

The Ultra Vires Doctrine

[Latin, Beyond the powers.] *The doctrine in the law of corporations that holds that if a corporation enters into a contract that is beyond the scope of its corporate powers, the contract is illegal.*

The doctrine of ultra vires played an important role in the development of corporate powers. Though largely obsolete in modern private corporation law, the doctrine remains in full force for government entities. An ultra vires act is one beyond the purposes or powers of a corporation. The earliest legal view was that such acts were void. Under this approach a corporation was formed only for limited purposes and could do only what it was authorized to do in its corporate charter.

This early view proved unworkable and unfair. It permitted a corporation to accept the benefits of a contract and then refuse to perform its obligations on the ground that the contract was ultra vires. The doctrine also impaired the security of title to property in fully executed transactions in which a corporation participated. Therefore, the courts adopted the view that such acts were [Voidable](#) rather than void and that the facts should dictate whether a corporate act should have effect.

Over time a body of principles developed that prevented the application of the ultra vires doctrine. These principles included the ability of shareholders to ratify an ultra vires transaction; the application of the doctrine of [Estoppel](#), which prevented the defense of ultra vires when the transaction was fully performed by one party; and the prohibition against asserting ultra vires when both parties had fully performed the contract. The law also held that if an agent of a corporation committed a TORT within the scope of the agent's employment, the corporation could not defend on the ground that the act was ultra vires.

Despite these principles the ultra vires doctrine was applied inconsistently and erratically. Accordingly, modern corporation law has sought to remove the possibility that ultra vires acts may occur. Most importantly, multiple purposes clauses and general clauses that permit corporations to engage in any lawful business are now included in the articles of incorporation. In addition, purposes clauses can now be easily amended if the corporation seeks to do business in new areas. For example, under traditional ultra vires doctrine, a corporation that had as its purpose the manufacturing of shoes could not, under its charter, manufacture motorcycles. Under modern corporate law, the purposes clause would either be so general as to allow the corporation to go into the motorcycle business, or the corporation would amend its purposes clause to reflect the new venture.

State laws in almost every jurisdiction have also sharply reduced the importance of the ultra vires doctrine. For example, section 3.04(a) of the Revised Model Business Corporation Act, drafted in 1984, states that "the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act." There are three exceptions to this prohibition: it may be asserted by the corporation or its shareholders against the present or former officers or directors of the corporation for exceeding their authority, by the attorney general of the state in a proceeding to dissolve the corporation or to enjoin it from the transaction of unauthorized

business, or by shareholders against the corporation to enjoin the commission of an ultra vires act or the ultra vires transfer of real or [Personal Property](#).

Government entities created by a state are public corporations governed by municipal charters and other statutorily imposed grants of power. These grants of authority are analogous to a private corporation's articles of incorporation. Historically, the ultra vires concept has been used to construe the powers of a government entity narrowly. Failure to observe the statutory limits has been characterized as ultra vires.

In the case of a private business entity, the act of an employee who is not authorized to act on the entity's behalf may, nevertheless, bind the entity contractually if such an employee would normally be expected to have that authority. With a government entity, however, to prevent a contract from being voided as ultra vires, it is normally necessary to prove that the employee actually had authority to act. Where a government employee exceeds her authority, the government entity may seek to rescind the contract based on an ultra vires claim.

ultra vires

'beyond the power'. An act is ultra vires if it is beyond the legal powers of the person doing it; thus an act by a company not expressly or impliedly permitted by its memorandum or articles is ultra vires. In the [UK](#), the ultra vires doctrine has been radically changed by the Companies Act 1989 to the extent that persons doing business with companies without notice of the problem have little to fear. The doctrine still applies in relation to other bodies such as local authorities.