

DOWNLOAD PDF TRUE DOCTRINE OF ULTRA VIRES IN THE LAW OF CORPORATIONS

Chapter 1 : Ultra Vires Acts

The true doctrine of ultra vires in the law of corporations: being a concise presentation of the doctrine in its application to the powers and liabilities of private and municipal corporations. Paperback - December 23,

The Memorandum serves as an outline and a guide that the executives of the company can follow to be sure of the scope of their own powers, and what lines they cannot and should not cross. Types of Ultra Vires Acts

There are three types of ultra vires acts, which outlined below: Ultra Vires the Memorandum by the Company

“ Acts performed by the company that are beyond the powers granted to it in the Memorandum are ultra vires. Ultra Vires the Articles, Intra Vires the Company “ These are acts performed beyond the powers granted to the company by its Articles of Incorporation , but that are still within the powers of its Memorandum. These acts are ultra vires the Articles, but intra vires the company. Ultra vires acts cannot be ratified. This means that once someone commits an ultra vires act, that act cannot retroactively be made valid.

Ultra Vires Example in Municipal Ordinance An example of ultra vires issues being brought before the Court began in , when the city of Houston, Texas implemented a drainage fee ordinance for certain properties. Part of the fees were also to be allocated toward funding future improvements that would become necessary to maintain the drainage system. He was also in charge of collecting these newly implemented fees, and distributing them as he was directed by the ordinance. This meant that their land does not absorb water well, or that it does not allow water to easily pass through, and so a separate drainage system is necessary. The railroads collectively sued Krueger, alleging that he was acting outside his scope, or ultra vires, and asked the court to grant injunctive relief. The City and Krueger filed a plea to the trial court stating that the government had immunity to an ultra vires claim. The railroads appealed, and the appellate court was entrusted to decide two issues in particular: Did Krueger act ultra vires by determining which properties were benefitted and therefore subject to drainage fees? The court of appeals granted the appeal in part and denied it in part. The railroads, as far as the court was concerned, did not effectively prove that their lands were not impervious, and that they did not need the proposed widespread drainage system. The parties cross-appealed, and the matter was brought before the Texas Supreme Court. Further, while Krueger may have had some power insofar as determining which properties were benefitted, he did not have the power to make that determination when it would conflict with additional provisions within the ordinance. The Court found that the railroads did, in fact, provide a valid example of an ultra vires claim, and so the case was remanded to the lower court for further proceedings. Injunctive Relief “ A court-ordered act or prohibition against an act or condition. Ordinance “ A law or regulation instituted by a municipal authority.

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Chapter 2 : Doctrine of Ultra Vires - Company Law - BBA|mantra

Excerpt from The True Doctrine of Ultra Vires in the Law of Corporations: Being a Concise Presentation of the Doctrine in Its Application to the Powers and Liabilities of Private and Municipal Corporations Hood v.

