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Minority Shareholders: Law, Practice and Procedure

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***J.B.L. 720** This, the third edition of a book first published in 2000, describes, in a well-written and organised manner, the law, practice and procedure relevant to minority shareholder claims and petitions in the courts of England and Wales, focusing on the popular unfair prejudice petition, petitions for just and equitable winding-up and derivative claims. Owing to their legal systems having different practices and procedures, Scotland and Northern Ireland are not covered.

The law is stated as at December 1, 2007 but, as with all company law texts appearing in this transitional period, a decision has had to be made about how to deal with the fact that the Companies Act 2006 is not yet fully implemented. The authors have adopted the forward-looking approach of writing the text by reference to the provisions of the 2006 Act, directing readers to relevant paragraphs of the second edition in relation to provisions not yet in force. Transition to the 2006 Act and reflection of extensive case law development resulting in the inclusion of close to 100 new cases make this a substantially changed book from the second edition published four years ago.

The features that mark this book out and make it a valuable contribution to legal scholarship on shareholder rights are its focus on the practical and procedural dimensions of minority shareholder petitions and claims and the sharing of practical experience by the authors. Accordingly, the book's principal audience is practitioners, although its clarity makes it an accessible and useful text for students with an interest in shareholder litigation. The forms, precedents, extracts from the Civil Procedure Rules 1998 (as amended) (CPR) and Practice Directions included in the appendices are particularly helpful aids to understanding how minority shareholders exercise their legal rights.

Turning to content, Ch.1 contains a clear explanation of the procedural stages of a derivative claim and the relevant law, which has been simplified in some respects by derivative claims being placed on a statutory footing. The review of the law on control of company litigation is particularly lucid. The extensive review in this chapter of the question whether or not a shareholders' loss is recoverable, known as the "no reflective loss principle", is welcome, although given that this question is secondary to whether or not a shareholder has a cause of action, potential confusion could arguably be avoided by placing this discussion in Ch.2, on personal claims.

Acknowledging but refusing to be distracted by the absence of a comprehensive definition of what constitutes personal rights of a member, the authors restrict Ch.2 to a review of the statutory contract (previously s.14, now s.33), member objection to alteration of the articles, the extent to which directors owe duties to members (rather than the company), and shareholders' agreements. Chapter 3, under the title "Rights conferred on shareholders by the Companies Act 2006", reviews shareholders' rights to object to the variation of class rights, in relation to company meetings, inspection of registers, rectification of the register of members ***J.B.L. 721** and the modified compulsory purchase or "squeeze-out" provisions by which minority shareholders may be forced to exit companies subject to a 90 per cent or more successful takeover bid.

Chapter 4 reviews the insolvency law-based unjust and equitable winding-up petition and reviews the relationship between it and unfair prejudice, the remedies, practice and procedure relevant to which are expounded in Chs 5 and 6. Although the 2006 Act has made no substantive changes to unfair prejudice petitions, case law continues to grow apace. The recent case of *Hawkes v Cuddy*,¹ also

known as *Neath Rugby Ltd, Re*, judgment on the main hearing of which (rather than the summary judgment) came a matter of days too late for inclusion in the text, demonstrates the problematic nature of a certain type of unfair prejudice case. The five-day summary hearing (which was appealed, adding further costs and court time) was followed by a three-week hearing, all relating to shares valued at no more than £97,000. It stands as a clear illustration that reason does not always underpin such petitions. The dispute arose out of what the judge described as a “spectacular falling out” resulting in costs being incurred far in excess of the value of the claim. It is unfortunate that these fact-intensive disputes continue to come before the courts rather than being settled or decided using alternative dispute resolution techniques.

The penultimate chapter, on directors' duties, introduces the reader to the new statutory general duties of directors in ss.171-177 of the 2006 Act. Although a breach of directors' duties must underpin all derivative claims and is usually a feature of unfair prejudice petitions, inclusion of so brief a review, limited to the general duties, is of questionable value, particularly to the main audience for the book. The final chapter, on taxation, at three pages, simply reminds the reader of the critical role taxation plays in the decision to litigate, the choice of remedies to seek, whether or not to accept an offer or settlement and the structuring of a settlement.

As indicated above, the forms, precedents and CPR extracts included in the appendices are a great strength of the book. Appendix 2 also contains extracts from statutes. The criteria used for inclusion of sections of the Companies Act 2006 are not always obvious and there are some puzzling omissions. With a new chapter on directors' duties, one might have expected to find the new statutory general duties of directors, yet ss.171-177 are not included. Neither, more oddly, are ss.260-264, the new derivative claim sections of the Act.

To question or challenge the law is not the aim of the authors. Some very helpful references to journal articles critiquing the law are made at pertinent points but the law is largely stated in a straightforward way as enacted, or declared and developed by the courts. In this, the authors demonstrate admirable writing skill and if at times the succinct style adopted is not wholly conducive to understanding, this is an inevitable consequence of the book having been kept to a sensible length. To illustrate, it is stated in the brief discussion of shareholders' agreements in Ch.2 that an agreement between all of the members of a company which has the effect of altering the articles must be registered with the registrar of companies. **J.B.L. 722* This is a correct statement of law based on repetition of the language in s.29 of the Companies Act 2006. Yet the reader is left with little understanding of the practice of registering shareholders' agreements or that confidentiality is a prized characteristic.

In conclusion, this is a very clearly written and informative book for anybody who wants to understand the legal practice and procedure of derivative claims, just and equitable winding-up petitions and unfair prejudice petitions in England and Wales based on the Companies Act 2006 being fully in force.

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J.B.L. 2008, 7, 720-722

1. *Hawkes v Cuddy* [2007] EWHC 2999 (Ch).

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