Corporate Law — Essential Readings Explained

By Dr Adrian Adams · Supplement to the preserved Chapters 1–8 and Week 9 university tutorial

This original explanatory companion interprets the user-supplied textbook extracts. The text is not a reproduction of copyrighted chapters. The existing textbook and statutory authorities should be checked when applying the law.

Chapter 1: Choosing the business structure: the human being, the business, and the company

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 1, particularly §§ 1.1–1.6 and 1.9 (only the prescribed page ranges are examinable unless your lecturer says otherwise).

A source for the Week 1 business structures and historical foundations teaching, especially business-organisations comparisons.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

Begin with a familiar situation. Three friends open a café and split the profits. They may have a partnership without ever saying the word “partnership”. Registering a trading name does not by itself register a corporation. Your first question is therefore *who is legally carrying on the business?* The answer determines who makes promises, owns assets, can sue, and may be personally liable.

A sole trader and the trader are one legal person. A partnership is ordinarily a relationship between persons carrying on business in common with a view of profit; partners can expose one another to obligations arising from partnership business. A trust is not itself a separate incorporated person: the trustee holds rights and assumes duties, subject to trust law and the trustee’s capacity. A company, by contrast, becomes a body corporate on registration under the Corporations Act. These distinctions matter before discussing any director’s duty.

For clients, the choice is not simply “which has the lowest tax?” Consider control, financing, succession, costs of complying with law, continuity if an owner leaves, exposure to debts, and whether lenders demand a personal guarantee. Limited liability normally protects a shareholder *as shareholder* from automatic responsibility for company debts; it does not erase a director’s statutory obligations or a signed personal guarantee.

The Week 1 prescribed reading is the foundation for Week 2 incorporation. When analysing a later problem about a director signing a contract, do not confuse the company’s separate

identity with the person's authority to bind it. Corporate personality, authority, and personal liability are three distinct questions.

Visual issue-spotting pathway

1 Identify the structure | **2** Find the correct legal person | **3** Identify the obligation | **4** Ask who bears it

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. Maya and Leon sell goods together under a registered business name, then a supplier demands payment. Does a company owe the debt? **Rule.** Company existence turns on incorporation, not branding; check registration under ss 117–119. **Application.** If no company was registered, the trading name is not a separate debtor. The parties' actual arrangements and relevant business-structure law determine liability. If a company was registered before the contract, examine the contracting party, capacity and personal guarantees. **Conclusion.** Do not assume "Pty Ltd" or a business-name record settles the liability issue without checking the incorporation and contract documents.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Is a business name the same thing as a company?

No. A business name identifies a trading label. A registered company has its own legal identity. Check the ASIC company registration, the ABN/ACN and the identity on the contract.

Does limited liability mean directors cannot be personally liable?

No. Limited liability is principally a feature of shareholding. A director may face a personal obligation under particular statutory or general-law rules, or as a guarantor.

Why discuss business structure in a corporate-law exam?

It decides which legal regime and parties are relevant. Without that threshold finding, later rules about company management and corporate contracts can be misapplied.

Essential-reading MCQs — with answer reasoning

Question 1: Which event creates a company as a body corporate?

1. Using a trading name
2. Signing a lease
3. Registration under the Corporations Act
4. Earning a profit

Show answer and reasoning

Answer C. Registration is the starting point: s 119; names and profitability do not themselves incorporate an entity.

Question 2: A shareholder signs an individual guarantee of a company loan. Which statement is best?

1. The guarantee can create personal liability
2. Limited liability automatically voids all guarantees
3. The lender must sue ASIC
4. No debt can be enforced

Show answer and reasoning

Answer A. The personal guarantee is a distinct promise. Analyse its formation and terms independently of the company's separate personality.

Scope and publication note

Use the lecturer’s Week 1 textbook page directions; the uploaded Chapter 1 extract supplies broader context, not permission to reproduce the copyrighted text.

Chapter 2: Incorporation: what actually changes when a company is registered?

