# Commercial Applications of Company Law 23rd edition

Multiple Choice Q&As

# CHAPTER 2

**Company Law**

**QUESTION 1\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In 1989 the Commonwealth Parliament passed the *Corporations Act 1989*. The 1989 legislation was challenged by the states in the High Court. What was the outcome of the challenge?

1. The 1989 Act was held to be valid and the challenge was unsuccessful.
2. The Commonwealth did not have the power under the Commonwealth Constitution to pass the 1989 Act and the challenge was unsuccessful.
3. The Commonwealth did not have the power under the Commonwealth Constitution to pass the 1989 Act and the challenge was successful.
4. The cross-vesting arrangements in the legislation (which allowed the Federal Court to hear corporations matters) were incapable of conferring jurisdiction on the Federal Court, and the challenge was successful.

**ANSWER 1**

Correct answer: **3**

The High Court held that the Commonwealth Constitution does not give the Commonwealth Parliament legislative power over corporations, so the states’ challenge was successful. Option 1 is incorrect: the challenge was successful. Option 2 is incorrect: the challenge was successful. Option 4 is incorrect: this is, in fact, what the High Court decided in relation to the Corporations Law in *Re Wakim* (1999).

*Commercial Applications of Company Law* 23rd ed ¶2-220

**QUESTION 2\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The constitutional validity of the *Corporations Law* 1991 was cast into doubt in 1999/2000 by a series of decisions of the High Court of Australia. What did the High Court decide in *Re Wakim* (1999)?

1. The Commonwealth Constitution does not authorise the Commonwealth Parliament to make laws with respect to corporations.
2. The Corporations Law was inconsistent with state corporations legislation and therefore invalid under the Commonwealth Constitution.
3. The Commonwealth Constitution does authorise the Commonwealth Parliament to make laws with respect to corporations.
4. The cross-vesting arrangements in the Corporations Law were incapable of conferring jurisdiction on the Federal Court to hear corporations matters.

**ANSWER 2**

Correct answer: **4**

This decision in *Re Wakim* had the effect of defeating the cross-vesting arrangements set out in the Corporations Law.

*Commercial Applications of Company Law* 23rd ed ¶2-220

**QUESTION 3\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following is **not** a factor that contributed to the enactment of the *Corporations Act* *2001* (Cth)?

1. The desire for uniform national regulation of companies.
2. The limitation in the Commonwealth Constitution on the power of the federal parliament to regulate corporations.
3. The decisions of the High Court in *Re Wakim* (1999) and *R v Hughes* (2000).
4. The decision of the states to refer legislative power to the Commonwealth.

**ANSWER 3**

Correct answer: **2**

This factor prevented the enactment of federal corporations legislation for many years. Option 1 is a factor which contributed to the enactment of the *Corporations Act 2001* (Cth): it has been recognised for some time that a lack of uniform regulation results in inconvenience and cost to business, and the Corporations Act is the latest attempt to overcome these problems. Option 3 is a factor which contributed to the enactment of the Corporations Act: these decisions cast doubt on the constitutional validity of the previous legislative scheme, the Corporations Law. Option 4 is a factor which contributed to the enactment of the Corporations Act: this decision led to the Commonwealth Parliament being given the constitutional power to pass the *Corporations Act 2001* (Cth).

*Commercial Applications of Company Law* 23rd ed ¶2-220

**QUESTION 4\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

How was the Commonwealth Parliament able to pass the *Corporations Act 2001* (Cth) in a way that was constitutionally valid?

1. The state Attorneys-General agreed to refer the necessary constitutional power to the Commonwealth Parliament.
2. Section 51(xx) of the Commonwealth Constitution gives the Commonwealth Parliament legislative power over all corporations in Australia.
3. The Corporations Act is, in fact, state legislation which is uniform across Australia and administered by the Australian Securities and Investments Commission (ASIC).
4. The cross-vesting arrangements in the Corporations Law, which allow the Federal Court and state Supreme Courts to hear corporations matters, confer jurisdiction on the Federal Court.

**ANSWER 4**

Correct answer: **1**

The Commonwealth Parliament has power under s 51(xxxvii) of the Commonwealth Constitution to make laws with respect to ‘matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States ...’.

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**QUESTION 5\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following statements about the content of the *Corporations Act* *2001* (Cth) is **not** true?

