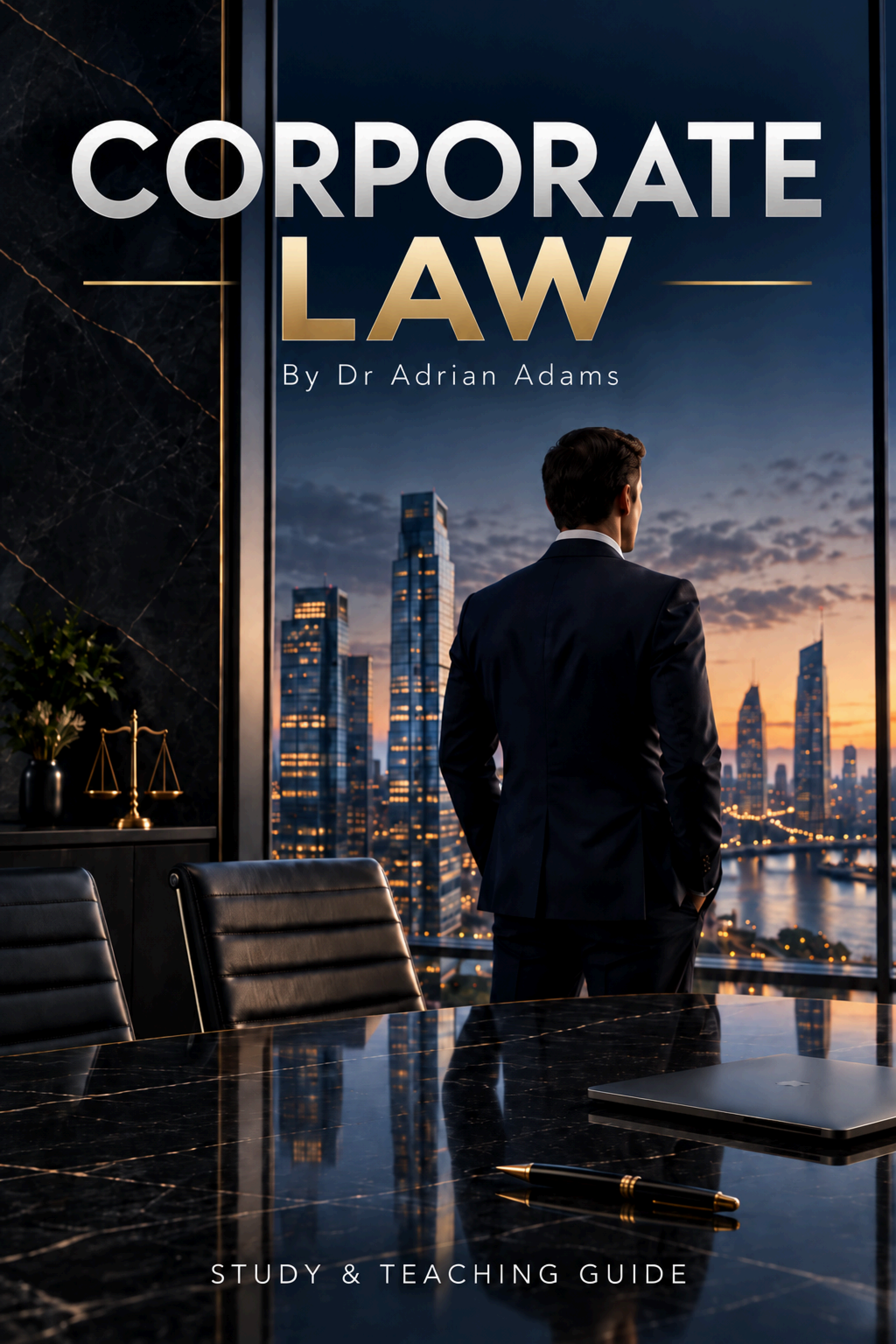

CORPORATE LAW

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 Casey Walters, 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.

I also dedicate this work to 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, *Australian Guide to Legal Citation* (4th ed, 2018) ch 1.

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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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.
8. *Corporations Act 2001* (Cth) s 57a.

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.

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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 CLR 321, 325-6.

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).
24. *Corporations Act 2001* (Cth).

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).
26. *Partnership Act 1891* (Qld) s 12.

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, HISTORICAL DEVELOPMENT OF COMPANY LAW, REGULATORY OVERVIEW AND ASIC

business structures • partnership as comparator • company preview • historical development • constitutional foundations • Corporations Act framework • ASIC • ASX • research method[27]

The first week of Corporate Law is not a detour before “real company law”. It supplies the comparison that makes company law intelligible. To understand what incorporation changes, students first need to understand what happens when a business is carried on personally or through a partnership.[28]

Learning outcomes

- Identify the major business structures used in Australia and explain the factors that influence structural choice.
- Explain the legal nature of an ordinary partnership and distinguish ownership, management, agency and liability.
- Apply the Queensland partnership rules governing formation, partner authority, ordinary debts, wrongs, management and fiduciary obligations.
- Explain why a company offers a legally different platform for ownership, risk, capital and continuity.
- Describe the historical path from chartered and joint-stock organisations to incorporation by registration and limited liability.
- Explain the constitutional path to the national Corporations Act 2001 (Cth).
- Distinguish ASIC from ASX and identify the principal sources of Australian corporate law.
- Use primary sources to support a tutorial answer, exam answer or preliminary client advice.

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27. *Paul Redmond, Corporations and Financial Markets Law (Thomson Reuters (Professional) Australia, 7th ed, 2017) 58-61; ASX Limited, ASX Listing Rules.*

28. Ellie (Larelle) Chapple et al, *Company Law* (Wiley, 3rd ed, 2024) 2-7, 10-17, 26-30, 35-37; Victoria Baumfield, "Corporate Law: Lecture One" (Lecture Slides, Bond University, September 2026) slides 11-35.

The organising question for this chapter is simple: **what changes when business activity is moved from individuals into a legal structure?**

1.1 A commercial problem before a legal problem

The prescribed reading begins with a growing business that has outgrown the simplicity of its original structure. The owner wants control, expansion, finance, succession planning and asset protection, but those goals pull in different directions. That is exactly how business-structure questions arise in practice.

The important lesson is methodological: a corporate lawyer should not begin by saying “form a company”. The lawyer begins by mapping the client’s objectives and risks.

THINK LIKE A CORPORATE LAWYER

- Who currently owns the business assets and signs the contracts?
- Who bears existing debt and litigation risk?
- Will new investors or lenders be needed?
- Does the client want to retain day-to-day control?
- How important are continuity, succession and transferability?
- What regulatory and reporting burden is commercially acceptable?
- Are assets or business lines exposed to different risk levels?
- Would a later restructure create tax, duty, financing or contractual costs?

1.2 Choosing the legal structure

A legal structure is the framework through which a business owns assets, enters obligations, raises capital, makes decisions and allocates risk. Structure also affects tax, disclosure, privacy, continuity, governance and the ease with which ownership can change.

