

### 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

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### 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 - **Puddenphatt 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**) enshired **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 (**Asiastic Petroleum**)

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

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## 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*)

