

Prentice

Companies Act
1980

Butterworths

COMPANIES ACT 1980

by

DANIEL D. PRENTICE,
M.A., LL.B., J.D.
Fellow of Pembroke College, Oxford

LONDON
BUTTERWORTHS
1980

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U.S.A.:

Butterworth & Co. (Publishers) Inc.
Boston: 10 Tower Office Park, Woburn, Mass. 01801

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ISBN 0 406 34160 5

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Printed in Great Britain by
W & J Mackay Limited, Chatham

PREFACE

The Companies Act 1980 makes substantial changes to the law relating to companies and company securities. It had a tortuous passage through Parliament and the end product enshrines many clauses originally drafted for the Labour government's abortive 1978 Bill.

The Act implements the 2nd EEC Directive on company law; regulates transactions where directors have a conflict of interest; alters the rules about loans made to directors and their associates; requires directors to look to the interests of employees; modifies the rule in *Parke v. Daily News, Ltd.*; strengthens the position of minority shareholders; outlaws insider dealing in company securities and it revises the penalties and modes of trial for offences under the 1948, 1967 and 1976 Companies Acts. This produces a picture of some complexity and it has consequently been more than a little difficult, without the benefit of hindsight, to distil the essence of the Act for the purposes of this book. Nonetheless, I hope that I have placed the Act in context and outlined the purport and probable effect of its provisions. The text of the Act (with annotations) and the 2nd Directive are set out in full and it is my hope that any details necessarily excluded from the narrative are dealt with in one of those places.

July 1980

DANIEL D. PRENTICE

TABLE OF CASES

In the following Table references are given to the English and Empire Digest showing where a digest of the case will be found.

	PARA.
A	
Allen <i>v.</i> Gold Reefs of West Africa, [1900] 1 Ch. 656; [1900-3] All E.R. Rep. 746; 69 L.J. Ch. 266; 82 L.T. 210; 48 W.R. 452; 16 T.L.R. 213; 44 Sol. Jo. 261; 7 Mans. 417, C.A.; 9 Digest (Reissue) 352	71
Allen <i>v.</i> Hyatt (1914), 30 T.L.R. 444, P.C.; 9 Digest (Reissue) 526	294
Ammonia Soda Co., Ltd. <i>v.</i> Chamberlain, [1918] 1 Ch. 266; [1916-17] All E.R. Rep. 708; 87 L.J. Ch. 193; 118 L.T. 48; 34 T.L.R. 60; 62 Sol. Jo. 85, C.A.; 9 Digest (Reissue) 142	178
Arrowsmith <i>v.</i> Jenkins, [1963] 2 Q.B. 561; [1963] 2 All E.R. 210; [1963] 2 W.L.R. 856; 127 J.P. 289; 107 Sol. Jo. 215; 61 L.G.R. 312; Digest Cont. Vol. A 634	385
Ashurst <i>v.</i> Mason (1875), L.R. 20 Eq. 225; 44 L.J. Ch. 337; 23 W.R. 506; 9 Digest (Reissue) 502	423
Ashburton Oil No Liability, Ltd. <i>v.</i> Alpha Minerals No Liability, Ltd. (1971), 45 A.L.J.R. 162	52
Ashbury <i>v.</i> Watson (1885), 30 Ch. D. 376; 54 L.J. Ch. 985; 54 L.T. 27; 33 W.R. 882; 1 T.L.R. 639, C.A.; 9 Digest (Reissue) 79	77
A.-G. <i>v.</i> Bournemouth Corporation, [1902] 2 Ch. 714; 71 L.J. Ch. 730; 87 L.T. 252; 51 W.R. 129; 18 T.L.R. 744; 46 Sol. Jo. 648, C.A.; 22 Digest (Reissue) 353	374
Ayre <i>v.</i> Skelsey's Adamant Cement Co., Ltd. (1904), 20 T.L.R. 587; affirmed (1905), 21 T.L.R. 464, C.A.; 9 Digest (Reissue) 96	71
B	
Bayswater Trading Co., Ltd., <i>Re</i> , [1970] 1 All E.R. 608; [1970] 1 W.L.R. 343; 114 Sol. Jo. 29; 10 Digest (Reissue) 939	90
Bell Houses, Ltd. <i>v.</i> City Wall Properties, Ltd., [1966] 2 Q.B. 656; [1966] 2 All E.R. 674; [1966] 2 W.L.R. 1323; 110 Sol. Jo. 268, C.A.; 9 Digest (Reissue) 706	140
Bellador Silk, Ltd., <i>Re</i> , [1965] 1 All E.R. 667; 10 Digest (Reissue) 906	90
Belmont Finance Corporation, Ltd. <i>v.</i> Williams Furniture, Ltd., [1979] Ch. 250; [1979] 1 All E.R. 118; [1978] 3 W.L.R. 712; 122 Sol. Jo. 743, C.A.; Digest Cont. Vol. E 59	167, 309
Belmont Furniture Corporation, Ltd. <i>v.</i> Williams Furniture, Ltd. (No. 2), [1980] 1 All E.R. 393, C.A.	357
Belvoir Finance Co., Ltd. <i>v.</i> Stapleton, [1971] 1 Q.B. 210; [1970] 3 All E.R. 664; [1970] 3 W.L.R. 530; 114 Sol. Jo. 719, C.A.; 12 Digest (Reissue) 340	167
Berthelemy <i>v.</i> Neale, [1952] 1 All E.R. 437; [1952] 1 T.L.R. 458; 96 Sol. Jo. 165, C.A.; 31(2) Digest (Reissue) 937	432
Bloomenthal <i>v.</i> Ford, [1897] A.C. 156; [1895-9] All E.R. Rep. Ext. 1845; 66 L.J. Ch. 253; 76 L.T. 205; 45 W.R. 449; 13 T.L.R. 240; 4 Mans. 156, H.L.; 9 Digest (Reissue) 305	111
Borland's Trustee <i>v.</i> Steel Brothers & Co., Ltd., [1901] Ch. 279; 70 L.J. Ch. 51; 47 W.R. 120; 17 T.L.R. 45; 9 Digest (Reissue) 96	52
Bowling and Welby's Contract, <i>Re</i> , [1895] 1 Ch. 633; [1895-9] All E.R. Rep. 920; 64 L.J. Ch. 427; 72 L.T. 411; 43 W.R. 417; 2 Mans. 257; 39 Sol. Jo. 345; 12 R. 218, C.A.; 10 Digest (Reissue) 977	504
British and American Trustee and Finance Corporation, Ltd. <i>v.</i> Couper, [1804] A.C. 399; [1891-4] All E.R. Rep. 667; 63 L.J. Ch. 425; 70 L.T. 882; 42 W.R. 652; 10 T.L.R. 415; 1 Mans. 256; 6 R. 146, H.L.; 9 Digest (Reissue) 148	161
Building Estates Brickfields Co., <i>Re</i> , Parbury's Case, [1806] 1 Ch. 100; 65 L.J. Ch. 104; 73 L.T. 506; 44 W.R. 107; 40 Sol. Jo. 67; 2 Mans. 616; 9 Digest (Reissue) 305	111
Burkinshaw <i>v.</i> Nicolls (1878), 3 App. Cas. 1004; 48 L.J. Ch. 179; 30 L.T. 308; 26 W.R. 819, H.L.; 9 Digest (Reissue) 306	111
Burland <i>v.</i> Earle, [1902] A.C. 83; [1900-3] All E.R. Rep. Ext. 1452; 71 L.J.P.C. 1; 85 L.T. 553; 50 W.R. 241; 18 T.L.R. 41; 9 Mans. 17, P.C.; 9 Digest (Reissue) 670	423

