
PRESCRIPTION: 210 THE LAW OF LEGAL ENTITIES

Last date for assessing this prescription is 31 December 2008

This version of paper 210 is valid from semester 2 2003

INTRODUCED	1987
UPDATED	1995
UPDATED	2003

AIM OF SUBJECT

To provide students with:

1. An analysis of the practical, legal and compliance requirements of set-up, operation and the cessation of the various forms of entity.
2. A general working knowledge of the Companies Act 1993, the Partnership Act 1908 and legislation relating to other forms of legal entity.

SPECIAL NOTE

This prescription:

- focuses primarily on companies, partnerships and sole traders, but also identifies the relevance of other forms of legal entity.
- Requires each of the **12 topics** to be studied in relation to **four** entity structures:
 - Three mandatory** –
 - Companies
 - Partnerships
 - Sole Traders
 - Plus One** of the following –
 - Trusts
 - Co-operatives
 - Incorporated Societies
- identifies the importance of the small to medium-sized enterprise, and other forms of entity.
- recognises that public listed companies and the related legislative requirements have an important role, but places a lesser emphasis on these entities.

- integrates the analysis of companies, partnerships and sole traders and other legal entities.
- largely confines its analysis to the Companies Act 1993 and the Partnership Act 1908.
- recognises the practical importance of compliance with relevant legislation.
- recognises the need to incorporate recent and appropriate case law into each topic.

ASSUMED PRIOR KNOWLEDGE

A level of knowledge as presented in the New Zealand Diploma of Business paper 110 Introduction to Commercial Law or equivalent.

COURSE LENGTH

The equivalent of 20 National Qualifications Framework credits, with a minimum of 60 class contact hours or the equivalent for open learning/distance tuition.

RESOURCES

Suggested Student References

Walker, G., Reid, T., et al, Commercial Applications of Company Law in New Zealand, 2002, CCH New Zealand Limited, Auckland.

Beck A., Borrowdale A., 2002, Guidebook to New Zealand Companies and Securities Law (7th edition), CCH New Zealand Limited, Auckland.

Webb P., Molloy T., 1996, Principles of the Law of Partnerships (6th edition), Butterworths, Wellington.

Dugan R., McKenzie P, Patterson D., 2000, Closely Held Companies – Legal and Tax Issues CCH New Zealand Limited

Borrowdale A., (Latest edition) Duties and Responsibilities of Directors and Company Secretaries in New Zealand, CCH New Zealand Limited

Watson S., et al, (Latest edition) The Law of Business Organisations, Palatine Press, Auckland

Bevan B. et al, 1999, Understanding Business Law (2nd edition), Butterworths

Cartwright S., Harrison S., 1999, Student Companion: Company Law, Butterworths

Pitchforth R., 1999, Meetings Practice and Procedure in New Zealand (3rd edition), CCH New Zealand Limited

Additional References

Grantham R., Rickett C., 2002, Companies and Securities Law: Commentary and Materials, Bookers

Castle P. et al., 1994, Anderson's Company and Securities Law, Brooker & Friend Limited, Wellington.

CCH New Zealand Limited, New Zealand Company Law and Practice, Auckland.

CCH New Zealand Limited, 1994, Directors Liability and Company Solvency - The new Companies Act, Auckland.

Dugan R., 1994, Company Law: A Transactional Approach, Butterworths of New Zealand Limited, Wellington.

Jones D., 1993, Company Law in New Zealand: A Guide to the Companies Act 1993, Butterworths of New Zealand Limited, Wellington.

CCH New Zealand Limited, New Zealand Company and Securities Legislation

CSNZ Inc. Handbooks, Powers and Duties of the Company Secretary; The Company Secretary and the Performance Evaluation of Boards; Minutes: Letters to an Unknown Judge

Texts on Trusts, Incorporated Societies, Co-operatives

Ayers, K., 1997, Drafting and interpreting trust deeds, New Zealand Law Society, Wellington

Brown, J. W., 2000, New Zealand master trusts guide
CCH New Zealand, Auckland.

