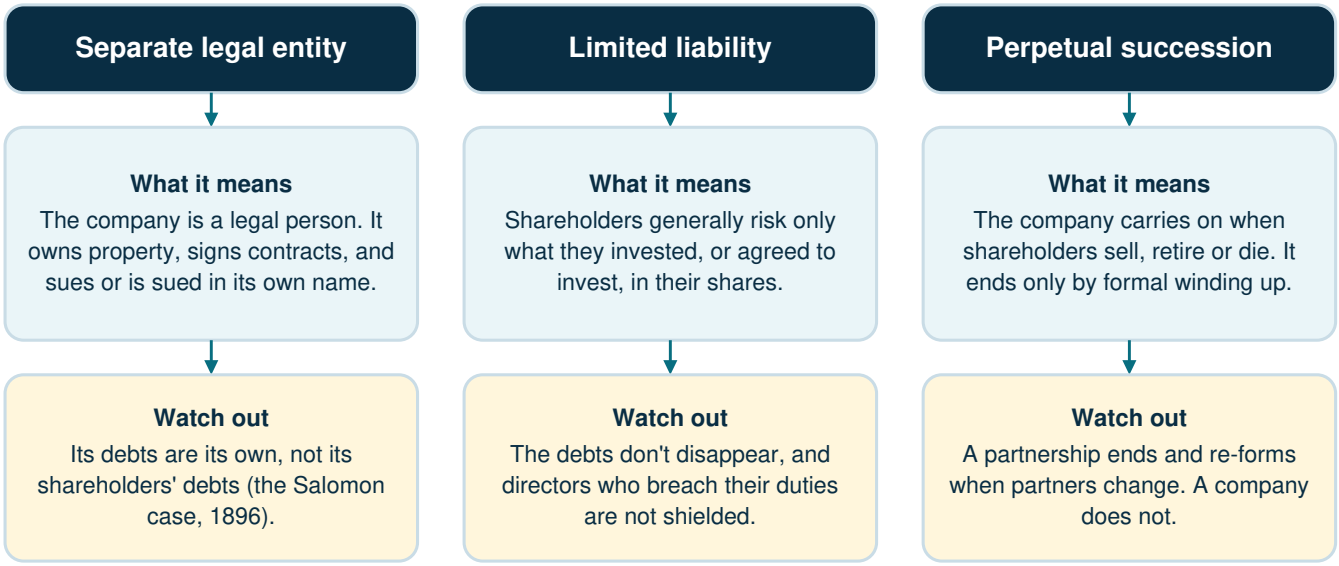
What makes a company different

MODULE 3 | PART A.1 | STUDENT COMPANION

A company is created by registration under the Corporations Act. From that moment it is a legal person in its own right. Three features follow, and each one has a common misunderstanding attached.



The trade-off. These features are privileges. The more outsiders rely on a company - lenders, investors, the market - the more the law asks it to report, audit and disclose.

