Ashbury Railway Carriage Co. V. Riche (1875) : In this case, the M/A provided that the objects were to make, sell, lend on hire, Railway Carriage.... and to carry on business of Mechanical Engineers and General Contractors.

The Company entered into a Contract with Riche to finance the construction of railway lines in Belgium. It, later repudiated. Riche sued the Company.

Held, the main object referred to Railway Carriages and this did not include the putting of Railway lines. Hence, the Contract was void.

Held, further that even ratification by the shareholders would not cure this basic defect.

The interpretation of objects clause in the M/A is now governed by Company (Amendment) Act 1965. A Company should state separately in its M/A

i) Main objects and

(ii) those objects which are incidental or ancillary to the main objects

(iii) other objects. The parliament by this amendment has prevented companies from venturing on entirely a new object risking its capital without notice to the members or creditors.

iv) Charitable Contributions: The funds of the Company can be used to carry out authorised objects only.

In A. **Laxmanaswamy Mudaliar V. L.I.C**.

the Directors of a company were authorised by the M/A, 'to make payments towards any charitable or any general or useful object...'. The shareholders passed a resolution to pay 2 lakhs to a trust for promoting technical and business knowledge.

Held, the payment was Ultra Vires.

Held, as the Company's insurance business had been taken over by the L.I.C. it had no business left and its payment was without authority.

Hence, the Company's funds cannot be used to give charities except in a limited way. The power to given charity is not an object of the Company

. Such a charity or grant must be (i) Incidental to Company business (ii) Bonafide and (iii) Must be for the benefit of the Company.

e.g. Ex gratia payment to workers as incentive, payment to widows of an ex-workers etc. are examples.

Leading case is Trevor V. Whotworth.

v) **Consequences :**

The Directors, as agents of the company **cannot do anything** which the company itself cannot do under M/A.

However, if the contract is within M/A but the Articles have not conferred powers on Directors, the company may ratify (Grant V. Switback Rly). If not so ratified, Directors will be liable (Collin V. Wright).

a) The members may bring an injunction from the Court, when the breach is about to take place.

b) The Directors become personally liable to the Company and hence, they will have to pay or account for, to the Company.

c) In case of excess of authority, if damage is done to third parties, the **Directors become personally liable**.

In Weeks V. Propert ….
exceeding the authorized debentures, Directors accepted 500 pounds.
Held, this was void. Directors were **held personally liable.**

CHAPTER 6

MEMBERSHI

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Ch. 6-1. Membership :

1. Modes of Acquision of Membership :

A person may become a member of a Company in any of the following ways:

i) **Subscribing to** M/A **:** (Sn.41) :

All the subscribers to the M/A, are deemed to have agreed to become members and hence on registration of the Company, they are members and their names should be entered in the 'Register of Members'. Every subscriber acquires this full status on registration.

When 'Qualification of holding certain shares' is prescribed (in Public Limited Companies) to become a Director, the person who signs & files with the Registrar with an undertaking to take such number of shares, becomes a member on the Registration of the Company.

ii) Application and Allotment:

A person becomes a member when shares are allotted to him. The application for shares should be duly filled up and signed by the applicant quoting the number of shares he wants. Shares are allotted by a resolution of the Directors. The allotment in complete when appropriation is made, and the allottee becomes a member. Notice or certificate is only an evidence of it.

iii) Transfer : (Sn. 82)

A person who buys shares in the open market, may apply to the Company to get his name duly registered as a member. He becomes a member only when so entered on the register.

iv) **By transmission:**

On the death of a member, his legal representative becomes entitled to the shares, according to law. In such a case the legal representative may himself become a member, or transfer the shares. He must decide in 90 days.

If he decides to become a member, his name must be entered in the register of the Company. This is called transmission.

v) **By holding out:**

Allowing one self to be held out as member. This is based on the principle of holding out and estoppel. Hence, if his name is

continued as a member, on winding up, he becomes liable as a contributory (Hansraj 's case).

2. Who can become a Member :

i) Persons who have attained majority and who are not insane or insolvent and otherwise disqualified, may become a member.

ii) Minor: is allowed to become a member but during minority he incurs no liability, e.g. He cannot be called to pay the 'Contributory' in the winding up of the Company. On attaining majority, within a reasonable time, he must opt to the membership. In Palaniappa V. Official liquidator shares were allotted to a minor, but on winding up, the minor was held not liable as **contributory**.

iii) Company : As company is a legal person, it can become a member of another company, if the M/A so authorises.

iv) Partnership firm: As partnership firm is not a legal person, it cannot buy shares in its own name.

