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沪江财会 财经互联网教育领先品牌

# ACCA F4 《公司法与商法》备考摘要

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## 复习纲要

第一， 根据基础课程的讲解，建立法律知识框架。

第二， 合理安排复习时间，根据部门法顺序理解记忆重点法律规则，并进行适当练习。

第三， 根据冲刺课介绍的复习方法，梳理课程重点难点，并熟悉案例分析题的解题思路。

**F4中比较难记的是案例的名字，时间非常有限时，大家可以挑选讲义中展开过的重要案例记忆。考试时如果忘掉了案例的名称，可以把案情描述一下，也可以获得分数的。**

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## 复习纲要：考点提炼

### Part A：单选题

本章知识点相对固定明确，重复率高。新考纲中，本部分内容依然会有很多考点，主要题型为单项选择题，一般不会考查小型案例分析题。新考纲官方样题共有涉及本部分内容6题，其中三选一共3题，四选一共3三题，合计9分。

1. 法的概念及分类（包括private law与public law, criminal law与civil law, case law与statute，尤以后两组最为重要）。
2. 英国法院体系及主要法院的案件管辖权（民事法院需关注County Court, High Court, Court of Appeal和Supreme Court；刑事法院需关注Magistrates' Court, Crown Court, Court of Appeal和Supreme Court ）。
3. 在熟悉英国法院体系的背景下，掌握判例法含义、类型和遵循先例制度。
4. 熟悉判例法之外的另一种法的渊源类型——成文法，特别是成文法的子类型——授权立法（delegated legislation）。
5. 掌握法官在适用法律过程中解释法律的规则。
6. 了解欧洲的European Convention on Human Rights与英国的Human Rights Act 1998，特别是两部法案对英国立法、司法的影响。

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## 复习纲要：考点提炼

### Part B: 单选题+案例分析题

- 债法主要探讨债的两大发生原因（即能够引起债权债务关系的法律事由），分别为合同和侵权。本部分探讨的是合同法。英国合同法主要是判例法规则，因此考生需要注意一些重要的判例。
- 合同法是F4考试最重要的内容之一，在旧考纲中，考查特点有：
  - 每次至少考两题（一个简答题和一个案例分析题），2009.12和2009.06甚至考了三题（两个简答题和一个案例分析题）；
  - 考点重复率高，像合同订立之要约与承诺以及合同的救济几乎每次必考，甚至考查要约与承诺的案例分析题有两次考法一模一样；
  - 重视考查理论知识的实际应用，每次必考一个案例分析题，说明本章内容要求学员不光要记忆知识点，还要能够灵活运用。
- 从新大纲样题来看，合同法必考多个选择题（鉴于本部分内容的复杂性，试题以四选一为主）和至少一道案例分析题，其中案例分析题将会沿袭旧的考查思路。因此，考生在备考本部分内容时，有必要认真研究以前考过的案例分析题。新考纲官方样题共有涉及本部分内容10题，其中三选一共3题，四选一共6题，微型案例分析题1题，合计21分，可见，合同法内容是重要的题目来源。侵权法必考多个选择题，一般不会设计小型案例分析题。新考纲官方样题共有涉及本部分内容5题，其中三选一共2题，四选一共3题，合计8分。

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## 复习纲要：考点提炼

### Part C :单选题+案例分析题（比较少）

- 劳动法的内容主要包括两个层面：劳动合同与劳动者保护。第一个问题与合同法紧密相联，第二个问题则体现了包括英国在内的各国劳动法律法规的价值取向——保护劳动者，毕竟在劳动关系中，劳动者是弱势群体。
- 绝大部分考查概念，考点相对集中、简单。学员要确保对主要知识点了然于胸。新考纲官方样题共有涉及本部分内容7题，其中三选一共4题，四选一共3三题，合计10分。
- 大纲变化：
  - 加入Explain termination of employment by notice
  - 加入distinguish between summary and constructive dismissal
  - 细化了dismissal考察点：2d要求注意unfair dismissal的procedure, fair and unfair reasons for dismissal
  - 不再考察remedies for redundancy

