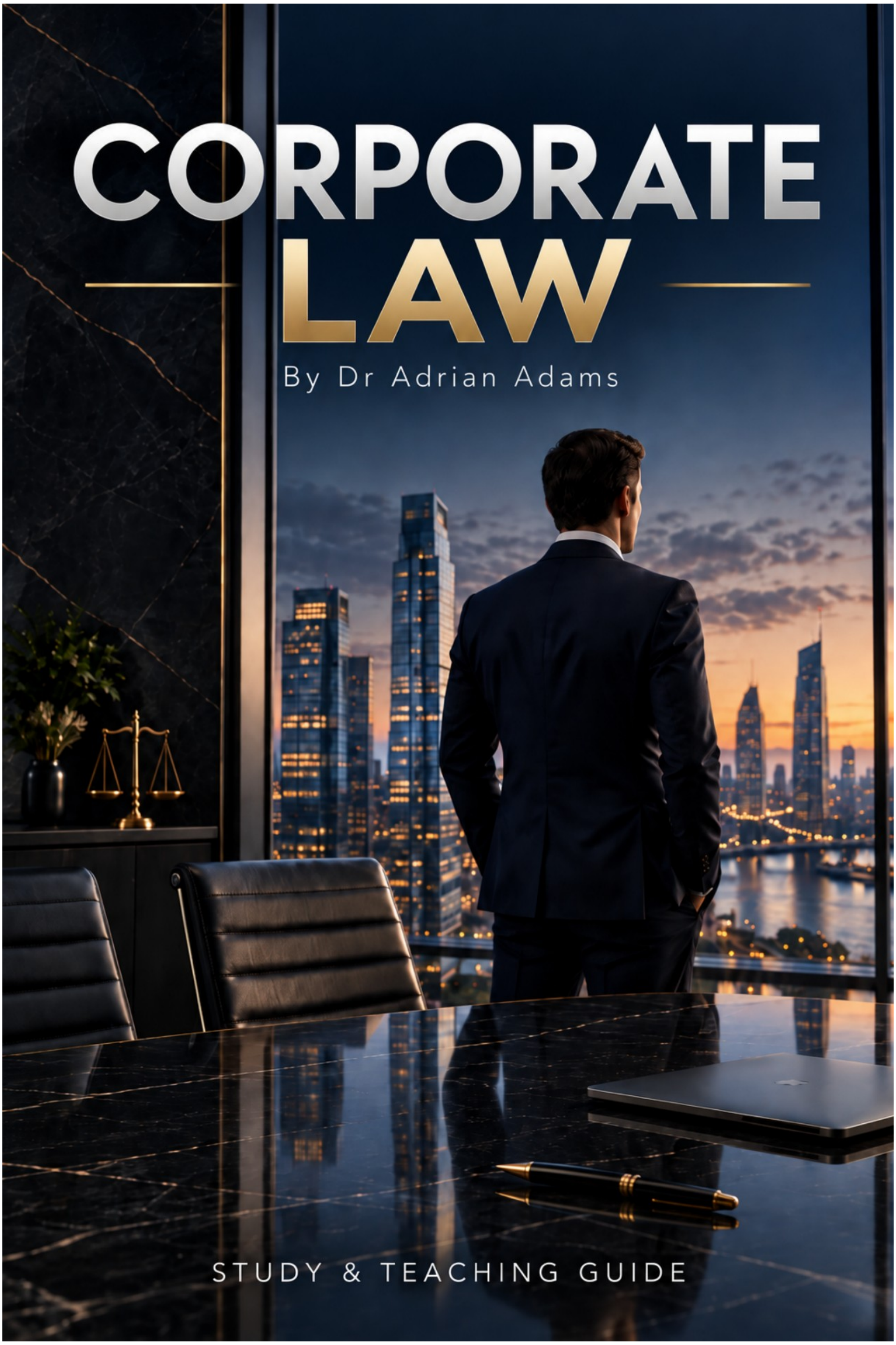
CORPORATE
LAW
By Dr Adrian Adams
STUDY & TEACHING GUIDE

# 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 the strongest counterargument, identify the consequence or remedy, and explain why the conclusion follows.