3. Membership when **ceases :**

Membership of a person ceases on i) death ii) transfer of shares iii) forfeiture or surrender of shares iv) winding up of the Company v) other methods, if any, provided in A/A.

4. Rights of a Member :

i) To receive share certificate

ii) To receive information of allotment of shares

iii) To transfer shares (subject to A/A)

iv) To attend meetings, to receive notices of meetings, to vote at the meetings as per A/A.

v) To associate in the declaration of dividend, vi)

To inspect the register kept by the Company.

vii) To obtain copies of M/A and A/A on request and payment of fees if any.

viii) To have the first option to buy any new shares on future issue of shares.

ix) The right of appointing Directors and auditors at the Annual General meeting.

x) The right to approach the court in the event of oppression or mismanagement.

5. Liabilities of a Member :

i) To take shares when they are allotted.

ii) to pay for the shares allotted to him, this is debt by him to the

Company.

iii) To abide by the doings of the majority of members.

iv) To contribute to the assets of the company, in case of winding up i.e., as 'Contributory'.

v) To contribute to loss suffered by the company under some circumstances. (S.45) e.g. in unlimited Companies. This will not arise in case of limited companies.

6- Cessation of Membership :

A member of a company ceases to be a member.

i) By transferring his shares, the name of transferee brought on record of register.

ii) By forfeiture of shares, iii) By

surrender of shares, iv) By the death of

the member. v) By the insolvency of the

member.

vi) On winding up of the company, but becomes liable as "Contributory".

vii) On rescission of the contract for misstatement in prospectus etc.

CHAPTER 7 SHARES

Ch. 7.1. Shares :

i) Meaning :

A share represents such a proportion of the interest of the share-holders, as the amount paid up thereon bears to the total paid-up capital of the Company. It is the measure of the interest in the Company's assets to which the member holding the share is entitled. The courts have held that a share is a right to participate in the profits of the company while it is running and in the assets when wound up.

ii) **Allotment of shares :**

a) According to the Supreme Court 'Allotment' is the appropria tion of a certain number of shares to a person (from the un-appropriated capital of the Company) and shows the assignment of interest in the capital of the company, of a fixed fiscal value, in favour of a sub scriber,

b) Valid allotment: Sn. 69. Requirements of a valid allotment are :

1. Authority :

Allotment must be authorised by a resolution of the Board of Directors or a committee of Directors.

2. Minimum subscription :

The prospectus should state the amount of minimum subscription and also the application money. The amount payable on application must be not less than 5% of the nominal value of the share.

These amounts must be received and deposited in a scheduled Bank.

If this minimum is not received in 120 days of the issue of prospectus the money should be refunded. If not so refunded in 130 days, the Directors become liable personally for the money with interest. Any waiver of this by share-holder is void.

There must be a prospectus issued duly observing the formalities. If not issued, a 'statement in lieu of prospectus' must be filed with the Registrar.

d) Opening of subscription List: - The time of opening must not be within 5 d?ys after issuing prospectus (or filing the statement). If this rule is not followed, a penalty is imposed.

e) Stock Exchange : - Listing is essential; the prospectus should specify the particular stock exchange and shares must be dealt with by that stock exchange.

f) Time : All allotment must be completed within a

reasonable
time.

g) Communication : - The allotment must be communicated to the applicant.

h) Conditions : If the allottee has put some conditions, the condition should be fulfilled by the Company. A had applied on the condition that he would take 4000 shares if he is appointed as a cashier in the new branch of the Company. Held, the condition must be fulfilled (of course, the company may refuse to allot the shares) (Raman Bhai V. Ghasiram). iii) Irregular allotment:

Any allotment without observing the statutory conditions is irregular.

Making allotment without the minimum subscription : or without receipt of 5% on application or, without filing "statement in lieu of prospectus' is irregular.

It is voidable at the option of the applicant. He must exercise his option within 2 months of the General Meeting of the company.

Any Director making such irregular allotment, knowingly or unknowingly is personally liable to the company and to the applicant for any loss incurred. Period of limitation is 2 years, to sue the Director.

Ch. 7.2. Calls:

i) One of the essentials of allotment is that the application money must not be less than 5%.

ii) ' Calls': The liability of a shareholder to pay the value of the share, held by him, is enforced by making 'Calls' for such payment. Payment is a statutory liability, but the call must be valid. To be valid it must have the following requisites.

a) Resolution of the Board of Directors is necessary.

b) The Resolution must state the amount of call and the time at which it is to be paid.

c) As the call-money is a trust, the call must be bonafide for the objects in M/A.

d) Uniformity must be maintained. No call should exceed l/4th of the value of the share, the interval between two calls should be more than 14 days.

iii) Remedy :

If calls are not answered by the applicant/shareholder, the remedy is forfeiture, but the rules under the Companies Act should be followed.

