

The Limits of Corporate Power: A Comparative Analysis of Trading Powers and the Ultra Vires Doctrine in both Common and Civil Law Jurisdictions

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Abstract

The courts created the ultra vires doctrine to restrict a registered company's authority to the things specified in its objects clause. It states that any action that went beyond those goals was not just outside the company's capabilities but also void, meaning it had no impact at all. This paper examines the effect of the ultra vires doctrine on the trading powers of a company at both common and civil law jurisdictions and the impact of the statutory reforms across jurisdictions aimed at reducing its deleterious effect on corporate transactions entered into by company in violation of the doctrine. The doctrinal research method was used. Reliance was placed on primary sources such as companies acts in jurisdictions in focus and relevant case law. Secondary sources such as journals both online and offline were used in the research. It also employs a comparative functional approach in analysing the applicable law in the selected jurisdictions. It was found that the doctrine had hitherto a strong hold on the trading powers of the company which have now been whittled down a great deal and in some cases relaxed to enable full realisation of the power of a natural person which a corporation should have. It comes to the conclusion that as the doctrine of constructive notice is abolished, a company should be allowed to enjoy the liberty to contract without worrying about being constrained by the ultra vires doctrine.

Keywords: corporate capacity, trading powers, ultra vires, constructive notice, statutory reforms

Introduction

One essential idea in corporate law is the ultra vires doctrine. The doctrine's main takeaway is that an established corporation can only accomplish the goals specified in its memorandum of association since it is an artificial person created for those purposes.

The theory placed unjustified restrictions on a company's ability. Of course, there are some things that a business just cannot do like getting married or committing rape. In addition to these intrinsic limitations on a company's capacities, the ultra vires doctrine asserted that a company should be considered incapable of accomplishing anything that was outside the scope of its objects clause.

The ultra vires concept at common and civil law, as well as its reform through statutory action in the United States, Nigeria, Russia, and the United Kingdom, are the limits of corporate power that are examined in this study. It specifically looks at the common law notion of ultra vires and how

much the Companies and Allied Matters Act 2020 has changed the common law situation as it currently exists in Nigeria. Next, the position under the Companies and Allied Matters Act 2020 is contrasted with the positions under the Russian Civil Code, the US Model Business Corporation Act 1985 Revision, and the UK Companies Acts 1985, 1989, and 2006. The paper is broken up into four sections. Part one covers the introduction, while Section Two discusses the ultra vires doctrine's common law application. Section three looks at how the idea is applied in common and civil law jurisdictions, and Section Four concludes the study.

Ultra Vires Doctrine at Common Law

According to common law, any transaction carried out outside the goals specified in the memorandum is ultra vires, meaning it is outside the company's authority and is null and invalid with no bearing whatsoever. Even if the other party to the contract was unaware that it was ultra vires, the corporation cannot be held accountable for such a transaction. This is due to the assumption that all individuals interacting with the firm are aware of the memorandum's contents, which can be examined at the company registry prior to the contract being made. Once more, even with the complete consent of all shareholders, such a transaction cannot be ratified.

Originally developed in relation to statutory corporations, the ultra vires doctrine was designed to keep directors in check by preventing them from deviating from the goals for which the company was established. All of the members' interests were used as justification for the theory. It gave members the assurance that their money would not be wasted on things they had not considered when they made their investment in the business. Additionally, creditors could utilize it as a security to prevent the company's assets from being diverted to unimaginable ends.

The doctrine was rigorously modernized in the well-known case of *Ashbury Railway Carriage & Iron Co. v. Riche*¹ in summary, the company was established with the intention of producing and selling railroad wagons and carriages or renting them out; buying, leasing, operating, and selling mines, minerals, land, and buildings; and conducting business as a general contractor and mechanical engineer. Riche and the directors agreed to purchase a concession in Belgium to construct and operate a railway. The corporation was supposed to raise the money, and Riche was supposed to build the train line. The company repudiated the contract after partial performance and claimed that it was ultra vires when it was sued for damages. Even the later consent of all shareholders could not confirm the contract since the House of Lords unanimously ruled that it was unlawful and beyond the company's authority. According to Lord Cairns in *Ashbury Railway Carriage & Iron Co. v. Riche*²:

The question is not the illegality of the contract but the competency and power of the company to make the contract. I am of opinion that his contract was, as I have said, entirely beyond the objects of the memorandum of association. If so, it was thereby placed beyond the powers of the company to make the contract. If so, it was void because the company could not make the contract. If so, it

¹ (1875) LR. 7 HL 753.