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## 复习纲要：考点提炼

### Part D: 单选题+案例分析题

- 直接考查代理法的几率不高，目前只考过一次，考查内容是代理权限的分类/来源。不过，代理法是极其重要的内容。(chp9)
- 合伙企业在英国是一种十分重要的企业形式，英国先后与1890、1907和2000年通过三部合伙企业法，分别允许设立三种类型的合伙企业。在新考纲官方样题中，一共有四题涉及合伙企业法的题目，分别为：三选一两个，四选一一个，小案例分析题一个，共计10分。需要注意：chp10内容可能会考查案例分析题。
- Chp11:公司独立的法人资格以及相关的揭开公司法人资格面纱理论，后者是前者的例外。在新考纲样题中，只有一个题目涉及本章内容，共1分。
- Chp12:本章涉及设立公司的程序性问题，属于细节知识点，可以依据公司设立过程来强化理解。新大纲样题中，虽无直接涉及本章内容的样题，但由于本章细节性知识点较多，需要引起注意。

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## 复习纲要：考点提炼

### Part E: 单选题+案例分析题

- 本部分是关于公司设立后如何募集经营所需资金的，属于操作层面内容，故而显得有点繁琐，理论知识不是很多。总的来说，公司募集经营资金的方式有两个：发行股份和借贷。本部分所有问题均是围绕这两条主线展开，学员应紧握这两条主线。借贷涉及担保的问题，在学习时可以结合自己了解的按揭(mortgage)规则去领悟。
- 新大纲样题中，共有三选一选择题一个、四选一选择题三个及小案例分析题一个，共计13分。

### Part F: 单选题+案例分析题

- 本部分介绍与公司经营管理有关的“人”。董事是公司管理者，股东是公司所有者，管理与所有二分是公司这一企业形式最显著的特征之一。公司管理者除董事外，还包括公司秘书（company secretary）和审计人员（auditor），前者由董事会任命，后者由股东会任命、帮助股东监督董事会。这两个职位目前只考查过任职资格、任命、权限和义务。
- 股东会则是股东作为公司所有者行使当家作主权利的场所。
- 本部分注重考查学生对知识的灵活运用程度，从历年真题来看，案例分析题考查频率较高。本部分既有相对集中的考点，也一般不会有考点被落下，准备复习时应重点着重看，其他知识点也不能放弃。在新大纲官方样题中，共有两个三选一、一个四选一的单选题，外加一个小案例分析题，总计10分。

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## 复习纲要：考点提炼

### Part G： 单选题

- 困境中公司的两种可能命运：破产（winding up/liquidation）或管理（administration）。
- 本章考查频率不高，一共考过三次，但近年考查频度有增高趋势，尤其是2012年连续考查过两次，这一现象应予以关注。新大纲样题共有三题四选一的选择题，共计6分，均是关于哪些主体可以申请对公司进行破产的。

### Part H： 单选题+案例分析题

- 本章涉及设立公司的一些程序性问题，属于细节知识点，可以依据公司设立过程来强化理解。
- 本章内容比较受出题人的青睐，在旧的考纲中以考查案例分析题为主，即便是考简答题，一般也是与董事部分内容重复。新大纲样题共有两个四选一的选择题和一个小型案例分析题涉及本章内容，共计10分。本章内容考查案例分析题的几率非常之高，所以要深入理解核心知识点。

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# ACCA F4 《公司法与商法》备考摘要

## 复习纲要：需要注意的判例

### I. 合同法判例

**（1）合同有效性之要约与承诺**

**1.** *Fisher v Bell [1960]: Products on display are only an invitation to treat, not an offer. 商店货架上陈列商品应视为要约邀请，非要约*

A shopkeeper displayed a flick knife with a price tag in the window. The Restriction of Offensive Weapons Act 1959 made it an offence to "offer for sale" a "flick knife". The shopkeeper was prosecuted in the magistrates' court.

