

summary of facts

- briefly state case facts
- mention issues at hand
- topics to which question relates

general introduction

before continuing further, we denote a company to be a separate legal entity (SLP) with its own corporate personality, divorce from that of its shareholders and directors (**Saloman v. Saloman**). The operation of such are transcribed within the Companies Act, 2006 (CA, 2006) where subscribers to a company undertake a supervisory role by becoming shareholder and in appointing directors; transfer executive powers onto them so as to oversee conduct business

key management powers in Model Articles

Reg3. gen. authority to manage company's business bestowed upon directors (Ds)

BoDs are primary wielding organ of company

Howard Smith v. Ampol Petroleum - BoD can take decisions against majority SH's wishes

HOWEVER, SH can remove D though simple majority (ordinary resolution of 51%)

decide whether to give SH dividends during general meeting of SH

key member powers in Model Articles

Reg4. shareholders (SHs) reserve power to direct Board via special resolution of 75% majority

general meeting - supervisory role (election/removal of Ds, share issuance, D remuneration)

- ▶ usually call by Board **BUT** SH with 5% holding to requisition meeting (**s.303**)

key member powers in Model Articles (cont)

▶ Courts empowered to order gen. meeting (**s.306**) - mostly used where minority seeks to use quorum req. to prevent majority from passing resolutions (**Union Music v. Watson**)

alteration to AoA via special resolution of 75% majority (**s.21 CA, 2006**)

quorum requirement - generally, at least 2 people (**s.318 CA, 2006**) but may be changed through AoA amendment

Re Duomatic - unanimous informal consent of SH in decision making is as good as formal resolutions

section 21 (CA, 2006)

articles can be amended upon SH's discretion through special resolution

Re Duomatic - informal amendments to AoA are valid

* amendments shouldn't benefit majority at minority's expense

Allen v. Gold Reefs - should be exercised bona fide for company's benefit

a) qualified subjective test: judge's opinion not considered | **view of reasonable SH in situation considered**

b) **Greenhalgh** - 'company's benefit as a whole' = was alteration 'discriminatory b/w SHs (VERY HARD TO PROVE)

- 1 area where Courts readily strike down alterations- **SHARES COMPULSORILY BOUGHT (Brown v BAW)** [b/c infringement of property rights]

alternatively, minority SH can seek statutory minority protection u/s. 994 CA, 2006

HOSTILITY IN COMPANY

section 21 (CA, 2006) (cont)

valid gen. meeting requires at least 2 SH (s.318), but minority SH may not attend where company only has 2 SH

- here, majority can ask Courts to order a valid meeting where quorum req. isn't met (**s.306**)

Union Music v. Watson - HOWEVER, where SH agreement where voting rights are mentioned is present, no such grant by Courts

RESTRICTION TO ALTERATIONS

1. alteration not made 'bona fide' in company's interest, minority can apply to courts & have it overturned (**Allen v. Gold Reefs**)

* rarely succeeds

2. class rights as a SH

Cumbrian Newspapers - class rights = rights not attached to shares || provided to SH *by name* via AoA || right only enjoyed by subset of SH & *isn't an outsider right*

3. provisions for entrenchment

provisions within AoA incapable of alterations later

usually occur proviso articles requiring **unanimous resolution** to pass for change to be enforceable

section 33 (CA, 2006)

AoA is a contract b/w members and the company

- can be amended w/o unanimous consent (only special majority required)

- AoA binds future members of company as well

ENFORCEMENT OF ARTICLES

1. by company on SH → yes, **s.33 (CA, 2006)**

2. by SH on company → only where **PERSONAL RIGHTS (PR)** are affected

section 33 (CA, 2006) (cont)

- including voting rights, protection of class rights, share transfer, pre-emption, claim declared dividend, appoint Ds

* however, enforcement of such is still contradictory

MacDougall v. Gardinaer - right to poll upheld

Pender v. Lushington - right to vote in general meeting upheld

3. by SH on another SH (Interse contract) - unclear

Wood v. Odessa - contract b/w SHs is valid

Salmon v. Quinn - contract b/w SHs unenforceable

Rayfield v. Hands - AoA is directly enforceable b/w members

involved quasi-partnership & breach of pre-emption right in AoA, rights were enforced

