

IMPORTANT CASE LAW

CARLILL Vs. CARBOLIC SMOKE BALL CO.

Fact of the case:

In this famous case, Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza.

Decision:

Held, she could recover the amount as by using the smoke balls she had accepted the offer. In terms of Sec. 8 of the Indian Contract Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

LALMAN SHUKLA Vs. GAURI DUTT

Fact of the case:

Gauri Dutt sent his servant Lalman to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. Lalman traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.

Decision:

Held, he is not entitled to the reward, as he did not know the offer. Section 4 of the Indian Contract Act states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

In Lalman case, the defendant's nephew absconded from home. The plaintiff who was defendant's servant was sent to search for the missing boy.

After the plaintiff had left in search of the boy, the defendant announced a reward of ₹ 501 to anyone who might find out the boy. The plaintiff who was unaware of this reward, was successful in searching the boy. When he came to know of the reward, which had been announced in his absence, he brought an action against

the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer and therefore he was not entitled to claim the reward.

BOULTON Vs. JONES

Fact of the case:

Boulton had taken over the business of one Brocklehurst, with whom Jones had previous dealings. Jones sent an order for goods to Brocklehurst, which Boulton supplied without informing Jones that the business had changed hands. When Jones found out that the goods had not come from Brocklehurst, he refused to pay for them and was sued by Boulton for the price.

Decision:

Jones is not liable to pay for the goods. It is a rule of law that offer made to a specific / ascertained person can be accepted only by that specified person.

HARVEY Vs. FACIE

Fact of the case:

In this case, Privy Council briefly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,

- (i) Will you sell us Bumper Hall Pen? And
- (ii) Telegraph lowest cash price.

The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £900". However, the defendants contending that they had made an offer to sell the property at £900 and therefore they are bound by the offer.

Decision:

Held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

MAC PHERSON Vs. APPANNA

Fact of the case:

The owner of the property had said that he would not accept less than ₹ 6000/- for it.

Decision:

It was held that this statement did not indicate any offer but indicated only an invitation to offer.

HARRIS Vs. NICKERSON

Fact of the case:

An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day. Plaintiff (Harris) with the intention to buy furniture came from a distant place for auction but the action was cancelled.

Decision:

It was held that plaintiff cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. The auctioneer (Nickerson) does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase.

PHARMA-CEUTICAL SOCIETY OF GREAT BRITAIN Vs. BOOTS CASH CHEMISTS LTD.

Fact of the case:

The goods were displayed in the shop for sale with price tags attached on each article and self service system was there. One customer selected the goods but the owner refused to sell.

Decision:

In this case, it was held that display of goods alongwith price tags merely amounts to invitation to treat and therefore if an intending buyer is willing to purchase the goods at a price mentioned on the tag, he makes an offer to buy the goods. Thus, the shopkeeper has the right to accept or reject the same. They contract would

arise only when the offer is accepted. Hence there was no contract and customer had no rights to sue the owner.

FELTHOUSE Vs. BINDLEY

Fact of the case:

F offered by letter to buy a nephews horse, saying; “if I hear no more about it, I shall consider the horse mine.” The nephew did not reply but he told an auctioneer not to sell that particular horse as he had sold it to his uncle. By mistake, the auctioneer sold the horse. F sued for conversion against his nephew.

Decision:

Held, F could not succeed as his nephew had not communicated acceptance and there was no contract.

NEALE Vs. MERRET

Fact of the case:

M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £80 only. He promised to pay the balance of £200 by monthly installments of £50 each.

Decision:

It was held that N could not enforce his acceptance because it was not an unqualified one.

BROGDEN Vs. METROPOLITAN RAIWAY CO.

Fact of the case:

Brogden a supplier, sent a draft agreement relating to the supply of coal to the manager of railway co. viz, metropolitan railway for his acceptance. The manager wrote the word “Approved” on the same and put the draft agreement in the drawer of the table intending to send it to the company’s solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer.

Decision:

Held, that there was no contract as the manager had not communicated his acceptance to the supplier, Brogden.

