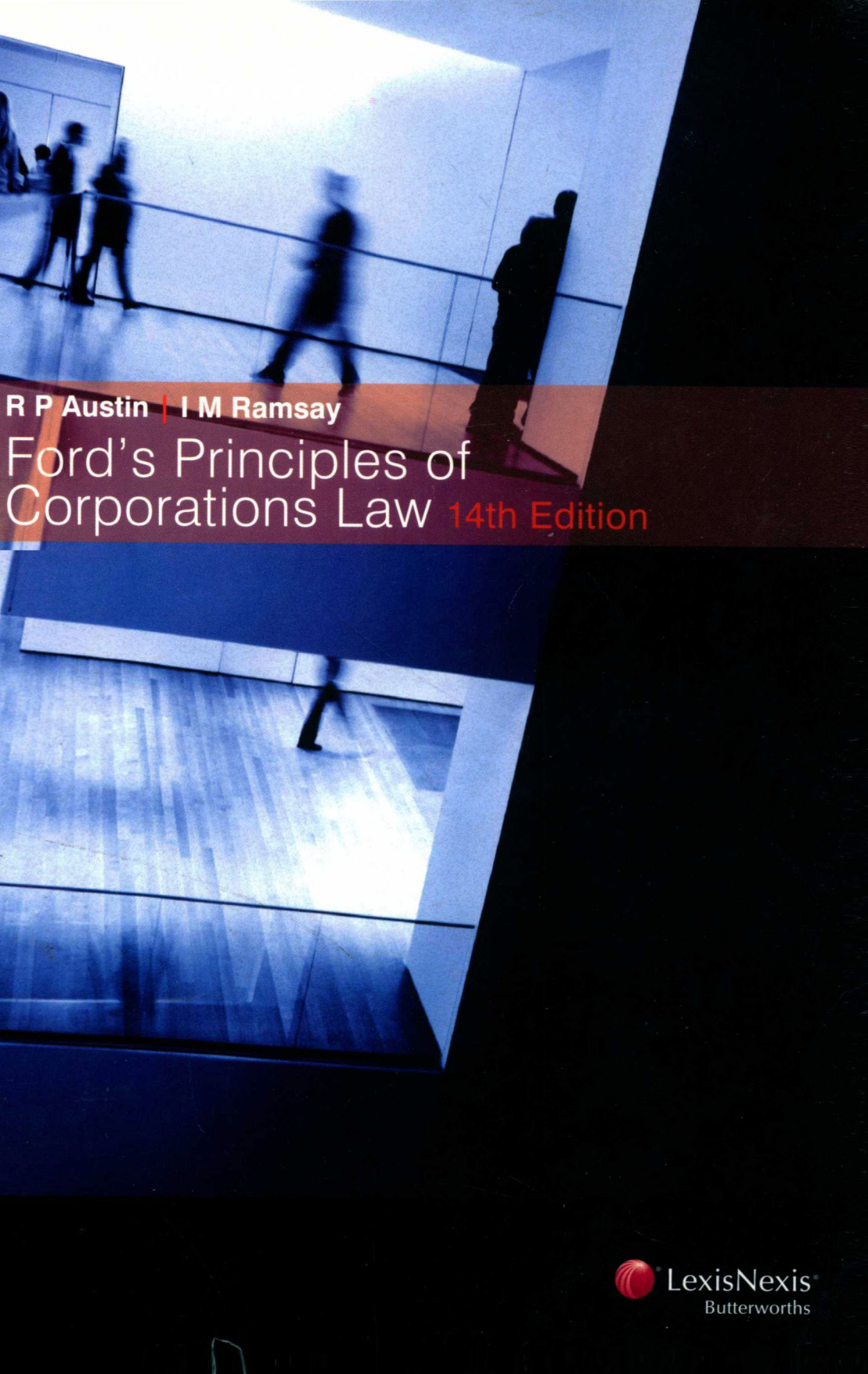




R P Austin | I M Ramsay

Ford's Principles of Corporations Law 14th Edition



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Ford's PRINCIPLES OF CORPORATIONS LAW

Fourteenth Edition

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Ford's
PRINCIPLES OF
CORPORATIONS LAW

Fourteenth Edition

Preface

The 14th edition of this work reflects a combination of legislative change and a great deal of development in Australian case law.

The main legislative developments affecting company law since the last edition have been:

- the Corporations Legislation Amendment (Simpler Regulatory System) Act 2007, which (inter alia) permits rights issues without a prospectus;
- the Corporations Amendment (Takeovers) Act 2007, which revises the powers of the Takeovers Panel;
- the Corporations Amendment (Insolvency) Act 2007, which makes many changes to external administration, including changes about disclosure and remuneration; and
- the Cross-Border Insolvency Act 2008, which provides for the recognition of foreign insolvency proceedings by an Australian court.

