

C a s e b o o k o n

COMPANY LAW

WITH SCOTTISH CASES

J R Bisacre

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Casebook on Company Law

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Preface

This casebook is a sister volume to *Casebook on Contract Law* by W T Major. Each chapter of the casebook contains a summary of the law to enable the reader to view the cases in their context. The case reports appear in the order in which they are given in the summary. The name and year only are quoted in the summary for those cases which are further reported upon. Occasionally a case is mentioned in the summary but is not further reported upon, and for such cases a full citation is given. Since much of company law is now statutory, the summaries do not purport to be complete statements of the law, and accordingly the book should be used in addition to, and not instead of, a textbook.

The casebook includes some Scottish material which is clearly marked as such by an asterisk preceding the title of the case.

The book is intended for students taking a first course in company law as part of a BTEC or SCOTVEC HND Accounting, a degree in Accounting or Business Studies, or the various professional examinations. For law students also, the book will serve as a useful and accessible summary of case law, although it cannot substitute for systematic consultation of the law reports themselves.

Josephine R Bisacre

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Latin words and phrases

ad hoc for a particular or special purpose

ad interim in the meantime

alter ego other self

bona fide(s) in good faith, good faith

cadit quaestio the matter admits of no further argument

cestui que trust a person for whom another is a trustee

damnum injuria datum loss caused by a legal wrong

de facto in fact

dicta statements

ejusdem generis of the same kind

ex debito justitiae a remedy applicable as of right

ex facie apparently

ex hypothesi according to the argument

ex proprio motu of its own motion

inter alia among other things

inter se among themselves

inter socios among partners

intra vires within the powers of

mala fide(s) in bad faith, bad faith

mandamus an order from a Divisional Court of the Queen's Bench
Division to some person or body to compel the performance of a
public duty

mens rea guilty mind or intention

non est factum it is not his deed (a plea denying that a deed
mentioned in the plaintiff's pleading was truly that of the
defendant)

per by means of, through

per contra on the contrary

per curiam by the court

per pro. on behalf of

persona personality

prima facie at first sight

pro tanto to a certain extent

qua as

quantum meruit according to his deserts

res inter alios acta things transacted between strangers do not injure those who are not parties to them

respondeat superior let the superior person answer (e.g. where an employer is responsible for the acts of an employee committed in the course of employment)

scire facias lit. 'that you cause him to know'. A writ based on a judgment directing the sheriff to warn the person against whom it was brought to show cause why the person bringing it should not have the benefit of judgment (abolished in 1947)

ultra vires beyond the powers of

vires powers

Glossary of legal terms

- B list of contributories*** A list of persons who were members of a company within a year before the commencement of a winding up, and who may be liable in the liquidation.
- Constructive trust*** A trust which arises by operation of law where a person acquires property which he is not entitled to retain.
- Estoppel*** An admission which cannot be denied by the party whom it affects (**personal bar*).
- Hiving down agreement*** An agreement between a company and a new, wholly owned subsidiary for the sale of that business to the subsidiary.
- Injunction*** An inhibitory writ by which a court stops or prevents an illegal or inequitable act being committed.
- Judicial Committee of the Privy Council*** Hears appeals from courts in certain Commonwealth countries.
- Lands Tribunal*** Assesses compensation for compulsory purchase of land, and the variation and discharge of land obligations.
- Misfeasance*** The doing of a lawful act in a wrongful manner.
- Novation*** The substitution of a new document of debt with the consent of the creditor, for an earlier document of debt.
- Personal relationship company*** A company which is in essence a partnership between a few persons all of whom have management rights.
- Power of attorney*** A document by which one person authorises another to act for him.
- Shadow director*** Defined by section 741 (1) of the Companies Act 1985 as a 'person in accordance with whose directions or instructions the directors of the company are accustomed to act'.
- Void*** Without legal effect
- Voidable*** Capable of being avoided (by legal action).

SCOTTISH LEGAL TERMS

- Arrestment*** Attaches assets in the hands of a third party in satisfaction of a debt owed by a debtor to a creditor.

Action of Furthcoming Court action by which funds or property belonging to a debtor which have been arrested in the hands of a third party are made available to the creditor.

Declarator Court action seeking a decree confirming or denying the existence of a right.

Diligence The process by which, *inter alia*, court decrees are implemented through the attachment of assets belonging to the debtor.

Interdict A prohibitory order of a court to prevent a wrongful act or breach of contract occurring.

Judicial factor Trustee appointed by a court to administer estates to provide protection to the beneficiaries against loss or injustice.

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