

PHILLIP GILLYON

Called: 1988

Profile:

Main practice areas are company and corporate insolvency law, in both litigation and advisory contexts, including related fields such as financial services, and mergers and acquisitions. Phillip Gillyon was a member (1990-2000) of the Panels of Counsel authorised to represent the Secretary of State for Trade and Industry/the Official Receiver in proceedings under the Company Directors Disqualification Act 1986.

Education:

Downing College, Cambridge (1984-1987) MA (Hons) in Law.

Recent reported cases include:

Company Law:

1. Re Joseph Holt plc (Times, 14th November 2000) (CA)

Takeovers. Whether compulsory acquisition of shares of minority shareholder who had not assented to the takeover offer should be permitted. Whether current practice for dealing with shareholders resident in jurisdictions with exacting securities laws (i.e. the USA, Canada, Australia and Japan) acceptable under Part XIII CA 1985. (Acted for the Offeror, instructed by Addleshaw Booth & Co. (Manchester)).

2. Jarvis plc v. PriceWaterhouse Coopers [2000] BCLC 368

Application under s.394(6) CA 1985 to prevent resigning auditors' statement of circumstances connected with their resignation from being circulated to the company's members. Application successfully resisted. (Acted for PWC, instructed by Herbert Smith).

3. Guinness Peat Group plc v. British Land Company plc [1999] 2 BCLC 243 (CA)

Unfair prejudice petition under s.459 CA 1985. Whether the petition should be struck out without a trial on the grounds that the petitioner's shares were at all times worthless and that the petitioner had therefore suffered no prejudice by the conduct complained of. Strike out application defeated on appeal. (Acted for Guinness Peat Group plc, instructed by CMS Cameron McKenna).

4. Re BSB Holdings Ltd [1996] 1 BCLC 155

Unfair prejudice petition under s.459 CA 1985. Analysis of the fiduciary duties of company directors in respect of different groups of shareholders in the company having differing interests. (Acted for Pearson plc, Granada Group plc and Chargeurs, instructed by Stephenson Harwood).

5. Possfund Custodian Trustee Ltd & Ors v. Diamond & Ors [1996] 1 WLR 1351

Consideration of the question whether those who are responsible for the publication of a prospectus for an issue of shares in a company owe a duty of care not only to the

addressees of the prospectus who rely upon it in subscribing to the issue, but also to those who rely upon the information in the prospectus when making subsequent purchases of shares in the "aftermarket". (Acted for Allied Provincial Corporate Services plc, instructed by Richards Butler).

6. Re Cimex Tissues Ltd [1995] 1 BCLC 409

Consideration of the characteristics of fixed and floating company charges; and in particular, whether a limited right of the chargee to deal with the charged property precludes the charge from taking effect as a fixed charge. (Acted for the chargeholder, instructed by Streathers).

7. Re NL Electrical Ltd. Ghosh and Anr v. 3i plc [1994] 1 BCLC 22

Shares/financial assistance in acquisition of shares/use of incorrect form of statutory declaration. (Acted for 3i plc, instructed by Lawrence Graham).

8. Wilton Group plc v. Abrams & Ors. [1991] BCLC 315

Sale of shares/terms of agreement/whether proper for vendor to be given a service contract in connection with the sale. (Acted for Cowan de Groot plc, instructed by Paisner & Co.).

Insolvency:

1. Re Leyland Daf Ltd. [2001] 1 BCLC 419

Priority as between liquidation expenses and claims of holder of crystallised floating charge. Whether expenses of liquidation occurring after appointment of administrative receivers were to be paid before claims of holder of floating charge which crystallised prior to liquidation. (Acted for the floating chargeholder (with Robin Potts QC), instructed by Freshfields Bruckhaus Deringer).

2. Banca Carige v. Banco Nacional de Cuba (New Law Digest 11th April 2001)

Application for permission to serve out of the jurisdiction proceedings under s.423 IA 1986 on the former and present central bank of Cuba. Whether no jurisdiction to hear proceedings owing to sovereign immunity under the State Immunity Act 1978, or the doctrine of judicial self restraint. Whether ground existed for service out of the jurisdiction - meaning of CPR 6.20(10). Exercise of discretion whether to grant permission to serve out of the jurisdiction. (Acted for Banca Carige, instructed by Holman, Fenwick and Willan.)