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 1, § 1.6 (companies), as preparatory context for the separately prescribed company-incorporation reading in Week 2.

The Chapter 1 extract is background for Chapter 2; it is not a substitute for the Week 2 assigned textbook Chapter 2 and the Week 2 lecture.

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Lecturer-style teaching: what it means and why it matters

Imagine Priya sells handmade furniture from her kitchen. Before registration she contracts in her own capacity. After she sets up a company, the company can itself enter contracts and own property. But the change does not automatically transfer Priya's earlier contracts to the new entity. Students should draw a vertical line on the timeline: *before registration* and *after registration*.

The first legal step is the registration application under s 117. On registration, a company comes into existence as a body corporate by s 119. The registered company has legal capacity under s 124. A company's internal objects restriction may matter internally, but s 125 stops an act being invalid merely because it contravenes an objects or power restriction.

Separate personality means the company's assets and obligations are generally distinct from its shareholders'. Do not collapse separate personality into a blanket rule that every person associated with the company is immune. When the facts involve personal misconduct, guarantees, a statute imposing responsibility or abusive structures, analyse the separate rule rather than simply saying "the veil is lifted".

In tutorials, take care to distinguish a *group of companies* from one single company. Parent and subsidiary may each be separate legal persons. Common control is not an automatic reason to ignore that separation.

Visual issue-spotting pathway

1When was the act done? **2**Was the company registered? **3**Who contracted? **4**Which liability rule applies?

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. Before incorporation, a founder orders machinery in the name of “soon-to-be-formed” Atlas Pty Ltd. After incorporation, the supplier seeks payment. **Rule.** The corporation did not exist when the agreement was signed. Examine the specific pre-registration contract rules in s 131 and the actual agreement. **Application.** Identify who signed, whether the company later registered, whether and when it ratified the arrangement and what the supplier knew. **Conclusion.** Do not answer “separate legal personality means Atlas owes it”: registration alone is not ratification.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

What is the company’s birthday in law?

The date of registration: s 119. This determines whether it could have acted as an incorporated entity at the relevant time.

Is a subsidiary the same legal person as its parent?

Generally no. Share ownership and control do not automatically eliminate the subsidiary's separate legal existence.

Why is pre-registration timing examinable?

It changes who could have contracted and whether special statutory rules on pre-registration agreements apply.

Essential-reading MCQs — with answer reasoning

Question 1: A company is incorporated after a proposed contract is signed. What is the best starting point?

1. Its logo
2. The s 131 pre-registration framework
3. Its first dividend
4. Its website

Show answer and reasoning

Answer B. The contract predates the company. Address s 131 rather than presuming registration adopts every earlier bargain.

Question 2: An objects clause restricts business activity. Does breaching it automatically make the company's act void?

1. Always
2. Usually not merely for that reason under s 125
3. Only if profits fall
4. Only if a shareholder asks

Show answer and reasoning

Answer B. s 125 is central. However, internal authority and directors' duties require separate analysis.

Chapter 3: Company constitution: the rulebook, the statutory contract and the limits of majority power

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 3, §§ 3.1–3.6 (company constitution, replaceable rules, objects and alteration).

Direct required reading for Week 3 Forum and Tutorial 3 (Week 4); supported by the lecturer's PowerPoint notes on corporate liability and attribution.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

A company needs rules just as a sporting club does. But its rules have different legal sources. s 134 allows the company to use statutory replaceable rules, its own constitution, or both. s 135 identifies which replaceable rules apply and when. A provision cannot override a mandatory statutory rule merely because shareholders prefer their own wording. s 141 provides the table of replaceable rules. A notable exception is the single-director/single-shareholder proprietary company: check the special statutory regime rather than applying every replaceable rule mechanically.

A constitution is the company's bespoke internal rulebook. Under s 136, adoption or alteration generally engages a special resolution (subject to applicable statutory and constitutional conditions). In an exam, do not stop at "75 per cent voted yes": examine meeting notice, voting entitlement, any additional restrictions and whether the alteration has an improper or oppressive effect.