The knife had not, in law, been "offered" for sale. The display of an article with a price on it in a shop window is merely an invitation to treat.

**2.** *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) [1953]: 同Fisher v Bell [1960]*

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## 复习纲要：需要注意的判例

**3.** *Partridge v Crittenden [1968]: The advertisement was merely an invitation to treat. 商业广告是要约邀请*

The defendant advertised wild birds for sale in a newspaper. A prosecution was brought against him by the RSPSB under the Protection of Birds Act, which makes it illegal to offer wild birds for sale.
The court held that the advertisement was an invitation to treat, not an offer for sale; therefore the defendant had not broken the law.

**4.** *Carlill v Carbolic Smoke Ball Co [1893]: An advertisement may be an offer.商业广告可能构成要约（可见，商业广告既可能是要约邀请，也可能是要约，具体要看是否满足要约要件）。*

Manufacturer of a patented cure for influenza advertised that anybody using their cure would not suffer from flu and that they would pay £100 to whoever used the medicine and still caught flu. The plaintiff, having used the medicine then caught flu, claimed the £100.
The court held the advertisement constituted an offer and that the manufacturer was bound to pay the reward.

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## 复习纲要：需要注意的判例

**5.** *Routledge v Grant [1828]: The offeror has the right to revoke the offer, even if the offeree is given some time for consideration, and the offer ceased to exist with its revocation.要约人可以随时撤销要约，即便是要约附期限，要约经撤消后失效。*

Defendant offered to buy plaintiff’s house, and asked for a definite answer within six weeks of the date of this offer. The offer was revoked before the six week option period had ended. Plaintiff claimed that he had the right to accept the offer, even though it had been revoked, because the six-week option period had not ended.

It was held that the offeror had the right to revoke the offer and the offer ceased to exist with its revocation. It could therefore not be accepted after it had been revoked.

**6.** *Adams v Lindsell [1818]: When acceptance is dispatched through postal service, then the contract comes into existence when the letter is posted.以写信方式作出承诺，信件发出时合同成立。*

Dispute arose because offeree had accepted an offer by letter, but the letter was misdirected and took two days longer than it should have done to reach the offeror.

It was held that the contract came into existence when the letter was posted, even though it did not reach the offeror until some time later.

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## 复习纲要：需要注意的判例

**7.** *Hyde v Wrench [1840]: A counter offer is a new offer, terminating the original offer.反要约是一个新要约，终止了原要约的效力。*

The defendant offered to sell property for £1,000. The plaintiff made a counter offer of £950, which was rejected. The plaintiff then decided that he wanted to accept the original offer of £1,000. The defendant now refused to sell at £1,000. The plaintiff tried to enforce his second acceptance.

The court held that the counter offer of £950 was a new offer. The counter offer superseded the original offer, which no longer existed. The subsequent offer to buy the property for £1,000 was also a new offer, which the defendant had the right to.

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## 复习纲要：需要注意的判例

**8.** *Dunlop v Selfridge [1915]: Only a party to the contract has rights or liabilities under the contract and have the right to enforce the contract.合同相对性原则：只有合同当事人有权依据合同享有权利、履行义务和执行该合同。*

Dunlop supplied tyres to Dew and Co. A term of the agreement was that the tyres would not be re-sold by Dew at below a minimum specified price set (or if sold below that price then a penalty of £5 per tyre would be payable to Dunlop). It was recognized in the agreement that Dew could sell the tyres on to other retailers, but only on the same terms, that the tyres should not be sold below the minimum specified price.

Dew and Co sold the tyres to Selfridge the retailer who then sold them at a price below the minimum price set by Dunlop. Dunlop sued Selfridge to recover the £5 per tyre penalty.

The court held Dunlop could not recover damages from Selfridge because there was no contract between them.