² (supra)

is not a question of whether the contract ever was ratified or not ratified. If it was a contract void at its beginning it was void for this reason-because the company could not make the contract.

There were two effects of the doctrine at common law. First, a company could successfully avoid any liabilities resulting from any transaction by relying on the doctrine. This was the position in the Ashbury case. Secondly, a company could not enforce an ultra vires transaction against persons who deal with it. So even where the other party had gained considerably under the transaction, the company could not recover any damages or property passed under the transaction. This was the position in the Nigerian case of *Continental Chemist Ltd. v. Ifeakandu*.³ In that instance, the plaintiff company's memorandum listed the following as its goals:

To import drugs;

To buy and sell drugs;

To manufacture drugs;

To compound drugs'

(e) To engage in any venture that the board believe will boost the company's earnings;

and

(f) To carry out any incidental tasks and activities that are necessary to achieve the aforementioned goals and abilities, or any combination of them.

The defendant committed to work and practice under the plaintiff company for a specified salary after the corporation contracted to educate him to become a doctor. As agreed upon, the corporation hired him after he qualified. Following a disagreement between the parties, the defendant quit working for the company, and the latter filed a breach of contract lawsuit against him. The contract was ultra vires, the defendant argued. Considering the memorandum's goals, the trial judge maintained the plea. The company appealed to the Supreme Court because it was unhappy with the lower court's decision. Bairamian JSC dismissed the appeal, stating:

After a company is incorporated, the memorandum becomes the charter of its activities and at the same time defines its field of operation. Apart from the statutory powers, anything done outside the stated objects is ultra vires the company; it is invalid and cannot be ratified by the members.

The ultra vires doctrine was applied freely at common law. In *Attorney-General v. Great Eastern Railway Co. Ltd*⁴ according to the English law lords, the concept of ultra vires is used generously, meaning that anything that is reasonably incidental to the goals indicated in the memorandum unless specifically forbidden is viewed as intra vires, or within the company's authority. The major goals clause, however, was created by the courts to limit the omnibus powers that a business may

³ (1966) 1 ANLR 1 S.C.

⁴ (1880) 5 App Case 473.

grant itself in its memorandum, even in its most generous interpretation. Thus, in *Anglo-Overseas Agencies Ltd. v. Green*⁵ Salmon, J. outlined this judicial device's impact as follows:

Where the memorandum of association expresses the object of the company in a series of paragraphs, and one paragraph, or the first two or three paragraphs, appear to embody the main "object" of the company, all the other paragraphs are treated as merely ancillary to this "main object" and as limited or controlled thereby.

Draftsmen frequently adorn the memorandum with one or more clauses that grant the corporation sweeping powers to conduct any transaction that may be incidental and helpful in achieving its goals. Despite its ancient origins, this practice has been assiduously maintained as a hallmark of legis per excellence. There is a catch, though. Any omnibus clause must have some connection to the company's "main object"; otherwise, it will be deemed null and void.

The Supreme Court, for instance, correctly noted in the *Continental Chemists* case that every omnibus authority granted to a company by its agreement requires the existence of a subclause of the right to perform that particular conduct. It was also decided that paragraphs (e) and (f) were indefinite and, as a result, pointless and null and void to the extent that the company's memorandum lacked such a subclause. The contract was not saved by the company's belief that it would be lucrative to train a medical professional to manage a hospital in combination with the activities or business permitted under its memorandum.

Ultra Vires Doctrine in Other Jurisdictions

3.1 The position in United Kingdom

Prior to the United Kingdom's 1972 ratification of the Treaty of Rome, several actions were done through statutory intervention in response to the 1945 Cohen Committee report's recommendations. The Committee came to the following conclusion in its report:

The doctrine of ultra vires is an illusory protection for the shareholders and yet may be a pitfall for third parties dealing with the company, and as now applied to companies, the doctrine serves no positive purpose but causes unnecessary prolixity and vexation.