## 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.

## How to use this book

**FORUM / LECTURE → TUTORIAL → ISSUE → RULE → SECTION → CASE → APPLICATION → COUNTERARGUMENT → CONSEQUENCE / REMEDY → CONCLUSION.**

The forum and lecture establish the doctrine and its commercial purpose. The tutorial teaches what that doctrine looks like when hidden inside facts. The statute provides the controlling words. Cases show how courts understand and apply the rule. Application is where the student links each legally significant fact to each statutory element and authority.

A strong answer then confronts the best counterargument, identifies the legal consequence or remedy, and reaches a reasoned conclusion.

**Issue spotting is a skill.** Each chapter teaches the factual triggers that should make a student stop and ask a legal question. A person wearing several corporate “hats” should trigger the question: *in what capacity was the person acting?* A company controlled by one person should trigger separate legal personality, not an assumption that the company and controller are the same. A subsidiary that fails while the wider group remains wealthy should trigger a corporate-group analysis, not automatic parent liability.

Every important statutory provision is identified at the section, subsection, paragraph and subparagraph level where relevant and then explained in plain English: what it does, why it exists, what factual trigger activates it and how it operates with the cases. Every major case is taught as a story: facts, issue, reasoning, outcome, principle, why it matters and when to use it.

### Digital and interactive edition

The electronic companion edition is designed for desktop computers, PCs, Macs, laptops, tablets, iPads, iPhones and Android phones. Students can attempt FAQs, multiple-choice questions, crosswords and IRAC construction exercises before opening separate answer pages. Diagnostic feedback identifies the concept or issue the student may have missed and directs the student back to the relevant law rather than simply revealing an answer immediately.

## Publication and Source Note

This is an independent Australian Corporate Law study and teaching guide. It synthesises the user's supplied Corporate Law forums, live transcripts, tutorials, course readings and lecture materials with current legislation and verified public legal authorities. It is not an official publication of Bond University, ASIC, ASX or any publisher or database.

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CHAPTER 1 • BUSINESS FORMS AND THE CORPORATE LAW FRAMEWORK

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

Week 1 Forum / LectureTutorial 1 - Week 2Queensland partnership lawAustralian Corporate Law foundations

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

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

## 1.1 Start with the commercial problem, not the company form

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

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

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

## 1.2 Choosing a business structure: the questions that matter

| Question | Why a corporate lawyer asks it |
|---|---|
| How many owners are there? | This affects whether a sole trader, partnership, company, trust or hybrid structure is even workable. |
| Who should control decisions? | Partnerships generally fuse ownership and management; companies can separate shareholders from directors and officers. |
| How will capital be raised? | A founder may rely on personal borrowing; a partnership pools partner capital; a company can issue shares and debt securities subject to the Corporations Act. |
| Who should bear business risk? | Sole traders and general partners may face personal exposure. Company members ordinarily receive a limited-liability position, but the company itself bears its liabilities. |
| Does the business need continuity? | A registered company can continue despite changes in shareholders and directors. That continuity is valuable for long-lived enterprises. |

| Question | Why a corporate lawyer asks it |
|---|---|
| Will ownership need to change? | Shares provide a legal mechanism for transferring participation, while partnership interests are less freely transferable. |
| How much privacy and compliance is acceptable? | Different structures have different registration, disclosure, accounting and governance burdens. |
| Are different activities exposed to different risks? | Later chapters show why companies and corporate groups may be used to separate projects, assets and liabilities. |

## 1.3 Sole trader: the baseline comparison

A sole trader is the simplest model because the individual and the business are legally the same person. The individual owns the assets, enters the contracts, receives the income and bears the liabilities. This gives direct control and simplicity, but it also means that business obligations can become personal obligations.

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

## 1.4 Partnership: the essential comparator

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

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

### 1.4.1 Formation and the importance of substance over labels

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

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

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

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

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

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

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

### 1.4.2 Internal management: who makes the decisions?

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

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

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

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

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

**Issue-spotting sequence.** (1) What business does the firm carry on? (2) Was the act within the usual way of that business? (3) Did the partner have actual or apparent statutory authority? (4) Did the outsider know of a restriction? (5) Only after that, identify the liability rule.