Structure	Separate legal person?	Who controls?	Personal liability profile	Best understood as
Sole trader	No	The individual	Generally unlimited	One person carrying on business personally

Structure	Separate legal person?	Who controls?	Personal liability profile	Best understood as
Ordinary partnership	No	Partners, subject to agreement/ default rules	Partners may be personally exposed under partnership liability rules	A relationship among persons carrying on business in common for profit
Joint venture	Depends on chosen form	By contract / venture structure	Depends on contract and legal vehicle	A collaboration for a defined commercial venture
Trust	The trust itself is not ordinarily a legal person	Trustee, subject to trust law and deed	Trustee liability plus rights of indemnity; corporate trustee often used	Property held and administered for beneficiaries/ purposes
Company	Yes	Board/ management under corporate law; members exercise reserved rights	Members commonly have limited liability	A registered legal person distinct from members
Co-operative / incorporated association	Yes when incorporated	Statutory governance structure	Members generally receive limited liability	Purpose-specific incorporated vehicles
Hybrid / group	Multiple legal persons and relationships	Distributed by corporate, trust, partnership and contract rules	Risk may be allocated or siloed, but not eliminated	A deliberately engineered combination of structures

WHY THIS MATTERS

If you misidentify the legal structure, almost every later conclusion can be wrong: who owns the property, who made the contract, who is liable, whose consent is required and which statute governs.

1.3 Sole trader: the baseline

A sole trader is the simplest comparator because there is no legal separation between the business and its owner. The individual owns the assets, makes the contracts, receives the profits and bears the liabilities. This gives control and administrative simplicity, but it also means business risk can become personal risk.

For students, the sole trader is useful because it shows what incorporation later changes. A company interposes a separate legal person between the business activity and the shareholder. A sole trader does not.

EXAM LENS
Do not say a sole trader “owns the company”. There is no company. The business is carried on by the individual. That distinction matters when analysing contracts, property and liability.

1.4 Partnership: the essential comparator for company law

Queensland partnership law is principally found in the Partnership Act 1891 (Qld)[29]. Section 5(1) defines partnership as the relationship between persons carrying on a business in common with a view of profit. The definition is relational: an ordinary partnership is not a new legal person separate from the partners.

STATUTORY STARTING POINT
Partnership Act 1891 (Qld) s 5[30] — identify the persons, the business, the element of carrying on in common and the profit objective.

1.4.1 Formation: substance over labels

Partnership can arise through an express agreement, an implied agreement or conduct. The legal question is not whether the parties used the word “partner”. The question is whether the statutory relationship exists. Section 6 supplies rules for deciding existence; no single commercial label is conclusive.

This is why “joint venture” is not a magic phrase. A venture may genuinely be structured outside partnership, but if its legal characteristics satisfy partnership law, a court can treat it as a partnership notwithstanding the label.

29. *Partnership Act 1891* (Qld).
30. *Partnership Act 1891* (Qld) s 5.

> Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd[31] [1974] HCA 22; (1974) 131 CLR 321
>
> **Issue**
>
> Whether an arrangement described as a joint venture was legally a partnership.
>
> **Rule / significance**
>
> The High Court looked to the substance of the relationship: a commercial enterprise for profit, shared profits, joint policy control and mutual concern for the venture. The label used by the parties did not determine legal character.
>
> Why students use it: Use it when a problem asks whether a partnership exists despite different terminology, or when distinguishing a joint venture from a partnership.

1.4.2 Partnership is not mere co-ownership

Two people can jointly own an asset without carrying on a business in common. Shared ownership, shared gross returns or receipt of a profit-related payment can be evidence, but the statutory relationship must still be established. This matters in property, investment and family-business fact patterns.

1.4.3 Who manages?

Unless the partners agree otherwise, s 27[32] supplies default internal rules. Every partner may take part in management; ordinary matters may be decided by majority; introducing a new partner requires unanimity; and changing the nature of the business requires consent of all existing partners. Those rules are defaults, not a substitute for reading the partnership agreement.

BOARDROOM / MANAGEMENT COMPARISON

Partnership fuses ownership and management more closely: partners are owners and, by default, each can participate in management. Corporate law can separate ownership (members/shareholders) from board-level management. That structural separation becomes central later in the course.

1.4.4 Authority: why one partner can bind the others

The key concept is agency. Under s 8[33], every partner in an ordinary partnership is an agent of the firm and the other partners for partnership business. An act done in the usual way of the kind of business carried on by the firm can bind the firm unless the statutory limitations apply.

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31. *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321, 325-6.

32. *Partnership Act 1891* (Qld) s 27.

33. *Partnership Act 1891* (Qld) s 8.

Section 9[34] reinforces the point by dealing with acts or instruments done in the firm name or another manner showing an intention to bind the firm by a person authorised to do so. Section 11[35] explains the effect of agreed restrictions on a partner's authority where an outsider has notice of the restriction.

DO NOT CONFLATE AUTHORITY AND LIABILITY
Authority asks whether the firm was bound. Liability asks who must answer for the resulting obligation. In an exam or tutorial, deal with authority first and liability second.

1.4.5 Ordinary debts: joint liability under s 12

For ordinary partnership debts and obligations, the precise Queensland rule is important. Section 12(1)[36] states that every partner in an ordinary firm is liable jointly with the other partners for debts and obligations incurred while that person is a partner.

This means the common shorthand "partners always have joint and several liability for every partnership debt" is too broad in Queensland. The Act distinguishes ordinary debts from liability for specified wrongs and misapplication of property.

1.4.6 Wrongs and misapplication: joint and several liability under s 15

Section 13[37] makes the firm liable for certain wrongful acts or omissions of a partner acting in the ordinary course of business or with authority. Section 14[38] deals with specified misapplication of money or property. Section 15[39] then makes partners jointly and severally liable for the firm's liability under ss 13 and 14.

ACCURACY POINT FOR TUTORIALS AND EXAMS
s 12: joint liability for ordinary debts and obligations. s 15: joint and several liability for the wrongs/misapplication liabilities arising under ss 13-14. State the distinction instead of using a blanket formula.

1.4.7 Internal duties, accounts and loyalty

A partnership is not only a contractual arrangement. It is also a relationship of loyalty and confidence. Section 31[40] requires true accounts and full information; s 32[41] requires a partner to account for unauthorised private benefits derived from

34. *Partnership Act 1891* (Qld) s 9.
35. *Partnership Act 1891* (Qld) s 11.
36. *Partnership Act 1891* (Qld) s 12.
37. *Partnership Act 1891* (Qld) s 13.
38. *Partnership Act 1891* (Qld) s 14.
39. *Partnership Act 1891* (Qld) s 15.
40. *Partnership Act 1891* (Qld) s 31.
41. *Partnership Act 1891* (Qld) s 32.

partnership transactions or property; and s 33[42] requires a partner who competes without consent to account for profits from the competing business.

Chan v Zacharia[43] [1984] HCA 36; (1984) 154 CLR 178

Issue

Whether a former partner could privately obtain the renewal of a valuable lease connected with the dissolved medical partnership.

Rule / significance

The High Court treated the opportunity as subject to continuing fiduciary obligations associated with winding up the partnership. A fiduciary cannot appropriate for personal benefit an opportunity obtained through the fiduciary position in circumstances engaging the no-conflict/no-profit principles.

Why students use it: Use it to explain the intensity of partnership fiduciary duties and the fact that relevant duties can continue during winding up after dissolution.

1.4.8 Partnership property

Section 23[44] deals with property brought into the partnership stock or acquired on account of the firm or for partnership business. Students should distinguish a partner's economic interest in the partnership from personal ownership of each item of partnership property.

1.4.9 Incoming and outgoing partners

Section 20[45] illustrates why timing matters. A new partner does not, merely by admission, become liable for pre-admission matters; a retiring partner does not, merely by retirement, cease to be liable for partnership debts and obligations incurred before retirement.

