

## **CHAPTER NINE : PROSPECTUS**

The following are the main remedies available to persons who have subscribed for or purchased shares in a company based on misrepresentations in the prospectus.

### 1. Rescission

This is a remedy whereby the contract of allotment of shares is set aside and the parties are restored to their original position.

In order to succeed, the plaintiff must prove, inter alia, that the prospectus contained a false statement of fact; that it was false in a material particular; and that he relied on it. Only subscribers (i.e. original allottees) would be entitled to the remedy and not subsequent purchasers (***Peek v Gurney***).

### 2. Damages

The plaintiff who has relied on the prospectus may in addition to the remedy of rescission also be entitled to damages for the loss he has suffered. Damages for negligent misrepresentation may be obtained under the principles in ***Hedley Byrne v Heller & Partners***.

In addition to this, damages may also be claimed for deceit if there has been a fraudulent misrepresentation inducing the plaintiff to acquire the shares.

A plaintiff would only be successful if he could show that the false statement was made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false (***Derry v Peek***). Such claim may be made against the company, the directors and anyone else responsible for the fraud.

### 3. Statutory compensation

Section 46 of the Companies Act 1965 provides that persons who have subscribed for or purchased shares or debentures on the faith of a prospectus may claim compensation for any loss or damage suffered by them by reason of any untrue statement or willful non-disclosure therein.

Such claim may be made against the directors, promoters, experts and any other person who authorised the issue of the prospectus.

However section 46(3) provides for several defences. Inter alia, any such person will not be liable if he had reasonable ground to believe and did up to the time of allotment or sale of the shares or debentures believe that the statement was true; or if the statement was a fair and accurate account of a statement by an expert.

In addition, the expert himself will also have a defence if he shows that he was competent to make the statement and had reasonable ground to believe

and did believe, up to the time of the issue of the prospectus, that the statement was true.

#### Learning outcome

1. To advise company on the rules and regulations imposed on prospectus.
2. Identify remedies that are available in relation to misrepresentation of prospectus.
3. Appreciate the purpose and protection offered in law with regards in relation to prospectus.

#### Exercise

1. Briefly explain the meaning of prospectus.
2. What are the remedies that are offered if there is a misrepresentation on prospectus.
3. What are the advantages of prospectus to a company in raising the company's fund?
4. What are the statutory regulations that must be complied with in issuing a prospectus?