As a result, the Committee recommended that a corporation should have all the authority of a natural person with regard to third parties and that a memorandum of association should only serve as a contract between a company and its shareholders regarding the powers that directors may exercise. The committee's recommendations were later incorporated into the Companies Act of 1945, which permitted a special resolution to amend the objects section in Section 5. It meant that companies could no longer be accused of not having the abilities needed to conduct business or lose out on commercial opportunities that were discovered after registering. The Act, however, said nothing about circumstances in which Section 5 modifications had not been made. Comprehensive changes to the ultra vires rule were not put into effect since Parliament did not implement all of the Cohen Committee's recommendations. The Cohen Committee suggested that

⁵ (1951)1QB1

all of a company's authority be ascribed to a natural person. This would have meant that the ultra vires rule would no longer apply to transactions involving third parties. The Cohen Committee's recommendations undoubtedly mirrored the business realities of companies that were constrained by contractual protections. According to Gower, who aligned his opinions with the Cohen Committee findings, the ultra vires concept has outlived its usefulness and is now only a nuisance to the firm and a trap for the naive third party.

On the other hand, the Jenkins Committee report from 1962 contended that eliminating the ultra vires doctrine would entail granting the business all of the authority of a natural person with regard to third parties. This basically means that the board of the firm would be able to use all of the broad powers granted to it. Given the widespread desire and/or agitation that shareholders should have more effective oversight over the actions of directors, the Committee consequently believed that this would be a step backward. The Committee therefore recommended that the ultra vires doctrine be maintained and that a third party's ability to enforce a contract against the company should not be automatically disregarded if he honestly and reasonably did not understand that the memorandum and articles essentially prohibited the corporation, any of its directors, or another person or individuals acting on its behalf from signing the relevant contract. The Jenkins Committee concurred with the Cohen's Committee that the notion of constructive notice, which is a supplement to the ultra vires rule, had to be eliminated.

Pennington made the following observation in his critique of the Jenkins Committee report:

A more speedy way of achieving justice would be to abolish the ultra vires rule altogether as a ground for invalidating contracts and dispositions of property. It would then operate only within company as between directors and shareholders, by enabling shareholders to restrain directors from entering into proposed ultra vires contracts, and by enabling the company result of ultra vires acts already carried out.

The Companies Act 1948 included such suggestions and allowed corporations to change their objects clause by passing a special resolution. Although this statutory reform allowed businesses greater latitude and flexibility to change the principles governing their corporate operations, it did not provide third parties with protection when a company entered a new market without first changing its objects clause.

The ideas of ultra vires and constructive notice had to be changed when the UK joined the Treaty of Rome in 1972 in order to comply with Article 9 of the First Directive published by the European Communities Council for the Harmonization of Member State Company Law. According to Article 9(1) of the First Directive:

Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

The European Communities Act of 1972's section 9(1) made it clear that the goal of Article 9 was to prevent a third party doing business with a firm from being negatively impacted by the thought that the company was going beyond its capabilities. According to the memorandum or articles, the directors' power to bind the company is unrestricted, and any transaction decided upon by the directors is regarded as one that the company is capable of entering into in the interest of an

individual conducting business with the company in good faith. The original version of this regulation was re-enacted as the UK Companies Act 1985, section 35.

It has been noted that there were several errors in the way this clause was written. First, only a transaction "decided on by the directors" was covered by the clause. Second, it exclusively benefited outside persons "dealing" in "good faith" with the business. The outcome was really disappointing.

The Companies Act 1989 revised section 35 of the Companies Act 1985 in response to the Prentice Report's recommendations. The aforementioned section 35 subsection 1 stipulates:

“The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.”

However, the ultra vires doctrine was not repealed. The right of a member to petition a court for an injunction to stop his firm from engaging in a transaction that would be beyond its means is preserved by the new section 35 subsection 2. This right was subject to a proviso for the benefit of third parties in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

A clause pertaining to double ratification also affirms that the directors have an obligation to adhere to any restrictions on their authority arising from the company's memorandum (section 35 subsection 3). First, unlike the common law norm of non-ratifiability, the act itself can now be ratified by a special resolution. Second, a specific resolution that is distinct from the one that ratifies must be used to release the directors or any other individual from liability resulting from a violation of this obligation.

