Commercial Applications of Company Law

12th Edition

Pamela Hanrahan
Ian Ramsay
Geof Stapledon

2011

Commercial Applications of Company Law

12th Edition

Pamela Hanrahan
Ian Ramsay
Geof Stapledon

2011

CCH AUSTRALIA LIMITED
GPO Box 4072, Sydney, NSW 2001
Head Office North Ryde
Phone: (02) 9857 1300 Fax: (02) 9857 1600
Customer Support
Phone: 1 300 300 224 Fax: 1 300 306 224
www.cch.com.au
Book Code: 39222A

About CCH Australia Limited

CCH Australia is a leading provider of accurate, authoritative and timely information services for professionals. Our position as the "professional's first choice" is built on the delivery of expert information that is relevant, comprehensive and easy to use.

We are a member of the Wolters Kluwer group, a leading global information services provider with a presence in more than 25 countries in Europe, North America and Asia Pacific.

CCH — *The Professional's First Choice.*

Enquiries are welcome on 1300 300 224

ISBN 978-1-921701-80-1

ISSN 1833-5993

Commonwealth legislation reproduced

© Commonwealth of Australia (2011)

All legislation herein is reproduced by permission but does not purport to be the official or authorised version. It is subject to Commonwealth of Australia copyright. The *Copyright Act 1968* permits certain reproduction and publication of Commonwealth legislation and judgments. In particular, s 182A of the Act enables a complete copy to be made by or on behalf of a particular person. For reproduction or publication beyond that permitted by the Act, permission should be sought in writing. Requests should be addressed to Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600, or posted at www.ag.gov.au/cca.

© 2011 Pamela Hanrahan, Ian Ramsay, Geof Stapledon

First published ..... January 2000
Second edition ..... January 2001
Third edition ..... January 2002
Revised third edition ..... July 2002
Fourth edition ..... December 2002
Fifth edition ..... February 2004
Sixth edition ..... December 2004
Seventh edition ..... January 2006
Eighth edition ..... January 2007
Ninth edition ..... January 2008
Tenth edition ..... January 2009
Eleventh edition ..... January 2010
Twelfth edition ..... January 2011

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping, or information retrieval systems) without the written permission of the publisher.

Printed in Australia by McPherson's Printing Group

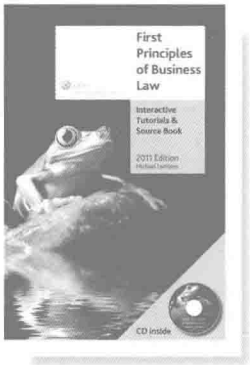
First Principles of Business Law 2011

By Michael Lambiris, Associate Professor, Faculty of Law, The University of Melbourne

These innovative computer-based tutorials, together with the companion source book, have proven popular and effective with business law students. The materials cover the sources of Australian law (legislation and case law); the essential principles of contract law, the Australian Consumer Law; agency law; tort law; and business organisations. There is also a revision tutorial designed to help students and graduates with legal problem-solving.

Key features:

- Promotes active learning through practical examples and questions
- Helpful introductions, focus questions and outlines for each topic
- Understand real-life applications, with over 200 clearly written case summaries, plus selected legislative provisions
- Easy navigation, with convenient indexes, tables and a glossary of terms



CCH Code: 39223A
ISBN: 978 1 921701 81 8
Publish: January 2011

RRP: $116.00

CCH
a Wolters Kluwer business

Order today!
Call **1300 300 224**

Commercial Applications of Company Law

D(91)41.206.11
(d)248-12

试读结束：需要全本请在线购买： www.ertongbook.com

CCH Acknowledgments

CCH Australia Limited wishes to thank the following who contributed to and supported this publication:

CCH AUSTRALIA

Managing Director
Matthew Sullivan

Editor-in-Chief
Peter Rodrigues

Portfolio Projects Manager
Judy Proctor

Editorial
Karen Gazzard

Indexing
Jay Tongsinoon

Production
Adrian Yap — Production Manager
Pradiipa Khor — Team Leader
Kevin Ho — Subeditor
Ashvaani Ramanathan — Subeditor
Tan Lee Ling — Production Editor
Lian Yiing Qian — Production Editor