1. The Corporations Act is itself only a brief piece of legislation. The specific details are contained in the Corporations Regulations.
2. The Corporations Act is divided into Chapters, and the Chapters into Parts, Divisions and sections.
3. The Corporations Act regulates fundraising by companies.
4. The Corporations Act regulates financial services, products and markets.

**ANSWER 5**

Correct answer: **1**

The *Corporations Act 2001* (Cth) is an extremely long and complicated statute, with several thousand separate sections.

*Commercial Applications of Company Law* 23rd ed ¶2-240

**QUESTION 6\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following statements about case law as a source of company law is **not** true?

1. Case law is a source of principles that govern companies, but are not recorded in the *Corporations Act 2001* (Cth).
2. Case law is a source of binding statements governing interpretation of the provisions of the Corporations Act.
3. For every section of the Corporations Act there is at least one case providing guidance as to its interpretation.
4. Case law is ‘reactive’, whereas legislation is ‘proactive’.

**ANSWER 6**

Correct answer: **3**

There are a number of key provisions in the *Corporations Act* *2001* (Cth) on which there is little or no applicable case law. Options 1 and 2 are true: case law can be a source both of additional rules governing companies that are not contained in the Corporations Act and of binding statements governing interpretation of the provisions of the Corporations Act. Option 4 is true: case law is ‘reactive’ in the sense that courts must wait for parties who have a disagreement to come before them to ask for adjudication on an issue.

*Commercial Applications of Company Law* 23rd ed ¶2-310

**QUESTION 7\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following is **not** issued by the Australian Securities and Investments Commission (ASIC)?

1. ASIC Instruments.
2. Accounting Standards.
3. Regulatory Guides.
4. Exemptions.

**ANSWER 7**

Correct answer: **2**

Accounting Standards are made by the Australian Accounting Standards Board.

*Commercial Applications of Company Law* 23rd ed ¶2-340—¶2-350

**QUESTION 8\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following statements about the Australian Securities Exchange Limited (ASX) Listing Rules is true?

1. All companies registered in Australia must comply with the ASX Listing Rules.
2. The Listing Rules are additional and complementary to companies’ common law and statutory obligations.
3. The Listing Rules override a listed company’s common law and statutory obligations.
4. If a listed company or its participants breach the Listing Rules, the company will be deregistered by the Australian Securities and Investments Commission (ASIC).

**ANSWER 8**

Correct answer: **2**

This statement is true: when they list, companies agree as part of a contract with the Australian Securities Exchange Limited (ASX) that they will comply with the rules imposed by the ASX Listing Rules. Option 1 is not true: only listed companies and their participants (and, in some cases, entities controlled by listed companies) are required to comply with the Listing Rules. Option 3 is not true: the Listing Rules are additional and complementary to a listed company’s common law and statutory obligations. Option 4 is not true: if a company or its participants breach the Listing Rules, ASX can remove or suspend that company’s securities from quotation.

*Commercial Applications of Company Law* 23rd ed ¶2-360

**QUESTION 9\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Which of the following statements about the functions of the Australian Securities and Investments Commission (ASIC) is true?

1. ASIC educates companies and individuals about the law.
2. ASIC registers company auditors and liquidators.
3. ASIC investigates breaches of the law.
4. All of the above.

**ANSWER 9**

Correct answer: **4**

ASIC exercises all of these function and more.

*Commercial Applications of Company Law* 23rd ed ¶2-520

**QUESTION 10\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Section 792D of the *Corporations Act 2001* (Cth) requires the Australian Securities Exchange Limited (ASX) to cooperate with the Australian Securities and Investments Commission (ASIC) in the performance of ASIC’s functions. What does this cooperation entail?

1. Conducting an investigation of a listed company on behalf of ASIC.
2. Notifying ASIC if ASX believes that a person is breaching the Corporations Act.
3. Notifying ASIC if ASX believes that a person is breaching the Listing Rules.
4. Providing information to ASIC about listed companies.
   1. C only.
   2. C and D.
   3. A and D.
   4. B, C and D.

**ANSWER 10**

Correct answer: **4**

The Australian Securities Exchange Limited (ASX) must provide information to the Australian Securities and Investments Commission (ASIC) about listed companies, and must notify ASIC if ASX believes that a person is breaching the Listing Rules or the *Corporations Act 2001* (Cth). ASX does not conduct investigations on behalf of ASIC.

*Commercial Applications of Company Law* 23rd ed ¶2-540