Section 3A, which was created as a result of the Companies Act 1989, is another modification that says the following:

According to the company's memorandum, the company's object is to operate as a broad commercial enterprise -

The company's object is to engage in any kind of commerce or business;

and

The corporation has the authority to take any action that is necessary or helpful to the operation of any trade or business it conducts.

It is clear that the purpose of Companies Act 1989, section 3A, was to persuade companies with commercial objects to do away with the customarily extensive objects clause. The question of whether a corporation's transactions are beyond its authority would not come up because a company with a general commercial clause can conduct any activity as a natural person with full ability.

The elimination of the constructive notice provision, which was established by Section 35 of the Companies Act, 1985, was the last modification brought about by the Companies Act, 1989. Under

Companies Act, 1989 the revised Section 35B, thereof, third parties were not required to have constructive knowledge of the transaction outside the company's constitution; nonetheless, they still needed to verify that the person they were dealing with was authorized by the board. When a director or other insider signed a deal with a board, the constructive notice rule did not apply. This was judged to be outside the board's authority, and the deal was null and void if not approved. Therefore, the elimination of the constructive trust rule did not protect insiders, and any gains or losses resulting from the deal were held directly accountable to the insider or those who approved it.

The ultra vires doctrine was a specter that still haunted directors at the beginning of the twenty-first century. The 1998 Company Law Review aimed to simplify company law in order to promote a "straightforward, cost-effective, and fair" corporate law system, and one of its objectives was ultra vires. The study that followed demanded that corporations have an unrestricted capacity and a single constitutional instrument. This effectively nullified the requirement for an objects provision in the memorandum of organization. New clauses pertaining to the directors' power to bind the firm were among the other proposed. These suggestions, including the total elimination of ultra vires, were included in the Companies Bill. However, charity organizations were exempt from the abolition since they were thought to need rigorous responsibility when conducting business, necessitating the limitations imposed by the objects clause. Under Sections 34A and 35B, the Bill chose to protect third parties' rights, with the exception of doing away with the apparent authority and good faith requirement. According to the White Paper, the government believed that the articles of organization, memorandum, and objects clause were no longer useful for business or legal purposes. The items were only for internal disputes for companies that decided to keep them. The elimination of the objects clause eliminated the concerns of third parties regarding constructive awareness and contracting competence.

Since the passage of the Companies Act 2006 in the United Kingdom, the ultra vires doctrine's relevance in English company law has substantially diminished. Although the doctrine primarily pertains to charities, a shareholder may request an injunction, only in advance, to stop an action that is deemed to be ultra vires. Companies are not required to register objects under the aforementioned regulation. Accordingly, unless a company's articles expressly limit its objects, those objects are unrestricted, according to section 31 of the Companies Act 2006, subsection 1 thereof. This clause has the effect of making it irrelevant for contracts with third parties to be lawful, even if companies register their objects. According to the same UK Companies Act, 2006 section 39.

"The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution."

Section 40 subsection 1 of the same Act reinforces the aforementioned clause by stating that:

In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.

An action may be taken to contest a transaction that goes beyond the directors' authority, but this will not change the company's liability for completed transactions. This can be deduced from section 40 subsection 4, which reads as follows:

This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors. But no such proceedings lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

Based on the aforementioned, it may be concluded that the common law notion of ultra vires has been modified in the UK to allow transactions that were previously prohibited by common law, hence decreasing its significance in business transactions by companies.

3.2 The position in United States

In the United States, any activity that was not permitted by the corporation's articles of incorporation or the state's corporation statute was void for lack of capacity. Either the company or the other party that dealt with the corporation could claim this lack of ability or power as a defense against a contract. Ultra vires was frequently used as a convenient excuse to break an arrangement that was no longer seen desirable. The doctrine has almost been abandoned as a result of this abuse.

