

Corporate Law

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ROLL NO: 15100

Q.No.1: Write detail note on history of Corporate Law?

Ans.

History of corporate law

Today the corporate sector of Pakistan is governed by company's ordinance of 1984. The history of corporate law in this region is much older than the history of Pakistan. Great Britain passed company act in 1908 which introduced several important provisions relating to company administrations. In 1913 after five years, company's act of 1913 was passed in British India.

Purpose

The purpose of the module is to give the participants an insight into the various facets of company's ordinance 1984 outlined in the syllabus.

This course deals with the practical and theoretical approach to the company's ordinance 1984 and Securities and Exchange Commission of Pakistan. A deep insight of modaraba companies and modaraba (floatation and control) ordinance 1980, modaraba companies and modaraba rules 1981.

Objectives

- To provide the students with through knowledge of corporate laws.
- To advise and assist the management for taking appropriate and prompt decisions.
- To explore in detail the major concepts and issues that are essential in today's business world.
- To carry business in legal ways.
- To have a secured business.
- To make the students aware of the legal issues involving businesses and how to deal with them.

Elements of company law

- Definitions and concepts
- Courts, SECP and Registrar
- Types of companies
- Incorporation of companies
- Memorandum of association and registered office of the company
- Article of association
- The name and publication of the name by a limited company
- Promoters

Share capital

- Prospectus
- Shares and share capital

- Allotment of shares
- Issue of share and share certificate
- Alternation of capital
- Reduction of capital and purchase of shares
- Transfer and transmission of shares

Borrowing powers

- Borrowing powers of a company
- Debentures

Management and administration

- Directors
- Chief Executive and Managing Agents
- Company secretary
- Shareholders and members
- Resolution, political contributions and distribution of gifts
- Statutory books

Audit and accounts

- Books of accounts and financial statements
- Audit and inspection
- Dividend

Modaraba

- Modaraba companies
- Registration of modaraba companies
- Definition

Q.No.2: Write Short Notes on the following?

A. Chief Executive

in relation to a company means an individual who, subject to control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, or includes the director or any other person occupying the position of the ceo, by whatever name called, and whether under a contract of service or otherwise.

B. Commission

Means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act 1997.

C. Debenture

A type of loan, often used by companies to raise money, that is paid back over a long period of time and at a fixed rate of interest.

Example price bond.

D. Company

Means a company formed and registered under this Act or the company law.

E. Court

A body of people presided over by judge or the court having jurisdiction under this ordinance

Q.No.3: Write down at least 5 decisions of Corporation in Pakistani Courts.

**Muslim Commercial Bank v. Dewan Salman
Fibres and others
2009 CLD 1483 (Single Bench- Islamabad)**

Subject: Company and Banking laws.

Key words: Winding up by creditors; jurisdiction of banking Court and company Court in winding up proceedings;

Abstract: Muslim Commercial Bank (Bank) filed winding up petition under Sections 305(e) and 306(1) of the Companies Ordinance, 1984 for winding up of the respondent company (Respondent). The Respondent filed an application under Order VII Rule 11(d) CPC read with rules 7 of the Companies Court Rules, 1997 (1997 Rules) for rejection of the Bank's winding up petition on the grounds that the Bank being a financial institution cannot file a winding up petition under the Companies Ordinance, 1984 as it must first have recourse under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Recovery Ordinance). In other words, the two laws are mutually exclusive and the Bank having instituted proceedings under the Recovery Ordinance was barred from initiating winding up proceedings as a creditor.

Judgment: The Court after reviewing Sections 4, 5(1), 7(4)(5) and 9(1) of the Recovery Ordinance held that there was nothing inconsistent in the provisions of the Companies Ordinance, 1984 and the Recovery Ordinance insofar as the winding up provisions of the Companies Ordinance are concerned. Accordingly, winding up by creditors being a wholly different situation, the jurisdiction of the Company Court may be invoked so long as it can be proved that a respondent company is unable to pay its debts and is thus liable to be wound up.

Justice: Muhammad Munir Peracha J.