LILLY WHITE Vs. MANNUSWAMY

Fact of the case:

Plaintiff delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, Plaintiff lost her new saree.

Decision:

Held, the terms were unreasonable and plaintiff was entitled to recover full value of the saree from the drycleaner. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt.

CHINNAYYA Vs. RAMAYYA

Fact of the case:

An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the maternal uncle and agreeing to pay him annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it.

Decision:

It was held that there was sufficient consideration for the uncle to recover the money from the daughter.

DURGA PRASED Vs. BALDEO

Fact of the case:

D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (collector), and not at the desire of the D (promisor).

Decision:

D was not bound to pay commission as it was without consideration and hence void.

MOHORI BIBI Vs. DHARMO DAS GHOSE

Fact of the case:

A, a minor borrowed ₹ 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled.

Decision:

It was held that a mortgage by a minor was void and B was not entitled to repayment of money.

SAIN DAS Vs. RAM CHAND

Fact of the case:

Where there was a join purchase by two purchaser, one of them was minor.

Decision:

It was held that the vendor could enforce the contract against the major purchaser and not the minor.

WORD Vs. HOBBS

Fact of the case:

H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W.

Decision:

Held there was no fraud

PEEK Vs GURNEY

Fact of the case:

The prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression thereby created was that the company was a prosperous one, which actually was not the case.

Decision:

Held the suppression of truth amounted to fraud.

REGIER Vs CAMPBELL STAURT

Fact of the case:

A broker was asked to buy shares for client. He sold his own shares without disclosing this fact.

Decision:

Held that the client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith.

HADLEY Vs BAXENDALE

Fact of the case:

The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft so the mill idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering of the broken part but also for loss of profits suffered by the mill for not having been worked.

Decision:

The court held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

SHYAMLAL Vs STATE OF U.P

Fact of the case:

'S' 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 mean time government went on appeal.

Decision:

The appeal was decided in favour of the government and 'S' was directed to return the salary paid to him during the period of reinstatement.

HOLLINS Vs HOWLER L.R. & H.L.,

Fact of the case:

H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so.

Decision:

Held that 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.

TRIKAMDAS Vs BOMBAY MUNICIPAL CORPORATION

Fact of the case:

'T' was traveling without ticket in a tram car and on checking he was asked to pay ₹5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him.

Decision:

The suit was decreed in his favour.

INDIAN CONTRACT ACT SECTIONS LIST

SECTION NO.	TOPIC
2(h)	Contract
2(e)	Agreement
2(b)	Promise/acceptance
10	Essential of valid contract
2(j)	Void contract
2(i)	Voidable contract
2(a)	Proposal/offer
2(d)	Consideration
3	Mode of acceptance
4	Communication of offer
5	Revocation of proposal
11	Competent to contract
12	Person of sound mind
13	Free consent
15	Coercion
16	Undue influence
17	Fraud
18	Misrepresentation
19	Effect of coercion
19A	Power to set aside contract induced by undue influence
Explanation to section 19	Discovering the truth with ordinary diligence
23	Agreement the consideration or object of which is unlawful
24	Agreement the consideration or object of which is unlawful in parts
25	Agreement without consideration
26	Agreement in restraint of marriage
27	Agreement in restraint of trade
28	Agreement in restraint of legal proceeding
29	Agreement the meaning of which is uncertain
30	Wagering agreement
31	Contingent contract
32	Enforcement of contracts contingent on an event happening
33	Enforcement of contracts contingent on an event not happening
34	A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or conduct as impossible of happening