According to the Revised Model Business Corporation Act 1985 Revision, a corporation has the same authority as an individual to take any necessary or practical action to conduct its business and affairs, unless otherwise specified in its articles of incorporation. Therefore, it is optional to include a purpose clause in the articles under the RMBCA. Unless the documents specify a different goal, any corporation formed under the RMBCA is intended to conduct any legal activity. The necessity that the corporation's goals and operations be "lawful" or "legal" was never eliminated, even when state incorporation statutes no longer required the statement of particular corporate purposes and powers. According to court rulings, illegal conduct are in fact beyond the bounds of the law. For example, in *Roth v. Robertson*⁶, when the corporate directors of an amusement park received "hush money" in exchange for assurances that a law prohibiting them from operating on Sundays would not be enforced, the New York Supreme Court decided that they were personally liable for the money. The payments were "the assertion that the payment was made for the purported advantage of the corporation cannot be regarded as any legal justification since they were more than an ultra vires transaction; they were a terrible moral transaction, and this is evident." Due to the statute, it was not feasible to challenge the legitimacy of corporate activity on the basis that the corporation lacked the necessary authority.

For two reasons, the ultra vires doctrine is not very important nowadays. First, to avoid any ultra vires issues, almost all organizations have broad clauses. Second, a corporation or the other party to an agreement cannot evade an obligation on the grounds that the corporate activity is ultra vires under the RMBCA or the majority of state corporation statutes.

Therefore, the use of ultra vires as a defence against contract enforcement has been abolished by the RMBCA. It does, however, allow a shareholder to request a court order to prevent a corporation from acting beyond its authority in a proposed action. Additionally, it allows the corporation, a shareholder, or a receiver to sue the directors or other officers who engaged into an ultra vires contract for damages to the corporation. Lastly, it gives the state attorney general the authority to

⁶ 64 Misc. 343, 345, 118 N.Y.S. 351, 353 (Sup. Ct. Erie County 1909)

prevent the company from engaging in illegal activities. If all parties are present, the court may award damages if and when it is appropriate to do so in such shareholder's actions, as well as enjoin or set aside the act if it is reasonable to do so.

The intricacy of the English technique is rendered needless and tedious by the American approach. Indeed, as long as the action is legal for an individual to engage in, a corporation is free to do anything it wants. Furthermore, the statutory granting of such broad, general corporate powers has not resulted in any notable issues. Naturally, the ultra vires theory has not been entirely abandoned in the US. In some cases, several legal ramifications have been preserved. This is the crucial difference. Both third parties as well as the corporation are prohibited by law from declaring any legally binding transaction that exceeds the corporation's jurisdiction unlawful by applying the ultra vires principle. As previously mentioned, the Attorney General alone and/or a corporation shareholder are legally allowed to successfully contest corporate ultra vires conduct.

3.3 The Position in Russia

The ultra vires problem is a significant corporation law issue in Russia. Russia does not uphold the legal notion of ultra vires in the meaning of US or UK law because it is a civil law nation. In other words, a commercial organization typically has the ability to engage in any type of transaction. However, transactions that the CEO of the company enters into that go beyond the management authority specified in the firm's foundation articles may frequently be deemed invalid. Due to this restriction, the rights of legitimate third parties conducting business with the corporation are at risk, especially when compared to comparable parties in the US or the UK.

The state restricted the ability of legal groups to serve specific purposes during the communist era in Russia. However, with the adoption of the first section of the Russian Federation's Civil Code ("GK RF") in 1995, things altered. Although the status and operations of legal persons are currently governed by a number of special legislation (such as the Law on Limited Liability Companies and the Law on Joint-Stock Companies), the Civil Code specifies the fundamental rules governing the legality of legal person transactions. Even though it is not officially a source of law in Russia, the judiciary frequently creates standards that are nearly as significant as those set forth by statute.

Article 49 of the Civil Code outlines a legal person's capacity and states that a legal person may have civil rights that align with the goals of its operations as stated in its founding documents and may also take on responsibilities related to those activities. Commercial organizations may enjoy civil rights and undertake civil obligations necessary for the exercise of any activity not expressly forbidden by law, with the exception of unitary businesses and other legally designated types of organizations. As a result, most commercial organizations have an infinite capacity by default, but they should "conform" to their particular goals.

