

Dev Limited issued a notice for holding of its Annual General Meeting on 7th November, 2005. The notice was posted to the members on 16.10.2005. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 1956 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:

- (i) Whether the meeting has been validly called?
- (ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the short fall, if any, be condoned?

Ans 1. Relevant Section - Sec 171 of the Companies Act, 1956 - "Length of notice for calling meeting -

- (1) A general meeting of a company may be called by giving not less than twenty one day's notice
 - (2) A general meeting may be called after giving shorter notice if consent is accorded thereto
 - in the case of an annual general meeting, by all the members entitled to vote thereat; and
 - in the case of any other meeting by members holding not less than 95 % of paid-up share capital:
 - In case of notice by post, notice shall be deemed to have been received on expiry of 48 hrs from the time of its posting.
 - the day of the meeting shall be excluded.
- **Findings** 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is not validly convened. **Notice falls short by 2 days.**

C, a member of LS& Co. Ltd., holding some shares in his own name on which Final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him. With reference to the provisions of the Companies Act, 1956, examine the validity of company's denial to C of his voting right

- **Relevant Section - Sec. 181 of the Companies Act, 1956** - Restriction on voting right of member who have not paid calls etc. -
- "no member shall exercise voting right in respect of shares on which any calls have not been paid."
- **Findings** - Since the stipulation in the articles relates to one of the grounds permitted under section 181, the same is valid C's protest is not valid.

At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 1956, examine the validity of the Chairman's declaration.

ANS 1. **Relevant Section - Sec, 189 (2) of the Companies Act, 1956** - "A resolution shall be a special resolution when -

- (a) the intention to propose the resolution as a special resolution is specified in the notice;
- (b) the notice is duly given of general meeting; and
- (c) the votes cast in favour of the resolution are 75%."

Finding - The votes cast in favour (20) being more than three times of the vote cast against (5), if other conditions of sec. 189 (2) are satisfied, the decision of the chairman is in order.

A Company served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such Meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid ?

Explanation -

- Section 173 requires a company to annex an explanatory statement to every notice for a meeting of company, at which some 'special business' is to be transacted.
- This explanatory statement is to bring to the notice of members all material facts relating to items of business.
- All business in case of any meeting other than the Annual General Meeting is regarded as 'special business'.
- Thus, the objection of the shareholder is valid, since the details on the item to be considered are lacking.
- The information about the amount is a material fact with reference to the proposed increase of share capital.

Findings - The notice is not a valid notice under Sec. 173 of the Companies Act, 1956.

DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 1956, examine the validity of the meeting and the resolution passed thereat.

Explanation -

- In this given case only one shareholder present. This was not a meeting within the meaning of the Companies Act, 1956.
- According to Sec. 174, another requirement of a valid meeting is the presence of a required quorum. The section also says that "the members actually present shall be the quorum". The presence of one member may not be enough.
- In the given case, since all the shares are not held by one person, no quorum is therefore present,
- Finding - The meeting and the resolution passed there shall not be valid.

List of Cases

1. **Sharp V. Dawes -**

"The moral meeting prima facie Means coming together of more than * one person."

2. **East V. Ben net Brothers Ltd. (1911) -**

It has been held that in case of a class meeting of all the shares of a particular class are held by one person, one person shall form the quorum.

Leading Cases

Saurabh Jain Business Law

1. **Lalman Vs. Gauri Datt (1913)**

Facts - Defendant's nephew absconded from home. He sent his servant in search of the boy. When the servant had left, the defendant by handbills offered to pay Rs. 501 to anybody discovering the boy. The servant came to know of this offer only when he had already traced the missing child. He, however, brought an action to recover the reward. But the action failed.

Point Decided - In order to constitute a contract, there must be an acceptance of an offer and there can be no acceptance unless there is knowledge of the offer.

2. **Balfour Vs. Balfour (1919)**

Facts - Husband was employed in Ceylon. His wife was advised to stay in England on account of her health. The husband agreed to send her an account off 30 a month for the probable expenses of maintenance. He did send the amount for some time, but differences afterwards arose and allowance fell into arrears. The wife's action to recover the arrears was dismissed.

Point Decided - To create a contract there must be a common intention of the parties to enter into legal obligations.

3. **Mc Gregor Vs. Mc Gregor (1888)**

Facts - A husband and wife withdrew their complaints under an agreement by which the husband promised to pay her an allowance and she to refrain from pledging his credit.

Point Decided - Agreement was held to be a binding contract. All that the law requires is that the parties must intend legal consequences.

