

THE DOCTRINE OF ULTRA VIRES
UNDER COMPANY LAW.
A CRITICAL EVALUATION OF
IT'S EFFICACY.

by

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PREFACE

Ultra vires in common law simply means an act beyond the power of a company. The doctrine applies because of the statutory requirement for the specification of the objects of the company in the Memorandum. A company having specified its object is required by the doctrine to keep its activities within the specify object.

The object of this paper is to provide a comparative study of the doctrine of ultra vires in Malaysia and the United Kingdom. The paper is not intended to provide a comprehensive study of all the topics within its title. On the contrary I have been deliberately discuss the development and present ambit of the ultra vires and how it effects our companies Act, 1965.

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Index of Cases

A

- Anglo-Overseas Agencies Ltd v Green (1961) 1 Q.B.
- Allen v Golf Reeds of West Africa Ltd (1900) Ch. 656
- Attorney General v Great Eastern Railway (1880) 5 A.C. 473
- Ashbury Railway Carriage and Iron Co v Riche (1875) C.R.

B

- Balder Singh v Mahima Singh 1974 1 MLJ 221.
- Baroness Wenlock v River Dee (1887) 36 Ch.

C

- Charterbridge Corpn v Lloyds Bank Ltd (1970) Ch. 62.
- Cunliffe Brooks & Co v Blackburn Bldg Society
(1883) 22 Ch. D 61
- Cotman v Braugham (1918) A.C. 514

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- Eley v Positive Government Security Life Assurance Co.
(1876) 1 Ex. D 88 .

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- Foss v Harbottle (1643) 67 E.R. 189

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- Hickman v Kent (1915) 1 Ch. 881.

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- Lee Behren's Co Ltd (1932) 2 Ch. 46 .

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- Mahony v East Holyford (1875) L.R. 7 H.L.

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- Parke v Daily News Ltd (1962) Ch 927

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- Rayfield v Hands (1876) 1 Ex. D 88 .
- Re Claridge's Patent Asphalte Co. (1921) 1 Ch 543
- Re Companie de Electricidad de la Provincia de Buenos Aires Ltd. (1978) 3 ALL E.R. 668.
- Re David Payne & Co (1904) 2 Ch 608 C.A.
- Re Introduction Ltd v National Provincial Bk Ltd (1970) Ch 199 (CA)
- Re John Beauforte Ltd (1953) Ch 131

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- Salmon v Quin and Axtens Ltd (1909) 1 Ch 311 (CA)
- Sinclair v Brougham (1914) A.C. 398 HL .

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- Trevor v Whitworth (1887) 12 AC 409 .

W

- Weston v Saffery (1897) AC 299 .

CHAPTER ONE

INTRODUCTION

Historical Prespective

The ultra vires rule has a long and somewhat tangled history. The early case of Sutton's Hospital (1) has generally taken to establish that a chartered corporation has all the powers of a natural person in so far as an artificial entity is physically capable of exercising them; if it misuses its powers by exceeding the objects in the charter. But it does not really throw light on the concepts which developed in the radically different circumstances of the late 18th and early 19th century (2). ✓

Similarly there was no question of a partnership acting ultra vires in the strict sense. The acts of one partner might not bind his fellow partners if the acts were outside his actual or apparent authority but they could always be ratified by all the partners. Similarly no change could be made in the partnership business without the consent of all the partners, but with their unanimous consent there was not and is not anything to stop a firm of grocers from changing to bookmakers or vice versa. ✓ The common type of