

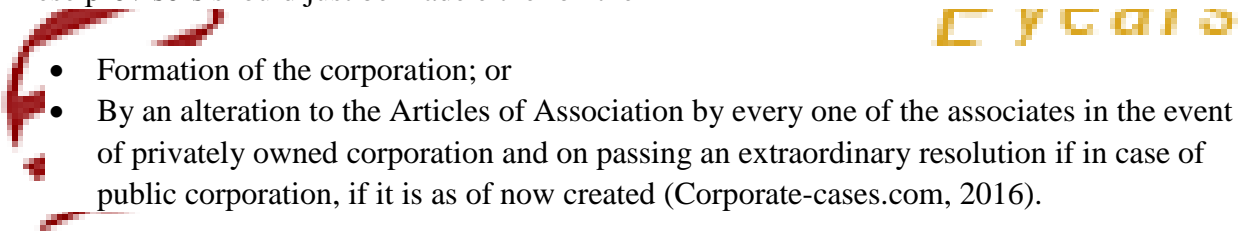
Question 1

Issue - David in the case study want to have entrenched clause included in the company's constitution.

Rule - Section 5 of the Companies Act 2013, contains the conditions concerning Articles of Association of a corporation. An entrenched clause or else entrenchment clause of an essential law or constitution is a proviso which makes certain alterations either extra troublesome or impracticable, that is, inadmissible. It might need a type of supermajority, a referendum submitted towards the individual, or the assent of another individual. Entrenchment could be either absolute or restrictive. Absolute entrenchment infers that specific proviso's are unchangeable and difficult towards changing unless there is a court or tribunal judgment. Conditional entrenchment, then again, suggests that specific proviso's could be modified, subjected towards satisfaction of specific conditions or conformity with particular strategies (Corporate-cases.com, 2016).

The techniques for Incorporation of Entrenchment Clause

These proviso's should just be made either on the –

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- Formation of the corporation; or
 - By an alteration to the Articles of Association by every one of the associates in the event of privately owned corporation and on passing an extraordinary resolution if in case of public corporation, if it is as of now created (Corporate-cases.com, 2016).

Such a proviso alluded to as a provision for entrenchment', might just be made in the corporation's articles on formation, or by a correction of the corporation's articles consented to by all individuals from the corporation. In any case, any such proviso for entrenchment doesn't prevent modification of the corporation's articles through agreement of all individuals from the corporation, or by judgment of a court or other power which has authority to change the corporation's articles (Corporate-cases.com, 2016).

As per the Corporations Act 2001 – section 45A

A proprietary corporation is an organization that is registered as, or changes to, a proprietary corporation in this Act (Corporations Act , 2001).

Application - David is contented with the need a corporation to maintain his business. On recommendation he concurs that the best decision is a proprietary company. As he finishes the application frame to join the corporation, (Form 201) he exhorts that despite the fact that he wishes towards having absolute control of the corporation He likewise needs to have his mother Helen required as a fellow director later on. Later on David includes Tom and Helen has later on been appointed as executives of the corporation. Sarah would be designated as a substitute

executive to the corporation towards replacing Helen while he is on his vacation for 6 months. Thus David needs to amend the company's Articles of Association for the inclusion of newly appointed directors and thus this would include a provision for entrenchment.

Conclusion - thus we could say that David can include the entrenched clause by amending the Articles of Association of his company.

Question 2

Issue – Michelle is the receptionist in the case study and was asked by Tom the office manager towards ordering from Office works. The company refuses to pay for the items. The issue is what authority Michelle has towards ordering the amount of stationery and the i pad, and do the company is bound to pay Office works or not?

Rule - Section 126 Corporations Act, states that a Company could be bound where the agreement through other parties is entered by an approved agent on behalf of the organization. A principal could be obligated for the activities of his agents if those actions were performed inside the Scope of the Agent's Authority that is made by: Actual Express authority, Actual Implied authority and Apparent Authority. Actual Express Authority could be given to an agent explicitly that could be either verbally or written (for instance in the constitution of the corporation) (Corporations Act , 2001). *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd.*

Actual Implied Authority could be controlled by the individual's spot in the corporation (for instance executives have suggested power towards dealing critical matters for the corporation because of their duties as well as decisions in a corporation) (Corporations Act , 2001). *Hely-Hutchinson v Brayhead Ltd.*

Apparent Authority is the point at which an agent appears to have as the corporation had some way or another arranged that the staff has a few power, regardless of the possibility that it was not given express or implied authority. If this agent that has clear power gets into contracts with 3rd parties for the corporation, so the principal is bounded (Corporations Act , 2001).

3rd parties could depend on Section 129(4) Corporations Act though they could expect that officials and agents legitimately play out their responsibilities in the corporation. But, according to area 128(4) 3rd parties contracting with corporations are not qualified towards making these suspicions in the event that they are not correct. When the agents carry out something past the extent of its power, their activities are not obligatory on the principal, which implies that, this individual is not an approved agent so if he gets in contracts with 3rd parties for the corporation, so the principal can't be sued. The contracting 3rd parties might sue the agent intended for misrepresentation or violation of warranty of authority (Corporations Act , 2001).

Application - For this situation, David who is the director has given Tom the actual express towards performing some actions for the most part required in maintaining the business. Thus, when Tom had the Actual Authority, he had conveyed his power to Michelle, which implies that now Michelle had power towards carrying out as an agent and managing Office Works.

Conclusion – The Company Racing Parts Pty Ltd is obligatory and should disburse Office Works as Michelle had gotten power from Tom who had the actual power, with respect to the extent of authority. Additionally, Office Works can uphold an agreement against the said company as they comprehend that Michelle had in any event apparent authority, depending on section 129 Corporations Act.



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