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FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
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NAME OF FACULTY: Ms. Anjali Dixit
Assistant Professor

FACULTY OF JURIDICAL SCIENCES

LECTURE-12

3. Legal Effect of Memorandum and Articles:

The legal effect is described in s.14 CA. The memorandum and articles operate as a contract between the company and its members, which both parties are bound to honour.

The effect of this is:

(a) Each member, in his capacity as a member, is bound to the company as if he personally had signed the memorandum and articles. **Hickman v Kent or Romney Marsh Sheep Breeders Association.**

(b)The company is bound to each member in his capacity as a member. **Wood v Odessa Waterworks Co.** (c)The memorandum and articles do not constitute a contract binding the company or any member to an outsider - or to a shareholder in any other capacity than as a member. **Eley v Positive Government Life Assurance Co Ltd** and **Beattie v E & F Beattie Ltd**

(d) Provisions of the memorandum or articles can sometimes form part of an extrinsic contract between the company and an outsider. This can happen in one of three ways:

(i) Where provisions of the memorandum or articles are expressly incorporated into an express contract between the company and the outsider.

(ii) Where there is no express contract but a provision in the memorandum/articles is incorporated by implication from the conduct of the parties.

(iii) Where there is an express contract which is silent on a particular matter, and relevant provisions in the articles or memorandum are used to fill in any gaps. The company is not actually liable to the outsider on the basis of the articles, but under the extrinsic contract. **Re New British Iron Co, ex parte Beckwith**

(e) A member has a right to compel the company to act according to the articles even if not enforcing a right which is personal to himself as a member. **Salmon v Quinn & Axtens Ltd**

(f) The memorandum and articles constitute a contract between each member and every other member. **Rayfield v Hands.**

VI. CAPITAL AND SHARES

1. Nature of Shares and Share Capital

(a) What is a Share?

A share is the unit of measure for determining a member`s interest in the company.

The memorandum states the nominal value for each share - members must contribute at least this amount. **(b) Share Capital:**

There are different aspects to this:

Authorised Share Capital:

Total value of shares the company is allowed to allot - also known as nominal or registered capital.

Allotted Share Capital:

Value of shares the company has actually allotted to members.

Paid-up Share Capital:

Amount that members have paid on their shares, excluding any premium.

Called-up Share Capital:

Paid-up capital + any amount members have been called on to pay.

Uncalled Capital and Reserve Capital:

Uncalled capital is the amount owing on partly paid shares which members have not yet been called on to pay.

Reserve capital is uncalled capital the company has resolved not to call unless the company is wound up.

2. Classes of Shares

(a) Typical Rights of Shareholders:

Member`s rights are detailed in the Articles, but the following are typical:

- right to control company through voting at meetings - right to participate in distribution of profits
- right to participate in surplus assets in a winding up.

(b) Preference Shares:

Give preferential right to a dividend of fixed amount or fixed percentage per share - this dividend is paid before anything is paid to ordinary shareholders. Right to dividend is normally cumulative.

Preference shares usually give a preferential right to repayment of capital on a winding up.

Preference shareholders normally have restrictions placed on their power to vote at general meetings.

(c) Ordinary Shares:

Dividend depends on company profits and there is no automatic right to a dividend.

1. Issue and Allotment of Shares:

Issuing is the process by which members take shares in the company.

A share is allotted when someone acquires an unconditional right to be entered in the register of members.

(a) **Allotment Contracts**:

Usual rules of contract apply. There must be an offer met by an acceptance. A prospectus is not an offer to sell shares, it is an invitation to treat.

It is possible to have a conditional contract which gives an option to demand the allotment of shares at a later date. These option can be traded like shares.

(b) Authorisation of Allotment:

Directors cannot allot shares without authority given by the existing shareholders or the articles.

The authority must state the maximum number of shares to be allotted. It is a criminal offence to allot shares without proper authorisation, but the allotment remains valid.

(c) Pre-emption Rights:

existing shareholders must be offered the opportunity to buy any new issue of shares before they are offered elsewhere. Shareholder must be given 21 days to decide whether to buy. Private companies can avoid pre-emption rights.

MCQs

1. **The memorandum and articles operate as a contract between the company and its members, which both parties are bound to honour.**

i. True
ii. False
iii. Can not say
iv. None of the above

2. **A share is allotted when someone acquires an unconditional right to be entered in the register of members.**
   i. True
   ii. False
   iii. Can not say
   iv. None of the above
3. **Reserve capital is uncalled capital the company has resolved not to call unless the company is wound up.**
   i. True
   ii. False
   iii. Can not say
   iv. None of the above
4. **Authorised Share Capital:Total value of shares the company is allowed to allot - also known as nominal or registered capital.**

i. True
ii. False
iii. Can not say
iv. None of the above

5. **Called-up Share Capital: Paid-up capital + any amount members have been called on to pay.**
    i. True
    ii. False
    iii. Can not say
    iv. None of the above