3. Re Anglo American Insurance Co. Ltd. (New Law Digest 8th November 2000)

Application for request for judicial assistance to overseas court. Reliance on confidential statement of Provisional Liquidator. Whether disclosure of confidential statement to be ordered. Whether permissible in statement to refer to without prejudice communications. (Acted for the Provisional Liquidators (with David Oliver QC), instructed by Linklaters).

4. Banco Nacional de Cuba v. Cosmos Trading Corp [2000] BCLC 813 (CA)

Petition to wind up overseas former Central Bank as an unregistered company. Whether sufficient connection with this jurisdiction for winding up. Whether Court should wind up an overseas company which has no trading connection with this jurisdiction but continues to

trade elsewhere. Whether State Immunity Act 1978 applied. (Acted for Cosmos Trading Corp., instructed by Holman, Fenwick & Willan).

5. Re Exchange Travel (Holdings) Ltd [1996] 2 BCLC 524

Preference by repayment of directors' loans avoided; balance sheet, rather than cash-flow, insolvency relied upon by the Liquidators. (Acted for the Liquidators, instructed by Addleshaw Booth & Co.).

6. Re a Company (No. 00687 of 1991) [1992] BCLC 133

Winding up/validation order/meaning of "advertisement" of petition. (Acted for the Company, instructed by Lawrence Graham).

7. Re FSA Business Software Ltd. [1990] BCLC 825

Winding up/disputed debt/effect of counterclaim by company. (Acted for the petitioner, instructed by Miller Paris).

Directors' Disqualification:

1. Represents the Secretary of State for Trade and Industry in disqualification proceedings in relation to Queens Moat Houses plc. (Instructed by the Treasury Solicitor).

2. Re Homes Assured Corporation plc [1996] BCC 297

Disqualification of director/whether disqualification proceedings may be stayed by consent/when a stay is appropriate. (Acted for the Official Receiver, instructed by the Treasury Solicitor).

3. Re Hitco 2000 Ltd. [1995] 2 BCLC 63

Disqualification of director/role of appellate court. (Acted for the director).

4. Re Wimbledon Village Restaurant Ltd. [1994] BCC 753

Disqualification of director. (Acted for the director).

5. Re Homes Assured Corporation plc [1993] BCC 573

Publications:

Contributor to Practice and Procedure of the Companies Court (LLP 1997)

Case List:

Re Leyland Daf Limited

Ref: [2002] 1 BCLC 571 (CA)

Re Joseph Holt plc

Ref: [2001] 2 BCLC 604 (CA)

Banca Carige v. Banco Nacional de Cuba

Ref: [2001] 2 BCLC 407

Jarvis plc v. PriceWaterhouse Coopers

Ref: [2000] 2 BCLC 368

Re Anglo American Insurance Co. Ltd

Ref: (New Law Digest 8th November 2000)

Banco Nacional de Cuba v. Cosmos Trading Corp

Ref: [2000] 1 BCLC 813 (CA)

Guinness Peat Group plc v. British Land Co. plc

Ref: [1999] 2 BCLC 243 (CA)

Re Possfund Custodian Trustee Ltd & Ors v. Diamond & Ors

Ref: [1996] 1 WLR 1351

Re Exchange Travel (Holdings) Ltd

Ref: [1996] 2 BCLC 524

Re BSB Holdings Ltd

Ref: [1996] 1 BCLC 155

Re Homes Assured Corporation plc

Ref: [1996] BCC 297

Re Cimex Tissues Limited

Ref: [1995] 1 BCLC 409

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Re NL Electrical Ltd. Ghosh and Anr v. 3i plc

Ref: [1994] 1 BCLC 22

Re Wimbledon Village Restaurant Ltd.

Ref: [1994] BCC 573

Re Homes Assured Corporation plc

Ref: [1993] BCC 573

Re a Company (No. 00687 of 1991)

Ref: [1992] BCLC 133

Wilton Group plc v. Abrams & Ors.

Ref: [1991] BCLC 315

Re FSA Business Software Ltd.

Ref: [1990] BCLC 825

Recent unreported cases/matters include:

Acting for a listed PLC in enquiries by, and appearing before, the Financial Reporting Review Panel (instructed by Bird & Bird)