational company-law separation between ownership rights and management authority. **Use it:** before advising that shareholders can mandate a company's staffing policy or asset disposition, read the constitution alongside s 198A and any relevant statutory shareholder power. The director-removal route may be available even where the proposed operational direction is not.

B. *National Roads and Motorists' Association v Parker* (1986) 6 NSWLR 517

Facts. Members of the NRMA proposed a general-meeting resolution addressing how voting materials would be distributed, a matter falling within the directors' management competence under the organisation's rules. The case reached the New South Wales Supreme Court when the members sought to exercise meeting rights to achieve that decision.

Issue and outcome. Was the directors' duty to convene a requisitioned meeting absolute, even where the proposed subject fell outside members' substantive decision-making power? McLelland J held that the directors were not required to convene the proposed meeting for business that members lacked power to decide. This is the important qualification to the word *must* in meeting requisition statutes.

Why it matters now. The case helps explain the modern proper-purpose inquiry under s 249Q and the separate question of whether a proposed resolution falls within the general meeting's powers. **Use in FreshFoods:** distinguish an unenforceable resolution ordering the board to retain staffed checkouts from a properly framed resolution removing directors under s 203D. **Client advice:** do not reject every activist proposal; examine the exact wording and identify a lawful form of shareholder action. Report source status: historical reported judgment citation confirmed through recognised scholarly discussion; a freely accessible full-text judgment link has not been independently verified.

C. *Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* [2016] FCAFC 80

Facts and litigation. A shareholder advocacy organisation sought to place resolutions concerning climate-related disclosure and the bank's approach to environmental issues before members. The bank disputed whether the proposed resolutions could properly be advanced as shareholder resolutions. The Federal Court considered the company's management structure and shareholders' legal role; the matter reached the Full Federal Court.

Issue and result. Could the statutory procedure for proposing resolutions itself give members power over matters ordinarily reserved to company management? The Full Court dismissed the appeal, reinforcing the need to distinguish what shareholders may *propose procedurally* from what the general meeting has power to *determine substantively*. The precise nature and form of each proposed resolution, including any constitution-alteration proposal, must be examined rather than treating all climate-related shareholder statements alike.

Exam use. Apply ss 198A, 249N–249P and the constitution. Analyse the proposed text before saying it must be circulated. **For a senior partner:** consider an opinion that separates (i) statutory eligibility; (ii) notice timing; (iii) corporate power to pass the resolution; and (iv) relief or strategic alternatives. Read the published Full Court judgment.

D. *AXA Asia Pacific Holdings Ltd v Direct Share Purchasing Corporation Pty Ltd* [2009] FCAFC 15

Facts. Direct requested an electronic copy of AXA's register of members. AXA supplied it but charged approximately $17,195. The dispute was not whether the share registry existed. It concerned the permissible cost charged to a person requesting the copy, including the role of AXA's registry service provider.

Outcome. The Full Federal Court dismissed AXA's appeal and upheld the primary judge's assessment of a much smaller reasonable fee (approximately $250). **Teaching significance:** ss 173–174 do not merely offer theoretical access: access and copies are governed by enforceable statutory rules and fee limits.

How to use it: a shareholder activist seeking to contact other shareholders should identify the statutory right to inspect or obtain the register, distinguish a proper corporate purpose from prohibited marketing, and check the current regulations governing fees and permitted use. Do not describe this case as establishing an unrestricted right to use member data. Read the Full Court judgment.

7. How the case law changes your advice to the client

The most effective answer is rarely only “the client cannot do that”. Suppose HBC lacks 5% voting power. The lawyer should check the register, assess whether lawful and proportionate shareholder contact can secure coalition support, explore whether an existing AGM can accommodate a valid s 249N resolution, verify whether a major shareholder will join, and consider the cost and risks of buying additional shares. Before recommending a meeting requisition, draft the actual resolution and test competence under *Cuninghame*, *NRMA v Parker* and *ACCR v CBA*. This is exactly why the lecturer insists on statutory interpretation as a practical skill.

> **Statutory source:** Corporations Act 2001 (Cth), compilation 149 (19 September 2026), official Volume 1. The section numbers and main effects described above have been checked against that compilation's authoritative source listing and available section text; the current print layout and some fine exceptions still warrant a complete pinpoint-by-pinpoint publication review. The transcript is a teaching source, not a substitute for the Act.

Editorial source-integrity note. The automatic transcript sometimes mishears *NRMA v Parker* as “Parker v British Airways” or similar. That phrase is not to be published as a case authority. The 100-member alternative survives for proposed resolutions under s 249N, not to compel a meeting under s 249D. The lecturer's comments on taxable dividend outcomes are context only; actual Australian dividend/franking treatment is not uniformly tax-free and depends on the shareholder.

WEEK 6 TUTORIAL · ORIGINAL UNIVERSITY QUESTION WORDING

Tutorial Question 1 — FreshFoods and HBC

The following reproduces the exact text of the supplied tutorial handout. It is separate from the original author's independently written explanatory model answer, which starts on the following page.

ORIGINAL QUESTIONS — NOT SIMPLIFIED OR OMITTED

Question 1: FreshFoods and HBC, continued . . .

We return to FreshFoods Ltd ('FreshFoods') and Humans Behind the Counter ('HBC') from last week's tutorial.

FreshFoods is an ASX-listed supermarket company. It plans to introduce automation that will significantly reduce the number of employees working in its stores. HBC opposes the plan.

As we saw last week, 110 HBC members have become FreshFoods shareholders. Each owns two shares.

HBC originally wanted shareholders to pass the following resolution:

'That FreshFoods Ltd must retain sufficient human employees so that at least 50% of all checkout lanes operating in each FreshFoods supermarket are staffed by human employees, and that the board must implement this policy throughout the company within six months.' [Proposal 1]

After the FreshFoods board refused to adopt this policy, HBC developed an alternative strategy. It wants shareholders to remove the existing directors, Priya, Marcus and Daniel, and replace them with three candidates supported by HBC. [Proposal 2]

Last week we considered the substantive validity of HBC's two proposals. This week, assume HBC wants to take the necessary procedural steps to put its proposals before FreshFoods' shareholders.

1. Calling a new shareholder meeting

Assume that FreshFoods' 2026 AGM has already taken place. No other shareholder meeting is scheduled until the next AGM, approximately 11 months from now.

HBC does not want to wait that long.

a. Requisitioning a meeting

Can HBC formally require FreshFoods to call a general meeting?

In your answer:

identify the applicable provision of the Corporations Act 2001 (Cth);

explain the requirements HBC must satisfy;

determine whether the 110 HBC shareholders, with two shares each, are presently entitled to requisition the meeting;

explain what FreshFoods must do if it receives a valid request; and

explain what options are available if the directors fail to comply with a valid request.

If HBC does not presently satisfy the statutory threshold, do not stop there. Think like HBC's lawyer. What lawful and practical steps could HBC take to try to overcome the problem?

b. HBC calling the meeting itself

Could HBC instead call and arrange the general meeting itself without first requiring the board to do so?

Identify:

the relevant statutory provision;

the threshold that must be satisfied; and

an important practical disadvantage of taking this route.

Would you recommend this course of action to HBC? Why or why not?

c. What should HBC propose at the meeting?

Assuming HBC can satisfy the requirements for calling the meeting, what resolutions should it include?

In particular, should HBC include:

Proposal 1 concerning human staffing levels;

resolutions removing Priya, Marcus and Daniel; and/or

resolutions appointing HBC's three preferred candidates?

Relate your answer to the division-of-powers principles considered in last week's tutorial.

2. Putting resolutions on the agenda of an already-scheduled AGM

We now change the facts: Assume that FreshFoods' 2026 AGM has not yet occurred. It is currently 1 October 2026, and the AGM is already scheduled for 18 November 2026.

HBC decides that there is no need to call a separate meeting. Instead, it wants to require FreshFoods to put its resolutions on the agenda for the AGM.

Advise HBC:

What statutory procedure allows members to give FreshFoods notice of a resolution they propose to move at an already-scheduled general meeting?

What shareholder threshold applies?

Do HBC's 110 shareholders satisfy that threshold even though their total shareholding is very small?

What formal requirements must HBC satisfy?

Most importantly, can HBC get its resolutions onto the agenda for the 18 November 2026 AGM if it first gives FreshFoods notice on 1 October 2026? Why or why not?

How does this process differ from the processes considered in Question 1 above?

Also consider whether HBC should attempt to submit Proposal 1, even though last week's tutorial identified a substantive problem with that resolution.

3. Convincing the other shareholders

Assume HBC succeeds in getting its valid resolutions before FreshFoods shareholders.

HBC knows that its own shareholding is far too small to determine the outcome of the vote. It therefore wants to explain its arguments to FreshFoods' other shareholders before the meeting.

Does the Corporations Act provide a mechanism that would allow HBC to require FreshFoods to distribute a statement supporting its proposed resolutions?

Identify the applicable provision and explain:

the shareholder threshold;

the principal procedural requirements;

any restrictions on the statement; and

who is responsible for the cost of distributing it.

Is the right to request distribution of such a statement restricted to the shareholders who originally proposed the resolution?

WEEK 6 TUTORIAL · HIGH DISTINCTION MODEL ANSWERS

Question 1 — Full written answers

1(A) · ISSUE, RULE, APPLICATION, COUNTERARGUMENT, CONCLUSION AND ADVICE

Can HBC compel a new shareholder meeting under s 249D?

Issue. The first question is not whether 110 people support HBC or whether it is politically desirable to debate checkout automation. It is whether those who sign a proposed requisition collectively control the percentage of voting power required by s 249D(1). Their proposed business strategy must also be mapped to matters properly decided in general meeting.

Rule. Under s 249D(1), members with at least 5% of the votes that may be cast at the general meeting can require the directors to call and arrange a meeting. Subsection (2) requires a written request setting out the resolutions, signed by the requesting members and given to the company. Separate identical copies may be signed under subs (3). The voting fraction is assessed at midnight immediately before the request under subs (4). Under subs (5) the directors must call within 21 days and the meeting must be held not later than two months after the request is delivered. A listed company's meeting must also meet the applicable notice requirements, particularly s 249HA. A meeting must be for a proper purpose under s 249Q.

Application. HBC's 110 supporters have only 220 shares in total. The total number of FreshFoods voting shares is not provided, so it would be wrong to calculate a fictional precise percentage. Given the facts describe FreshFoods as a large ASX-listed supermarket and these shares as tiny holdings, HBC cannot on the given information establish 5% of the voting power and must not assert a present entitlement to requisition. Crucially, the 100-member route belongs to s 249N and s 249P, not s 249D. It cannot simply be imported into s 249D.

What can counsel do? HBC should obtain lawfully available register and voting-capital information, confirm registered membership and voting rights, engage a shareholder registry or broker as appropriate, recruit existing substantial shareholders and institutional holders, obtain their written commitment to join the requisition, and consider whether HBC members can lawfully acquire more votes. The group must verify the 5% threshold on the statutory midnight snapshot and

lodge properly signed requests with precise, substantively valid proposed resolutions. Commercial caution: purchasing shares solely to clear the threshold may be expensive and market disclosure and association rules may become relevant depending on the coordinated conduct.

If directors ignore a valid request: s 249E(1) allows members with *more than 50% of the votes held by all the requisitionists* to convene it after the 21-day failure. They must hold it within three months of the request; reasonable expenses are paid by the company, with the possibility of recovery from responsible directors under s 249E(5). The 21-day call requirement is different from the two-month deadline for holding the meeting. The directors' failure also justifies considering appropriate court proceedings where statutory remedies are engaged.

Counterargument. HBC may claim that a large headcount implies legitimacy. That is a persuasive political argument, but not the statutory threshold. Nor is the board necessarily obliged to propose any resolution HBC likes: an attempt to commandeer management will face the division-of-powers problem.

Conclusion. HBC has no demonstrated present s 249D entitlement. Obtain sufficient voting support first, then use s 249D with legally valid director-election and removal resolutions and plan for a s 249E response if the board does not comply.

1(B) · MEMBERS CONVENING THE MEETING THEMSELVES

Issue. Can HBC bypass the board and call the meeting directly?

Law. Section 249F allows members having at least 5% of the votes castable at a general meeting to call and arrange the meeting without first making a s 249D requisition. Under s 249F(1), those members must pay expenses of calling and holding it; the procedure otherwise follows the available meeting-calling methods. Listed-company notice rules remain applicable. This differs materially from s 249E, where a properly qualifying group of requisitionists may obtain reimbursement from the company after board default.

Application. HBC's 110 members with 220 shares have not been shown to satisfy the voting-power threshold. The option is unavailable on the present evidence. If HBC recruits enough votes, it could act under s 249F, but issuing notices, arranging a venue or hybrid platform, processing proxies and complying with listed-company

rules could be costly. It could also bear strategic and reputational costs if the resolutions are incompetent or doomed to defeat.

Recommendation and conclusion. Do not presently recommend s 249F. Establish a lawful coalition of at least 5% voting power, prefer a properly prepared s 249D request where feasible, and keep s 249F as a strategic alternative only after evaluating the costs and the merits of the proposed resolutions.

1(C) · DRAFTING RESOLUTIONS THAT MEMBERS ARE ENTITLED TO DECIDE

Issue. Which of HBC's requested resolutions should be placed before members?

Rule. Section 198A generally places management powers with the board; *Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* [2016] FCAFC 80 and *Automatic Self-Cleansing* explain why ordinary members cannot seize those powers by majority vote. A public company's members may remove directors under s 203D, and appoint directors according to the applicable corporate rules (including s 201G and the constitution). Section 203D(2) imposes a specific notice-of-intention procedure for removal and safeguards the affected director's rights. Section 201E can require separate appointment resolutions for multiple candidates in public companies, subject to its qualifications.

Application. Proposal 1 attempts to order the directors to retain particular staffing levels in every store and implement the policy within six months. Operating decisions of that nature ordinarily rest with the board and the proposed mandatory wording exceeds ordinary shareholder competence; it should not be advanced as a binding ordinary resolution merely because it is popular. HBC may raise the issue through lawful engagement and a s 249P statement, and might consider a different constitutionally authorised strategy, but must not misstate a non-binding expression of views as a valid direction to management.

Proposal 2 uses a genuinely shareholder-held power: individually worded resolutions to remove Priya, Marcus and Daniel under s 203D and, where properly proposed and allowed, to elect the three named replacement candidates. However, counsel must check candidacy eligibility, consents, board composition and constitutional requirements; comply with s 203D's director-specific notice and right to respond; obey s 249HA and s 249L meeting notice requirements; and consider s 201E's prohibition on bundled public-company director appointments unless relevant conditions are met. Removing the whole board without valid replacement

arrangements may create governance risks; the transition should be sequenced carefully.

Counterargument. HBC might argue that shareholders are ultimate owners and may direct any policy. This confuses ownership of shares with the board's management mandate. But members have a lawful remedy to dissatisfaction: vote to change directors, who then exercise managerial discretion subject to their own duties; new directors are not puppets of the appointing group.

Conclusion. Recommend properly specified individual removal and replacement resolutions if procedural and eligibility conditions are met; avoid Proposal 1 as a binding board instruction.

QUESTION 1, PART 2 · EXISTING AGM AGENDA

What changes when the AGM is on 18 November 2026?

Issue. If the meeting already exists, can 110 tiny shareholders require their proposals to appear on its agenda by giving notice on 1 October?

Rule. Section 249N(1) allows members to propose a resolution if they either hold at least 5% of votes on the resolution *or* there are at least 100 members entitled to vote. They must give signed written notice specifying the proposed resolution's exact wording (ss 249N(2)–(3)). Under s 249O(1), a notice under s 249N carries the right to consideration at the next general meeting occurring *more than two months after notice is given*. Section 249O addresses circulation and costs; defamatory or overlong material raises exceptions. Procedure does not make an invalid substantive resolution competent, as established by *ACCR v CBA*.

Application. On the assumptions that all 110 HBC supporters are registered members with voting rights and no applicable regulation changes the headcount threshold, HBC can qualify under the 100-member limb even though its total shareholding is only 220 shares. But 1 October to 18 November 2026 is only 48 days, less than two months. Therefore s 249O does **not** compel inclusion at that November AGM. An existing AGM does not have to be moved forward or amended to meet the group's preferred timing. HBC could ask FreshFoods voluntarily to place properly valid resolutions on the agenda, or plan for the next qualifying general meeting. For director removals, the separate s 203D(2) notice and the

exception where the company subsequently calls a meeting also need assessment; no attempt should be made to evade them.

Distinction from Question 1. Sections 249D–F concern causing a *new meeting to be called*; ss 249N–O concern *putting a proposed resolution before an appropriate meeting*. Sections 249N–O are useful to relatively numerous small shareholders, but do not give automatic agenda access at short notice.

Proposal 1. The mandatory human-staffing direction remains substantively defective under the division-of-powers rule regardless of the filing date and threshold. HBC should prefer valid director-removal or appointment proposals, subject to the statutory constraints already discussed.

Conclusion. The 110-member numerical route is potentially open, but the 18 November timing is too soon to compel inclusion under s 249O.

QUESTION 1, PART 3 · CONVINCING OTHER SHAREHOLDERS

May HBC require circulation of an advocacy statement?

Issue. How can a numerically large but low-vote activist coalition persuade other shareholders before voting?

Law. Section 249P(1) permits a statement about a proposed resolution or any other matter properly considered at a general meeting. It is available to members holding at least 5% of the votes on the resolution or at least 100 members entitled to vote (s 249P(2), subject to any valid prescribed variation). The request must be signed, written and delivered under s 249P(3). The company distributes it with or as soon as practicable after the meeting notice under s 249P(6). The company bears distribution costs if received in time to accompany the meeting notice; otherwise the requestors are jointly and individually liable for reasonable expenses unless members resolve otherwise (ss 249P(7)–(8)). Statements exceeding 1,000 words, or defamatory, need not be distributed (s 249P(9)); if the requesting members bear the costs, advance funds reasonably sufficient may be required.

Application. The 110 qualifying HBC members meet the 100-member route even though their aggregate shareholding is small. They should submit a careful, civil, evidence-based statement of no more than 1,000 words explaining the commercial case for changing directors: customer preferences, service quality, brand trust and estimated financial consequences. They should submit it sufficiently early to

accompany the official notice and avoid avoidable circulation costs. The requestors do not have to be precisely the same people who signed the s 249N proposal; s 249P creates a separate statutory right.

Counterargument and caution. A critic may say HBC is using corporate machinery to advance labour policy unrelated to returns. HBC should therefore frame its case in credible corporate-governance terms and avoid defamatory assertions. It cannot use the register for unrelated contacts without considering s 177.

Conclusion. Yes, s 249P is HBC's most immediately useful campaigning procedure; satisfying a communication right must not be confused with holding enough votes to win a director election.

WEEK 6 TUTORIAL · ORIGINAL UNIVERSITY QUESTION WORDING

Tutorial Question 2 — FreshFoods' Dividend

The following reproduces the exact text of the supplied tutorial handout. It is separate from the original author's independently written explanatory model answer, which starts on the following page.

ORIGINAL QUESTIONS — NOT SIMPLIFIED OR OMITTED

Question 2: FreshFoods' dividend

FreshFoods has enjoyed several highly profitable years. Its constitution adopts the replaceable rules concerning dividends.

On 15 August 2026, the FreshFoods board determines that shareholders will receive a cash dividend of $0.40 per share, payable on 30 November 2026.

At the time the decision is made, FreshFoods is in a strong financial position.

The situation then changes dramatically.

On 10 November 2026, FreshFoods unexpectedly becomes liable to repay $900 million under a major debt facility. The board had expected to refinance the debt, but negotiations with the proposed lender suddenly collapse. FreshFoods owns substantial assets, including stores, warehouses and other property, but now faces a serious shortage of immediately available cash.

The board is reconsidering whether the dividend should be paid.

Advise FreshFoods on the following.

1. May FreshFoods legally pay the dividend?

What statutory requirements must be satisfied before FreshFoods can pay a dividend? Apply each element of the relevant statutory test to the facts. Does the fact that FreshFoods owns substantial assets necessarily mean that it can lawfully proceed with the dividend despite its liquidity problem?

2. May the board cancel the dividend?

Assume that paying the dividend would satisfy the minimum statutory requirements for a lawful dividend. That does not necessarily answer the next question:

Is FreshFoods required to pay the dividend because the board has already determined its amount and payment date, or may the board revoke it before 30 November?

Identify the relevant statutory provision and explain:

when the dividend becomes a debt owed by FreshFoods to its shareholders; and

whether the board can revoke its earlier decision before the payment date.

What is the last date on which the board could revoke the dividend?

3. Consequences of proceeding with the dividend

Assume instead that the board allows FreshFoods to proceed with the dividend despite serious concerns about the company's ability to meet its debts. Identify at least one potential legal consequence for the directors personally.

You do not need to analyse in detail doctrines that have not yet been covered in the course. It is sufficient to identify the potential issue and explain briefly why paying the dividend might create it.

4. Can the shareholders force payment?

Assume that the FreshFoods board revokes the dividend before it becomes a debt.

A group of shareholders is furious. They argue:

'FreshFoods is our company. It has made large profits for years, and the board already promised us this dividend. The shareholders should be able to vote to reinstate it.'

Can the shareholders pass an ordinary resolution requiring the board to reinstate the dividend? Identify the relevant provision concerning who determines that a dividend is payable, and relate your answer to the division-of-powers principles from last week's tutorial.

5. Would an older constitution change the result?

Finally, assume instead that FreshFoods was incorporated before 1998 and still has an old constitutional provision requiring dividends to be declared by shareholders in general meeting.

Assume the shareholders validly declared this dividend before FreshFoods' financial problems arose.

Would this change:

when the dividend became a debt; and

whether the dividend could subsequently be revoked?

Explain by reference to the relevant statutory provision.

WEEK 6 TUTORIAL · HIGH DISTINCTION MODEL ANSWERS

Question 2 — Full written answers

QUESTION 2(1) · MAY FRESHFOODS LAWFULLY PAY?

Issue. May a large, apparently profitable, asset-rich listed company lawfully distribute the $0.40-per-share dividend when a refinancing collapses and $900 million suddenly falls due?

Law. Section 254T(1)(a) requires assets to exceed liabilities by at least the amount of the dividend immediately before the dividend is declared, with figures determined under applicable accounting standards by s 254T(2). Section 254T(1)(b) requires fair and reasonable treatment of shareholders as a whole. Section 254T(1)(c) prohibits payment that materially prejudices the company's ability to pay creditors. A resulting inability to pay debts as due is a statutory example of material prejudice. Solvency is defined by s 95A and director risk may arise under s 588G. Determining a dividend under s 254U is not itself proof of lawful payment.

Application — limb (a). FreshFoods was financially strong in August, but the amounts of current assets, current liabilities, the total proposed dividend and its debt maturity profile are not provided. The board must obtain current accounts and forecast the relevant liability accurately. A $900 million repayment obligation changes the liability and cash-flow picture; the existence of real estate is not equivalent to a calculated accounting surplus adequate for the dividend. An exact arithmetic conclusion cannot honestly be reached from this problem alone.

Limb (b). A consistent cash dividend of $0.40 per ordinary share would often satisfy equality within the ordinary class under s 254W(1), but the board should verify different classes, constitutional entitlements and whether the dividend arrangement is fair to shareholders collectively. There is no fact suggesting discriminatory allocation, though that element must be articulated in the answer.

Limb (c). This is the decisive risk. With $900 million due and the replacement lender unavailable, FreshFoods may have insufficient liquid resources despite owning stores and warehouses. If it cannot raise funds, dispose of assets or lawfully refinance in time, paying the dividend could materially impair its ability to pay the debt facility and other creditors. It must not treat accounting wealth as proof of

ability to discharge near-term debts. The board should suspend payment pending detailed cash-flow testing and financial/legal advice.

Counterargument. FreshFoods may eventually realise value from property, obtain new funding or repay the debt by other means. Thus insolvency is not established merely by the words 'serious shortage of cash'; further evidence is needed. But the directors must not pay a dividend by assuming unfounded liquidity will materialise.

Conclusion. Payment cannot presently be certified as lawful. In particular, s 254T(1)(c) may prevent it. Reassess all three limbs on verified up-to-date evidence and keep the directors' duties distinct from the dividend test.

QUESTION 2(2) · REVOCATION AND EXACT TIMING

Issue. Having determined a dividend on 15 August, must the board honour it even after the November crisis?

Law. FreshFoods adopts the replaceable rules concerning dividends. Under s 254U(1), directors may determine that a dividend is payable and fix its amount, time and method. Under s 254V(1), fixing the amount or payment date *does not yet create a debt*. The debt arises when the fixed date arrives, and directors may revoke their decision at any time before that point. This statutory result is different from a constitutional declaration governed by s 254V(2).

Application. The August board decision fixed a dividend of $0.40 per share payable on **30 November 2026**. Since the due date has not yet arrived on 10 November and the company follows the modern s 254U arrangement, FreshFoods may revoke the determination before payment time. The board can protect creditors and shareholders from further harm by promptly recording a properly constituted resolution revoking the dividend, giving appropriate shareholder/market disclosure and maintaining evidence of its financial assessment.

What is the last date? Because the debt arises when the *time fixed for payment arrives*, the safest exam answer on an instrument specifying only a payment *date* is: **before 30 November 2026** — ordinarily by 29 November, unless an objectively established later time was lawfully fixed. The statutory rule does not license cancellation after the payment obligation has arisen on 30 November; avoid assuming a clock time absent from the facts.

Counterargument. Shareholders may point to the August announcement as a promise. But the statute deliberately distinguishes announcement/determination from debt formation. Their expectation is real, but is not the same as an enforceable debt before the due time under s 254V(1).

