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the articles between shareholders as to how they would exercise their voting rights on a particular resolution was valid. It emphasised that the shareholders' agreement was of a personal nature and was not embodied in the articles.

The case of **Russell** (above) confirms the principle that a company cannot contract out of its statutory power under section 21 to alter its articles by a shareholder agreement. A different judicial approach was taken when dealing with the issue as to whether the company can contract out of statutory provisions by its articles.⁹ In **Bushell v Faith** [1970] AC 1099, a weighted voting right was included in the articles whereby in the event of a resolution to remove a director that director's shares would carry three votes per share. This has the effect of preventing that director from being removed by an ordinary resolution (now under s. 168, Companies Act 2006). The House of Lords held that the article in question was not inconsistent with the statutory power which was silent on the allocation of voting rights for an ordinary resolution.

In conclusion, shareholders' agreements are more flexible and private, more difficult to change and easier to enforce than the articles of association.¹⁰

⁹ A consideration of the different judicial approach shows your sound knowledge of this legal issue and will gain you more marks.

¹⁰ Your conclusion should echo the legal issues that arise in the question. A succinct conclusion will enhance your arguments and complete your answer.



Make your answer stand out

- Point out that not all the clauses in the articles can be altered by a special resolution in accordance with section 21. You can discuss the common law restrictions and the different requirements for the variation of class rights (s. 630) and the entrenchment articles (s. 22).
- Refer to academic debates on the enforcement of a shareholders' agreement such as: Sealy, L. (1992) Shareholders' agreements – an endorsement and a warning from the House of Lords. *CLJ* 437; Davenport, B. J. (1993) What did *Russell v Northern Bank Development Corporation Ltd* decide? 109 *LQR* 553; Riley, C. A. (1993) Vetoes and voting agreements: some problems of consent and knowledge. 44 *NILQ* 34; Ferran, E. (1994) The decision of the House of Lords in *Russell v Northern Bank Development Corporation Ltd*. *CLJ* 343.

**Don't be tempted to . . .**

- Provide an answer without detailed analysis of *Russell v Northern Bank Development Corporation Ltd* (1992). This is a very important case in relation to shareholders' agreements and must not be omitted in your answer.
- Give a narrative list of a comparison between the articles of association and shareholders' agreements. You should focus on the main differences which lie in their enforcement.

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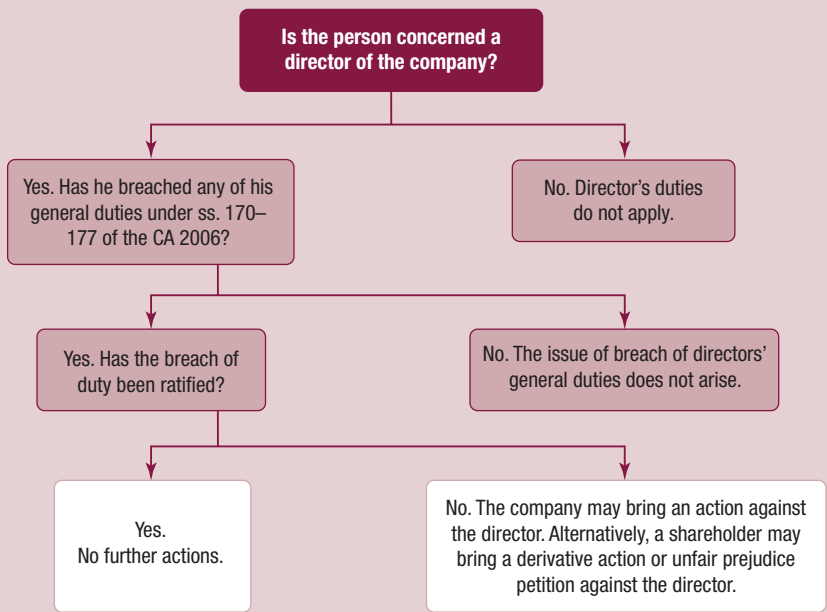
Directors' duties

How this topic may come up in exams

Directors' general duties which existed in common law rules and in equitable principles are codified in the Companies Act 2006. The codified duties are very popular exam topics and therefore essential for your revision. Each of the general duties in sections 170–177 can be assessed in an essay or problem question, either on its own or with other duties. Section 172, in particular, has received considerable academic attention with regard to the enlightened shareholder value. You may also need to consider the law on shareholder remedies in problem questions in relation to directors' breach of duties.

Before you begin

It's a good idea to consider the following key themes of directors' duties before tackling a question on this topic.



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Question 1

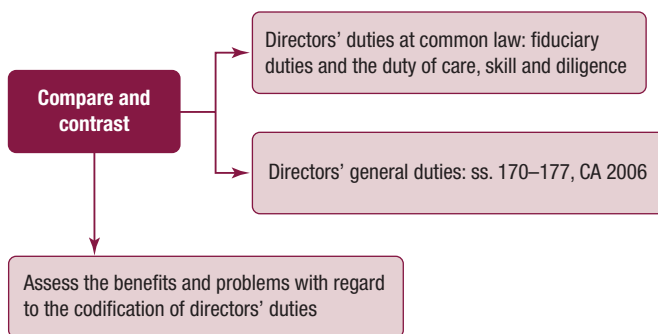
'The Company Law Review, in line with its objectives of maximising clarity and accessibility, recommended that the duties of directors should be codified by way of a statutory restatement ... [T]he issue of restating directors' duties in statutory form caused considerable controversy and generated widespread debate' (Dignam A. and Lowry, J. *Company Law*, 5th edn, (Oxford University Press 2009), p. 299).

Evaluate the above statements.

Answer plan

- ➔ Examine directors' general duties in sections 170–177 of the Companies Act 2006.
- ➔ Compare the codified duties with their equivalent common law duties.
- ➔ Discuss in detail the duty in section 172 which arguably has made one of the most significant changes in the CA 2006.
- ➔ Evaluate whether the codification of directors' duties has improved or clarified this area of law.

Diagram plan



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Answer

¹ These opening sentences identify the key legal issues raised in the question and reassure the examiner that you clearly understand what is being asked in the question.

This question requires a discussion of the codification of directors' duties and an evaluation of whether it has clarified or improved this area of law. Although codification offers some advantages such as clarity and accessibility, it is argued that it has led to some uncertainties.¹