Ch. 7.3. **Forfeiture of shares :**

When a member does not attend the calls to pay but defaults, the Company may (a) sue him or (b) forfeit his share.

Certain conditions are to be fulfilled to forfiet the share,

i) **Authority :**

The A/A must have expressly provided for such a power or authority.

The procedure so laid down must be strictly followed.

ii) Resolution and Notice :

Resolution of forfeiture must be made. Notice under the authority of the Board of Directors must be served on the defaulting member. It should state the date. At least 14 days time should be given. It must warn him about the forfeiture. Even if slight defect is there the forfeiture becomes bad. In Pramila V. Wearwell Cycle Co., regd. notice sent was returned unserved. The shares were forfeited. Held, this was bad.

iii) Good faith :

The basic requisite is that the power of forfeiture must be exercised with utmost good faith.

iv) Consequences:

After forfeiture, the member remains as a contributory as a past member for one year from the date of forfeiture. He may be treated as a debtor if the A/A so provide. (Ladies Press Assn. V. Pulbrook).

Ch. 7.4. **Surrender of shares:**

A member, who has failed to pay according to calls, may surrender the share to the Company. There must be a valid call and default. The Directors may accept the "Surrender of the shares". A surrender amounts to a reduction of the capital.

Forfeiture	**Surrender**
1. It is made by the Directors for default of payment on calls.	1. Voluntarily made by the member to the Company.
2. All the formalities must be strictly observed. Otherwise forfeiture become invalid.	2. There are no formalities,
3. Sanction of court is not necessary.	*3.* As this amounts to reduction of capital, courts permission is required.

Ch. 7.5. **Reduction of shares:**

Any Creditor to the company, looks to the capital of the Company and hence capital should not be reduced but only subject to certain safeguards. Sn. 100 provided that a Company may, by special resolution and with the confirmation of the court, reduce the share capital in any way provided under the Act. This power is vested in the company but it has no powers to return the capital to members. The question of reducing capital being a domestic one, it should be decided by a majority. The company is to determine the extent, the mode and the incidence of the reduction. The court has powers to sanction a reduction which is, according to it fair and equitable. The interest of the creditors and of the shareholders is paramount.

If not sanctioned by the Court, the reduction is unlawful.

The procedure for reduction must be strictly followed. The Company may

i) reduce the liability if any, on its shares

ii) cancel any paid up share capital which is lost

iii) pay off any paid up capital which is in excess of the requirements of the Company.

In Marwari Stores Ltd., V. Goenka, the Company had a capital of Rs.1,92,000 i.e., 1920 shares of Rs.100/- each. By a special resolution, it reduced the capital to half. 1920 shares of Rs.50/- each, i.e., The paid up capital of Rs.50/- on each share was cancelled bringing the capital to Rs.96,000/- this was challenged by a shareholder. Held, the reduction was valid. The court confirmed the scheme of reduction.

CHAPTER 8

SHARE CAPITAL

Ch. 8-1. Share Capital:

The M/A states the Capital of the Company

i) Amount stated in the M/A : Authorised Capital (e.g. This may be 50000 shares of 100 Rs. each i.e., 50 lakhs).

ii) Only *Vz* of this may be issued : This is called issued capital,

iii) Allotment is made: Subscribed capital

iv) It need not 'Call' the entire amount. It may call certain amounts which is paid. This is paid up capital.

Ch. 8.2. Kinds of shares:

There are two kinds of shares:

i) Preferential shares

ii) Ordinary shares (Equity shares)

iii) Preferential shares (Sn. 85). It is assured of a Preferential dividend. It may be (say Rs.25,000/- per year) a fixed amount or 5% of the nominal value of the share.

Classes: Cumulative Preferential Share means the dividends accumulate year after year. If there are no profits in one year, the next year when there are profits, these shares get the previous years dividend also. This is cumulative.

Non-cumulative Preference shares:

Here, the dividend, if unpaid, lapses and will not accumulate.

Redeemable Preferential Shares. As per the A/A, the Company may choose to pay back the holders of such shares. Such shares are called redeemable Preferential Shares.

If redemption (repayment) is made out of profits an equal sum is put to a reserve fund called. The Capital Redemption Reserve Account. Bonus shares may be issued from this fund.

Ch. 8.3. Share Certificate (Sn. 113) :

i) A Share Certificate is a document issued by the Company, under its seal certifying that the member holds a number of shares specified therein. This must be issued within 3 months of allotment.

The Certificate is evidence of title and the shareholder can sell in the open market.

ii) Legal consequences:

a) The Certificate binds the Company. It is estoppd from denying the title of the share.