INDIAN CONTRACT ACT SECTIONS LIST

35	Contingent on happening of specified event within the fixed time
	Contingent on specified event not happening within fixed time
36	Contingent on an impossible event
37	Obligations of parties to contracts
38	Effect of refusal to accept offer of performance
39	Effect of refusal of party to perform wholly
40	Person by whom promise is to be performed
41	Effect of accepting performance from third person
42	Devolution of Joint liabilities
43	Any one of joint promisors may be compelled to perform
44	Effect of release of one joint promisor
45	Devolution of joint liability
46	Time for performance of promise, where no application is to be made and no time is specified
47	Time and place for performance of promise, where time is specified and no application to be made
48	Application for performance on certain day to be at proper time and place
49	Place for the performance of promise, where no application to be made and no place fixed for performance
50	Performance in manner or at time prescribed or sanctioned by promisee
51	Promisor not bound to perform, unless reciprocal promise ready and willing to perform
52	Order of performance of reciprocal promises
53	Liability of party preventing event on which the contract is to be effect
54	Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
55	Effects of failure to perform at a time fixed in a contract in which time is essential
56	Agreement to do impossible act (initial and subsequent)
57	Reciprocal promise to do certain things that are legal, and also some other things that are illegal
58	'Alternative promise' one branch being illegal
59	Application of payment where debt to be discharged is indicated
60	Application of payment where debt to be discharged is not indicated
61	Application of payment where neither party appropriates
62	Effect of novation, rescission, and alteration of contract
63	Promisee may waive or remit performance of promise
64	Restoration of benefit under a voidable contract
65	Obligations of person who has received advantage under void agreement

INDIAN CONTRACT ACT SECTIONS LIST

	or contract that becomes void
66	Communication of rescission
67	Effects of neglect of promisee to afford promisor reasonable facilities for performance
68	Claim for necessaries supplied to persons incapable of contracting
69	Payment by an interested person
70	Obligation of person enjoying benefits of non-gratuitous act
71	Responsibility of finder of goods
72	Money paid by mistake or under coercion
73	Compensation for loss or damages caused by breach of contract
74	Penalty and liquidated damages
75	Party rightfully rescinding contract, entitled to compensation

SALE OF GOODS ACT SECTIONS LIST

SECTION NO.	TOPIC
2(1)	Buyer
2(2)	Delivery
2(4)	Document of title to goods
2(6)	Future goods
2(7)	Goods
2(8)	Insolvent
2(9)	Mercantile agent
2(10)	Price
2(11)	Property
2(12)	Quality of goods
2(13)	Seller
2(14)	Specific goods
4(1)	Sale
4(3)	Agreement to sale
5	Contract of sale how made
6	Existing goods
6(2)	Contingent goods
7	Goods perishing before making of contract
8	Goods perishing before sale but after agreement to sell
9	Ascertainment of price
10	Agreement to sell at valuation
11	Stipulation as to time
12	Condition and warranty
13	When condition to be treated as warranty
14 - 17	Condition and warranty
14(a)	Condition as to title
14(b)	Warranty as to undisturbed possession
14(c)	Warranty as to non-existence of encumbrances
15	Sale by description & sale by sample as well as by description
16	Caveat emptor
16(1)	Condition as to quality or fitness
16(2)	Condition as to merchantability
16(3)	Warranty as to quality or fitness by usage of trade
17	Sale by sample
18 - 26	Passing of property
18	Identification of goods
19	Property (specific or ascertained goods) passes when intended to pass
20	Specific goods in a deliverable state
21	Specific goods to be put into a deliverable state
22	Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price

SALE OF GOODS ACT SECTIONS LIST

23(1)	Sale of unascertained goods by description
23(2)	Delivery to carrier
24	Goods sent on approval or "on sale or return"
25	Reservation of right of disposal
26	Risk prima facie passes with property
27-30	Transfer of title by non-owners
27	Sale by person not the owner
28	Sale by one of the joint owners
29	Sale by a person in possession under voidable contract
30(1)	Sale by one who have already sold the goods but continues in possession thereof
30(2)	Sale by buyer obtaining possession before the property in the goods has vested
31	Duties of seller and buyer
32	Payment and delivery are concurrent conditions
33	Delivery of goods sold
34	Effect of part delivery
35	Buyer to apply for delivery
36(1)	Place of delivery
36(2)	Time of delivery
36(3)	Goods in possession of a third party
36(4)	Time for tender of delivery
36(5)	Expenses for delivery
37	Delivery of wrong quantity
38	Instalment deliveries
39(1)	Delivery to carrier
40	Deterioration during transit
41	Buyer's right to examine the goods
42	Rules related to acceptance of delivery of goods
43	Buyer not bound to return rejected goods
44	Liability of buyer for neglecting or refusing delivery of goods
45	Unpaid seller
46	Unpaid seller's right
47	Seller's lien
48	Part delivery
49	Termination of lien
50	Right to stoppage in transit
51	Duration of transit
52	How stoppage in transit is affected
53	Effect of sub-sale or pledge by buyer
54	Right of re-sale
55-61	Rights of unpaid seller against the buyer
55	Suit for price
56	Suit for damages for non-acceptance
57	Damages for non-delivery