Dal Pont, G.E., 1996, Equity and Trusts in Australia and New Zealand, LBC Information Services, North Ryde, NSW

Davis, R., 1997, Trustee investment : the prudent person approach,
Butterworths, Wellington

Eagles, I. et al, 2001, Law in Business and Government in New Zealand, Palatine Press, Auckland (Chapter 14, Trusts)

Hawes, M., 2000, Family Trusts : 77 frequently asked questions, Shoal Bay Press, Christchurch

Hawes, M., 1996, Family trusts : a New Zealand guide, Shoal Bay Press, Christchurch

Thomas, C. M., 2002, Forsyth's brief outline of the law relating to trusts, wills, executors and administrators, Dunmore Press, Palmerston North

Trusts conference 1999, New Zealand Law Society, Wellington

The laws of New Zealand, 1994, Butterworths, Wellington (Section on incorporated societies)

von Dadelszen, M., 2000, Law of Societies in New Zealand: Unincorporated, Incorporated and Charitable, Butterworths, Wellington.

Legislation - Co-operatives, Incorporated Societies, Trusts

Co-operative Companies Act 1996

Incorporated Societies Act 1908

Industrial & Provident Societies Act 1908

Building Societies Act 1965

Friendly Societies and Credit Unions Act 1982

Charitable Trusts Act 1957

Unit Trust Act 1960

Trustee Act 1956

Journals and reports

Company and Securities Law Journal, Bookers

NZ Business Law Quarterly, Bookers

CCH NZ Company Law Cases

Trade and Competition Law Reports, Bookers

Butterworths Current Law

Capital Letter. Financial Press

Websites and government reports

New Zealand Co-operatives Association Inc website:

www.nzco-ops.org.nz

Email: nzco-opassn@xtra.co.nz

Ministry of Economic Development

The Companies Office is a business unit in the Ministry of Economic Development

www.med.govt.nz/pubs/publications

Contains reports, discussion papers on:

Bankruptcy Information for Creditors (August 1998)

Business Rehabilitation: Discussion Document (May 2002)

Corporate Rescue: Report for the Ministry of Economic Development / Prepared by David Brown MA (Oxon), Victoria University of Wellington (November 2000)

Director's Duties Upon Liquidation - A Guide for Directors of Companies Where the Official Assignee is Liquidator

Information for Insolvent Companies (August 1998)

The Insolvency Quarterly - Newsletter of the Insolvency and Trustee Service

Insolvency Law Review: Tier One - Discussion Documents (January 2001)

Insolvency Law Review: Tier Two Consultation Points (May 2001)

The Official Assignee as Liquidator: A Guide to the Liquidation Process (August 1998)

Company Registration

Company Annual Returns (August 1998)

Company Names (August 1998)

A Guide to the Financial Reporting Act 1993

A Guide to the Incorporated Societies Act 1908.

Incorporating a Charitable Trust under the Charitable Trusts Act 1957 (August 1998)

Incorporating a Company under the Companies Act 1993 (August 1998)

Incorporated Societies after Registration (August 1998)

Online Company Incorporation: A Guide to Incorporating a New Zealand Company via the Internet (April 1999)

Registering an Incorporated Society (August 1998)

Registering an Overseas Company in New Zealand (August 1998)

Statutory Obligations of Companies and their Directors (August 1998)

Personal Property Securities Registration

Personal Property Securities Register: Consultation Process (April 2000)

Financial Reporting for Small Companies (the Exempt Company Regime) - Objectives of Financial Reporting for SME Companies

(www.med.govt.nz/buslt/bus_pol/bus_law/financial-reporting/financial-reporting.pdf)

Small Business Advisory Group March 2003

www.med.govt.nz/irdev/ind_dev/sbag/tor.html

SMEs in New Zealand: Structure and Dynamics - Introduction

www.med.govt.nz/irdev/ind_dev/smes/smes-01.html

SMEs in New Zealand: Structure and Dynamics - June 2001

www.med.govt.nz/irdev/ind_dev/smes2001/smes2001-01.html

SMEs in New Zealand: Structure and Dynamics - June 2002

www.med.govt.nz/irdev/ind_dev/smes2002/smes2002-01.html

Ministry of Economic Development New Zealand | Industry and Regional Development | Industry Development

www.med.govt.nz/irdev/ind_dev.html

New Zealand Capital Markets - Some Conclusions, November 2001.
www.med.govt.nz/buslt/bus_pol/bus_law/forum/2001/healy/healy-07.html