4. **Carlill Vs. Carbolic Smoke Ball Co. Ltd. (1893)**

Facts - A Company offered by advertisement to pay £ 100 to anyone "who contracts the increasing epidemic influenza, colds or any disease caused by taking cold, after having used the ball according to printed directions" A lady used the smoke balls but suffered from influenza. She was held entitled to recover the promised reward.

Point Decided - An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person.

(201)

5. **Harvey Vs. Facey (1893)**

Facts - The plaintiffs telegraphed to the defendants writing; " will you sell us Bumper Hall Pen? Telegraph lowest cash price." The defendants

replied, also by a telegraph: "Lowest price for Bumper Hall Pen, £ 900." The plaintiffs immediately sent their last telegram stating, "we agree to buy Bumper Hall Pen for £ 900."

Point Decided - Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but only invite the other party to make an offer on those terms.

Therefore, this is the basic distinction between an "offer" and an "invitation" to receive offers.

6. Mc Pherson Vs. Appana (1951)

Facts - The plaintiff offered to purchase a lodge owned by the defendants for Rs. 6000. He wrote the defendant's agent asking whether his offer had been accepted and saying that he was prepared to accept any higher price if found reasonable. The agent replied, "won't accept less than rupees ten thousand." The plaintiff accepted this and brought a suit for specific performance.

Point Decided - Defendant did not make any offer or counter-offer in his cable but was merely inviting offers. There was no assent to the plaintiff's offer to buy at Rs. 10,000 and, therefore, no concluded contract.

7. Felt house Vs. Bindley (1863)

Facts - The plaintiff offered by means of a letter to purchase his nephew's horse. The letter said, "If I hear no more about the horse. I consider the horse mine at £ 33.155." To this letter no reply was sent. But the nephew told the auctioneer not to sell the horse as it was already sold to his uncle. The defendant auctioneer by mistake sold it. The plaintiff sued the auctioneer on the ground that horse had become his property. Point Decided - Acceptance of an offer made should be communicated to the offeror or himself or to the person he has authorised to receive the acceptance.

8. Powell Vs. Lee (1908)

Facts - The plaintiff was an applicant for the headmastership of a school. The managers passed a resolution appointing him, but the decision was not communicated to him. One of the members, however, in his individual capacity informed him. The managers cancelled resolution and the plaintiff sued for breach of contract.

Point Decided - The communication of acceptance should be from a person who has the authority to accept. Information received from an unauthorized person is ineffective.

9. Eliason Vs. Henshaw (1819)

Facts - A offered to buy flour from B requesting that acceptance should be sent by the wagon which brought the offer. B sent his acceptance by post, thinking that this would reach the offeror more speedily. But the letter arrived after the time of the wagon. A was held to be not bound by the acceptance.

Point Decided - Acceptance has to be made in the manner prescribed or indicated by the offeror. An acceptance given in any other manner may not be effective, particularly where the offeror clearly insists that the acceptance shall be made in the prescribed manner.

10. Hyde Vs. Wrench (1840)

Facts - An offer to sell a farm for £ 1,000 was rejected by the plaintiff, who offered £ 950 for it. This was turned down by the offeror and then the plaintiff agreed to pay £ 1,000. Court held that there was no binding obligation.

Point Decided - Unless there is an absolute and unqualified acceptance, the stage of negotiations has not yet passed, and no legal obligation is imposed. In short, a counter offer puts an end to the original offer.

11. Curie Vs. Misa (1875)

Point Decided - The expression 'consideration' has to be understood as a price paid for an obligation. It is "some right, interest, profit or benefit • accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

12. Durga Prasad Vs. Baldeo (1880)

Facts - The plaintiff on the order of the Collector of a town, built at his own expense, certain shops in a bazaar. The shops came to be occupied by the defendants who, in consideration of the plaintiff having expended money in the construction, promised to pay him a

commission on articles sold through their agency in the bazar. The plaintiff's action to recover the commission was rejected.

Point Decided - An act shall not be a good consideration for a promise unless it is done at the desire of the promisor.

13. Kedar Nath Vs. Gorie Mohammad (1886)

Facts - It was thought advisable to erect a town hall at Howrah through public subscription. The Commissioners of Howrah Municipality set out to work to obtain necessary funds. The defendant was a subscriber to this fund having signed his name in the subscription book. On the faith of the promised subscriptions, the plaintiff entered into a contract with a contractor for the purpose. But the defendant failed to pay the amount. He was held liable.