Regarding ultra vires transactions, Art. 173 GK RF states that a transaction carried out by a legal entity that is in conflict with the objects of the enterprise that are specifically limited in the entity's founding documents or by a legal entity that lacks a license to engage in the activity in question may be declared invalid by the court in an action brought by the legal entity, its founder, or a state agency that has control or oversight over the legal entity's operations. The other party to the transaction must have known—or at least should have known—that the transaction was unlawful. This must be demonstrated and proven by evidence. This means that while commercial companies can do anything they want, their founding papers may specifically restrict what they can accomplish. Any transaction that exceeds the limit in this situation would be voidable; if so, a court

ruling would proclaim it so. Non-commercial organizations and some commercial organizations have specific (limited) capacity, meaning they can only accomplish things that the law expressly authorizes them to do. Even if the court has not decided anything to that effect, their transactions that exceed the limit are null and void.

The actions of the governing bodies of legal persons, such as the general director of a firm, are an entirely separate matter. That is action that goes beyond what a governing body can do. Although a company's overall capacity is typically limitless, the authority of any of its governing bodies is subject to legal restrictions and may also be further constrained by the corporate papers. When a governing body's authority is exceeded, the action is deemed invalid. In other words, transactions that go beyond the authority granted to governing bodies by the founding documents are voidable upon the organization's challenge; transactions that go beyond the authority granted to governing bodies by the law are void unless the legislation specifies otherwise. Beyond the authority of corporate governing bodies, the organization may thereafter approve voidable transactions.

In contrast to common-law legal systems, Russian law clearly distinguishes between a representative of a legal person who goes beyond the authority typically specified in a written power of attorney and the governing body of a legal person, including the general director of a company, who surpasses the authority of the governing body specified in the founding documents. In contrast to a transaction by an unapproved governing authority, the latter is considered to be legitimate. However, the unauthorized representative is a party to the transaction rather than the organization. However, rather than acting as the representative, the organization may ratify the transaction and therefore become a party to it.

The implementation of the ultra vires rule in Russia makes the interests of third parties doing business with the organization relatively vulnerable, increasing the likelihood that the actions of corporate governing bodies would eventually be deemed illegal.

The Position in Nigeria

There were no particular provisions pertaining to the ultra vires doctrine in the Companies Act of 1968 or its predecessors. The Companies Act of 1968's Section 2 only mandated that each firm include its objects in the memorandum of association. Therefore, in Nigeria, the common law was supreme until 1990, when the Companies and Allied Matters Act went into effect. The Companies and Allied Matters Act, 2020 replaced the Companies and Allied Matters Act, 1990 (as amended) after it was repealed.

The ultra vires doctrine was drastically altered by the CAMA. On the other hand, section 27 subsection 1 paragraph (c) requires all companies to include in their memorandum the type of activity they are permitted to conduct as well as any limitations on their authority. Unless otherwise stated in the company's memorandum or in any statute, Section 43 subsection 1 states that every corporation must have all the authority of a natural person with full ability in order to promote its authorized business or objects. Unless otherwise limited by the company's memorandum or other laws, this clause effectively grants a corporation all the authority of a real person with the complete capacity to do its authorized activity. To put it another way, a corporation is allowed to use all of the authority of a natural person in cases when its memorandum does not limit it.

The practice of creating an omnibus clause, which states, "to carry out any additional legal actions that are necessary or helpful in achieving any of the aforementioned objects," may no longer be

required in light of CAMA 2020, section 43 subsection 1 which assumes that the company has all human-like abilities. The company can decide how best to accomplish the given objects. The aforementioned section has given the firm the authority to engage in any transaction that advances its objects without being subject to the ultra vires doctrine. A company can deal with its property, enter into a contract, or become liable as a legal person. CAMA 2020, section 35 subsection 1 which states that a company's objects are unrestricted unless expressly limited in its articles, supports this position.