SALE OF GOODS ACT SECTIONS LIST

58	Suit for specific performance
59	Suit for breach of warranty
60	Repudiation of contract before due date
61	Suit for interest
64	Auction sale
64A	Inclusion of increased or decreased taxes in contract of sale

IMPORTANT CASE LAWS

KD KAMATH & CO.

The supreme court has held that the two essential conditions to be satisfied are that:

- (1) There should be an agreement to share the profits as well as the losses of business; and
- (2) The business must be carried on by all or any of them acting for all, within the meaning of the definition of partnership under section 4

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstances that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

SANTIRANJAN DAS GUPTA Vs. DASYRAN MURZAMULL (SUPREME COURT)

The supreme court to reach the conclusion that there is no partnership between the parties:

- (a) Parties have not retained any record of terms and conditions of partnership.
- (b) Partnership business has maintained no account of its own, which would be open to inspection by both parties.
- (c) No account of the partnership was opened with any bank.
- (d) No written intimation was conveyed to the deputy director of procurement with respect to the newly created partnership.

VISHNU CHANDRA Vs. CHANDRIKA PRASAD [SUPREME COURT]

The supreme court, held that the expression, 'if any partner want to dissociate from the partnership business', in a clause of the partnership deed which was being constructed, comprehends a situation where a partner wants to retire from the partnership. The expression clearly indicated that in the event of retirement, the partnership business will not come to an end.

INDIAN PARTNERSHIP ACT SECTIONS LIST

SECTION NO.	TOPIC
4	DEFINATION OF 'PARTNERSHIP', 'PARTNER', 'FIRM' AND 'FIRM NAME'
6	Mode of determining existence of partnership
7	Partnership at will
9	General duties of partners
10	Duty to indemnify for loss caused by fraud
11	Determination of rights and duties of partners by contract between the partners
12	Conduct of the business
12(a)	Right to take part in the conduct of the business
12(b)	Right to be consulted
12(c)	Right to be consulted
12(d)	Right of access to books
12(e)	Right of legal heirs/representatives/their duly authorised agents
13	Mutual rights and liabilities
13(a)	Right to remuneration
13(b)	Right to share profits
13(c)	Interest on capital
13(d)	Interest on advances
13(e)	Right to be indemnified
13(f)	Right to indemnify the firm
14	The property of firm
15	Application of the property of the firm
16	Personal profit earned by partners
17	Rights and duties of partners after a change in the firm
18	Relation of partners to third parties
19	Implied authority of partner as agent of the firm
20	Extension and restriction of partners implied authority
21	Partner's authority in an emergency
22	Mode of doing act to bind firm
23	Effect of admissions by a partner
24	Effect of notice to acting partner
25	Liability of a partner for act of the firm
26	Liability of the firm for wrongful acts of a partner
27	Liability of firm for misapplication by partners
28	Partner by holding out
29	Right of transferee of a partner's interest
30	Minors admitted to the benefit of partnership
31	Introduction of a partner
32	Retirement of a partner
33	Expulsion of a partner
34	Insolvency of a partner
35	Liability of estate of deceased partner

INDIAN PARTNERSHIP ACT SECTIONS LIST

36	Rights of outgoing partner to carry on competing business
37	Right of outgoing partner in certain cases to share subsequent profits
38	Revocation of continuing guarantee by change in firm
39	Dissolution of firm
40	Dissolution by agreement
41	Compulsory Dissolution
42	Dissolution on the happening of certain contingencies
43	Dissolution by notice of partnership at will
44	Dissolution by court
45	Liability for acts of partners done after dissolution
46	Rights of partners to have business wound up after dissolution
47	Continuing authority of partners for purposes of winding up
48	Mode of settlement of partnership accounts
49	Payment of firm debts and of separate debts
58	Application for registration
59	Registration
59A-1	Late registration on payment of penalty
69	Consequences of non-registration