The statutory contract under s 140(1) is powerful but specific. It binds the company and each member, the company and each director and secretary, and members inter se to the extent the rules apply to their capacities. A member asserting a right conferred on them *as a member* is differently placed from someone claiming only as an employee, lawyer or supplier. This is why the *Hickman* and *Eley* examples matter in the prescribed textbook.

Company capacity and internal authority are separate questions. Under s 125, a corporate act is not invalid only because a company's constitution restricts its activity. But a director may still

breach an internal obligation, and a third party's ability to enforce the transaction may raise separate agency and statutory-assumption questions. That is a Chapter 6 problem, not an automatic consequence of s 125.

To prepare Tutorial 3's corporate-misconduct question, create a second branch: *how is a natural person's action or state of mind attributed to a company?* The answer depends on the particular liability rule. Do not use a universal "directing mind" shortcut. Your lecturer's Week 3 last-slide notes and the assigned articles by Walpole and Corrigan and Elise Bant provide the conceptual discussion. The articles are analytical readings, not substitutes for the governing criminal statute or controlling judicial authority.

Visual issue-spotting pathway

1Find the Act rule **2**Check if replaceable **3**Read the constitution **4**Check the claimant's capacity **5**Apply the relevant remedy

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. The majority changes a constitution to eliminate a minority shareholder's procedural protection. Can the change be enforced? **Rule.** Start with s 136 (valid adoption/alteration), then s 140 (the relevant contractual right), and consider whether the change is constrained by general-law fairness principles or statutory remedies, depending on the exact facts. **Application.** Was a special resolution properly passed? Is the claimed protection a membership right? What does the clause actually say? Does the change affect share rights or involve an expropriation requiring the *Gambotto* analysis? **Conclusion.** A successful vote is an important fact, not a complete legal conclusion.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction

benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Is every rule in the Corporations Act a replaceable rule?

No. Only provisions designated as replaceable rules operate that way. Read ss 135 and 141 and check the heading of the relevant provision.

Can anyone named in a constitution sue to enforce it?

No. The statutory contract under s 140 is limited by its parties and the capacity in which a right is claimed. Separate ordinary contractual rights may also exist.

Does the company become automatically criminally liable when one employee commits an offence?

No. Identify the offence, its required fault elements and the statute or doctrine used to attribute conduct and fault. The Week 3 assigned attribution articles deepen that analysis.

Essential-reading MCQs — with answer reasoning

Question 1: Which section gives a constitution and applicable replaceable rules statutory-contract effect?

1. s 119
2. s 140
3. s 181
4. s 588G

Show answer and reasoning

Answer B. s 140(1) defines the statutory relationships; the capacity of the claimant still matters.

Question 2: An internal objects clause prohibits a transaction. What should you analyse?

1. Assume the transaction is automatically void
2. Apply s 125, then internal duties and authority
3. Ignore the constitution completely

4. Treat every director as a shareholder

Show answer and reasoning

Answer B. s 125 addresses validity. Internal compliance and outsider authority are separate issues.

Scope and publication note

Essential Week 3 supporting readings also include Walpole and Corrigan (2021), Bant (2025) and the lecturer’s final-slide notes; treat any broader theories of corporate intention as commentary unless the governing law adopts them.

Chapter 4: Corporate governance: who decides, who supervises, and who can remove a director?

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 7, §§ 7.1–7.4 (governance, officers, directors' and members' roles and appointments/removal).

Direct prescribed reading for Week 4 Forum and Tutorial 4 (Week 5), including the lecturer's additional narrated slides and director-status cases.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

People often say "the shareholders own the company, so they run the company". That is legally incomplete. Members own shares, not the company's individual assets, and the board ordinarily manages the business. If s 198A applies as a replaceable rule, the company's business is managed by or under the directors' direction. The board can exercise company powers except those reserved to members by law or the constitution. First check the constitution and whether the rule applies in the particular company.