Companies Office website: www.companies.govt.nz

Legislation website: www.legislation.co.nz/ and www.pco.parliament.govt.nz/pal

New Zealand Government website: www.govt.nz

Statistics NZ website: www.stats.govt.nz for NZ Business Demographic Statistics – Feb 2002

TIME AND ASSESSMENT SCHEDULE

The prescription assumes a RCAP model of assessment (R = recall, C = comprehension, A = application, P = problem solving). In assessing to the prescription, it is expected that, in general, assessment will be of the ability of students to apply the learning outcomes and to undertake problem solving within the course material. Assessment of comprehension should be undertaken only where it is appropriate. Assessment of recall is implicit.

TOPICS	Time in hours	Assessment Weightings (%)	
		Min	Max
1. Overview of Business Entities in New Zealand	4	6	9
2. Choice of Entity	6	8	12
3. Entity – Documentation	4	6	9
4. Constitutional Requirements	6	8	12
5. Equity Structures and Financing	6	8	12
6. Entity Management	4	6	9
7. Directors, Shareholders and Partners	8	12	16
8. Non-Compliance	2	4	6
9. Meetings and Procedures	4	6	8
10. Contract and Tort	6	8	12
11. Cessation of Business	6	8	12
12. Compliance Requirements for Listed Companies	4	6	9
	TOTAL	60	100%

This schedule is a recommendation and guide for lecturers/tutors, examiners and students. It gives:

- 1 an approximate allocation of time in hours, by topic
- 2 an approximate allocation of assessment in percentages, by topic.

Note:

All assessment weightings are expected to be identified in the assessment structure for the course. It may be appropriate to combine topics in assessment tasks.

TOPICS

1 OVERVIEW OF BUSINESS ENTITIES IN NEW ZEALAND

Learning Outcome

Students who have fulfilled all requirements for this topic are aware of the categories of business enterprises in New Zealand.

Assessment Criteria

Students will be expected to:

- 1.1 Analyse available reports and statistics and in terms of numbers of companies, partnerships, sole traders and other legal entities in New Zealand.
- 1.2 Identify website resources relevant to the learning outcome.
- 1.3 Discuss the development and economic impact of the SME and publicly listed company in New Zealand.

Teaching note

It is suggested that the class undertake a project to identify the impact that SMEs and listed companies have on regional economic development, revenue, and employment, and an analysis of the sector groups within the regions.

2 CHOICE OF ENTITY

Learning Outcome

Students who have fulfilled all requirements for this topic understand the legal implications that impact on each of the business entities.

Assessment Criteria

Students will be expected to:

- 2.1 Define and discuss liability, limited and unlimited as it applies to each entity.
- 2.2 Describe and discuss the legal issue issues arising on the choice of entity.
 - Separate legal entity of companies.
 - Personal liability including the impact of personal guarantees entered into by directors/shareholders.
- 2.3 Describe the liability arising from the legal definition of a partnership.

3 ENTITY – DOCUMENTATION REQUIREMENTS

Learning Outcome

Students who have fulfilled all requirements for this topic know the documentation required for each of the entities – companies, partnerships, sole traders, plus one of:-

- Co-operatives
- Incorporated Societies
- Trusts

Assessment Criteria

Students will be expected to:

- 3.1 Assess and analyse the documentation and registration requirements for each of the entities.
- 3.2 Describe the relevance of the listed documents as follows:
 - 3.2.1 Companies
 - application and approval of name
 - signed consents by all directors to act as such and certificates stating each is not disqualified from acting as a director
 - signed consents by shareholders to take a stated number of shares

- the constitution (if any) of the proposed company
- certificate of incorporation.

3.2.2 Partnerships

- Deed of Partnership considerations
- Trading name implications.

3.2.3 Sole Traders

- trading name implications.

3.2.4 Co-operatives/ Incorporated Societies/ Trusts

- incorporation, registration and documentation requirements.

Teaching Note

If a sole trader or partnership changes to a company entity, personal liability may arise if creditors are not informed of the change of entity.