Point Decided - An act done at the promisor's desire furnishes a good consideration for his purpose even though it is of no personal significance or benefit.

14. Chinnaya Vs. Ramayya (1882)

Facts - An old lady, by deed of gift, made over certain landed property to the defendant, her daughter, by the terms of the deed. Which was registered, it was stipulated that an annuity of Rs. 653 should be paid every year to the plaintiff, who was the sister of the old lady. The annuity was not paid. The plaintiff was allowed to recover it. Point Decided - In view of the clear language used in defining consideration in Section 2 (d), it is not necessary that consideration should be furnished by the promisee. The consideration can legitimately, move from a third party is an accepted principle of law in India though not in England.

15. Sindha Vs. Abraham (1885)

Facts - The plaintiff rendered services to the defendant at his desire during his minority. He also continued to render the same services after the defendant attained majority.

Point Decided - Services rendered to a minor at his request and which are continued after majority at the same request, are good consideration for promise to pay. But it was admitted that if the services had not been rendered at the desire of the defendant it would be hit by Section 25.

16. De La Bere Vs. Pearson (1908)

Facts - The defendants who were newspaper proprietors, offered to answer inquiries from readers of the paper desiring financial advice. The plaintiff wrote to them asking for a safe investment and also for the name of a good stock broker. The editor recommended a person who, unknown to him, was in fact an undischarged bankrupt. The plaintiff, in reliance on the recommendation, sent sum investment and they were misappropriated. In an action against the defendants, the question was whether there was adequate consideration for the offer of advice.

Point Decided - The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the court when it is sought to be enforced. This is the English rule and is applicable in India also.

17. Khawja Mohammad Khan Vs. Hussaini Begum (1910)

Facts - Where the father of the bridegroom promised to pay through a contract with the father of the bride, an allowance to the bride if she married his son. The bride sued her father in law after marriage. Her claim was allowed.

Point Decided - Indian Courts are not bound by the rule in Tweddle Vs. Atkinson. Nor is there anything in the Indian Contract Act, which prevents the recognition of a right in a third party to enforce a contract made by others, which contains a provision for his benefit.

18. Shuppu Vs. Subramaniam (1910)

Facts - Two brothers, on a partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. She was held entitled to require them to make the investment.

Point Decided - Where an agreement is made in connection with marriage partition or other family arrangement and a provision is made for the benefit of a person, he may take advantage of that agreement although she is no party to it.

19. Rajliiknee Devee Vs. Bhootnath Mookerjee {(1900) 4 Cal WN 488J

Facts - The defendant promised to pay his wife a fixed sum of money every month for her separate residence and maintenance. The agreement was contained in a registered document which mentioned certain quarrels

and disagreements between the two. The court refused to treat it as an exception to Section 25 of Act.

Point Decided - There is always some degree of instinctive love and affection between parties nearly related. But this instinct may sometimes be

overruled by external circumstances,

20. Chikham Amiraju Vs. Chikham Seshamma(1917)

Facte - By threat of suicide, a Hindu induced his wife and son to execute a release in favour of his brother in respect of certain properties which they claimed as their own. The court held that the threat of suicide was coercion within Section 15 and the release deed was voidable. ; Decided - A consent induced by coercion makes the contract voidable.

21. Mannu Singh Vs. Umadatt Pandey (1890)

Facte - A spiritual guru induced the plaintiff, his devotee, to gift to him the whole of his property to secure benefits to his soul in the next world. The court held it a case of undue influence.

Point Decided - If the parties to an agreement are so related to each other that one of them is able to dominate the will of the other then such consent is said to be induced by undue influence.

22. Deny Vs. Peek (1889)

Facte - A Company's prospectus contained a representation that the company had been authorised by a Special Act of Parliament to run trams by steam. The authority to use steam was in fact, subject to the approval of the Board of Trade, but no mention was made to this. The Board refused the consent and consequently the company was wound up. But they were not held liable for fraud.

Point Decided - The person making a false representation is not guilty of fraud if he honestly believes in its truth. Thus, intentional misrepresentation is of the essence of fraud.

23. Couturier Vs. Hastie (1856)

Facts - The defendant was employed to sell the plaintiffs cargo which was on voyage. After the defendant had sold the cargo to a third person, it was discovered that the cargo, having been damaged by bad weather had been sold at an intermediate port. The buyer repudiated the contract and the defendant was sued for the price. But he was held not liable. Point Decided - If neither of the parties is aware of non-existent subject matter, such contract is void ab initio.