A director is more than a job title. A person may be a formally appointed director, someone acting in the position without formal appointment, or someone whose instructions the directors habitually follow so as to fall within the statutory definition, depending on the facts and statutory exceptions. The Act's officer definition likewise encompasses certain persons who participate in important corporate decision-making. When solving a tutorial, identify the actual person and the evidence of conduct before assigning legal status.

Separate board powers from member powers. A member may vote on specified resolutions, receive notices, seek information where entitled, and exercise statutory remedies. That does not ordinarily authorise the member to manage every day-to-day contract. If a controlling shareholder gives instructions, ask if the directors retained independent judgment and if the shareholder is in fact acting in a capacity relevant to a statutory duty.

Director appointment, retirement and removal are subject to different rules for proprietary and public companies. Compare s 203C (a replaceable rule for proprietary companies) with s 203D (public company removal requirements). Also inspect consent, eligibility, procedural notice and

the special protection for the company not being left without a director. A correct answer never assumes that either a CEO or a board can dismiss a public-company director at will.

The Week 4 prescribed source specifically directs students to edited extracts from *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* and *Grimaldi v Chameleon Mining NL (No 2)*, plus the Omens article on shadow and de facto directors. Treat these as distinct authority questions: who qualifies as a director/officer, and which consequences attach to that status?

Visual issue-spotting pathway

1Identify the person **2**Classify the company **3**Locate management power

4Check duties and procedure **5**Evaluate remedies

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. Jordan founded 80% of a company and orders the directors to sign a costly contract. They obey without discussion. Was that lawful? **Rule.** Start by locating the allocation of management authority under the constitution and s 198A where applicable. Then consider whether Jordan's actual conduct amounts to a relevant director or officer role and whether the directors complied with their duties. **Application.** Share ownership confers voting power, not a universal management mandate. Find board minutes, the instructions, the company's interests and reasons for the decision. **Conclusion.** The control question and the duty question must be answered separately.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive

participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Can the majority shareholder simply order the board to enter a contract?

Shareholder control does not itself replace the board's management powers. Identify the statutory or constitutional source of a power to instruct, appoint or remove the board.

Is a person who has never been formally appointed necessarily outside director duties?

No. The statutory definitions can extend beyond formal appointment; evidence of actual functions and director conduct matters.

Why must I distinguish public and proprietary companies in a removal question?

Because s 203C and s 203D work differently. A conclusion without company classification and procedure is incomplete.

Essential-reading MCQs — with answer reasoning

Question 1: Which provision ordinarily allocates management to directors as a replaceable rule?

1. s 198A
2. s 140
3. s 124
4. s 181(1)(b)

Show answer and reasoning

Answer A. s 198A is the starting point, subject to its applicability and the constitution.

Question 2: A company is public and shareholders seek to remove a director. Which starting point is correct?

1. s 203D
2. s 203C as a universal rule
3. Only the CEO can do so
4. An oral request always suffices

Show answer and reasoning

Answer A. The public-company process is under s 203D; notice and representation rights also matter.

Scope and publication note

Do not treat the textbook's corporate governance discussion as a substitute for the statutory director/officer definitions and the prescribed *Buzzle* and *Grimaldi* judgments.

Chapter 5: Shareholder rights: a meeting is a process, not merely a vote

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 7, § 7.3 (division of directors' and members' powers), as supporting context for the prescribed Week 5 membership/dividends reading.

The newly uploaded Chapter 7 source is context. Week 5's principal reading is the textbook membership/dividends chapter and Corporations Act meeting/dividend provisions.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

Think of members as people with defined governance rights, not a committee that approves every supplier invoice. Their rights arise from the Act, the constitution, share terms and sometimes separate agreements. Under the applicable internal management structure, directors generally manage business; members exercise their reserved voting and meeting powers. This distinction explains why the same person can have one remedy as a member and another as a director.

For meeting problems, build a timeline: who had the right to request or call the meeting, how notice was given, what business was stated, who could vote, whether quorum was present, and whether the resolution required an ordinary or special majority. Read the applicable provisions in Part 2G.2, including the specific company classification and procedural exceptions. A question that asks only whether "most people voted yes" misses the main analysis.