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

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

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

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

### 1.4.5 Partnership property and private interests

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

### 1.4.6 Fiduciary loyalty: partnership is not only about debt

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

Chan v Zacharia (1984) 154 CLR 178

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

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

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

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

### 1.4.7 Can partnership risk be reduced?

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

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

## 1.5 Other structures: trusts, associations and hybrids

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

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

## 1.6 Why companies developed: from privilege to registration

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

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

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

## 1.7 The Australian constitutional path to the Corporations Act 2001

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

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

**Why it matters historically.** The case was associated with a narrow early understanding of the corporations power. It helps explain why Australia did not simply begin with a single comprehensive federal companies statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.9 Sources of Corporate Law: learn the hierarchy

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

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

## 1.10 Issue-spotting method for Chapter 1

| Fact trigger | Issue | Law / authority |
|---|---|---|
| People run a business together for profit, but deny they are partners. | Does a partnership exist? | Partnership Act ss 5-6; Canny Gabriel. |
| One partner signs a contract without consulting the others. | Did the partner bind the firm? | ss 8-11; agency before liability. |
| Supplier seeks payment for ordinary firm debt. | Who is liable? | s 12(1): joint liability. |
| Client suffers loss from a partner's wrongful act. | Firm liability and partner exposure. | ss 13-15; joint and several liability under s 15. |
| Partner appropriates opportunity or private profit. | Fiduciary / statutory loyalty. | ss 31-33; Chan v Zacharia. |
| Question asks why national corporate law required constitutional reform. | Federal constitutional foundation. | Constitution ss 51(xx), 51(xxxvii); Incorporation Case; Hughes. |
| Question refers to listed company disclosure or market rules. | ASIC or ASX? | ASIC Act / Corporations Act versus ASX Listing Rules. |

## 1.11 Frequently Asked Questions

### FAQ 1 - Is a partnership a separate legal person?

No, not an ordinary partnership. The partnership is a legal relationship among the partners. Incorporated limited partnerships are a statutory exception.

### FAQ 2 - Does calling an arrangement a joint venture prevent partnership?

No. Canny Gabriel shows that the court examines substance. Shared profit, joint control and the overall relationship may support partnership despite the label.

### FAQ 3 - What is the cleanest order for analysing a partner's contract?

First authority under ss 8-11. Then liability under ss 12-15. Do not collapse those questions.

**FAQ 4 - Are partnership debts always joint and several?**

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

**FAQ 5 - Can partners change the statutory rules?**

Many internal default rules can be varied by agreement, but private arrangements do not automatically defeat outsider rights.

**FAQ 6 - Why learn partnership law in Corporate Law?**

Because it exposes what a company changes: separate personality, allocation of management, transferability, continuity, capital formation and limited liability.

**FAQ 7 - Why is Chan v Zacharia useful?**

It teaches how fiduciary obligations constrain a partner's use of opportunities connected with the partnership and foreshadows directors' fiduciary duties.

**FAQ 8 - Why did Australia need State referrals of power?**

The Commonwealth's corporations power did not itself provide a secure power to create all companies. The referral mechanism under s 51(xxxvii) supported the modern national scheme.

**FAQ 9 - Is ASIC the stock exchange?**

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

**FAQ 10 - Is history examinable just because it is in the chapter?**

Course emphasis controls assessment, but the history explains why the present legal architecture looks the way it does. It should be used to understand, not merely memorise dates.

## 1.12 Multiple Choice Questions

1. A and B call their agreement a "joint venture", share net profits equally and jointly decide major policy. What is the best approach?