24. Mohoribibi Vs. Dharmodas Ghose (1903)

Facts - A minor executed a mortgage in favour of the husband of Mohoribibi. The question for consideration is whether the mortgage is valid.

Point Decided - A person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. A minor's agreement is absolutely void.

25. Mir Sarwarjan Vs. Fakhruddin Mohammad (1912)

Facts - A contract to purchase certain immovable property had been made by a guardian on behalf of a minor, and the minor sued the other party for a decree of specific performance to recover possession. His action was rejected.

Point Decided - All contracts by guardian are not valid. A guardian cannot bind a minor in a contract to purchase immovable property.

26. Burnard Vs. Haggis (1863)

Facts - The defendant who was a Cambridge undergraduate and an infant, hired a horse for the purpose of going for a ride, expressly stating that he did not want a horse for jumping. He let the horse to a friend, who used it for jumping and it became injured. The defendant was held liable. POINT DECIDED - A minor can be held liable for the acts outside the contract and which cannot be said to be an abuse of the contract.

27. Jennings Vs. Rundall (1799)

Facts - The defendant, an infant, had hired a horse to be ridden for a short journey and took it on a much longer journey, with the result that it was injured. The defendant was held not liable. Point Decided - A minor can be held liable in other ways than contract.

28. Frost Vs. Knight (1872)

Facts - The defendant promised to marry the plaintiff on the death of his father. While the father was still alive, he married another woman. It was held

that it had become impossible that he should marry the plaintiff and she was entitled to sue him for the breach of the contract.

Point Decided - Where the contract is enforceable if a certain person is to act in a certain way, the event shall be considered to have become impossible if that person does something which makes it impossible.

29. Start-up Vs. Macdonalds (1843)

The defendant bought of the plaintiff ten tons of linseed oil to be delivered within the last 14 days of the month of March. The plaintiff tendered on the last of the fourteen days at 9 O'clock at night. The defendant refused to accept owing to the lateness of the hour.

Point Decided - The tender of performance must be made within the time and at the place so fixed. If it is not accepted, the promisor is under no responsibility.

30. Murlidhar Chatterjee Vs. International Film Company

Point Decided - When a promisee puts an end to a contract being rightly entitled to do so, it shall be deemed as if he has rescinded a voidable contract.

31. Taylor Vs. Caldwell (1863)

Facts - The defendants had agreed to let the plaintiffs the use of their music hall between certain dates for the purpose of holding a concert there. But before that first day on which a concert was to be given, the hall was destroyed by fire without the fault of either party. It was held that contract was not absolute.

Point Decided - Parties shall be excused in case, when the performance becomes impossible from the perishing of thing without default of the contractor.

32. Krell Vs. Henry [(1903) 2 KB 740 CA]

Facts - The defendant agreed to hire from the plaintiff a flat for two days on which days it had been announced that the coronation procession would pass along that place. A part of the rent was paid in advance. But the procession having been cancelled owing to the King's illness, the defendant refused to pay the balance.

Point Decided - The doctrine of frustration is not confined to physical impossibilities. It extends also to cases where the performance of the contract is physically possible, but the object the parties had in mind has failed to materialise.

33. Robinson Vs. Davison 1(1871) LR 6 Exch 269]

Facts - There was a contract between the plaintiff and the defendant's wife, who was an eminent pianist, that she should play the piano at a concert to be given by the plaintiff on a specified day. On the morning of the day in question she informed the plaintiff that she was too ill to attend the concert. The concert had to be postponed and the plaintiff lost a sum of money.

Point Decided - In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for nonperformance of the contract.

34. Satyabrata Vs. Mugneeram Bangur & Co. {AIR 1954 SC 44J

Facts - * The defendant company started a scheme for the development of a tract of land into a housing colony. The plaintiff was granted a plot on payment of earnest money. The company undertook to construct the roads and drains necessary for making the lands suitable for building and residential purposes and as soon as they were completed, the purchaser was to be called upon to complete the conveyance by payment of the balance of the purchase money. But before anything could be done, a considerable portion of the land was requisitioned by the State during the second world war for military purposes. It was held that the contract was not frustrated.

Point Decided - An intervention of a temporary nature which does not uproot the foundation of the contract will not have the dissolving effect.

35. Hochester Vs. De La Tour [(1853) 2 Eills & BB 678]

Facts - The plaintiff was a courier. He was engaged by the defendant to accompany him on a tour to commence. Nearly a month before this date the defendant wrote to the plaintiff that he had changed his mind, and declined his services. The plaintiff sued him for damages for breach. The claim

was allowed.