C

Calgary and Edmonton Land Co., Ltd., <i>Re</i> , [1975] 1 All E.R. 1046; [1975] 1 W.L.R. 355; 119 Sol. Jo. 150; 10 Digest (Reissue) 1167	352
Castiglione's Will Trusts Ltd., <i>Re</i> , Hunter v. Mackenzie, [1958] Ch. 549; [1958] 1 All E.R. 480; [1958] 2 W.L.R. 400; 102 Sol. Jo. 176; 9 Digest (Reissue) 676	160, 166
Charterbridge Corporation, Ltd. v. Lloyd's Bank, Ltd., [1970] Ch. 62; [1969] 2 All E.R. 1185; [1969] 3 W.L.R. 122; 113 Sol. Jo. 465; [1969] 2 Lloyd's Rep 24; 9 Digest (Reissue) 492	340
Churchill v. Walton. <i>See</i> R. v. Churchill (No. 2)	
Coleman v. Myers, [1977] 2 N.Z.L.R. 277; Digest Cont. Vol. E 56	294, 336
Cook v. Deeks, [1916] 1 A.C. 554; [1916-17] All E.R. Rep. 285, 85 L.J.P.C. 161; 114 L.T. 636, P.C.; 9 Digest (Reissue) 494	94
Corocraft, Ltd. v. Pan American Airways, Inc., [1969] 1 Q.B. 616; [1968] 2 All E.R. 1059; [1968] 3 W.L.R. 714; 112 Sol. Jo. 819; [1968] 1 Lloyd's Rep. 625; reversed, [1969] 1 Q.B. 616; [1969] 1 All E.R. 82; [1968] 3 W.L.R. 1273; 112 Sol. Jo. 903; [1968] 2 Lloyd's Rep. 459, C.A.; 8(2) Digest (Reissue) 608	6
Cotman v. Brougham, [1918] A.C. 514; [1918-19] All E.R. Rep. 265; 87 L.J. Ch. 379; 119 L.T. 162; 34 T.L.R. 410; 62 Sol. Jo. 534, H.L.; 9 Digest (Reissue) 673	140, 344
Crumpton v. Morriner Hall Pty., Ltd., [1965] N.S.W.R. 240	71
Cruttwell v. Lye (1810), 17 Ves. 335; 1 Rose 123; 5 Digest (Reissue) 1036	113
Currie v. Misa (1875), L.R. 10 Exch. 153; 44 L.J. Ex. 94; 23 W.R. 450; affirmed <i>sub nom.</i> Misa v. Currie (1876), 1 App. Cas. 554; [1874-80] All E.R. Rep. 686; 45 L.J.Q.B. 852; 35 L.T. 414; 24 W.R. 1049, H.L.; 12 Digest (Reissue) 218	406
Curtis v. Chemical Cleaning and Dyeing Co., Ltd., [1951] 1 K.B. 805; [1951] 1 All E.R. 631; [1951] 1 T.L.R. 452; 95 Sol. Jo. 253; C.A.; 3 Digest (Reissue) 470	389

D

Derry v. Peek (1889), 14 App. Cas. 337; [1886-90] All E.R. Rep. 1; 58 L.J. Ch. 864; 61 L.T. 265; 54 J.P. 148; 38 W.R. 33; 5 T.L.R. 625; 1 Meg. 292, H.L.; 9 Digest (Reissue) 123	389
Diamond v. Oreamuno, 248 N.E. 2d 910 (1969)	293
Dibble v. Ingleton, [1972] 1 Q.B. 480; [1972] 2 W.L.R. 163; 116 Sol. Jo. 97; [1972] R.T.R. 161; <i>sub-nom.</i> Ingleton v. Dibble, [1972] 1 All E.R. 275; 136 J.P. 155; 15 Digest (Reissue) 990	385
Dimbula Valley (Ceylon) Tea Co., Ltd. v. Laurie, [1961] Ch. 353; [1961] 1 All E.R. 769; [1961] 2 W.L.R. 253; 105 Sol. Jo. 129; 9 Digest (Reissue) 671	181

E

Eaton v. Cobb, [1950] 1 All E.R. 1016; 114 J.P. 271; 48 L.G.R. 528; 26 Digest (Repl.) 469	385
Ebrahimi v. Westbourne Galleries, Ltd. <i>See</i> Westbourne Galleries, Ltd. v. Ebrahimi.	
Elder v. Elder and Watson, 1952 S.C. 49; 10 Digest (Reissue) 919	98

F

Fawcett Properties, Ltd. v. Buckingham County Council, [1961] A.C. 636; [1960] 3 All E.R. 503; [1960] 3 W.L.R. 831; 125 J.P. 8; 104 Sol. Jo. 912; 59 L.G.R. 69; 12 P. & C.R. 1, H.L.; 45 Digest (Repl.) 342	412, 432
Fischer v. Easthaven, Ltd., [1964] N.S.W.R. 261	71
Five Minute Car Wash Service, Ltd., <i>Re</i> , [1966] 1 All E.R. 242; [1966] 1 W.L.R. 745; 110 Sol. Jo. 347; 10 Digest (Reissue) 944	93
Foss v. Harbottle (1843), 2 Hare 461; 9 Digest (Reissue) 515	94, 341
Foster v. New Trinidad Lake Asphalt Co., Ltd., [1901] 1 Ch. 208; 70 L.J. Ch. 123; 49 W.R. 119; 17 T.L.R. 89; 8 Mans. 47; 45 Sol. Jo. 100; 9 Digest (Reissue) 655	180
Fowlers Vacola Manufacturing Co., Ltd., <i>Re</i> , [1966] V.R. 97	85
Franklin v. Gramophone Co., Ltd., [1948] 1 K.B. 542; [1948] 1 All E.R. 353; [1948] L.J.R. 870; 64 T.L.R. 186; 92 Sol. Jo. 124, C.A.; 24 Digest (Repl.) 1021	432
Fridrich v. Bradford, 542 F. 2d 307 (1976)	334

G

Gaiman v. National Association for Mental Health, [1971] Ch. 317; [1970] 2 All E.R. 362; [1970] 3 W.L.R. 42; 114 Sol. Jo. 416; 9 Digest (Reissue) 94	11
Goldsmiths' Co. v. West Metropolitan Rail Co., [1904] 1 K.B. 1; [1900-3] All E.R. Rep. 667; 72 L.J.K.B. 931; 89 L.T. 428; 68 J.P. 41; 52 W.R. 21; 20 T.L.R. 7; 48 Sol. Jo. 13, C.A.; 45 Digest (Repl.) 257	375