Advocates: Jam Asif Mehmood for petitioner and Azid Nafees for respondent

Cases referred to: Majeed A Tahir v United Bank Ltd 2008 CLD 1162; Abdur Rahman Allana v. Citibank 2003 CLD 1843; Maj (Retd) Javed Inayat Khan Kayani v. the State PLD 2006 Lah. 752; Sindh Glass Industries Ltd v. National Development Finance Corporation PLD 1996 SC 601 and Pakland Cement 2002 CLD 1392.

Cases distinguished: Ghulam Dastagir and Sons v. Union Insurance Company of Pakistan Ltd. PLD 1995 Lah. 290.

Dada Steel Mills v. Metalexport and 5 others
2009 CLD 1524 (Division Bench - Karachi)

Subject: Contract

Key words: Interpretation of statutes; contract; specific relief; whether damages payable in addition to specific performance.

Abstract: In this Appeal, the appellant (being in the business of re-rolling steel mill) agreed to purchase a vessel "M" from the respondents for the purposes of which it opened an irrevocable letter of credit. Upon arrival of "M", the respondents repudiated the contract and refused to hand over delivery. "M" was auctioned and sold for Rs.6,505,299 of which Rs.3,477,899 was paid to the respondents and rest was invested by the Nazir. By Court order, the appellant was allowed to withdraw the amount on furnishing a bank guarantee. The trial Court after examining evidence held that since the respondents breached the contract, the relief of specific performance could not be granted and awarded a sum of Rs.2,036,628 as damages and directed the appellant to deposit the excess amount in Court with interest after adjustment of costs. The appellant appealed.

Judgment: The Court allowed the Appeal pursuant to Section 19 of the Specific Relief Act, 1877 (SRA) and held that under Section 19 of SRA the Court can grant compensation when (i) the plaintiff has not abandoned its right of specific performance and (ii) the Court comes to the conclusion that although the plaintiff is entitled to specific performance but due to some hardship or disadvantage it may also be compensated in damages for value of the property upto the date of the judgment. In this Appeal, the Court was mindful of the fact that the appellant sought to purchase "M" for its factory requirements and not for ordinary scrap business, a factor not considered by the trial Court.

Justices: Arif Khilji and Soofia Latif JJ.

Advocate: Khalid Anwar for Appellants.

**Muhammad Suleman Kanjiani and others v.
Dadex Eternit & Others
2009 CLD 1687 (Single Bench- Karachi)**

Subject: Company law.

Key Words: Directors right of inspection of books of accounts etc.; incurring capital expenditure; appointment of forensic auditor to investigate allegations of fraud; Courts not to interfere with internal management of company; “Rule of Majority”; “Rule of Transparency”.

Abstract: This case involves an interlocutory application for temporary injunction filed by the minority directors representing a minority group of shareholders against the directors representing the majority shareholders seeking (i) an order restraining the defendants from incurring capital expenditure on the ground that huge sums of money were being fraudulently siphoned off under the garb of capital expenditure and (ii) an order seeking the appointment of a forensic auditor to investigate the affairs of the company. The defendants filed an application under Order 39 Rule 4 seeking discharge of the plaintiffs’ applications.

Judgment: The Court addressed two principal questions involved in the interlocutory applications (i) as to whether in the circumstances of declining profits by the company corresponding to the investment can be termed as siphoning off the funds by the directors in majority thereby justifying interference by the Court and (ii) as to whether the plaintiffs after having approved the budget and accounts containing such capital expenditure have waived their right to object same subsequently. In answering the above, the Court observed that as a general principle, Courts would not interfere with internal management of a company so long as the power exercised by the board are consistent with the Companies Ordinance, 1984 and have been exercised in good faith and in the best interests of the company. Where, however, the said powers were not exercised in good faith, the Court may based on cogent documentary evidence before it, interfere in appropriate cases. Insofar as the ‘Rule of Majority’ is concerned, the same is one of the cardinal principles of company law but will be subject to the ‘Rule of Transparency’ in order to prevent the majority from depriving the rights of the minority. In other words, the principle of majority should be balanced through transparency at board meetings where all directors should have the benefit of full disclosure and material information to ensure that meetings are meaningful and decisions are taken in an informal manner. Accordingly, the Court declined to order forensic audit as it would tantamount to a fishing enquiry which was inappropriate given that no evidence was on record to show that the plaintiff directors exercised their right under Section 230 of the Companies Ordinance, 1984 to inspect the books of account and other books and papers or that any information was being denied to them. As regards the incurring of capital expenditure, the Court permitted it provided that all further capital expenditure may only be incurred after obtaining prior approval in a meaningful meeting of the board in accordance with Section 196 of the Companies Ordinance, 1984.

