DIRECTORS DUTIES - *Companies Act 2006 s171 – 177* (statutory duties)

REMEDIES:
Damages is the usual remedy available to the Company against the director in breach of duties owed.
CA 2006- s.171-173 & 175-177 are fiduciary duties for which equitable remedies may be available.

REMOVAL OF A DIRECTOR:
CA 2006 s.168 provides that a director may be removed from office at any time by **ordinary resolution** of which **special notice** has been given by the person proposing it.
s.168 cannot be overridden by the articles or any service agreement, although the articles can provide for weighted voting rights e.g. "***Bushell v. Faith*** clause"

Bushell v Faith
Mr Faith and his sisters, Mrs Bushell and Dr Bayne had 100 shares each in the company. Under Article 9 of the company constitution directors' shares were weighted and carried three votes each in the event when the director was proposed to be removed. The sisters tried to remove Mr Faith, who as a director recorded 300 votes against their 200 votes together.
HELD: the provision was valid and circumvented the ***CA s168.***

Eley v. Positive Life
The Company Articles stated that Mr. Ely was to be the company's solicitor. The directors decided to use other solicitors. Mr Eley sued to assert a right conferred on him by the articles in his capacity as a solicitor rather than a member.
HELD: that the articles conferred no rights on a member where the member seeks to enforce rights in a capacity other than a member. The articles contained either a "stipulation which would bind the members", or else a "mandate to the directors" from the members.

SHARES

- Shares in a limited company must have a fixed nominal value (*s.542(1) CA 2006*)
- an allotment of shares without a fixed nominal value is void (*s.542(2) CA 2006*).
- Definition of the term 'share'
  - *" …/the interest of the shareholder in the company measured by a sum of money, for the purposes of **liability** in the first place and of **interest** in the second, but also consisting of a series of **mutual covenants** entered into by all the shareholders".* [Emphasis added]: ***Borland's Trustees v Steel*** *(1901)*

DEBENTURES

- A debenture technically is a document which acknowledges that a company has borrowed money and was not used to refer to any security that may have been given for the loan.
- But common business practice: the term 'debenture' is extended to include the loan itself and it usually designates a secured loan as opposed to an unsecured one

CHARGES AND WINDING UP

s860 CA 2006: **Charge** must be registered within 21 days of its creation.

s.175 Insolvency Act 1986: Preferential creditors' **order of priority**

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