Table of Cases

	PARA.
Governments Stock and other Securities Investment Co., Ltd. <i>v.</i> Christopher, [1956] 1 All E.R. 490; [1956] 1 W.L.R. 237; 100 Sol. Jo. 186; 9 Digest (Reissue) 99	47
Graham <i>v.</i> Lewis (1888), 22 Q.B.D. 1; 58 L.J.Q.B. 117; 53 J.P. 166; 37 W.R. 73; 5 T.L.R. 21, C.A.; 33 Digest (Repl.) 504	208
Greenhalgh <i>v.</i> Arderne Cinemas, Ltd., [1946] 1 All E.R. 512; 90 Sol. Jo. 248, C.A.; 9 Digest (Reissue) 235	74, 81
Grigsby <i>v.</i> Melville, [1973] 3 All E.R. 455; [1974] 1 W.L.R. 80; 117 Sol. Jo. 632; 26 P & C.R. 182, C.A.; Digest Cont. Vol. D 278	421

H

Hampson <i>v.</i> Price's Patent Candle Co. (1876), 45 L.J. Ch. 437; 34 L.T. 711; 24 WR. 754; 10 Digest (Reissue) 1349	337
Hardoon <i>v.</i> Belilios, [1901] A.C. 118; 70 L.J.P.C. 9; 83 L.T. 573; 49 W.R. 209; 17 T.L.R. 126, P.C.; 9 Digest (Reissue) 208	161
Hare <i>v.</i> Gocher, [1962] 2 Q.B. 641; [1962] 2 All E.R. 763; [1962] 3 W.L.R. 339; 126 J.P. 395; 106 Sol. Jo. 531; 60 L.G.R. 278; 13 P & C.R. 298; 45 Digest (Repl.) 257	397
Harlowe's Nominees Pty., Ltd. <i>v.</i> Woodside (Lakes Entrance) Oil Co., Ltd. (1968), 42 A.L.J.R. 123; 121 C.L.R. 483	52
Harold Holdsworth & Co. (Wakefield), Ltd. <i>v.</i> Caddies. <i>See</i> Holdsworth (Harold) & Co. (Wakefield), Ltd.	
Hatschek's Patents, <i>Re, Ex parte</i> Zerenner, [1909] 2 Ch. 68; 78 L.J. Ch. 402; 100 L.T. 809; 25 T.L.R. 457; 26 R.P.C. 228; 36(2) Digest (Reissue) 1178	432
Head (Henry) & Co., Ltd. <i>v.</i> Ropner Holdings, Ltd., [1952] Ch. 124; [1951] 2 All E.R. 994; [1951] 2 T.L.R. 1027; 95 Sol. Jo. 789; 9 Digest (Reissue) 320	114
Hector Whaling, Ltd., <i>Re</i> , [1936] Ch. 208; [1935] All E.R. Rep. 302; 105 L.J. Ch. 117; 154 L.T. 342; 52 T.L.R. 142; 79 Sol. Jo. 966; 9 Digest (Reissue) 639	388
Hellenic and General Trust, Ltd., <i>Re</i> , [1975] 3 All E.R. 382; [1976] 1 W.L.R. 123; 119 Sol. Jo. 845; Digest Cont. Vol. D 99	76
Henry Head & Co., Ltd. <i>v.</i> Ropner Holdings, Ltd. <i>See</i> Head (Henry) & Co., Ltd. <i>v.</i> Ropner Holdings, Ltd.	
Hilder <i>v.</i> Dexter, [1902] A.C. 474; 71 L.J. Ch. 781; 87 L.T. 311; 51 W.R. 225; 18 T.L.R. 800; 7 Com. Cas. 258; 9 Mans. 378, H.L.; 9 Digest (Reissue) 237	52
Hogg <i>v.</i> Cramphorn, Ltd., [1967] Ch. 254; [1966] 3 All E.R. 420; [1966] 3 W.L.R. 995; 110 Sol. Jo. 887; 9 Digest (Reissue) 319	52, 100, 103
Holdsworth (Harold) & Co. (Wakefield), Ltd. <i>v.</i> Caddies, [1955] 1 All E.R. 725; [1955] 1 W.L.R. 352; 99 Sol. Jo. 234, H.L.; 9 Digest (Reissue) 570	212
Hong Kong and China Gas Co., Ltd. <i>v.</i> Glen, [1914] 1 Ch. 527; [1914-15] All E.R. Rep. 1002; 83 L.J. Ch. 561; 110 L.T. 859; 30 T.L.R. 339; 58 Sol. Jo. 380; 21 Mans. 242; 9 Digest (Reissue) 237	124
Houldsworth <i>v.</i> City of Glasgow Bank and Liquidators (1880), 5 App. Cas. 317; [1874-80] All E.R. Rep. 333; 42 L.T. 194; 28 W.R. 677; 7 R. (H.L.) 53; 17 Sc. L.R. 510, H.L.; 9 Digest (Reissue) 120	69
Howard Smith, Ltd. <i>v.</i> Ampol Petroleum, Ltd. <i>See</i> Smith (Howard), Ltd. <i>v.</i> Ampol Petroleum, Ltd.	
Hutton <i>v.</i> West Cork Rail Co. (1883), 23 Ch. D. 654; 52 L.J. Ch. 689; 49 L.T. 420; 31 W.R. 827, C.A.; 9 Digest (Reissue) 686	337

I

Industrial Development Consultants, Ltd. <i>v.</i> Cooley, [1972] 2 All E.R. 162; [1972] 1 W.L.R. 443; 116 Sol. Jo. 255; 9 Digest (Reissue) 574	293
Ingleton <i>v.</i> Dibble. <i>See</i> Dibble <i>v.</i> Ingleton.	
Inland Revenue Comrs. <i>v.</i> Muller & Co.'s Margarine, Ltd., [1901] A.C. 217; [1900-3] All E.R. Rep. 413; 70 L.J.K.B. 677; 84 L.T. 729; 49 W.R. 603; 17 T.L.R. 530, H.L.; 45 Digest (Repl.) 515	113
Introductions, Ltd., <i>Re</i> Introductions, Ltd. <i>v.</i> National Provincial Bank, Ltd., [1970] Ch. 199; [1969] 1 All E.R. 887; [1969] 2 W.L.R. 791; 113 Sol. Jo. 122; [1969] 1 Lloyd's Rep. 229, C.A.; 9 Digest (Reissue) 75	342

J

Jermyn St. Turkish Baths, Ltd., <i>Re</i> , [1970] 3 All E.R. 57; [1970] 1 W.L.R. 1194; 114 Sol. Jo. 583; reversed, [1971] 3 All E.R. 184; [1971] 1 W.L.R. 1042; 115 Sol. Jo. 483; C.A.; 10 Digest (Reissue) 918	90, 93
--	--------

John Smith's Tadcaster Brewery Co., Ltd., *Re. See Re Smith's (John) Tadcaster Brewery Co., Ltd.*

K

Karak Rubber Co., Ltd. <i>v.</i> Burden (No. 2), [1972] 1 All E.R. 1210; [1972] 1 W.L.R. 602; 115 Sol. Jo. 888; [1972] 1 Lloyd's Rep. 73; 3 Digest (Reissue) 585	309
Kerr <i>v.</i> John Mottram, Ltd., [1940] Ch. 657; [1940] 2 All E.R. 629; 109 L.J. Ch. 243; 163 L.T. 222; 56 T.L.R. 711; 84 Sol. Jo. 358; 9 Digest (Reissue) 642	374
Kirby <i>v.</i> Wilkins, [1929] 2 Ch. 444; [1929] All E.R. Rep. 356; 142 L.T. 16; 9 Digest (Reissue) 403	161
Kitson & Co., Ltd., <i>Re</i> , [1946] 1 All E.R. 435; 175 L.T. 25; 90 Sol. Jo. 222, C.A.; 10 Digest (Reissue) 923	140
Knox <i>v.</i> Boyd, 1941, J.C. 82; 30 Digest (Reissue) 106	385