Documentation should be used by the students to form their own company and partnership structures.

Regions with a strong agricultural sector may wish to explore the role of co-operative companies.

4 CONSTITUTIONAL REQUIREMENTS

Learning Outcome

Students who have fulfilled all requirements for this topic are able to understand the varying forms of constitutions for partnerships and companies, together with co-operative companies and incorporated societies – deemed, standard form and specifically designed.

Assessment Criteria

Students will be expected to:

- 4.1 Explain the implications of the different categories of constitution for companies – to include shareholding/pre-emption/re-purchase of shares.
- 4.2 Explain the implications of failing to draw up a Deed of Partnership.

Teaching note

A range of specimen Deeds of Partnership, and company constitutions could be used as case studies.

The constitutional requirements of co-operatives, incorporated societies and Trusts have specific legal issues. These need to be clearly identified.

5 EQUITY STRUCTURES AND FINANCING

Learning Outcome

Students who have fulfilled all requirements for this topic will have an understanding of the legal requirements relating to the raising of finance and the legal requirements relating to capital

Assessment Criteria

Students will be expected to:

- 5.1 Explain and evaluate a range of sources of business finance
 - internal and external financing – equity and debt
 - short term, medium term and long term financing
 - secured and unsecured financing
- 5.2 Explain in relation to a company the requirements relating to share holding:
 - classes of share
 - consideration
 - non-cash contributions
- 5.3 Explain in relation to a company the requirement relating to entitlements:
 - distributions
 - solvency test
- 5.4 Explain in relation to a company the requirement relating to re-purchase of shares.
- 5.5 Explain in relation to a partnership
 - Capital and the impact of the Deed of partnership
 - Share of profits/drawings

- Non-cash contributions

5.6 Explain in relation to a sole trader:

- profit.

5.7 Explain in relation to a co-operative/ incorporated society/ trust

- financial management legal requirements
- borrowing powers.

6 ENTITY - MANAGEMENT

Learning Outcome

Students who have fulfilled all requirements for this topic understand the organisation structure within an entity and the legal implications that attach.

Assessment Criteria

Students will be expected to:

- 6.1 Identify the formal requirements for appointment of directors and the legal responsibilities that attach to that appointment.
- 6.2 Identify and contrast the difference between the role of management and director, including the management of medium-sized businesses.
- 6.3 Identify the circumstances under which the role of manager becomes that of director, ie deemed director and the means by which this classification can be avoided.
- 6.4 Analyse the management role as defined in the Partnership Deed in contrast to a partnership without a deed.
- 6.5 Identify the legal requirements for the management of co-operatives/ incorporated societies/ trusts.

Teaching note

It is suggested that a discussion be held on the formal roles of managers and directors in closely held companies; and how non-director managers' and other officers' duties could be defined in such a way that they are not classified as deemed directors.

This leads to a discussion of when decisions made by a management team may overlap that of the board.

7 DIRECTORS, SHAREHOLDERS, PARTNERS

Learning Outcome

Students who have fulfilled all requirements for this topic understand the nature of the rights, powers, and duties of directors, shareholders and partners.

Assessment Criteria

Students will be expected to:

- 7.1 Define and discuss Directors power and duties, including generic and specific duties.
- 7.2 Define and discuss Shareholders' rights, including minority rights.
- 7.3 Define and discuss a Partners rights and duties, including fiduciary and partnership deed duties.
- 7.4 Define and discuss the powers of Directors in a Co-operative Company; Trustees in a Trust; Officers in an Incorporated Society

Teaching note

The topic seeks to identify the key legal elements for the above groups.

The focus for the discussion on directors' specific duties should be the broad range of reporting requirements, such as company records, annual and financial reports and statutory returns.

In addition, the generic duties of care and skill, and fiduciary obligation should be considered.

8 NON-COMPLIANCE

Learning Outcome

Students who have fulfilled all requirements for this topic have a comprehensive knowledge of the consequences of failure to comply with statutory duties.

