**Share Holder Defined**

- **Who is a shareholder…?**

- **A shareholder is** - A person whose name is entered in the Share Register as the holder of a share for the time being.

- **Shareholders include** –
  
  A. Anyone named as shareholders in an application of the company at the time of its registration.

  B. Persons entitled to have their names entered in the share register.

  C. Persons to whom shares have been transferred and whose
• However, if a company **Fails** to include the name of a person to whom the shares have been transferred, that person shall be:
  • Deemed to be a shareholder.
  
  • Shall enjoy all the powers, rights and privileges of a shareholder.
  
  • Shall be subject to duties, responsibilities and obligations as a shareholder.
Shareholder Liability

• Who is liable for the wrongdoing of a company…?

• Due to a company having a Separate Legal Personality, its shareholders are not liable for any of companies default or obligation.

• Therefore. Shareholder’s liabilities towards the company are limited.

• They have liabilities only to the extent what the Act or the Articles state.

• However, a shareholder is personally liable if he commits;
  • Any breach of contract with the company
  • Any tort or breach of fiduciary duty against the Company
• Shareholders have **No power** to interfere with the management of a company.

• **Who does the management of a company…?**

• **Shareholders gain power through two ways;**
  A. From the Act
  B. From the Company Articles

• **However, such power can be entertained by shareholders Only -**
  A. At a shareholder meeting
  B. Through a circular resolution signed by shareholders having not less than 85% of the votes
Shareholder Meetings -

- Normally, shareholders take decisions at a shareholder meeting by a way of an **Ordinary Resolution**.

- However, for certain decisions, shareholders have to give special permission via having majority of votes.

- Such approvals are given by a way of a **Special resolution**.

- Situations where shareholders require **Special Resolutions**;
  - Alteration of the Articles
  - Approval of major transactions
  - Approval of amalgamations
  - Reduction of stated capital
  - Resolutions for voluntary winding up
Shareholder

- There are Two types of rights given to shareholders;
  1. Individual rights
  2. Common rights

- Where do shareholders gain these rights –
  a. Companies Act
  b. Articles of association
  c. Prospectus

Statutory Rights –

- Statutory rights (From the Companies Act) can not be changed or altered from other documents.

- No one can refuse these rights. If someone violates these rights, the shareholder can file an action against such person.

- For violation of the common rights, either the whole group or few or an individual can take action.
Individual Rights of a Shareholder –

- **Section 13(B) of the Companies Act** directs a company to include shareholder rights in the Company’s Articles.

- Unless specifically mentioned in the Companies Act, rights recognized by the Act cannot be changed at any given time.

- A shareholder is entitled to the following Personal Rights:

1) A shareholder reserves a right to enter his name in the Share Register.
   - He has a right to check the share register
   - Obtain copies of the share register
2) To obtain a copy of the **Articles of Association** of the company – Section 18

3) To obtain a prospectus, if the company wishes to issue shares in the future.

4) To obtain damages for any **Criminal liability** of the company for **misrepresentation** of the prospectus. *(Check the Prospectus lesson)*

5) To participate in Shareholder Meetings

   – Right to vote on a poll *(Check types of shares and voting rights)*

   – To appoint a representative on behalf of the shareholder to attend meetings and to vote

6) **Right to demand a poll at a meeting** – Section 140.

7) The right to an equal share in **dividends** paid by the company. *(Check the Distribution lesson)*
7) To obtain a restricting order from courts – Section 17(3)

- The Articles and the Act lay down certain Restrictions regarding the business of the company.

- However, a company could act in a manner inconsistent with the restrictions placed by the articles and the Act.

- In such situations, a shareholder could obtain a restricting order from courts prohibiting the inconsistent conduct of the company.

- A Director is also eligible to request courts to
8) Right to obtain a Derivative Action

- Section 224 -233 of the Companies Act

- Any shareholder having fulfilled the following requirements may apply for a derivative action
  - During 6 months prior to making the application
  - Held shares which carried not less than 5% of the voting rights

- A shareholder may apply for the action on behalf of the Company.

- The derivative action by a shareholder can be taken in the following circumstances;
  
  - Affairs of such company are being conducted in a manner Unfair to any shareholder or shareholders.

  - The affairs of the company are being conducted in a manner harmful to the Interests of the company.