LIMITED LIABILITY PARTNERSHIP SECTIONS LIST

SECTION NO.	TOPICS
2(d)	Body corporate
2(e)	Business
2(j)	Designated partner
2(k)	Entity
2(I)	Financial year
2(m)	Foreign LLP
2(n)	LLP
2(o)	LLP agreement
2(ta) [newly inserted]	Small limited liability partnership
4	Non-applicability of the IPA
5	Partners
6	Minimum numbers of partners
7	Designated partners
11	Incorporation
12	Incorporation by registration
13	Registered office of LLP and change therein
14	Effect of registration
15	Name
16	Reservation of name
17	Change of name of LLP
22	Eligibility of partners
23	Relationship of partners
24	Cessation of partnership interest
25	Registration of changes in partners
26	Partner as agent
27	Extent of liability of LLP
28	Extent of liability of partner
29	Holding out
30	Unlimited liability in case of fraud
31	Whistle blowing
34	Maintenance of books of account, other records and audit, etc.
34A [newly inserted]	Accounting and auditing records
35	Annual return
55	Conversion from firm into LLP
56	Conversion from private company into LLP
57	Conversion from unlisted public company into LLP
58	Registration and effect of conversion

LIMITED LIABILITY PARTNERSHIP SECTIONS LIST

59	Foreign limited liability partnerships
63	Winding up and dissolution
64	Circumstances in which LLP may be wound up by tribunal
65	Rules for winding up and dissolution
66	Business transactions of partner with LLP
67	Application of the provisions of the companies act
67A [newly inserted]	Establishment of special court
67B[newly inserted]	Procedure and powers of special court
67C [newly inserted]	Appeals and revision
68	Electronic filing of documents
68A [newly inserted]	Registration offices
69	Payment of additional fee

IMPORTANT CASE LAWS

MACAURA Vs. NORTHERN ASSURANCE CO.

Fact of the case

Macaura (M) was the holder of nearly all (except one) shares of a timber company. He was also a major creditor of the company. M insured the company's timber in his own name. The timber was lost in fire. M claimed the insurance compensation.

Decision

Held, the insurance company was not liable to him as no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in them.

SALOMON Vs. SALOMON AND CO. LTD.

Fact of the case

Salomon incorporated a company named "Salomon & Co. Ltd.", with seven subscribers consisting of himself, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for £ 38,872 and in turn, Salomon took 20000 shares of £ 1 each, debenture worth £ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one £ 1 share each. Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of £ 7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debenture held by him, as he was the managing director of one-company, which was not different from Salomon and the cloak of the company was a mere sham and fraud.

Decision

The company is at law a different person altogether from the subscribers to the memorandum, and through it may be that after incorporation the business is precisely the same as it was before and the same person are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the act.

JUGGILAL Vs. COMMISSIONER OF INCOME TAX AIR (SC)

Where corporate entity is used to evade or circumvent tax

DINSHAW MANECKJEE PETIT

Where assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decided the real owner of the income.

ASSOCIATED RUBBER INDUSTRIES LIMITED, BHAVNAGAR V. ASSOCIATED RUBBER INDUSTRY LTD

Fact of the case

A limited purchased shares of B limited by investing a sum of ₹ 4,50,000. The dividend in respect of these shares are shown in the profit and loss account of the company, year after year. It was taken into account for the purpose of calculating the bonus payable to workmen of the company. Thus, the dividend income did not find place in the profit & loss account of A ltd., with the result that the surplus available for the purpose for payment of bonus to the workmen got reduced.

Decision

The supreme court brushed aside the separate existence of the subsidiary company. The new company so formed had no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company and serving no purpose except to reduce the gross profit of the principal company so as to reduce the amount paid as bonus to workmen.