If an act requires legal authority and it is done with such authority, it is characterised in law as *intra vires* "within the powers". If it is done without such authority, it is *ultra vires*. Acts that are *intra vires* may equivalently be termed "valid" and those that are *ultra vires* "invalid". Legal issues relating to *ultra vires* can arise in a variety of contexts: Companies and other legal persons sometimes have limited legal capacity to act, and attempts to engage in activities beyond their legal capacity may be *ultra vires*. Similarly, statutory and governmental bodies may have limits upon the acts and activities which they legally engage in. Acts attempted by a corporation that are beyond the scope of its charter are void or voidable. An *ultra vires* transaction cannot be ratified by shareholders, even if they wish it to be ratified. The doctrine of estoppel usually precluded reliance on the defense of *ultra vires* where the transaction was fully performed by one party. *A fortiori*, a transaction which was fully performed by both parties could not be attacked. If the contract was fully executory, the defense of *ultra vires* might be raised by either party. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for quasi-contract for recovery of benefits conferred was available. If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground the act was *ultra vires*. Several modern developments relating to corporate formation have limited the probability that *ultra vires* acts will occur. Except in the case of non-profit corporations including municipal corporations, this legal doctrine is obsolescent; within recent years, almost all business corporations are chartered to allow them to transact any lawful business. United States According to American laws, the concept of *ultra vires* can still arise in the following kinds of activities in some states: The position is now regulated by the Companies Act, sections 31 and 39, which similarly greatly reduces the applicability of *ultra vires* in corporate law, although it can still apply in relation to charities and a shareholder may apply for an injunction, in advance only, to prevent an act which is claimed to be *ultra vires*. In many jurisdictions, such as Australia, legislation provides that a corporation has all the powers of a natural person^[8] plus others; also, the validity of acts which are made *ultra vires* is preserved. To go outside those powers would be *ultra vires*; for example, although the court did not use the term in striking down a federal law in *United States v. Lopez* on the grounds that it exceeded the Constitutional authority of Congress, the Supreme Court still declared the law to be *ultra vires*. In the case of *CityView Press v AnCo*, however, the Irish Supreme Court held that the Oireachtas may delegate certain powers to subordinate bodies through primary legislation, so long as these delegated powers allow the delegatee only to further the principles and policies laid down by the Oireachtas in primary legislation and not craft new principles or policies themselves. Any piece of primary legislation that grants the power to make public policy to a body other than the Oireachtas is unconstitutional; however, as there is a presumption in Irish constitutional law that the Oireachtas acts within the confines of the Constitution, any legislation passed by the Oireachtas must be interpreted in such a way as to be constitutionally valid where possible. Thus, in a number of cases where bodies other than the Oireachtas were found to have used powers granted to them by primary legislation to make public policy, the impugned primary legislation was read in such a way that it would not have the effect of allowing a subordinate body to make public policy. In these cases, the primary legislation was held to be constitutional, but the subordinate or secondary legislation, which amounted to creation of public policy, was held to be *ultra vires* the primary legislation and was struck down. In UK constitutional law, *ultra vires* describes patents, ordinances and the like enacted under the prerogative powers of the Crown that contradict statutes enacted by the Crown-in-Parliament. Almost unheard of in modern times, *ultra vires* acts by the Crown or its servants were previously a major threat to the rule of law. *Boddington v British Transport Police* is an example of an appeal heard by House of Lords that contested that a bylaw was

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beyond the powers conferred to it under section 67 of the Transport Act. Narrow ultra vires applies if an administrator did not have the substantive power to make a decision or it was wrought with procedural defects. Broad ultra vires applies if there is an abuse of power. e. United Kingdom In the seminal case of *Anisminic v Foreign Compensation Commission*, [12] Lord Reid is accredited with formulating the doctrine of ultra vires. However, ultra vires, together with unreasonableness, was mentioned much earlier by Lord Russell in the well known case, *Kruse v Johnson*, [13] regarding challenging by-laws and other rules. *Anisminic* is better known for not depriving courts of their jurisdiction to declare a decision a nullity, even if a statute expressly prevents the decision being subject to judicial review. In *Hammersmith and Fulham London Borough Council v Hazell* [16] the House of Lords held that interest rate swaps entered into by local authorities a popular method of circumventing statutory restrictions on local authorities borrowing money at that time were all ultra vires and void, sparking a raft of satellite litigation.

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Chapter 3 : What is Ultra Vires? – Business Law Center

Ultra Vires [Latin, Beyond the powers.] The doctrine in the law of corporations that holds that if a corporation enters into a contract that is beyond the scope of its corporate powers, the contract is illegal.