1.4.10 Can partnership law reduce personal risk?

Yes, but risk reduction is not the same thing as eliminating risk. Parties can regulate internal rights by agreement; authority can be restricted subject to the statutory rules and notice to outsiders; indemnity and contribution operate internally; insurance may transfer some financial risk; and Queensland legislation provides limited partnership and incorporated limited partnership forms.

For a registered limited partnership, s 53[46] limits the limited partner's required contribution to the registered amount, subject to the statutory scheme. Section 60[47]

42. *Partnership Act 1891* (Qld) s 33.
43. *Chan v Zacharia* (1984) 154 CLR 178, 198-9 (Deane J).
44. *Partnership Act 1891* (Qld) s 23.

restricts a limited partner from taking part in management and provides consequences for doing so. Incorporated limited partnerships have their own liability framework, including ss 86-87[48].

1.4.11 Partnership size and professional exceptions

Corporations Act 2001 (Cth) s 115[49] generally prevents participation in forming a profit-seeking partnership or association with more than 20 members unless it is incorporated or otherwise formed under Australian law. The Corporations Regulations 2001 reg 2A.1.01[50] prescribe higher limits for specified professional partnerships, including 400 legal practitioners and 1,000 accountants.

1.5 Joint ventures, trusts and purpose-specific entities

Joint ventures

A joint venture describes commercial collaboration, but the legal consequences depend on its actual design. The participants may contract directly, create a company, use a trust or unintentionally create a partnership. The Canny Gabriel decision demonstrates why the substance of governance, profit sharing and mutual obligations must be analysed rather than the label.

Trusts and trading trusts

A trust separates legal control of property from beneficial enjoyment. The trustee holds and administers trust property subject to trust duties. In business, a corporate trustee is often used because a company can provide continuity and a separate incorporated vehicle through which the trustee function is exercised. Trust law, tax law and corporate law may therefore intersect.

Co-operatives, incorporated associations and purpose-driven entities

Co-operatives and incorporated associations provide statutory incorporation for different organisational purposes. The crucial study point is that incorporation changes the legal platform: an incorporated entity can generally hold property and contract in its own name, and members commonly receive limited liability subject to the governing statute.

Aboriginal and Torres Strait Islander corporations operate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* and are regulated through the Office of the Registrar of Indigenous Corporations. The course introduces these

45. *Partnership Act 1891* (Qld) s 20.
46. *Partnership Act 1891* (Qld) s 53.
48. *Partnership Act 1891* (Qld) s 87.
49. *Corporations Act 2001* (Cth) s 115.
50. *Corporations Regulations 2001* (Cth) reg 2A.1.01.

structures to show that "company" is not the only form of incorporated organisation in Australia.

1.6 Hybrid structures: commercial architecture

Real enterprises often combine legal structures. A group may contain a holding company, operating subsidiaries, trusts, joint ventures, financing entities and special-purpose vehicles. A hybrid structure can separate assets, business lines, investors and risk, or accommodate regulatory and financing requirements.[51]

The professional lesson is restraint: complexity is not automatically sophistication. Every additional entity creates governance, compliance, accounting, tax, banking and transactional consequences. Structure should be only as complex as the client's legitimate objectives require.

THINK LIKE IN-HOUSE COUNSEL
Before adding another entity to a group, ask what problem it solves. Which assets move? Which contracts require consent? Which liabilities remain? Who will direct the new entity? Which board approves the transaction? What tax, duty, financing, reporting or insolvency consequences are created?

1.7 The company: preview of the corporate form

The company is the central structure in this subject. Under the Corporations Act 2001 (Cth)[52], the statutory dictionary in s 9[53] defines a company as a company registered under the Act. Section 57A[54] uses the broader term *corporation*, which includes a company and other bodies described in that provision.

The defining conceptual shift is separate legal personality. A registered company is treated as a legal person distinct from its members. That allows the company, rather than its shareholders personally, to be the holder of business rights and obligations. The full doctrine, its consequences and its limits are the subject of Chapter 2.

Feature	Why it matters commercially	Why it matters legally
Separate legal personality	Business can operate through a continuing entity	The company's rights, property and liabilities are distinct from those of members

51. Ellie (Larelle) Chapple et al, *Company Law* (Wiley, 3rd ed, 2024) 35-37.
52. *Corporations Act 2001* (Cth).
53. *Corporations Act 2001* (Cth) s 9.
54. *Corporations Act 2001* (Cth) s 57a.

Feature	Why it matters commercially	Why it matters legally
Limited liability of members	Investment risk can be capped according to the share/guarantee structure	Members are not automatically liable merely because the company owes a debt
Perpetual succession	Ownership changes need not end the business	The entity continues despite changes in members/directors
Transferable ownership interests	Investment can be transferred subject to legal/ constitutional limits	Shares represent membership interests rather than direct title to company assets
Centralised management	Professional management and board governance become possible	Directors exercise corporate powers subject to the Act, constitution and duties
Capital raising	Can support larger pools of equity/debt capital	Fundraising is regulated and may trigger disclosure/ licensing requirements

CLIENT ADVICE POINT
A company is not automatically “better” than a partnership or sole trader. The recommendation depends on scale, risk, capital needs, succession, control, tax, compliance burden and the client’s future strategy.

1.8 Why company law developed: a short legal history

The history matters because modern corporate law solves recurring economic problems: how can capital be pooled, managed over time, transferred between investors and protected from the death or departure of individual participants?

Medieval and chartered organisations

Early incorporated bodies included religious institutions, boroughs, guilds and universities. Incorporation allowed an organisation to hold property and persist beyond the lifespan of individual office-holders. Royal and Parliamentary charters later supported large trading enterprises.

Joint-stock enterprise and the problem of scale

Industrialisation required larger pools of investment. Joint-stock arrangements divided economic interests into transferable units and separated investment from day-to-day management, but many operated through partnership, trust and deed mechanisms rather than modern registration.

Registration and limited liability

The Joint Stock Companies Registration and Regulation Act 1844 (UK) marked a major movement toward incorporation by registration. Limited liability legislation followed in 1855. The conceptual shift was profound: incorporation moved from a special privilege granted by sovereign or Parliament toward a standard legal facility available on compliance with legislation.[55]

WHY HISTORY HELPS

The modern company combines solutions developed over centuries: continuity, pooled capital, transferable investment, central management and limited investor liability. Those features explain why the company became the dominant vehicle for large-scale enterprise.

1.9 The Australian path to a national corporations statute

Colonial development

Australian company activity developed before Federation through joint-stock arrangements, private statutes and charters. Early enterprises included the Bank of New South Wales and companies established for agriculture, infrastructure and utilities. Company regulation was therefore historically State-based.

The constitutional constraint

The Commonwealth corporations power in Constitution s 51(xx)[56] extends to foreign corporations and trading or financial corporations formed within the Commonwealth. The word “formed” became important because the High Court did not treat s 51(xx) as an unrestricted power to create all corporations.

55. 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; Victoria Baumfield, "Corporate Law: Lecture One" (Lecture Slides, Bond University, September 2026) slides 23-31.

56. *Australian Constitution* s 51(xx), (xxxvii).

New South Wales v Commonwealth (Incorporation Case)[57] [1990] HCA 2; (1990) 169 CLR 482

Issue

Whether s 51(xx) authorised the Commonwealth to legislate for the incorporation of trading and financial corporations.

Rule / significance

The High Court held that the corporations power, in referring to corporations “formed within” the Commonwealth, did not itself support the attempted general federal incorporation provisions.

Why students use it: Use it to understand why the 1989 national takeover failed and why later national company law required a different constitutional foundation.