MERCHANDISE TRANSPORT LIMITED Vs. BRITISH TRANSPORT COMMISSION

Fact of the case

A transport company wanted to obtain licenses for its vehicles but could not do so if applied in its own name, it therefore formed a subsidiary company, and the application for license was made in the name of subsidiary. The vehicle were to be transferred to the subsidiary company.

Decision

Held, the parent and the subsidiary were one commercial unit and the application for licenses was rejected.

GILFORD MOTOR CO. Vs. HORNE

Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligation.

HARI NAGAR SUGAR MILLS LTD. Vs. S.S JHUNJHUNWALA

From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the MOA and AOA.

STATE TRADING CORPORATION OF INDIA Vs. COMMERCIAL TAX OFFER

A legal personality emerges from the moment of registration of a company and from that moment the persons subscribing to the memorandum of association and other persons joining as members are regarded as a body corporate or a corporation in aggregate and the legal person begins to function as an entity. A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members.

SPENCER & CO. LTD. MADRAS Vs. CWT MADRAS

It may be noted that under the provisions of the act, a company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity.

HEAVY ELECTRICAL UNION Vs. STATE OF BIHAR

The law recognises such a company as a juristic person separate and distinct from its members. The mere fact that the entire share capital has been contributed by the CG and all its shares are held by the president of India and other officers of the CG does not make any difference in the position of registered company and it does not make a company an agent either of the president or the CG.

BORLAND TRUSTEES Vs. STEEL BORS. & CO. LTD.

A SHARE IS NOT A SUM OF MONEY BUT IS AN INTEREST MEASURED BY A SUM OF MONEY AND MADE UP OF VARIOUS RIGHTS CONTAINED IN THE CONTRACT, INCLUDING THE RIGHT TO A SUM OF MONEY OF A MORE OR LESS AMOUNT.

ASHBURY RAILWAY CARRIAGE AND IRON COMPANY LIMITED V. RICHE-(1875)

Fact of the case

The main objects of a company were:

- (a) To make, sell or lend on hire, railway carriages and wagons;
- (b) To carry on the business of mechanical engineers and general contractors.
- (c) To purchase, lease, sell and work mines.
- (d) To purchase and sell as merchants or agents, coal, timber, metals etc.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors by passing a special resolution. The company however, repudiated the contract as being ultra-virus. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of share-holders.

Decision

It was held by the court that the contract was null and void. It said that the terms general contractors was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If, the term general contractor's was not so interpreted, it would authorise the making of contracts of any kind and every description, for example, marine and fire insurance.

ROYAL BRITISH BANK VS. TURQUAND

Fact of the case

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, coal and Swansea and Loughor Railway Company. It was incorporated under the Joint stock companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's

drawing on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (article of association), directors only had power to borrow up to an amount authorised by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Decision

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. AOA were registered with companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

HOWARD Vs. PATENT IVORY MANUFACTURING CO.

Where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they are lending money to the company required the assent of the general meeting which they had not obtained.

MORRIS V KANSSEEN

A director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

ANAND BIHARI LAL VS. DINSHAW & CO.

The plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

HAUGHTON & CO. V. NOTHARD, LOWE & WILLS LTD.

Where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was

something so unusual “that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it.”

RUBEN V GREAT FINGALL CONSOLIDATED

Fact of the case

In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be stopped from denying genuineness of the document.

Decision

It was held, that the rule has never been extended to cover such a complete forgery.

COMPANIES ACT SECTIONS LIST

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2(6)	Associate company
2(8)	Nominal or authorised or registered capital
2(15)	Called-up capital
2(20)	Definition of company
2(21)	Company limited by guarantee
2(22)	Company limited by shares
2(42)	Foreign company
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2(50)	Issued capital
2(52)	Listed company
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2(84)	Nature of shares
2(85)	Small company
2(86)	Subscribed capital
2(87)	Subsidiary company
2(92)	Unlimited company
3	Formation of company
7	Incorporation of company
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43	Kind of share capital
44	Shares are a movable property
45	Shares shall be numbered
406(1)	Nidhi company
455	Dormant company