An act of the company must not be beyond the objects clause, otherwise it will be ultravires and, therefore, void and cannot be ratified even if all the members wish to ratify it. This is called the doctrine of ultra vires, which has been firmly established in the case of *Ashtray Railway Carriage and Iron Company Ltd v. Ashtray*. Thus the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra vires act is void and cannot be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the powers delegated to them. Where a company exceeds its power as conferred on it by the objects clause of its memorandum, it is not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles. Basic principles included the following: An ultra vires transaction cannot be ratified by all the shareholders, even if they wish it to be ratified. The doctrine of estoppel usually precluded reliance on the defense of ultra vires where the transaction was fully performed by one party. A fortiori, a transaction which was fully performed by both parties could not be attacked. If the contract was fully executory, the defense of ultra vires might be raised by either party. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for quasi contract for recovery of benefits conferred was available. If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground the act was ultra vires. The objects of this company, as stated in the Memorandum of Association, were to supply and sell the materials required to construct railways, but not to undertake their construction. The contract here was to construct a railway. That was contrary to the memorandum of association; what was done by the directors in entering into that contract was therefore in direct contravention of the provisions of the Company Act, It was held that this contract, being of a nature not included in the Memorandum of Association, was ultra vires not only of the directors but of the whole company, so that even the subsequent assent of the whole body of shareholders would have no power to ratify it. The shareholders might have passed a resolution sanctioning the release, or altering the terms in the articles of association upon which releases might be granted. If they had sanctioned what had been done without the formality of a resolution, that would have been perfectly sufficient. Thus, the contract entered into by the company was not a voidable contract merely, but being in violation of the prohibition contained in the Companies Act, was absolutely void. It is exactly in the same condition as if no contract at all had been made, and therefore a ratification of it is not possible. If there had been an actual ratification, it could not have given life to a contract which had no existence in itself; but at the utmost it would have amounted to a sanction by the shareholders to the act of the directors, which, if given before the contract was entered into, would not have made it valid, as it does not relate to an object within the scope of the memorandum of association. Later on, in the case of *Attorney General v. Great Eastern Railway Co.* *ShamjiLadha* and has been well established and explained by the Supreme Court in the case of *A. Life Insurance Corporation Of India*. Even in India it has been held that the company has power to carry out the objects as set out in the objects clause of its memorandum, and also everything, which is reasonably necessary to carry out those objects. For example, a company which has been authorized by its memorandum to purchase land had implied authority to let it and if necessary, to sell it. However it has been made clear by the Supreme Court that the company has, no doubt, the power to carry out the objects stated in the objects clause of its memorandum and also what is conclusive to or incidental to those objects, but it has no power to travel beyond the objects or to do any act which has not a reasonable proximate

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connection with the object or object which would only bring an indirect or remote benefit to the company. To ascertain whether a particular act is ultra vires or not, the main purpose must first be ascertained, then special powers for effecting that purpose must be looked for, if the act is neither within the main purpose nor the special powers expressly given by the statute, the inquiry should be made whether the act is incidental to or consequential upon. An act is not ultra vires if it is found: The doctrine of ultra vires played an important role in the development of corporate powers. Though largely obsolete in modern private corporation law, the doctrine remains in full force for government entities. An ultra vires act is one beyond the purposes or powers of a corporation. The earliest legal view was that such acts were void. Under this approach a corporation was formed only for limited purposes and could do only what it was authorized to do in its corporate charter. This early view proved unworkable and unfair. It permitted a corporation to accept the benefits of a contract and then refuse to perform its obligations on the ground that the contract was ultra vires. The doctrine also impaired the security of title to property in fully executed transactions in which a corporation participated. Therefore, the courts adopted the view that such acts were voidable rather than void and that the facts should dictate whether a corporate act should have effect. Over time a body of principles developed that prevented the application of the ultra vires doctrine. These principles included the ability of shareholders to ratify an ultra vires transaction; the application of the doctrine of estoppel, which prevented the defense of ultra vires when the transaction was fully performed by one party; and the prohibition against asserting ultra vires when both parties had fully performed the contract. Despite these principles the ultra vires doctrine was applied inconsistently and erratically. Accordingly, modern corporation law has sought to remove the possibility that ultra vires acts may occur. Most importantly, multiple purposes clauses and general clauses that permit corporations to engage in any lawful business are now included in the articles of incorporation. In addition, purposes clauses can now be easily amended if the corporation seeks to do business in new areas. For example, under traditional ultra vires doctrine, a corporation that had as its purpose the manufacturing of shoes could not, under its charter, manufacture motorcycles. Under modern corporate law, the purposes clause would either be so general as to allow the corporation to go into the motorcycle business, or the corporation would amend its purposes clause to reflect the new venture. State laws in almost every jurisdiction have also sharply reduced the importance of the ultra vires doctrine. For example, section 3. Government entities created by a state are public corporations governed by municipal charters and other statutorily imposed grants of power. Historically, the ultra vires concept has been used to construe the powers of a government entity narrowly. Failure to observe the statutory limits has been characterized as ultra vires. With a government entity, however, to prevent a contract from being voided as ultra vires, it is normally necessary to prove that the employee actually had authority to act. Where a government employee exceeds her authority, the government entity may seek to rescind the contract based on an ultra vires claim. *Sivashanmugham And Others v. Cas Mad*, A borrowing beyond the power of the company i. However, the courts have developed certain principles in the interest of justice to protect such lenders. Thus, even in a case of ultra vires borrowing, the lender may be allowed by the courts the following reliefs: An act, which is intra vires the company but outside the authority of the directors may be ratified by the shareholders in proper form. An act which is intra vires the company but done in an irregular manner, may be validated by the consent of the shareholders. The law, however, does not require that the consent of all the shareholders should be obtained at the same place and in the same meeting. There are certain acts under the company law, which though not expressly stated in the memorandum, are deemed impliedly within the authority of the company and therefore they are not deemed ultra vires. For example, a business company can raise its capital by borrowing. If an act of the company is ultra vires the articles of association, the company can alter its articles in order to validate the act. In either case it is a matter between the directors and shareholders, and not between them and the plaintiff. But where on the footing of that article the directors are employed by the company and accept office the terms of art. Under the article as thus embodied the directors obtain a contractual right to an annual sum of 1 as remuneration. It was held also that although these provisions in the articles were only part of the contract