L

Lee <i>v.</i> Lee's Air Farming, Ltd., [1961] A.C. 12; [1960] 3 All E.R. 420; [1960] 3 W.L.R. 758; 104 Sol. Jo. 869, P.C.; 9 Digest (Reissue) 574	282
Lewin <i>v.</i> End, [1906] A.C. 299; 75 L.J.K.B. 473; 94 L.T. 649; 70 J.P. 268; 54 W.R. 606; 22 T.L.R. 504; 4 L.G.R. 618, H.L.; 30 Digest (Reissue) 257	421
Lewin <i>v.</i> Newnes, Ltd. (1904) 90 L.T. 160; 68 J.P. 164; 20 T.L.R. 206, 48 Sol. Jo. 223; 19 Digest (Repl.) 560	421
Litchfield <i>v.</i> Dreyfus, [1906] 1 K.B. 584; 75 L.J.K.B. 447; 22 T.L.R. 385; 50 Sol. Jo. 391; 35 Digest (Repl.) 232	207
London and Globe Finance Corporation, Ltd., <i>Re</i> , [1903] 1 Ch. 728; [1900-3] All E.R. Rep. 891; 72 L.J. Ch. 368; 88 L.T. 194; 51 W.R. 651; 19 T.L.R. 314; 10 Mans. 198; 10 Digest (Reissue) 1128	389
London Computator, Ltd. <i>v.</i> Seymour, [1944] 2 All E.R. 11; 109 J.P. 10; 42 L.G.R. 278; 17 Digest (Reissue) 515	385
Lundie Brothers Ltd., [1965] 2 All E.R. 692; [1965] 1 W.L.R. 1051; 109 Sol. Jo. 470; 10 Digest (Reissue) 914	90, 98
Lyle and Scott, Ltd. <i>v.</i> Scott's Trustees, [1959] A.C. 763; [1959] 2 All E.R. 661; [1959] 3 W.L.R. 133; 103 Sol. Jo. 507, H.L.; 9 Digest (Reissue) 374	52

M

M.F.I. Warehouses, Ltd. <i>v.</i> Natrass, [1973] 1 All E.R. 762; [1973] 1 W.L.R. 307; 137 J.P. 307; 117 Sol. Jo. 143; Digest Cont. Vol. D 988	389
Macmillan & Co., Ltd. <i>v.</i> Rees, [1946] 1 All E.R. 675; 175 L.T. 86; 62 T.L.R. 331, C.A.; 31(2) Digest (Reissue) 999	421
Mahmoud and Isphani, <i>Re</i> , [1921] 2 K.B. 716; [1921] All E.R. Rep. 217; 90 L.J.K.B. 821; 125 L.T. 161; 37 T.L.R. 489; 26 Com. Cas. 215, C.A.; 12 Digest (Reissue) 331	131
Maidstone Buildings Provisions, Ltd., <i>Re</i> , [1971] 3 All E.R. 363; [1971] 1 W.L.R. 1085; 115 Sol. Jo. 464; 10 Digest (Reissue) 1033	207
Makins <i>v.</i> Elson (Inspector of Taxes), [1977] 1 All E.R. 572; [1977] 1 W.L.R. 221; 121 Sol. Jo. 14; [1977] S.T.C. 46; [1977] T.R. 281; Digest Cont. Vol. E 297	421
Mallon <i>v.</i> Allon, [1964] 1 Q.B. 385; [1963] 3 All E.R. 843; [1963] 3 W.L.R. 1053; 128 J.P. 81; 107 Sol. Jo. 892; 62 L.G.R. 58; Digest Cont. Vol. A 625	385
Marshall, Fleming & Co., Ltd., <i>Re</i> , 1938 S.C. 873; 9 Digest (Reissue) 150	71
Miller <i>v.</i> Outilie (Owners), [1944] 1 K.B. 188; [1944] 1 All E.R. 277; 113 L.J.K.B. 115; 170 L.T. 204; 60 T.L.R. 169; 36 B.W.C.C. 236, C.A.; 34 Digest (Repl.) 349	432
Mills <i>v.</i> Mills (1938), 60 C.L.R. 150; 11 A.L.J. 527; 9 Digest (Reissue) 553	52
Misa <i>v.</i> Currie. <i>See</i> Currie <i>v.</i> Misa.	
Morgan <i>v.</i> Gray, [1953] Ch. 83; [1953] 1 All E.R. 213; [1953] 2 W.L.R. 140; 97 Sol. Jo. 48; 9 Digest (Reissue) 432	504
Mosely <i>v.</i> Koffyfontein Mines, Ltd., [1904] 2 Ch. 108; 73 L.J. Ch. 569; 91 L.T. 266; 53 W.R. 140; 20 T.L.R. 557; 48 Sol. Jo. 507; 11 Mans. 294; C.A., 9 Digest (Reissue) 323	108

N

Nakkuda Ali <i>v.</i> Jayaratne, [1951] A.C. 66; 66 (pt. 2) T.L.R. 214; 94 Sol. Jo. 516, P.C.; 8(2) Digest (Reissue) 812	415
Newton <i>v.</i> Pyke (1908), 25 T.L.R. 127; 35 Digest (Repl.) 230	207

