

Company law essay examples

[Business](#), [Company](#)



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Law

1.) The enactment of the Corporations Act of 2001 is to create a law in relation to the formation of corporations, corporate regulation and the regulation of financial services and products (Cassidy, 2006, p. 8). The law is intended to regulate the business entities in Australia such as partnerships, corporations and other investment schemes. It also regulates the operation of these entities in relation to the duties of the officers of the company, mergers and takeovers.

2.)The concept of corporate governance deals with the legal and organizational framework within which the principles and processes of by which the corporations are governed (du Plessis, Bagaric and Hargovan, p. 4). It denotes to the powers, accountability and relationships of the officers and directors who take an active part in direction and control of the corporation. It also deals with the relationship between the corporation and its shareholders.

3.)The director's duty to prevent insolvent trading creates the offence and liability of the director to stop the company from incurring excessive debts

that may lead to bankruptcy. In the event that the director is aware that an insolvent trading is about to take place in the company and failed to avoid it, then such person shall be liable (Gibson, 2003. p. 111).

4.) There are 5 common types of business structures: sole proprietorship, corporation, partnership, s corps and limited liability corporations (Carter, 2006, p. 26).

A sole proprietorship is an unincorporated business owned by only one individual and is considered as the simplest and easiest form of business to create. A partnership deals with the relationship between two or more persons, who are joined together to accomplish a trade or business, wherein each partner shall contribute money, capital, labor and skills, and such profits shall be divided equally among the partners (Carter, 2006, p. 26). A corporation is an artificial entity created by law wherein it is given express powers under the law, which are related to its existence. The S corporation is not similar to a standard company in such a way that it is exempt from federal income tax which is a tax other than certain capital gains and passive income (Carter, 2006, p. 26). A limited liability corporation (LLC) is a company wherein its owners have limited personal liability for the debts and actions of the corporation. The owners of a LLC are called members and the owners of a standard corporation are called the shareholders (Carter, 2006, p. 27).

5.) The main advantage of incorporating a company is that the company is not dependent on the existence of its shareholders which means that the death of the controlling shareholder does not terminate the existence of a corporation (Smith, 1999, p. 8). The creation of a limited liability corporation

means that the members shall not be held personally liable for the debts incurred by the LLC. By creating a corporation, a capital structure of differing classes of share may be established to match the investment preferences of its investors (Smith, 1999, p. 8).

6.) a.) The term company review date refers to the date when the corporation was registered or incorporated (CCH, 2009, p. 581).

b.) The company review date is significant for taxation purposes because the law allows some corporations to change of their review date provided they have complied with the requisites such as those corporations with common officer holder, common ultimate holding company and other exceptional circumstances (CCH, 2009, p. 581).

7.) a.) The company constitution will contain the rules for managing the internal affairs of the company. It refers to the set guidelines which regulates the manner in which the corporation is instituted and to determine the relative rights and duties of the officers, and at the same time to limit their powers (Bottomley 54). An example of a decision that will require a company constitution is the approval of a merger or conversion or dissolution of a company which will require the vote majority of the shareholders.

b.) In the event that a company does not have its own constitution in place, the rules of the Corporations Act will be applied in the management of its internal affairs (Dagwell, Wines and Lambert, 2007, p. 27).

8.) The role of a non-executive director is more difficult compared to executive directors because the role of a non-executive director has two dimensions. First dimension is to control or counterweight to executive directors so that the presence of non-executive directors guarantees to

ensure that an individual person or group cannot duly influence the decision of the board. The second dimension is the contribution that a non-executive director can make to the overall leadership and development of the company (Malin, 2007. p. 132).

9.) A conflict of interest refers to a situation when directors are required to disclose their interest in a proposed transaction and that they must have their proposed action approved by majority vote of the board which constitutes a quorum during the general meeting of the company (Latimer, 2012, p. 695). An example of a conflict of interest is when a director has a personal interest in a transaction with the company that may earn him or her personal profits. In such case, this may be resolved by the act of the director in disclosing the transaction as well as the potential profits. The director has a fiduciary responsibility to the corporation and must not use confidential information pertaining to the company for his or her personal gain.

10.) The role of the auditors is to detect fraud in the management of a corporation. The auditing profession believes that the responsibilities of auditors shall be limited to planning of the audit so there is a reasonable expectation to detect material fraud (Tomasic, Bottomley, and McQueen, 2002, p. 165). The auditor of a company may be appointed by the directors of the company in a general meeting one month after the registration of the company.

11.) The removal of the auditor can only take effect after a resolution is issued by the company, signed by the directors during a general meeting. The auditor has the statutory right to receive a copy of the notice of the resolution and should be given the ample opportunity to reply Tomasic et al.,

2002, p. 150).

12.)The rationale of keeping accounting records is to be able to give a true and fair view of the financial state of companies and at the same time to be able to protect the interest of stockholders and potential investors of the company. It shall be the responsibility of the auditor to prepare the report of the financial statements of a company (Dugan, McKenzie and Patterson, 2000, p. 54).