A company might earn an accounting profit yet not have cash available for distribution. Therefore profits, dividends and directors' duties need separate explanations. When the tutorial asks if a proposed dividend is valid, consult the current statutory requirements, including s 254T, and the applicable constitution or share terms. Never invent a simple rule that every profit can be paid out immediately.

The prescribed Week 5 teaching about an actual meeting requisition gives students an excellent practical reason to learn procedures: a statutory right may fail in practice if notice,

voting or disclosure steps are mishandled. Use the facts provided in the original university tutorial, rather than substituting a generic fact pattern.

Visual issue-spotting pathway

1Identify the corporate organ **2**Check meeting right **3**Comply with procedure **4**Count eligible votes **5**Apply the remedy

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. Members with sufficient voting power demand that directors call a meeting to remove the board; management ignores their request. **Rule.** Check the company type and the Part 2G.2 procedural provisions. If removal of directors is sought, classify the company and consider ss 203C–203D. **Application.** Establish who made the demand, the voting rights, written form, relevant dates, notice requirements and any statutory relief available. **Conclusion.** Do not state a remedy until the procedural prerequisites are satisfied.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Does owning 51% of shares mean a person can sign company contracts without authority?

No. Shareholder voting control and company contracting authority are different legal matters.

What distinguishes an ordinary and a special resolution?

The statutory threshold and notice requirements differ. First determine the particular issue and the statutory or constitutional rule governing it.

Does profit equal cash that may legally be distributed?

No. Accounting profit, liquidity, the dividend provisions and directors' duties must all be examined separately.

Essential-reading MCQs — with answer reasoning

Question 1: What is the most useful first step in a meeting-dispute tutorial?

1. Count the speakers
2. Find the relevant meeting procedure and company type
3. Look at the dividend yield
4. Assume the chairman wins

Show answer and reasoning

Answer B. Meeting rights are statutory and procedural; identify the governing provisions before applying the vote counts.

Question 2: A dividend is proposed. Which provision is especially relevant?

1. s 254T
2. s 131
3. s 119
4. s 129

Show answer and reasoning

Answer A. s 254T is central; also examine directors' duties, cash position and share terms.

Chapter 6: Promoters, pre-registration contracts and outsiders: who must pay?

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 4, §§ 4.1–4.4, and ch 5, §§ 5.1–5.6; Week 6 reading also prescribes ch 5 up to § 5.7.

Direct prescribed reading for Week 6 and the original Week 7 tutorial concerning Coastal Fitness and Sunshine Surf.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

Before a company is registered, a promoter may arrange premises, equipment, suppliers and finance. A promoter is not simply someone who advertises a company: the concept concerns a person who takes steps in its formation and arrangements. The promoter's fiduciary-like duties, particularly around undisclosed profits and conflicts, must be analysed on the facts. Cases such as *Erlanger v New Sombrero Phosphate Co* and *Gluckstein v Barnes* illustrate why full disclosure is crucial.

A contract signed on behalf of a company that does not yet exist raises s 131. The question is not simply "does the promoter remain liable?" State whether a company was later registered, whether it ratified within the agreed or reasonable period, and which personal-liability or damages consequences follow under the relevant subsection. ss 132–133 address associated rights and displacement rules. This is why Tutorial 6 must include a timeline and the exact parties to the contract.

After registration, the problem changes. The company has the capacity to contract, but the specific person must possess authority or the outsider must have a valid basis to rely on the transaction. Actual authority can be express or implied from an authorised position or conduct. Apparent authority depends on a relevant representation or holding out attributable to the company, and reliance by the outsider. Simply declaring "the employee said she was authorised" is not sufficient proof of a company representation.

The statutory assumptions in ss 128–129 can protect people dealing with a company. For example, s 129(1) concerns assumed compliance with the constitution and replaceable rules. But s 128(4) removes entitlement to an assumption when the outsider knew or suspected it was

incorrect at the time of the dealings. Keep this precise, rather than using the vague phrase “an outsider can always assume everything was properly done”.