Assessment Criteria

Students will be expected to:

- 8.1 Analyse the types of liability for non-compliance with statutory requirements – civil and criminal.
- 8.2 Analyse joint and several liability of partners.
- 8.3 Identify the liability that attaches to directors and shareholders.
- 8.4 Identify the liability that attaches to the entities, and directors/ officers/ trustees of co-operatives/ incorporated societies/ trusts.

Teaching note

For each of the three main groups – directors, shareholders and partners – the relevant offences and liabilities should be examined. As an example the consequences for directors failing to keep accounting records will not only result in a fine but may also lead to unlimited personal liability.

9 MEETINGS AND PROCEDURES

Learning Outcome

Students who have fulfilled all requirements for this topic understand the nature and significance of the different categories of meetings that can be called by business entities.

Assessment Criteria

Students will be expected to:

- 9.1 Describe the different categories, functions, proceedings and requirements for shareholder meetings.
- 9.2 Identify the different categories of shareholding resolution and the circumstances in which these resolutions are required.
- 9.3 Explain the situations in which the requirements for the holding of a meeting can be satisfied by a resolution in lieu of a meeting.
- 9.4 Discuss when a meeting of the board of directors of a company is to be held, and the proceedings and requirements for such a meeting.
- 9.5 Outline the circumstances and procedures for the calling of a meeting of partners.

9.6 Discuss the requirements for meetings for co-operatives/ incorporated societies/ trusts.

Teaching note

In regard to the meetings of boards of directors, particular attention should be paid to share related transactions and the compliance obligations that attach to them, together with remuneration to directors and other benefits.

New forms of holding meetings, e.g. cyber-meetings should not be overlooked.

Attention should also be paid to major transactions.

10 CONTRACT AND TORT

Learning Outcome

Students who have fulfilled all requirements for this topic understand the impact of legislation on contract and tort liability of companies and partnerships.

Assessment Criteria

Students will be expected to:

- 10.1 Explain the legal position regarding pre-incorporation contracts for companies.
- 10.2 Describe the power of a company and of a partnership to enter into contracts, together with any limitations on that power.
- 10.3 Discuss the situations in which a lack of contractual power may nevertheless lead to a contract that is binding on the company and on the partnership.
- 10.4 Describe the nature of contractual joint and several liability of partners, including the unlimited liability of partners.
- 10.5 Describe the nature of liability in tort of partners and partnerships, and of companies and directors.
- 10.6 Describe for co-operatives/ incorporated societies/ trusts contract and tort liability.

Teaching Notes

A range of common law torts may be discussed.

11 CESSATION OF BUSINESS

Learning Outcome

Students who have fulfilled all requirements for this topic are familiar with the causes of business failure and the options available to business entities and creditors to deal with failure and/or the cessation of business.

Assessment Criteria

Students will be expected to:

11.1 Describe and discuss the causes for business entity failure.

11.2 Identify the options available to Directors and Shareholders when the company is insolvent.

- The legal impact of continuing to trade whilst insolvent
- Comprises and proposals
- Voluntary liquidation

11.3 Briefly identify the remedies available to company creditors.

- Secured creditors options:
 - Receiverships/liquidation
- Preferential creditors:
 - Liquidation by court order
- Unsecured creditors:
 - Liquidation by court order

11.4 Briefly identify winding up of partnership by Court under the Judicature Act 1908.

11.5 Briefly identify liquidation processes for co-operatives/ incorporated societies/ trusts.

12 COMPLIANCE REQUIREMENTS FOR LISTED COMPANIES

Learning Outcome

Students who have fulfilled all requirements for this topic will have an understanding of the other categories of legislation that impact on listed companies.

Assessment Criteria

Students will be expected to:

12.1 Describe the relevance of the following to the activities of listed companies:

- Securities Act 1978 as amended, Securities Markets Amendment Act 2002, Securities Amendment Act 2002
- Takeovers Act 1993, Takeovers Code 2001, Takeovers Amendment Act 2002, Financial Reporting Act 1993
- NZSE Listing Rules.

Teaching note

The topic may be used as a forum for seminars or discussions or research activities. Alternatively, it can be integrated into the course to suit the student cohort. For a discussion on the new 2002 law, see www.sec-com.govt.nz/speeches/jds151002.shtml - "New regulatory compliance procedures for New Zealand".