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between the shareholders inter se, the provisions were, on the directors being employed and accepting office on the footing of them, embodied in the contract between the company and the directors; that the remuneration was not due to the directors in their character of members, but under the contract so embodying the provisions; and that, in the winding-up of the company, the directors were entitled to rank as ordinary creditors in respect of the remuneration due to them at the commencement of the winding-up. *Rayfield v Hands and Others*, [R. The plaintiff, Frank Leslie Rayfield, was the registered holder of of those shares, and the defendants, Gordon Wyndham Hands, Alfred William Scales and Donald Davies were at all material times the sole directors of the company. The plaintiff was a shareholder in a company. Article 11 is concerned with the relationship between the plaintiff as a member and the defendants, not as directors, but as members of the company. *Guinness v Land Corporation of Ireland, L.* By the memorandum of association of a company limited by shares it was stated that the objects of the company were, the cultivation of lands in Ireland , and other similar purposes there specified, and to do all such other things as the company might deem incidental or conducive to the attainment of any of those objects. This action was brought by one of the B shareholders on behalf of himself and the others, to restrain the directors from issuing any A shares on the footing of their being entitled to the benefit of that article, and to restrain the directors from applying in accordance with it the capital arising from the B shares. It was held that the application of the B capital provided for by the articles is not an application of capital to carrying on the business of the company, but is providing an inducement to people to take shares and subscribe capital to carry on the business and that article 8 was invalid, as it purported to make the B capital applicable to purposes not within the objects of the company as defined by the memorandum of association, and in a way not incidental or conducive to the attainment of those objects, and that the directors must be restrained from acting upon it. The articles of association of a company cannot, except in the cases provided for by sect.

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Chapter 4 : DOCTRINE OF ULTRA VIRES-EFFECTS AND EXCEPTIONS

Meaning of Doctrine of Ultra Vires. The doctrine of ultra vires applies to the memorandum of association of a company. The memorandum of association contains the permitted range of activities in its objects clause and a company cannot practice any other activity which is not defined under the scope of objectives mentioned in the memorandum.