CITATION CORRECTION

The judgment is [1990] HCA 2; (1990) 169 CLR 482. Course materials may refer to the 1989 challenge because the matter was argued in 1989, but the judgment and report are 1990.

Uniformity, co-operation and constitutional difficulty

Australia moved through several attempts at uniformity. Uniform companies legislation in the 1960s did not contain a reliable mechanism for keeping State laws identical. The later co-operative scheme used Commonwealth legislation in the Territories combined with State application legislation, supported by the National Companies and Securities Commission and State corporate-affairs administrations.[58]

The Commonwealth’s attempted comprehensive Corporations Act 1989 was constitutionally challenged. After the Incorporation Case, Australia returned to a scheme that still depended significantly on State legislation.

The 1999-2000 crisis and referral solution

Later High Court decisions exposed additional constitutional vulnerabilities in the cross-vesting and enforcement architecture. *R v Hughes* was particularly important to the urgency of reform because it examined the conferral of State functions on Commonwealth officers within the Corporations Law scheme.

57. *New South Wales v Commonwealth* (1990) 169 CLR 482, 498-9.

58. 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; Victoria Baumfield, "Corporate Law: Lecture One" (Lecture Slides, Bond University, September 2026) slides 23-31.

The Queen v Hughes[59] [2000] HCA 22; (2000) 202 CLR 535

Issue

Whether Commonwealth prosecutorial machinery could validly exercise functions in relation to offences arising under the State-based Corporations Law scheme.

Rule / significance

The case exposed constitutional limits on conferring State functions and duties on Commonwealth officers and reinforced the need for a more secure national scheme.

Why students use it: Use it as historical constitutional context for why the 2001 referral-based regime replaced the former Corporations Law architecture.

The long-term solution used the referral power in Constitution s 51(xxxvii)[60]. States referred corporations matters to the Commonwealth, supporting the Corporations Act 2001 (Cth)[61] and the ASIC Act 2001 (Cth)[62]. This produced the national scheme students use today.

1.10 The modern regulatory framework

Corporations Act 2001 (Cth)

The Corporations Act is the principal statute regulating companies and broader corporate activity in Australia. It is not the only source. Corporate law also draws on case law, equity, the ASIC Act, regulations, market rules and other statutes.

ASIC: statutory regulator

ASIC[63] describes itself as Australia's integrated corporate, markets, financial-services and consumer-credit regulator. It is an independent Commonwealth body established under the ASIC Act and carries out much of its work under the Corporations Act.

The ASIC Act[64] requires ASIC, in performing its functions and exercising powers, to pursue statutory objectives including financial-system performance, confident and informed participation, effective administration, efficient information handling, public access to company information and enforcement of the law.

ASIC's practical work includes registration and registry functions, licensing, surveillance, investigation, civil enforcement, administrative action and support for

59. *The Queen v Hughes* (2000) 202 CLR 535.
60. *Australian Constitution* s 51(xx), (xxxvii).
61. *Corporations Act 2001* (Cth).
62. *Australian Securities and Investments Commission Act 2001* (Cth) s 1(2).
63. Australian Securities and Investments Commission, 'Our Role' (Web Page).

criminal prosecution through the relevant prosecution arrangements. Its powers include information-gathering, banning, infringement, relief and court-based enforcement mechanisms.

ASIC IS NOT “THE COMPANY’S LAWYER”
ASIC is a public regulator. Its role is not to advise a company how to optimise its commercial position. Corporate lawyers and in-house counsel must distinguish compliance advice from the regulator’s public enforcement and market-integrity functions.[65]

ASX: market operator and listing framework

ASX[66] operates financial markets and, for listed entities, the ASX Listing Rules govern admission, quotation, disclosure and aspects of listed-entity conduct. ASX therefore performs a different function from ASIC. Listed companies can be subject to the Corporations Act, ASIC regulation, ASX Listing Rules and corporate-governance expectations at the same time.

The course introduces the distinction early because students often treat “ASIC” and “ASX” as interchangeable acronyms. They are not.

Entity	Legal character / function	Examples of relevance
ASIC	Independent Commonwealth statutory regulator	Company registration, registers, licensing, surveillance, investigation, enforcement, relief, market supervision
ASX	Licensed market operator with contractual/statutory Listing Rule framework	Admission to official list, quotation, continuous disclosure, listing compliance
APRA	Prudential regulator	Banks, insurers and superannuation entities
ACCC	Competition and consumer regulator	Competition law and Australian Consumer Law issues affecting corporate conduct
Courts	Judicial interpretation and remedies	Construction of the Corporations Act, civil penalties, private disputes, insolvency and judicial review

64. *Australian Securities and Investments Commission Act 2001* (Cth) s 1(2).
65. Paul Redmond, *Corporations and Financial Markets Law* (Thomson Reuters (Professional) Australia, 7th ed, 2017) 55-61; Australian Securities and Investments Commission, 'Our Role' (Web Page).
66. ASX Limited, *ASX Listing Rules* (Rules, current 22 September 2026).

1.11 Sources of Corporate Law

A competent Corporate Law answer identifies which source is doing the legal work.

Source	Function	Student method
Corporations Act 2001 (Cth) and regulations	Primary statutory framework	Read the exact section/ subsection/paragraph before using commentary
ASIC Act and other legislation	Regulator powers, financial services and related regimes	Check whether the issue is actually governed by another Act
Case law and equity	Interpretation, common-law doctrines, fiduciary principles, remedies	Use the ratio/proposition for which the case is authority
ASX Listing Rules and guidance	Rules applicable to listed entities	Check whether the entity is listed and identify the exact Listing Rule
ASIC legislative instruments and regulatory guides	Relief, modification and regulatory interpretation/ practice	Distinguish binding instruments from guidance
Company constitution and replaceable rules	Internal governance rules	Later chapters show how these rules operate as a statutory contract

1.12 Business names: identification is not incorporation

Registering a business name does not create a company and does not create separate legal personality. The Business Names Registration Act 2011 (Cth)[67] has an identification function: it allows people dealing with a business to identify the underlying entity and contact it. The Act also makes clear that registration does not itself give the entity property rights in the name.

COMMON STUDENT ERROR

"Retrofit" may be a registered business name, but the legal person carrying on the business might still be Julian personally, a partnership, a trustee or a company. Always identify the underlying entity.

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

1.13 Worked structure analysis: from facts to advice

Assume a growing business has substantial turnover, employees, contracts, equipment, expansion plans and a founder who wants to retain control while protecting personal assets and preserving succession options.

Question	Why it matters	How the structures differ
Who should own business assets?	Determines where risk and value sit	Sole trader owns personally; partnership property is held for partnership purposes; company owns its own assets
Who can bind the business?	Contract and debt exposure	Sole trader acts personally; each ordinary partner may bind the firm within s 8; company acts through organs/agents
How is control exercised?	Governance and founder objectives	Sole trader direct control; partners share management by default; company separates board management from membership
What happens on death/exit?	Continuity and succession	Sole trader and partnership are more person-dependent; company can continue despite membership changes
How can capital be raised?	Growth and finance	Company form is generally better adapted to equity investment; public fundraising is heavily regulated
What personal liability remains?	Asset protection	Sole trader and ordinary partners have substantial personal exposure; company members usually receive limited liability but directors can still incur personal liability under specific rules

PROFESSIONAL ADVICE

The conclusion should not be “company = limited liability = always best”. Advice should identify the client’s priorities, explain trade-offs, flag tax and asset-protection advice that requires specialist input, and explain implementation steps such as transferring contracts, assets, employees, licences and finance.