Conclusion. Yes, the board may revoke the dividend before its fixed payment time. It should act before the due date on the facts supplied and communicate the decision properly.

QUESTION 2(3) · DIRECTORS' PERSONAL CONSEQUENCES

Issue. What could happen if directors knowingly allow the dividend to proceed when FreshFoods may be unable to meet debts?

Law and application. Contravening s 254T(1)(c) may involve a prohibited dividend if it materially prejudices the ability to pay creditors. Section 588G may impose liability where the company incurs a relevant debt while insolvent, or becomes insolvent by incurring it, and the additional statutory requirements are met. Paying or permitting an imprudent distribution may also raise breaches of duties under ss 180–183, depending on evidence and the directors' conduct. Other relief might arise under s 1324 (injunction) or s 232 (oppression), or capital maintenance provisions in an appropriate case. The lecturer correctly identifies these as overlapping *potential* consequences for future weeks, but they are not all established by merely showing non-payment of a dividend.

Conclusion. The strongest immediate answer is potential director exposure concerning insolvent trading and duties, with liability contingent on proof of each element and any applicable defences. Directors should seek immediate legal and solvency advice, document deliberations and avoid unlawful distributions.

QUESTION 2(4) · CAN SHAREHOLDERS COMPEL PAYMENT?

Issue. Can angry shareholders vote by ordinary resolution to reimpose the dividend after the board revokes it?

Law. Under the assumed replaceable rule in s 254U(1), the directors determine dividends. Section 198A generally gives the directors the company's management powers. The Full Federal Court decision in *ACCR v CBA* [2016] FCAFC 80 confirms that the fact that shareholders own shares does not empower an ordinary general-

meeting resolution to command the board in areas the constitution assigns to directors.

Application. A large accumulated profit does not itself create a shareholder debt, and the August announcement was not irrevocable before the due date under s 254V(1). A general meeting's ordinary resolution to reverse the board's lawful revocation would therefore exceed its ordinary powers. Shareholders may lobby directors, lawfully elect or remove directors as the rules permit, and consider other remedies if there is actionable wrongdoing; they cannot automatically mandate this dividend by a simple vote.

Conclusion. No. Under these facts and governance rules, the ordinary resolution cannot bind the directors to restore the revoked dividend.

QUESTION 2(5)–(7) · THE OLDER CONSTITUTIONAL DECLARATION

Issue. Would an older constitution requiring shareholders to declare dividends change debt formation and revocation?

Law. Section 254V(2) expressly states that, where a company's constitution provides for declaration of dividends, a debt is incurred when the dividend is declared. This displaces the otherwise more flexible timing in s 254V(1) for that constitutional arrangement.

Application. On the modified facts, shareholders have validly declared the dividend before the $900 million financing crisis. The debt therefore arises upon declaration, rather than on 30 November, although the obligation might become payable later according to its terms. Directors cannot simply revoke it in reliance on s 254V(1). They must address the resulting debt and financial exposure through lawful means, rather than pretending the debt never arose. The phrase 'incurs a debt' does not by itself prove immediate insolvency: counsel must examine when payment falls due, actual resources and the separate elements of applicable liabilities.

Counterargument. Company age alone is not the statutory test; the operative constitutional clause is. A newly incorporated company could also adopt a declaration provision, and an older company could amend its constitution to use a determination model.

Conclusion. Yes, the old-style constitution materially changes both the timing of debt formation and the ability to revoke after declaration. This is the lecturer's critical comparison between ss 254V(1) and (2).

ACTIVE LEARNING · PASTEL BLUE

Frequently Asked Questions

Each answer teaches a distinction that a student should be able to explain orally and apply to new facts.

FAQ 1. Can a profitable company refuse dividends?

Generally yes. A profit does not automatically give a shareholder power to compel directors to determine dividends. Check s 254U, the constitution and class rights. Do not confuse corporate profit with an existing debt under s 254V.

FAQ 2. What is the difference between a shareholder and a director?

The shareholder owns the rights attached to shares; the director participates in managing the company subject to duties. Under s 198A and ACCR v CBA, shareholders do not automatically control routine operations.

FAQ 3. Can 110 members force an EGM?

Not by headcount alone. Section 249D requires at least 5% of votes; 110 qualifying members could satisfy the alternative numerical route under s 249N for proposing resolutions and under s 249P for distributing a statement.

FAQ 4. How does s 249E differ from s 249F?

Section 249E is a consequence of directors failing to respond to a valid s 249D requisition; a majority of requisitionists by their votes can take over and the company ordinarily meets reasonable costs. Section 249F enables holders of 5% to convene directly, at their own expense.

FAQ 5. What if a shareholder wants to tell members why directors should be removed?

Section 249P can require distribution of a statement if the 5% or 100-member threshold and written formalities are satisfied. The statement must observe the 1,000-word and defamation restrictions and cost rules.

FAQ 6. Does a board announcement turn dividends into debts?

Not ordinarily under s 254V(1) if the board merely determines payment. The debt arises when the fixed payment time arrives, unless a valid constitutional declaration rule triggers s 254V(2).

FAQ 7. Does owning buildings prove solvency?

No. Accounting assets can exceed liabilities while the company lacks liquid funds to pay creditors when due. Section 254T(1)(c) and s 95A require a practical, evidence-led consideration of creditors and cash flow.

FAQ 8. Is every improper dividend automatically insolvent trading?

No. It can create insolvency and liability risks, but s 588G has its own requirements, and statutory defences or relief may be relevant. Explain possibilities without assuming liability.

ACTIVE LEARNING · SOFT LAVENDER

Multiple-Choice Questions

Answer all ten before reading the key. In the electronic edition, use each answer expander; in the print edition, the full answers follow the questions on the next page.

MCQ 1. HBC members hold only 220 votes. Which threshold governs requisitioning a new meeting under s 249D?

A. At least 100 members

B. At least 5% of the votes that may be cast

C. At least 50% of members by headcount

D. Any three members

MCQ 2. HBC has 110 registered voting members. The route most clearly open for a lawful members' resolution is:

A. s 249N

B. s 249F

C. s 249D regardless of votes

D. s 588G

MCQ 3. The board receives a valid s 249D request. By when must it call the meeting?

A. 7 days

B. 14 days

C. 21 days

D. 2 months

MCQ 4. A valid s 249N notice is given on 1 October 2026 for an AGM on 18 November 2026. Is inclusion mandatory under s 249O?

A. Yes, 100-member rule overrides timing

B. No; the meeting is not more than two months after notice

C. Yes, if a director agrees orally

D. Yes, but only with 5% votes

MCQ 5. Which is an appropriate binding shareholder resolution in an Australian listed public company?

A. Order the board to open stores at 9 am

B. Order directors to employ 50% checkout staff

C. Remove a director under s 203D, properly complying with procedure

D. Command directors to pay a dividend by ordinary resolution

MCQ 6. A company is asset-rich but cannot meet a large debt next week. Which dividend limb is most obviously at risk?

A. s 254T(1)(c)

B. s 254T(2) alone

C. s 249P

D. s 254V(2) automatically

MCQ 7. Under s 254V(1), a board-determined dividend payable on 30 November generally becomes a debt:

A. On announcement

B. When profitability is recorded

C. When the fixed time for payment arrives

D. When the next AGM opens

MCQ 8. Under a constitution that validly provides for shareholder declaration, s 254V(2) creates a debt:

A. When the dividend is declared

B. Only when the board prepares cash

C. On company registration

D. Never

MCQ 9. Which statement about member-proposed resolutions is accurate?

A. Any 100 members can requisition an EGM

B. Section 249N makes every management order enforceable

C. Meeting procedure cannot give the general meeting a management power it lacks

D. All listed-company meetings can occur on seven days' notice

MCQ 10. Who ordinarily pays for an s 249F meeting?

A. ASIC

B. The company automatically
C. The members calling and holding the meeting
D. The directors personally by definition

MCQ Answers and Explanations

MCQ 1: B
Section 249D uses a voting-power threshold of 5%. The 100-member alternative belongs to ss 249N and 249P, not s 249D.

MCQ 2: A
Section 249N allows at least 100 qualifying members to propose a competent resolution for an eligible meeting, subject to the detailed formalities and timing.

MCQ 3: C
Section 249D(5) separates calling within 21 days from holding not later than 2 months after the request.

MCQ 4: B
Section 249O(1) refers to the next general meeting occurring more than two months after notice is given.

MCQ 5: C
The board controls general management. Section 203D grants public-company members a separate statutory director-removal power.

MCQ 6: A
The payment cannot materially prejudice the company's ability to pay creditors; having property assets does not guarantee liquidity.

MCQ 7: C
Fixing amount or payment time alone does not create the debt. The decision may be revoked before the fixed payment time.

MCQ 8: A

This is the critical exception to the otherwise later debt timing of s 254V(1).

MCQ 9: C

Procedural inclusion and substantive competence are separate questions; see the Full Federal Court in ACCR v CBA.

MCQ 10: C

Section 249F(1) allocates expenses to the convening members, unlike the distinct s 249E recovery mechanism.

ACTIVE LEARNING · PALE PEACH

Short-Answer Questions

Short-answer 1. Describe what a member owns when they hold company shares.
Write a reasoned answer identifying exact sections, their meaning and application.

Short-answer 2. Identify the difference between ss 249D, 249N and 249P.
Write a reasoned answer identifying exact sections, their meaning and application.

Short-answer 3. Why can a 2026 AGM be too early for a s 249N notice?
Write a reasoned answer identifying exact sections, their meaning and application.

Short-answer 4. Distinguish a director-determined dividend from a constitutionally declared dividend.
Write a reasoned answer identifying exact sections, their meaning and application.

Short-answer 5. Write every limb of s 254T(1) and explain an asset-rich/cash-poor example.
Write a reasoned answer identifying exact sections, their meaning and application.

Short-answer 6. How should HBC prepare individual director-removal and appointment resolutions?
Write a reasoned answer identifying exact sections, their meaning and application.

Short-Answer Model Answers

Short-answer 1

The member owns shares, which are personal property carrying defined rights. The member does not own a divisible piece of corporate land or cash. Corporate personality, the constitution, s 140, s 1070A and the division of board/member powers explain why.

Short-answer 2

Section 249D requires 5% votes and compels directors to call a new meeting. Section 249N uses 5% votes or 100 members for proposing a competent resolution at a meeting. Section 249P uses a similar 5% or 100-member threshold for circulating a relevant written statement, subject to restrictions and costs.

Short-answer 3

Section 249O(1) attaches the mandatory consideration mechanism to the next general meeting occurring more than two months after the notice. If notice is given 1 October and the AGM is 18 November, the required statutory interval has not elapsed.

Short-answer 4

Under ss 254U(1) and 254V(1), the board may determine a dividend and normally revoke before the time fixed for payment; debt arises at that time. Under s 254V(2), if the constitution provides for declaration, debt arises when the dividend is declared, making unilateral revocation much harder.

Short-answer 5

Assets must exceed liabilities by at least the proposed dividend immediately before declaration; payment must be fair and reasonable to shareholders as a whole; and payment must not materially prejudice the ability to pay creditors. A company with valuable but unsaleable warehouses may fail the creditor-protection limb if obligations fall due immediately.

Short-answer 6

Its lawyer must identify shareholder powers under s 203D and s 201G, satisfy s 203D(2) notice and relevant directors' procedural rights, prepare properly worded separate resolutions where s 201E applies, comply with listed-company meeting notice including s 249HA, establish candidate consent/eligibility and plan for a functioning compliant board. A management policy instruction under s 198A is not an equivalent shareholder power.

CHAPTER 5 • HIGH DISTINCTION MODEL-ANSWER WORKSHOP

Two Complete IRAC Problems and Model Answers

These are newly written exercises designed to build professional legal reasoning. They supplement rather than replace your original University Tutorial 5 questions. Read the complete problem before turning to the model answer. Each answer separates the legal issue, exact statutory rule, authorities, applied reasoning, counterargument, remedies and practical conclusion.

PROBLEM QUESTION 1 — SHAREHOLDER CAMPAIGN

The FreshFoods requisition dispute

FreshFoods Ltd is a listed public company with 20 million ordinary voting shares. The board has announced that 70% of stores will replace staffed checkouts with self-service stations. Humans Behind the Counter (HBC) consists of 110 registered shareholders holding two ordinary shares each. HBC sends a letter signed by all 110 members on 1 October 2026, demanding a new general meeting and proposing: (A) “The company must permanently retain 70% staffed checkouts”; and (B) “Director Williams be removed from office”. The directors refuse. HBC learns that the company's AGM is scheduled for 18 November 2026. On 24 October, HBC proposes calling its own meeting, distributing other shareholders' addresses to campaign volunteers, and recovering costs from the directors.

Advise HBC and FreshFoods comprehensively on meeting requisitions, directors' powers, existing AGM procedures, expenses and the practical alternatives. Identify all relevant statutory thresholds and competing arguments.

MODEL ANSWER 1 — ISSUE

The central issue is whether HBC can lawfully require an extraordinary general meeting, cause the company to place its resolutions before the already scheduled AGM, or convene a meeting itself. Closely connected questions are whether the proposed resolutions lie within shareholders' powers, whether the directors are in default, how costs are allocated, and what lawful corporate strategy a solicitor should recommend.

Rule: the meeting routes are distinct

Section 249D(1) requires members holding at least 5% of the votes that may be cast at a general meeting. Under **s 249D(2)(a)–(d)**, the request must be written, set out the proposed resolutions, be signed by the requesters and be given to the company; **s 249D(3)** allows identical separately signed documents, and **s 249D(4)** fixes the voting-power calculation at midnight before delivery. If a legally valid request has been made, **s 249D(5)** requires directors to call the meeting within 21 days and hold it within two months. Under **s 249E(1)**, if directors fail to act, members holding *more than 50% of the original requisitionists' votes* may arrange the meeting; **ss 249E(2)–(5)** govern timing, register access, reasonable expenses and potential recovery from liable directors. Alternatively, **s 249F** permits members with at least 5% voting power to convene and pay for their own meeting.

For an existing meeting, **s 249N(1)(a)–(b)** provides a different threshold: 5% of relevant voting power or 100 voting members, subject to **s 249N(1A)**. Under **s 249N(2)**, the proposed resolution must be in writing, set out in its exact terms and signed; **s 249O(1)** relates to a next general meeting occurring *more than two months* after the notice, and **s 249P** governs qualifying member statements. Meeting notices and timing are also subject to **ss 249H, 249HA and 249L**. A listed-company general meeting ordinarily needs at least 28 days' notice. For removing a public-company director, **s 203D** sets out an additional, distinct procedure, including notice of intention to move the resolution and the director's right to make representations.

Under **s 249Q**, a meeting must be called for a proper purpose. Members cannot automatically direct management that is constitutionally entrusted to the board: *Automatic Self-Cleansing v Cuninghame* [1906] 2 Ch 34; *NRMA v Parker* (1986) 6 NSWLR 517; and *ACCR v CBA* [2016] FCAFC 80. The **s 198A** replaceable rule and the actual constitution therefore matter.

Application: 220 shares do not establish 5%

HBC holds 110 × 2 = **220 voting shares** out of 20,000,000: **0.0011%** of the total. The company would need 1,000,000 relevant votes to satisfy 5%. Even assuming each HBC share carries one ordinary vote, its own holding falls far short. Consequently, HBC has no enforceable s 249D requisition entitlement on the stated facts. The directors cannot presently be characterised as having breached s 249D(5) by refusing this demand. That also prevents HBC relying on s 249E for company-funded self-help or directors' personal reimbursement liability.

The request's form is nevertheless important. It was signed and delivered, and contains the wording of the resolutions, but the statute's requirements are cumulative. Substantial compliance with writing and signatures cannot compensate for a missing 5% vote. Nor does s 249F assist: it repeats the 5% requirement and places the meeting expenses on the convening members. HBC should not assume it can shift those costs to the company. If HBC recruits one or more shareholders possessing sufficient additional votes and makes a new properly documented request, the result may change. A coalition's actual voting entitlement, precise signatures, share classes and timing must be verified.

Application: proposed resolutions must be lawful

Resolution (A), purporting to compel the board to keep 70% of staffed checkouts, is substantively vulnerable. A checkout policy ordinarily involves commercial management under s 198A and the constitution. *Cuninghame* shows that ownership does not transfer management powers to shareholders; *NRMA v Parker* limits the obligation to call meetings for incompetent business; and *ACCR v CBA* reinforces that a procedural right to propose a resolution does not itself make an operational instruction binding. HBC can advocate the policy politically, but it should not present it as a compulsory operational direction without identifying a substantive power.

Resolution (B) concerns the statutory shareholder power to remove a director of a public company under s 203D. It is fundamentally different from resolution (A). However, it must be properly framed and comply with the director-removal procedure, including applicable notice and representation rights, as well as the listed-company meeting rules and any other applicable statutory requirements. The solicitor should not treat a validly framed s 203D resolution as doomed merely because the board opposes it.

Application: the existing AGM

HBC's **110 members** may satisfy the 100-member alternative in **s 249N(1)(b)** to propose a resolution, assuming all are registered voting members and no different prescribed threshold applies. Yet 1 October to 18 November is approximately seven weeks, which is *not more than two months*. HBC therefore cannot compel inclusion in that AGM merely through the timing rule in s 249O(1). FreshFoods may choose to cooperate where lawful, but it must not promise that the statute requires circulation at that date. A later compliant meeting, carefully timed notice, and an appropriately drafted member statement under s 249P should be considered.

Counterarguments, remedies and advice

HBC may argue that shareholders should be able to debate policy in a democratic company. That is a legitimate advocacy consideration but does not eliminate the legal allocation of management power. FreshFoods may argue every activist proposal is an improper purpose; that is too broad. Removing a public-company director under s 203D is a recognised member power, so the actual wording and formalities must be examined. In litigation, an injunction or declaratory relief may be relevant if an invalid meeting is threatened, but costs, urgency and the availability of cooperative solutions should be assessed.

Conclusion: HBC cannot presently compel an EGM because 220 of 20 million votes is only 0.0011%. It should pursue lawfully permitted shareholder contact, build a coalition, check whether a major voting holder will support a fresh requisition, and separate non-binding advocacy about checkouts from a competent s 203D director-removal resolution. FreshFoods should document its threshold assessment, treat lawful director-removal procedures seriously and avoid obstructing properly qualified shareholder action.

PROBLEM QUESTION 2 — DIVIDEND CRISIS

A dividend the company may no longer afford

Oceanside Retail Ltd, a public company, has 10 million ordinary shares. Its directors resolved on 15 August 2026 to pay a dividend of 40 cents per share, payable on 30 November 2026. The constitution applies modern replaceable rules concerning directors' dividend determinations. On 10 November, a finance provider suddenly demands repayment of $9 million after refinancing negotiations fail. Oceanside's recent balance sheet reports total assets of $18 million and liabilities of $11 million, but only $1 million of its assets is cash. Most remaining assets are specialised retail premises and stock that cannot realistically be sold before the creditor's deadline. The board insists that because reported net assets exceed the intended $4 million dividend, it must pay. Shareholders threaten to sue if directors cancel it.

Advise the board whether payment is lawful, whether the dividend may be revoked, what insolvency and director-duty concerns arise, and whether the result differs if the constitution instead requires a dividend to be declared by members.

MODEL ANSWER 2 — ISSUE

The issues are (i) whether Oceanside satisfies the statutory conditions for payment; (ii) whether the previously determined dividend has matured into a debt; (iii) whether the board may revoke it before the specified payment date; and (iv) what creditor-protection and directors' duties arise from the imminent $9 million obligation.

Rule: statutory preconditions and financial reality

Section 254T(1)(a)–(c) establishes three cumulative preconditions: the company's assets must exceed its liabilities immediately before the dividend is declared, with the excess sufficient for payment; payment must be fair and reasonable to the shareholders as a whole; and payment must not materially prejudice the company's ability to pay creditors. Under **s 254T(2)**, the assets and liabilities calculation must be made by reference to prescribed accounting standards. Other parts of the Act, including restrictions on capital maintenance and insolvent trading, may also matter. The older approach requiring distributions only from profits should not be substituted for the current s 254T formulation.

Under the replaceable rule in **s 254U**, directors may determine that a dividend is payable and fix its amount, time and method, subject to the constitution and law. **Section 254V** distinguishes a dividend determined under the modern rule (generally not a company debt until payable) from a dividend declared under a constitutional regime requiring declaration (which may create an earlier debt). Consequently, a directors' determination made in August is not necessarily an irrevocable debt merely because a shareholder expects payment in November.

Application: apparent net assets do not answer the creditor question

Oceanside's reported asset surplus is $18m − $11m = **$7 million**, and the proposed dividend is 10m × $0.40 = **$4 million**. On those figures alone, the surplus exceeds the dividend amount. But s 254T requires satisfaction of all three conditions, not simply a favourable difference between total assets and liabilities. A company may own property it cannot sell quickly while still being unable to pay debts falling due. The due $9 million and the mere $1 million in cash make the creditor-prejudice analysis under **s 254T(1)(c)** particularly serious.

The board must establish realistic alternative funding, maturity dates, debt enforceability, the scope of any refinancing, the balance-sheet valuation date, share-

class rights and the company's actual cash-flow capacity. It is insufficient to say “the warehouses are worth millions” without explaining how their value can be realised lawfully in time. Directors must test the financial position immediately before the proposed payment and not rely mechanically on August's approval.

Application: determination, revocation and creditor protection

On the stated modern-rule facts, the dividend was determined by directors on 15 August for payment on 30 November. Under s 254V(1), it ordinarily does not become a debt until the payment date. Subject to the constitution and the full text of the section, revocation before that date is a real legal possibility. The company should consider a formal board resolution reversing or suspending the earlier determination, accurate recording in minutes, prompt communication to shareholders and independent financial advice. Directors should also consider their duties of care and diligence under s 180 and the statutory insolvent-trading framework under s 588G in light of the actual debts and insolvency risks.

Oceanside's shareholders will contend that a public announcement induces justified reliance and that withholding payment is unfair. Yet shareholder expectations do not override a statutory prohibition on an unaffordable distribution. No shareholder has an unconditional right to force a fresh dividend decision merely because the company was once profitable. A declared dividend under an older constitution requiring shareholder declaration presents a different debt-timing analysis under s 254V(2). Even then, the company may not simply ignore creditor-protection duties or assume that an existing debt guarantees cash availability.

Counterargument, professional advice and conclusion

An asset-rich borrower might lawfully pay if, for example, genuinely committed bridging finance arrives before the debt falls due, or the alleged $9 million liability is disputed or validly deferred. Conversely, if payment would materially prejudice creditors, directors risk serious statutory and fiduciary consequences. The burden of responsible advice is to obtain evidence, not make dramatic declarations about insolvency from incomplete figures.

Conclusion: The net-asset limb may appear satisfied, but the impending creditor payment creates a substantial issue under s 254T(1)(c). Oceanside should not pay the dividend while unable to establish compliance. Its directors should promptly reassess solvency, consider revocation before the 30 November date, obtain cash-

flow and legal advice, and document their reasoning. If the constitution instead requires a shareholder declaration, the legal debt may have arisen earlier and the remedies and options require separate specialist analysis.

Sources and quality control. These model answers are newly drafted pedagogical examples based on the Week 5 lecture's legal issues and related statutory framework. The specific fact patterns here are teaching hypotheticals and not replacements for the two original FreshFoods tutorial questions reproduced elsewhere in Chapter 5. For filing legal advice in a real matter, verify every relevant subsection and all applicable company-constitution terms against the current consolidated statute and actual company documents.

CONSOLIDATION · LECTURER'S PRIORITIES

Cases, provisions, revision route & publication notes

Cases and why they are here

Case	Principle / exam use
ACCR v CBA [2016] FCAFC 80	Division of powers; distinguishes incompetent management directions from resolutions members can lawfully move — key to HBC Proposal 1.
Automatic Self-Cleansing [1906] 2 Ch 34	Historic board/member division and the inability of a bare general-meeting majority to override allocated managerial powers.
John Shaw & Sons v Shaw [1935] 2 KB 113	Who exercises a power allocated by the constitution; relevant to board authority and limits on shareholder instruction.
NRMA v Parker (1986) 6 NSWLR 517	Meeting requisition and proper purpose; a shareholder resolution requires a legitimate legal subject matter.
IMF (Australia) v Sons of Gwalia [2005] FCAFC 75	Restrictions on using members' register information under s 177; relevant to lawful shareholder campaigning.
Re Clifton Springs Hotel [1939] VLR 27	Evidentiary significance of the register for establishing shareholding and contribution obligations.
Re Bahia and San Francisco Rail Co (1868) LR 3 QB 584	Company representations in certificates and estoppel/damages for mistaken share ownership.
Roberts v Coussens (1991) 25 NSWLR 171	Share transfer refusal and the scope of discretion; use with ss 1071E–1071F.

Read the exact statutory provisions

Start with the official current version of the Corporations Act 2001 (Cth), compilation No 149 (19 September 2026). The hyperlinks below open the relevant pages in the legislation:

Legal topic	Official law
Requisition and default	ss 249D–249E
Members calling meeting	s 249F
Member-proposed resolution	ss 249N–249O
Member statements	s 249P
Dividends: permission	ss 254SA–254T
Determination and debt	ss 254U–254V
Share dividend rights	ss 254W–254WA

Three critical warnings for publication

1. Original textbook: The Wiley *Company Law* chapter is a research and study source only. Its figures, chapters and prose are not licensed for wholesale republishing on JUNIQ. The educational proxy and certificate examples here are newly authored illustrations, not scans of the publisher's content.