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## 复习纲要：需要注意的判例

### （2）合同有效性之对价

**1.** *Thomas v Thomas [1842]:Consideration need not be adequate (satisfactory) but must be valuable (beneficial).对价在量上只需要达到sufficiency标准即可。*

The executors of a man’s will allowed the widow to live in the house of her deceased husband for a rent of £1 per year. The defendant later claimed that £1 per year was not consideration, because it was much below an economic rent for the property. He removed the widow from the house and the widow sued for breach of contract.

A promise to convey a house to a widow on her promise to pay £1.00 rent p.a. and keep the house in repair was binding.

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## 复习纲要：需要注意的判例

**2.** *Stilk v Myrick [1809]:Performance of existing duty doest not amount to consideration.*

*履行已有合同义务不构成新的对价。*

Two out of eleven sailors deserted a ship. The captain promised to pay the remaining crew extra money if they sailed the ship back, but later refused to pay.

As the sailors were already bound by their contract to sail back and to meet such emergencies of the voyage, promising to sail back was not valid consideration. Thus the captain did not have to pay the extra money.

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## 复习纲要：需要注意的判例

**3.** *Hartley v Ponsonby [1857]: Performance beyond existing duty amounts to consideration.在原合同义务之外提供额外服务，构成新的对价。*

A high number of desertions from a merchant ship rendered the vessel unseeworthy, undermanned since extra pay was offer to the crew if they remain loyal.

The promise of extra money was recoverable by seaman who were doing more than required in the original contract.

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## 复习纲要：需要注意的判例

**4.** *Re McArdle [1951]: Past consideration is no consideration.过去的对价不是有效对价。*

A wife and her three grown-up children lived together in a house. The wife of one of the children did some decorating and later the children promised to pay her £488 and they signed a document to this effect.

It was held that the promise was unenforceable as all the work had been done before the promise was made and was therefore past consideration.

**5.** *Pinnel’s case: A lesser sum is not a good consideration for a higher sum.债权人免除债务的允诺需以债务人支付对价作为前提，否则不可执行该允诺。*

Cole owed Pinnel a sum of money (£8 10s) but at Pinnel’s request paid a part of this amount (£5 2s 6d). Cole claimed that there was an agreement by Pinnel that the part-payment would discharge the full debt.

The court disagreed, and held that the part-payment did not constitute full payment, regardless of what Pinnel might have promised.

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## 复习纲要：需要注意的判例

**6.** *Central London Property Trust Ltd. v High Trees House Ltd [1947]: Doctrine of promissory is estoppel: You cannot exploit the situation by going back against your own words.禁止反言作为对价的例外。*

In 1937, CLP granted a lease on a new block of flats at a rent of £2,500 per year. Due to the impact of the war that soon followed, it was impossible to find tenants for the flats except at lower rents. In 1940 CLP and High Trees agreed a lower annual rent for the property. By 1945 the property was fully let and a claim was made by CLP to revert to the old rent.

The court held the agreement for reduced rent between 1940 and 1945 was not supported by consideration from High Trees. However, under the doctrine of estoppel, the landlords would be estopped from denying they had promised to accept a lower rent and so could not claim for this higher rent.

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## 复习纲要：需要注意的判例

**（3）合同订立之intention to create legal relations**

**1.** *Rose and Frank Co v Crompton Bros [1925]: Whether there is an intention to enter into a binding contract depends first of all on the express attitude.是否有订立合同意图首先取决于当事人的明确表态。*

Two parties had made an agreement with a statement that the agreement was not a "formal or legal agreement and shall not be subject to legal jurisdiction in the Law Courts."

The court held that it was not a contract and so was not legally binding.

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## 复习纲要：需要注意的判例

**2.** *Merritt v Merritt [1970]: Agreements between spouses about to or already separated are legally binding.已离异或将要离异的配偶之间可能存在intention to create legal relations.*

A husband separated from his wife wrote and signed a document stating that in consideration of the wife paying off the outstanding mortgage debt of £180 on their matrimonial home he would transfer the house into her sole ownership. The wife implemented her promise but husband did not. He alleged that his promise was a domestic relation not giving rise to a legal relation.