1.14 Chapter 1 legislation map

Provision	Rule / function	When to use it
Partnership Act 1891 (Qld) s 5[68]	Definition of partnership	Formation/existence questions
Partnership Act 1891 (Qld) s 6[69]	Rules for deciding existence	Where labels, profit sharing, co-ownership or commercial conduct are ambiguous
Partnership Act 1891 (Qld) s 8[70]	Partner agency and power to bind firm	Authority to contract/incur obligations
Partnership Act 1891 (Qld) s 11[71]	Effect of agreed restrictions where outsider has notice	Limits on partner authority
Partnership Act 1891 (Qld) s 12[72]	Joint liability for debts and obligations	Ordinary partnership debts
Partnership Act 1891 (Qld) ss 13-15[73]	Firm liability for wrongs/ misapplication; joint and several partner liability	Torts, wrongful acts, misapplied money/property
Partnership Act 1891 (Qld) s 20[74]	Incoming/outgoing partner liability	Timing of membership and pre/post retirement debts
Partnership Act 1891 (Qld) s 23[75]	Partnership property	Ownership/use of firm assets
Partnership Act 1891 (Qld) s 27[76]	Default internal management rules	Profits/losses, management, admission of partners, voting, books

68. *Partnership Act 1891* (Qld) s 5.
69. *Partnership Act 1891* (Qld) s 6.
70. *Partnership Act 1891* (Qld) s 8.
71. *Partnership Act 1891* (Qld) s 11.
72. *Partnership Act 1891* (Qld) s 12.
73. *Partnership Act 1891* (Qld) s 15.
74. *Partnership Act 1891* (Qld) s 20.
75. *Partnership Act 1891* (Qld) s 23.
76. *Partnership Act 1891* (Qld) s 27.

Provision	Rule / function	When to use it
Partnership Act 1891 (Qld) ss 31-33[77]	Accounts, private profits, competition	Internal loyalty/accounting duties
Corporations Act 2001 (Cth) s 9[78]	Definition of company	Company/corporation terminology
Corporations Act 2001 (Cth) s 57A[79]	Meaning of corporation	Broader statutory scope
Corporations Act 2001 (Cth) s 115[80]	General 20-member partnership/association limit	Large professional/business partnerships
Constitution s 51(xx), (xxxvii)[81]	Corporations power and referral power	History and constitutional basis of national scheme
ASIC Act 2001 (Cth)[82]	ASIC's statutory framework and objectives	Regulatory architecture
Business Names Registration Act 2011 (Cth)[83]	Business-name registration	Distinguishing registration of name from incorporation

1.15 Chapter 1 case and authority map

Authority	Proposition	Use
Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd[84] [1974] HCA 22; (1974) 131 CLR 321	Substance determines whether a commercial arrangement is a partnership; label "joint venture" is not conclusive.	Formation / classification of partnership

77. *Partnership Act 1891* (Qld) s 31.
78. *Corporations Act 2001* (Cth) s 9.
79. *Corporations Act 2001* (Cth) s 57a.
80. *Corporations Act 2001* (Cth) s 115.
81. *Australian Constitution* s 51(xx), (xxxvii).
82. *Australian Securities and Investments Commission Act 2001* (Cth) s 1(2).
83. *Business Names Registration Act 2011* (Cth).

Authority	Proposition	Use
Chan v Zacharia[85] [1984] HCA 36; (1984) 154 CLR 178	Partnership fiduciary obligations can continue through dissolution/ winding up; partner cannot appropriate a partnership-linked opportunity for personal benefit.	Fiduciary duties / winding up
New South Wales v Commonwealth (Incorporation Case)[86] [1990] HCA 2; (1990) 169 CLR 482	s 51(xx) did not support general Commonwealth incorporation provisions.	Historical constitutional foundation
The Queen v Hughes[87] [2000] HCA 22; (2000) 202 CLR 535	Highlighted constitutional problems in the former Corporations Law enforcement scheme.	Why the referral-based 2001 regime emerged

1.16 Exam method: business structure and partnership problems

Issue
Identify the relationship and the legal actor. Is there a partnership? Was the firm bound? Is the question ordinary debt or wrongful conduct?

Rule
Use the exact Partnership Act section. Separate s 5 formation, s 8 authority, s 12 ordinary debt and ss 13-15 wrongs.

Application
Connect each statutory element to facts: business, in common, profit objective, usual way of business, actual authority, outsider knowledge, timing.

Conclusion
State whether the firm is bound, who is liable, the type of liability, and any internal indemnity/limited-partnership point.

ONE-SENTENCE EXAM TRIGGER

84. *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321, 325-6.
85. *Chan v Zacharia* (1984) 154 CLR 178, 198-9 (Deane J).
86. *New South Wales v Commonwealth* (1990) 169 CLR 482, 498-9.
87. *The Queen v Hughes* (2000) 202 CLR 535.

If the facts say “partner A signed”, “partner B knew nothing”, “the firm cannot pay” or “the client wants the wealthiest partner”, immediately separate authority from liability and identify whether s 12 or ss 13-15 is engaged.

1.17 Tutorial 1 - Questions

The tutorial deliberately uses partnerships to create a contrast with corporations. The answers below are fuller than the class requires because the book is designed for revision, assessment and later professional use.

Write your own answer before checking the model answer pages. The questions are reproduced from Tutorial 1 so the book can function as both a class-preparation guide and a revision text.

Tutorial question 1

A. Who owns a partnership?

Tutorial question 2

B. Is everyone who works within a partnership a partner?

Tutorial question 3

C. How is a partnership formed?

Tutorial question 4

D. Where would one look to find the rules governing the functioning of a partnership? How do those sources interact?

Tutorial question 5

E. Who manages/makes decisions for a partnership?

Tutorial question 6

F. Who can enter into contracts and incur debts in the partnership’s name? What legal concept allows this?

Tutorial question 7

G. Who is liable for debts incurred by the partnership? To what extent? What is the legal name for this liability?

Tutorial question 8

H. Are individual partners potentially liable for debts incurred by other partners on behalf of the partnership?

Tutorial question 9

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

1.17 Tutorial 1 - Model Answers

These model answers go beyond the minimum tutorial response. They show the precise rule, authority and reasoning that students can reuse in exams and client-oriented problem solving.

Tutorial answer 1

Model answer

An ordinary partnership is not a separate legal person distinct from the partners. The partners collectively constitute the firm. Partnership property is held and applied for partnership purposes under s 23[88]. It is therefore better to say that the partners have partnership interests and rights in the partnership assets, rather than saying that the "partnership entity" owns property in the same way a company does. Exception: an incorporated limited partnership is a separate legal entity under the statutory scheme.[89]

Tutorial answer 2

Model answer

No. Employees, contractors and consultants may work for a partnership without becoming partners. Partnership depends on the statutory relationship in s 5[90], assessed using the existence rules in s 6[91] and the substance of the parties' relationship. A person's job title is not decisive.

Tutorial answer 3

Model answer

A partnership can arise by express agreement, implied agreement or conduct. The question is whether persons are carrying on a business in common with a view of profit. A formal deed is strongly advisable but is not always necessary for the relationship to arise. Canny Gabriel[92] demonstrates that courts look beyond labels.

Tutorial answer 4

Model answer

At minimum: (1) the Partnership Act 1891 (Qld)[93]; and (2) the partnership agreement. Case law and equitable fiduciary principles also matter. Many statutory internal rules are default rules that operate subject to express or implied agreement: see s 27[94]. Some rules, particularly those protecting outsiders or governing liability, cannot simply be contracted away against third parties.