13.)Yes, Muscow will be able to pass on the information to Kross Ltd since the information that was discussed in the meeting will greatly affect the company. In addition, Muscow was nominated as director of Limited Ltd., which is a company where Kross Ltd. owns a majority shareholding. Hence, there will be no conflict of interest on the part of Muscow since Limited Ltd is partly owned by Kross Ltd, which is technically a majority shareholder. Thus, any disclosure of sensitive information regarding Kross Ltd cannot result to a conflict of interest on the part of Muscow.

14.)The directors and officers owe fiduciary duties to the corporation. The duty of the director shall extend to the interest of the shareholders, stockholders, creditors, suppliers, consumers, government and the environment. The directors must act truthfully and in good faith with a view to the best interests of the company. This means that a director should not commit fraud and dishonesty because it will be considered as a breach of the fiduciary duty owed to the corporation (Keay, 2007, p. 169).

15.)The difference between an executive director and a non-executive director is that in terms of managing the affairs of the corporation, an executive director is the person employed by the company whose

assignment is to take-charge of the operations of the company. A non-executive director does not have the chance manage the operations company. Both the executive director and the non-executive director shall have the same position in the Board just as the executive directors to the right to vote on management decisions during board meetings. An executive director has to perform functions on a daily basis and considered as a regular employee of the company. An executive director is entitled to receive compensation and benefits every month and the salary rate shall be determined by the Board. The non-executive director's participation shall be restricted attending board meetings and shall be paid on a per diem basis every meeting (Keay, 2007, p. 169).

In the recent case of Middleton J in ASIC v Healey (2011), a non-executive director although was not able to complete a tertiary education, the High Court held that such individual should possess financial literacy to comprehend the basic accounting principles and should be able to carry-out the required diligence in reviewing the financial statements of the company.

Question 1.

Gonzo is liable under Section 191 (1) of the Corporations Act of 2001 which states that a director of a company who shall have a material personal interest in a subject that concerns the business dealings of the company should provide ample notification to the other directors of such interest provided such interest fall under one of the exceptions under Section 191(2).

Farrar (2000, p. 110) stated that a director is not obligated to act as a kind of devil's advocate and predict the risks and benefits of the transaction.

However, there are circumstances that will necessitate the director to be

proactive where he is a director of two companies with conflicting interests. At this instance, the director is required to declare his interest and explain the potential harm to the company.

In this given illustration, Gonzo acquired for himself a business opportunity that should have redounded to the corporation and obtained personal profits out of the transaction. As a director of U R Saved Pty Ltd, he has the fiduciary duty to disclose any material personal interest in a subject that concerns the business dealings of the company by providing ample notification to the other directors of such interest. In this given case, although Gonzo has invested his own personal money of \$100, 000, he is liable to disclose the business dealings he entered with Travel Services R Us Pty Ltd. It bears stressing the U R Saved Pty Ltd had already had previous dealings with Travel Services R Us Pty Ltd, which is known as a very profitable company. Hence, Gonzo took advantage of the business opportunity for himself instead of disclosing the potential profit which should belong to the company. Gonzo acquired \$1. 5 million worth of profit to the prejudice of the company. It is evident that he committed a breach of fiduciary duty to the company which makes him liable for a civil action. In a breach of fiduciary duty, the company is not required to prove the elements of fraud or fraudulent intent of Gonzo. For the case to prosper, the claimant should only present evidence to prove that Gonzo occupied a position of trust in the company or the existence of fiduciary relationship where the defendant breached his duty to acquire personal benefit. The company may receive damages for lost profits and recover profits that the self-dealing director gained, even if the company did not suffer actual losses. The

company shall be allowed to recover the salaries paid to the Gonzo as director at the time when he breached his fiduciary duties to the company.

Question 2.

a.) The initial step in registering a company starts with deciding the structure of the company and deciding what company name to use. Along with this is to decide the operation of the company and knowing the legal obligations of the company. The company must file its registration with Australian Securities and Investment Commission or ASIC (ASIC, 2012).

b.) The form to use in the registration of a limited liability company in ASIC is Form 201B and the applicable fees shall be \$357 (ASIC, 2012).

c.) The importance of corporate key is that the company is the company is separate and distinct from the stockholders and directors. Hence, the corporate existence will not depend on the existence of its shareholders that in the event of the death of the controlling shareholder, corporation will continue to exist (Smith, 1999, p. 8). The creation of a limited liability corporation means that the members shall not be held personally liable for the debts incurred by the limited liability corporation.

d.) A company register refers to a complete set of documents that corporations in Australia should comply with in accordance to the Corporations Act 2001. These documents are to be kept to date by reflecting the changes made to the company, and to be stored in the registered office, or principal place of business of the registered company (ASIC, 2012).

e.) The documents contained in the company register shall include the director and secretary consent forms that should be filled out, minutes of board meetings of directors, the applications for shares of the shareholders,

share certificates, share member registry, the consent in the use of the company office address and other optional requirements such as the register of debentures, if available and register showing the option holders (ASIC, 2012).

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