Marketing
Jen Armstrong — Director of Marketing
Teresa Vaccaro — Project Manager — Books
Antonina Cocilovo — Marketing Executive
Mathias Johansson — Designer

Important Disclaimer

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person. This publication is sold on the terms and understanding that (1) the authors, consultants and editors are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and (2) the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, consultants and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above, no author, consultant or editor shall have any responsibility for any act or omission of any other author, consultant or editor.

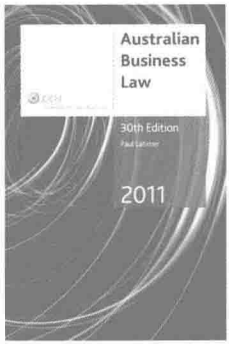
Australian Business Law 2011 – 30th Edition

By Paul Latimer, Monash University

Australian Business Law 2011 is both an essential complement to studies in business law and a concise overview of the principles of business law for practitioners and students. The book covers a range of business law concerns and provides a clear and concise explanation of the law in Australia and how it affects business. This edition uses flow charts and diagrams to aid explanations and the majority of the text has been revised and updated to improve readability and to include changes to the law including those made by the Australian Consumer Law, National Consumer Credit Protection and Personal Property Securities.

Key features:

- Improve understanding with numerous case examples to illustrate points of law
- Quickly locate required information using a comprehensive index and tables of cases and statutes
- Aids understanding with Plain English alternatives provided for certain legal phrases and words
- Improved readability from a new revised format



CCH Code: 39228A
ISBN: 978 1 921701 86 3
Publish: December 2010

RRP: $121.00

CCH
a Wolters Kluwer business

Order today!
Call **1300 300 224**

Preface

Commercial Applications of Company Law is an integrated teaching and learning resource designed especially for the study of company law by business students.

The book comprises four different parts. The first is the commentary, which is written by three of Australia's leading corporate law academics, each of whom has taught corporate law to business students at The University of Melbourne. The commentary aims to explain the core principles of corporate law in a straightforward (but not simplistic) way and to illustrate the application of those principles by reference to important case law. In addition to dealing with the "four pillars" of company law — corporate legal personality, corporate management and governance, corporate finance and corporate liability — the commentary also includes chapters introducing the related areas of securities and takeover law, financial services regulation, and corporate insolvency.

The second part consists of the case studies and problem sets. The book includes three running case studies, involving a listed public company, an unlisted public company and a proprietary company. Each problem set requires the student to apply the principles explained in the commentary to real life situations involving these different types of companies. In the third part, examples of corporate documents (such as a corporate constitution, a notice of meeting, minutes of meetings, and ASIC filings) are provided, and the fourth part extracts important provisions of the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) that are referred to in the commentary.

The 12th edition reflects recent changes to the law, including changes to the rules about payment of dividends and to the reporting obligations of smaller companies limited by guarantee. As always, we have focused on expounding and explaining the law as it is applied in commerce.

While the book is a collaborative effort, responsibility for the different chapters is allocated as follows. Pamela Hanrahan wrote Chapters 1–7, 16–19 and 21, and parts of Chapters 20, 22 and 24. Ian Ramsay wrote Chapters 8–15 and ¶5-660. Geof Stapledon wrote Chapters 22–23 and 25–26, and ¶2-400, ¶5-620–¶5-640, ¶20-200–¶20-420 and ¶24-100–¶24-240. The assistance of Larelle Chapple in updating Chapters 25 and 26 for the 9th edition is gratefully acknowledged.

Pamela Hanrahan

Ian Ramsay

Geof Stapledon

Melbourne, December 2010.

