

Ultra vires essay



Under common law, ultra vires describes acts attempted by a corporation that are beyond the scope of powers granted by the corporation's objects clause. Company may only enter into transactions to the extent that it is permitted to do so by its objects clause which is specified in its Memorandum of Association. Any action not in accordance with these objects is ultra vires. Any contracts that are ultra vires are void and unenforceable against the company.

Ultra Vires originally got mentioned was merely for restricting the power of Parliamentary Corporation citing Eastern Counties Railways Company v Hawkes 1859. Later on, in the first case of ultra vires of a Registered Corporation (Riche v Ashbury Railway Carriage Company 1875), Lord Selbourne confirmed the application of “ ultra vires” to Registered Corporations, stating: Contracts for objects and purposes foreign to, or inconsistent with “ the objects clause” are ultra vires of the corporation itself.

The principle of this migration is to protect shareholders against the management changing the nature of the business of the company. However in practice companies were incorporated with very long objects clauses in order to give wide powers to the company, thus restricting the application of the doctrine. Given that this course of practice was commercially unrealistic, provisions were included in the Corporations Acts with the express object of abolishing the ultra vires doctrine. In the United Kingdom, the Companies Act 2006 s31 and s39 greatly reduced the applicability of ultra vires in corporate law.

In many jurisdictions, such as Australia, legislation provides that a corporation has all the powers of a natural person plus others; also, the validity of acts which are made ultra vires is preserved. Today companies are generally no longer required to state their objects. A company may, however, include in its constitution a restriction or prohibition on the exercise of a power/ on an act: s125 (1)/ (2). If an objects clause is included in the company's constitution, this no longer confines the company's legal capacity to the pursuit of such objects: s125 (1) and (2).

Nevertheless, s124 (1) declares a company to have, inter alia, the legal capacity of an individual. Most importantly, this capacity is not limited by any prohibition or restriction or statement of objects included in the company's constitution. See also *News Ltd v Australian Rugby football league Ltd* (1996) 21 ACSR 635. Even when the act was contrary to the company's best interests, the restriction would not undermine the company's legal capacity: s124 (2). A company's power is now only limited to the extent that they are constrained by the Corporations Act.