Point Decided - An anticipatory breach of contract gives an immediate right of action.

36. Hadley Vs. Baxendale [(1854) 9 Ex 341]

Facts - Plaintiff's mill was stopped by a breakage of the crankshaft by which the mill was worked. The defendants were engaged to carry the shaft to the manufacturers as a pattern for a new one. The plaintiff's servant told the defendants that the mill was stopped, and that the shaft must be sent immediately. But the defendants delayed the delivery by some neglect, and the plaintiff did not receive the new shaft for several days after they would otherwise have done. The action was brought for the loss of profits which would have been made during the period of the delay. Point Decided - The defendant cannot be held liable for all that follows from his breach. There must be a limit to liability and beyond that limit the damage is said to be too remote, therefore, irrecoverable.

37. Wilson Vs. Lancashire and Yorkshire Rly Co. [50 LJCP 232]

Facts - The plaintiff bought velvet with a view to making it into caps for sale during spring. But due to delay in transit, he was unable to use the velvet for making caps for sale during season. It was held that the plaintiff is entitled for compensation without notice.

Point Decided - Compensation can be recovered even without notice for damages or 'deterioration caused to goods on account of delay by carriers amounting to breach of contract. The word "deterioration" means not only physical damages but also loss of opportunity.

38. Dunlop Pneumatic Tyre Co. Ltd. Vs. New Garage & Motor Co. Ltd. [(1915) AC 79]

Facts - A manufacturer of tyre supplied a quantity of tyres to a dealer on the condition that they would not be sold below the list prices and that liquidated damages, not penalty, of £ 5 would be payable for every tyre sold in breach of the agreement. The dealer committed breach. Court held it a liquidated damages.

Point Decided - If the sum fixed represents a genuine pre-estimate of the probable damage that is likely to result from the breach, it is liquidated damages.

39. Shri Chunni Lai Vs. Mehta & Sons Ltd. [A.I.R. 1962 S.C. 1314]

Point Decided - The aggrieved party should not be allowed the claim a sum greater than what is specific in the written agreement. But even there the court has power to reduce the amount if considered reasonable to reduce.

40. Moses Vs. Macferlan 1(1760) 2 Burr 1005]

Facts - Jacob issued four promissory notes to Moses and the latter endorsed them to Macferlan, excluding, by a written agreement, his personal liability on the endorsement. Even so Macferlan sued Moses on the endorsement and he was held liable despite the agreement. Moses was thus compelled to discharge a liability which he had excluded, and therefore, sued to recover back his money from Macferlan. Point Decided - Law as well as justice should try to prevent " unjust enrichment," that is, enrichment of one person at the cost of another.

41. Muni Bibi Vs. Trilokinath J(1960) SC 779]

Facts - The plaintiff agreed to purchase certain mills, to save it from being sold to outsiders, paid certain arrears of municipal dues. Here the payment made by the plaintiff was held to be recoverable as he had interest in the property as prospective buyer.

Point Decided - A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.

42. Shyam Lal Vs. State of U.P. 1(1968) A.I.R. 130]

Facts - A government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the meantime government filed appeal. The appeal was decided in favour of the government and the government servant was directed to return the salary paid to him during the period of reinstatement

Point Decided - Where a person lawfully does anything or delivers anything ungratuitously and such other person enjoys the benefit thereof, the latter

is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

43. Nanak Ram Vs. Mehinal [(1877) 1 AH 487]

Facts - 'A' had advanced money to 'B' on a bond hypothecating B's property stating that C is the surety for any balance that might remain due after realisation of B's property. C was not a party to the bond. He, however, signed a separate surety bond two days subsequent to the advance of the money. It was held that the subsequent surety bond was void for want of consideration.

Point Decided - Anything done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.

44. Kishore Vs. Radha Raman [(1939) I.L.R. 12 Cal 330]

Facts - The plaintiff sued the principal debtor and the surety for arrears of rent. The plaintiff also made the legal representatives of the principal debtor a party after knowing about the death of the principal debtor to avoid the debt being barred by limitation. It was held that even if debt is barred by limitation on account of death of principal debtor the surety is still liable.

Point Decided - Omission of the creditor to sue within the period of limitation does not discharge the surety.

45. Imperial Bank Vs. SL Kathereine Docks [(1877)5 Ch. D]

Facts - A creditor had the right to stop the goods or sellers lien, surety would enjoy the same right after he has paid the amount. Point Decided - The surety gets the right of subrogation for all payments and performance he is liable. This right would accrue only when the surety has paid the amount of liability in full.