Significant case law developments in company law since the last edition include cases concerning:

- the rights of shareholders against a company in external administration (*Sons of Gwalia Ltd v Margaretic* (2007) 231 CLR 160);
- the liability of directors, underwriters, auditors and advisers to pay damages to investors for misleading conduct in connection with a capital issue (*Ingot Capital Investments Pty Ltd v Macquarie Equity Capital Markets Ltd* (2008) 68 ACSR 595);
- the duty to act with reasonable care and diligence (*ASIC v Macdonald (No 11)* (2009) 71 ACSR 368);
- removal of a director of a public company by members (*Scottish & Colonial Ltd v Australian Power and Gas Co Ltd* (2007) 65 ACSR 313);
- whether there is a principle of caretaker directors in Australia (*Chimaera Capital Ltd v Pharmaust Ltd* (2008) 64 ACSR 332);
- the duty imposed on directors to have regard to the interests of creditors when the company is insolvent or nearing insolvency (*The Bell Group Ltd (in liq) v Westpac Banking Corporation (No 9)* (2008) 70 ACSR 1);
- insolvent trading liability and the availability to liquidators of litigation funding to pursue such a case (*Hall v Poolman* (2007) 65 ACSR 123, and on appeal, (2009) 71 ACSR 139);
- reflections on the concept of solvency in the *Bell Group* case and in *Hall v Poolman* at first instance;
- the court's power to exonerate directors for breach of duty (*Hall v Poolman* (2007) 65 ACSR 123 and *Deputy Commissioner of Taxation v Dick* (2007) 64 ACSR 61);
- the derivative action and liquidation (*Chahwan v Euphoric Pty Ltd* (2008) 65 ACSR 661);
- the oppression remedy (*Campbell v Backoffice Investments Pty Ltd* (2009) 73 ACSR 1);
- vicarious liability of a company as an employer (*Nationwide News Pty Ltd v Naidu* (2007) Aust Torts Reports 81-928);

- the nature and priority of a floating charge, and the characterisation of charges over book debts (*Re Spectrum Plus Ltd* [2005] 2 AC 680);
- criminal liability of companies (*Presidential Security Service of Australia Pty Ltd v Brilley* (2008) 67 ACSR 692); and
- the constitutional validity of the Takeovers Panel (*Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542).

The section in Ch 7 dealing with issues in corporate governance has been extensively revised and there is new data on Australian boards of directors; discussion of the second edition of the ASX Corporate Governance Principles and Recommendations and the 2009 edition of the Investment and Financial Services Association corporate governance guide; revision of the section on the disclosure, structure and approval of remuneration; and a new section on the global financial crisis and governance.

As with the previous three editions, we have prepared this new edition bearing in mind the needs of undergraduate and postgraduate students of company law, rather than legal practitioners. We have endeavoured to cater for the needs of legal practitioners in the larger looseleaf publication. Catering for students means producing a text directed to the exposition of the formative policies and principles of company law, capable of being digested in the limited time provided by the university semester. Consequently the treatment of some topics considered at greater length in the looseleaf publication has been reduced and simplified here. In some cases, we have omitted material we have judged unnecessary for students in a company law course: for example, there is no significant treatment of managed investment schemes here. Those who need additional material should consult the looseleaf publication.

It remains appropriate to quote the remarks of Lord Lindley in his treatise on company law, which we have quoted in the prefaces to our earlier editions: "It must always be borne in mind that in order to determine any legal question relating to companies, it is indispensable to attend closely to the language of the statutes by which they are governed, and although for convenience, the substance of various statutory enactments has been shortly stated in the text, the reader is warned not to rely on these abridgements but to consult the statutes themselves in every case which he may have to investigate."

Sadly 2009 has marked Professor Ford's retirement from editorship of the looseleaf publication. As with the 12th and 13th editions, we have produced this new edition of "Ford" without the direct participation of the architect of the text, although Professor Ford's work on the looseleaf publication until 2009 is reflected in many of the edits we have made. We remain deeply indebted to him for his rich scholarship and enthusiasm for company law.

We gratefully acknowledge the assistance of all of the editorial team at LexisNexis.

R P Austin
I M Ramsay

8 December 2009

Publisher's Note

Professor Ford's modest ambition for the first edition of this work, then titled *Principles of Company Law*, was that it should be a text primarily for students of law and commerce and only incidentally of value as a resource for legal practitioners and business. Thirty-five years, 14 editions and numerous reprintings later, it has become a standard text, frequently cited in judgments of superior courts in jurisdictions throughout Australia and a first point of reference for judges, lawyers, company officers and students alike.

The wide acceptance of this classic work brought great satisfaction and pride, and as publishers we were confident that its worth would be appreciated even more widely if it were made available in dual format — for students, the familiar bound edition, and for practising lawyers and business people, a looseleaf edition (bearing the same title) with expanded coverage of areas of special interest.

H A J Ford was the sole author of all editions until the fifth, in which R P Austin wrote as a specialist contributor. The sixth edition and the supplements to the fifth and sixth editions were written by both authors, as was the seventh edition of the book. The seventh edition formed the basis for the looseleaf work (in which H A J Ford and R P Austin were joined by I M Ramsay). The opportunity was taken at this point to re-cast the book content. Both works appeared in 1995. Professor Ramsay joined the other two authors for the eighth, ninth, tenth, eleventh, twelfth and thirteenth editions of this book. R P Austin and I M Ramsay were the authors for the twelfth and thirteenth editions and now the fourteenth edition. While Professor Ford decided not to contribute directly to the twelfth and thirteenth editions, he maintained full involvement in the authorship of the looseleaf work until 2009.

This edition is in turn based on the looseleaf work, and reflects the frequent updating that has taken place since its initial publication. Excision of material not of direct relevance to students, including the removal of extra reports from citations, makes it possible for the book still to appear as a single volume. Where relevant, references are provided to more detailed discussion in the looseleaf work, and to additional matters treated there.

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