   A. The label is conclusive.

   B. Apply ss 5-6 and examine substance, including Canny Gabriel.

   C. A partnership only exists after ASIC registration.

   D. A partnership must have a written deed.

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

2. Which provision is the starting point for a partner's power to bind the firm in ordinary partnership business?

   A. s 8 Partnership Act 1891 (Qld)

   B. s 12

   C. s 15

   D. s 181 Corporations Act

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

3. An ordinary contractual debt validly incurred by the firm is governed principally by:

   A. s 12 joint liability

   B. s 15 joint and several liability

   C. s 516 Corporations Act

   D. s 588G

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

4. A partner negligently advises a client in the ordinary course of the firm's business. Which combination is most relevant?

   A. ss 13 and 15

   B. ss 8 and 12 only

   C. s 119 Corporations Act

   D. s 51(xx) Constitution

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

5. Why is Chan v Zacharia important here?

   A. It establishes ASIC.

   B. It illustrates partnership fiduciary obligations and opportunities.

   C. It creates companies by registration.

   D. It defines a public company.

   **Answer: B.**

6. The Incorporation Case is most important for understanding:

   A. dividend taxation

   B. why the Commonwealth needed a referral-based foundation for the national scheme

   C. partnership agency

   D. listed-company disclosure

**Answer: B.**

7. ASIC is best described as:

   A. Australia's stock exchange

   B. a statutory regulator with functions under the corporations legislation and other financial-system laws

   C. a private professional body

   D. a court

   **Answer: B.**

8. The ASX Listing Rules are most directly relevant when:

   A. a sole trader registers an ABN

   B. an entity is listed or seeking listing on ASX

   C. two doctors form a partnership

   D. ASIC prosecutes an offence

   **Answer: B.**

9. A private partnership agreement says Lee cannot spend over $20,000, but an unaware supplier receives a usual-business order for $45,000. Which provision makes the outsider's notice important?

   A. s 11 Partnership Act

   B. s 516 Corporations Act

   C. s 119 Corporations Act

   D. s 51(xxxvii) Constitution

   **Answer: A.**

10. Which statement best captures the Chapter 1 method?

    A. Memorise case names first.

    B. Identify the legal relationship, then authority, liability and consequence.

    C. Always recommend incorporation.

    D. Treat every business as a company.

    **Answer: B.**

Open Chapter 1 interactive crosswordChapter 1 crossword answers

## 1.13 Tutorial 1 - Full Questions and Teaching Answers

Question 2A - Who owns a partnership?

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

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

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

Question 2C - How is a partnership formed?

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

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

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

Question 2E - Who manages a partnership?

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

Question 2F - Who can contract for the firm?

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

Question 2G - Who is liable for partnership debts?

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

Question 2H - Can one partner expose the others?

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

Question 2I - How can partnership risk be mitigated?

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

## 1.14 Full Constructed IRAC Model Answer - Partner Authority and Liability

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

### Issue

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

### Rule / Law

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

The distinction between authority and liability is essential. Sections 8-11 determine whether the firm became bound. Section 12 then identifies the external liability consequence for an ordinary debt. This two-stage analysis prevents the common error of assuming that because a partner breached an internal rule, the outsider necessarily loses.

### Application

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

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

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

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

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

### Conclusion

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

### Exam lesson

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

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CHAPTER 2 • INCORPORATION AND ITS EFFECTS

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

Week 2 Forum / LectureTutorial 2 - Week 3Corporations Act 2001 (Cth)

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

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

## 2.1 Why Corporate Law exists: separation of ownership and control

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

The Wall Street example used in class is memorable because it asks a simple question: what happens when managers spend money that economically belongs to an enterprise in which they own only a small stake? A private jet, excessive perks or wasteful expenditure may benefit managers while reducing value available to investors. That is an agency problem. Corporate law therefore does more than create companies. It supplies governance rules that allocate powers, impose duties and protect participants against the risks generated by separating economic ownership from managerial control.

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

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

## 2.2 Who is who inside and outside the company?

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

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

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

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

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

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

## 2.4 Company versus corporation

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

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

## 2.5 Registration: the legal "birthday" of the company

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

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

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

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

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

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

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

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

## 2.7 Perpetual succession

A company's existence is not tied to the life of its founder. Shareholders can sell shares, directors can resign or die, and management can be replaced without the corporate person automatically ending. The company continues until deregistration or another legal event terminates it. This continuity is one reason companies are suited to long-lived enterprises and large pools of investment.

