



**Company Law:
Theories, Principles
and Applications**

Jason Harris

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Preface

‘Corporate theory’ is a phrase that causes the eyes of most undergraduate company law students to glaze over. They see it as being superfluous to their primary objective in studying company law, which is to get through it on their way to a successful career. The teaching of theory in many corporate law subjects, indeed in most law subjects in general, is something done at the start of the subject as part of an introductory class. Theory is often covered somewhere between a discussion of the administrative arrangements used in a course and an examination of the ‘real law’: that is, the rules that are derived from cases and provisions in the statute.

This book is an attempt to prove these perceptions wrong. Theory underpins every aspect of corporate law. An understanding of the theory of corporations and of corporate law is an essential component to understanding how corporate law works. More importantly, an appreciation of theoretical perspectives provides the tools for critical analysis. Without theory, corporate law is just rules. The purpose of studying law is not merely to fill one’s head with rules, but to develop skills in critical analysis and problem solving, which require more than simply the application of established principles. Lawyers in the modern economy are not merely transaction engineers who apply rules and precedents to particular situations. Successful lawyers need to be reflective practitioners who can see beyond the facts presented by an individual client. Lawyers need to be flexible and creative in their approach to assisting clients with practical problems. Corporate and commercial lawyers are business advisors with skills in legal analysis and reasoning.

Corporate law is more than just the sum of the provisions in the Corporations Act 2001 (Cth) and the cases that have interpreted and applied it. Corporate law is a mechanism of social ordering which promotes some normative goals over others. A study of the historical development of corporations and of corporate law demonstrates that normative preferences can, and do, change with the times. The nature of corporate laws is continually shaped by the social context in which they operate. Students of corporate law should appreciate the justifications for those laws, and not simply be aware of the existence of the rules. The individual rules change over time, so the value of studying corporate law is in the critical thinking skills and techniques that it encourages students to develop.

This book integrates theory and context into each chapter. A number of theoretical perspectives have been used to explain particular rules and to highlight underlying norms and assumptions that support and seek to justify those rules. I have tried to

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challenge readers to formulate their own ideas and to critically assess their own values while reading this book. While my own preference for economic perspectives is apparent, I have provided a balanced approach by using contrasting approaches from communitarian and feminist perspectives. The literature on these three areas is vast and no one book can do them justice, but I have included a range of references to give the reader a base from which to explore these perspectives.

I have written this book with compulsory undergraduate company law courses taught to LLB and JD students in mind. This book does not attempt to cover comprehensively the omnibus statute comprising the Corporations Act 2001 (Cth). I have provided further reading references in footnotes throughout each chapter to guide readers to additional relevant material. I have omitted topics that are commonly covered in advanced courses, such as mergers and acquisitions and financial services.

In writing the chapters I have focused on the most important cases and discussed these cases in some depth. I have avoided a propositional style that treats cases as mere foundations for rules that are to be repeated in assessment tasks. I want readers to think about why cases were decided in particular ways and what that says about the nature of corporate law in modern society. This focus means that some cases covered in standard texts are not discussed in this book. I have tended to refer to cases that I have used in my teaching and research.

The views I present in this book are the result of years of discussions, debates and, occasionally, arguments with my colleagues and students at UTS, UNSW, ANU and UWS. My colleagues, past and present, have contributed greatly to my understanding of corporate law and I thank them for their support and encouragement. In particular I thank my LexisNexis Butterworths co-authors, Anil Hargovan and Michael Adams, and my current colleagues at UTS: Paul Redmond, Peter Edmondson, Angus Corbett, Lesley Hitchens and Weng Siow. The community of corporate law scholars in Australia is a supportive one, and the members of the CLTA and attendees at its annual conferences have provided many helpful comments and suggestions over the years. Of course, the views presented here are my own and all errors and omissions are my sole responsibility. Suggestions for improvement will be gratefully received.

I also want to thank the staff at LexisNexis Butterworths, who have demonstrated extraordinary patience and professionalism in the production of this book, which has been a lengthy process. In particular I would like to thank my original commissioning editor, Angie Zandstra, my current and former managing editors (particularly Carolyn Chamberlain, who I am sure thought this book would never be finished) and Kerry Paul and Georgia O'Neill, who have been a pleasure to work with. I also thank Catherine Gordon, Rosa Chen and Rafael Aiolfi for their work on the ancillary materials.

Most importantly I thank my wife, Kathy, my children, Ciaran, Erin and Katie, and my parents, for their continuing love and support which allows me to take time away from them to work on 'the book'.

Jason Harris

Sydney

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