The relationship between ss 124–125 (company capacity), ss 126–127 (contracts and execution) and ss 128–130 (statutory assumptions) is the key diagram for Chapter 6. The prescribed cases *Freeman & Lockyer v Buckhurst Park Properties*, *Crabtree-Vickers* and *Northside Developments* help show when an outsider can or cannot rely on authority. Read the particular holding of each case before applying its facts.

Visual issue-spotting pathway

1Pre-registration? **2**If yes: s 131 **3**If no: actual or apparent authority **4**Check ss 128–129 **5**Test s 128(4) **6**State who owes what

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. A promoter signs a lease for Coastal Fitness Pty Ltd before incorporation. After registration an office manager separately orders equipment without board approval. Is the company liable? **Rule.** These are *two different transactions*. The lease calls for s 131. The equipment calls for actual/apparent authority and possibly ss 128–129, subject to s 128(4). **Application.** For the lease, prove registration and ratification. For the equipment, identify any delegated authority, the company’s holding out and the supplier’s knowledge or suspicion. **Conclusion.** Give separate conclusions and remedies for the promoter, company and outsider. A one-paragraph blanket answer is not High Distinction quality.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive

participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Does registration by itself ratify a promoter's earlier agreement?

No. Apply the statutory conditions in s 131 and examine conduct constituting ratification.

Can an outsider always rely on a director's apparent authority?

No. Establish the company's relevant representation and reliance, or a statutory assumption; check the knew-or-suspected exception under s 128(4).

Why distinguish s 124 and s 129?

Section 124 concerns the company's legal capacity; s 129 sets out assumptions outsiders may make about authority and procedures. They solve different problems.

Essential-reading MCQs — with answer reasoning

Question 1: What section addresses a purported contract made before a company exists?

1. s 131
2. s 254T
3. s 198A
4. s 181

Show answer and reasoning

Answer A. s 131 applies to relevant pre-registration contracts, with ratification and possible personal liability depending on the facts.

Question 2: The supplier knew the agent lacked authority. Can the supplier necessarily use s 129 assumptions?

1. Yes, always
2. No: s 128(4) may prevent reliance
3. Only if the invoice is blue
4. Only if the company made profit

Show answer and reasoning

Answer B. s 128(4) prevents reliance where the outsider knew or suspected an assumption was incorrect at the time.

Scope and publication note

The two original tutorial questions and lecturer prompts remain in the original chapter material. This additional analysis explains the legal sequence rather than substituting the textbook's copyrighted exercises.

Chapter 7: Equity, debt and fundraising: the sources-of-capital decision

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 7, § 7.3 (who has corporate decision-making power), and ch 5, §§ 5.1–5.6 (authority to bind the company), as supporting context only.

The principal prescribed Week 7 reading is the separate textbook Chapter 10 on debt/equity; the uploaded ch 5 and ch 7 extracts illuminate corporate authority but do not replace that reading.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

Imagine a company needs $1 million. It may seek money by issuing additional shares, taking a loan, or negotiating other finance. Equity is contributed capital in exchange for share rights; debt is an obligation to repay on agreed terms. Each may alter control, repayment risk, cost and company flexibility. A beginner should understand that a share issue affects existing shareholders' percentage of voting and economic rights, while borrowing can increase fixed obligations without necessarily altering equity percentages.

Who has power to approve the borrowing or share issue? Start with the Act and the company constitution. Where applicable, s 198A permits the directors to manage the business, including the exercise of powers not reserved for members. If a manager purportedly signs a loan, the separate authority problem leads back to ss 126–129. The lender's question is not answered by knowing only that "the company can borrow".

The financing choice may also engage duties: directors must make their decisions for the company's legitimate purposes. If shares are issued primarily to change voting control rather than to raise genuine capital, the proper-purpose issue is addressed in Chapter 8. That is why a student must keep a copy of the corporate-authority, share-issue and directors'-duties flowcharts side by side.