Husband promise was enforceable the agreement having been made when the parties were not living together courteously. A legal relation is assumed where a husband deserts his wife and an agreement is concluded of the ownership of the matrimonial home occupied by the wife and children.

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## 复习纲要：需要注意的判例

**3.** *Edwards v Skyways [1964]: In a commercial agreement, there is usually an intention that it should be legally binding.商业性质的合同一般当事人有 intention to create legal relations.*

Edwards was made redundant by Skyways. He was offered the choice between withdrawing his contributions from the company pension scheme and continuing in the pension scheme. It was in the company' s financial interests that Mr Edwards should take the money rather than remain in the pension scheme, and offered him an extra payment if he would agree so.

Edwards chose to withdraw his contributions from the scheme, but the company refused to make the extra payment. It claimed it did not intend the offer of extra payment to be legally binding.

The court decided that in a commercial agreement there is an intention that it should be legally binding.

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## 复习纲要：需要注意的判例

**（4）关于合同内容的案例**

**1.** *Poussard v Spiers [1876]：Contract is termed void on breach of a condition.当事人违反term时，守约方可以终止合同。*

An opera singer contracted to sing throughout a season in an opera. Due to illness, she was unable to perform on the opening night and the next few nights. In consequence the promoters hired a replacement singer. When the original singer had recovered from her illness, the promoters refused to employ her for the remainder of the season.

The court held in this case that failure to perform on the opening night was a breach of a condition, and the promoters had the right to repudiate the contract and treat it as terminated.

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## 复习纲要：需要注意的判例

**2.** *Bitteni v Gye [1876]:Breach of a warranty does not make the contract void.当事人违反warrany时，守约方不得终止合同。*

An opera singer was contracted for a season including attendance at rehearsals for six days prior to the opening. The singer did not attend the rehearsals for the first three days due to illness. The promoter treated the contract as discharged. The court held, however, that the rehearsal clause was a warranty. The opera singer was in breach of a warranty, and the contract could not be repudiated.

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## 复习纲要：需要注意的判例

**（5）关于违约的案例**

**1.** *Hochster v De La Tour [1853]: Where there is an anticipatory breach of contract, the innocent party may sue for breach upon notice of breach.发生预期违约时，守约方可在收到预期违约的通知后立即追究违约责任。*

In April, Hochster was engaged by De La Tour to act as a courier on a European tour starting on 1 June. De La Tour then wrote to Hochster on 11 May saying that his services on the tour would no longer be needed. On 22 May, Hochster started proceedings for breach of contract by De La Tour, but De La Tour argued that proceedings could not be started before 1 June.

It was held that there had been an express anticipatory breach of contract, and Hochster was entitled to take legal action as soon as the anticipatory breach occurred.

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# ACCA F4 《公司法与商法》备考摘要

## 复习纲要：需要注意的判例

**2.** *Hadley v Baxendale [1854]:Only natural losses or indirect but reasonably foreseeable losses may be claimed for.违约方只赔偿因违约行为所导致的直接损失和间接、可预测的损失。*

A carrier was given a mill-shaft to deliver to a plant manufacturer as a model for making a new shaft the carrier delayed in delivery and unknown to him the mill stood idle during the period of delay. He was not liable for the loss of profit and the rule was formulated as follows: The loss should be such as may fairly and reasonably be considered either arising naturally, from the breach of contract, or as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract.

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## 复习纲要：需要注意的判例

### II. 侵权法案例

**1.** *Donoghue v Stevens [1932]: Every person owes a duty of care to his "neighbor" 在没有合同关系的情况下，每个人都对"邻居"负有注意义务"。*

A purchased a bottle of ginger beer for consumption by B. B drank part of the contents, which contained the remains of a decomposed snail, and became ill. The manufacturer argued that as there was no contract between himself and B he owed her no duty of care and so was not liable.

