

SHARE CAPITAL, DEBT CAPITAL AND DIVIDENDS

Re Wragg Ltd [1897]

Allotment of shares and non – cash consideration

Facts

- Mr Wragg and Mr Martin sold their omnibus and livery stable business to a newly incorporated company for £46,300.
- The company paid by issuing debentures and fully paid shares to Mr Wragg and Mr Martin.
- The liquidator of Wragg Ltd claimed that the company was (in return for the share issue) worth £18,000 less than the board had decided to pay.

Issues

- Can companies' issue shares for non – cash consideration?

Held

- Companies can issue shares for non – cash consideration.
- In most cases consideration for cash but this is not always the case.

Re White Star Line Ltd [1938]

Allotment of shares and non – cash consideration

Facts

- There had been a call on shares and the shareholder sought to satisfy the call by issuing deferred creditor certificates.
- Those certificated entitled the company to receive payment at a later date.

Issues

- Was this sufficient consideration?

Held

- The value of the consideration for an allotment of shares must be more than sufficient consideration required under the law of contract.
- It must represent “money's worth” for the allotment.
- In this case the money was inadequate & the consideration was illusory and not valuable consideration – certificates in which the company got no immediate payment but the prospect of payment in the indefinite future does not amount to payment.

Crompton v Morrine Hall [1965]

Classes of Shares

Facts

- Crompton owned shares in a home unit that entitled her to certain rights in respect of one of six units in a building owned by the company,
- The company altered its constitution so as to restrict the right of shareholders to lease the units and to allow determinations of the rights to occupy in certain circumstances.

- Crumpton argued that these alterations constituted a variation of her class rights and hence the procedure for class consent set out in terms similar to **s 246B (2)** should have been followed.

Issues

- Was this an alteration of class rights?

Held

- It was held that the shares were divided into different classes despite the fact that the constitution did not refer to the groups of shares as classes.
- They were classes of shares because one group had quite different rights to another group.

White v Bristol Aeroplane Co [1953]

Variation of Class rights

Facts

- The company had ordinary and preference shares on issue.
- It proposed to issue further preference shares which would rank equally with the existing preference shares.
- A preference shareholder challenged the issue.

Issues

- Was this a variation of class rights? NO

Held

- In this case, a bonus issue to holders of ordinary shares only was held not to “affect, modify, vary, deal with or abrogate” the rights of existing preference shareholders.
- While the bonus issue had the effect of increasing the votes cast by ordinary shareholders and thereby diluting the percentage of votes of preference shareholders at shareholders’ meetings, this did not affect preference shareholders’ strict legal rights which remained the same.
- They continued to have the right to vote one vote per preference share.
- This was the narrow interpretation of “variation of class rights”

Greenhalgh v Arderne Cinemas [1946]

Variation of Class rights

Facts

- A company issued 21,000 preference shares of 10 shillings each and 31,000 ordinary shares of 10 shillings each.
- Under the articles, each share carried one vote.
- The company also had the power to subdivide its existing shares.
- When the company fell into financial difficulties it entered into an agreement with Greenhalgh by which he lent it £11,000 secured by a debenture.
- He was also issued with 10-shilling ordinary shares subdivided into 2-shilling shares. Each 2-shilling share was to have the same voting rights as the issued ordinary 10-shilling shares.

- After differences arose between the parties, the company resolved at a general meeting to subdivide all existing 10-shilling shares into 2-shilling shares ranking equally with the subdivided shares held by Greenhalgh.
- The effect of this was to diminish the proportion of votes that Greenhalgh previously had and meant that he no longer held sufficient shares to block the passing of special resolutions.
- Greenhalgh argued that the voting rights attached to his shares were varied without the consent of the holders of those shares as required by the articles.

Issues

- Was this a variation of class rights? NO

Held

- It was held that the voting rights were not varied even though they were affected in a business sense.