2. Source conflicts: The narrated transcript occasionally paraphrases the legislation loosely: s 254T(1)(c) is the creditor material-prejudice rule, s 124(1)(d) is the relevant general power, and personal liability is not automatic. The model answers preserve the lecturer’s substantive focus while using the current Act as the governing text.

3. Completion: This edition integrates the supplied Week 5 lecture PPTX, Week 5 narrated dividend transcript and Chapter 6 textbook content, and the full Week 6 tutorial handout. A later live transcript, the separate Intrepid Mines document packet, and any additional source materials can be separately incorporated upon supply. Existing Chapters 1–4 have not been modified.

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CHAPTER SIX

PROMOTERS AND OUTSIDERS

Week 6 Forum | Week 7 Tutorial

FROM THE FIRST BUSINESS IDEA TO A BINDING CONTRACT

Promoters, fiduciary obligations and secret commissions

Contracts signed before registration: ss 131–133

Company capacity, execution and authority: ss 124–130

Actual authority, apparent authority and outsider protections

Cases, tutorials, FAQs, MCQs and High Distinction IRAC answers

A detailed Australian Corporate Law study and teaching chapter with original tutorial problems and practical client-advice models.

Chapter 6 — Deep teaching expansion: promoters, company contracts and outsiders

Before registration: ss 131–133

Company and agency: ss 124–127

Outsiders: ss 128–130

Reader's orientation (Week 6, LAWS75-310). The Bond reading screenshot specifies **Chapple et al, Company Law (3rd ed, 2023), Chapter 4 in full**, **Chapter 5, pp 117–135, stopping when §5.7 begins**, and close reading of **Corporations Act 2001 (Cth) ss 125–130 and 131–133**. Both of those textbook chapters have been supplied; the explanations here restate the concepts independently in original teaching language. The teaching follows the existing Chapter 6 and its Week 7 tutorial, preserving the legacy chapter and its original questions. The assigned excerpt **stops before the textbook's separate discussion of corporate tort and criminal liability**.

1. Start with a story — before the company, after the company, and the outsider

A graduate and a friend want to establish a chain of health-food cafés. They decide to create Reef Café Pty Ltd. Before it is registered, the graduate signs a lease “for Reef Café Pty Ltd”. After registration, the new business orders expensive coffee machines. A manager claims to have board approval, but no board meeting took place. The supplier delivers everything and asks to be paid. The company then argues that neither contract binds it.

This is not one legal problem. It is three layers. **First**, before registration the future company did **not exist** and could not simply act as a normal contractual principal. **Second**, once registered, the company has legal capacity but acts through real people. **Third**, the law needs to decide when an outsider may rely upon a director, officer, agent, signature or company procedure. Student answers earn marks by identifying which layer exists at which time, rather than applying a single vague rule about “authority”.

Three-route visual map

Before registration? → Part 2B.3: ss 131–133. After registration, acting through a person? → ss 124–127 + actual/apparent authority. Outsider challenges an internal

defect? → ss 128–130 + the company's representations and the outsider's knowledge or suspicion. Different questions require different legal tests and potentially different defendants.

2. Promoters: who are they and why does the law impose fiduciary responsibility?

A **promoter** is someone who takes a significant role in forming and setting a company going, rather than merely lending a neutral professional service. The concept arises from general law; **the Corporations Act does not supply a comprehensive definition**. Active promoters organise the venture, secure finance, negotiate contracts and encourage investors. People may also fall within the doctrine where their involvement and expected benefit show they participated in promotion despite leaving much activity to others. A solicitor who merely advises on incorporation under ordinary instructions is not automatically a promoter; a professional who instead drives the venture or takes a concealed interest might become one. Ask **what the person actually did**, not just what business card they held.

The central danger is that the promoter may control both sides of a transaction at the moment the new company lacks an experienced, independent decision-maker. A promoter might acquire land for **$300,000**, then cause the new company to purchase it for **$500,000**, without disclosing the promoter's earlier purchase and profit. The extra **$200,000** is not automatically lawful just because the promoter took commercial risk. The legal issue is **informed disclosure**, conflict and independent authorisation. Equity imposes fiduciary obligations because the promoter's position creates an opportunity to act for personal gain at the emerging company's expense. A fiduciary must avoid unauthorised conflicts and unauthorised secret profit; whether a transaction can be retained depends on full disclosure and valid, independent approval in the circumstances.

Key cases explained in usable examination language

Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218. The promoters sold an asset into a company formed under their influence at a profit, with disclosure and independence of approval at issue. The House of Lords treated the absence of an independent and properly informed corporate decision as critical and recognised rescission in the circumstances. **Why use it?** It shows why a promoter cannot protect an interested transaction merely by arranging approval from people under the promoter's control. In an answer, identify the conflicted transaction, who knew what, whether the company had a genuinely independent decision-maker and whether restoration remains possible.

Gluckstein v Barnes [1900] AC 240. Promoters used arrangements surrounding a property acquisition to obtain an undisclosed gain beyond what was openly revealed to the

company. The case illustrates the strict approach to **secret profits** and the need for effective disclosure. **Why use it?** Do not limit your enquiry to whether the gross transaction price was commercially plausible. Trace every payment, rebate, commission, connected entity and beneficiary; ask whether the company or truly independent shareholders were told the material facts. The practical remedy may include an **account of profits**, even where proving an exact matching corporate loss is difficult.

Tracy v Mandalay Pty Ltd (1953) 88 CLR 215; [1953] HCA 9. In a property-development promotion, persons benefiting from the scheme could be treated as promoters even where they were not the most active organisers. **Why use it?** A participant does not necessarily escape responsibility by saying that someone else conducted the meetings and paperwork. Identify each person's stake, agreement, role and anticipated gain; the label “passive investor” is not conclusive. Official High Court judgment.

Disclosure and remedies. A company may pursue remedies depending on the facts, including rescission where available, an account of profits, equitable compensation or other orders; the remedy must be fitted to the wrong and the possibility of restoration. For public fundraising involving a prospectus, **s 711(2)–(4)** imposes specific disclosure rules for interests and benefits of the prescribed people, including promoters. That does not mean every private proprietary-company formation triggers a prospectus. First establish whether the statutory disclosure regime actually applies.

3. Pre-registration contracts: the company did not exist yet

A company legally comes into existence when registered: **s 119**. Before that, a person cannot simply claim the future company was their principal in the ordinary agency sense. The present statutory starting point is **s 131**, not the superseded common-law rules. Under **s 131(1)**, a company subsequently registered (or a reasonably identifiable company) becomes bound by and entitled to benefit from the pre-registration contract if it **ratifies** within the time the parties agreed or, if none is agreed, within a reasonable time. **Ratification** here means adopting that earlier contract through legally sufficient corporate action; merely receiving an invoice, incorporating, or using a similar name should not be treated as automatic proof of ratification.

Section 131(2) exposes the **person who purported to contract** to statutory damages if the company is not registered, or if registration occurs but neither ratification nor a substitute contract occurs within the relevant time. The statutory measure looks to what the company would have owed for complete non-performance had it ratified. **Section 131(3)** allows a court, in the prescribed registered-but-unratified circumstances, to make suitable orders against the company. **Section 131(4)** permits an order against the pre-registration contracting person in certain cases where the company ratifies but subsequently fails to

perform. The risk therefore does not disappear merely because the company ultimately exists.

Section 132(1) permits a contractual counterparty to sign a release of the person's statutory liability. Under **s 132(2)** the person has **no automatic right of indemnity** against the company under this Part even where purporting to act as trustee. **Section 133** displaces other rights and liabilities on the pre-registration contract itself. In practice, advise the client to decide who should sign, create clear conditions, set a realistic ratification date, record post-registration adoption properly, and obtain any necessary release or substitute contract expressly.

Worked timing example — the $30,000 lease deposit

Maya signs an equipment lease for **$30,000** on 1 August on behalf of a company she intends to register. The lease says the new company must ratify it by **1 September**. It registers on **15 August** but the board never ratifies by 1 September. On these stated facts the key question is whether the company ratified or entered a substitute within the **agreed period**. If neither occurred, the company is not automatically made liable by registration alone. Maya faces potential damages under **s 131(2)**. The counterparty's remedy needs proof of the relevant breach and statutory measure. Maya should not simply debit the new company's account and presume an indemnity, given **s 132(2)**. If the board later validly adopts a new contract, analyse whether it is a substitute and what liabilities remain; do not conflate a new agreement with timely statutory ratification.

4. A company has capacity, but capacity is not authority

Under **s 124(1)** a registered company generally has a natural person's legal capacity and the powers of a body corporate. **Section 125(1)** allows the constitution to restrict the exercise of a corporate power but provides that a purported exercise is **not invalid merely** because it violates that restriction. **Section 125(2)** similarly addresses constitutional objects. This is the contemporary answer to much of the old *ultra vires* problem: the company may have general legal capacity despite internally restricting how it should act. But the directors or agents may still breach internal duties, and an outsider's ability to bind the company requires a separate authority analysis. A constitution is therefore not irrelevant; it is just not a universal weapon for voiding inconvenient third-party contracts.

A company may contract through an individual agent with **express or implied authority** under **s 126(1)**. Express actual authority is communicated in words, board resolutions, role documents or a power of attorney. Implied actual authority may arise from the person's role, established course of dealing, necessary incidents of delegated responsibilities or company acquiescence. A warehouse manager ordinarily authorised to buy routine supplies is not

therefore obviously authorised to mortgage the company's headquarters. Always ask **what was actually authorised, by whom, on what terms, and at what time?**

The separate concept of **apparent (ostensible) authority** protects a counterparty in some situations where the company, by an authorised representation or consistent conduct, holds a person out as having a particular power and the counterparty deals on that basis. **Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480** illustrates the company's acquiescence in someone acting as managing director and the reliance of outside contractors on that outward position. The key is a representation attributable to the company, not simply an agent saying “I can sign”. Evaluate the scope of the claimed authority, the source of the representation, reliance and the company's actual capacity.

Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd (1975) 133 CLR 72; [1975] HCA 49 is a limiting example. A person without actual authority to make the necessary representation cannot manufacture the apparent authority of another person by a chain of unsupported assurances. **Why use it?** When a junior employee says “my manager authorised me”, do not leap immediately to a binding company contract. Find a representation by the company or someone properly authorised to make it, not merely the alleged agent's self-certification.

5. Document execution: s 127 is valuable but not the only path

A company may directly execute a document without a common seal in the configurations set out in **s 127(1)**, including **two directors** under (a), **a director and company secretary** under (b), or in the qualifying sole-director proprietary-company situations under **(c)(i)–(ii)**. **Section 127(2)** addresses execution using a common seal and the required witnessing; **s 127(2A)** addresses observing a seal by physical or electronic means. **Section 127(3)–(3B)** covers execution as a deed and relevant modern formalities. Electronic signing is also supported by the technology-neutral rules in **Part 1.2AA**. **Section 127(4)** preserves other available ways of executing documents; failure to use the s 127 method is not invariably the end of the authority question.

Explain to a client why this matters. A lender confronted with a properly executed s 127 document has a stronger statutory assumption under **s 129(5)** (or **s 129(6)** with a seal) than one relying only upon an employee's emailed promise. Conversely, an adviser should never assume two signatures are conclusive without checking whether the signature appearances and the outsider's knowledge or suspicion bring the particular statutory assumption into play.

6. The indoor management rule and modern statutory assumptions

The historical **indoor management rule**, associated with **Royal British Bank v Turquand (1856) 6 E & B 327**, responds to a commercial problem: outsiders cannot realistically attend each internal corporate meeting to check every approval. The law historically allowed outsiders, in appropriate circumstances, to assume that internal procedures were performed. That principle must now be read alongside the statutory assumptions. **Section 130** prevents public availability of ASIC information, by itself, from creating constructive notice. In plain language, a counterparty is not deemed to know every fact in a public ASIC record merely because it could have searched for it.

Section 128(1) generally entitles someone dealing with a company to make the **s 129** assumptions, and limits the company's capacity to assert the contrary in proceedings. **Section 128(2)** extends protection in certain property-title dealings. Crucially **s 128(3)** permits assumptions even in dealings involving fraud or forgery; however **s 128(4)** denies the assumptions where the outsider **knew or suspected** at the time of dealings that the relevant assumption was incorrect. Thus, “fraud occurred” alone is not a complete conclusion. The outsider's knowledge and suspicion must be separately analysed.

The **s 129** assumption map: **(1)** the constitution and replaceable rules have been complied with; **(2)** an ASIC-identified director or secretary is duly appointed and can exercise the powers customary for comparable officers; **(3)** a company-held-out officer or agent is properly appointed and has customary authority; **(4)** officers and agents properly perform duties; **(5)** s 127(1)-style signing supports due execution; **(6)** appropriately witnessed seal execution supports due execution; and **(7)** particular document-issuance officers or agents have authority to warrant authenticity. The exact text and factual preconditions matter; an outsider should plead the particular subsection rather than saying merely “the indoor management rule applies”.

Northside Developments Pty Ltd v Registrar-General (1990) 170 CLR 146 is particularly valuable for testing suspicious transactions and the limits of reliance. A mortgage over company assets used for purposes that appeared to benefit connected interests calls for scrutiny of the facts available to the outsider, the company's authority and the surrounding warning signs. The case is not a slogan that every forged document is ineffective or that lenders may never rely on corporate signatures. Read it together with **ss 128(3)–(4)** in the modern statutory regime and distinguish the then-applicable law from the current Act.

A corporate contracting decision tree

Was the company registered when the deal was made? If no, use **ss 131–133**. If yes, **what actual corporate power and constitutional restriction apply under ss 124–125?** Then ask **who purported to act and did they have actual authority under s 126?** Next

consider **apparent authority attributable to the company**. If a document is signed, check **s 127**. For outsiders, test **each relevant s 129 assumption through s 128**, including the outsider's actual knowledge or suspicion under **s 128(4)**. Finally identify **who owes what to whom and what remedy**. Never assume that demonstrating an internal breach necessarily defeats the outsider's claim.

7. Apply the law to a realistic commercial transaction

Original worked problem. Bayshore Kitchens Pty Ltd has one director, Talia, and no company secretary. Its constitution says that borrowing above **$100,000** needs board and member approval. Talia tells the company's purchasing manager Leo, “You can order the necessary new ovens within the usual operating budget.” Leo signs a **$180,000** equipment purchase agreement after telling the supplier, “I have authority to bind Bayshore on any deal.” The supplier knows only that Leo regularly places orders around **$8,000**. Talia also signs a separate **$180,000** loan for the equipment in her own capacity as sole director; the finance company receives an email from Talia saying that company approvals have been obtained, although no formal member approval occurred.

For the **equipment supply**, determine whether Leo had **express actual authority** (his instruction appears limited), **implied actual authority** (past $8,000 orders are not comparable), or **apparent authority** (what did Bayshore or an authorised officer represent about $180,000 deals?). Leo's own statement is insufficient by itself: compare **Crabtree-Vickers**. **Section 129(3)** may matter if Bayshore held Leo out as an agent with customary authority for transactions of this kind, but not every purchasing-manager title extends to a six-figure exceptional order. Check **s 128(4)** for information the supplier actually knew or suspected.

For the **loan**, identify that the company is a sole-director proprietary company without a secretary and consider **s 127(1)(c)(ii)** and the matching **s 129(5)** execution assumption if the relevant formalities appear to be met. The constitutional borrowing limitation engages **s 125** (not automatically invalidating the external act) and **s 129(1)**, but the supplier or lender's actual knowledge or suspicion remains material under **s 128(4)**. Talia's inaccurate email raises internal duties and evidence issues. The finance company has stronger arguments if execution looks compliant and no red flags arise, but no sound lawyer guarantees enforceability without reading the signed documents, company register and communications. Internal governance and outsider protection are separate inquiries.

8. The textbook's own teaching objectives translated into client questions

Chapter 4, §4.1 — Identify the promoter: Who initiated the business, negotiated asset transfers, attracted investors and expected a benefit? **§4.2 — Duties:** Did that person place self-interest ahead of the emerging company, or conceal a profit? **§4.3 — Remedies:** Could the company rescind, recover a profit or obtain equitable relief, and what would restoration require? **§4.4 — Pre-registration contracts:** Was the company registered and did it ratify on time under s 131, or is the signer exposed to damages?

Chapter 5, §§5.1–5.2 — Company power and contracting: Differentiate the legal capacity of the company from the authority of the natural person signing. **§5.3 — Agency:** Is actual or apparent authority established by evidence? **§5.4 — Execution:** Was the s 127 pathway followed and, if not, was another lawful pathway available? **§5.5 — Indoor management:** What internal irregularity does the outsider claim not to know? **§5.6 — Statutory assumptions:** Identify the exact assumption and test **s 128(4)**. The lecturer's prescribed excerpt ends before **§5.7**; the latter subject is not represented as part of the Week 6 assigned reading here.

9. FAQs — simple answers grounded in the precise rules

FAQ 1 — Is everyone who helped start a company automatically a promoter?

No. The law looks at the person's substantive role and influence. Active organisers and persons participating for gain may qualify; routine independent professional advisers generally do not become promoters merely by registering the entity. The promoter inquiry matters because fiduciary duties and disclosure obligations may follow from the role.

FAQ 2 — The company is registered now; does that mean the contract signed last week binds it?

No. **Section 131(1)** requires registration of the relevant company **and timely ratification**. If there is no timely ratification or substitute and the conditions apply, the signer may be liable under **s 131(2)**. Registration is a necessary chronology point, not a substitute for legal analysis.

FAQ 3 — Can a promoter keep a profit after selling their land to the new company?

A profit is not categorically prohibited, but **undisclosed conflicts and secret profits** are a serious fiduciary problem. Analyse who made the profit, what was disclosed, to whom, whether the approval was independent and informed, and what equitable remedy may be available. **Erlanger** and **Gluckstein** provide leading illustrations.

FAQ 4 — Does a clause in the constitution make an outsider's contract void?

Not merely because corporate exercise contravened that restriction: see **s 125(1)**. The person's authority, the terms of the contract and any available outsider assumptions require separate examination. Directors may still face internal consequences for breaching valid restrictions.

FAQ 5 — Does the company need two directors to sign every contract?

No. **Section 127** offers specified formal execution methods, including certain sole-director proprietary-company arrangements, but **s 127(4)** leaves other lawful methods possible. Under **s 126**, an appropriately authorised agent may bind a company. Ask which mechanism is actually being relied on.

FAQ 6 — If a signature was forged, can a lender ever rely on it?

Potentially **s 128(3)** allows assumptions even where fraud or forgery occurred, but **s 128(4)** prevents reliance if the outsider knew or suspected the assumption was wrong. The particular **s 129** assumption must be available on the facts. Read the document, identities, surrounding circumstances and warning signs closely rather than making a blanket statement.

FAQ 7 — What is the practical difference between actual and apparent authority?

Actual authority concerns power truly given to the agent by the company (expressly or by implication). **Apparent authority** concerns authority the company represented to the outsider as existing, coupled with the necessary legal requirements. An employee's unsupported boast proves neither. This distinction often decides whether the company or the individual must face the counterparty's claim.

10. Multiple-choice questions — reasoning with each answer

MCQ 1. Which fact alone binds a registered company to a pre-registration lease? A. Its later registration; B. A promoter's hope; C. Timely statutory ratification under s 131(1); D. Its new letterhead. **Answer: C.** The Act requires the registered relevant company to ratify in the agreed or reasonable period.

MCQ 2. A promoter receives an undisclosed rebate while selling property to the new company. Which authority is especially relevant? A. Gluckstein v Barnes; B. Salomon only; C. s 249D; D. s 254T. **Answer: A.** *Gluckstein* concerns secret promoter profit and the strict duty of disclosure.

MCQ 3. A company constitution prohibits loans above $100,000 without member approval. Under s 125(1), an exercise that breaches the clause is: A. necessarily invalid solely for that

reason; B. not invalid **merely** for that reason; C. always criminal; D. a dividend. **Answer: B.** External validity, authority, outsider assumptions and internal accountability must be analysed separately.

MCQ 4. A junior employee tells a supplier that a different employee has unlimited authority. The company has said nothing. Which issue is central? A. Can apparent authority be created by an agent's unsupported claim? B. Are cash dividends payable? C. Has an AGM occurred? D. Is a company a trust? **Answer: A.** The company-attributable representation requirement is central; *Crabtree-Vickers* provides a warning.

MCQ 5. Which rule generally disqualifies an outsider from relying on s 129 assumptions? A. Section 128(4), if the outsider knew or suspected the assumption was incorrect; B. Any breach of the constitution; C. Mere public availability of ASIC records; D. Every case of employee fraud. **Answer: A.** The statute separates fraud/forgery in s 128(3) from the knowledge/suspicion restriction in s 128(4).

MCQ 6. A qualifying sole-director proprietary company with no secretary executes a contract by that director signing. Which is the most directly relevant pathway? A. s 127(1)(c)(ii); B. s 249A; C. s 254W; D. s 711. **Answer: A.** Always check precise officer status and how execution appears before claiming the s 129(5) assumption.

11. Short-answer questions — High Distinction-style responses

SAQ 1 — Why must a promoter disclose conflicts even when the company agrees to buy the asset?

Because the agreement may have been engineered at a time when the promoter controls who speaks for the new company. Fiduciary regulation addresses the **process and loyalty of decision-making**, not only whether a price can be justified retrospectively. **Erlanger** demonstrates why an independent decision-maker and effective disclosure matter; **Gluckstein** demonstrates why concealed promoter gains can be recoverable. Ask whether approval was sufficiently informed and independent and whether the company retains an available equitable remedy.

SAQ 2 — State the correct chronology for a pre-registration contract problem.

First identify **the contract date** and whether the proposed company existed under **s 119**. Second identify **the human signer** and whether the contract purported to benefit the future company. Third establish registration and whether it is the company reasonably identifiable with the original arrangement. Fourth determine the **agreed or reasonable time** for ratification under **s 131(1)**. Fifth decide whether ratification or a substitute contract was made in time. Sixth analyse personal damages under **s 131(2)** and discretionary orders

under **s 131(3)–(4)**, plus release and indemnity under **s 132**. Finally give a documented risk-management recommendation, not just a conclusion of liability.

SAQ 3 — Explain the relationship between the indoor management rule and ss 128–130.

The historical rule seeks to prevent outsiders from having to audit internal company procedures before ordinary dealings. Contemporary statutory protection is more precise: **s 128** confers entitlement to the **particular** assumptions listed in **s 129**, while **s 128(4)** excludes someone who knew or suspected the assumption was wrong. **Section 130** rejects constructive notice merely from public ASIC information. A careful answer uses the common-law rule as context but applies statutory elements to the evidence rather than treating it as an all-purpose exemption from due diligence.

12. Original full tutorial-style IRAC model answers

Problem A — promoter's secret profit

Question. Elena buys a warehouse for $520,000 with the plan to form Studio West Pty Ltd. Before the company has an independent board, she arranges for it to buy the same warehouse for $760,000. She discloses that she is the seller but does **not** disclose her earlier purchase price or a separate $35,000 facilitation commission she receives from a connected entity. Investors ask whether she breached a duty and what can be done.

Issue. Whether Elena was a promoter, whether she owed fiduciary obligations, whether the transaction involved an inadequately disclosed conflict or unauthorised profit and what remedy is possible.

Rule. Equity imposes fiduciary duties upon qualifying promoters. **Erlanger** scrutinises the independent and informed nature of corporate approval where a promoter sells property into the company. **Gluckstein** illustrates liability for undisclosed promoter gains. Remedial possibilities can include rescission, account of profits and other equitable relief, depending on proof, election and practical circumstances.

Application. Elena planned formation and engineered the transaction, so she is likely an active promoter. Her financial interest as vendor is an obvious conflict; the resale margin is **$760,000 − $520,000 = $240,000**. The connected commission of **$35,000** raises a further potential hidden benefit. The fact the company knew she was the seller may not constitute full disclosure if material facts about the transaction and separate benefits were withheld, especially where independent corporate judgment was absent. However neither the **entire $240,000 price difference** nor the **$35,000** should be automatically treated as the measure of judgment without examining legitimate costs, consideration, disclosure, authorisation and

available remedies. Evidence will include titles, conveyancing records, invoices, investor materials and minutes.

Counterarguments. Elena may argue that the independent shareholders approved with sufficient information; that she bore commercial risk; that a fair purchase price was obtained; or that rescission is impossible because the asset has been changed or third-party rights intervened. Those facts affect legal assessment and available relief but do not automatically authorise concealed profit.

Conclusion. There is a substantial promoter-duty and disclosure issue. Advise the company to preserve all transaction documents, commission trails and approvals; obtain an independent valuation and governance advice; and assess rescission or an account of profits only after determining what was known and whether those remedies are available.

Problem B — pre-registration lease and a disputed signatory

Question. Before incorporation, Sam signs a five-year office lease “on behalf of FutureMap Pty Ltd”. The parties agree that FutureMap must ratify within 30 days. The company registers 14 days later but its directors decline to ratify. The landlord claims the company must pay because it now exists, and Sam claims that if personally liable, the company must reimburse him. Advise each party.

Issue. Does registration alone bind the company? Is Sam exposed to statutory damages? Can Sam insist upon corporate indemnity?

Rule. Section 131(1) requires timely ratification by the registered or reasonably identifiable company. **Section 131(2)** provides for the signer's damages liability in the defined non-registration or non-ratification circumstances. The court has possible orders under **s 131(3)** where the registered company has not ratified or entered a substitute, and **s 131(4)** where it ratified but failed to perform. **Section 132(1)** permits a written release and **s 132(2)** denies an automatic indemnity. **Section 133** defines the pre-registration contract regime's replacement of other rights and liabilities on that contract.