The House of Lords laid down the general principle that every person owes a duty of care to his "neighbor", to "persons so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected".

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**2.** *JEB Fasteners v Marks, Bloom and Co (1983):A duty of care was owed by accountants as it was foreseeable that someone contemplating a takeover might rely on accuracy of the accounts.会计人员如知晓某特定人将依据他的会计报告作出投资决策，则该会计人员对之负有注意义务。*

The defendants, a firm of accountants, negligently overstated the value of stock in preparing audited accounts for their client. At preparation, the accountants were aware their client was in financial difficulties.

After seeing the accounts, the plaintiffs decided to take over the company, but then discovered the truth and sued the accountants for negligent misstatement.

It was held that a duty of care was owed by accountants as it was foreseeable that someone contemplating a takeover might rely on accuracy of the accounts.

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**3.** *Caparo Industries plc v Dickman and Others [1990]: A public company's auditors owe no duty of care to the public at large. 公司审计不对不特定社会公众负有注意义务。*

Caparo, which already held shares in Fidelity plc, bought more shares and later made a takeover bid, after seeing accounts certified by the defendants that showed a profit of £1.3m. Caparo claimed against the auditors (Dickman). The claimants argued that the auditors owed a duty of care to investors and potential investors in respect of the audit.

It was held that a public company's auditors owe no duty of care to the public at large who rely on an audit report when deciding to invest – and, in purchasing additional shares, an existing shareholder is in no different position to the public at large.

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**4.** *Morris v Murray [1990]: A defense against a claim for negligence is that the claimant willingly exposed himself to the risk that led to his injury.(Volenti non fit injuria) Volenti non fit injuria作为侵权的抗辩事由。*

The claimant had taken a ride in a private plane, when the pilot was clearly drunk. The plane crashed and the claimant was injured. He brought an action against the pilot for negligence.

The court held that since the pilot had been so obviously drunk, the claimant had willingly accepted the risk of injury in agreeing to go on the flight. The defendant' s claim of 'volenti not fit injuria' was upheld.

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## 复习纲要：需要注意的判例

**5.** *Sayers v Harlow Urban District Council [1961]: The contributory negligence of the claimant can result typically in a reduction in damages of between 10-75% where it can be proved that the claimant had contributed to their injury in some way.共同过失（contributory negligence）可适当降低侵权人的侵权责任。*

The claimant was injured whilst trying to climb out of a public toilet cubicle that had a defective lock. Her claim for damages for negligence against the local council was successful; however, it was held that she had contributed to her injury by using a revolving toilet roll holder in her attempt to climb out. Damages were therefore reduced by 25% for contributory negligence.

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## 复习纲要：需要注意的判例

### III. 公司法案例

**1.** *Salmon v Salmon & company Ltd. [1897]: A company is a separate legal entity having its own assets and liabilities.公司是独立的法人实体，公司的债务一般只有由公司而非公司股东来负担。*

Salmon had been in the boot and leather business for some time together with other family members he sold the old business to his newly formed Ltd. company.

Payment was in form of cash shares and debentures when the company was eventually winded up it was agreed that Salmon and the company was the same and he could not be the creditor of his own so his debentures would not have any effect.

The House of lord held that since there was no fraud involved his debentures were valid the company was properly constituted and therefore it was a separate legal personality from Salmon.

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## 复习纲要：需要注意的判例

**2.** *Panorama Development v Fidelis Furnishing [1971]: A Company secretary within his authority can make contracts with third parties on behalf of his company.公司秘书有权代表公司订立与行政管理事务相关的合同。*

Co.’s secretary of the defendant ordered a Limousine & stated that it was to be used in business, but used personally. Secretary usually hired cars in the past.

The contract was binding, since hiring of cars was usual to the office of company’s secretary.

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