Tutorial answer 5

Model answer

The partners do, subject to their agreement. The default rule in s 27(1)(e)[95] is that every partner may take part in management. Ordinary matters may be decided by

88. *Partnership Act 1891* (Qld) s 23.
89. Ellie (Larelle) Chapple et al, *Company Law* (Wiley, 3rd ed, 2024) 10-17.
90. *Partnership Act 1891* (Qld) s 5.
91. *Partnership Act 1891* (Qld) s 6.
92. *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321, 325-6.

majority under s 27(1)(h), while a change in the nature of the partnership business requires consent of all existing partners.

Tutorial answer 6

Model answer

A partner can bind the firm where the statutory agency rules apply. The legal concept is agency. Under s 8[96], every ordinary partner is an agent of the firm and the other partners for partnership business; acts done in the usual way of that kind of business bind the firm unless the statutory exception applies. Analyse authority first.

Tutorial answer 7

Model answer

For ordinary debts and obligations, s 12(1)[97] makes partners jointly liable. For liabilities of the firm arising under ss 13-14 (specified wrongs and misapplication), s 15[98] imposes joint and several liability. Personal exposure can therefore be substantial and, for an ordinary partnership, is not protected by corporate limited liability.

Tutorial answer 8

Model answer

Yes, if the firm is bound and the statutory liability rule is engaged. The analysis is two-stage: first ask whether the acting partner bound the firm under ss 8-11[99]; then identify the relevant liability provision, commonly s 12[100] for debts or s 15[101] for wrongs falling within ss 13-14.

Tutorial answer 9

Model answer

Yes. Partnership agreements can regulate internal authority, contribution and indemnity; restrictions may affect outsiders who have notice under s 11[102]; insurance can transfer some financial risk; and Queensland provides limited and incorporated limited partnership structures, including liability rules in s 53[103] and management

95. *Partnership Act 1891* (Qld) s 27.
93. *Partnership Act 1891* (Qld).
94. *Partnership Act 1891* (Qld) s 27.
96. *Partnership Act 1891* (Qld) s 8.
97. *Partnership Act 1891* (Qld) s 12.
98. *Partnership Act 1891* (Qld) s 15.
99. *Partnership Act 1891* (Qld) s 8.
100. *Partnership Act 1891* (Qld) s 12.
101. *Partnership Act 1891* (Qld) s 15.
102. *Partnership Act 1891* (Qld) s 11.
103. *Partnership Act 1891* (Qld) s 53.

restrictions in s 60[104]. Incorporation as a company is also a structural alternative and is the comparison developed next in the course.

Questions worth asking in the tutorial

1. For Queensland exam purposes, should students expressly distinguish s 12 joint liability for ordinary debts from s 15 joint and several liability for wrongs under ss 13-14?
2. When the course describes partnership formation as "contractual", should we state more precisely that the relationship can arise by express or implied agreement/conduct if the statutory elements are satisfied?
3. How much detail does the subject expect students to know about limited partnerships and incorporated limited partnerships, given that alternative business structures are primarily contextual?
4. When comparing partnerships with companies, which distinction is most important for the examination: separate legal personality, limited liability, centralised management, continuity, or all of these together?
5. For the historical material, should students remember the constitutional chronology only as context, or should we be able to explain the significance of the Incorporation Case and R v Hughes in an assessment answer?

1.18 Frequently Asked Questions

Use these as fast issue-spotting prompts. Answer in one or two sentences, then turn to the following answer page.

FAQ 1

Is a partnership a separate legal entity?

FAQ 2

Can a person be a partner without signing a formal deed?

FAQ 3

Does sharing profits automatically create a partnership?

FAQ 4

Can one partner bind everyone else?

FAQ 5

Are partnership debts always joint and several in Queensland?

FAQ 6

Can partners contract out of liability to outsiders?

FAQ 7

Why is a company different from a business name?

FAQ 8

Is ASIC the stock exchange?

104. *Partnership Act 1891* (Qld) s 60.

FAQ 9

Why did Australia need referrals of State power?

FAQ 10

Why learn historical material if it is not heavily examinable?

1.18 Frequently Asked Questions - Answers

FAQ 1 answer

An ordinary partnership is not. An incorporated limited partnership is a statutory exception and is treated as a separate legal entity.

FAQ 2 answer

Yes. The statutory relationship can arise from express or implied agreement and conduct. A written deed is prudent but not always constitutive.

FAQ 3 answer

No. It is evidence, but s 6 makes clear that the overall relationship must be assessed.

FAQ 4 answer

Potentially. Section 8 makes each ordinary partner an agent for partnership business, subject to the statutory limits.

FAQ 5 answer

No. Ordinary debts are joint under s 12. Section 15 creates joint and several liability for the wrongs/misapplication liabilities in ss 13-14.

FAQ 6 answer

An agreement can regulate internal rights and restrict authority, but it does not automatically defeat the rights of an outsider who is protected by the statutory rules.

FAQ 7 answer

A business name is an identifier. A company is a registered legal person.

FAQ 8 answer

No. ASIC is a statutory regulator. ASX is a market operator with Listing Rules and market functions.

FAQ 9 answer

The Constitution did not give the Commonwealth an unrestricted incorporation power under s 51(xx). The referral mechanism supported the modern national scheme.

FAQ 10 answer

Because it explains the constitutional structure, the role of ASIC and why the Corporations Act is a national statute with a distinctive federal foundation.

1.19 Multiple Choice Questions

Choose the best answer without looking ahead. The following answer pages explain the correct option and why the distractors fail.

1. Which statement best describes an ordinary Queensland partnership?

A. It is always a separate legal person

B. It is a relationship between persons carrying on business in common with a view of profit

C. It can only exist if registered with ASIC

D. It must have equal capital contributions

2. Which concept principally explains why one partner may bind the firm?

A. Trusteeship

B. Agency

C. Estoppel only

D. Separate legal personality

3. Under Queensland law, ordinary partnership debts and obligations under s 12 are:

A. Several only

B. Joint

C. Always joint and several

D. Limited to partnership assets

4. Section 15 is most relevant to:

A. Registration of a company

B. Joint and several liability for firm liability under ss 13-14

C. Management voting

D. Business names

5. Which source most directly governs default internal management rights in a Queensland partnership?

A. Corporations Act s 181

B. Partnership Act s 27

C. ASIC Act s 1

D. ASX Listing Rule 3.1

6. Canny Gabriel is important because:

A. It created limited liability

B. It shows that calling an arrangement a joint venture does not prevent it being a partnership

C. It concerns directors' insolvent trading

D. It invalidated the Corporations Act 2001

7. Chan v Zacharia is principally useful in Week 1 for:

A. ASX disclosure

B. Partnership fiduciary obligations
C. Corporate registration
D. Business names
8. A business name registration:
A. creates a separate legal person
B. automatically gives trademark rights
C. identifies the entity carrying on business but is not incorporation
D. replaces the need for an ABN
9. The Corporations Act definition of "company" is found in:
A. s 9
B. s 57A only
C. s 115
D. ASIC Act s 1
10. The Incorporation Case primarily concerned:
A. Directors' duty of care
B. The constitutional power of the Commonwealth to legislate for incorporation under s 51(xx)
C. Partnership agency
D. ASX Listing Rules
11. ASIC is best described as:
A. A private stock exchange
B. Australia's integrated corporate, markets, financial-services and consumer-credit regulator
C. A court
D. A professional association
12. The ASX Listing Rules primarily apply to:
A. Every partnership
B. Listed entities
C. Only ASIC employees
D. All sole traders

1.19 Multiple Choice Questions - Answers & Explanations

Question 1

B is correct because s 5(1) defines partnership as the relationship of persons carrying on a business in common with a view of profit. A is wrong because an ordinary partnership is not a separate legal person. C is wrong because ASIC registration is not constitutive of an ordinary partnership. D is wrong because equal capital contributions are not an element of formation.