Application. Sam made the lease before FutureMap existed and therefore cannot assume it was an ordinary company contract. Registration after 14 days did not of itself ratify it. The 30-day agreed period governs. If there was no qualifying ratification or substitute contract within it, the company is not bound under s 131(1) merely because it was registered, and Sam may face the statutory damages claim under s 131(2). The landlord should document actual loss and the measure stipulated by the Act. Sam cannot assume a right of reimbursement under s 132(2). A discretionary order involving the company is possible only if its own statutory conditions and the court's judgment warrant it.

Counterarguments. Evidence of a valid board resolution or other sufficient corporate adoption within 30 days might change the result. A later new contract might be relevant as a

substitute if made within the specified period. The precise lease terms, corporate dealings, dates and remedies must be scrutinised.

Conclusion. Sam's personal exposure is real and registration alone is inadequate. A properly documented timely ratification or substitute agreement, or a signed release from the counterparty where appropriate, would be the risk-management solution. Each party should preserve the lease, registration data, communications and board records.

Problem C — outsider, authority and the suspicious mortgage

Question. A manager at Timberline Pty Ltd signs a bank mortgage using the company's assets to secure repayment of a debt of the manager's personally owned business. The manager says “the directors approved it”, but the bank has received a company email indicating that the board raised concerns about use of company property for the personal debt. There are no board minutes approving the arrangement. The bank argues that it may assume everything was regular.

Issue. Did the manager have actual or apparent authority and can the bank rely on specific statutory outsider assumptions despite the warning signs?

Rule. Sections 124–125 govern corporate capacity and constitutional restrictions, while **s 126** addresses contracting by authorised agents; **s 127** governs prescribed execution methods. **Section 128(1)** supplies entitlement to **s 129** assumptions, including internal compliance under **s 129(1)** and held-out agents under **s 129(3)** where available. **Section 128(4)** bars reliance where the counterparty **knew or suspected** the assumption was incorrect. The practical concern in **Northside Developments** is that unusual security arrangements may carry warning signs that defeat a casual reliance argument, though the modern statutory language controls.

Application. The company's legal capacity is not the decisive issue. There is no evidence the manager had actual authority to encumber corporate property for their unrelated business; the benefit flowing to the manager's business is commercially unusual. The bank must identify what the company itself represented about the manager's power and whether a relevant s 129 assumption is properly invoked. The email describing board concerns is particularly important evidence that the bank may have suspected the asserted internal approval was false. Even if company procedures were typically assumed to be regular, **s 128(4)** requires direct attention. If the mortgage was not signed as s 127 specifies, its execution-based assumptions may not be available, though other avenues can be investigated.

Counterarguments. The bank could rely on evidence of prior similar authorised mortgages, later valid corporate approval, a different genuine corporate benefit, or documentation satisfying a particular statutory assumption. The company must prove its

case concerning the knowledge or suspicion restriction, and the precise evidence may be disputed.

Conclusion. The bank's blanket “indoor management” assertion is insufficient. Request the mortgage, signature records, ASIC officer data, board minutes, relevant emails and details of the underlying debt. Analyse each assumption separately and advise on the enforceability claim, possible internal duty breaches and options to protect company assets.

13. Final issue-spotting and suggested reading plan

Read in this order: The Week 6 Bond instructions; **Chapple et al, Company Law (3rd ed, 2023), Chapter 4 pp 97–114, in full**; then **Chapter 5 pp 117–135, stopping at §5.7**, concentrating on actual authority, apparent authority, document execution and the statutory assumptions. Read the current **ss 125–130 and 131–133** word for word. Use **Tracy**, **Erlanger**, **Gluckstein**, **Freeman & Lockyer**, **Crabtree-Vickers** and **Northside** to explain not merely a slogan but facts, issue, reason, result and application. Review the lecturer-recommended **Redmond extract pp 147–156** and its case extracts at **pp 318–335** if licensed through the Bond library; that extract was not part of the uploaded PDFs. Then answer the existing original Week 7 tutorial and compare the saved model answers. Do not confuse the *textbook chapter number* with the *Corporate Law teaching-book chapter number*.

Primary law, verified version: Corporations Act 2001 (Cth), compilation 19 September 2026. **Historical case directly verified:** Tracy v Mandalay, High Court. Other case citations are derived from the uploaded prescribed textbook and current case-source cross-checks; a court/official judgment hyperlink should be substituted only after positive destination verification. *Original educational commentary only; not a substitute for the textbook or legal advice.*

CHAPTER 6 — PROMOTERS AND OUTSIDERS

Promoters and Outsiders

Week 7 Tutorial · Full original questions followed immediately by High Distinction answers · 15 ranked questions for your lecturer · 26 October 2026

HOW TO READ THIS EDITION

This learning supplement integrates the supplied 31-slide forum, the verbatim 2-page Tutorial 6, the live recording transcript supplied in Pasted text.txt, and the author's current course summary. This is an expansion of—not a deletion or replacement for—the earlier 30-page teaching guide. Read the narrative, cases and legislation before attempting the original tutorial. The 15 lecturer questions deliberately extend beyond the slides.

SOURCE LIMITATION. The live transcript supplied ends while the lecturer is discussing Freeman & Lockyer. Later topics are confirmed by the 31-slide deck and the screenshots, not attributed to unseen spoken words. The prescribed textbook Chapter 4, Chapter 5 pages 117–135 and optional Redmond extracts were identified by the reading screenshot but not supplied as full text; this supplement does not claim to have reproduced them.

1. The story behind this week's law

Imagine buying a business property through a company you have not yet incorporated. You sign a lease, obtain equipment quotes and seek outside investment. Before registration, who can contract for the company? The company does not yet legally exist. Once registered, it can contract—but it acts only through people. This module joins these two stages in a single lawyer's question: when is the company bound, and who pays if the arrangement goes wrong?

The lecturer's memorable analogy is that incorporation is a company's birthday. The period before registration is its formation or promotion period. Promoters arrange capital, business

plans, premises, investor interests and contracts. Courts focus on what people actually did, not their business titles. A person may be a promoter by actively organising formation or, exceptionally, by knowingly standing behind the transaction expecting profits from the promotion.

EXAM STARTING POINT

Write the chronology first: (1) Was the agreement made before registration? → ss 131–133. (2) Was it made after registration? → capacity under s 124, authority under s 126 or execution under s 127, then assumptions under ss 128–129. (3) Did a promoter profit secretly? → fiduciary duty and equitable remedies.

2. The law you must be able to explain aloud

s 119

Company exists from the start of registration. Before that point there is no corporate principal able to appoint an agent or contract.

s 122

Permits expenses of promoting and establishing a company to be paid from company assets; it does not itself ratify pre-registration contracts or immunise promoters.

s 124(1)–(3)

Companies generally have individual-like and corporate legal capacity. Section 124(2) distinguishes capacity from whether an act benefits the company; s 124(3) preserves external legal prohibitions.

s 125(1)–(2)

A restriction on powers or corporate objects in the constitution does not automatically invalidate an act merely because it exceeds that restriction/object.

s 126(1)

An individual can make, vary, ratify or discharge contracts for a company with express or implied authority. Modern text also covers execution of documents and deeds; the key question is actual authorisation.

s 126(2) and related execution provisions

Other laws requiring specific contractual procedures still apply. Do not assume that s 126 dispenses with separate legal formality.

s 127(1)(a)–(c)

Execution WITHOUT a seal: two directors; director and secretary; or a sole director of a proprietary company who is also sole secretary or where there is no secretary. Chloe alone cannot satisfy this when Sunshine Surf has two directors.

s 127(2)–(4), s 110A

Execution with a seal requires statutory witnessing; deeds and technology-neutral signing have additional rules. Section 127 does not exhaust all ways a company may execute documents.

s 128(1)

Outsider may rely on listed s 129 assumptions and company cannot assert against the outsider in proceedings that they were wrong.

s 128(2)

Protects certain dealings involving persons acquiring or purporting to acquire title to property from a company.

s 128(3)

Assumptions may remain available even where an officer/agent is fraudulent or forges a document—read with s 128(4), not as unlimited protection.

s 128(4)

Protection is not available if outsider KNEW or SUSPECTED the specific assumption was false at the time of dealing. Mere failure to check is not automatically equivalent.

s 129(1)

Company constitution and replaceable rules assumed followed: internal regularity.

s 129(2)(a)–(b)

Person shown as director/secretary in company-provided public ASIC information is assumed appointed and to have customary powers of a similar office—not unlimited standalone director power.

s 129(3)(a)–(b)

Person HELD OUT BY THE COMPANY as an officer or agent is assumed duly appointed and to possess customary powers of that office. Crucial in Chloe's case if Ethan/company permitted the title or role.

s 129(4)

Outsider may assume officers and agents properly perform their duties to the company, including required internal processes where otherwise relevant.

s 129(5)(a)–(d)

Apparent signatures complying with s 127(1) can be assumed due execution; specified claims about signatory capacities may be assumed true.

s 129(6)(a)–(f)

Equivalent presumptions where a seal appears affixed/witnessed under s 127(2) and 127(2A).

s 129(7)–(8)

Person authorised to issue documents/certified copies may be assumed authorised to warrant authenticity; subsection (8) is a clarification, not an additional general power.

s 130

An outsider is not deemed to know company information merely because ASIC makes it publicly available. This limits constructive notice.

s 131(1)(a)–(b)

A company registered after someone purported to contract for it becomes bound only if it ratifies in the agreed period or otherwise within a reasonable time.

s 131(2)(a)–(b)

If company is never registered or fails in time to ratify or enter a substitute contract, person who contracted may owe damages measured as if company ratified then failed entirely to perform.

s 131(3)(a)–(c)

On specified unratified-contract proceedings, court may order registered company to contribute to damages, return property received or pay money; discretionary.

s 131(4)

Even if company ratifies, where it does not perform, court can order original contracting person to pay some/all damages awarded against company; NOT automatic personal liability.

s 132(1)–(2)

Other contract party can sign release of promoter from s 131 liability; promoter is otherwise not entitled to indemnity from company for liability under this Part.

s 133

This statutory Part replaces other rights/liabilities ON the pre-registration contract, while separate promoter fiduciary wrongs remain analytically distinct.

ss 198A, 198C, 201J

Where applicable: board collectively manages; directors can delegate powers to an MD; directors may appoint an MD. Examine constitution and valid board action.

s 711(2)–(4), Ch 6D

Where a prospectus is required, particular promoter/officer interests, benefits and amounts must be disclosed; check the operative text and fundraising exclusions before applying to a proprietary company.

3. Explain the difficult distinctions as if teaching a beginner

A. Promoters and secret commissions

A promoter may properly sell property to a new company, but if the promoter benefits on both sides of the bargain there is a risk of conflict. Equity demands full and frank disclosure to people capable of giving meaningful, independent consent. A board made up of the promoter's friends or fellow beneficiaries may not provide effective consent. The company, not each investor personally, ordinarily owns the claim to unwind an infected deal or recover a secret profit. A promised commission raises an additional evidence issue: has the money actually been received, is it due, and what relief can prevent payment?

The correct remedy depends on what was wrong. If the company purchased an asset because of a concealed conflict, rescission might restore the parties if possible. If the promoter made a secret profit, an account of profits targets that benefit. If the company suffered demonstrable loss, equitable compensation may address the loss. Proprietary remedies may sometimes be available over identifiable proceeds; do not assume automatic constructive trust in every case.

B. Ratification of contracts signed for an unborn company

Ratification is the new company adopting a particular pre-registration contract after registration. The word means approval, not simply incorporation. Properly authorised adoption can be express, and commercial conduct may require close analysis as potential evidence; investigate board minutes, payments, occupation and dealings, rather than assuming acceptance. If Coastal Fitness simply rejects the equipment, s 131(2) is the

starting risk for Lucas. But a court will not automatically award the supplier the full $30,000: contract damages must be proved.

A carefully structured contract can deal with this risk: an agreed incorporation date, express ratification deadline, substitute contract/novation, signed release and clear conditions before delivery. Section 132(2) means a promoter should not simply assume the company will reimburse statutory personal liability.

C. Actual authority, apparent authority and execution

Actual authority asks whether the company genuinely authorised the signer. It may be expressly stated in company decisions or implied from valid delegation and business practice. Apparent authority asks what the company (rather than the individual alone) caused the outsider to believe and what the outsider relied upon. Proper execution under s 127 is a separate evidentiary route: getting statutory signatures can give stronger certainty.

For Sunshine Surf, Chloe's own business card does not prove company holding-out on its own. However, Ethan's knowledge, company email signatures, supplier introductions, previous accepted orders and the fact he allowed Chloe to run the surf shop could together support the necessary representation. A private limit, especially one not properly resolved by the two-director board, must be analysed cautiously. The company may be bound even if Chloe acted contrary to a genuine private instruction.

LEGAL ROUTE	QUESTION	EXAMPLE
s 126	Did company actually authorise?	Validly approved purchasing delegation
Apparent authority	Did company hold signer out?	Allowed her to act publicly as MD
ss 128–129	Can outsider assume listed facts?	Held-out MD has customary duties
s 127	Did company itself execute correctly?	Two directors sign; or secretary route

Figure: four separate routes to analyse. None should be confused with an automatic guarantee of every contract.

4. The cases: story → ruling → why lawyers use it

Tracy v Mandalay Pty Ltd [1953] HCA 9; (1953) 88 CLR 215

WHAT HAPPENED?

The Salons controlled an existing trading company and promoted Mandalay to undertake a Sydney Potts Point flat development. Land and share transactions involved promoter profits and insufficient independent disclosure. Other participants, including people who stood behind the scheme in expectation of profit, were not all active organisers.

DECISION AND REASONING. The High Court treated passive participants knowingly standing behind the promotional transaction as capable of being promoters. It upheld the setting aside of the interested transactions, but qualified the lower court's broad orders for joint and several repayment; repayment required careful allocation to relevant recipients.

WHY IT MATTERS. Promoter identity rests on substantive participation and beneficial interest rather than labels. Rescission is possible where adequate independent consent is absent.

WHEN TO USE IT. Use to characterise a non-director, financier or passive participant as promoter and to analyse the proper scope of rescission/repayment. Do NOT assert all innocent outside investors automatically owe fiduciary duties.

Open case source: Tracy v Mandalay Pty Ltd [1953] HCA 9; (1953) 88 CLR 215

Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218

WHAT HAPPENED?

Promoters acquired the lease of an island for about £55,000 and resold it to a newly promoted phosphate company for £110,000. The company's board was not genuinely

independent; promoters' interests and profit were not fully disclosed to an independent decision-maker. Investors later discovered problems with the venture.

DECISION AND REASONING. The House of Lords permitted rescission, emphasising promoters' fiduciary obligations and genuine disclosure to an independent board or fully informed members.

WHY IT MATTERS. Secret profit and self-approval are unacceptable even if a property sale could otherwise be legitimate. Independence and informed consent are critical.

WHEN TO USE IT. Mia's $12,000 referral payment: ask who knew, whether board was independent and whether approval followed full disclosure.

Open case source: Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218

Gluckstein v Barnes [1900] AC 240

WHAT HAPPENED?

Promoters purchased the Olympia premises for £140,000 and resold them to the company for £180,000. The prospectus disclosed the £40,000 trading profit, but the promoters had also benefited by buying secured debts at a discount, concealing roughly £20,000 additional profit.

DECISION AND REASONING. The House of Lords required an account of the concealed profit. Disclosure of one component did not sanitise another hidden benefit.

WHY IT MATTERS. A half-truth is not sufficient disclosure and a company may recover secret profit notwithstanding other disclosed elements.

WHEN TO USE IT. Mia should not claim transparency simply because the lease terms were known: the side commission must also be disclosed.

Open case source: Gluckstein v Barnes [1900] AC 240

Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480

WHAT HAPPENED?

Kapoor ran a property company as if managing director without being formally appointed. The board knew of and tolerated his management. He engaged architects who completed work; the company later disputed its liability to pay.

DECISION AND REASONING. The company was bound because the board's conduct amounted to a company holding-out of Kapoor as having managing-director authority, relied on by architects.

WHY IT MATTERS. Apparent authority requires representation attributable to the principal, outsider reliance, and the right type of transaction.

WHEN TO USE IT. Sunshine Surf: compare Ethan permitting Chloe to operate as MD with the business card, prior dealings and ordinary surfboard purchasing.

Open case source: Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480

Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd (1975) 133 CLR 72; [1975] HCA 49

WHAT HAPPENED?

An employee signed a substantial order for printing machinery, supposedly under the authority of a managing director, whose own powers on this major purchase were limited. The supplier sued when the company would not complete.

DECISION AND REASONING. The High Court rejected the claim on the relevant facts: one cannot use merely ostensible authority of an intermediary to generate further ostensible authority where no one with actual company authority made the representation.

WHY IT MATTERS. A would-be agent cannot manufacture authority solely through their own claims or a chain of unauthorised agents.

WHEN TO USE IT. Sunshine Surf: test whether the representation about Chloe came from Ethan/the authorised management, not merely from Chloe herself.

Open case source: Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd (1975) 133 CLR 72; [1975] HCA 49

Royal British Bank v Turquand (1856) 6 E & B 327; 119 ER 886

WHAT HAPPENED?

A company issued a £2,000 bond under a constitutional power to borrow provided specified member approval was obtained. The company later argued that the necessary internal approval had not occurred.

DECISION AND REASONING. The court permitted the bank to assume internal procedural requirements had been observed when dealing on an apparently regular external transaction.

WHY IT MATTERS. This is the indoor management rule, a historical basis for the modern s 129(1) statutory assumption.

WHEN TO USE IT. When company points to a missing internal resolution, do not assume outsider must have seen it.

Open case source: Royal British Bank v Turquand (1856) 6 E & B 327; 119 ER 886

Northside Developments Pty Ltd v Registrar-General (1990) 170 CLR 146; [1990] HCA 32

WHAT HAPPENED?

A company-owned property was mortgaged to secure indebtedness associated with a director rather than company business. The mortgage documentation and corporate authority were defective, and the bank faced obvious questions about the transaction.

DECISION AND REASONING. The High Court concluded the transaction could not safely be treated as authorised merely on general indoor-management reasoning; inquiry

concerns were significant. The case preceded current statutory formulations and must be read alongside ss 128–129.

WHY IT MATTERS. Commercial convenience protects legitimate outsiders, not unrestricted reliance where authority is missing and irregularities are apparent.

WHEN TO USE IT. Use to identify suspicious/non-ordinary company transactions; keep the present s 128(4) actual-knowledge-or-suspicion test distinct from old common law put-on-inquiry language.

Open case source: Northside Developments Pty Ltd v Registrar-General (1990) 170 CLR 146; [1990] HCA 32

Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711

WHAT HAPPENED?

A company secretary hired prestige vehicles under the company's name and misused them personally. The car hire business sought payment from the company.

DECISION AND REASONING. The Court of Appeal held company bound for administrative-type contracts within the customary authority of a company secretary.

WHY IT MATTERS. Authority depends on the office and normal business functions, not the job label alone. A secretary has administrative authority, not unrestricted trading power.

WHEN TO USE IT. Distinguish routine car arrangements from a major asset sale or unusual corporate mortgage.

Open case source: Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711

In re Tummon Investments Pty Ltd (1993) 11 ACLC 1139

WHAT HAPPENED?

The lecturer cites this authority when distinguishing ordinary managing-director powers from financing transactions outside the ordinary scope of company management. The

specific transaction chronology is not independently established in supplied files.

DECISION AND REASONING. The source-derived proposition is that customary MD power does not extend automatically to unusual non-ordinary-course loan transactions; verify the primary judgment before quoting detailed findings.

WHY IT MATTERS. Senior-sounding titles do not confer unlimited borrowing or security powers.

WHEN TO USE IT. Use cautiously as illustration of scope of customary authority, not for unsupported facts or invented procedural history.

Ashbury Railway Carriage & Iron Co Ltd v Riche (1875) LR 7 HL 653

WHAT HAPPENED?

A historic English company entered business outside objects stated in its memorandum and the ultra vires doctrine led to disputes about validity.

DECISION AND REASONING. Under the historical rule, corporate capacity was restricted by objects. Australian law now instead uses ss 124–125 and does not ordinarily invalidate acts merely for being beyond constitution objects.

WHY IT MATTERS. Shows why modern statutory corporate capacity is different from historic English law.

WHEN TO USE IT. Explain historical backdrop only; answer a 2026 Australian capacity question from ss 124–125.

5. ORIGINAL WEEK 7 TUTORIAL — QUESTION THEN ANSWER

The following questions reproduce the supplied course document's substantive wording. Answers immediately follow their matching questions. Important missing facts are stated as contingencies, not invented facts.

ORIGINAL TUTORIAL QUESTION — verbatim

QUESTION 1 — Coastal Fitness Pty Ltd

Mia and Lucas decide to open a small fitness studio, which they plan to operate through a new company called Coastal Fitness Pty Ltd ('Coastal Fitness'). They also plan to invite several outside investors to become shareholders in the company.

Before Coastal Fitness is registered, Mia begins looking for suitable premises. She finds a studio in Burleigh Heads owned by her uncle, Robert. Robert tells Mia that if Coastal Fitness leases his property, he will pay Mia a $12,000 commission. Mia agrees and signs a lease for the premises on behalf of Coastal Fitness.

Mia does not tell Lucas or the proposed outside investors about the commission.

Three investors, Priya, Noah and Grace, agree to invest in Coastal Fitness. As part of their investment, they require seats on the board. It is agreed that, once the company is registered, its board will consist of Mia, Lucas, Priya, Noah and Grace.

Meanwhile, Lucas is arranging equipment for the new studio. One week before Coastal Fitness is registered, he signs a contract with Budget Gym Equipment Ltd ('Budget Gym') for the purchase of $30,000 worth of exercise equipment. Lucas signs the contract "for and on behalf of Coastal Fitness Pty Ltd".

After the company is registered, the directors inspect Budget Gym's equipment and decide that it is unsuitable. The board instead purchases equipment from another supplier. Coastal Fitness does not make any payment to Budget Gym and does not take delivery of its equipment.

Shortly afterwards, Grace discovers an email between Mia and Robert concerning the $12,000 commission. The other directors had not previously known about the arrangement.

Advise Coastal Fitness:

1. Does Coastal Fitness have any recourse against Mia in relation to the $12,000 commission?

HIGH DISTINCTION MODEL ANSWER

ISSUE. Has Mia, as promoter, breached a fiduciary obligation by procuring a lease in exchange for an undisclosed private commission, and what relief belongs to Coastal Fitness?

RULE. A promoter owes equitable fiduciary obligations in promotion arrangements. Erlanger v New Sombrero Phosphate Co demands full disclosure and valid informed approval where a promoter sells or arranges property on a conflicted basis. Gluckstein v Barnes requires complete disclosure of all profits; Tracy v Mandalay confirms courts look to substance of the promotion and the true independent decision-maker. The usual duties are not extinguished merely because the promoter subsequently becomes a director. Available remedies depend on facts and include account of secret profits, equitable compensation, rescission and possibly proprietary relief.

APPLICATION. Mia initiated formation of Coastal Fitness and signed a lease before registration; she is plainly acting as promoter. Robert's promise of $12,000 if the company leases his studio creates a direct financial conflict: Mia benefits from recommending premises irrespective of whether the studio's rent or location is best for the company. The commission was concealed from Lucas and outside investors and not disclosed to the post-registration five-person board. Her familial relationship with Robert adds a conflict indicator. No informed company consent is evidenced. Unlike an independent board reviewing all facts, her unilateral arrangement cannot authorise her own gain. If the commission has been paid, account of profits is a powerful remedy; if only promised, seek evidence of the agreement and consider a declaration/injunction or appropriate equitable relief. Rescission of the lease may be considered, but first establish whether Coastal Fitness itself ratified the pre-registration lease under s

131(1), whether possession/rent were accepted, and whether rescission remains practically available without unfairness or affirmation. If over-market rent or loss is proved, assess equitable compensation separately—do not equate a $12,000 payment with $12,000 proven company loss.

CONCLUSION/ADVICE. Coastal Fitness has a strong basis to pursue Mia for undisclosed benefit and to scrutinise whether the lease can be rescinded, subject to facts and equitable defences. Obtain the lease, corporate resolutions, commission emails, independent valuation and payment records. Ensure Mia does not vote on the company's response and seek independent decision-making. Any contract claim by Robert and Mia's promoter liability under s 131 must be analysed separately from Mia's fiduciary wrongdoing.

ORIGINAL TUTORIAL QUESTION — verbatim

QUESTION 1 — continued

2. What is the legal position regarding the contract with Budget Gym? In particular:

• Is Coastal Fitness bound by the contract?

• Could Lucas be personally liable under the contract?

HIGH DISTINCTION MODEL ANSWER

ISSUE. Lucas purported to sign for an entity that did not yet exist. Did Coastal Fitness adopt the contract after incorporation? If not, what is Lucas's statutory exposure?

RULE. Section 119 fixes corporate existence upon registration. Under s 131(1)(a)–(b), a pre-registration contract binds the later-formed company only if it ratifies within the agreed or reasonable period. Section 131(2) makes the pre-registration contracting person liable in damages if the company is not formed, or is formed but does not in time ratify or enter a substitute. Section 131(3) permits specified discretionary court orders affecting a registered but non-ratifying company. Under s 131(4), court-ordered promoter liability may still arise if a ratifying company defaults. Section 132(1) permits

signed release by the outsider; s 132(2) denies the promoter an automatic right of indemnity from the company. Section 133 replaces other rights and liabilities on the pre-registration contract.