Justice: Sajjad Ali Shah J

Advocates: Khalid Javed Khan for the plaintiffs and Sajid Zahid for the defendants.

Cases referred to: Mst. Khurshid Ismail v. Unichem Corp 1996 CLC 1863; Pakistan v. Israr ul Haq PLD 1981 SC 531; Jam Pari v. Muhammad Abdullah 1992 SCMR 786; Karachi Pipelines v. Gov’t of Sindh 1992 CLC 1668; Mahendra Singh Mewar v. Lake Palace Hotels and Motels Ltd. 1999 Company Cases (Vol.96) p.1999; Dadabhoy Cement Industries Ltd v NDFC PLD 2002 SC 500; and Ghulam Ghous v. Muhammad Yasin 2009 SCMR 70.

**Cooper & Co. (Pvt) Ltd. vs. Laurel Navigation
(Mauritius) Ltd.
2009 CLD 179 (Single Bench – Karachi)**

Subject: Agency law.

Key words: termination; agency coupled with interest; injunction.

Abstract: The case involved a claim for illegal termination of an agency under Section 202 of the Contract Act, 1872 (Contract Act). The plaintiff alleged that its agency could not be terminated as it was coupled with interest. The plaintiff consequently sought a permanent injunction to restrain the defendant from appointing the defendant No. 2 as its new agent and alternatively, claimed damages.

Judgment: The issue (being the issue in all like cases) to be determined was whether the plaintiff had an overriding security interest in the subject matter of the agency. The Court looked into the facts alleged by the parties and prima facie held that (i) the plaintiff as an agent earned commission as its remuneration and as such is not protected under Section 202 of the Contract Act; (ii) the agency was non-exclusive (iii) the investments made by the plaintiff where obligations agreed to by the agent / plaintiff under the agency agreement (iv) the agreement appeared to be time-bound (v) the plaintiff was aware for some time of the appointment of defendant No.2 as the new agent and (vi) the plaintiff had claimed damages on account of heavy investment and accordingly damages would be adequate relief in this case. The plaintiff's applications were dismissed.

Justice: Qaiser Iqbal J.

Advocates: Dr. Farogh Naseem for the plaintiff and Rehman Aziz Malik for defendant No.1 and Shakeel Pervez Bhatti for defendant No.2.