CAMA 2020, section 43 subsection 1 does not forbid the insertion of express powers in a memorandum; rather, it merely eliminates the requirement for such powers to be fully stated. However, CAMA 2020, section 44 subsection 1 which codifies the common law notion of ultra vires, severely limits the ostensibly expansive powers granted to the firm under section 43. It states that a firm cannot do any business that is not permitted by its memorandum and cannot go beyond the authority granted to it by the Act or its memorandum. This section states that a corporation cannot do any activity or deal that is not specified in its memorandum and that it cannot go beyond the authority granted to it by the memorandum or the Act. This effectively limits the company's ability to conduct business in accordance with the memorandum's objects clause, register with the Corporate Affairs Commission, and exercise the authority granted by the Companies Act. CAMA 2020, sections 43 subsection 1 and 44 subsection 1 have been combined to give Nigerian lawful sanction to the ultra vires doctrine. The theory acknowledges and upholds the requirement that a business, as established by statute, operate within the bounds of its permitted goals and authorities. Section 44 subsection 2 of the Act supports this position by stating that a violation of subsection (1) may be claimed in any proceeding governed by CAMA 2020 sections 344–358.

Section 44 subsection 2 essentially states that actions for violating the ultra vires doctrine may be taken in order to defend minority interests against unlawful and oppressive actions by the majority that are beyond the company's authority. A breach of the ultra vires rule might be prevented by an injunction, or relief could be sought in a personal, representative, or derivative capacity on the grounds of "unfairly prejudicial and oppressive conduct." The persons who may sue the company for such an ultra vires transaction are listed in Section 44 subsection 4. The trustee of any debenture holders who have a floating charge over all or any of the company's assets is one of these parties, as is any shareholder in the company. Any conduct that breaches CAMA 2020, section 44 subsection 1, including the conveyance or transfer of any property, may be prohibited by the court through an injunction.

However, the severity of the common law notion of ultra vires, which is enshrined in CAMA 2020, section 44 subsection 1, has been lessened by section 44 subsection 3. The provision stipulates that:

Notwithstanding the provision of subsection 1 of this section, no act of conveyance or transfer of property to or by company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorized business of the company or that the company was otherwise exceeding its objects or powers.

This subsection's goal is to ensure that no company's act, conveyance, or transfer is deemed invalid because it was not carried out to further any of its approved purposes or operations, or because it went beyond its scope of authority.

A transaction is deemed ultra vires for the firm when it is void ab initio and has no impact. However, because the act, conveyance, or transfer was not made by the corporation to enhance its business or because it went outside its objects or authority, section 44 subsection 3, CAMA 2020 has rendered such a transaction lawful.

The aforementioned clauses imply that the legal rights or interests obtained or to be acquired by either party under a contract will be safeguarded after it has been fully performed or executed. When property has passed to a party or the latter has benefited from the transaction, the section makes sure that no party to the transaction with the company withdraws from it on the grounds that the company lacks the capacity to fulfill his own obligations to the other party. Any contracting party's deceptive designs will be checked by this clause. Additionally, it will significantly lessen third parties' fear when interacting with companies. The section essentially confirms that performed ultra vires contracts are valid.

Furthermore, because section 92 of CAMA 2020 eliminated the doctrine of constructive notice of registered documents, companies are no longer able to rely on it. The severe effects of the ultra vires doctrine have also been lessened by Section 92 of the Act, particularly for the third party that was previously assumed to have actual or take notice of the information included in the articles of association and memorandum, which are both public documents.. Additionally, the presumption of regularity stated in *Royal British Bank v Turquand*⁷ has been affirmed by CAMA 2020, section 93, which says that anyone working with a company or obtaining title under it has the right to believe that the company's articles and memorandum have been correctly followed and that neither the company nor those obtaining title under it will be permitted to deny their truth. Insiders and those with firsthand information are not included in this section's presumptions.

In order to give the bodies more protection, both English and American Acts continue to apply the common law notion of ultra vires with reference to charitable businesses, non-profit corporations, or state-created corporations. CAMA, however, says nothing. It does not distinguish between organizations that are philanthropic and those that are not.

CAMA 2020, sections 27, 43, 44 subsection 1, and 344 subsection 1 collectively have the effect of preventing the firm or a third party from using the ultra vires doctrine to avoid liability for a transaction that was carried out outside of the memorandum's stated objects. The Ashbury and Continental Chemists cases seem to have been statutorily reversed. However, this does not imply that Nigeria's ultra vires doctrine has been eliminated by the Act.