  - A material change has taken place in the management or control of the company and that by reason of such change it is likely that the affairs of the company may be conducted in a manner harmful to the interests of the company.
In such situations, a shareholder may:

- Make an application to courts for an order
- The courts may make an order as they think fit to remedy the matter as pleaded by a shareholder.
- Until the final order is made, court can make an Interim Order to regulate the company’s affairs.

Section 234 –
A derivative action by a shareholder can be taken up Only after courts give leave for that application.
9. Minority Buy-Outs

• Generally a company operates on the basis of Majority Rule.
  Eg. Passing a resolution/ Having a poll/ Decision of shareholders

• However, if minority shareholders idea always conflict with the majority idea and they do not have a say in the company, they are Free to Sell their shares and Exit the company.

• The companies Act has provided certain protections to minority shareholders in such situations to exit the company.

• One such protection is identified as “Minority Buyout”.
Minority Buyout and Its Features Under the Companies Act

1) Section 93 of the Act describes this concept.

- What are the situations where shareholders require a Special Resolution at a shareholder meeting?
  - Alteration of the Articles
  - Approval of major transactions
  - Approval of amalgamations
  - Reduction of stated capital
  - Resolutions for voluntary winding up

- If a shareholder Votes Against a Special Resolution that deals with either of the following situations or does not Sign the resolution, then he can request the company to Purchase his Shares.
  - Alteration of the Articles
  - Approval for a major transaction
2) **Section 100 of the Companies Act**

- **If a company does something that would effect the Rights Attached to shares of shareholders,**
  
  - The company should first take approval from such shareholders by a way of a Special resolution
  
  - Any shareholder who votes against such resolution or does not sign the resolution is entitled to request the company to buy his shares.
Procedure in Exercising the Right –

- The shareholder should **Notice** of his Intention to the company in **Writing**.
- Within 10 working days from the adoption of the resolution or receiving notice of its adoption.
- The company must, within 20 days from receiving such notice, agree to purchase the shares **OR** arrange a 3rd party to buy them.
• Normally, a company operates on the basis of the Majority Rule.

• That is to say that any decision regarding the company should be made with the consent of the majority.

• This scenario was discussed in the following case.

• Foss V. Harbottle (1843) 2 Hare 461
**Foss V. Harbottle**

- The directors of a company arranged for it to purchase land from the directors at an overvalue price.
- Enter into an ultra vires loan arrangement to do so.
- Action against the directors were brought by two shareholders. Shareholders were trying to bring an action to enforce rights belonging to the company.
- Because, the company was affected by the action of those directors.

**Question to be solved –**
- Who is suppose to bring an action on behalf of the company for damages made to the company.
- Normally, one would assume that directors are suppose to bring an action on behalf of the company.
- Issue in this situation – Directors were the people who actually undertook the wrongdoing. Will they bring an action against themselves.
• Courts Held – Shareholders cant bring an action on behalf of the Company.

• Reason – Company is a separate legal entity. The proper plaintiff in an action in respect of a wrong alleged to be done to a company is the company itself [“Proper Plaintiff” principle]

• Shareholders cannot act for the company.
To the Foss V. Harbottle Rule –

• It is established under the above Rule that a shareholder or any other person is Not eligible to file an action against a Company for any wrong doing happened to a company.

• However, there are few exemptions where a shareholder [could be a minority shareholder] is entitled to file an action on behalf of a company.

1) Fraud or Ultra Vires –

• If the company is making any fraudulent conduct which is outside its power will not come under this rule.

• In such occasions, a shareholder could file an action on behalf of the company.

• Park v Daily News [1962] Ch 927

– A shareholder could stop the company officials/directors or
2) Special Majority Required -

• There are certain decisions where a company requires the majority approval to execute.

• In such occasions, if the company or any of the members avoid this requirement by only obtaining a simple majority or no majority at all, then a shareholder (minority or not) could bring an action on behalf of the company.

• *Edwards v Halliwell* [1950] 2 All ER 1064

  – Two members of a trade union successfully restrained an attempt to increase the members’ contributions without obtaining the two-thirds majority required under their rules
3) **Personal Rights** -

- If someone does an act which would effect the **Personal Rights** of a shareholder and also **effect the company at large**, then a shareholder is eligible to bring an action on behalf of the company.

- **Pender V. Lushington** (1877) 6 Ch D 70
  - The chairman of a general meeting refused to take the votes of certain shareholders into account.
  - The members were able to bring an action to have their votes counted.
  - Members have a personal right to have their votes counted.
4) Fraud on the Minority and the Wrongdoers are in Control –

- Cook V. Deeks [1916] 1 AC 554