APPLICATION. Lucas signed one week before registration, expressly on behalf of Coastal Fitness. That fits the gateway of s 131. The board, after seeing the equipment, chose another supplier; no payment or delivery occurred. These facts strongly indicate that it did not ratify Budget Gym's contract. There is no evidence of an express acceptance, use or substitute contract with Budget Gym. The precise contract terms and timing must be reviewed because s 131(1) refers to an agreed time or otherwise a reasonable time. Lucas is therefore exposed under s 131(2) after that period. Budget Gym's damages are calculated by the loss it could have recovered from Coastal Fitness had the contract been ratified and entirely breached: this may involve lost net profit, wasted costs or resale mitigation—not automatically the entire $30,000 contract price. The company has apparently received no equipment or benefit, weighing against (but not conclusively excluding) any discretionary s 131(3) contribution. If board action somehow amounted to ratification, the company would be bound; on later breach Budget Gym could pursue the company and ask for a discretionary s 131(4) order against Lucas.

CONCLUSION/ADVICE. On the supplied facts Coastal Fitness is probably not bound to Budget Gym because it appears not to have ratified, while Lucas faces a strong risk of personal damages under s 131(2). Notify Lucas, preserve the contract and board documents, ascertain deadline and measure of supplier loss, and negotiate a written resolution/release if commercially desirable. Also investigate Mia's lease separately: that is another pre-registration contract with its own possible s 131 issues.

ORIGINAL TUTORIAL QUESTION — verbatim

QUESTION 2 — Sunshine Surf Pty Ltd

Ethan is the sole shareholder and a director of Sunshine Surf Pty Ltd ('Sunshine Surf'), which operates a surf shop on the Gold Coast.

Ethan appoints his friend Chloe as a second director of the company. Chloe begins managing the shop on a day-to-day basis and describes herself as the Managing Director of Sunshine Surf. She has never been formally appointed as Managing Director.

Ethan is happy for Chloe to run the ordinary business of the surf shop. However, he tells Chloe privately:

“You can deal with suppliers yourself, but you must get my approval before entering into any contract worth more than $20,000.”

One day Chloe negotiates with Ocean Boards Ltd (‘Ocean Boards’) to purchase $28,000 worth of surfboards for Sunshine Surf.

During the negotiations, Chloe gives Ocean Boards’ sales manager her business card, which describes her as:

Chloe Martin
Managing Director
Sunshine Surf Pty Ltd

The sales manager does not ask Chloe whether there are any restrictions on her authority. Chloe signs the contract on behalf of Sunshine Surf.

Ethan is furious when he discovers the contract. He contacts Ocean Boards and says:

“Chloe had no authority to make this purchase. Sunshine Surf will not honour the contract.”

Advise Sunshine Surf whether it is bound by the contract with Ocean Boards.

In your answer, consider:

1. Did Chloe have actual authority to enter into the contract?
2. Could Chloe have apparent (ostensible) authority?
3. Are there any relevant statutory assumptions under the Corporations Act 2001 (Cth) that Ocean Boards might be entitled to rely upon?
4. Are there any facts that could prevent Ocean Boards from relying on those assumptions?

HIGH DISTINCTION MODEL ANSWER

ISSUE. Was the $28,000 surfboard purchase authorised by Sunshine Surf, or can Ocean Boards enforce it despite Ethan's private purchasing limit? This is a company-formation-complete (post-registration) authority problem, NOT a s 131 case.

RULE AND ACTUAL AUTHORITY. Section 124 gives capacity. Section 126(1) recognises contracts made by agents with express or implied actual authority. Under the ordinary replaceable-rule framework, s 198A places management with the directors, s 201J concerns formal MD appointment and s 198C concerns board delegation (subject to constitution). A director is not automatically empowered alone to bind the company in every matter; an ordinary managing director or shop manager may possess express or implied authority for routine purchases. A company could also be bound by later ratification.

APPLICATION—ACTUAL AUTHORITY. Chloe was genuinely a director and was permitted to run day-to-day trading and engage with suppliers. That supports an implied or expressly delegated purchasing authority. However, Ethan expressly told her approval was required above $20,000, and $28,000 exceeds that sum. If the restriction was a valid company direction binding Chloe, she lacked actual authority for this order. There is an important extra problem: Ethan was sole shareholder but, after appointing Chloe, no longer the only director. His personal direction may not equal a valid board resolution. Check company constitution, board process, pattern of transactions, and whether Ethan controlled/was authorised to set the limit. The answer on actual

authority therefore has a strong argument against Chloe but is not mechanically conclusive.

RULE AND APPARENT AUTHORITY. Under Freeman & Lockyer, a company can be bound where a representation originating from the principal or someone with real management authority holds the agent out as able to transact, the outsider relies on that representation, and the contract lies within the represented role. Crabtree-Vickers warns that an agent cannot create unlimited authority by unilateral self-description; Northside cautions on unusual and suspicious corporate transactions.

APPLICATION—APPARENT AUTHORITY. Surfboards are core trading stock for a Gold Coast surf retailer. If Ethan knowingly allowed Chloe to manage the store as though MD, negotiate routine supplier contracts, sign corporate emails as MD or accept prior similar orders, the company's conduct could amount to a holding-out. Ocean Boards has a strong claim it relied on Chloe's apparently managerial position to agree the order. But the business card alone was created/presented by Chloe; without a representation attributable to Sunshine Surf or its authorised decision-maker, that single fact is insufficient. Verify company acquiescence.

STATUTORY ASSUMPTIONS. Under s 128(1), Ocean Boards may rely upon any applicable s 129 assumption. Section 129(3)(a)–(b) is particularly relevant where the company held Chloe out as managing director/officer: it covers appointment and customary powers of that position in a similar company. Section 129(4) supports an assumption that internal duties and processes are complied with, and s 129(1) addresses constitution/replaceable-rule regularity. Section 129(2) can show Chloe is properly appointed director on company-provided public ASIC information, but customary powers of a mere director are more limited than those of an MD. Section 129(5) is NOT the usual answer: Sunshine Surf had two directors and Chloe signed alone, so this is not apparently a s 127(1) two-director execution. Section 130 prevents deeming Ocean Boards to know an ASIC-available private limitation.

LIMITATION / COUNTERARGUMENT. Section 128(4) bars reliance on an assumed

fact if Ocean Boards KNEW OR SUSPECTED it was incorrect at the time. No such knowledge is stated. Failure to ask about internal authorisation is not itself proof of suspicion. However, if $28,000 is extraordinarily large for Sunshine Surf or Ocean Boards had been told approval was needed, suspicion may become factually arguable. Distinguish the precise current statutory test from older Northside common-law inquiry language.

CONCLUSION AND PRACTICAL ADVICE. Sunshine Surf is likely bound if Ethan/company knowingly permitted Chloe to function publicly as MD and $28,000 is an ordinary commercial stock order, even if Chloe exceeded a genuine undisclosed limit. On the stated facts, a bare self-issued card leaves some uncertainty; the most important fact is the company's holding-out, not just Chloe's assertion. Ethan should not summarily refuse performance until board records, emails, prior purchasing history and supplier knowledge are reviewed. If bound, the company should manage the commercial contract and separately consider internal action against Chloe for breaching an effective instruction; remedies depend on duties, loss and contract. If not bound, notify supplier with evidence rather than unsupported assertion.

ORIGINAL TUTORIAL QUESTION — verbatim

PREPARATION FOR CLIENT INTERVIEW EXERCISE
Imagine that Ethan is your client and that you have only been given the facts above.

Before advising him, identify three additional questions you would ask Ethan.

For each question, briefly explain:
• why you want that information; and
• how his answer could affect your legal advice.

HIGH DISTINCTION MODEL ANSWER

1. “What exactly did the board decide when Chloe became a director, and what does the constitution say about management, MD appointment and purchasing limits?” WHY: The legal source of Chloe’s actual authority and the validity of Ethan’s private $20,000 restriction must be identified. EFFECT: A formal limit supports the argument she exceeded actual authority; an informal personal instruction may not.

2. “Before this transaction, had you introduced Chloe as managing director, authorised company material with that title, allowed her to sign contracts, or paid invoices on purchases above $20,000?” WHY: Apparent authority requires a company-attributable holding-out. EFFECT: Accepted past conduct strengthens Ocean Boards’ s 129(3) and Freeman & Lockyer arguments; isolated self-issued cards weaken them.

3. “How large is a typical Sunshine Surf inventory order, and what did Ocean Boards know about Chloe’s role or the $20,000 limit?” WHY: A $28,000 purchase may be ordinary stock replenishment or a dramatic outlier; s 128(4) turns on knowledge or suspicion. EFFECT: Normal stock purchase without red flags favours enforceability; proof of actual suspicion/relevant knowledge could undermine statutory assumptions.

6. Fifteen ranked questions to ask your lecturer

1. When can ratification occur by conduct?

If a newly registered company starts using premises or equipment obtained by a promoter without a formal board resolution, what facts prove ratification under s 131(1), and how do we determine the time limit?

WHY IT ADDS VALUE: Adds evidence and board decision-making to the lecture’s basic ratification rule.

2. Independent consent in family-owned companies

Where the promoter is majority shareholder and controls the board, who can give genuinely independent approval for a related-party lease, and what should the solicitor record?

WHY IT ADDS VALUE: Tests Erlanger beyond its classic facts and how real closely held companies function.

3. The precise trigger for suspicion under s 128(4)

When does an unusual transaction become actual suspicion preventing reliance on s 129, and what due-diligence questions should an outsider ask?

WHY IT ADDS VALUE: Tests Northside against the modern statutory subjective knowledge/suspicion threshold.

4. Designing an effective purchasing-authority control system

What combination of board delegation, constitution, external supplier communications and contract signatures best enforces a dollar limit without jeopardising routine trading?

WHY IT ADDS VALUE: Connects company governance to s 126, s 129(3), Freeman & Lockyer and Crabtree-Vickers.

5. Promoter liability after ratification and later insolvency

How is s 131(4) discretion actually exercised, and what contractual drafting or risk allocation can reduce a promoter's exposure?

WHY IT ADDS VALUE: Goes beyond the basic text and asks how to advise a founder commercially.

6. Can a private instruction by one director bind another director?

When a sole shareholder appoints a second director, can the former sole director still unilaterally impose binding purchasing limits or must the board validly resolve them?

WHY IT ADDS VALUE: Surfaces the critical Sunshine Surf issue around s 198A and constitution.

7. Promoter's receipt versus promise of a secret commission

Where a promoter has been promised a private benefit but has not received it yet, which remedy should the company seek first and why?

WHY IT ADDS VALUE: Distinguishes an account of profit from injunction, declarations and compensation.

8. Drafting the best substitute contract and release

When a proposed company will not ratify a promoter contract, how do s 131(2), s 132(1) and a new novation or substitute agreement interact in a well-drafted settlement?

WHY IT ADDS VALUE: A practical negotiation exercise for Lucas/Budget Gym.

9. Electronic signatures and delegated agents

What evidence should a business obtain to ensure an electronically signed document satisfies ss 110A, 126 and 127, especially where the signer is not a director?

WHY IT ADDS VALUE: Moves beyond lecture slide 20 into digital contract risk.

10. Ordinary-course authority versus extraordinary debt

Does a managing director's customary authority change with a company's size, history and business model, particularly for overdrafts, leases, guarantees and security?

WHY IT ADDS VALUE: Develops Tummon / Northside customary authority context.

11. Does a company remain bound where the outsider acted negligently?

If a supplier failed to check ASIC filings or board minutes, is mere carelessness sufficient to defeat reliance under s 128(4), or must knowledge/suspicion actually be shown?

WHY IT ADDS VALUE: Clarifies statutory wording versus historical constructive inquiry doctrine.

12. When does a professional adviser become a promoter?

At what point could a solicitor, accountant or business consultant move from ordinary professional services to promoter status and fiduciary exposure?

WHY IT ADDS VALUE: Tests the lecturer's substance-over-form approach.

13. Proprietary-company fundraising and secret benefits

How would a business lawyer reconcile the promoter's equitable disclosure obligations with the actual operation and exceptions of Chapter 6D for private investors in a Pty Ltd?

WHY IT ADDS VALUE: Extends the brief s 711 discussion into practical capital raising.

14. Which remedy should be pleaded and by whom?

How does the company choose between rescission, account of profits and equitable compensation, and when would a shareholder need a derivative action to enforce the corporate right?

WHY IT ADDS VALUE: Bridges Equity, Corporate Law and litigation strategy.

15. What is the complete outsider-protection protocol?

If advising a company about a $5 million purchase involving a self-described MD, what documentary protections would you ask for beyond the minimum rights conferred by ss 128–129?

WHY IT ADDS VALUE: A practical senior-partner style checklist question.

7. Oral-exam attack sheet: teach it back in under two minutes

PROMOTER

“Before registration the person is promoting a company that does not yet exist. Promoter fiduciary obligations arise from equity. Identify any undisclosed benefit and whether genuinely independent consent was obtained.”

PRE-REGISTRATION CONTRACT

“Apply s 131: was the company registered and did it ratify in time? If not, the signer faces s 131(2) damages. Check s 131(3) discretion, s 131(4) if ratified but defaulted, s 132 release/no indemnity and s 133.”

OUTSIDER CONTRACT

"After registration, separate company capacity under ss 124–125 from actual agency under s 126, company execution under s 127, and outsider reliance on ss 128–129."

APPARENT AUTHORITY

"Ask what the COMPANY represented or permitted, what the outsider relied upon, and whether that kind of contract was customary. The agent's own business card cannot create authority by itself."

RED FLAGS

"Section 128(4) asks whether the outsider actually knew or suspected the relevant assumption was wrong. Apply the facts, not general criticism that the outsider failed to investigate."

8. Sources and accuracy notes

STATUTORY CONTROL TEXT: Corporations Act 2001 (Cth), Federal Register of Legislation compilation C149, effective 19 September 2026. The current federal compilation is the source for the numbered subsections used here. The links below open the public Act or identified judgments; a general Act link is not represented as independently tested pinpoint navigation for each paragraph.

Official Corporations Act 2001 — current text

PRIMARY MATERIALS: Week 6 "Promoters and outsiders" PowerPoint (31 slides), the Week 7 Tutorial 6 Word document (2 pages), the user-provided live transcript in Pasted text.txt, the user's JUNI summary and lecture screenshots. Earlier 30-page study guide also reviewed for continuity.

SOURCE DISTINCTIONS: (1) Live transcript stops during Freeman & Lockyer; not a complete 2-hour verbatim record. (2) Erlanger reported as 3 App Cas 1218, not 2 App Cas; (3) Tracy (not “Tracey”) v Mandalay is [1953] HCA 9; (4) s 711(3) relates to stated fees/benefits paid or agreed to be paid to specified people, not automatically amounts “promoter must pay”; (5) s 131(4) is discretionary; (6) s 128(4) says “knew or suspected”.

Professional advice note: These are educational model answers. Real clients require full documents, instructions, current-law verification, evidence, litigation strategy and local solicitor review before action.

9. Four visual explanations to remember

These diagrams are teaching tools. Use the text of the Corporations Act and the cases for the exact governing rule.



Figure 6.1 — Chronology: before and after incorporation

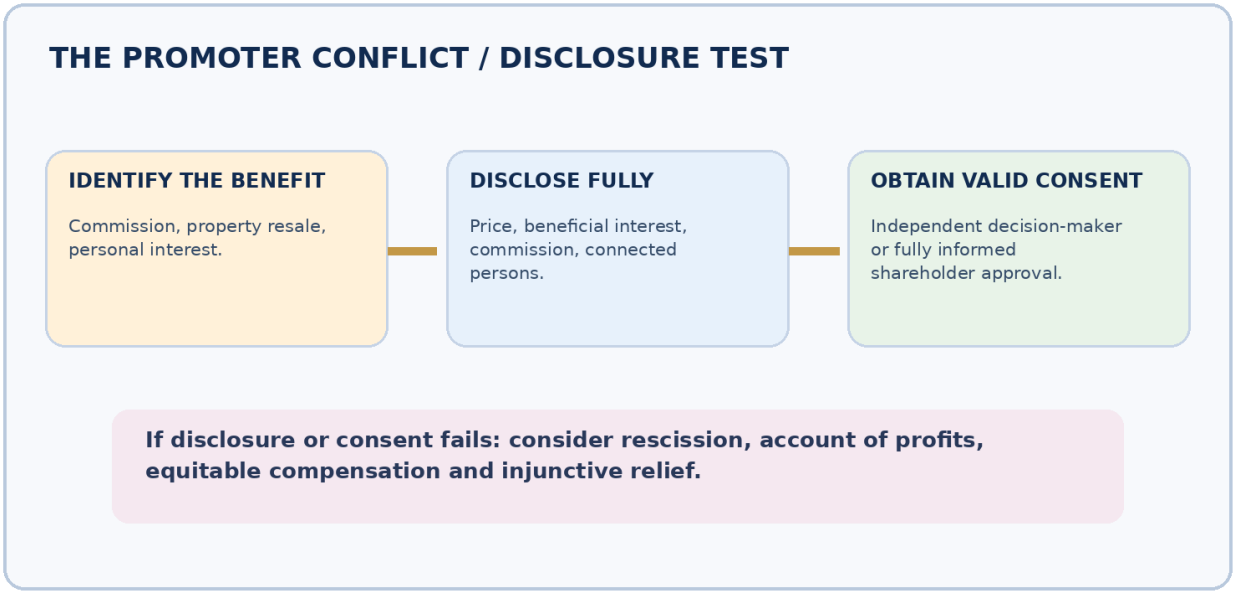


Figure 6.2 — Promoter duties: identify, disclose, obtain independent approval

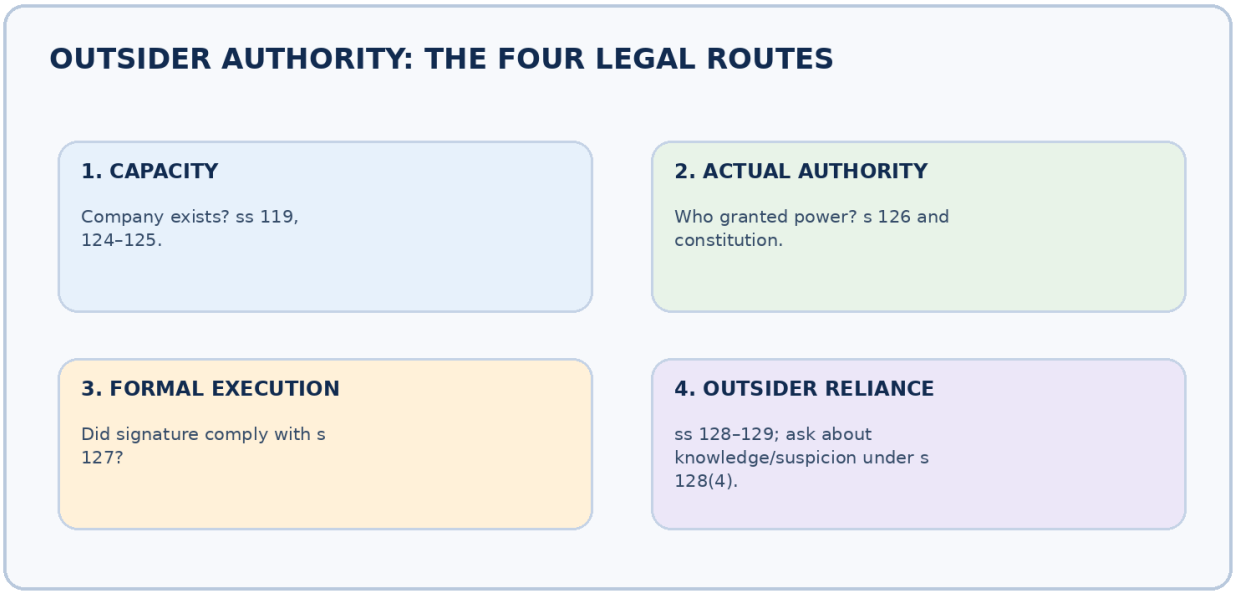


Figure 6.3 — Statutory problem solving: capacity, authority, execution, reliance

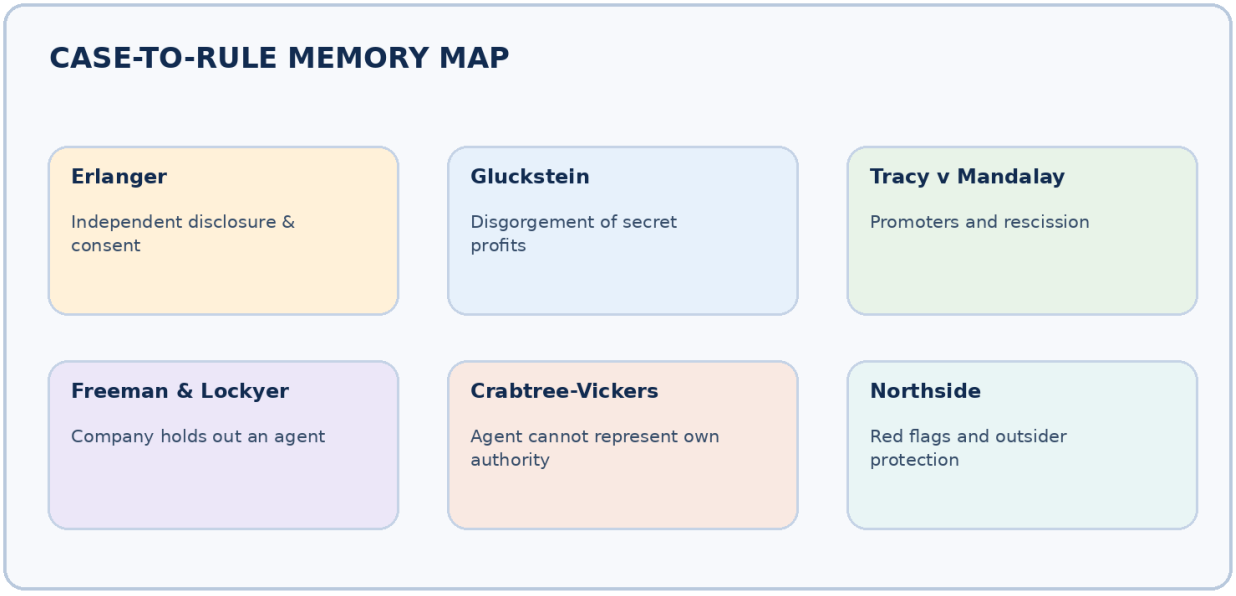


Figure 6.4 — Cases and principles: when to use each authority

10. Frequently asked questions and full answers

FAQ 1 — Is anyone who pays money to form a company automatically a promoter?

No. A promoter is identified by involvement in procuring formation and the relevant transaction. Tracy v Mandalay shows why a knowing passive participant in a scheme may still be treated as a promoter. Mere ordinary arm's-length subscription or professional advice is not automatically enough.

FAQ 2 — Why does a promoter owe fiduciary duties before the company exists?

Equity restrains people who place themselves in a position to act for a contemplated company and its investors, particularly where they exploit the formation process for undisclosed personal benefit. The governing duty is sourced in case law, not a blanket statutory "promoter" definition.

FAQ 3 — Is profit on a sale to a company automatically prohibited?

No. The decisive issue is a disclosable conflict and whether the promoter obtained properly informed consent from independent decision-makers. Erlanger explains why a controlled board is not a substitute for independent approval.

FAQ 4 — Who may sue for Mia's commission?

Ordinarily the company asserts its own rights once incorporated; the board should independently assess the transaction and remedies. Investors are not automatically personally entitled to the $12,000 simply because they subscribed for shares.

FAQ 5 — If Lucas signed "for and on behalf of" an unborn company, is it a company contract?

Not automatically. Section 131 expressly deals with the non-existent principal: the later company must be registered and ratify the agreement within the agreed period or a reasonable time.

FAQ 6 — Does "ratification" mean the company must say the word "ratify"?

Not necessarily. What matters is whether the company validly adopted the particular agreement within the statutory time. Objective conduct and board decisions can be evidence, but mere registration alone is not adoption.

FAQ 7 — Does an agent's business card establish apparent authority?

No. A person cannot normally bootstrap authority through their own representations. Freeman & Lockyer and Crabtree-Vickers require a company-attributable holding out; in Chloe's case examine Ethan's conduct, company materials, and past accepted

transactions.

FAQ 8 — Can an outsider always rely on s 129 even when a transaction looks unusual?

No. Under s 128(4), actual knowledge or suspicion that the relevant assumption was incorrect prevents reliance. Northside provides a useful historical illustration of warning signs, but do not replace the words of s 128(4) with an invented general negligence test.

FAQ 9 — Is a director always able to bind a company alone?

No. There may be a valid actual delegation, a company-attributable appearance of authority, or effective execution. Section 127 formal execution for a company with two directors is not generally satisfied by one director signing alone.

FAQ 10 — What practical documents should a lawyer ask to inspect?

ASIC details, the constitution, shareholder agreements, board minutes, delegated authority policies, emails, contract execution records, past supplier invoices, prospectus/disclosure materials, and evidence of every person's knowledge at the time.

11. Multiple-choice examination questions

MCQ 1 — When does a company become a legal person?

A. When promoters approve the business plan
B. On registration under s 119
C. When the first bank account opens

D. When the first invoice is issued

MCQ 2 — Which case illustrates inadequate disclosure to a non-independent board?

A. Erlanger v Sombrero
B. Freeman & Lockyer
C. Northside Developments
D. Crabtree-Vickers

MCQ 3 — What is the primary concern where a promoter secretly takes a commission?

A. Company capacity
B. Personal profit and conflict
C. Constitutional objects
D. Electronic signatures

MCQ 4 — Lucas signs before registration and the company never ratifies. Starting point?

A. s 131(2)
B. s 129(2)
C. s 125(2)
D. s 127(3)

MCQ 5 — Section 124 primarily concerns:

A. Corporate capacity
B. Proxy voting

C. Registered charges
D. Liquidation

MCQ 6 — A private spending cap necessarily defeats an outsider claim?