4. by outsider (D or Creditor) - no

Salmon v. Quinn - if rights of SH have TANGENTIAL effect n his rights as D

SHAREHOLDER'S AGREEMENT

due to uncertainty of AoA enforcement b/w SH, they enter separate SH agreements

benefit from ease of enforcement - **Pudden-phatt v. Leith**

company is also party to these agreements **BUT** can't agree to limit its constitutional rights

Punt v. Symons - company can't contract out of its right to alter AoA

Rusell v. N. Bank - agreement can't be enforced against company

section 39 (CA, 2006)

- objects (principal line of business) of the company

HISTORY

- companies originally viewed as public bodies, acting beyond conferred powers was *ultra vires*

- *ultra vires* doctrine served to protect SH & creditors via **objects** limitation

- BUT doctrine proved problematic for Courts (dynamic nature of companies leads to diversifying portfolio BUT altering **objects** was limited + interplay with *constructive notice* left 3rd party contract unenforceable)

- originally, Courts approach was strict (**Ashbury Railway**) but gradually got more lax (**Bell Houses**)

* *approach shows acknowledgement of companies as a private entity*

REFORMS

- reform via **s.39**, replacing s.35 of 1985 Act (read with **s.31**) allows companies to now have unlimited objects clause or not mention it at all

- Company's Act, 1985, **s.3A & 4** allowed changes to + widening of objects clause

CURRENT LAW

- obligations of UK to European Community led to replacing constructive notice with 'good faith' requirement

- objects can also be altered proviso **s.21**

- issue of company's powers reduced to whether decision was undertaken by proper authority (**s.40**)

section 40 (CA, 2006)

signing of contract without proper internal authority

- previously doctrine of *constructive notice* upheld - now **indoor management** (**RBB v. Turquand**) enshrined **u/s. 40**

2 requirements for principle to be satisfied

✓ action undertaken via **actual** or **apparent** authority of D

✓ contract achieved by 3rd party in '**good faith**'

ACTUAL AUTHORITY

- expressly or impliedly conferred via AoA or the individual's position (as a D)

- could be implied through the position one occupies within the corporate structure (**HH v. Brayhead**)

APPARENT AUTHORITY

criteria laid out in **Freeman v. Buckhurst**

4. representation that agent had authority on behalf of company

5. authority granted by person with **actual** authority

6. contractor (3rd party) induced by such representation to enter into contract

other attribution issues

VICARIOUS LIABILITY UNDER TORT

Campbell v. Paddington - Courts accepted VL for civil liability only (company liable for employee's acts)

PREVIOUSLY, organic theory was followed - liable individual & company considered a single entity (**Asiatic Petroleum**)

* incompatible with **Saloman principle** + difficulty in attributing fault upon 1 individual

other attribution issues (cont)

CURRENT LAW follows control theory - attribution of liability by considering who *controllers of the company were* (**Meridian Global Funds**)

* compatible with *Saloman principle* + advantage of holding lower-rung employees accountable (**McNicholas**)

regardless, organic theory still holds ground (**Moore Stephens**)

CORPORATE MANSLAUGHTER

PREVIOUSLY organic theory was applied here too

* corporate structure too complex to attribute *MR* onto one person (**Jenkins v P&O**)

CURRENTLY, 'corporate manslaughter' introduced by Government through separate act in 2007

* is based around 'management failure' - management fall far below standard reasonably expected in such circumstances (**R v. Cotswald**)

removal of directors

s. 168 CA, 2006 - D can be removed by SH by passing ordinary resolution

- employment contract specifying time-span for employment will not prevent enforcement of removal (**s. 168(1)**)

▶ } *HOWEVER*, if removal in breach contract then Ds have right to compensation (**s. 168(5)**)

LONG-TERM SERVICE CONTRACTS REQUIRE SH APPROVAL FOR THEM TO BE VALID* (by simple majority)

▶ i.e.; more than 2 years (**s. 188**)