Question 2

B is correct because agency is the mechanism in s 8 that can allow one partner to bind the firm and the other partners for partnership business. Trusteeship and separate legal personality are different concepts, and estoppel is not the principal statutory rule asked for here.

Question 3

B is correct. Section 12 uses joint liability for ordinary debts and obligations. The shorthand “joint and several” is too broad for this category in Queensland, and liability is not confined to partnership assets.

Question 4

B is correct because s 15 makes partners jointly and severally liable for the firm liabilities arising under ss 13 and 14. The other options concern unrelated topics.

Question 5

B is correct because s 27 supplies default internal management rules, subject to agreement. Section 181 concerns corporate directors/officers, the ASIC Act concerns ASIC, and ASX Listing Rules concern listed entities.

Question 6

B is correct. Canny Gabriel demonstrates substance over label: calling an arrangement a “joint venture” does not prevent a court from finding a partnership where the legal characteristics satisfy the statutory test.

Question 7

B is correct. Chan v Zacharia is a leading authority on partnership fiduciary obligations and partnership opportunities/property. It is not a registration, disclosure or business-name authority.

Question 8

C is correct. Business-name registration identifies who is trading under a name; it does not create a separate legal person and does not itself confer trade mark rights.

Question 9

A is correct. “Company” is defined in s 9 of the Corporations Act. Section 57A addresses the broader concept “corporation”; s 115 concerns large partnerships.

Question 10

B is correct. The Incorporation Case concerned whether s 51(xx) supported Commonwealth legislation for incorporation. It explains why the later national scheme needed a different constitutional foundation.

Question 11

B is correct. ASIC is the independent Commonwealth regulator for corporations, markets, financial services and consumer credit. It is neither a court nor the ASX.

Question 12

B is correct. The ASX Listing Rules operate within the listed-market framework and primarily bind listed entities and relevant market participants, not every business form.

1.20 Chapter 1 Crossword Revision

Complete the crossword from memory before checking the answer grid on the following page. Every clue comes from the Chapter 1 legal framework.

1

2

3

4

5

6 7 8

9

10

11

12

Across

3. The commercial objective expressly included in the statutory partnership definition.

4. Independent Commonwealth regulator for corporations, markets, financial services and consumer credit.

6. Relationship defined by s 5(1): persons carrying on business in common with a view of profit.

9. Type of loyalty-based duty illustrated by Chan v Zacharia.

11. General institutional description of ASIC.

12. Under s 15, liability for specified partnership wrongs is joint and _____.

Down

1. Section 12 describes ordinary partnership debt liability as _____.

2. A registered legal person governed principally by the Corporations Act 2001 (Cth).

4. Concept explaining why one partner can bind the firm under s 8.

5. The legal exposure analysed after determining whether the firm was bound.

7. Before liability, ask whether the acting partner had power to bind the firm: this is the issue of _____.

8. Australian market operator whose Listing Rules apply within the listed-market framework.

10. Constitutional mechanism under s 51(xxxvii) supporting the modern national corporations scheme.

1.20 Chapter 1 Crossword - Answer Grid

Check the grid, then return to the relevant statute or case for any term you could not recall confidently.

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                1J
            2C  O
      3P R  O  F I T
            M   N
            P   T        4A S I C
            A     A  5L  G
6P 7A R T   N  E R 8S H I  P  E
   U        Y     X  A   N
   T                 B   C
   H        9F I D U C I A R Y
   O                 L
   R        10R      I
   I     11R E  G U L A T O R
   T        F        Y
   Y        E
            R
12S E V E   R  A L
            A
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1.21 Short-Answer Questions

Write a concise answer first. Aim to identify the rule, authority and legal significance in a form that could earn marks under time pressure.

Short-answer question 1

Explain why a partnership agreement and the Partnership Act must be read together.

Short-answer question 2

Distinguish authority from liability in partnership law.

Short-answer question 3

Why is "joint and several liability" an incomplete description of Queensland partnership liability?

Short-answer question 4

What is the significance of s 51(xxxvii) of the Constitution to modern corporations law?

Short-answer question 5

Distinguish ASIC and ASX.

1.21 Short-Answer Questions - Model Answers

Model answer 1

The agreement regulates internal rights and can modify many default rules. The Act supplies the legal definition, outsider-facing rules and defaults. Statutory provisions protecting outsiders or fixing liability cannot simply be ignored by private agreement.

Exam method: identify the exact statutory rule first, then state its legal significance in plain English.

Model answer 2

Authority asks whether an act binds the firm; ss 8-11 are central. Liability asks who must answer for the resulting obligation; s 12 governs ordinary debts while ss 13-15 govern specified wrongs and misapplication.

Exam method: identify the exact statutory rule first, then state its legal significance in plain English.

Model answer 3

Because s 12(1) makes ordinary debts and obligations joint, whereas s 15 expressly creates joint and several liability for liabilities arising under ss 13-14.

Exam method: identify the exact statutory rule first, then state its legal significance in plain English.

Model answer 4

It is the referral power under which States can refer matters to the Commonwealth. State referrals helped provide the constitutional foundation for the national Corporations Act 2001 regime.

Exam method: identify the exact statutory rule first, then state its legal significance in plain English.

Model answer 5

ASIC is an independent statutory regulator. ASX is a market operator; its Listing Rules regulate listed entities within the market framework. A listed company can be subject to both.

Exam method: identify the exact statutory rule first, then state its legal significance in plain English.

1.22 IRAC / Problem Questions

Treat each problem as a mini client file: identify the actor, issues and sub-issues; state exact law and authority; apply every material fact; test counterarguments; conclude; then identify the practical next step.

IRAC problem 1

Problem 1 - Partner authority and ordinary debt

A three-person architectural partnership supplies commercial design services. Without consulting the other partners, Lee orders $45,000 of specialist modelling equipment in the firm name from a supplier that has dealt with the firm before. The partnership agreement requires unanimous approval for expenditure above $20,000, but the supplier has never seen the agreement. The firm refuses to pay. Advise the supplier and the partners.

IRAC problem 2

Problem 2 - Wrongful act and partner liability

A partner in a financial-advice partnership gives negligent advice to a client in the ordinary course of the firm’s business, causing substantial loss. Another partner had no involvement in the advice and was overseas. Advise the client.

IRAC problem 3

Problem 3 - Is the “joint venture” a partnership?

Two companies agree to finance and operate a series of music events. They call the agreement a “Joint Venture Agreement”, share net profits equally, require joint approval for major policy decisions, operate a joint bank account and are financially dependent on one another for the project. The agreement says nothing about sharing losses. One party later argues there was no partnership. Advise.

IRAC problem 4

Problem 4 - Structure advice for a growing founder-led business

A founder operates a profitable importing business personally. The business now has 14 employees, major lease obligations, product-liability exposure, expansion plans, and a possible external investor. The founder wants to retain day-to-day control and later transfer the business to children. Prepare a preliminary structure advice outline.

1.22 IRAC / Problem Questions - Model Answers

Model IRAC answer 1

Model IRAC answer

Issue. Whether Lee bound the firm despite breaching an internal restriction, and who is liable for the resulting ordinary debt.