A. Yes always
B. Only if registered at ASIC
C. No; analyse company authority and outsider protections
D. Only where the director is a shareholder

MCQ 7 — The s 128(4) disqualification applies if the outsider:

A. Failed to read ASIC
B. Knew or suspected the assumption was wrong
C. Was not a company director
D. Used electronic signatures

MCQ 8 — The strongest evidence of apparent authority is:

A. The agent calling themselves MD
B. A self-created business card alone
C. A company-authorised holding out and reliance
D. A private conversation unknown to the supplier

MCQ 9 — Which case is central to holding-out authority?

A. Freeman & Lockyer
B. Erlanger
C. Gluckstein

D. Tracy

MCQ 10 — Why is an independent board significant?

A. It always eliminates liability
B. It may be competent to consent after full disclosure
C. It can waive every statute
D. It replaces company registration

12. MCQ model answers and explanations

Answer 1: B — On registration under s 119

Section 119 fixes legal existence at registration, not the commencement of preparations. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 2: A — Erlanger v Sombrero

Erlanger applies independent informed disclosure and consent. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 3: B — Personal profit and conflict

The fiduciary conflict and no-secret-profit principles engage. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 4: A — s 131(2)

Section 131(2) imposes damages exposure on the individual signer, subject to its terms. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 5: A — Corporate capacity

It gives registered companies broad legal capacity. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 6: C — No; analyse company authority and outsider protections

Actual authority, representations, relevant assumptions, and knowledge/suspicion must be examined separately. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 7: B — Knew or suspected the assumption was wrong

The statute uses knowledge or suspicion, not automatically constructive notice. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 8: C — A company-authorised holding out and reliance

The principal must be responsible for the appearance. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 9: A — Freeman & Lockyer

Freeman & Lockyer sets out the principal-made representation rationale. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

Answer 10: B — It may be competent to consent after full disclosure

Consent must be real, independent, and adequately informed. The other options fail because they confuse corporate formation, promoter duties, execution mechanics or outsider protection.

13. Short-answer questions

Short answer 1 — Explain the differences between actual express, actual implied and apparent authority.

Short answer 2 — What must be established to impose damages under s 131(2)?

Short answer 3 — Explain the difference between ss 126 and 127.

Short answer 4 — What is the significance of Northside for a third party?

Short answer 5 — Why may rescission differ from an account of profits?

Short answer 6 — Identify five documents a solicitor should seek before advising Sunshine Surf.

14. Short-answer model answers

Model answer 1

Express actual authority comes from authorisation stated expressly; implied actual authority may flow from a role, course of dealings or necessary incidents of the task, attributable to the company. Apparent authority is different: the company represents to an outsider that an agent has authority, and the outsider contracts in reliance on that representation. Do not conflate a secret internal limit with an externally effective representation. Apply s 126, s 129 and Freeman & Lockyer.

Model answer 2

Identify the pre-registration contract, the individual who purported to contract, whether registration occurred, whether the later company ratified within the agreed or reasonable time or entered a substitute, and the other party's demonstrated contractual loss. Consider s 131(3) discretionary court orders, s 131(4) if ratification happened but later default followed, and s 132.

Model answer 3

Section 126 is company contracting through an agent acting with actual express or implied authority. Section 127 supplies formal statutory company-execution methods, commonly giving outsiders stronger s 129 assumptions when requirements appear satisfied. A single director in a two-director company signing without the second director does not automatically amount to due s 127 execution.

Model answer 4

Northside weighs commercial convenience against the need to protect the company against irregular unauthorised acts. A transaction securing the debts of another person or company raises warning signs. In a 2026 statutory problem, begin with ss 128–129 and specifically s 128(4), identifying actual knowledge or suspicion rather than merely assuming every suspicious-looking document is unenforceable.

Model answer 5

Rescission seeks to unwind a transaction, ordinarily requiring attention to restoring benefits and third-party consequences. An account of profits strips the fiduciary's unauthorised profit, rather than calculating company loss. An injunction may be appropriate where an undisclosed commission is promised but unpaid; equitable compensation may instead remedy attributable loss.

Model answer 6

Company constitution; board meeting and delegation records; ASIC officer records; Chloe's email correspondence and business cards used by the company; supplier invoices and previous company-approved orders. Also obtain Ocean Boards' communications to identify company-attributable representations and possible

knowledge or suspicion.

15. Two original High Distinction IRAC problems

IRAC PROBLEM 1 — QUESTION

A newly formed Brisbane technology company is promoted by two founders. Before registration, founder Ava arranges a $100,000 software licence and negotiates a personal undisclosed rebate of $14,000 from the supplier, contingent on the company executing the contract. Founder Ben signs the licence “for FutureTech Pty Ltd” while the company does not exist. FutureTech registers two weeks later. Its independent directors are shown the contract but not the rebate. They pay a $20,000 deposit before later deciding the software is unsuitable and refusing further performance. Advise FutureTech and the supplier.

IRAC PROBLEM 1 — HIGH DISTINCTION MODEL ANSWER

ISSUES. Identify promoter status and secret benefit, the extent of valid informed consent, the nature of the pre-registration contract, whether FutureTech ratified, and available remedies for each party.

RULE. Before incorporation, promoters owe fiduciary duties to the proposed company in respect of promotion transactions: Erlanger v Sombrero (non-independent or incomplete disclosure insufficient); Gluckstein v Barnes (secret profits accountable); Tracy v Mandalay (rescind infected transaction and consequences for promoter participants). Registration occurs under s 119. Under s 131(1), FutureTech becomes bound if it registers and ratifies within the agreed or a reasonable time. Section 131(2) addresses damages payable by signer Ben if there is no registration, ratification or substitute contract. Section 131(3) permits specified discretionary relief, s 131(4) addresses the individual signer where company ratifies but fails to perform, and s 132 concerns release and indemnification limitations. The case turns on the evidence of ratification, not assumption.

APPLICATION. Ava arranged the benefit during promotion and hid it from directors despite their formal independence. The payment offer represents at least a conflict and potential secret profit. Proper disclosure of the transaction without the rebate is deficient. FutureTech should inspect the written arrangements and consider an injunction to prevent payment of the contingent rebate, an account if paid, rescission where restoration remains practically possible, and equitable compensation for proven loss. Ben contracted before the company existed. Post-registration payment of a deposit may objectively evidence ratification; board review and rejection alone would not. Determine whether directors knew the key terms, whether the payment was authorised as adoption, and whether the agreed time was met. If ratified, FutureTech may be liable on the contract and the supplier may pursue contractual relief. If not ratified, Ben faces exposure under s 131(2) subject to proved loss; the supplier cannot simply demand the whole licence price without damages analysis. If ratified but breached, s 131(4) allows (not automatically requires) a damages order against Ben, considering statutory conditions.

COUNTERARGUMENTS. Ava may contend that her rebate was prospective and no profit arose or that the licence was good value; neither eliminates the duty to disclose an interest. Ben may assert payment was provisional and not a corporate ratification; the supplier will rely on acceptance of benefits and the deposit. Rescission may be unavailable if benefits cannot be restored or third-party rights intervene.

REMEDIES AND CONCLUSION. Preserve the written evidence, cease payment of rebate pending advice, appoint disinterested directors to assess the promoter breach, notify supplier of the ratification dispute and consider negotiation or formal adoption/substitution. The stronger claim against Ava is non-disclosure; liability on the software contract depends on the documents and conduct after registration. Do not assume automatic liability or automatic rescission.

IRAC PROBLEM 2 — QUESTION

Sunrise Foods Pty Ltd has two directors, Tara and Kelvin, and a board-approved delegation allowing Tara, the operations director, to order routine stock up to $35,000. Kelvin alone privately tells Tara not to spend above $15,000. The company's website and stationery describe Tara as "General Manager". After three prior purchases of $32,000 that the company paid without objection, Tara orders $31,000 of ordinary stock from Pacific Foods. Pacific Foods has no knowledge of Kelvin's warning but notices that this order will be shipped to a new warehouse. Tara signs the purchase agreement alone. Advise Sunrise Foods and Pacific Foods.

IRAC PROBLEM 2 — HIGH DISTINCTION MODEL ANSWER

ISSUES. Identify genuine actual delegation, legal effect of Kelvin's later private warning, any company-attributable holding out, whether formal execution is necessary, statutory assumptions and the effect of possible suspicion.

RULE. Registered companies generally have capacity under s 124 notwithstanding any mere constitutional objects restriction under s 125. Under s 126, a company may contract by an agent with express or implied actual authority. Actual authority is assessed against corporate governance and delegations, not simply a shareholder's personal preference. Company execution under s 127 is an alternative formal route and is not established merely by a single director signing in a company with two directors. Freeman & Lockyer v Buckhurst Park Properties explains principal-attributable holding out and reliance; Crabtree-Vickers highlights limits on self-authorisation; Northside warns against irregular transactions. Under ss 128(1), 129(1)–(4) outsiders may rely on relevant internal-compliance and held-out-officer authority assumptions, subject to s 128(4): they cannot rely on an assumption they knew or suspected was wrong. Section 130 eliminates constructive notice merely from ASIC availability.

APPLICATION. The board-approved $35,000 delegation is powerful evidence Tara had actual express authority to purchase ordinary inventory for $31,000, making Kelvin's unilateral and undisclosed $15,000 instruction unlikely to cancel that valid delegation absent power to do so. Even if the board validly modified the delegation, the company's General Manager identification and three accepted $32,000 orders amount to company-attributable representations of authority within the normal scale of business. Pacific Foods acted in reliance on the established purchasing relationship. A new warehouse delivery address may justify logistical checking but, standing alone, does not establish actual knowledge or suspicion of the relevant authority assumption. Section 129(3) may assist given the company-held-out role, while s 129(1) or (4) may help on internal regularity; s 129(2) should not be over-read as giving an ordinary director unlimited power. Tara's solo signature does not meet the standard two-director s 127(1) execution route; that does not defeat an otherwise authorised s 126 contract.

COUNTERARGUMENTS. Sunrise may show a formal later board resolution genuinely

revoking authority communicated to Pacific Foods; then the authority analysis would change. Pacific Foods' knowledge of a prior delegated limit or an extraordinary purchase could generate s 128(4) questions. A mere new warehouse address is not necessarily a red flag of authority; investigate who controlled it and previous practices.

REMEDIES AND CONCLUSION. Sunrise is likely bound by the $31,000 stock agreement. It should review the company resolution and ordinary course purchase history before denying liability, consider performance or commercial settlement, and adopt a documented external-authority protocol. Any internal breach by Tara is a separate potential directors' duty or employment/governance matter requiring proof of a valid limit and loss. Pacific Foods should preserve company letterhead, emails, invoices and delivery instructions supporting its reliance.

16. Chapter 6 examination and professional advice checklist

ISSUE → SOURCE → APPLICATION → REMEDY

1. Fix chronology and identify company status.
2. Name each affected client and contracting party.
3. Find the precise current statutory subsection.
4. Explain the authority case with material facts and reasoning.
5. Apply the exact documents and powers.
6. Analyse rival constructions and counterarguments.
7. Identify available relief and litigation/commercial risks.
8. Conclude with an action plan and evidence checklist.

CHAPTER SEVEN · WEEK 7 LECTURE

Financing a Company: Equity, Debt and Fundraising

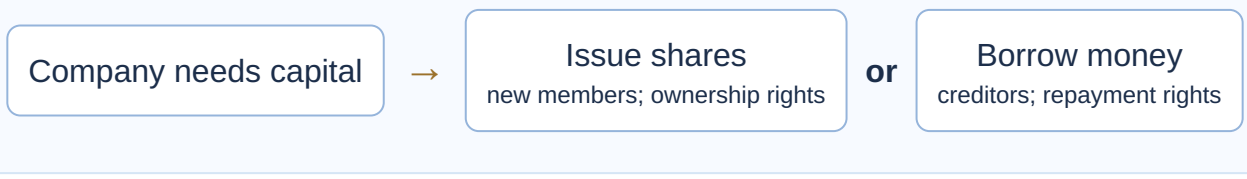
A company can have a brilliant business idea and still fail because it cannot pay for its next stage of growth. Corporate finance begins with a remarkably practical question: **where will the money come from, what is the company promising in exchange, and what rights will the financier receive?** This chapter teaches those questions from first principles before connecting them to the exact Australian legal framework.

> **The idea in one sentence.** Equity gives an investor an ownership interest with membership rights; debt gives a lender a contractual claim to repayment. Before advising a company, identify which relationship the proposed transaction creates.

7.1 Why finance is a legal question, not merely an accounting question

Imagine a Queensland company that designs electric surfboards. It needs $600,000 to manufacture its first large commercial order. The directors can ask investors to subscribe for new shares. Those investors become members and may receive voting rights, dividends if validly payable and a residual claim on surplus assets if the company is wound up. Alternatively, the company can borrow the money from a bank. The bank becomes a creditor: it expects repayment of the principal plus agreed interest, regardless of whether shareholders receive any dividend.

These options cannot be compared simply by looking at the dollars entering the company's bank account. Issuing shares can dilute existing members' economic and voting influence. Borrowing creates repayment obligations and may require security over company property. Both decisions may affect control, solvency, governance, the duties of directors and the information that must be disclosed to prospective investors. As you work through any financing problem, ask whether the transaction gives a person a *membership interest*, a *debt claim*, or some combination.



7.2 Share capital: what, exactly, is a share?

The lecturer begins with share capital because it is a familiar financing mechanism and the foundation for understanding the proper-purpose duty in Chapter 8. A company raises equity capital by issuing shares in return for money or property. The new shares represent a bundle of rights determined by statute, the constitution, the terms of issue and the relevant share class. They are intangible personal property, not a direct slice of the company's factory, cash or equipment. The separate legal personality principle from Chapter 2 remains crucial: assets bought with shareholders' contributions belong to the company, not to the shareholders individually.

For example, suppose the company has 1,000 ordinary shares on issue and one investor owns 250. Assuming equal rights in that class, the investor owns 25% of those shares. If the company issues 1,000 additional ordinary shares to a new investor, the original investor still holds 250 shares, but now owns only 250 out of 2,000, or 12.5%. Their shares have not been taken away; their proportional interest has changed. This is **dilution**. It can be economically and politically important because voting influence may be reduced.

> **Worked calculation — dilution, step by step**
>
> Before issue: 250 ÷ 1,000 × 100 = **25%**.

After 1,000 new shares are issued: total shares = 1,000 + 1,000 = 2,000. The holder still has 250 shares. Therefore 250 ÷ 2,000 × 100 = **12.5%**.

Why this matters: a board may genuinely need capital, but using an issue to manipulate who controls voting power raises the separate proper-purpose question considered in Chapter 8.

The central statutory starting points are Corporations Act 2001 (Cth) ss 124 and 254A. Section 124 gives a company the legal capacity and powers of an individual, together with corporate powers including issuing shares and borrowing. Section 254A makes clear that the issue power extends to bonus shares, preference shares and partly-paid shares. Those categories are different commercial tools; none automatically overrides constitutional or statutory constraints.

7.3 Fully paid, partly paid and no-liability shares

A **fully paid share** is one for which the agreed issue price has been paid. The holder generally owes nothing more on that share. A **partly paid share** is issued with an amount still outstanding, which the company may be able to call for payment according to the issue terms and statute. Section 254A(1)(c) recognises partly-paid shares; ss 254M–254N deal with calls and related matters. Section 516 concerns the extent of liability of members on winding up, subject to the relevant statutory qualifications.

Suppose 100 shares have an issue price of $10 each, with $6 payable on issue and $4 uncalled. The investor initially pays 100 × $6 = $600. The unpaid amount is 100 × $4 = $400. If a valid call is made for that balance, the investor may have to pay the remaining $400. This is not an additional share subscription: it is completing the price of the existing shares.

The lecturer also identifies the specialist **no liability company**, associated with a distinct statutory regime. Do not assume its treatment of unpaid amounts is the same as for an ordinary proprietary or public company. First identify the company type under the Act, then read the applicable provisions.

7.4 Classes of shares and preference shareholders

Companies may issue different classes to attract different investors. Ordinary shares frequently carry the standard voting and residual economic rights. Preference shares may grant priority in payment of dividends or return of capital, or restrict voting rights. The label alone does not establish the details. Under **s 254A(2)**, the rights attached to preference shares concerning repayment of capital, participation in profits and surplus assets, dividends, voting and priority must be specified in the constitution (if any) or otherwise approved by special resolution. Section 254A also recognises redeemable preference shares.

For a client, ask for the constitution, shareholder agreements, issue terms and register. A preference share may promise a fixed dividend rate, but this does not mean every payment is automatically payable regardless of the statutory dividend requirements or the terms of issue. Analyse the legal conditions for payment rather than treating a preference share as interchangeable with a bank loan.

Worked calculation — a preference dividend

Assume the terms of issue provide for a non-cumulative 6% preference dividend calculated on $200,000 paid-up preference capital, subject to lawful declaration/payment. The annual contractual measure is $200,000 × 0.06 = **$12,000**.

If dividend conditions are not satisfied, the figure does not itself establish a current right to payment. A *cumulative* entitlement may have different carry-forward consequences under the precise share terms. Always obtain those terms.

The Week 7 lecture flags **variation of class rights** under ss 246B–246C. These provisions protect holders when the rights associated with their class are varied. The lecturer marks the detailed mechanics as *not examinable* for that lecture. For professional practice, however, the point is important: a board cannot assume that members' class rights can be changed merely by issuing a general announcement. Check the constitution and statutory approval process.

7.5 Reductions of capital, share buy-backs and financial assistance

Early company law strongly resisted returning issued share capital to members, partly to protect creditors who had relied on the company's asset base. The historic decision *Trevor v Whitworth* (1887) 12 App Cas 409 provides the background. Modern Australian legislation permits capital reductions and buy-backs on defined conditions. The lecturer links this to ss 256A–256B and 257A–257J: the essential themes are creditor protection, fairness between shareholders and proper corporate procedure.

Consider a solvent company with excess capital proposing to buy back shares from one founder. That changes not just the cash balance, but potentially control and the interests of those left in the company. The lawyer should check whether the buy-back is authorised, whether it materially prejudices creditors, what disclosures and approvals are necessary, and whether all members are treated lawfully. Do not give a one-line answer that any profitable company may repurchase its own shares.

A related issue arises when a company finances another person's acquisition of shares in the company. **Section 260A** places conditions on such financial assistance, including lack of specified material prejudice, prescribed shareholder approval or an exemption. A loan used to help someone buy the company may be a legitimate commercial transaction, but the company should not risk its assets for an acquisition without reviewing the statutory requirements. The lecture names *ASIC v Adler* [2002] NSWSC 171 and *Connective Services Pty Ltd v Slea Pty Ltd* [2019] HCA 33 as relevant authorities. These advanced topics are labelled not examinable in the lecturer's Week 7 deck; they remain valuable context for client advice.

7.6 Debt capital: creditors are not shareholders

Debt finance begins when a company obtains funds subject to an obligation to repay. The lender is not automatically a member and ordinarily has no member vote merely by lending. The interest rate, repayment date, events of default and security are established by the loan agreement and any applicable law. The lecturer's important contrast is that debt interest can be owed even when the company has made no profit, while dividends are governed by the separate law of distributions to members.

Worked calculation — debt interest

A company borrows $500,000 for one year at 8% simple annual interest. Interest = principal × annual rate × time = $500,000 × 0.08 × 1 = **$40,000**.

The contractual amount due at the end, assuming no interim payments or fees, is $500,000 + $40,000 = **$540,000**. This is an illustrative simple-interest example, not an assertion that real bank facilities use simple interest or that tax is treated identically.

Section 124(1) expressly supports corporate powers to borrow, issue debentures and grant security interests. A **debenture** is a particular debt security within the statutory definition in s 9. Debenture holders are creditors; they may be secured or unsecured, and certain instruments can be convertible into shares. The lecturer directs attention to the statutory rules for describing debentures in s 283BH and, where relevant, requirements for trustees and trust deeds. The word *bond* may be used commercially, but the statutory character of the instrument must be checked from its terms.

A **security interest** gives a creditor rights relating to identified assets if obligations are not met. Security raises questions about what property is covered, whether the interest is enforceable and perfected, and its priority against other claimants. The Week 7 slide identifies the topic but does not supply a full PPSA tutorial; this book

therefore treats priority mechanics as further research rather than pretending the course explained every rule. For clients, obtain loan agreements, security documents and relevant registrations before advising.

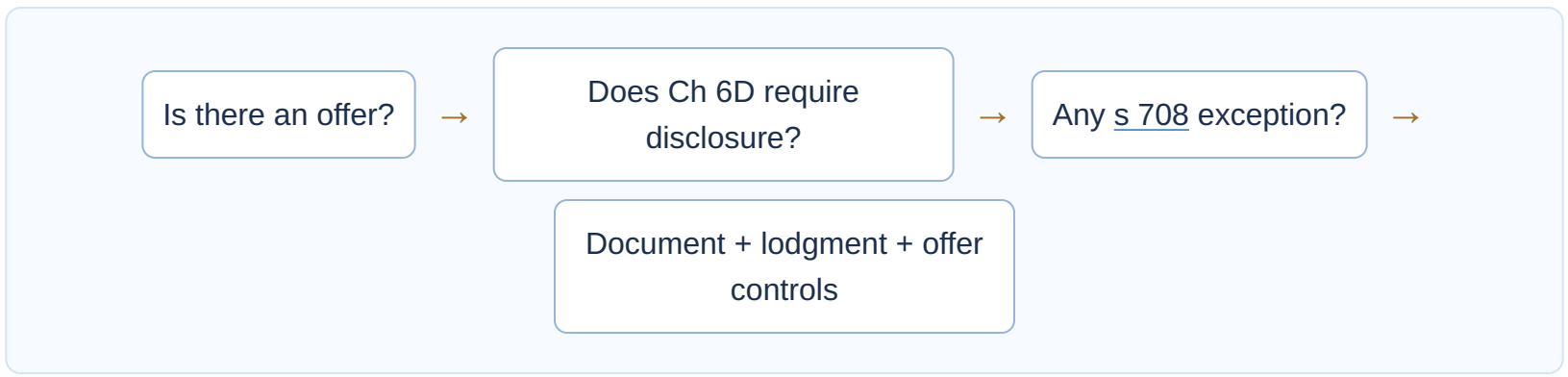
7.7 Insolvency changes how financing risk is understood

When a company fails, creditors generally assert claims to payment before shareholders receive any residual distribution. A shareholder who subscribed $100,000 in ordinary shares may lose that investment entirely if the company's assets are exhausted meeting liabilities. By contrast, a lender has a creditor claim, although actual recovery depends on security, priority and available assets. That is why the distinction between equity and debt is not a vocabulary exercise—it can determine who bears losses when a business collapses.

Directors deciding whether to incur further debt must also consider duties under ss 180–181 and the insolvent trading rules in s 588G where applicable. The detailed statutory insolvency topic belongs to later course material; at this stage learn to recognise the warning sign: the company needs finance, repayment obligations are accumulating and management cannot simply assume future sales will solve a current inability to pay debts.

7.8 Fundraising under Chapter 6D

Australian fundraising law tries to resolve an information problem. The directors usually know more about the company's financial condition, business model, assets and legal risks than a potential outside investor. Chapter 6D of the *Corporations Act* requires disclosure for many offers of securities so investors can make informed decisions. The starting questions are whether there is an offer of securities for issue (s 706), whether an offer for sale triggers disclosure (s 707), and whether an exemption applies, including those in s 708. Only after those questions should the adviser choose the appropriate document and consider advertising restrictions.



The lecture emphasises the distinction between public companies, which may seek public investment subject to applicable regulation, and proprietary companies, which face restrictions including s 113(3). Do not infer that a proprietary company is forbidden from every private share issue; the issue is whether the company engages in activity requiring disclosure under Chapter 6D. A proper answer must examine the offering, company type and exemption.

One familiar exception under s 708 concerns qualifying **small-scale personal offers**. Subject to the detailed statutory rules and exclusions, these involve a 20-investor ceiling and a $2 million ceiling over a relevant 12-month period. The personal-offer requirement matters: sending a public online invitation is not automatically converted into a personal offer because only a few investors respond. Other exemptions concern certain sophisticated or professional investors, senior managers and particular existing-security-holder transactions. None should be applied without testing its conditions.

> **Worked problem — the two small-scale ceilings**
>
> Assume a qualifying company has already issued securities under relevant personal offers to 18 investors for a total of $1.70 million during the relevant 12 months. It proposes a further qualifying personal offer accepted by one new investor for $250,000. Investor count: 18 + 1 = **19**. Amount raised: $1.70m + $0.25m = **$1.95m**. Both ceilings are below the threshold, so the arithmetic alone does not disqualify the offer.
>
> Now suppose the proposed investor subscribes $400,000. Amount = $1.70m + $0.40m = **$2.10m**, exceeding $2m even though the investor count is only 19. The small-scale exemption cannot be assumed to apply.

> Separate exceptions, aggregation rules and anti-avoidance provisions must still be assessed. This example is about method, not blanket legal approval.

7.9 Prospectus and other disclosure documents

Where disclosure is required, the central document is often a **prospectus**. Section 710 uses an investor-focused standard: disclose information investors and professional advisers would reasonably require to make an informed assessment of the specified matters, within the statutory framework. Section 711 imposes additional content requirements. A useful prospectus tells the reader what the company does, how it will use funds, what the financial and commercial risks are, who controls it and what major agreements or litigation could materially affect the investment.

