



ACC520 Legal Regulation of Business Structures Semester 2, 2018 Assessment Task 2

TOTAL MARKS: 40 marks (40% of overall assessment) [Each Question is worth 20 marks]

WORD LIMIT: 2500 words

SUBMISSION: Electronically in Black Board under the Assessment tab. Ensure that you include a cover page with your name, the name of your tutor and day and time of your tutorial.

There are two (2) questions. You must submit answers to BOTH questions (including sub-questions). Submissions should be in a single document. In preparing your responses you should focus only on the Week 3 to 7 Lecture Topics (and Week 4 to 8 Tutorial Questions).

QUESTION 1:

Sammy and Huw met whilst studying an IT degree and have just graduated. Together they have come up with an idea for a subscription business providing highly entertaining podcasts and interviews using a new 'app' that they have designed for smartphones. Rather than sell the app to Apple, Google or Samsung, they decide to start a company (which they want to register with the name "Gosh Pty Ltd") to market and sell the app to end-users.

Huw, keen to get started, approaches Gracey who is a well-known Australian radio host. Huw negotiates a contract on behalf of Gosh with Gracey for the exclusive supply of a weekly podcast to their new company. The contract is signed by both parties on the 20th April 2018, and provides that Gracey is to be paid a fee of \$4,000 per month for the period of one year for the provision of weekly podcasts.

When Sammy and Huw go to register Gosh Pty Ltd on the 1st of May 2018, they discover that there is already a competitor company that has registered that name. As such, they register the company Oh My Pty Ltd instead. Oh My Pty Ltd adopts a constitution and Sammy and Huw are listed as the two company directors. Oh My then enters into an employment contract with Amaya to act as the company's accountant. Sammy and Huw each hold 45% of the company's shares and Amaya is given a 10% shareholding.

On the 10th of May 2018, Sammy and Huw convene their first directors' meeting. Sammy is pleased to hear that Huw has already managed to sign a contract with Gracey for her weekly podcast and they begin paying the \$4,000 monthly fee.

On the 1st of July 2018 Sammy and Huw find out that Amaya has just accepted an accounting position with their competitor Gosh Pty Ltd and is trying to encourage



Gracey to provide her podcasts to Gosh instead. Sammy and Huw immediately call a members' meeting and pass a resolution that alters Oh My's constitution to provide that directors may determine that the company can buy back shareholdings of less than 11% at their discretion. Oh My also refuse to continue to pay Gracey her monthly fee.

Advise:

- 1. Amaya, what the process for altering a company constitution is, and whether she can prevent the inclusion of the clause allowing the directors to expropriate her shares?**
- 2. Gracey, what recourse, if any, she has for the non-payment of her monthly fee for the remainder of her one year contract?**

QUESTION 2:

Drink It Up Pty Ltd is a company that is involved in two businesses: the bottling and marketing of spring water, which is very profitable, and the production and marketing of organic fruit juices which has been making a loss. The directors of the company are Kristofer, Aida and Jaden. Kristofer owns 40% of the shares in the company and Aida and Jaden owning 20% of the shares each. The remaining 20% of shares are owned by five outside investors (Dhruv, Rose, Neve, Timur and Jean-Luc).

Drink It Up has been having financial difficulties, with a number of outstanding payments to creditors—particularly those that supply the fruit juice business. At a board meeting on the 1st of July 2018, Kristofer proposes a resolution to incorporate a separate company, H2O Pty Ltd and to transfer the profitable water business to this company. The resolution is unanimously passed.

On the 7th of July 2018, H2O Pty Ltd is incorporated, the assets related to the springwater business are transferred to it and all customers and suppliers are updated with the new details.

On the 3rd of July, Kristofer had been approached by Dhruv who had asked if he could purchase additional shares in Drink It Up Pty Ltd. Kristofer agreed to sell him an additional 5% of the shares himself, and they completed the transaction on the 5th of July.

Upon application by creditors who had not been paid, the court orders that a liquidator be appointed and Drink It Up Pty Ltd be wound up in insolvency. Lily-Mae is then appointed as liquidator.

Advise:

- 1. Lily-Mae whether the directors of Drink It Up Pty Ltd have breached s181 of the Corporations Act 2001 (Cth) or their equivalent equitable duties and what penalties or remedies might be applicable; and**
- 2. Dhruv whether he has an action against Kristofer for breach of directors' duties for selling him the shares in Drink It Up Pty Ltd just before it was going into liquidation.**



ASSIGNMENT GUIDELINES & INSTRUCTIONS

The following guidelines are based on a review of common errors made in assignments. Students are asked to **read these guidelines carefully** as they will be taken into account in marking your papers.

ASSESSMENT CRITERIA

As noted in the course outline, the assessment criteria for this assessment task are:

1. **Demonstration of knowledge of the law, as evidenced by accurate statement of relevant legal principles;**
2. **Demonstration of understanding of the law, as evidenced by cogent and coherent application of legal principles to the fact situation as stated;**
3. **Demonstration of requisite academic communication skills, as evidenced by logical structure of arguments, appropriateness of conclusions, accuracy of citations (legal referencing) and academic referencing and use of accurate and appropriate expression.**

CONTENT AND ANALYSIS

The focus of the assignment is on clear, accurate and concise application of the law to the fact scenario. You should make direct reference to the relevant sections of the legislation (the **Corporations Act 2001** (Cth)), as well as the relevant case law (such as that discussed in the lectures and textbook). Make sure you clearly and directly answer the question that is asked. Whilst there may be a range of issues that arise on the facts, focus on the key issues required to respond to the question.

