6. **Identify four major differences between a public and proprietary company.**
   a) Proprietary company is limited to maximum 50 non-employee members; which public company doesn't have this limitation.
   b) Proprietary company cannot lodge a disclosure document during fundraising, which means they can only raise the funds from its own employees or shareholders.
   c) Company name: public company cannot use "Pty" in their company name
   d) Proprietary company is exempt from holding annual general meetings; appointing a company secretary; appointing an auditor and so on.

7. **What requirements must a proprietary company satisfy to be classified as a small proprietary company?**
   a) **<u>Section 45A</u>**: satisfy at least **<u>two</u>** of the following tests
      i. Gross operating revenue of less than 25 million for the financial year;
      ii. Gross assets of less than 12.5 million at the end of the financial year;
      iii. Fewer than 50 employees at the end of the financial year
   b) A company that does not satisfy at least two of these tests is classified as a large proprietary.

8. **What types of companies may be registered under the Corporations Act?**
   a) Public companies and proprietary companies
   b) Companies which are public companies can registered as limited by shares, limited by guarantee, unlimited with share capital and no liability companies.
   c) Companies which are proprietary companies can be registered as limited by shares and unlimited with share capital companies.

9. **What is a discretionary trust and what its primary purpose?**
   a) a discretionary trust is a trust where the beneficiaries and/or their entitlements to the trust fund are not fixed, but are determined by the criteria set out in the trust instrument by the settlor. The trustee has discretion as to how the profits and capital of the trust are to be distributed among the beneficiaries.
   b) The discretionary trust is particularly useful, in this manner, as a method of minimizing tax as distributions may be tailored to particular beneficiaries

10. **What is a trading trust and what structure does it generally take?**
   A trading trust is usually an entity that holds property (capital) for certain beneficiaries. This type of business structure is formed when a settlement is made to a trustee (a person or a company) on behalf of a yet-to-be-formed trust. A solicitor then draws up a Trust Deed setting out the trust's powers and formalising its administration.
   a) Used for distribute income of family business
   b) Structure: individual as beneficiary; company as trustee.

11. **What are the duties, powers, rights and liabilities of trustees?**
   a) Duties
   Trustees owe fiduciary duties to beneficiary. Trustees are accountable to the beneficiaries and can be liable for breach of fiduciary duty and acts of negligence.
   b) Powers: defined by the trust instrument, which may direct and guide the trustee in many ways
   c) Rights
      i. The trustee has all of the rights of an ordinary legal owner of property, although it may be limited by trust deed. The trustee also has various statutory rights under the Trustee Act.

- Sealing of documents by a director and secretary are correct.
- Officers/agents/employees perform their duties for the corporation for a proper purpose.

There are some limitations to the use of the s 129 statutory assumptions for third parties, which are found in s 128(4):

- where there is actual knowledge of the true position, which is based on a question of proof; or
- there is imputed knowledge, where the person merely suspects the assumption is incorrect. There has to be sufficient information for the person to be suspicious that the assumption should not be relied on and further investigation of the facts is warranted.

Self Review Questions - Week 6

1. What are the main aims of Chapter 6D of the Corporations Act? P266

a) Achieve a fair and well-informed market.
b) Assist investors in identifying risks.
c) Imposes liability for breach of disclose provisions

2. What types of disclosure documents can a company issue?

- Section 709: (1) prospectus (2) short from prospectus, (3) offer information statement, (4) profile statement

3. When is a disclosure document required?

- Section 706: an offer of securities for issue needs disclosure to investors unless section 708 or 708AA says otherwise.

4. What are some of the policy considerations for exempting the need for disclosure documents for certain offers of securities? 271-274

Offers of securities that do not require disclosure include:

i. Small scale exemption (20 issues in 12 months with maximum of $2 million raised);
ii. sophisticated investor exemption (where the person invests a minimum of $500,000; or has investment experience or has wealth – gross income of at least $250,000 or net assets of at least $2.5 million);
iii. professional investor exemption (see definition s 9);
iv. senior manager/relation exemption;
v. existing holder exemption; Made by disclosing entity to existing debenture holders
vi. takeover and schemes exemption;
vii. exempt bodies and public authorities exemption (such as co-operatives and friendly societies).
viii. Rights issues (s 708AA

5. In general terms, what information must a prospectus contain?

a) General disclosure test:
b) Section 710(1) requires the prospectus to provide all the information that investors and their professional advisers would reasonably require to make an informed assessment of:
   i. The rights and liabilities attaching to the securities offered
   ii. The assets and liabilities of the body
   iii. The financial position and performance of the body
   iv. The profits and losses of the body
   v. The prospects of the body

6. What type of activities can give rise to civil and criminal liability during corporate fundraising?