About the Authors

Associate Professor Pamela Hanrahan

Dr Pamela Hanrahan is the Australian Securities and Investments Commission's Regional Commissioner for Queensland and an Associate Professor of Law at The University of Melbourne. She has published widely in the areas of company law and financial services law. Her books include Australia's leading securities law book *Securities and Financial Services Law* (co-author 2008); two books on the law of investment management — *Managed Investments Law and Practice* (Looseleaf 1998, 2008) and *Funds Management in Australia: Officers' Duties and Liabilities* (2007); and the local versions *Commercial Applications of Company Law in Malaysia* (co-author, 2002); *Commercial Applications of Company Law in Singapore* (co-author, 2nd edn 2006); and *Commercial Applications of Company Law in New Zealand* (co-author, 2nd edn 2005). She is also the author of many refereed journal articles in the areas of company law, securities law, funds management law and financial services law.

Pamela holds Honours degrees in Arts and Law from The University of Melbourne, a Masters degree (with Honors) from Case Western Reserve University in the United States, and a Doctorate of Juridical Science from The University of Melbourne. For many years Pamela practised law with a leading Australian law firm in Melbourne.

She is a member of the Corporations Committee of the Law Council of Australia.

Professor Ian Ramsay

Ian Ramsay is the Harold Ford Professor of Commercial Law in the Law School at The University of Melbourne where he is Director of the Centre for Corporate Law and Securities Regulation. He has practised law with the firms Sullivan & Cromwell in New York and Mallesons Stephen Jaques in Sydney. Other positions Ian currently holds or has previously held include:

- Associate Dean, Masters Program, Faculty of Law, The University of Melbourne (2005 to date)
- Dean, Faculty of Law, The University of Melbourne (2002–2003)
- Member of the Takeovers Panel (which is the main forum for resolving takeover disputes) (2000 to date)
- Deputy Director of the federal government's Companies and Securities Advisory Committee where he wrote a number of reports which resulted in changes to the law including a report on directors' and officers' insurance (1991–1992)
- Head of the federal government's inquiry on auditor independence (2001)
- Member of the Corporations and Markets Advisory Committee (which is the federal government's main corporate law reform advisory body) (2002 to date)
- Member of the Australian Securities and Investments Commission External Advisory Panel (2009 to date)

- Member of the federal government's Implementation Consultative Committee for the Financial Services Reform Act (2001–2005)
- Member of the Executive Committee of the Business Law Section of the Law Council of Australia (1990–1999)
- Member of the National Law Committee of the Australian Institute of Company Directors (1995 to date) and the Corporations Law Committee of the Law Council of Australia (1995 to date)
- President of the Corporate Law Teachers Association (2000–2001)
- Member of the International Federation of Accountants taskforce on rebuilding confidence in financial reporting (2002–2003)
- Consultant to the Australian Securities and Investments Commission (ASIC) and author of the report for ASIC on disclosure of fees and charges in superannuation and other managed investments (2002)
- Director of the Audit Quality Review Board (2006–2009)
- Member of the federal government's Companies Auditors and Liquidators Disciplinary Board (2004 to date)
- Member of the Appeals Commission of the Federation of International Basketball Associations (2002 to date)
- Consultant to the Australian Broadcasting Authority (ABA) and author of the report for the ABA on reform of the ABA's enforcement powers (2004)
- Member of the Australian Securities and Investments Commission's Corporate Governance Roundtable (1998–2002)
- Consultant to the Australian Law Reform Commission for its managed investments project (1992)
- Member of the Australian Law Reform Commission's Advisory Committee for its civil and administrative penalties project (2000–2002)
- Consultant to the Victorian Government on corporate law reform (2000, 2003 and 2007)
- Consultant to the Scrutiny of Acts and Regulations Committee, Parliament of Victoria (2008)
- Consultant to the Parliament of Australia House of Representatives Standing Committee on Economics, Finance and Public Administration (2004)
- Visiting Professor, Faculty of Law, The University of Paris (2008)
- Distinguished Visiting Professor, Faculty of Law, The University of Toronto (1997)
- Distinguished Visiting Professor and Professorial Fellow, Faculty of Law, The University of Hong Kong (2001).