The lecturer contrasts a full prospectus with a **short-form prospectus** (s 712), which may incorporate information from documents lodged with ASIC by reference; a **profile statement** (ss 709 and 714), subject to approval and procedural conditions; and an **offer information statement** (ss 709 and 715), available within applicable statutory thresholds and conditions. The older lecture mentions a dollar threshold, but this edition deliberately directs the reader to verify the current provision and all conditions at the time of an actual offer. A document's familiar name is not a substitute for meeting its statutory rules.

Fundraising rules extend beyond the document itself. Section 734 regulates certain advertising and publicity for offers that require disclosure; s 727 prohibits specified conduct involving securities without required disclosure; and the Act includes rules on unsolicited offers. The lecture also distinguishes primary-market disclosure from listed companies' continuous disclosure obligations. They are related investor-protection systems but should not be conflated in an IRAC answer.

7.10 Case study: advising a client who wants $1.5 million

A new food-technology company says: “We want $1.5 million quickly. Could we put a post on social media inviting anyone to buy shares?” A weak legal answer is “Yes, because $1.5 million is less than $2 million.” A stronger answer explains why that is insufficient. First, find out whether the company is proprietary or public. Second, establish exactly what security is being offered and to whom. Third, test whether any qualifying exemption applies. A public social-media invitation may not satisfy the personal-offer requirement in s 708 merely because the target raise is below a monetary ceiling. Fourth, decide whether a disclosure document is needed and what offer advertising constraints apply. Finally, examine the director decision to issue shares: is the company genuinely raising capital, or is there another control-related objective? That last question connects directly to Chapter 8.

> **How to advise.** Tell the client what can be established now, what cannot be established without documents and what should happen next. Ask for the company type, constitution, existing capital table, proposed offer terms, investor list, previous 12-month offers, marketing materials and intended use of proceeds. Clear advice is both legally careful and commercially useful.

7.11 Applied practice problem A — equity versus debt

> **Author-created revision question (not represented as an original university tutorial).**
>
> OceanTech Ltd requires $900,000 for manufacturing. Its founders currently hold all 900 ordinary shares. It can either issue 300 new ordinary shares to an investor for $900,000 or borrow $900,000 for two years at 9% simple annual interest. Explain the ownership and cash-flow consequences and the key legal questions for directors.

Model answer — Issue

The issues are dilution, differences between member and creditor rights, lawful use of the share-issue power, obligations under the loan and directors' governance duties.

Rule

A company has power to issue shares and borrow under ss 124 and 254A, subject to the Act and constitutional limits. Shareholders are members with rights determined by the class and constitution; lenders hold contractual claims. The directors must act in good faith in the corporation's best interests and use powers for proper purposes under s 181.

Application and calculations

Before issue the founders hold 900 of 900 shares = 100%. After issue there are 900 + 300 = **1,200** shares. Founders retain 900 ÷ 1,200 = **75%** and the new investor holds 300 ÷ 1,200 = **25%**. The company receives $900,000 without an ordinary loan repayment obligation, but the founders' proportional voting/economic interest is reduced, assuming equal ordinary share rights.

For the loan, two years' simple interest = $900,000 × 0.09 × 2 = **$162,000**. Total principal plus interest at the end, on the stated simplified assumption, is **$1,062,000**. Founders' share percentage remains unchanged, but the company faces repayment risk and may provide security or financial covenants. Real loans may compound, require instalments or charge fees, so the actual contract is essential.

Counterarguments and conclusion

The founder may prefer no dilution, but debt is not automatically safer merely because ownership is preserved. Conversely, equity need not be preferable if the directors issue shares on unfair terms or for an ulterior control purpose. The board should compare cash flows, investor conditions, constitutional rights, solvency and statutory compliance before recommending a structure.

7.12 Applied practice problem B — a small-scale offer

Author-created revision question.

BlueCo Pty Ltd has placed a public online advertisement soliciting share investments. Twenty-one unrelated people propose to invest $80,000 each in the same 12 months. BlueCo argues that s 708 automatically exempts the offers because the money sought is “only startup capital”. Advise.

Model answer — Issue and rule

The issues are the company's status as proprietary, the restrictions in s 113, the disclosure starting point in ss 706–707, and whether s 708's small-scale exemption is available. The exemption is conditioned on qualifying personal offers and relevant numerical ceilings; it is not an exemption for all startup ventures.

Application

The proposed investor count is **21**, above the basic 20-investor ceiling if all issues fall within its counting rules. Total proposed subscriptions = 21 × $80,000 = **$1,680,000**, below $2 million. The numerical ceiling is conjunctive: satisfying the monetary ceiling alone is insufficient. Furthermore, a public online advertisement is unlike a qualifying offer made personally to an identified recipient, so the personal-offer condition requires particular scrutiny. BlueCo's proprietary status also raises s 113(3).

Conclusion

BlueCo should not proceed on its claimed automatic exemption. The facts strongly suggest the small-scale pathway is unavailable; an adviser must check all statutory exclusions and alternatives before settling the fundraising method and advertising. Directors should seek specialist fundraising advice and prepare a compliant transaction process.

7.13 Applied practice problem C — a preference share promise

Author-created revision question.

Peak Holdings proposes 1,000 preference shares at $100 each with a 7% annual preferred dividend and preferential repayment on winding up. The directors say they need no special shareholder approval and the preferred dividend must be paid every year even if the company cannot lawfully make a distribution. Analyse.

Model answer

Section 254A(2) requires the specified preference-share rights to be set out in the company's constitution (if any) or otherwise approved by special resolution. The legal analysis begins with those issue terms and the company documents. The proposed paid-up capital is 1,000 × $100 = **$100,000**; an annual 7% measure would be $100,000 × 0.07 = **$7,000**. But those calculations do not independently establish that $7,000 can or must be paid in each year. Actual dividend entitlements depend on issue terms and statutory requirements. Priority on winding up likewise depends on the class terms and the hierarchy of claims; preference shareholders generally remain members rather than ordinary creditors. The directors' assurances are therefore legally unsafe without examining the documents and payment conditions.

7.14 Applied practice problem D — the share issue as an abuse of power

Author-created revision question, bridging Chapters 7–8.

A board issues shares worth $2 million to a friendly investor immediately after learning that a potential acquirer has assembled a large shareholding. The company has substantial cash reserves, no announced project and no immediate need for finance. Directors say the new investor will protect the business's “culture”. Is the finance transaction automatically valid?

Model answer

No. A company can possess the legal power to issue shares while directors still exercise that power for an improper purpose. The question is not simply whether capital entered the company. Under s 181(1)(b), and the fiduciary proper-purpose doctrine explained in *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 and *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285, identify the power, its authorised objects and the actual motivating purpose. The company's lack of capital need, timing, selection of a friendly investor and anticipated voting impact are evidence of a potentially impermissible control objective. The directors may respond that the business faced a genuine threat, but honest belief does not itself answer the proper-

purpose inquiry. Further evidence, including board minutes and commercial forecasts, is required before a final conclusion. Chapter 8 supplies the structured analysis and potential remedies.

7.15 FAQs — the questions students actually ask

Does owning 20% of shares mean owning 20% of the company's property?

No. A shareholder owns the shares, a distinct form of property. The company owns its assets as a separate legal person. Membership rights, not direct co-ownership of assets, follow from the shares.

Does a new share issue automatically breach directors' duties because it dilutes existing members?

No. Dilution is common in lawful fundraising. The key is whether the issue complies with the Act, constitution, share rights and directors' duties, especially proper purpose.

Are preference shareholders creditors?

Usually they remain members despite preferential terms. Their exact rights must be read from the share terms and statute; convertible and hybrid instruments need individual classification.

Can a company issue partly-paid shares?

Yes. Section 254A recognises them; payment calls and member liability require analysis of ss 254M–254N and the terms of issue.

Can a company borrow even if its constitution is silent?

The Corporations Act generally confers broad corporate powers under s 124, including borrowing; management authority, any constitutional restrictions and the legality of the financing terms must still be checked.

Are all offers under $2 million exempt from prospectus requirements?

No. The small-scale exception depends on qualifying personal offers and both numerical ceilings, subject to the provision's full rules and exclusions.

Is a prospectus the same as a business plan?

No. A prospectus is a legally regulated disclosure document with statutory content obligations. A marketing plan alone does not fulfil those obligations.

7.16 Multiple-choice practice — reasoning after each answer

MCQ 1 — An investor with 100 of 400 equal ordinary shares owns: A. 10%; B. 20%; C. 25%; D. 40%.

Answer C. 100 ÷ 400 × 100 = 25%. The percentage describes the class holding on these assumptions, not ownership of 25% of the company's physical assets.

MCQ 2 — The usual legal position of a debentureholder is: A. director; B. creditor; C. ordinary shareholder; D. regulator.

Answer B. A debenture is a debt security. The holder is a creditor, although instruments may have conversion terms.

MCQ 3 — Preference shares are subject to which statutory rule about specified attached rights? A. s 254A(2); B. s 249D; C. s 588G; D. s 1324.

Answer A. Section 254A(2) requires the listed preference rights to be specified in the constitution (if any) or approved by special resolution.

MCQ 4 — Which is a central purpose of Chapter 6D disclosure rules? A. guarantee profits; B. give investors material information; C. eliminate all business risk; D. appoint every director.

Answer B. Disclosure improves informed assessment, but no legislation can guarantee investment success.

MCQ 5 — A company borrows $100,000 at 5% simple interest for two years. Total simple interest? A. $5,000; B. $10,000; C. $20,000; D. $110,000.

Answer B. $100,000 × 0.05 × 2 = $10,000. $110,000 is the principal plus interest, not interest alone.

MCQ 6 — A public post inviting everyone to buy shares automatically qualifies for a personal-offer exemption. True or false?

False. The personal-offer conditions in s 708 must actually be satisfied. An invitation to the public is not transformed into a personal offer by low response numbers.

MCQ 7 — Which question belongs at the beginning of a fundraising-law problem? A. What is the logo? B. Is there an offer requiring disclosure and any exception? C. Who likes the director? D. Will the shares rise in price?

Answer B. Characterise the offer under ss 706–708 and the company type before selecting disclosure documentation.

MCQ 8 — A company issues shares to defeat a takeover. Can a genuine receipt of cash end the proper-purpose inquiry?

No. The real motivating purpose matters. The share issue power cannot be used for a collateral control objective merely because the company also receives subscription funds.

7.17 Short-answer revision — model explanations

Question: Explain dilution to a first-year student.

Model: Dilution occurs when a company issues additional shares and an existing member's percentage ownership or voting interest falls because the total number of shares increases. Their original number of shares may stay the same. The legal relevance is that share issues can alter control, requiring both compliance with the Act and a proper-purpose analysis.

Question: Why can interest be owed while a dividend is not payable?

Model: Interest ordinarily arises from a debt obligation owed to a creditor; a dividend is a distribution to members governed by corporate law and issue terms. Thus a loss-making company may owe agreed loan interest even though it cannot lawfully make or has not validly declared dividends.

Question: What is the first document you ask for in a preference-share dispute?

Model: Obtain the constitution, the terms of the issue and any approval resolution. Those documents identify the actual class rights and whether the requirements of s 254A(2) were followed.

7.18 Recap and source note

Corporate finance becomes straightforward once you ask three questions: **What is the instrument? What rights and duties does it create? What statutory pathway makes the transaction lawful?** In advice, add a fourth: **Why did the directors choose this instrument?** The fourth question leads to Chapter 8 and proper purpose.

Course basis: *Corporate Law Updated Lecture Seven — Equity, Debt and Fundraising* (25-slide deck), and the funding-week reading instructions previously provided. The lecturer marks variation of class rights, capital reductions and financial assistance as non-examinable at this stage. There was no independently authenticated original Week 8 tutorial question sheet for this finance lecture among the files recovered; the four Chapter 7 problems above are therefore clearly marked **author-created practice**, not passed off as original university tutorial questions. Verify the statutory text against the latest official Corporations Act before using this material in a live transaction.

CHAPTER EIGHT · WEEK 8 LECTURE + WEEK 9 TUTORIAL

Chapter 8 — Directors' Duties: Good Faith and Proper Purpose

The company is a separate legal person. Directors manage its affairs, but the powers entrusted to them are not their personal property. This chapter shows how to decide whether directors are acting for the company, whether they have exercised independent judgment, and whether they have used a particular power for the reason the law permits.

How to learn this chapter. Read the narrative first. Learn the difference between *good faith* and *proper purpose*. Then follow the worked reasoning in the two original university problems. Whenever you encounter a statute or case, ask two questions: "Why does this matter?" and "What fact makes it relevant?"

8.1 Why directors owe duties

Think of a company as an enterprise that owns property, makes contracts and bears liabilities in its own name. Its directors make decisions on its behalf. That arrangement is commercially useful, but it creates a risk: a director could use company money to help a friend, keep a preferred shareholder in power, or protect a parent company while harming a subsidiary. The law responds by imposing duties of loyalty, independent judgment and proper use of power. The point is not to guarantee every commercial decision will succeed. It is to require directors to make decisions for legally permissible reasons and with due regard to the company they serve.

There are two overlapping sources of law. The general law includes fiduciary and equitable duties developed by courts. Parliament has imposed related statutory obligations, principally in Chapter 2D of the *Corporations Act 2001* (Cth). Section 185 preserves the operation of the general law duties: the statute does not simply erase those principles. For an exam, state both sources where the facts require them and then apply them rather than listing sections without analysis.

Who is covered?

Directors, including people who satisfy the Act's definition of director, and relevant officers can be subject to statutory obligations. The current definition of *officer* in s 9AD reaches beyond a job title, including those who participate in major business decisions, can significantly affect the corporation's financial standing or whose instructions the board is accustomed to follow, subject to the statutory qualifications. A powerful founder who controls the board may therefore raise an officer or shadow-director issue even without a formal board appointment. But influence alone does not automatically establish liability: identify the actual patterns of conduct and the precise definition relied upon.

Core statutory map. Section 180(1): care and diligence. Section 181(1)(a): good faith in the corporation's best interests. Section 181(1)(b): proper purpose. Section 182: improper use of position. Section 183: improper use of information. Section 184: specified criminal contraventions. Section 187: a limited rule concerning directors of wholly-owned subsidiaries. Section 191: disclosure of certain material personal interests. Section 588G: insolvent trading obligations. Always distinguish a section relevant to the current problem from an additional issue that would require more facts.

8.2 Good faith and best interests — s 181(1)(a)

A director must act in good faith in the best interests of the corporation. This means the director cannot simply substitute the wishes of a majority shareholder, their own interests or the interests of the parent company for those of the company whose board they sit on. An honest belief is relevant, but it is not a magic formula. Courts consider the objective circumstances and may reject an assertion of good faith where no rational director could have regarded the conduct as beneficial. The lectures use *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62 and *ASIC v Adler* [2002] NSWSC 171 to illuminate this inquiry.

When explaining “the company’s interests”, do not jump to a single slogan such as “always maximise current shareholders’ profits”. The company’s interests can involve its long-term viability and its shareholders as a general body rather than an individual shareholder. Where insolvency or doubtful solvency emerges, creditors’ interests become highly material. *Walker v Wimborne* (1976) 137 CLR 1 illustrates that group companies have separate interests and assets; a director cannot treat them as interchangeable pots of money. *Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722 addresses the significance of creditors in insolvency. The facts must tell you whether solvency is actually in issue.

Nominee directors and corporate groups

A nominee director may be chosen by a substantial investor, lender or parent company, but appointment by a shareholder does not transfer the director’s loyalty to that shareholder. The director still serves the company. A nominee can take the appointor’s interests into account when they are consistent with the company’s interests, but must exercise independent judgment when interests conflict. The lecture contrasts *Re Broadcasting Station 2GB Pty Ltd* [1964–65] NSWR 1648, *Levin v Clark* [1962] NSWR 686 and *Scottish Co-operative Wholesale Society Ltd v Meyer* [1959] AC 324. Their importance is in the limits they place on assuming that a shareholder-nominated director may simply obey instructions.

Section 187 is an important exception that must not be over-generalised. A director of a *wholly-owned subsidiary* may be taken to act in the subsidiary’s best interests by acting for the holding company only where the subsidiary’s constitution expressly authorises this, the director acts in good faith in the holding company’s interests, and the subsidiary is neither insolvent nor rendered insolvent by the act. A subsidiary owned 60% by a parent and 40% by another shareholder is not wholly owned: s 187 does not rescue a decision that harms that subsidiary.

Duty to retain discretion

The law expects directors to think. A director cannot normally promise to cast every vote as another person commands. Consulting an appointor can be sensible, but the director must still evaluate the corporation’s position and the merits of the decision. A vote cast without independent consideration — particularly where the company has plausible claims against the appointor — is a powerful indication of a problem under the general law and potentially s 181(1)(a).

8.2A The four fiduciary ideas — keep them separate

Directors' duties are easier to understand when we separate the different kinds of wrongdoing. First, **good faith and best interests** asks whether the director acted honestly for the corporation and whether the asserted view of corporate benefit withstands legal scrutiny. Second, **proper purpose** asks whether a particular power was used for the end for which it was given. Third, the **duty to retain discretion** requires directors to exercise their own judgment rather than make their board vote mechanically dependent on someone else's orders. Fourth, **conflicts of interest and unauthorised profit** concern loyalty when personal or third-party interests collide with corporate interests. The last category is developed further in subsequent course weeks; this chapter identifies it so students can recognise the issue without pretending it was the entire Week 8 lesson.

The lecturer's memorable theme is *other people's property*. The director controls company assets and decisions, but those powers are entrusted to the office, not owned personally by the director. It is precisely because a director can affect wealth belonging to another legal person that the law demands loyalty, judgment and restraints on using those powers.

How statutes and general law work together

The modern statutory duties do not erase the older fiduciary principles. Section 185 preserves the interaction of ss 180–184 with duties arising at common law or in equity. This matters to remedies: an ASIC civil penalty proceeding is not the same as a company's equitable action for an injunction or an account of profits. A lawyer identifies the duty, its legal source, the party entitled to enforce it and the appropriate remedy rather than invoking a general phrase such as “breach of fiduciary duty” without precision.

The practical director's checklist

> Before voting: Who benefits? What information have I considered? Am I making an independent decision? What legal power am I using? Why was that power entrusted to the board? Would I exercise it this way if the personal, family or parent-company advantage disappeared?

8.2B Whose interests count when the company is solvent, distressed or in a group?

A company is a separate legal person. Directors generally owe duties to that company, not to whichever shareholder nominated them. The interests of members collectively matter to understanding corporate benefit, but shareholders may disagree among themselves, and the board cannot simply assume that the majority shareholder is identical to the company. At the same time the company is not frozen in the present: long-term commercial survival and future members may matter. The lecturer points to *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286, *Darvall v North Sydney Brick & Tile Co Ltd (No 2)* (1987) 6 ACLC 154, and corporate-benefit analysis in *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62.

Financial distress changes the analysis. If a company is insolvent, or its solvency is seriously in doubt, creditors' interests become particularly important because their recoveries are placed at risk by the use of company assets. The Week 8 lecture identifies *Walker v Wimborne* (1976) 137 CLR 1, *Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722 and the *Bell Group* litigation. The exact timing and consequences are fact-dependent; do not memorise an artificial date on which directors supposedly stop owing duties to the company and start owing an entirely new personal duty to every creditor. The fiduciary duty remains owed to the company, informed by its circumstances, while additional insolvency legislation can apply.

Corporate groups create another common trap. A profitable parent company may control the votes in a subsidiary, but the subsidiary is still its own legal person. Its directors must consider its interests. Section 187 provides a narrow statutory rule for directors of **wholly-owned subsidiaries**, and only where the constitution expressly authorises action in the holding company's best interests, the director acts in good faith in those interests, and the subsidiary is not insolvent and is not made insolvent by the action. A 60%-owned joint-venture subsidiary does not qualify merely because its parent has practical board control.

> **SolarCar: apply the threshold before debating the exception.**
>
> Testa owns 60% and Turnbull owns 40%. Because SolarCar is not wholly owned by Testa, s 187 does not give Alexandra and James a ready answer to why they obeyed Testa. Their appointment by Testa does not permit them to turn their backs on potentially valuable claims belonging to SolarCar.

8.3 Proper purpose — s 181(1)(b)

The proper-purpose rule asks a different question from good faith. It is possible to honestly hope to benefit the company *and still use the wrong power to achieve that objective*. A board cannot manipulate the power to issue shares merely to prevent an unwelcome takeover, even if directors sincerely believe the bidder would be a poor owner. This is why an exam answer should separately analyse s 181(1)(a) and s 181(1)(b).

The power to issue shares is commonly given to directors so that the company can obtain capital, pay consideration for an acquisition or remunerate people through valid equity arrangements. Those examples are not exclusive. The court must construe the particular power in its setting. It is generally not a proper use to manipulate voting control, entrench incumbents or destroy an existing shareholder's voting majority. The central cases are *Ngurli Ltd v McCann* (1953) 90 CLR 425, *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 and *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285.

The lecturer's five-stage method:

1. Identify the exact power being exercised.
2. Identify the objective legally authorised purposes of that power, using case law and the constitution.

3. Identify the directors' actual motivating purpose from evidence: minutes, emails, timing, financial needs and likely effects.
4. Compare the two: if the power was exercised for an impermissible purpose that legally caused the exercise, a breach may follow.
5. Where genuine proper and improper purposes coexist, conduct a further causation analysis under *Whitehouse*: would the power have been exercised **but for** the impermissible purpose?

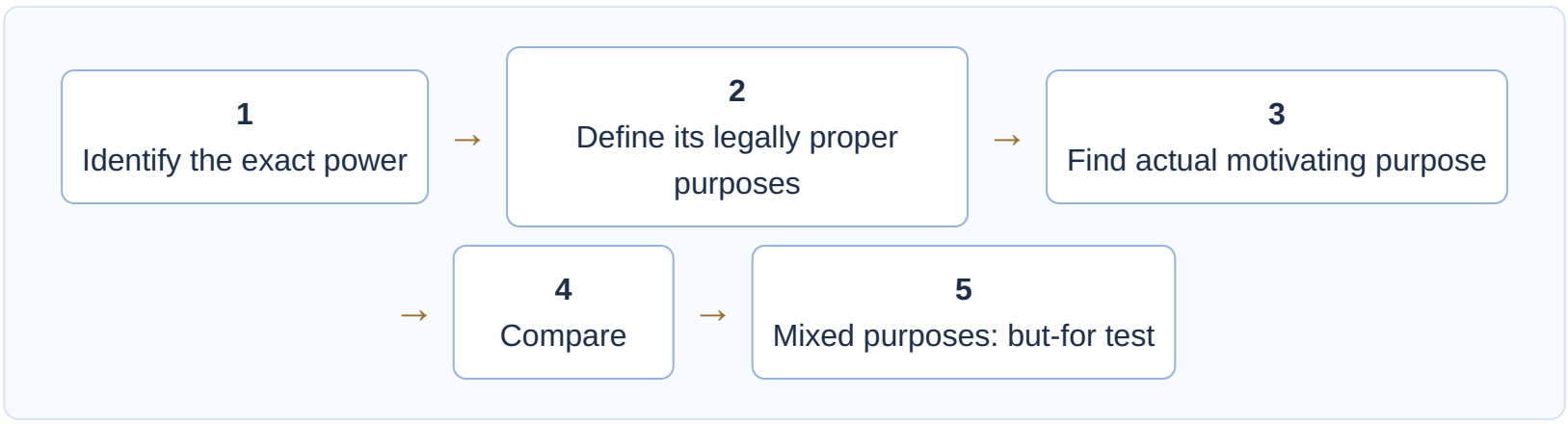
Howard Smith teaches that an issue of shares designed to change voting power in a takeover contest can be improper despite directors' stated commercial concerns. *Whitehouse* explains the importance of causation in mixed-purpose cases. Its majority articulated a preferable but-for formulation while expressly noting it was unnecessary finally to determine the precise test on the facts before it. A careful answer attributes that formulation accurately rather than claiming that every legal debate has been conclusively settled.

Worked illustration: mixed purposes

Suppose the board wants to issue 2 million shares. It genuinely needs $4 million to build a factory, but directors also want to dilute a hostile bidder's voting strength. The financing aim is potentially proper; the desire to manipulate voting control is potentially improper. Do not stop at "mixed motives, therefore breach." Ask whether, without the bid-related motive, the board would still have issued shares on substantially those terms and at that time. Genuine funding projections, valuation materials and earlier capital plans can help answer that question. A fundraising label is evidence, not a legal conclusion.

8.3A The lecturer's five-stage proper-purpose method

The uploaded one-page *Proper Purpose — How to Analyze* guide is a direct teaching instruction. Use it in this order, and do not collapse the steps into one statement that the directors "seemed unfair".



Step 1: Name the power. In a takeover scenario, the board is usually exercising the power to issue or allot shares. In a procurement scenario, it may be the power to decide whether the company enters a contract. Naming the power is crucial because different powers exist to serve different ends.

Step 2: State the power's authorised purpose. This is an objective legal inquiry supported by cases, not a description of the director's hopes. Issuing shares can raise capital; it may also provide consideration for an acquisition or remuneration under lawful arrangements. *Ngurli Ltd v McCann* (1953) 90 CLR 425 and *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 supply important context. A power is not conferred to let directors rig voting control to defeat an unwanted shareholder or preserve themselves in office.

Step 3: Identify actual motivations from evidence. Examine directors' minutes, financing forecasts, the company's cash position, previous discussions with investors, the timing of a takeover approach and the identity of those receiving the shares. A court is not limited to accepting the label directors choose to place on their decision.

Step 4: Compare. An issue genuinely designed to finance an identified project may be proper even if it incidentally affects a takeover. An issue whose actual end is to manipulate voting control may be improper even if it brings cash into the company. This is why good faith and proper purpose are separate inquiries under s 181(1) (a) and (b).