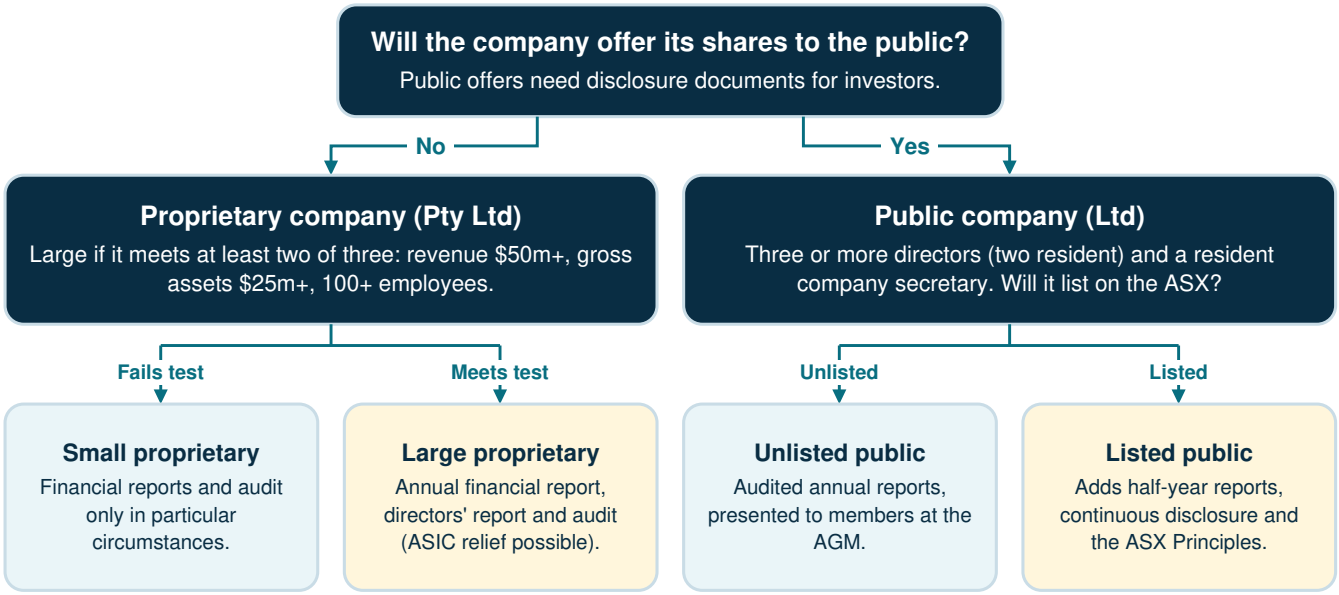
Four liability types to recognise

Type	Usual suffix	What the owners risk
Limited by shares	Pty Ltd or Ltd	The amount paid, or still unpaid, on their shares. The most common form.
Limited by guarantee	Ltd	A set amount members promise to contribute if the company is wound up. Common for not-for-profits.
Unlimited	Pty (no Ltd)	Owners can be exposed beyond what they invested.
No liability	NL	Mining companies only. Shareholders who don't pay calls lose those shares instead of being sued.

Which kind of company?

MODULE 3 | PART A.1 | DECISION FLOWCHART

Two questions decide the type, and each destination carries its own reporting load. Follow the question at the top, then the branch that matches the facts.



Proprietary company limits

- A maximum of **50 shareholders who are not employees**.
- No action that would need a disclosure document for investors, such as offering shares to the general public.
- Allowed: issues to existing shareholders and employees, to investors classed as sophisticated or professional, and small-scale offers of up to **$2 million in any 12 months to a maximum of 20 people**.
- Breaking these rules lets ASIC require the company to convert to a public company.

Large or small proprietary? Large if at least **two of three** are met for the financial year, counting the entities it controls: revenue of $50 million or more; gross assets of $25 million or more; 100 or more employees at year end. One failed test does not matter when two are met.

Practice questions

MODULE 3 | PART A.1 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - large or small?

Imagine a company called **Kestrel Drone Repairs Pty Ltd**. For the year it has revenue of $62 million, consolidated gross assets of $18 million and 120 employees at year end. Is it a large or small proprietary company? Show which tests are met, and state one consequence of your answer.

Question 2 - raising money

Imagine a proprietary company called **Bluegum Pottery Pty Ltd** wants to raise $3 million by selling new shares to 250 of its customers. Can it do this as an ordinary offer while it remains a proprietary company? What realistic options does it have?

Question 3 - explain it in your own words

In the Salomon case, why couldn't the company's unsecured creditors recover their money from Mr Salomon personally, even though he owned almost every share?

Real case: Salomon v A Salomon & Co Ltd [1897] AC 22 (House of Lords, decided 1896). Kestrel, Bluegum and Harbour Coffee Roasters are imagined examples. Study guide reference: Module 3, Part A, section 3.1.

Worked answers

MODULE 3 | PART A.1 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Kestrel Drone Repairs Pty Ltd

Test	Threshold	Kestrel	Met?
Revenue for the year	$50 million or more	$62 million	Yes
Consolidated gross assets	$25 million or more	$18 million	No
Employees at year end	100 or more	120	Yes

Two of the three tests are met, so Kestrel is a **large proprietary company**. The failed asset test does not change the answer. Consequence: it must prepare an annual financial report and directors' report, and have the financial report audited, unless ASIC grants relief.

Question 2 - Bluegum Pottery Pty Ltd

No. An offer of shares to 250 customers would need a disclosure document, which a proprietary company must not do. It is also far beyond the small-scale limit of $2 million to a maximum of 20 people in 12 months.

- **Option 1:** convert to a public company and raise the money with a proper disclosure document.
- **Option 2:** use crowd-sourced funding if it is eligible. Since 2017 this regime has let eligible smaller companies raise money from many small investors with lighter requirements while keeping investor protections.
- **Option 3:** raise a smaller amount within the exceptions, for example from sophisticated or professional investors, or a small-scale offer within the limits.

Question 3 - the Salomon case

Once the company was properly formed, it was a separate legal person. The debts to suppliers were the company's debts, not Mr Salomon's, and as a shareholder his exposure was limited to his shares. Owning nearly every share did not make him personally liable. A strong answer also notes that part of the price the company owed him was a secured debt, which the House of Lords treated as valid, so it ranked ahead of unsecured creditors.

Common slip: treating limited liability as if the debts vanish. The company still owes them; creditors claim against the company's assets, which is why lenders often ask small-company owners for personal guarantees.

Thresholds as at October 2026: Corporations Act 2001 (Cwlth) s45A, for financial years beginning on or after 1 July 2019. Proprietary company fundraising limits and crowd-sourced funding: Module 3, Part A, section 3.1.