Ian has published extensively on corporate law issues both internationally and in Australia. His books include *Ford's Principles of Corporations Law* — which is Australia's leading corporate law book — (co-author, 14th edn, 2010); *The Takeovers Panel and Takeovers Regulation in Australia* (editor, 2010); *Varieties of Capitalism,*

Corporate Governance and Employees (co-editor, 2008); *Commercial Applications of Company Law in Singapore* (co-author, 3rd edn, 2008); *Commercial Applications of Company Law in Malaysia* (co-author, 3rd edn, 2008); *Commercial Applications of Company Law in New Zealand*, (co-author, 3rd edn, 2009); *Company Directors: Principles of Law and Corporate Governance* (co-author, 2005); *Experts' Reports in Corporate Transactions* (co-author, 2003); *Key Developments in Corporate Law and Trusts Law: Essays in Honour of Professor Harold Ford* (editor, 2002); *Company Directors' Liability for Insolvent Trading* (editor, 2000); *Securities Regulation in Australia and New Zealand* (co-editor, 1998); *The Corporate Law Economic Reform Program Act Explained* (co-author 2000); *The New Corporations Law* (co-author, 1998); *Corporate Governance and the Duties of Company Directors* (editor, 1997); and *Education and the Law* (co-author, 1996).

In addition, he has published approximately 140 research reports, book chapters and journal articles.

His publications have been cited by the High Court of Australia, the Federal Court of Australia, the Courts of Appeal of the Supreme Courts of New South Wales, Victoria and Western Australia, as well as by the Supreme Courts of Queensland and South Australia.

Ian is a respected commentator in the media on corporate governance and corporate law. He is regularly interviewed in the financial press and has been interviewed for international newspapers including the *New York Times*. His research has been reported in international newspapers including the *Financial Times* and the *Wall Street Journal*. Ian has been interviewed on major TV programs such as the *7.30 Report* and *Lateline*, as well as radio programs including the *Law Report* and various current affairs programs.

Ian has been subject coordinator for Corporate Law taught to business law students at The University of Melbourne.

Professor Geof Stapledon

Geof Stapledon is Group Manager, Governance for BHP Billiton, the world's largest mining company, and a Professorial Fellow of the University of Melbourne Law School. The BHP Billiton role provides leadership and innovation in key aspects of the Group's governance including monitoring, analysing key trends and interacting with governance representatives of the investment community. Prior to joining BHP Billiton, Geof headed up Asia-Pacific research for RiskMetrics Group. Before that, Geof taught and researched corporate law, competition law and corporate governance at the University of Melbourne. During that period he also carried out several consultancies in the governance field, for public- and private-sector clients. He has also worked as a lawyer specialising in corporate advisory and transactions. His book *Institutional Shareholders and Corporate Governance* was published by Oxford University Press in 1996. Geof is a member of the Business Consultative Panel of the Australian Securities and Investments Commission. He has degrees in Economics and Law from the University of Adelaide, and a doctorate from the University of Oxford.