46. Bal Krishna Vs. Bank of Bengal [(1891) 15 Bom 585]

A engaged B as clerk to collect money for him and B failed to account for some of his receipts. Thereupon, A called upon B to furnish sectionurity for his duly accounting the receipts. C gave the required guarantee. A did not apprise C of the fact of a previous declaration by B and thereafter B again made a default. The guarantee was held to be invalid. Point Decided - The expression "Keeping silence" implies intentional concealment of a material fact, as distinct from a mere non-disclosure thereof.

47. Ram Gulam Vs. Government of U.P. [AIR 1950 All 206]

Facts - The plaintiffs ornaments, having been stolen, were recovered by the police and, while in police custody, were stolen again. The plaintiffs action against the state for the loss was dismissed.

Point Decided - When a person's goods go into the possession of another without any contract, there is no bailment.

48. Martin Vs. London County Council [(1947) KB 628J]

Facts - The plaintiff was brought to a paid hospital as a patient, on her entry the hospital officials took charge of two pieces of jewellery and a gold cigarette case. They were subsequently stolen by a thief who broke into the room in which they were kept. Defendants were held liable.

Point Decided - Section 151 prescribes a uniform standard of care in all cases of bailment, that is, a degree of care which a man of ordinary prudence would take of his own goods of the same type and under similar circumstances. If the care devoted by the bailee falls below this standard, he will be liable for loss of or damage to the goods.

49. Ferguson Vs. Uma Chand Bold [(1905) 33 Lai 343J]

'A' executed a power of attorney in favour of 'B' in running a silk factory but the power of attorney did not authorise 'B' to borrow and if B borrowed, it was stated to be an act in excess of his authority.

Point Decided - An agent has the power and authority to do all acts lawful and necessary in the normal circumstances in discharge of his functions but these must not be exceeded.

50. Smith Vs. Mose [(1940) 1 KB 424]

Facts - A woman allowed her son to drive a car for her, she paying all the expenses of maintenance and operation, it was held that the son was an implied agent of the mother and when he made a collision his mother could be sued.

Point Decided - Implied agencies arise from the conduct, situation or relationship of parties.

Leading Case on Company Law

1. Gol ford Motor Co. Vs. Home (1933) 1 Ch 935;

Facts - Home was appointed as a managing director of the plaintiff company on the condition that "he shall not at any time while he shall hold the office of a managing director or afterwards, solicit or entice away the customers of the company." His employment was determined under an agreement.

Shortly afterwards he opened a business in the name of a company which solicited the plaintiffs customers.

Judgment-It was held that the company was a mere cloak or shaw for the purpose of enabling the defendant to commit a breach of his covenant against solicitation. The court will refuse to uphold the separate existence of the company where it is formed for a fraudulent purpose or to avoid legal obligations.

2, Saloman Vs. Saloman & Co. Ltd. (1895 - 99) All ER Rep 33

Facts - Saloman sold his business to a company named Saloman & Company Ltd., which he formed. Saloman took 20,000 shares. The price paid by the company to Saloman was £ 30,000, but instead of paying him, cash, the company gave him 20,000 fully paid shares of £ 1 each & £ 10,000 in debentures. The company wound up & the assets of the company amounted to £ 6,000 only. Debts amounted to £ 10,000 due to Saloman & secured by debentures and a further £ 7,000 due to unsecured creditors. The unsecured creditors claimed that as Saloman & Co. Ltd., was really the same person as Saloman, he could not owe money to himself and that they should be paid their £ 7,000 first.

Judgment-

1. A Company is a "legal person" or "legal entity" separate from and capable of surviving beyond the lives of, its members.
 2. The company is not in law the agent of the subscribers or Trustee for them.
 3. Saloman was entitled to £ 6,000 as the company was an entirely separate person from Saloman.
 4. The unsecured creditors got nothing.
3. Lee Vs. Lee's Farming Co. Ltd. (1960) 3 All - 6.R. 420 P.C.

Facts - Lee incorporated a company of which he was the managing director. In that capacity he appointed himself as a pilot of the company. While on the business of the company he was lost in a flying accident. His widow claimed compensation for personal injuries to her husband while in the course of his employment. It was argued that no compensation was due because L & lee's Air Farming Ltd. were the same person.