Law. Section 8 makes a partner an agent of the firm for partnership business and binds the firm for acts in the usual way, subject to the statutory exception. Section 11 addresses agreed restrictions where the outsider has notice. Section 12 governs ordinary partnership debts.

Application. Buying specialist modelling equipment appears connected with the usual business of an architectural firm. The internal $20,000 limit restricts Lee’s actual authority, but the supplier had no notice. On the assumed facts, the firm is likely bound under s 8. The liability is an ordinary contractual debt, so s 12 joint liability is the starting point. Internally, Lee may have breached the partnership agreement and may face contribution/indemnity consequences.

Conclusion. The supplier has a strong argument that the firm is bound. The internal authority breach does not automatically defeat the supplier’s rights.

Professional next step: obtain the partnership agreement, purchase documents and evidence of what the supplier knew about Lee’s authority; advise separately on the supplier’s external claim and the partners’ internal contribution/indemnity position.
Model IRAC answer 2

Model IRAC answer

Issue. Whether the firm and the uninvolved partner may be liable for the wrongful act.

Law. Section 13 addresses firm liability for a partner’s wrongful act or omission in the ordinary course of business or with authority. Section 15 makes partners jointly and severally liable for liabilities arising under ss 13-14.

Application. The advice was given by a partner in the ordinary course of the firm’s financial-advice business. Section 13 is therefore engaged on the assumed facts. Section 15 then exposes the partners to joint and several liability, meaning the client can pursue an individual partner subject to the statutory framework. Internal allocation between partners is a separate matter.

Conclusion. The uninvolved partner’s lack of personal participation does not itself prevent liability where ss 13 and 15 apply.

Professional next step: identify every partner at the relevant time, the engagement terms, available professional-indemnity insurance and limitation issues. Separate the client’s external claim from contribution rights between partners.
Model IRAC answer 3

Model IRAC answer

Issue. Whether the arrangement is legally a partnership despite its label and the absence of an express loss-sharing clause.

Law. Section 5 requires business in common with a view of profit; s 6 guides existence. Canny Gabriel shows that legal character turns on substance and that a “joint venture” can be a partnership where the relationship displays partnership characteristics.

Application. The facts show a commercial enterprise, profit sharing, joint policy control and financial interdependence. Those factors strongly resemble Canny Gabriel. The absence of an express loss-sharing clause is relevant but not decisive.

Conclusion. A court could characterise the arrangement as a partnership notwithstanding the contractual label.

Professional next step: review the entire agreement and actual conduct. Labels are evidence, not conclusions; assess profit sharing, control, mutual agency, assets, accounts and risk allocation before advising on classification.
Model IRAC answer 4

Model IRAC answer

Issue. Which structural factors should be addressed before recommending incorporation or another vehicle.

Law / framework. Structural choice is not governed by a single section. Relevant features include separate legal personality, personal liability, control, continuity, transferability, capital raising, compliance and tax. The Corporations Act provides the company framework; partnership and trust law may also be relevant depending on design.

Application. Product and lease risk make personal exposure significant. An external investor and succession plan favour a vehicle with transferable ownership interests and continuity. The founder can remain involved in management while using a company, but corporate governance and directors' duties will apply. Tax, asset transfers, licences, employee arrangements, leases and lender consents require separate implementation advice.

Conclusion. A proprietary company is a strong candidate, but the recommendation should be conditional on tax, financing, asset-protection and implementation advice. The lawyer should explain that limited liability is not a universal shield and that director duties remain personal.

Professional next step: prepare a structure-options matrix covering liability, control, succession, capital raising, compliance, tax, asset transfers, licences, finance and implementation. Obtain specialist tax advice before restructuring.

1.23 Common traps

- Saying a business name is a company.
- Treating an ordinary partnership as a separate legal person.
- Saying every person working in a partnership is a partner.
- Using "joint and several liability" for every Queensland partnership debt without distinguishing ss 12 and 15.
- Answering liability before asking whether the acting partner had authority to bind the firm.
- Assuming the label "joint venture" prevents partnership classification.
- Confusing ASIC with ASX.
- Using the year 1989 as the formal citation year for the Incorporation Case judgment.
- Quoting a statute but failing to apply its elements to facts.
- Recommending a company solely because it offers limited liability, without discussing control, compliance, finance, succession and implementation.

1.24 Sixty-second revision sheet

Trigger	Recall
Partnership definition	s 5: persons + business + in common + view of profit
Does arrangement really form partnership?	s 6 + Canny Gabriel: substance over label

Trigger	Recall
Can partner bind firm?	s 8 agency; s 11 restrictions + outsider notice
Ordinary debt	s 12 joint liability
Wrong / misapplication	ss 13-14 firm liability → s 15 joint and several
Internal management	s 27 default rules subject to agreement
Loyalty / private profit	ss 31-33 + Chan v Zacharia
Large partnership	Corporations Act s 115 + reg 2A.1.01
Company definition	Corporations Act s 9
Corporation broader concept	s 57A
Why 2001 national Act?	s 51(xx) limits + Incorporation Case + referral power s 51(xxxvii)
ASIC vs ASX	ASIC statutory regulator; ASX market operator/ listing rules

END-OF-CHAPTER CAPABILITY CHECK
You should now be able to explain why legal structure matters, identify when a partnership exists, separate authority from liability, use the correct Queensland liability provisions, explain the historical constitutional path to the Corporations Act, distinguish ASIC from ASX, and turn those rules into preliminary client advice.

> Reading and authority note. The chapter integrates the prescribed Week 1 readings, the Week 1 lecture/forum material, Tutorial 1, current legislation, leading authorities and regulator materials. The electronic edition uses blue links so students can move from the teaching explanation to the underlying source.

1.25 Chapter 1 Bibliography and Resources

The following bibliography identifies the principal sources relied upon in Chapter 1. Electronic links are provided for research; subscription databases require institutional access.

A Articles / Books / Reports

Baxt, Robert, Keith Lloyd Fletcher and Saul Fridman, *Corporations and Associations: Cases and Materials* (LexisNexis Butterworths, 10th ed, 2009)

Chapple, Ellie (Larelle) et al, *Company Law* (Wiley, 3rd ed, 2024)

Redmond, Paul, *Corporations and Financial Markets Law* (Thomson Reuters (Professional) Australia, 7th ed, 2017)

B Cases

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

Chan v Zacharia (1984) 154 CLR 178

Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330

New South Wales v Commonwealth (1990) 169 CLR 482

Re Wakim; Ex parte McNally (1999) 198 CLR 511

The Queen v Hughes (2000) 202 CLR 535

C Legislation

Australian Constitution

Acts Interpretation Act 1901 (Cth)

Acts Interpretation Act 1954 (Qld)

Australian Securities and Investments Commission Act 2001 (Cth)

Business Names Registration Act 2011 (Cth)

Corporations Act 2001 (Cth)

Corporations Regulations 2001 (Cth)

Partnership Act 1891 (Qld)

E Other

Australian Securities and Investments Commission, 'Our Role' (Web Page)

ASX Limited, *ASX Listing Rules*

Baumfield, Victoria, 'Corporate Law: Lecture One' (Lecture Slides, Bond University, September 2026)

Melbourne University Law Review Association Inc and Melbourne Journal of International Law Inc, *Australian Guide to Legal Citation* (4th ed, 2018)

Australasian Legal Information Institute (AustLII)

Lexis+ Australia

Westlaw Australia

END OF CHAPTER 1