Cases referred to: 1Abdul Habib Rajwani v. Messrs Brothers Industries Ltd. 2007 YLR 590; Travel Automation (Pvt.) Ltd. v. Abacus International (Pvt.) Limited 2006 CLD 497; Roomi Enterprises (Pvt.) Limited v. Stafford Miller Limited 2005 CLD 1805; Time Visions International (Pvt.) Limited v. Dubai Islamic Bank Pakistan Limited 2007 CLD 762; Farooq & Co. v. Federation of Pakistan 1996 CLC 2030; Zubair Ahmed v. Pakistan State Oil Co. Limited PLD 1987 Kar. 112; Muhammad Aref Effendi v. Egypt Air 1980 SCMR 588; Muhammad Ibrahim v. Small Business Finance Corporation 2002 CLD 176; Messrs Business Computing International (Pvt.) Limited v. IBM World Trade Corporation 1997 CLC 1903; Pakistan Automobile Corporation Limited v. General Motors Overseas Distribution Corporation PLD 1982 Kar. 796; Huma Enterprises v. Syed Pir Ali Shah 1985 CLC 1522; Universal Trading Corporation (Pvt.) Limited v. Beecham Group PLC 1994 CLC 726; Bolan Beverages (Pvt.) Limited v. Pepsico PLD 2004 SC 860; World Wide Trading Co., v. Sanyo Electric Trading Co., Limited PLD 1986 Kar. 234; Muhammad Riaz v. Federal Construction Corporation Limited 1987 CLC Kar. 345; Universal Business Equipment (Pvt.) Limited v. Messrs Kokusai Commerce Inc. 1995 MLD 384; Talani Vanna and others v. Krishnaswarni Konar AIR 1946 Nad, 9; Muhammad Farooq and Co. (Pvt.) Limited v. Messrs Pakistan Tobacco Co., Limited and others 1997 CLC 520; Syed Shafique Hussian v. Syed Abdul Qasim PLD 1979 Kar. 22; Caltex Oil Pakistan Limited v. Sheikh Rahan-ud-Din PLD 1958 Lah. 63; Sardar Muhammad Nawaz v. Firdous Begum 2008 SCMR 404; Muhammad v. Hashim Ali PLD 2003 SC 271; Salma Javed v. S.M. Arshad PLD 1983 Kar. 303; Balagarnwala Oils Mills v. Shakarchi Trading AG PLD 1990 Kar. 1; Molasses Export Co. Limited v. Consolidated Sugar Mills Limited 1990 CLC 609; Marghub Siddiqui v. Hamid Ahmed Khan 1974 SCMR 519; Rehman Khan v. Safia Begum 2002 YLR 3120; Syed Mahmood Ali Gardezi v. Syeda Rabia Begum 1993 MLD 814; Muhammad Matin v. Mrs. Dino Manekji Chinoy PLD 1983 Kar. 387; Sui Gas Transmission Company v. Sui Gas Employees' Union 1977 SCMR 220; S.N. Gupta and Co.

v. Sadananda Ghosh PLD 1960 Dac. 153; Muhammad Yousuf v. Messrs Urooj Private Limited PLD 2003 Kar. 16; Farooq and Co. v. Federation of Pakistan 1996 CLC 2030; Sunshine Corporation (Pvt.) Limited v. V.E.L. Du Pont 1996 YLR 2162; Messrs Nasir Traders v. Haib Bank Limited Quetta PLD 1993 Quetta 94; Azeemun Nisa Begum v. Ali Muhammad PLD 1990 SC 382; Abdul Habib Rajwani v. Brothers Industries Limited 2007 YLR 590 (Kar.); Philippine Airlines Inc. v. Paramount Aviation (Pvt.) Limited PLD 1999 Kar. 227; Petrocommodities (Pvt.) Limited v. Rice Export Corporation of Pakistan PLD 1998 Kar. 1; Zahid Hussain v. Government of Sindh 1992 CLC 2396; Pakistan Associated Construction Limited v. Asif H. Kazi 1986 SCMR 820; Puri Terminal Limited v. Government of Pakistan 2004 SCMR 1092; Hameedull v. Headmistress 1997 SCMR 855; and Hazara Hill Tract Improvement Trust v. Mst. Qaisra Elahi 2005 SCMR 678.

**Muhammad Tahir Majeed v. Security Leasing Corporation Ltd.
2010 CLD 351 (Division Bench - Karachi)**

Subject: Contract

Key words: Indemnity and damages

Abstract: In this Appeal, the appellant claimed an excess amount from the leasing company / respondent which included certain front end fee and facilitation charges incurred by the leasing company / respondent after repossession of the leased goods (buses). In particular the issue was whether the leasing company / respondent had a right to recover such charges after it had already repossessed the leased property. The basis of this right of the leasing company was contained in the indemnity clause of the concerned lease agreement.

Judgment: The Court rejected the appellant's contentions and held that the losses incurred by the leasing company / respondent resulted from the appellant's breach of the lease agreement. The indemnity clause of the lease agreement clearly stated in this regard that "The Lessee further indemnifies the Lessor against any loss or expense which the Lessor shall certify as rights incurred by it as a consequence of the occurrence of any Event of Default and Termination, or arising out of any misrepresentation of the Lessee." Accordingly, the Court held that the appellant cannot now back out of the indemnity provided by him and was bound in terms of Section 124 and 125 of the Contract Act, 1872.

Justices: Mushir Alam and Ather Saeed JJ.

Advocates: Sohail Rana for the appellants and Abdul Qayyum Abbasi for the respondents.