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

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

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

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

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

## 2.9 Why limited liability matters economically

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

That trade-off matters especially when comparing sophisticated contractual creditors with involuntary tort creditors. A bank can investigate a company, price risk, obtain security or demand a guarantee. A person injured by a corporate activity may never have had any opportunity to negotiate risk allocation. Corporate groups intensify that fairness problem.

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

## 2.10 Salomon: the case that makes the separate entity real

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

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

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

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

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

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

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

## 2.11 Lee: one person can be controller and employee

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

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

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

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

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

## 2.12 Macaura: separate personality can hurt the shareholder too

Macaura v Northern Assurance Co Ltd [1925] AC 619

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

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

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

**Why it matters.** This case stops students from treating separate personality as a one-way protection device. The shareholder gains limited liability but also loses direct ownership of company assets. A share is an interest in the company under its legal framework, not a fractional title to every truck, bank account or parcel of timber owned by the company.

## 2.13 The corporate veil: start with respect for the entity

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

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

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

Gilford Motor Co Ltd v Horne [1933] Ch 935

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

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

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

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

Jones v Lipman [1962] 1 WLR 832

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

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

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

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

## 2.16 Insolvent trading: a statutory example of personal exposure

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

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

## 2.17 Corporate groups: why businesses build layers of companies

Large enterprises often use holding companies and subsidiaries to separate geography, intellectual property, finance, business lines and risk. A bank group might have different operating subsidiaries in different countries, a separate intellectual-property entity and a riskier agricultural-finance subsidiary. The commercial logic is risk partitioning: failure in one business line should not automatically consume the assets of every other company in the group.

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

## 2.18 Briggs: control of a subsidiary is not enough

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

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

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

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

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

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

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

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

## 2.20 Corporate groups and statutory intervention

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

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

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

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

| Type / rule | Key provision | Why it matters |
|---|---|---|
| Types of company | [s 112] | Classifies companies by liability and public/proprietary status. |
| Company limited by shares | ss 112, 516 | Standard for-profit form; member contribution on winding up generally limited to unpaid share capital. |
| Company limited by guarantee | s 9 definition; s 112 | Common not-for-profit form; members undertake a specified guarantee payable on winding up rather than holding shares. |
| No liability company | s 112(2) | Special form connected |

| Type / rule | Key provision | Why it matters |
|---|---|---|
| | | with mining purposes and statutory conditions. |
| Proprietary company | ss 45A, 113 | Closely held company; s 113 limits non-employee shareholders and restricts fundraising requiring Chapter 6D disclosure, subject to exceptions. |
| Minimum membership | s 114 | A company must have at least one member. |
| Directors | s 201A | Proprietary companies need at least one director, with the residency requirement in the provision; public companies require at least three directors, at least two ordinarily resident in Australia. |
| Names | ss 148-150 | Connects the company's legal type to naming requirements, including "Pty" and "Ltd" and limited exceptions. |
| Large / small proprietary company | s 45A + Corporations Regulations reg 1.0.02B | Classification affects reporting. Current prescribed thresholds are $50m consolidated revenue, $25m consolidated gross assets and 100 employees; at least two criteria determine large/small status. |

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

## 2.22 Issue-spotting map for Chapter 2

| Fact trigger | Issue | Law / authority |
|---|---|---|
| Founder says "I own 100%, so the company is me." | Separate personality despite control. | ss 114, 119; Salomon. |
| Controller also works for the company. | Multiple legal capacities. | Lee. |
| Shareholder claims direct | Asset ownership. | ss 119, 124; Macaura. |

| Fact trigger | Issue | Law / authority |
|---|---|---|
| ownership of company property. | | |
| Creditor wants shareholder to pay company debt. | Company debt versus member liability. | Salomon; s 516; identify any guarantee or separate basis. |
| Company created after an individual becomes bound by a restraint. | Evasion of existing obligation. | Gilford Motor; Jones v Lipman. |
| Director incurs debts while company is insolvent. | Statutory personal liability. | s 588G and later insolvency provisions. |
| Parent controls subsidiary and creditor seeks parent assets. | Corporate group separate personality. | Salomon; Briggs; targeted statutory exceptions. |
| Group communications blur which entity is contracting. | Identity of contracting party / commercial reality. | Qintex; contract and authority principles. |

## 2.23 Frequently Asked Questions

### FAQ 1 - Why does Corporate Law separate ownership and control?

It allows investors to supply capital while directors and managers specialise in running the enterprise. The trade-off is an agency problem: managers may not always have the same incentives as investors.