Your Week 7 reading screenshot specifies that the course's disclosure reading was not examinable at that point. Preserve it as professional-context reading, not as an additional compulsory examinable topic. There was no ordinary Week 8 tutorial because of client

interviews, so exercises in Chapter 7 must be identified as original practice rather than university questions.

Visual issue-spotting pathway

1 What financing is proposed? **2** Who has authority? **3** Check governance requirements

4 Examine outsider rights **5** Consider proper purpose

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. The company's CFO signs a large bank loan outside a stated delegated limit. Is the company bound? **Rule.** Company capacity is distinct from agency; identify ss 124–129 and the constitutional delegation. **Application.** Check the board's approval, implied/express authority, representations to the lender, and whether statutory assumptions are available or excluded under s 128(4). **Conclusion.** State whether the company is bound, whether the officer acted improperly, and any internal consequences separately.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

What is the simplest difference between debt and equity?

Debt usually imposes an obligation to repay; equity normally gives ownership interests through shares and can dilute existing voting and economic percentages.

Can a lender assume a company employee has unlimited borrowing authority?

No. Examine actual/apparent authority and statutory assumptions, including what the lender knew or suspected.

Why does a share issue create a directors'-duties question?

Directors may be issuing shares to fund the business or for an improper collateral purpose such as manipulating control.

Essential-reading MCQs — with answer reasoning

Question 1: A company borrows money. What is the first corporate-authority question?

1. Did the company have capacity and did the signatory have authority?
2. Did the lender like the brand?
3. Was the share price high?
4. Were dividends declared?

Show answer and reasoning

Answer A. Corporate capacity under s 124 and the signatory's authority are analytically separate.

Question 2: Which issue arises if directors allot shares principally to defeat a takeover?

1. s 181(1)(b) proper purpose
2. Only s 119
3. Only partnership law
4. Only s 131

Show answer and reasoning

Answer A. s 181(1)(b) may be engaged even where directors sincerely believe they are helping the company.

Scope and publication note

Original author-written Chapter 7 practice problems are preserved. The Week 8 no-tutorial reminder is respected.

Chapter 8: Directors' duties: good faith is not a defence to an improper purpose

Essential reading explained: learn it, reason with it, apply it

Prescribed-reading connection

Chapple et al, *Company Law* (3rd ed, 2023), ch 7, §§ 7.2–7.3 (status and management powers), as preparatory background; Week 8's principal prescribed textbook chapters are ch 8 (selected pages) and ch 9 (to the specified section).

The uploaded governance chapter helps identify who owes duties and which power was exercised; Week 8 lecture, supplemental transcript and original Week 9 tutorial are primary course sources.

The reading is a course/licensed text; it is cited, not republished. Textbook publisher and table of contents. For the current statutory wording, use the Federal Register of Legislation.

Lecturer-style teaching: what it means and why it matters

Before deciding whether conduct was improper, identify the person. Is Alexandra a director? Is Evan a possible shadow director? The corporate-governance reading explains why role and actual conduct matter. Next identify the particular power: directors may manage, pursue claims, issue shares or make commercial decisions, but the legal purpose of each power constrains its exercise.

Under s 181(1)(a) a director or other officer must exercise powers and discharge duties in good faith in the best interests of the corporation. Under s 181(1)(b) they must act for a proper purpose. These are distinct duties. If directors issue shares principally to manipulate voting control, saying "we honestly thought that retaining the board would be best" does not necessarily answer the proper-purpose complaint.

A strong share-issue answer identifies the power, the purposes for which it may legitimately be used, the directors' actual substantial reasons, and whether any improper reason was causally decisive. The supplementary lecture uses the *but-for* inquiry for mixed purposes, drawing on *Whitehouse v Carlton Hotel*; explain the case-law qualification rather than turning tutorial shorthand into an inflexible universal formula.