Table of Cases

	PARA.
Normandy <i>v.</i> Ind Coope & Co., Ltd., [1908] 1 Ch. 84; 77 L.J. Ch. 82; 97 L.T. 872; 24 T.L.R. 57; 15 Mans. 65; 9 Digest (Reissue) 579	423
O	
Oban and Aultmore, Glenivet Distilleries, Ltd., <i>Re</i> 1903, 5 F. (Ct. of Sess.) 1141; 9 Digest (Reissue) 234	71
Old Silkstone Collieries, Ltd., <i>Re</i> , [1954] Ch. 169; [1954] 1 All E.R. 68; [1954] 2 W.L.R. 77; 98 Sol. Jo. 27, C.A.; 33 Digest (Reissue) 876	80
Ooregum Gold Mining Co. of India, Ltd. <i>v.</i> Roper, [1892] A.C. 125; 61 L.J. Ch. 337; 66 L.T. 427; 41 W.R. 90; 8 T.L.R. 436; 36 Sol. Jo. 344, H.L.; 9 Digest (Reissue) 321	52, 108
Oriental Inland Steam Co., <i>Re, Ex parte</i> Scinde Rail Co. (1874), 9 Ch. App. 557; 43 L.J. Ch. 699; 31 L.T. 5; 22 W.R. 810; 10 Digest (Reissue) 978	352
P	
Panorama Developments (Guildford), Ltd. <i>v.</i> Fidelis Furnishings Fabrics, Ltd. [1972] 2 Q.B. 711; [1971] 3 All E.R. 16; [1971] 3 W.L.R. 440; 115 Sol. Jo. 483, C.A.; 9 Digest (Reissue) 589	367
Parke <i>v.</i> Daily News, Ltd., [1962] Ch. 927; [1962] 2 All E.R. 929; [1962] 3 W.L.R. 566; 106 Sol. Jo. 704; 9 Digest (Reissue) 690	337, 338, 342, 344, 351, 371, 445
Parker <i>v.</i> McKenna (1874), 10 Ch. App. 96; [1874-80] All E.R. Rep. 443; 44 L.J. Ch. 425; 31 L.T. 739; 23 W.R. 271; 9 Digest (Reissue) 526	293
Percival <i>v.</i> Wright, [1902] 2 Ch. 421; 71 L.J. Ch. 846; 51 W.R. 31; 18 T.L.R. 697; 9 Mans. 443; 46 Sol. Jo. 616; 9 Digest (Reissue) 493	294
Piercy <i>v.</i> S. Mills & Co., Ltd., [1920] 1 Ch. 77; [1918-19] All E.R. Rep. 313; 88 L.J. Ch. 509; 122 L.T. 20; 35 T.L.R. 703; 64 Sol. Jo. 35; 9 Digest (Reissue) 318	52
Premor, Ltd. <i>v.</i> Shaw Brothers, [1964] 2 All E.R. 583; [1964] 1 W.L.R. 978; 108 Sol. Jo. 375, C.A.; Digest Cont. Vol. B 547	208
Punt <i>v.</i> Symons & Co., Ltd., [1903] 2 Ch. 506; [1900-03] All E.R. Rep. Ext. 1040; 72 L.J. Ch. 768; 89 L.T. 525; 52 W.R. 41; 47 Sol. Jo. 619; 10 Mans. 415; 9 Digest (Reissue) 318	52
R	
R. <i>v.</i> Banks, [1916] 2 K.B. 621; [1916-17] All E.R. Rep. 356; 85 L.J.K.B. 1657; 115 L.T. 457; 80 J.P. 432; 25 Cox C.C. 535, 12 Cr. App. Rep. 74, C.C.A.; 14(1) Digest (Reissue) 353	415
R. <i>v.</i> Bates, [1952] 2 All E.R. 842; 96 Sol. Jo. 785; 36 Cr. App. Rep. 175; affirmed <i>sub nom.</i> R. <i>v.</i> Russell, [1953] 1 W.L.R. 77; 97 Sol. Jo. 12, C.C.A.; 44 Digest (Repl.) 444	389
R. <i>v.</i> Bishirgian, [1936] 1 All E.R. 586; 154 L.T. 499; 52 T.L.R. 361; 25 Cr. App. Rep. 176; 30 Cox C.C. 379, C.C.A.; 15 Digest (Reissue) 1332	389
R. <i>v.</i> Carr-Briant, [1943] K.B. 607; [1943] 2 All E.R. 156; 112 L.J.K.B. 581; 169 L.T. 175; 107 J.P. 167; 59 T.L.R. 300; 41 L.G.R. 183; 29 Cr. App. Rep. 76, C.C.A.; 14(2) Digest (Reissue) 477	428
R. <i>v.</i> Chertsey Justices, <i>Ex parte</i> Franks, [1961] 2 Q.B. 152; [1961] 1 All E.R. 825; [1961] 2 W.L.R. 442; 125 J.P. 305; 105 Sol. Jo. 181; 59 L.G.R. 260; 12 P. & C.R. 278; 45 Digest (Repl.) 356	380
R. <i>v.</i> Churchill (No. 2), [1967] 1 Q.B. 190; [1966] 2 All E.R. 215; [1966] 2 W.L.R. 1116; 110 Sol. Jo. 526 C.C.A.; reversed <i>sub nom.</i> Churchill <i>v.</i> Walton, [1967] 2 A.C. 224; [1967] 1 All E.R. 497; [1967] 2 W.L.R. 682; 131 J.P. 277; 111 Sol. Jo. 112; 51 Cr. App. Rep. 212, H.L.; 14(1) Digest (Reissue) 126	375
R. <i>v.</i> Dunbar, [1958] 1 Q.B. 1; [1957] 2 All E.R. 737; [1957] 3 W.L.R. 330; 121 J.P. 506; 101 Sol. Jo. 504; 41 Cr. App. Rep. 182, C.C.A.; 14(2) Digest (Reissue) 447	428
R. <i>v.</i> Grunwald, [1963] 1 Q.B. 935; [1960] 3 All E.R. 380; [1961] 2 W.L.R. 606; 124 J.P. 495; 105 Sol. Jo. 368, C.A.; 44 Digest (Repl.) 444	389
R. <i>v.</i> Harrison, [1938] 3 All E.R. 134; 159 L.T. 95; 82 Sol. Jo. 436; 31 Cox C.C. 98; 26 Cr. App. Rep. 166, C.A.; 15 Digest (Reissue) 1223	415
R. <i>v.</i> Lord Kylsant, [1932] 1 K.B. 442; [1931] All E.R. Rep. 179; 101 L.J.K.B. 97; 146 L.T. 21; 48 T.L.R. 62; 75 Sol. Jo. 815; 29 Cox C.C. 379; 23 Cr. App. Rep. 83; 15 Digest (Reissue) 1332	389
R. <i>v.</i> Mackinnon, [1959] 1 Q.B. 150; [1958] 3 All E.R. 657; [1958] 3 W.L.R. 688; 123 J.P. 43; 102 Sol. Jo. 861; 43 Cr. App. Rep. 1; 44 Digest (Repl.) 444	389
R. <i>v.</i> Russell. <i>See</i> R. <i>v.</i> Bates.	
R. <i>v.</i> Senior, [1899] 1 Q.B. 283; [1895-9] All E.R. Rep. 511; 68 L.J.Q.B. 175; 79 L.T. 562; 63 J.P. 8; 47 W.R. 367; 15 T.L.R. 102; 43 Sol. Jo. 114; 19 Cox C.C. 219; 14(1) Digest (Reissue) 25	385
R. <i>v.</i> Slade, <i>Ex parte</i> Saunders, [1895] 2 Q.B. 247; 64 L.J.M.C. 232; 73 L.T. 343; 59 J.P. 471; 39 Sol. Jo. 625; 18 Cox C.C. 176; 15 R. 499; 26 Digest (Repl.) 691	380

Table of Cases

	PARA.
R. v. Struve, etc. Glamorganshire Justices (1895), 59 J.P. 584, 46 Digest (Repl.) 320	380
R. v. Turner, [1910] 1 K.B. 346; 79 L.J.K.B. 176; 102 L.T. 367; 74 J.P. 81; 26 T.L.R. 112; 54 Sol. Jo. 164; 22 Cox. C.C. 310; 3 Cr. App. Rep. 103; C.C.A.: 30 Digest (Reissue) 315	388
R. v. Tyson (1867), L.R. 1 C.C.R. 107; 37 L.J.M.C. 7; 17 L.T. 292; 32 J.P. 53; 16 W.R. 317, 11 Cox C.C. 1; 15 Digest (Reissue) 954	389
R. v. Walker (1934), 24 Cr. App. Rep. 117, C.C.A.: 14(1) Digest (Reissue) 275	385
Rayfield v. Hands, [1960] Ch. 1; [1958] 2 All E.R. 194; [1958] 2 W.L.R. 851; 102 Sol. Jo. 348; 9 Digest (Reissue) 82	52
Rice v. Connolly, [1966] 2 Q.B. 414; [1966] 2 All E.R. 649; [1966] 3 W.L.R. 17; 130 J.P. 322; 110 Sol. Jo. 371; 15 Digest (Reissue) 989	385
Rolls v. Miller (1884), 27 Ch. D. 71; [1881-5] All E.R. Rep. 915; 53 L.J. Ch. 682; 50 L.T. 597; 32 W.R. 806, C.A.: 45 Digest (Repl.) 383	208
Rolls Royce, Ltd. v. Jeffrey, [1962] 1 All E.R. 801; [1962] 1 W.L.R. 425; 106 Sol. Jo. 261; 40 T.C. 443; [1962] T.R. 9; 41 A.T.C. 17; H.L.: 28(1) Digest (Reissue) 31	113