Acts attempted by a corporation that are beyond the scope of its charter are void or voidable. An ultra vires transaction cannot be ratified by shareholders, even if they wish it to be ratified. The doctrine of estoppel usually precluded reliance on the defense of ultra vires where the transaction was fully performed by one party. A fortiori, a transaction which was fully performed by both parties could not be attacked. If the contract was fully executory, the defense of ultra vires might be raised by either party. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for quasi-contract for recovery of benefits conferred was available. If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground the act was ultra vires. Several modern developments relating to corporate formation have limited the probability that ultra vires acts will occur. Except in the case of non-profit corporations including municipal corporations, this legal doctrine is obsolescent; within recent years, almost all business corporations are chartered to allow them to transact any lawful business. United States[edit] According to American laws, the concept of ultra vires can still arise in the following kinds of activities in some states: Charitable or political contributions Guaranty of indebtedness of another Loans to officers or directors Pensions, bonuses, stock option plans, job severance payments, and other fringe benefits The power to acquire shares of other corporations The power to enter into a partnership See also: The position is now regulated by the Companies Act, sections 31 and 39, which similarly greatly reduces the applicability of ultra vires in corporate law, although it can still apply in relation to charities and a shareholder may apply for an injunction, in advance only, to prevent an act which is claimed to be ultra vires. In many jurisdictions, such as Australia, legislation provides that a corporation has all the powers of a natural person [8] plus others; also, the validity of acts which are made ultra vires is preserved. To go outside those powers would be ultra vires; for example, although the court did not use the term in striking down a federal law in *United States v. Lopez* on the grounds that it exceeded the Constitutional authority of Congress, the Supreme Court still declared the law to be ultra vires. In the case of *CityView Press v AnCo*, however, the Irish Supreme Court held that the Oireachtas may delegate certain powers to subordinate bodies through primary legislation, so long as these delegated powers allow the delegatee only to further the principles and policies laid down by the Oireachtas in primary legislation and not craft new principles or policies themselves. Any piece of primary legislation that grants the power to make public policy to a body other than the Oireachtas is unconstitutional; however, as there is a presumption in Irish constitutional law that the Oireachtas acts within the confines of the Constitution, any legislation passed by the Oireachtas must be interpreted in such a way as to be constitutionally valid where possible. Thus, in a number of cases where bodies other than the Oireachtas were found to have used powers granted to them by primary legislation to make public policy, the impugned primary legislation was read in such a way that it would not have the effect of allowing a subordinate body to make public policy. In these cases, the primary legislation was held to be constitutional, but the subordinate or secondary legislation, which amounted to creation of public policy, was held to be ultra vires the primary legislation and was struck down. In UK constitutional law, ultra vires describes patents, ordinances and the like enacted under the prerogative powers of the Crown that contradict statutes enacted by the Crown-in-Parliament. Almost unheard of in modern times, ultra vires acts by the Crown or its servants were previously a major threat to the rule of law. *Boddington v British Transport Police* is an example of an appeal heard by House of Lords that contested that a bylaw was beyond the powers conferred to it under section 67 of the Transport Act. Narrow ultra vires applies if an administrator did not have the substantive power to make a decision or it was wrought with procedural defects. Broad ultra vires

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applies if there is an abuse of power e. United Kingdom[edit] In the seminal case of *Anisminic v Foreign Compensation Commission* , [12] Lord Reid is accredited with formulating the doctrine of ultra vires. However, ultra vires, together with unreasonableness, was mentioned much earlier by Lord Russell in the well known case, *Kruse v Johnson* , [13] regarding challenging by-laws and other rules. *Anisminic* is better known for not depriving courts of their jurisdiction to declare a decision a nullity, even if a statute expressly prevents the decision being subject to judicial review.

Chapter 5 : Ultra vires - Wikipedia

The true doctrine of ultra vires in the law of corporations: being a concise presentation of the doctrine in its application to the powers and liabilities of private and municipal corporations / by Reuben A. Reese.

Chapter 6 : Ultra Vires - Definition, Examples, Cases, Processes

The major exception to the ultra vires doctrine is the nonprofit sector. A nonprofit company may still, in very specific situations, raise the ultra vires doctrine. However, this is a very limited exception, and courts may still frown upon it being raised as a defense.

Chapter 7 : Is the Doctrine of Ultra Vires Applicable to LLPs? - IndiaCorpLaw

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Chapter 8 : Ultra vires | Revolv

The doctrine of ultra vires applies to the memorandum of a company. The memorandum of association contains the permitted range of activities in its objects clause and a company cannot practice any other activity which is not defined under the scope of objectives mentioned in the memorandum.