A shareholder or holder of a debenture backed by a floating charge may challenged an ultra vires transaction, or his trustee may petition the Federal High Court under CAMA 2020, sections 44 subsection 4 and 343 paragraph (a) to issue an injunction preventing the business from engaging in the transaction on the grounds that it is ultra vires or that the business is acting beyond its statutory authority. Under CAMA 2020, section 44 subsection 5, any shareholder, holder of a

⁷ (1856) E7B, 327

debenture secured by a floating charge, or his trustee may ask the court to prohibit the contract's fulfillment or transaction in cases where the company has already entered into it.

In any case, the court may set aside or prohibit the performance of the contract and compensate the company or the other party for any loss or damage resulting from the setting aside or prohibition of performance, if it finds it to be equitable and all parties are involved in the proceedings. However, the loss of expected earnings from the performance of such a contract will not be compensated for. Furthermore, under CAMA 2020 section 353, any member, officer, creditor, or the Corporate Affairs Commission may petition the court for redress based on unfairly oppressive and discriminatory behaviour.

As a result, the Act has altered the ultra vires doctrine in two noteworthy ways. First, there is now a much smaller group of people who can use the doctrine. It is now limited to a specific group of investors, notably shareholders and holders of debentures that have floating charges over all or a portion of the company's assets or property. Second, the doctrine's reach has been limited. It is now essentially restricted to executory transactions only. Neither the corporation nor a third party may assert ultra vires to escape responsibility under the transaction after it has been completed, even though it may be the foundation for a petition under CAMA 2020, sections 344–358.

A scholarly author has argued that a company's memorandum no longer functions as its charter under sections 38(1) and 39(3) of the Act. He asserts that an incorporated company now possesses all of the capabilities of a human being. Except in cases where the Act specifically forbids it or where an injunction is issued at the request of a member or holder of a debenture secured by a floating charge, it is free to act and conduct business as usual. Although it is widely acknowledged that the CAMA 2020 has significantly altered the concept of ultra vires, this does not imply that the memorandum no longer serves as the company's charter. A memorandum of association is still necessary for all companies, and a party that feels wronged can ask the court for an injunction if the projected act of the business is not covered by the memorandum of association and is consequently outside its bounds.

Given that the Act prohibits a company from donating or gifting any of its assets to a political party, political organization, or for any other political purpose as a full-capacity natural person, the authority granted to a company in the course of its operations is not absolute. However, it is acceptable for a business to give a gratuitous payment to a current or former employee in conjunction with the termination or transfer of all or a portion of the business or its subsidiary to another individual.

The general remedy opened to one who complained about a company engaging in ultra vires transaction is an injunctive relief. Those entitled to apply for such relief seems to vary across jurisdictions. In Russia an action may be brought by the legal entity, its founder, or a state agency that has control or oversight over the legal entity's operations, whilst in US such action is brought by the Attorney General alone and/or a corporation shareholder. In UK a shareholder may apply to court to restrain a proposed act of the company and in Nigeria a shareholder or a holder or trustees of debenture with a floating charge may apply to restrain a proposed act of a company that is ultra vires.

Conclusion

It cannot be gainsaid that the ultra vires doctrine has universal application with statutory modifications. Under the several statutory regimes under review, the common law position is no longer valid. Measures are being taken to reduce the impact of the doctrine on the contractual ability of the organization. Since a company's objects are unrestricted unless otherwise stated in its articles, the UK Companies Act of 2006 increased a company's capacity to enter into contracts without fear of being seen as an ultra vires transaction. In the US, a company's ability to enter into contracts is unrestricted unless the constitution expressly states otherwise. Neither the corporation nor the third party may use ultra vires to contest a fairly lawful transaction that the firm has entered into. Even so, a shareholder or the attorney general may contest a company's contractual ability to engage in a particular transaction. The situation in Russia is not all that different in that, although business organizations often have limitless capacity, their founding agreements may specifically restrict the range of activities they can engage in. Any transaction that exceeds the limit in this situation would be voidable; if so, a court ruling would proclaim it so. Although it acknowledges a business's legal status as a natural person, Nigeria maintains a partial preservation of the theory, permitting executed transactions between a company and a third party to be exempt from the ultra vires doctrine's grasp.

Though the goal is still far off, it can be concluded that progress is being made across jurisdictions to allow a business to operate as a natural person without being restricted in its contractual powers. There is much more to be done to enable a company to exercise its full trading powers without constraints, as would a natural person under the law.