Judgment-

1. L was separate person from the company he formed and compensation was payable.
2. His widow recovered compensation under the Workmen's Compensation Act
3. A member of a company can contract with a company of which he is a shareholder.
4. The directors are not precluded from being an employee of the company for the purpose of workmen's compensation legislation.

4. MacauraVs. Northern Assurance Co. Ltd. (1925) AC 619 HL.

Facts - M was the holder of nearly all the shares except one of a timber company. He was also a substantial creditor of the company. He insured the company's timber in his own name. The timber was destroyed by fire & M claimed the loss from Insurance Company.

Judgment-

1. The Insurance Company was not held liable to him.
2. A shareholder cannot insure the company's property in his own name even if he is the owner of all or most of the company's shares.

5. Daimler Co. Ltd. Vs. Continental Tyre & Rubber Co. Ltd. (1916) 2 AC 307.

Facts - In a company incorporated in England for the purpose of selling tyres manufactured in Germany by a German Company, all the shares except one was held by the German subjects residing in Germany. The remaining one was held by a British. Thus the real control of English Company was in German hands. Question arose whether the company had become an enemy company due to war & should be barred from maintaining the action.

Judgment-

1. A Company incorporated in United Kingdom is a legal entity, a creation of law with the status & capacity which the law confers.

2. It is not a natural person with mind or conscience. It can neither be loyal nor disloyal. It can be neither friend nor enemy. But it can assume enemy character when persons in defacto control of its affairs are residents in any enemy country or whenever resident, are acting under the control of enemies.

3. Held that company was an enemy company for the purpose of trading and therefore it was, barred from maintaining the action.

6. Needle Industries Ltd. Vs. Needle Industries Newly (India) Holding Ltd. (1981) 3 SCC 333.

Facts - The articles of a private company contained a clause that when the directors decided to increase the capital of the company by the issue of new shares the same should be offered to the shareholders, and if they failed to take, may be offered to others. The company was a wholly owned subsidiary of an English Company. The Govt. of India adopted a policy of diluting foreign holdings. The company accordingly issued new shares to its employees and relatives reducing the foreign holding to 60%. The company became a deemed public company because more than 28% of its share capital was held by a body corporate.

Judgment-

1. A deemed public company is neither a private company nor a public company but a company in a third category.
2. If the power of appointing additional directors is delegated to the Board by the articles, the Board can appoint additional directors without taking this item on the agenda of its meeting.

7. Gramophone Ltd. Vs. tanley (1908) 2 KB 89 Judgment- '

1. "Even a resolution of a numerical majority, at a general meeting cannot impose its will upon the directors. When the articles have confided to them the control of the company's affairs."
2. A company will be regarded as an Indian Company even if it is incorporated in India by promoters of foreign nationality.

8. T.R. PRATT Ltd. Vs. Sasson & Co. Ltd. (1936) Bombay 62.

Facts - There were three companies, namely, 'S' 'MT' & 'P' Company. S company had been financing P Company for a number of years and all transactions of loans were entered into through the agency of MT Company which held almost all the shares of P Company. The Directors of MT Company were also the Directors of P Company and this fact was known to S Company. An equitable mortgage was created on the property of 'P' Company for a loan granted by S to MT Company. In the winding up of P Company, it was held that the official liquidator was entitled to avoid the equitable mortgage as S Company had the knowledge of the facts through its directors.

Judgment-

1. Just as in case of agency, a notice to agent will amount to a notice to the principal, in the same way a notice to director will be deemed as a notice to the company.
2. Money having borrowed and used for the benefit of the principal, i.e. company in either paying off debts or for its legitimate business, the company could not repudiate its liability on the ground that the agents i.e., directors had no authority from the company to borrow.
3. "Under the law an incorporated company is a distinct entity, and although all the shares may be practically controlled by one person, in law a company is a distinct entity and it is not permissible or relevant to enquire whether the directors belonged to the same family or whether it is compendiously described as one man company.

9. Ewing Vs. Butter Cut Margarine Company Ltd. (1917) 2 Ch. 1 (C.A.)

Facts - The plaintiff was an incorporated firm carrying on substantial business under the trade name of Butter Cap Dairy Company. The defendant company was registered to trade in similar commodities and selected the name bonafide believing that there was no other company in existence with a similar name. The plaintiff alleged that the name of the new company would lead to confusion and was detrimental to the plaintiffs business.

Judgment-Plaintiff was entitled to restrain the newly registered company from carrying on business on the ground that the public might reasonably think that the registered company was connected with his business.