S

Sajan Singh v. Sardara Ali, [1960] A.C. 167; [1960] 1 All E.R. 269; [1960] 2 W.L.R. 180; 104 Sol. Jo. 84, P.C.: 12 Digest (Reissue) 350	167
Salomon v. Comrs. of Customs and Excise, [1967] 2 Q.B. 116; [1966] 3 All E.R. 871; [1966] 3 W.L.R. 1223; 110 Sol. Jo. 833; [1966] 2 Lloyd's Rep. 460, C.A.; Digest Cont. Vol. B 622	6
Salomon v. Salomon & Co., [1897] A.C. 22; [1895-9] All E.R. Rep. 33; 66 L.J. Ch. 35; 75 L.T. 426; 45 W.R. 193; 13 T.L.R. 46; 41 Sol. Jo. 63; 4 Mans. 89, H.L.: 9 Digest (Reissue) 20	504
Saldcan Estate Co., Ltd., Re, [1968] 3 All E.R. 829; [1968] 1 W.L.R. 1844; 112 Sol. Jo. 798; 9 Digest (Reissue) 155	84
Scottish Co-operative Wholesale Society, Ltd. v. Meyer, [1959] A.C. 324; [1958] 3 All E.R. 66; [1958] 3 W.L.R. 404; 102 Sol. Jo. 617; 1958 S.C. (H.L.) 40, H.L.: 10 Digest (Reissue) 943	94
Scottish Insurance Corporation, Ltd. v. Wilsons and Clyde Coal Co., Ltd., [1949] A.C. 462; [1949] 1 All E.R. 1068; [1949] L.J.R. 1190; 65 T.L.R. 354; 93 Sol. Jo. 423, H.L.: 33 Digest (Repl.) 874	84
Shawinigan, Ltd. v. Vokins & Co., Ltd., [1961] 3 All E.R. 396; [1961] 1 W.L.R. 1206; 105 Sol. Jo. 588; [1961] 2 Lloyd's Rep. 153; 8(1) Digest (Reissue) 44	389
Shearer v. Bercaim, Ltd., [1980] S.T.C. 359	114
Shindler v. Northern Raincoat Co., Ltd., [1960] 2 All E.R. 239; [1960] 1 W.L.R. 1038; 104 Sol. Jo. 806; 9 Digest (Reissue) 568	212
Smith (Howard), Ltd. v. Ampol Petroleum, Ltd., [1974] A.C. 821; [1974] 1 All E.R. 1126; [1974] 2 W.L.R. 689; 118 Sol. Jo. 330, P.C.: 9 Digest (Reissue) 496	52
Smith's (John) Tadcaster Brewery Co., Re, John Smith's Tadcaster Brewery Co., Ltd. v. Gresham Life Assurance Society, Ltd., [1953] Ch. 308; [1953] 1 All E.R. 518; [1953] 2 W.L.R. 516; 97 Sol. Jo. 150, C.A.: 9 Digest (Reissue) 235	74
Sovereign Life Assurance Co. v. Dodd, [1892] 2 Q.B. 573; [1891-4] All E.R. Rep. 246; 62 L.J.Q.B. 19; 67 L.T. 396; 41 W.R. 4; 8 T.L.R. 684; 36 Sol. Jo. 644; 4 R. 17, C.A.: 10 Digest (Reissue) 1226	76
Stamp Duties Comr. (Queensland) v. Livingston, [1965] A.C. 694; [1964] 3 All E.R. 692; [1964] 3 W.L.R. 963; 108 Sol. Jo. 820; [1964] T.R. 351; 43 A.T.C. 325; [1965] A.L.R. 803, P.C.: Digest Cont. Vol. B 247	352
Stewart v. Chapman, [1951] 2 K.B. 792; [1951] 2 All E.R. 613; 115 J.P. 473; [1951] 2 T.L.R. 640; 95 Sol. Jo. 641; 49 L.G.R. 816; 35 Cr. App. Rep. 102; 45 Digest (Repl.) 113	375
Stockdale v. Coulson, [1974] 3 All E.R. 154; [1974] 1 W.L.R. 1192; 118 Sol. Jo. 627; 9 Digest (Reissue) 645	131
Symington v. Symington Quarries, Ltd. 1908, 3 F. (Ct. of Sess.) 121; 43 Sc. L.R. 157; 13 S.L.T. 509; 10 Digest (Reissue) 927	98

T

Taylor's Central Garages (Exeter), Ltd. v. Roper (1951), 115 J.P. 445; [1951] 2 T.L.R. 284; 45 Digest (Repl.) 134	385
Teck Corporation Ltd. v. Millar (1972), 33 D.L.R. (3d) 288; [1973] 2 W.W.R. 385; 9 Digest (Reissue) 506	52, 337
Theatrical Trust, Ltd., Re, Chapman's Case, [1895] 1 Ch. 771; 64 L.J. Ch. 488; 72 L.T. 461; 43 W.R. 553; 11 T.L.R. 310; 2 Mans. 304; 39 Sol. Jo. 364; 13 R. 462; 9 Digest (Reissue) 301	114
Tintin Exploration Syndicate, Ltd. v. Sandys (1947), 177 L.T. 412; 91 Sol. Jo. 599; 9 Digest (Reissue) 323	114
Tivoli Freeholds, Ltd., Re, [1972] V.R. 445	140