试读结束：需要全本请在线购买： www.ertongbook.com

Contents

Page

Details of Contents xi

PART A — COMPANIES AND COMPANY LAW

1 About companies 3

2 Company law 23

3 Companies and business planning 49

4 Constituting companies 75

PART B — COMPANY MANAGEMENT AND GOVERNANCE

5 Managing companies 97

6 Member decision-making 119

7 Members' meetings 139

8 Restrictions on member decision-making 159

9 Company directors 179

10 Directors' duties 1 203

11 Directors' duties 2 225

12 Directors' duties 3 239

13 Directors' duties 4 255

14 Consequences of breach of duty 283

15 Members' remedies 301

16 Reporting and disclosure 329

PART C — CORPORATE FINANCE

17 Financing companies 357

18 Shares and shareholding 1 373

19 Shares and shareholding 2 397

20 Securities and takeovers 421

21 Financial services and markets 457

PART D — COMPANIES AND OUTSIDERS

22 Transacting by companies 1 485

23 Transacting by companies 2 503

24 Corporate liability and the corporate veil 517

25 External administration 533

26 Winding up 553

Page

PART E — REFERENCE MATERIALS

30 Case study and problem sets 577

32 Sample company documents 599

40 Legislative extracts 649

INDEX

Table of Cases 907

Legislation Finding List 915

Index 925

Details of Contents

Paragraph

PART A — COMPANIES AND COMPANY LAW

1 ABOUT COMPANIES

Introduction . . . . . **¶1-001**

What is a company? . . . . . **¶1-050**

Companies as a form of business organisation

Introduction . . . . . ¶1-100
What are companies like? . . . . . ¶1-120
What are listed companies, and who invests in them? . . . . . ¶1-140

The architecture of companies

Introduction . . . . . ¶1-200
How is a company's capital structured? . . . . . ¶1-220
How is a company's management structured? . . . . . ¶1-240
What are a company's key legal attributes? . . . . . ¶1-260

The historical development of companies

How did companies develop? . . . . . ¶1-300
What are *corporations aggregate* and *joint stock*, and when did these concepts develop? . . . . . ¶1-320
When did the right to incorporate companies become generally available? . . . . . ¶1-340
When was limited liability first introduced? . . . . . ¶1-360
When were companies first used for small business? . . . . . ¶1-380

Separate legal personality

What is separate legal personality? . . . . . ¶1-400
What happened in *Salomon's* case? . . . . . ¶1-420
What are the consequences of treating the company as a separate legal entity? . . . . . ¶1-440

Some key terms

What do these terms mean? . . . . . ¶1-500

2 COMPANY LAW

Introduction . . . . . **¶2-001**

Scope and operation of company law

What is "company law"? . . . . . ¶2-100
What does company law cover? . . . . . ¶2-120
How is company law enforced? . . . . . ¶2-140
What are the main sources of company law? . . . . . ¶2-160

The Corporations Act

What is the Corporations Act? . . . . . ¶2-200
What is the background to the Corporations Act? . . . . . ¶2-220
What does the Corporations Act contain? . . . . . ¶2-240

Paragraph

Other sources of company law
Overview . . . . . ¶2-300
What is case law? . . . . . ¶2-310
What are the Corporations Regulations? . . . . . ¶2-320
What is the ASIC Act? . . . . . ¶2-330
Why are ASIC orders important? . . . . . ¶2-340
Why are accounting standards relevant? . . . . . ¶2-350
What are the ASX Listing Rules? . . . . . ¶2-360

Applying company law to legal problems
How do you use company law to answer a legal question? . . . . . ¶2-400

Regulation of companies
Overview . . . . . ¶2-500
What is ASIC? . . . . . ¶2-520
What is ASX's regulatory role? . . . . . ¶2-540
What courts have jurisdiction in corporations matters? . . . . . ¶2-560

3 COMPANIES AND BUSINESS PLANNING

Introduction . . . . . ¶3-001

Comparing companies with other forms of organisation
What are the different forms of organisation? . . . . . ¶3-100
What forms can be used for non-profit activities? . . . . . ¶3-110
What is sole proprietorship? . . . . . ¶3-120
What is partnership? . . . . . ¶3-130
What are joint ventures? . . . . . ¶3-140
What is a trust? . . . . . ¶3-150
What is a managed investment scheme? . . . . . ¶3-160
What are ABNs, ACNs, ARBNs and ARSNs? . . . . . ¶3-170

Choice of form of business organisation
How do we choose between the different forms of business organisation? . . . . . ¶3-200
What are some of the advantages of the corporate form? . . . . . ¶3-220
What are some of the disadvantages of the corporate form? . . . . . ¶3-240
What is the most appropriate form? . . . . . ¶3-250

Types of companies
Overview of the different types of companies . . . . . ¶3-300
How are companies classified according to the members' liability? . . . . . ¶3-320
How are companies classified as public or proprietary? . . . . . ¶3-340
Can companies change type? . . . . . ¶3-360
What is a registrable body? . . . . . ¶3-370