Step 5: Where there are mixed purposes, apply *Whitehouse*. Ask whether the impermissible purpose was causative: would the power have been exercised as it was *but for* that improper objective? Do not mechanically replace the High Court's causation inquiry with a simple “which motive was bigger?” question. If the improper purpose made the difference to the decision, it can vitiate the exercise even if directors also pointed to something commercially useful.

Worked calculation — voting dilution in a takeover

Hogwarts has 10 million ordinary shares and a prospective bidder owns 4 million (40%). Suppose a new issue of 5 million shares is made entirely to another investor: total shares become 15 million. The bidder's fraction becomes 4 million ÷ 15 million = **26.67%**, assuming unchanged holdings and equal rights. A control-related issue can therefore reduce proportional voting power without anyone taking the bidder's shares. A *pro rata rights issue*, by contrast, offers existing holders an opportunity to subscribe proportionately and may not change voting percentages if everyone subscribes in the same proportions. But an offer being pro rata does not automatically establish a proper purpose; consider the commercial facts, participation prospects, underwriting and real motivations.

8.3B Case lessons — why each case matters

Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821 involved directors issuing shares while competing takeover interests were in play. The critical point is not that every issue during a takeover is forbidden. The Privy Council examined whether the substantial purpose for which the directors issued shares was a proper one. Where the exercise primarily manipulated the existing balance of voting power rather than serving the authorised object of the power, the issue was susceptible to challenge. In an exam, cite this case for the *identify power → define purpose → examine substantial actual purpose* method.

Whitehouse v Carlton Hotel Pty Ltd (1987) 162 CLR 285 is the Australian High Court authority your lecturer stresses for mixed motives and the causative “but for” analysis. Shares were allotted in a family-company dispute to influence future control. The case teaches that a director's asserted belief that this would protect the company does not excuse a share issue for an impermissible purpose. It also teaches that a vitiated allotment is generally treated as voidable rather than automatically void, and that relief and subsequent events require careful consideration. Avoid saying every improper issue was legally nonexistent from the beginning.

Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324 (also cited in the course extracts as [1958] 3 All ER 66) explains a real danger in nominee and parent-company control: a majority may operate a subsidiary in ways that advantage the parent while damaging the minority's company. The diagram on slide 18 of your Week 8 lecture shows how parent-controlled nominees dominated the board and the subsidiary's trade was diverted. That diagram is useful precisely because students can see the relationship between *ownership*, *board control* and *corporate loss*. These are three related facts, not one legal person.

Walker v Wimborne (1976) 137 CLR 1 reinforces that directors in a corporate group must consider each company's interests, especially where funds move between related companies. A board cannot simply treat a corporate group as one undifferentiated wallet. In SolarCar, the group argument is weakened still further because 40% of SolarCar belongs to an unrelated venture participant.

8.4 Remedies: who may act and what may be ordered?

Ordinarily the company is the proper claimant for loss caused by breach of duties owed to it. Possible remedies under the general law include compensation, account of profits, injunctions, rescission or restoration of property, depending on the breach and the equitable or legal basis. Statutory civil penalty proceedings have their own rules; do not assume that a shareholder personally receives the company’s compensation. ASIC may seek declarations and civil penalties in appropriate cases and criminal exposure requires the additional statutory fault elements in s 184.

Where those controlling the company will not sue, examine the statutory derivative-action procedure in ss 236–237. Where conduct unfairly prejudices a minority shareholder, examine the oppression provisions in ss 232–233,

including possible orders regulating conduct or requiring a share purchase. Section 1324 may be relevant to injunctive relief for contraventions. Standing, evidentiary thresholds, the particular contravention and the remedy requested must each be addressed separately. Identifying a breach is not itself the end of the legal analysis.

8.4A Enforcing directors' duties without confusing the claimant

The company is generally the proper claimant for loss caused to it. However, that proposition does not mean a minority shareholder is always helpless when the board refuses to sue alleged wrongdoers. Part 2F.1A provides statutory derivative action mechanisms, including ss 236–237, which require analysis of eligibility and the court's leave requirements. Part 2F.1 provides an oppression pathway under ss 232–233 where company affairs are conducted in an oppressive, unfairly prejudicial or unfairly discriminatory manner. A shareholder should not simply claim company damages personally without explaining the statutory basis of relief.

In a serious case a company may seek equitable compensation, injunctions, an account of profits or other relief, depending on the duty and circumstances. ASIC may seek civil penalties and disqualification where statutory conditions are established; s 184 creates specified criminal offences requiring the additional mental elements. These enforcement paths must be kept distinct. Section 1324 concerns injunctions in defined statutory circumstances, but standing and the precise contravention must be addressed. For a proposed share allotment, urgent interim relief may be more practical than seeking reversal after securities have circulated to third parties.

Exam-writing example

Do not write: “Turnbull can sue because the directors acted unfairly.” Write: “The immediate loss is SolarCar's lost value and unpursued claims, so the company is ordinarily the proper claimant. Because the majority-controlled board refuses to act, Turnbull should investigate statutory derivative relief under ss 236–237, and separately consider oppression relief under ss 232–233 based on the diversion of business and exclusion of the minority's interests. Standing and court discretion must be established.”

8.5 Original Tutorial 7, Question 1 — SolarCar and nominee directors

ORIGINAL UNIVERSITY TUTORIAL QUESTION — reproduced from the supplied DOCX

Testa Ltd ('Testa') is a large Australian conglomerate that operates in several high-technology industries. The company is dominated by its charismatic founder and managing director, Evan Rusk.

Several years ago, Testa and Turnbull Pty Ltd ('Turnbull') established a joint venture company, SolarCar Ltd ('SolarCar'), to design and manufacture solar-powered vehicles. Testa holds 60% of SolarCar's shares and Turnbull holds the remaining 40%.

SolarCar has a board of three directors. Alexandra and James were nominated for appointment by Testa, while Carson was nominated by Turnbull. SolarCar's constitution is silent on the role of nominee directors.

SolarCar purchases one of its most important components, solar battery cells, from Testa under a long-term supply agreement. No other manufacturer currently produces battery cells that are suitable for use in SolarCar's vehicles.

When the joint venture was established, Testa relied heavily on Turnbull's expertise in automotive design. Over time, however, Testa developed its own in-house design capability and became dissatisfied with having to share SolarCar's profits with Turnbull. The intellectual property rights relating to SolarCar's vehicle designs and manufacturing processes are owned by SolarCar itself.

Testa subsequently incorporates a wholly owned subsidiary, SunMobile Ltd ('SunMobile'). SunMobile begins manufacturing vehicles that are identical to those produced by SolarCar.

At around the same time, Testa stops supplying battery cells to SolarCar despite the existence of the long-term supply agreement.

Carson proposes that SolarCar commence proceedings: (1) against SunMobile for infringement of SolarCar's patents; and (2) against Testa for breach of the battery supply agreement. Alexandra and James vote against both proposals after being directed by Evan Rusk not to allow SolarCar to take action against either Testa or SunMobile.

Alexandra and James state that they were appointed to represent Testa's interests, are expected to follow Testa's instructions, and have no practical choice but to do what Evan says.

Discuss the legal issues arising from these facts and advise what remedies, if any, may be available to Turnbull.

Lecturer’s questions to consider

1. To whom do directors owe their duties? Can a director appointed by a particular shareholder treat that shareholder’s interests as paramount? What is the significance of the company’s constitution being silent on nominee directors?

2. What does acting in the best interests of the company require? Whose interests should Alexandra and James consider when deciding whether SolarCar should commence legal proceedings?

3. Must directors exercise their own judgment? Can directors simply follow instructions given by the person or entity that nominated them?

4. What significance attaches to the fact that SolarCar is part of a corporate group? Can directors prioritise the interests of a parent company over those of a subsidiary?

5. What consequences might follow if directors refuse to allow the company to pursue potentially valuable claims?

6. Revision: Does Evan’s role create additional issues? Could a person who gives directions or instructions to directors incur legal responsibility even if not formally appointed?

7. If a breach of duty has occurred, who may seek a remedy and what remedies might be available?

Consider both relevant case law and relevant sections of the Corporations Act 2001 (Cth) as you work through this question.

Question summary (original question reproduced without alteration in the original tutorial). Testa owns 60% of SolarCar and Turnbull 40%. Two Testa-nominated directors refuse to authorise proceedings against Testa and a competing subsidiary after following the founder’s instructions. Advise Turnbull on the legal issues and remedies.

Issue

The principal issues are whether Alexandra and James breached duties owed to SolarCar by suppressing potentially valuable claims to protect Testa, whether their status as nominee directors changes the analysis, whether Evan Rusk might be treated as an officer or shadow director, and how Turnbull could obtain relief when its representatives do not control the SolarCar board.

Rule and authority

Under s 181(1)(a), directors and officers must act in good faith in the corporation’s best interests. The general law also imposes fiduciary loyalty and independent judgment requirements. Nomination by a shareholder does not negate those obligations; *Scottish Co-operative Wholesale Society Ltd v Meyer* illustrates the risks when nominees of a controlling shareholder allow the subsidiary’s business to be disadvantaged. *Walker v Wimborne* demonstrates the separate interests of companies within a corporate group. Section 187 is limited to wholly-owned

subsidiaries satisfying its additional statutory conditions. Section 9AD may be relevant to a person whose instructions the board habitually follows. Sections 232–233 and 236–237 provide potential minority protection and derivative-litigation routes.

Application — why the evidence matters

SolarCar, not Testa, owns the intellectual property in the vehicle designs. A competing manufacturer producing identical vehicles may infringe SolarCar's rights, although infringement would still depend on patent scope, validity and the actual acts alleged. SolarCar also has a long-term battery supply agreement with Testa. Stopping supply may be a breach, subject to its contractual terms, any termination rights and available defences. The critical point for corporate law is that these are potentially valuable *SolarCar claims* which the directors were asked to investigate.

Alexandra and James did not merely vote against litigation after a documented cost-benefit assessment. The facts say that Evan told them not to permit proceedings and they believed they had no practical choice. Their statement that they were appointed to represent Testa is not a defence. A competent director would consider prospects of success, the commercial importance of battery supply, the cost and strategic consequences of suing, possible settlement, expert patent advice and SolarCar's independent commercial interests. Refusing any assessment simply to protect the majority shareholder strongly supports breach of the obligation to act in good faith and to retain discretion.

There is a particularly clear conflict: Testa benefits if SolarCar does not litigate its contract claim, and SunMobile benefits if SolarCar does not enforce its patents. SolarCar may be deprived of its principal input and of its product designs, jeopardising the enterprise. The two nominees' loyalty to Testa could lead the court to conclude they preferred the appointor to SolarCar. The analysis is about their actual conduct, not a blanket prohibition on directors ever declining litigation.

Section 187 cannot justify the vote because Testa holds only 60% of SolarCar. Even if SolarCar were wholly owned, s 187 would still require constitutional authorisation and the other specified conditions. The silence of the constitution reinforces that there is no special authorisation on these facts. Evan's role raises a separate question: if directors are accustomed to act on his directions, the officer definition may apply, but one instruction and a charismatic reputation do not by themselves establish every element. His personal statutory exposure needs evidence of habitual obedience or other relevant participation and the particular duty breached.

Counterarguments

Alexandra and James may say litigation against Testa would jeopardise SolarCar's sole supply source and create litigation costs it cannot afford. Those would be substantial commercial considerations if investigated honestly. They might also contend they reasonably believed keeping the group together benefited SolarCar. The response is that the facts attribute the votes to Evan's command rather than independent assessment, and the group's wishes are not automatically SolarCar's interests. A properly reasoned decision not to sue could be lawful; a compelled decision protecting the other side is very different.

Consequences, standing and remedies

The underlying contract and patent claims belong to SolarCar. The company ordinarily must pursue them. Turnbull, holding 40%, should consider its access to company information and whether it can obtain appropriate board action. If those in control refuse, Turnbull may seek leave for statutory derivative proceedings under ss 236–237, with the court addressing the statutory criteria including company inaction and good faith. It may separately seek relief for oppressive or unfairly prejudicial conduct under ss 232–233; possible orders may include regulating affairs or a buy-out, depending on the evidence. ASIC action for statutory breaches is a distinct possibility, not a remedy Turnbull can command. Injunctions or other protective relief could be considered where urgency and standing allow.

Conclusion

Turnbull has a substantial argument that Alexandra and James failed to exercise independent judgment and prioritised Testa contrary to duties owed to SolarCar. Section 187 does not apply. Evan's liability is arguable but

requires further evidence of his legal status and role. Turnbull's practical route is not to claim SolarCar's damages as its own: it should examine derivative action and minority-oppression relief while preserving SolarCar's contractual and intellectual-property claims.

8.6 Original Tutorial 7, Question 2 — Hogwarts rights issue

ORIGINAL UNIVERSITY TUTORIAL QUESTION — reproduced from the supplied DOCX

Hogwarts Ltd ('Hogwarts') is a publicly listed company. Recent reports suggest that Beauxbatons Ltd ('Beauxbatons') is considering making a takeover bid for Hogwarts.

Concerned by this possibility, the Hogwarts board resolves to undertake a $250 million rights issue. Under the proposal, each existing shareholder will be entitled to subscribe for new shares in proportion to their current shareholding. No shares will be offered to non-shareholders.

Hogwarts does not presently require additional capital. The company is financially strong and has substantial cash reserves. Internal board papers indicate that several directors support the rights issue because it will make any takeover attempt significantly more expensive and difficult to complete.

Advise Beauxbatons whether there are any legal grounds on which the rights issue could be challenged.

Lecturer's questions to consider

1. What is the relevant director power being exercised? What is the legal purpose of a power to issue shares?

2. How do courts determine whether a power has been exercised for a proper purpose? Is it enough that directors honestly believe they are acting in the company's best interests?

3. What evidence might assist a court in determining the directors' purpose?

4. Is there a distinction between acting in good faith and acting for a proper purpose?

5. What significance should be attached to the fact that Hogwarts does not presently require additional capital?

6. How might the proposed rights issue affect a potential takeover bid? Is influencing the outcome of a takeover necessarily an improper purpose?

7. If the directors had more than one purpose, how should a court determine whether the share issue is valid?

8. Assuming a breach is established, what remedies might be available and who would have standing to seek them?

As with Question 1, consider relevant portions of both the case law and the Corporations Act 2001 (Cth).

Question summary (see verbatim original). A listed company with substantial cash reserves announces a $250 million pro-rata rights issue while a prospective takeover is emerging. Internal documents suggest directors want to make the takeover more expensive. Advise the prospective bidder.

Issue

Did the directors use their power to issue shares for the improper purpose of frustrating a possible takeover, contrary to the general-law fiduciary duty and s 181(1)(b), despite the pro-rata structure? What proof and remedies could support a challenge by Beauxbatons?

Rule and authority

The power to issue shares must be used for its authorised purposes. A genuine issue to obtain capital may be proper, as may other legitimate corporate uses. An issue designed to manipulate voting control or obstruct an unwanted takeover may be improper. *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 demonstrates that directors cannot use share-issue power to rearrange the voting balance in a takeover contest merely because they dislike a particular bidder. *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285 guides the analysis of improper and competing purposes, including the but-for causation approach. Good faith and proper purpose are distinct requirements.

Application

Hogwarts is financially strong and has significant cash reserves. That does not prove it has no proper use for new capital: it might have an impending acquisition, capital-intensive project, debt refinancing need or prudent liquidity objective. But the stated absence of a present capital requirement creates an evidentiary question. A quarter-billion-dollar issue would ordinarily call for financial forecasts, board papers and concrete commercial justification. The internal papers revealing concern about takeover costs are significant evidence of motive.

The offer is proportional to existing holdings and is not made to outsiders. This is an important distinction from a targeted allotment that directly destroys a particular block's voting majority. If all members take up their entitlements in the same proportions, their relative voting percentages remain unchanged. Nevertheless, a costly issue could deter a bidder by changing the amount of money needed to acquire the company or by affecting the bidding economics. Those effects are not necessarily improper by themselves. The court would need to determine the directors' actual purpose, the issue terms and the effect in context; a proportional offer is not an automatic safe harbour.

First identify the power, usually the board's power under the company's constitution and applicable Act provisions. Second identify lawful purposes, especially genuine capital raising. Third examine the directors' operative purposes using the board materials, the absence of immediate need, timing, issue size and any pre-existing financing plans. Fourth compare actual and legally proper purposes. If raising capital was genuine but the bid-deterrence objective was also significant, assess whether the issue would have proceeded on these terms *but for* the takeover concern. The fact that directors honestly thought the takeover undesirable does not itself answer s 181(1)(b).

Counterarguments

The board may present investment plans or evidence that the issue had been considered before takeover rumours. The pro-rata offer may demonstrate fair treatment, and a court should not infer improper purpose solely from the fact that a valid capital decision incidentally complicates a bid. Conversely, a large issue without a genuine capital need, timed immediately after takeover reports and supported by internal takeover-deterrence papers, supports the argument that the power is being used for another end. This balance — evidence over labels — is what distinguishes a strong answer from a memorised rule.

Remedies, standing and conclusion

Beauxbatons has credible grounds to investigate and potentially challenge the issue, but being a prospective bidder does not automatically give it standing for every company-law remedy. Depending on standing and the nature of the proposed contravention, urgent injunctive relief under s 1324 or other appropriate equitable remedies might be explored. A member or the company may have different routes; a derivative action has statutory thresholds. Separate takeover-law and Takeovers Panel questions may arise if circumstances fall within that jurisdiction, but the facts and applicable provisions must be established before making that claim.

The best conclusion is conditional: the internal papers and limited apparent funding need support an improper-purpose challenge under s 181(1)(b), but the pro-rata structure and any genuine financing evidence must be assessed. A court would focus on the actual purpose and causal role of takeover deterrence, not merely whether the transaction makes a takeover harder.

8.7 Frequently asked questions

Does acting honestly automatically satisfy s 181?

No. A director may genuinely believe that excluding a bidder benefits the company yet misuse a share-issue power to achieve that aim. Good faith and proper purpose must be analysed separately.

Can a nominee director obey the investor who appointed them?

They can listen and take account of consistent interests, but must independently serve the company on whose board they sit. A conflict requires separate judgment.

Does s 187 permit every subsidiary director to prioritise the parent?

No. It applies only to a wholly-owned subsidiary and only if all prescribed conditions are met, including express constitutional authority and solvency requirements.

Do shareholders receive compensation personally for company loss?

Normally company loss belongs to the company. Minority members may have derivative or oppression remedies in defined circumstances, but must identify their own standing and the relief sought.

What is the “but for” question in a mixed-purpose share issue?

Would directors have exercised the power as they did without the impermissible purpose? Evidence of real financing need, earlier plans and board deliberations matters greatly.

8.8 Multiple-choice practice — explain the reason

Q1. A 60%-owned subsidiary may rely on s 187 automatically. True or false?

False. The subsidiary must be wholly owned and the other statutory conditions must be satisfied. In the SolarCar example, the 40% minority holding alone prevents s 187 from applying.

Q2. Honest belief that a hostile bidder would mismanage the company always validates defensive share issues. True or false?

False. Proper purpose is an additional requirement. A director cannot use the share issue power for an impermissible end simply because they believe the result would help the company.

Q3. A rights issue offered proportionally to all shareholders can never raise a proper-purpose problem. True or false?

False. Proportionality is relevant evidence, not a universal defence. The courts analyse why the power was exercised and its surrounding context.

Q4. The first step in a proper-purpose answer is to decide whether the directors are nice people. True or false?

False. Start with the exact power, then its legally permitted purposes and the directors' actual objectives.

8.9 Short-answer revision — models

Prompt: Explain why nominee director status does not end the fiduciary inquiry.

Model answer: Nomination explains how the person reached the board; it does not automatically change the beneficiary of the directors' duties. The director must act for the corporation and exercise independent judgment. An appointor's preferences can be taken into account if consistent with the company's interests, but obedience that harms the company can breach the director's duties. Apply the company's constitution and consider any applicable statutory qualification, including the restrictive s 187 rule for wholly-owned subsidiaries.

Prompt: Distinguish the good faith inquiry from the proper-purpose inquiry.

Model answer: Good faith examines whether the director acted honestly in the corporation's best interests, taking account of the circumstances. Proper purpose examines whether the legal power was used to accomplish the objectives for which it was conferred. Thus even an honestly motivated attempt to avoid an undesirable takeover can be unlawful if the board uses its power to issue shares principally or causatively to distort voting power. Analyse ss 181(1)(a) and (b) separately on the evidence.

8.10 Further reading and source note

The chapter is developed from the uploaded 31-slide Week 8 lecture, the original Tutorial 7 for Week 9, the lecturer's five-step "Proper Purpose — How to Analyze" guide, and the weekly reading instructions. The weekly reading EPUB is an assignment guide, not a full copy of the textbook chapter. The uploaded notes direct students to textbook Chapter 8 pp 205–209 and Chapter 9 through §9.3.2, excluding the later conflict-of-interest material. The accompanying funding-week EPUB assigns textbook Chapter 10 and Chapter 11 through p 299.

Official current Corporations Act · Whitehouse judgment · Original tutorial text. Case citations and links should receive a final independent publication audit before being described as comprehensive.

8.11 Client advice checklist — making the doctrine useful

For SolarCar, obtain the joint-venture agreement, SolarCar constitution, current board minutes, the long-term battery-cell supply contract, patent-registration documents, written directions from Evan Rusk and evidence of the lost business. Establish whether the proposed patent and contract claims have merit and what harm the refusal to pursue them has caused. Preserve limitation periods and consider whether independent legal advice to SolarCar is possible.

For Hogwarts, obtain board minutes, cash-flow forecasts, rights-issue terms, underwriting arrangements, share registers, correspondence about the proposed takeover and financial reasons recorded before the bid emerged. Ask the directors to identify the project or financing need served by the $250 million raise. Compare the financial evidence with the timing and control effect. Be careful about Beauxbatons' standing: being a possible bidder does not automatically give the same oppression or derivative-action rights as a member. Any injunction, takeover-panel option, contractual claim or shareholder action must be established on its own facts and legal basis.

The goal in both problems is not to guess a verdict. It is to identify the exact legal person, the actual power and evidence, the doctrinal test, each credible response and the best practical remedy. A strong conclusion can be firm about the most likely legal concern while candid about missing proof.

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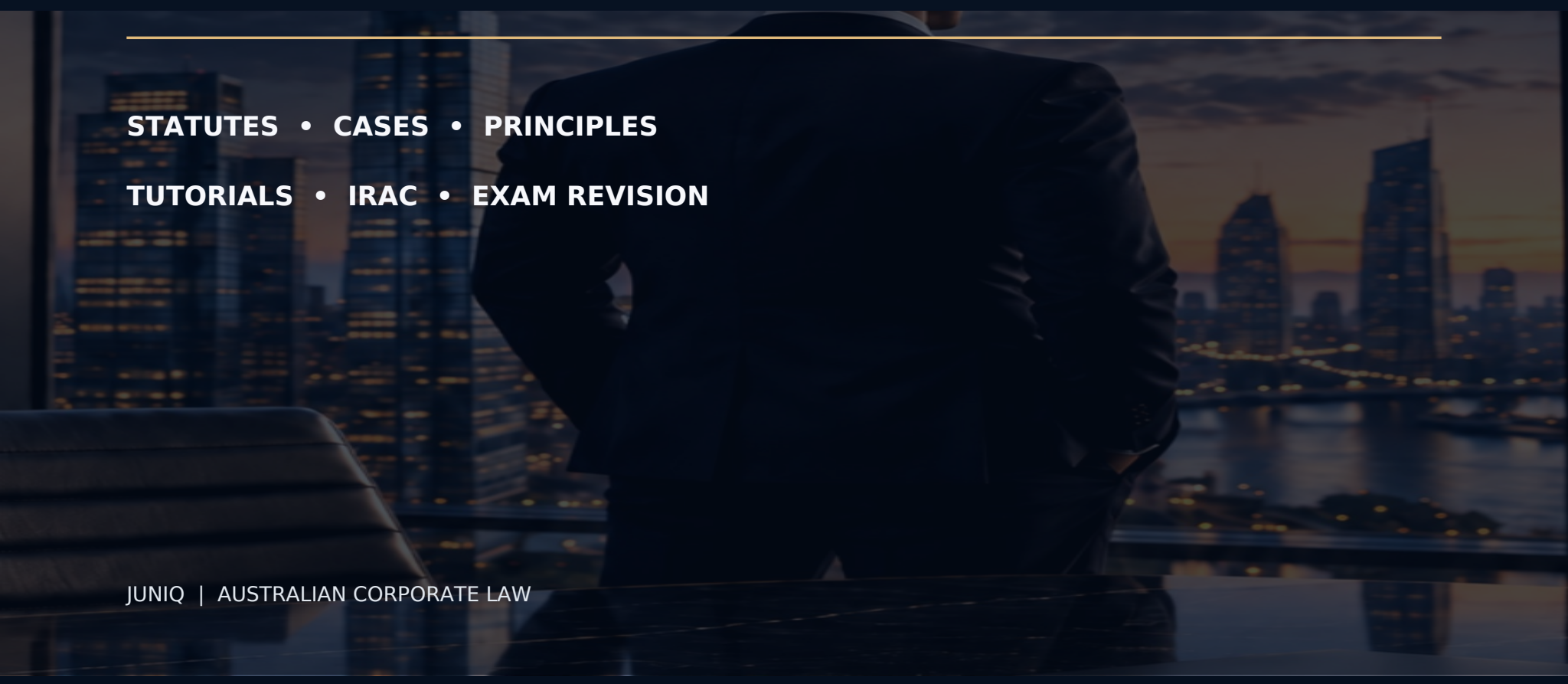
BY DR ADRIAN ADAMS

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