Table of Cases

	PARA.
Town Investments, Ltd. v. Department of the Environment, [1978] A.C. 359; [1977] 1 All E.R. 813; [1977] 2 W.L.R. 450; 121 Sol. Jo. 203; 34 P. & C.R. 48; [1977] R.V.R. 76, H.L.; Digest Cont. Vol. E. 379	208
Trevor v. Whitworth (1887), 12 App. Cas. 409; [1886-90] All E.R. Rep. 46; 57 L.J. Ch. 28; 57 L.T. 457, 36 W.R. 145; 8 T.L.R. 745; 32 Sol. Jo. 201, H.L.; 9 Digest (Reissue) 676	160
Trow v. Ind Coope (West Midlands), Ltd., [1967] 2 Q.B. 899; [1967] 2 All E.R. 900; [1967] 3 W.L.R. 633; 111 Sol. Jo. 375, C.A.; Digest Cont. Vol. C 955	397
Tuchmann v. Schmerler (1944), 172 L.T. 43; 88 Sol. Jo. 415; 35 Digest (Repl.) 249	207
V	
Van Duyn v. Home Office: 41/74, [1975] Ch. 358; [1975] 3 All E.R. 190; [1975] 2 W.L.R. 760; 119 Sol. Jo. 302; [1974] E.C.R. 1337; [1975] 1 C.M.L.R. 1; Digest Cont. Vol. D 318 ..	6
Verbond van Nederlandse Ondernemingen v. Inspecteur der Invoerrechten en Accijzen: 51/76, [1977] E.C.R. 113; [1977] 1 C.M.L.R. 413	6
W	
Weber Feeds, Ltd. v. Weber (1979), 99 D.L.R. (3d) 176	293
Welham v. Director of Public Prosecutions, [1961] A.C. 103; [1960] 1 All E.R. 805; [1960] 2 W.L.R. 669; 124 J.P. 280; 104 Sol. Jo. 308; 44 Cr. App. Rep. 124, H.L.; 14(1) Digest (Reissue) 254	390
Westbourne Galleries, Ltd., <i>Re</i> , [1970] 3 All E.R. 374; [1970] 1 W.L.R. 1378; 114 Sol. Jo. 785; reversed, [1971] Ch. 799; [1971] 1 All E.R. 56; [1971] 2 W.L.R. 618; 115 Sol. Jo. 74, C.A.; on appeal <i>sub nom.</i> Ebrahimi v. Westbourne Galleries, Ltd., [1973] A.C. 360; [1972] 2 All E.R. 492; [1972] 2 W.L.R. 1289; 116 Sol. Jo. 412, H.L.; 10 Digest (Reissue) 916 .. 90, 93, 98	74, 86
White v. Bristol Aeroplane Co., Ltd., [1953] Ch. 65; [1953] 1 All E.R. 40; [1953] 2 W.L.R. 144; 97 Sol. Jo. 64, C.A.; 9 Digest (Reissue) 235	74, 86
White Star Line, Ltd., <i>Re</i> , [1938] Ch. 458; [1938] 1 All E.R. 607; 107 L.J. Ch. 225; 158 L.T. 315; 54 T.L.R. 473; 82 Sol. Jo. 213, C.A.; 9 Digest (Reissue) 347	124
Whiteman Smith Motor Co., Ltd. v. Chaplin, [1934] 2 K.B. 35; 103 L.J.K.B. 328; 150 L.T. 354; 50 T.L.R. 301; 31(2) Digest (Reissue) 928	113
Whitney v. Inland Revenue Comrs., [1926] A.C. 37; 95 L.J.K.B. 165; 134 L.T. 98; 42 T.L.R. 58; 10 T.C. 88, H.L.; 28(1) Digest (Reissue) 526	439
Williams Brothers Direct Supply Stores, Ltd. v. Cloote (1944), 60 T.L.R. 270; 17 Digest (Reissue) 531	389
Wragg, Ltd., <i>Re</i> , [1897] 1 Ch. 796; [1895] All E.R. Rep. 398; 66 L.J. Ch. 419; 76 L.T. 397; 45 W.R. 557; 13 T.L.R. 302; 41 Sol. Jo. 385; 4 Mans. 179, C.A.; 9 Digest (Reissue) 302 ..	124

CONTENTS

	PAGE
<i>Preface</i>	iii
<i>Table of Cases</i>	xi
	PARA.
CHAPTER 1 INTRODUCTION	[1]
CHAPTER 2 TYPES OF COMPANIES	
1. Distinction between public and private companies	[8]
2. Public company: definition	[9]
(i) capital	[10]
(ii) memorandum of association	[11]
(iii) name	[12]
(iv) registration procedure	[13]
(v) trading certificate	[14]
3. Authorised minimum capital	[16]
4. Guarantee companies having a share capital	[18]
5. Private companies	[19]
CHAPTER 3 ALTERATION OF CORPORATE STATUS	
1. Re-registration of private companies as public companies: s. 5 and s. 6	[20]
(i) alteration of articles and memorandum of association	[21]
(ii) procedure on application to be re-registered as a public company	[22]
(iii) authorised minimum capital requirements	[27]
(iv) the role of the registrar on re-registration	[29]
2. Re-registration of unlimited company as public limited company: s. 7	[30]
3. Re-registration of a public company as a private company: s. 10 and s. 11	[31]
(i) alteration of memorandum and articles	[32]
(ii) protection of dissentient shareholders	[33]
(iii) application to registrar for re-registration as a private company	[35]
4. Registration of joint stock companies: s. 13	[37]
CHAPTER 4 Old PUBLIC COMPANIES	
1. Introduction	[38]
2. Old public companies: s. 8	[39]
3. Re-registration as public companies	[40]

	PARA.
4. Re-registration as private company where registration as public company is possible	[42]
5. Re-registration as private company where registration as public company is not possible	[43]
6. Compulsion to select appropriate status: s. 9	[44]
 CHAPTER 5 DISTRIBUTION OF SECURITIES	
1. Shares and debentures of private company not to be offered to the public: s. 15	[46]
2. Statement of subscribed capital in prospectus: s. 16	[51]
 CHAPTER 6 PRE-EMPTIVE RIGHTS	
1. Nature of pre-emptive rights	[52]
2. Implementing pre-emptive rights	[55]
3. Scope of the pre-emptive right	[56]
4. Exception (1): statutory pre-emptive right not available	[58]
5. Exception (2): pre-emptive right optional	[66]
6. Remedies for breach of pre-emptive right	[69]
7. Transitional provisions	[70]
 CHAPTER 7 SHAREHOLDER CLASS RIGHTS	
1. Protecting class rights: introduction	[71]
2. Scope of s. 32	[73]
3. Mechanics of protecting class rights	[77]
4. Transitional provisions	[87]
5. Procedure for shareholder class meetings	[88]
6. Publicity of class rights: s. 33	[89]
 CHAPTER 8 MINORITY SHAREHOLDER OPPRESSION	
1. Defects of s. 210 of the Companies Act 1948	[90]
2. Section 75	[91]
3. Power to appoint inspectors	[99]
 CHAPTER 9 DIRECTORS' POWERS: ALLOTMENT OF SHARES	
1. Power to allot shares: s. 14	[100]
2. Directors' power of allotment: fettered discretion	[101]
3. Directors' power of allotment: unfettered discretion	[103]
4. Penalties and civil consequences of breach	[104]
5. Transitional provisions	[106]
 CHAPTER 10 PAYMENT FOR SHARES	
1. Introduction	[107]
2. Allotment of shares at a discount: s. 21	[108]
3. Third party transferees: s. 20(4)	[111]
4. Payment for shares: s. 20	[113]
5. Minimum subscription for shares: s. 22	[117]
6. Payment of consideration otherwise than in cash for shares: s. 23	[120]

Contents

	PARA.
7. Valuation by expert of consideration for shares other than cash: s. 24 and s. 25	[124]
8. Valuation report	[127]
9. Failure to prepare a valuation report (including defective reports)	[131]
10. Allotment of shares and other consideration for payment other than in cash	[133]
11. Restriction on right of a company to acquire assets from subscribers: s. 26	[134]
12. Valuation procedure under s. 26	[143]
13. Defective s. 26 valuations	[145]
14. Judicial relief with respect to capital payment provisions: s. 28	[150]
15. Liability of subscribers: s. 29	[156]
16. Scope of the capital payment provisions: s. 31	[157]
 CHAPTER 11 MAINTENANCE OF CAPITAL	
1. Introduction	[158]
2. Reduction of capital below authorised minimum: s. 12	[159]
3. Acquisition of own shares by a company or its nominee: s. 35 and s. 36	[160]
4. Criminal and civil consequences of breach of s. 35(1)	[162]
5. Treatment of shares held by or on behalf of a public company: s. 37	[163]
6. Cancellation of shares held by or on behalf of a company	[168]
7. Cancellation of voting rights of shares held by or on behalf of a company	[170]
8. Accounting and disclosure for shares held by or on behalf of a company	[171]
9. Scope of s. 37	[172]
10. Charges taken by a public company on its own shares: s. 38 ..	[173]
11. Serious loss of called-up share capital: s. 34	[174]
 CHAPTER 12 DISTRIBUTION OF PROFITS	
1. Introduction	[178]
2. Definition of profits (all companies): s. 39	[179]
3. Distribution and capitalisation	[185]
4. Distribution by a public company: s. 40	[187]
(i) net assets	[188]
(ii) called-up share capital	[189]
(iii) undistributable reserves	[190]
5. Special rules for investment companies: s. 41	[191]
6. Definition of investment company	[194]
7. Insurance companies: s. 42	[197]
8. Preparation of proper accounts for determining validity of a distribution: s. 43	[199]
9. Defective distributions: s. 44	[204]
10. Transitional provisions	[205]