The SolarCar question is different. The nominated directors owe duties to SolarCar, not automatically to the shareholder that nominated them. Examine whether they independently considered enforcing SolarCar's claims and whether benefits to Testa were wrongly prioritised. Section s 187 has conditions concerning wholly owned subsidiaries and cannot simply be

applied to the 60/40-owned SolarCar. Discuss who has standing to bring proceedings, including any appropriate derivative-action mechanism, before promising a personal award to Turnbull.

For Hogwarts, the facts indicate a proposed $250 million rights issue despite ample cash and a hostile takeover. Work through *Howard Smith*, *Whitehouse* and the statutory wording. Apply each fact both for and against the board: is there evidence of genuine financing needs? What alternative funding was considered? When did the share issue proposal arise? The answer should acknowledge any uncertainty in causation and distinguish invalidity or other private remedies from ASIC civil enforcement.

Visual issue-spotting pathway

1Identify whose duty **2**Identify the power **3**State lawful purpose **4**Find actual reasons **5**Analyse mixed motives **6**Remedy and standing

This sequence is an issue-spotting tool; the case facts and applicable law still control the answer.

Illustrated tutorial application — the issue and rule in context

Issue. Hogwarts proposes a $250 million rights issue after learning of Beauxbatons' bid, despite substantial existing funds. Was the share-issue power used for its proper purpose? **Rule.** s 181(1)(b) requires a proper purpose; the cases distinguish genuine capital raising from manipulation of voting control. **Application.** Analyse timing, cash need, board minutes, the pro-rata form of the offer and whether the decision would have been made absent the bid. The pro-rata label does not end the purpose inquiry. **Conclusion.** The facts create a substantial improper-purpose concern, subject to evidence about genuine need and causation. Identify the proper claimant and remedy; do not state that personal compensation for every shareholder follows automatically.

Compare this method with the original tutorial question and full model answer. Do not substitute this illustrative problem for the university question.

What a High Distinction-standard explanation must demonstrate

Identify **every material issue and sub-issue**; state the exact legislative source and the legal effect of its subsection; distinguish binding rules from commentary; explain the controlling case rather than name-dropping; apply facts for both parties; address limits, remedies and standing; then give a qualified, evidence-based conclusion. The course-participation High Distinction

benchmark previously provided is 85%+: thorough preparation, sophisticated legal analysis, synthesis and evaluation, original thinking, practical and wider connections, constructive participation and professionalism. Explain how each issue meets those criteria in a tutorial response. This is **not** a substitute for an examination-specific marking rubric, nor a guarantee of any mark.

Essential-reading FAQs — questions with explanations

Can a good-faith belief automatically excuse an improper share issue?

No. s 181(1)(a) and s 181(1)(b) impose distinct requirements.

Do nominee directors owe their duties only to the shareholder who appointed them?

No. Duties owed to the relevant corporation remain central. Some group-structure exceptions are limited; check their statutory conditions.

What makes a mixed-purpose answer strong?

Identify each evidenced purpose, test causal significance of the improper purpose, and explain the available facts and counterarguments rather than only reciting a case name.

Essential-reading MCQs — with answer reasoning

Question 1: A share issue principally designed to thwart a takeover may raise which duty?

1. Proper purpose under s 181(1)(b)
2. Only the dividend rule
3. Only s 119
4. Only business-name registration

Show answer and reasoning

Answer A. s 181(1)(b) is central; apply the case law to the proved purpose.

Question 2: SolarCar has 60% and 40% corporate owners. Can s 187 be assumed automatically to permit sacrificing SolarCar's interests?

1. Yes
2. No, the statutory conditions for the wholly owned subsidiary exception are not established
3. It applies to all business groups

4. It applies only to dividends

Show answer and reasoning

Answer B. A 60/40 shareholding is not the statutory wholly owned subsidiary scenario. Analyse the actual best interests of SolarCar and other applicable principles.

Scope and publication note

Original Week 9 SolarCar/Hogwarts question sheets and prior model answers remain in the Cloudflare book. This additional narrative is exam-method guidance and does not substitute for a question-by-question final marking audit.