



INSTITUTE OF DISTANCE LEARNING

KWAME NKURUMAH UNIVERSITY OF SCIENCE
AND TECHNOLOGY, KUMASI, GHANA



MAS 354 Company Law

UNIT 2: SOURCES OF COMPANY LAW

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THE SOURCES OF COMPANY LAW

A source of law may mean two things:

- First, it may mean the authority from which the laws of a State spring, for example, the current constitution, enactments by parliament/decrees by military government. These are described as formal source.
- The second meaning is the source from which the rules of law are derived and are referred to as legal source. Under the second meaning, the law of Ghana has three sources, namely: Common Law, including judicial precedence, Equity and Customary Law.



The question of sources of law in Ghana is answered by our country's most authoritative legal document, the CONSTITUTION OF GHANA.

Article 11(1) of the 1992 Constitution gives the following as sources of law in Ghana:

- The constitution,
- Enactments,
- Rules and Regulations,
- The existing law and the
- Common law



(B) LEGISLATIVE SOURCE (Statutes/ Decrees)

- Enactments by Parliament and decrees made by military regimes which are still in force.
- These form the primary statutory sources of law in Ghana. In this sense, the Ghana Companies Act, 2019 (Act 992) is the main primary legislative source of Company law in Ghana (regulating business companies and their operations).
- However, some other relevant statutes have special provisions regulating business association and the conduct of business.



The other relevant Statutes include:

- Ghana Invest. Promotion Center Act 2013, Act 865
- Contract Act, 1960 (Act 25)
- Trustee (Incorporation) Act 1962 (Act 106)
- Bodies Corporate (Official Liquid) Act 1963 (Act 180)
- Co-operative Societies Decree 1968 (NLCD 252)
- Exchange Control Act 1961 (Act 71)
- Incorporated Private Partnership Act 1962 (Act 152)
- Insolvency Act 1963 (Act 153)
- Registration of Business Names Act 1962 (Act 151)
- Borrowers and Lenders Act 2008 (Act 773)
- Banking Act 2016, (Act 930)



(C) STATUTORY INSTRUMENT (LI) AS SUPPLEMENTARY SOURCE

These are regulations made by ministries and other authorities under power conferred by parliament. Such Regulations relating to associations of business organizations include:

- *Companies (Prescribed Forms) Instrument, 1963 (L.I. 289)*
- *Registration of Business Names Regulations, 1974 (L.I. 982)*
- *Stock Exchange (Ghana Stock Exchange) Membership Regulations 1990 (LI 1510)*



(D) LEGAL SOURCE

COMMON LAW SOURCE (Judicial Precedents)

- Salomon v Salomon & Co. (1897), dealing with the **separate legal personality of company** when incorporated and its liability;
- Trevor v Whitworth (1887), which **requires a company's share capital to be kept intact for the benefit of its creditors**;
- Ewing v Buttercup Margarine Co. Ltd. (1917), it concerns name used by two companies to sell the same goods and the plaintiff who earlier in 1904 used the name contended that there was likely to be confusion between the two companies which the defendant denied. Court held that an injunction to be granted to restrain the defendant from the use of its name which registered in 1916 (because the objects and the place of business are the same and could create confusion, *i.e.* **the tort of passing off**)



- **Royal British Bank v. Turquand** (1855), the company went into liquidation and the liquidator (Turquand) argued that the company had no obligation to repay the loan since the loan contract (debentures) had been made without the authority required by the articles.
- Held: the bank must be deemed to be aware that the directors needed authority to borrow but could also assume that authority had been properly given since the bank may have no means of knowing whether a valid resolution had been passed. However, a person who has any knowledge to the contrary cannot make these assumptions ***The case also lays down the indoor-***



- **Panagiotopoulos v Plastico Ltd.** (1965) GLR 176, deals with **pre-incorporation contracts**. Personal liability of signatory to contract of a company (before its formation) will be fully effected in the absence of expressed exclusion of personal liability.
- **Foss. v Harbottle** (1843), which affirms **the principle of majority rule and minority protection**. The principle that court will not intervene in a matter which the company is competent to settle itself, particularly in a case of irregularity requiring that the company ratifies it by its own internal procedures. An individual cannot take a legal action in response to a wrong suffered by the company.



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Thank You

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