	PARA.
CHAPTER 13 TRANSACTIONS INVOLVING DIRECTORS	
1. Introduction	[206]
2. Definition of director: the “shadow director”	[207]
3. Directors and connected persons	[209]
4. Long term employment agreements: s. 47	[212]
5. Substantial property transactions: s. 48	[217]
6. Loans to directors and connected persons: s. 49	[223]
7. Prohibition of loans	[224]
8. Special regulations with respect to “relevant companies”	[227]
9. Quasi-loans	[228]
10. Credit transactions	[230]
11. Exceptions from s. 49: s. 50	[232]
(a) intra-corporate dealings	[233]
(b) credit transactions	[235]
(c) transactions of minimal value: s. 50(2)	[237]
(d) director’s expenses	[238]
(e) money-lending transactions	[239]
(f) home loans	[244]
12. Relevant amounts and their valuation	[246]
13. Value of transaction unascertainable	[251]
14. Civil remedies for breach of s. 49: s. 52	[252]
15. Criminal penalties for breach of s. 49: s. 53	[253]
16. Some miscellaneous aspects on the scope of Part IV	[254]
CHAPTER 14 DISCLOSURE OF DIRECTOR’S TRANSACTIONS	
1. (1) Disclosure of director’s interests: s. 49 transactions	[256]
2. (2) Disclosure of director’s interests: other transactions	[258]
3. Penalties for non-disclosure and defences	[263]
4. Exemptions from s. 54	[266]
5. Particulars to be disclosed: s. 55	[274]
6. Details of loans to corporate officers	[278]
7. Companies Act 1948, s. 199	[280]
8. Companies Act 1967, s. 26	[282]
9. Scope of Part IV	[284]
CHAPTER 15 RECOGNISED BANKS	
1. Loans	[286]
2. Disclosure of transactions	[287]
CHAPTER 16 INSIDER TRADING	
1. Introduction	[292]
2. Insider liability to company	[293]
3. Insider liability to shareholders	[294]
4. Statutory regulation of insider trading: Part V	[295]
5. Insider: “Individual knowingly connected”	[296]
6. Inside information	[299]
7. Insider trading	[306]

Contents

	PARA.
8. Extension of liability under s. 68(1)	[307]
9. Third parties: tpees	[309]
10. Insider trading and take-over offers	[312]
11. Application of Part V to "individuals" only	[314]
12. Part V applies only to "dealing"	[315]
13. Off-market dealings: s. 70	[317]
14. Dealings on a foreign stock exchange: s. 70(2)	[319]
15. Defences and exclusions	[320]
(i) trading other than for profit	[320]
(ii) liquidator, receiver or trustee in bankruptcy	[322]
(iii) jobbers	[323]
(iv) trustee and personal representatives	[325]
(v) the completion of transactions	[328]
(vi) international bond issues	[329]
16. Crown servants: s. 69	[333]
17. Consequences of insider trading	[334]
 CHAPTER 17 A COMPANY AND ITS EMPLOYEES	
1. Introduction	[337]
2. Directors' duties and employee interests: s. 46	[340]
3. Corporate capacity and employee interests: s. 74	[342]
4. Conditions precedent to the exercise of power under s. 74	[348]
5. Gratuitous payments to employees of companies being wound up	[351]
 CHAPTER 18 MISCELLANEOUS, INCLUDING ALTERATIONS TO THE COMPANIES ACTS 1948 AND 1967	
1. Alterations to the memorandum (objects)	[355]
2. Financial assistance by company in connection with purchase of own shares	[357]
3. Increased penalties and enforcement	[358]
4. Powers of the Secretary of State	[361]
5. Employees' share schemes	[362]
6. Company names	[364]
7. Appointed day and transitional period	[366]
8. Secretary of public companies	[367]
9. Protection of depositors	[368]
10. Repeals and amendments	[370]
 COMPANIES ACT 1980	 [371]—[517]
<i>EEC Second Directive</i>	PAGE 311
<i>Index</i>	323
<i>Words Statutorily defined</i>	337

CHAPTER I

INTRODUCTION

Throughout this book, unless otherwise stated or the context otherwise requires, the expressions "the Act" or "the Act of 1980" refer to the Companies Act 1980. Reference to a section (e.g., "section" or "s. 2") will be to that section of the Companies Act 1980. All other Companies Acts will be appropriately identified.*

When the Companies Act 1980 (the first Companies Act by a Conservative government since Stanley Baldwin) was initially tabled its principal purpose was the implementation of the Second Directive¹ on Company Law. During its legislative odyssey, which started in the House of Lords, it was substantially added to, partly as a result of opposition urgings and partly because the government had a change of heart, and during the committee stage in the House of Commons a cluster of provisions dealing mainly with the duties of directors were incorporated. Another Companies Act is promised for the 1980–81 session of parliament² which, in part, will be designed to implement the Third³ and Fourth Directives⁴. A number of observations can be made on the effect of the Companies Act 1980 and more generally on the present state of company law reform.

[1]

First, our obligation to implement the various EEC directives on company law has already (and will more so in the future) entailed a change in the legislative style of Companies Acts. Given continental influences and the need to guarantee a broad level of uniformity among the company law regimes of member states of the EEC, it is inevitable that such acts will be more rigid and prescriptive than they have been in the past. Also, in the United Kingdom many aspects of corporate affairs have not been subject to legal control, or controlled within a very loose legal framework, because of the heavy reliance placed on self-regulation and self-proclaimed codes of conduct promulgated by the various participant groups in the securities industry. In the future, because of our need to implement the various company law directives, we will inevitably come to rely less on this regime of self-regulation. As the House of Lords Select Committee on

* The phrase "the Companies Acts 1948 to 1980" is defined in s. 90(2) of the 1980 Act to embrace not only the major Companies Acts but also, the Companies (Floating Charges and Receivers) (Scotland) Act 1972, the European Communities Act 1972, s. 9, the Stock Exchange (Completion of Bargains) Act 1976, ss. 1–4, and the Insolvency Act 1976, s. 9. The phrases, "the 1948 Act", "the 1967 Act" and "the 1976 Act" refer to the Companies Acts of these years respectively: s. 87(1).

¹ OJ 1977, L26/1.

² Parliamentary Debates, House of Lords, Vol. 401, Col. 105. Although subsequently this promise became much less certain: Parliamentary Debates, House of Lords, Vol. 407, col. 583.

³ OJ 1978, L295/36.

⁴ OJ 1978, L222/11.