

**CONCISE
COLLEGE
CASENOTES**

**CASES AND STATUTES
ON
COMPANY LAW**

W. J. BROWN

**SWEET
&
MAXWELL**



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CASES AND STATUTES
ON
COMPANY LAW

By

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LONDON
SWEET & MAXWELL
1976

*Published in 1976 by
Sweet & Maxwell Limited of
11 New Fetter Lane, London
and printed in Great Britain by
Northumberland Press Limited
Gateshead*

SBN Hardback 421 20740 x
Paperback 421 20750 7

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Sweet and Maxwell
1976

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PREFACE

THE purpose of this book, like other works in the series, is to provide a collection of cases and statutes for students who may not have access to a law library. It has been designed particularly for students studying part-time for examinations set by the accountancy and secretarial professions. In addition, it should be of similar help to students studying part-time, either privately or by correspondence course, for an external degree or for the various legal professional examinations. It may also be useful to university and polytechnic students as an easily accessible source of material for revision purposes.

I have tried to include as many cases and relevant extracts of statutes as possible within the publishers' limits. The main aim has been to set out the leading cases on each aspect of the law, together with cases which are often referred to in text-books but of which details are rarely given. As a general rule a section of a statute has been stated, followed by relevant cases which give the facts and the principle of law established by the decision.

The principal statute relating to company law is the Companies Act 1948, and all references in the text to sections and Table A, refer to this Act unless otherwise stated.

March 1975

W.J.B.

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PART I: NATURE OF A COMPANY

CHAPTER 1

SEPARATE LEGAL ENTITY

A company is an artificial person with a separate and distinct existence apart from its members.

Salomon v. Salomon & Co. Ltd. [1897] A.C. 22

Salomon had for many years been in business as a boot manufacturer, and leather merchant. The firm was solvent and he formed a limited company; the memorandum of association was signed by Salomon, his wife and five children, each holding one share. The boot business was sold to the company for £30,000; 20,000 £1 fully paid up shares, which were allotted to Salomon, and £10,000 secured by a debenture.

The company failed and went into liquidation. The company's assets of £6,000 were insufficient to repay the debentures and the unsecured creditors, who were owed £8,000. The liquidator claimed that the company and Salomon were the same person and that the debentures held by Salomon should be set aside.

It was held that the company was a separate legal entity, "... at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee 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."

There was no fraud upon the creditors as the company had been properly formed and registered, and therefore the debenture holder was entitled to the available assets in priority to the unsecured creditors.

Macaura v. Northern Assurance Co. Ltd. [1925] A.C. 619

Macaura owned a timber estate and formed a company to which he sold his timber for 42,000 £1 fully paid shares; the only shares