

# Commercial Applications of Company Law



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Pamela Hanrahan  
Ian Ramsay  
Geof Stapledon

10th Edition

2009

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# **Commercial Applications of Company Law**

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## 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, and 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 fact that the book is now in its 10th edition shows just how rapidly Australian company law has continued to evolve since the book was first published in January 2000. The 10th edition incorporates reference to developments in company law in 2008.

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 2008.

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## About the Authors

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Pamela Hanrahan is 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. Currently Pamela is Senior Executive Leader — Investment Managers at the Australian Securities and Investments Commission.

### Professor Ian Ramsay

Ian 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, Graduate Studies, 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 federal government's Implementation Consultative Committee for the Financial Services Reform Act (2001–2005)
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- 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)
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  - 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 Parliament of Australia House of Representatives Standing Committee on Economics, Finance and Public Administration (2004)
  - 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, 13th edn, 2007); *Commercial Applications of Company Law in Singapore* (co-author, 2nd edn, 2006); *Commercial Applications of Company Law in New Zealand*, (co-author, 2nd edn, 2005); *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); *Commercial Applications of Company Law in Malaysia* (co-author 2002); *Company Directors’ Liability for Insolvent Trading* (editor, 2000); *Securities Regulation in Australia and New Zealand* (co-editor, 1998); *The*

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*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.

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