### FAQ 2 - What is the company's "birthday"?

The beginning of the day of registration under s 119, when the company comes into existence as a body corporate.

### FAQ 3 - Can one person own and direct the whole company?

Yes. Section 114 allows at least one member, and a proprietary company can have one director subject to s 201A. Separate personality still applies.

### FAQ 4 - What does "in what capacity?" mean?

Identify whether the person was acting as member, director, officer, employee, creditor or another role. The applicable powers and duties depend on that capacity.

### FAQ 5 - Are shareholders the owners of company assets?

No. The company owns its property. Macaura is the classic illustration.

**FAQ 6 - Does a company have limited liability?**

The company is responsible for its debts. Limited liability ordinarily describes the member's capped contribution merely as member.

**FAQ 7 - Why is Salomon more than a case name?**

Because it shows that a properly registered company remains separate even when one person overwhelmingly owns and controls it, and that the controller can have a separate creditor relationship with the company.

**FAQ 8 - Why is Lee important after Salomon?**

It shows the capacity principle in practice: the controller could also be an employee.

**FAQ 9 - Why is Macaura important?**

It shows the cost of separation: shareholders do not directly own corporate property.

**FAQ 10 - When can the corporate veil be ignored?**

Only on a recognised legal basis. Do not use "veil piercing" as a general fairness doctrine. Gilford Motor and Jones v Lipman illustrate relief where a company was used to evade an existing obligation.

**FAQ 11 - Does parent-company control make the parent liable?**

No, not by itself. Briggs is important precisely because control is normal in corporate groups.

**FAQ 12 - Why do groups use subsidiaries?**

To organise different businesses, jurisdictions, assets, financing and risks. The legal benefit of separation creates the creditor-policy problem discussed in Briggs and Qintex.

**FAQ 13 - Are directors protected by limited liability if they breach duties?**

Separate personality does not excuse personal wrongdoing. Directors can be personally liable on independent statutory, contractual, tortious or equitable grounds.

**FAQ 14 - Why distinguish proprietary and public companies?**

The classification affects fundraising, reporting, director requirements, governance and disclosure.

**FAQ 15 - Do I need to memorise every company type?**

Know the main forms and attach each to its legal consequence. Understanding beats isolated memorisation.

## 2.24 Multiple Choice Questions

1. The strongest explanation of separate legal personality is:

   A. Directors own the company assets.

   B. Registration creates a legal person distinct from members and directors.

   C. A company is only a contract among shareholders.

   D. The company and its controlling shareholder are always one person.

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

2. Why is the question "in what capacity?" so important?

   A. It identifies which legal role, powers and duties attach to the conduct.

   B. It tells you the person's tax bracket.

   C. It determines whether the company is listed.

   D. It makes Salomon irrelevant.

   **Answer: A.**

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

   A. Macaura

   B. Lee v Lee's Air Farming

   C. Briggs

   D. Qintex

   **Answer: B.**

4. Which case shows that a shareholder does not directly own company property?

   A. Gilford Motor

   B. Salomon only

   C. Macaura

   D. Canny Gabriel

   **Answer: C.**

5. A shareholder has fully paid shares. The company fails owing $4m. With no guarantee or wrongdoing, which statement is best?

   A. The shareholder must pay the whole $4m.

   B. The company owes the debt; the member's contribution is ordinarily limited under s 516.

   C. The directors automatically owe the $4m.

   D. The corporate veil disappears on insolvency.

**Answer: B.**

6. Stella signs a restraint, then creates a company solely to perform the restrained activity. Which authority is closest?