Corporate groups
What are corporate groups? . . . . . ¶3-400
Why use a corporate group, rather than an individual company? . . . . . ¶3-420

Paragraph

Group relationships — the definitions . . . . . ¶3-440
In what circumstances does the law recognise and regulate corporate groups? . . . . . ¶3-460

Listing on the Australian Securities Exchange
What is listing? . . . . . ¶3-500
Why do companies list? . . . . . ¶3-520
How do companies list? . . . . . ¶3-540

4 CONSTITUTING COMPANIES

Introduction . . . . . ¶4-001

Registration of companies
How are companies created? . . . . . ¶4-100
What is the required procedure? . . . . . ¶4-120
Company names . . . . . ¶4-140

Pre-registration activities
Pre-registration contracts . . . . . ¶4-200
Who are the company's promoters? . . . . . ¶4-220

Internal governance rules
What are internal governance rules? . . . . . ¶4-300
How can the rules be tailored? . . . . . ¶4-320
What were memoranda and articles of association? . . . . . ¶4-340
What changed in 1998? . . . . . ¶4-360

The replaceable rules
When do the replaceable rules apply? . . . . . ¶4-400
What do the replaceable rules contain? . . . . . ¶4-420
When is it appropriate to use the replaceable rules? . . . . . ¶4-440

The constitution
What is the effect of a constitution? . . . . . ¶4-500
Why adopt a constitution? . . . . . ¶4-520
How does a company adopt a constitution? . . . . . ¶4-540
How does a company amend or repeal a constitution? . . . . . ¶4-560
How does a constitution operate to displace or modify the replaceable rules? . . . . . ¶4-580

Legal effect of the internal governance rules
How do the internal governance rules work? . . . . . ¶4-600
How are the rules interpreted? . . . . . ¶4-620
How are the rules enforced? . . . . . ¶4-640
What happens if the rules are not observed? . . . . . ¶4-660

Single director/shareholder companies
What is a single director/shareholder company? . . . . . ¶4-700
What rules govern single director/shareholder companies? . . . . . ¶4-720

Paragraph

PART B — COMPANY MANAGEMENT AND GOVERNANCE

5 MANAGING COMPANIES

Introduction . . . . . ¶5-001

Decision-making and company management
How are decisions made in companies? . . . . . ¶5-100
What kinds of decisions do companies make? . . . . . ¶5-120
Who makes the decisions: directors or members? . . . . . ¶5-200
How is decision-making divided? . . . . . ¶5-220

The directors' power of management
Overview . . . . . ¶5-300
What are the board's powers? . . . . . ¶5-320
Can members override decisions of the board? . . . . . ¶5-340
What options are available to members who disagree with decisions of the board? . . . . . ¶5-360

Members' decision-making powers
Which decisions must be made by members? . . . . . ¶5-400
When can members make decisions that usually belong to the board? . . . . . ¶5-420
What is the scope of these reserve powers? . . . . . ¶5-440

The role of company officers
Overview . . . . . ¶5-500
What is the directors' role? . . . . . ¶5-520
How does the board discharge its role? . . . . . ¶5-540
What is the company secretary's role? . . . . . ¶5-560
What is the executive officers' role? . . . . . ¶5-580

Corporate governance
Overview . . . . . ¶5-600
What is *corporate governance?* . . . . . ¶5-620
What is corporate governance concerned with? . . . . . ¶5-640
What mechanisms play a role in corporate governance? . . . . . ¶5-660

6 MEMBER DECISION-MAKING

Introduction . . . . . ¶6-001

Member voting and corporate control
Do the members control companies? . . . . . ¶6-100
How much control do members have in large listed companies? . . . . . ¶6-120
What impact do institutional investors have on control? . . . . . ¶6-140

The scope of member voting rights
Understanding member voting rights . . . . . ¶6-200
On what issues do members have a vote? . . . . . ¶6-220

试读结束：需要全本请在线购买： www.ertongbook.com