10. Mackinnon Mackenzie & Co. Re, (1967) 1 Comp LJ 200

Facts - A Company desired to shift its registered office from the State of West Bengal to Bombay. The Company's petition was resisted by the state on the grounds of loss of revenue.

Judgment- Held that there is no statutory right of the state, as a state, to intervene in an application made u/s 17 for alteration of the place of the registered office of a company. To hold that the possibility of the loss of revenue is not only relevant, but of persuasive force in regard to the change is to rob the company of the statutory power conferred on it by Sec. 17. The question of loss of revenue to one state would have to be considered in the total conspectus of revenue for the Republic of India and no parochial consideration should be allowed to turn the scale in regard to change of registered office from one state to another within India.

11. Scientific Poultry Breeder's Association, Re (1933) Ch 227

Facts - Memorandum of the company prohibited payment of any remuneration to the directors. When the business of the company increased it was found that the directors could not pay sufficient attention unless some remuneration was paid to them.

Judgment-Company was allowed amendment to enable it to pay remuneration to its managers, which was formerly forbidden, being necessary for efficient management.

12. Re Cyclists Touring Club. (1907) 1 Ch 269

Facts - The Company's business was to promote, assist & protect cyclists on the public roads. The company by altering the object clause desired to include among the persons to be assisted all tourists including motorists.

Judgment-

1. The club not allowed to undertake protection of motorists also, as cyclists had to be protected against motorists.
2. It was impossible to combine the two business as one of the objects of the company was to protect cyclists against motorists.

13. Peeveril Gold Mines Ltd. Re (1898) 1 Ch 122.

Facts - The articles provided that no winding up petition could be presented without the consent of two directors or unless a resolution to wind up was passed at a general meeting or the petitioner held one-fifth of the share capital. None of these conditions was fulfilled.

Judgment-

1. Restriction was invalid & the petition could be presented.
2. Sec. 439 of the Companies Act, 1956 confers the right on a shareholder to petition for winding up of the company in certain circumstances. This right can't be excluded or limited by the articles.
3. Each member is entitled to say that there shall be no breach of the Articles and he is entitled to an injunction to prevent breach.

14. Hulton Vs. Scarborough Cliff Hotel Co. (1865) 62 ER 717.

Facts - A resolution passed at a general meeting of a company altered the articles by inserting the power to issue new shares with preferential dividend. The memorandum contained no such power.

Judgment-

The alteration was inoperative.

15. Royal British Bank Vs. Turquand (1856) 119 ER 886.

Facts - The Directors of a company borrowed a sum of money from the plaintiff. The company's articles provided that the directors might borrow on bonds such sums as may from time to time be authorised by a resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorising the loan and, therefore, it was taken without their authority. The company was however held bound by the loan. Once it was found that the directors could borrow subject to a resolution, the plaintiff had a right to infer that the necessary resolution must have been passed.

Judgment-

1. Persons dealing with the company are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith.
2. Outsiders are bound to know the external position of the company, but are not bound to know its indoor management.
3. Company may ratify the ultra vires borrowing by the directors if it is taken bonafide for the benefit of the company.

16. Ruben Vs. Great Fingall Consolidated (1906) AC 439.

Facts - The plaintiff was the transferee of a share certificate issued under the seal of a defendant company. The certificate was issued by the company's secretary, who had affixed the seal of the company & forged the signatures of two directors.

Judgment-

1. It is quite true that persons dealing with limited liability companies are not bound to enquire into their indoor management and will not be affected by irregularities of which they have no notice. But the doctrine of indoor management, which is well established, applies to irregularities which otherwise might affect a genuine transaction. It can't apply to a forgery.
2. Plaintiffs suit for damages did not succeed because Turquand's rule did not apply where the document was forged.

17. Erlanger Vs. New Sombrero Phosphate Co. (1878) 3 App Cas 1218.

Facts - Erlanger was the head of a syndicate who purchased an Island containing mines of Phosphate for 55,000 pounds Then formed a company to buy this Island. A contract was made between X a nominee of the syndicate and the company for its purchase at 1,10,000 pounds. A prospectus was then issued. Many persons took shares. The company failed & the liquidator sued the promoter for the refund of the profit.

Judgment-

1. Promoters stand in a fiduciary position. They have in their hands the creation & moulding of the company.
2. The promoters is in the situation a kin to that of a trustee of the company, & his dealings with it must be open and fair.
3. Promoter is guilty of breach of trust if he sells property to the company without informing the company that the property belongs to him or he may commit a breach of trust by accepting a bonus or commission from a person who sells property to the company.