   A. Gilford Motor Co Ltd v Horne

   B. Lee

   C. Macaura

   D. Canny Gabriel

   **Answer: A.**

7. Which is the safest statement about veil piercing?

   A. Courts ignore companies whenever justice requires.

   B. Control alone is enough.

   C. A recognised legal basis must be identified; the metaphor should not replace analysis.

   D. It only applies to public companies.

   **Answer: C.**

8. Why is Briggs significant?

   A. It says every corporate group is one legal person.

   B. It rejects parent control alone as a sufficient basis to disregard subsidiary personality.

   C. It abolishes limited liability.

   D. It concerns partnership authority.

   **Answer: B.**

9. Qintex is useful because it illustrates:

   A. how commercial group practice can blur the identity of the contracting company

   B. how a partnership forms

   C. the tax rate on dividends

   D. how ASIC appoints directors

   **Answer: A.**

10. A company limited by guarantee is most commonly associated with:

    A. a not-for-profit organisation without share capital

    B. a listed mining company

    C. an ordinary partnership

    D. a sole trader

**Answer: A.**

11. A proprietary company generally cannot have more than how many non-employee shareholders for s 113 purposes, subject to statutory qualifications?

    A. 5

    B. 20

    C. 50

    D. 1000

    **Answer: C.**

12. The current proprietary-company size thresholds are found in:

    A. only s 119

    B. s 45A together with Corporations Regulations reg 1.0.02B

    C. s 516 only

    D. Partnership Act s 5

    **Answer: B.**

Open Chapter 2 interactive crosswordChapter 2 crossword answers

## 2.25 Tutorial 2 - Complete Teaching Answers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Issue

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

### Rule / Law

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

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

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

### Application

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

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

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

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

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

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

### Remedy / Consequence

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

### Strong Conclusion

Assuming the six-month restraint is legally valid and enforceable, LV has a strong argument for injunctive relief against Stella and Stella Designs. Separate personality under s 119 and Salomon remains the starting rule, so Stella's control alone is insufficient. But the immediate incorporation of Stella Designs, the company's proposed supply of shoe designs to LV's direct competitor during the restraint period and Stella's possession of LV's recent designs make Gilford Motor a close analogy. The stronger conclusion is that Stella should not be permitted to use the company as the vehicle for evading the existing restraint.

### Exam lesson

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

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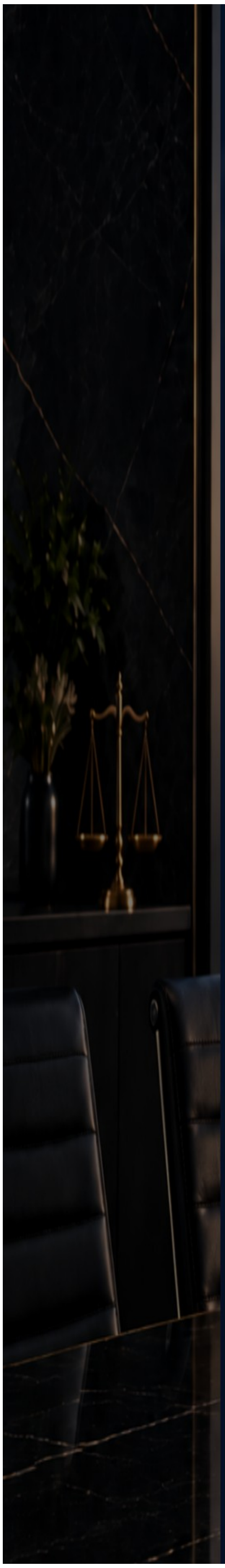

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## DR ADRIAN ADAMS

Dr Adrian Adams is an entrepreneur, educator and experienced business leader whose career has spanned healthcare, property, investment and international enterprise. Now nearing completion of his Juris Doctor at Bond University, he combines practical commercial experience with legal study to make complex areas of law clearer, more structured and easier for students to apply. His aim is simple: teach students how to identify the issue, find the controlling law, understand the authorities, reason through the facts and reach a defensible conclusion.

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