In terms of addressing the assessment criteria:

- In order to demonstrate knowledge of the law for this assignment, you need to state the relevant legal principles accurately and reference them appropriately by citing case law and legislation;
- In order to demonstrate understanding of the law, you need to apply the relevant legal principles to the facts of the case study in order to reach a conclusion;
- You need to adopt a logical structure (it is recommended you use headings), avoid spelling and grammatical errors (see further under 'Structure and Style' below) and present your arguments in a coherent and convincing manner.

Note that the use of footnotes is the required method of referencing for legal writing (you can use the 'Insert > Footnote' function in Word).

The following guidelines stem from the criteria stated above:

- It is not enough to discuss the facts in a general way without reference to legal principle/s.
- It is not enough to state relevant legal principles without explicitly applying those principles to the facts.
- Statements of legal requirements/ principles must be accurate. Use of your own words is encouraged but must convey the substance (meaning of) the legal principle/s.
- Merely reproducing the facts given in the problem will not attract marks. This problem commonly occurs in written introductions, where it would appear that the writer is not sure where to start.
- Answers to each question should include an introduction, analysis which outlines and applies the relevant law to the facts and a conclusion which responds directly to the

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question (but DO NOT simply use 'introduction', 'analysis' and 'conclusion' as your headings).

- The introduction to each question should contain brief statements of:
 - The legal terms given to the relevant parties on the facts
 - The nature of the action to be taken by the party advised
 - The party who must prove the action (burden of proof)
 - The relevant standard of proof
 - The elements of the action requiring proof.
- The analysis should include
 - Statements of the relevant law including the elements requiring proof (from the legislation) and interpretation of those elements (from legislation and case authorities as appropriate)
 - An application of the legal requirements (elements) and their interpretation to the facts in question – after correctly identifying the relevant legal issues, this is the most important aspect of your answer
 - A consideration of legal remedies available to the injured party should the action be proven.
- The conclusion should contain:
 - A summary of previous discussion and conclusion as to the likelihood of proof of the action. No new material should be included in this part of an answer.
- Accurate and full reference to cases and legislation must be used (see further below).

STRUCTURE AND STYLE

The following guidelines reflect the requirements of formal academic writing generally and those more specifically relevant to law.

- Executive summaries or abstracts should NOT be included.
- Headings may be used (and are recommended).
 - Headings should reflect the legal issues raised by the problem
 - Do NOT use headings such as IRAC (issue, rule, application...)
 - Do NOT use headings 'introduction', 'analysis', 'conclusion'
- Avoid abbreviations- eg use 'has not' instead of 'hasn't'.
- Avoid informal language- eg use 'Therefore..' instead of 'So..' or 'Well..'.
- Avoid use of emotive language- eg use 'I argue..', 'I would argue..', 'I assert..', or 'I contend..' instead of 'I believe..', 'I feel..' or even 'I think..'.
- Be mindful that legal analysis is about logical argument based on principles as applied to the facts and not about personal responses- emotional or value-laden.
- Avoid use of 'slang' (or poor grammar generally)- eg use 'should have' instead of 'should of'.
- An opinion may be stated but must be based upon an application of legal principle to the facts.
- Ensure you proof read your submission, checking for accurate spelling and grammar (and make use of the spelling and grammar checks available in your word processing software).
- Full sentences, containing a subject, verb and object must be used.
- When beginning a sentence with a reference to a section of legislation use 'Section..'
- When referring to a section of legislation mid-sentence use 's....'.
- When referring to a court's finding or judgement use, for example, 'It was held in that case that..' or 'The court held that..' (Note third person and past tense used).
- When first referred to in a sentence cite legislation in full, and the full name of cases plus the year of reporting. For example;
 - It was found in Smith v Jones (1986) 5 CLR 98 that..
 - Section 67 of the Town Planning Act 1987 (Cth) requires that...



- Subsequent references may be summarised or truncated to, for example;
 - In Smith's Case...
 - The Town Planning Act...; or
 - The Act...
- Care should be taken in the use of quotations and reproduction of sections of legislation.
 - Generally a quotation should only be used when the author being quoted conveys her own very specific idea that you are referencing, or when the author conveys an idea in a manner that is convincing and that you cannot adequately paraphrase.
 - Reproduction of provisions of legislation should be limited to very brief sections or parts of sections

REFERENCING

- Although for your non-law courses you may be using the Harvard style of referencing, or that appropriate to another discipline, in law the most accepted style is footnoting.
- The law reference guide is the Australian Guide to Legal Citation (AGLC) (3rd ed) and is posted with your assignment. There is a great deal of detail in this guide. For our purposes, please note the following and refer to further instruction in the lectures:
 - Use footnotes by using the 'insert' icon in Word and scrolling down to footnote or endnote. Footnotes will appear at the bottom of the page you are working on.
 - Your footnote should contain references to cases and legislation.
 - Accurate, complete references to cases and legislation must be given (and may be found in your text).
 - References to legislation must contain the relevant section to which you are referring.
 - References to either legislation or cases must NOT contain spelling errors.
 - Case names and legislation should be presented in italics or underlined.

FORMATTING

- An assignment cover page should be attached to your work.
- The name of your tutor and the day and time of your tutorial MUST appear on the assignment cover page.
- Appropriate margins should be provided on each page of your work.
- A copy of your paper should be retained for your reference.
- **Use Times New Roman 12 font and 1.5 line spacing.**