

A low-angle, upward-looking photograph of a modern skyscraper with a glass facade. The building's structure is a complex grid of dark metal beams and glass panels. The sky is a deep, warm red, and the light reflects off the glass, creating a shimmering effect. The perspective makes the building appear to converge towards the top of the frame.

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Company Law

ALAN DIGNAM & JOHN LOWRY

9th edition

CORE TEXT SERIES

CORE TEXT SERIES

Company Law

Ninth edition

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Preface

Company law is a difficult subject. We know this because each year our student feedback tells us so. There are two reasons for this. First, company law has become a quasi-core subject with students choosing it because they regard it, not unnaturally, as an essential requirement for pursuing a career as a commercial lawyer. The fact that many students may not have the skills best suited to studying company law never seems to put students off and is often at the root of a poor to mediocre performance in the exams. So what are the essential skills needed? A good knowledge of contract, a proper understanding of equity, good statutory and common law interpretation skills and a certain flexibility of mind needed to deal with the legal creation of corporate personality. With this base of skills a student will be equipped to deal with the hazardous waters of company law. If you think you don't have these essential skills then put this book down and rethink your options. Choose subjects based around the skills you have already identified as your strongest. It is best to do this now rather than suffer through an unhappy year of company law.

The second reason that students find company law difficult is that it is not until the end of the course that they see how the various parts of company law fit together. This is because company law is much like a jigsaw puzzle made up of smaller pieces that fit together to form a larger picture. Unfortunately, unlike a jigsaw puzzle you don't get a picture on the box to guide you. It is therefore not until the end of the course that the full company law picture is revealed, often too late for a really good understanding of the subject to emerge. It is our intention in this book to go as far as we can to provide that picture on the box to guide the company law student.

The book is structured fairly broadly around the University of London External LLB syllabus for Company Law on the basis that it represents the typical company law curriculum to be found in most UK undergraduate courses. However, given the burgeoning nature of the subject, not every part of that syllabus is covered by us. As a means of producing a manageable sized text that meets the objectives of the *Core Text Series*, we focus on those areas which are encountered in the company law courses we both teach. Where emphasis is accorded to certain topics above others this reflects our particular interests and our combined teaching experience rather than any subliminal message concerning the importance of those areas within the curriculum. Part I of the book seeks to guide the reader through the fundamental principles which underlie company law and those areas of the law which are necessarily encountered when a company is first brought into existence. Part II focuses on what goes on behind the corporate veil; it considers constitutional matters, classes of shares, and shareholders' rights and remedies. Part III examines issues of authority that arise when business is conducted through a company. It deals with how power is allocated to transact with outsiders, the company's principal organ of management, and the duties of directors. Emphasis is also given to corporate

governance and how the corporation can be best accommodated within the various corporate theories that have been developed over the last two hundred years or so. Of course, somewhat appropriately, we also, in our final chapter, deal with the end of the company. At the end of each individual chapter there is a list of 'Further Reading' which we have selected as particularly useful for fleshing out the topic just covered. Additionally we have provided an extended list of reading for each chapter in the Select Bibliography at the end of the book. If we have discussed an article or book in a chapter the full reference to it will be found in either the Further Reading or the Select Bibliography.

Students of the subject will soon learn that company law has been in a state of flux over recent decades. A major review of company law by the Department of Trade and Industry (DTI, now the Department for Business, Innovation and Skills—BIS) began in 1998 which culminated in the Companies Act 2006. It is very important that any student of company law has extensive knowledge of this project as it provides a detailed account of the nuts and bolts of company law. The various consultation papers and the *Final Report* of the DTI's Company Law Review Steering Group (CLRSG) are available at <http://webarchive.nationalarchives.gov.uk/97801987041334/http://www.bis.gov.uk/policies/business-law/company-and-partnership-law/company-law/publications-archive>. The *Final Report* forms the basis of the Government's 2002 and 2005 White Papers as well as much of the Companies Act 2006. These are also available at the same web address, and hard copies will most certainly be available in a good law library or, if you lack access to a library, from the Stationery Office. The proposals of the CLRSG, the Government's response and, of course, the ensuing Companies Act 2006 are discussed where they impact on each individual chapter, but we also expect students to go through these documents themselves.

We would particularly like to thank the following for their support and comments on this work: Michael Bryan, Rob Chambers, Rod Edmunds, Michael Galanis, Jennifer Hill, Lusina Ho, Magdalena Latek, Ernest Lim, Andrea Lista, James Penner, Ian Ramsay, Philip Rawlings, Arad Reisberg, and David Tomkin. We owe a particular debt of gratitude to Sheila Shirley, Janette Monk, and Nerys Evans at QM for their tireless support. Needless to say, our thanks go to the School of Law at Queen Mary, University of London and to the Faculty of Laws at UCL for their support, and to the generations of students who have taught us much about the complexities of company law.

Primary authorship of each chapter is as follows: Alan Dignam contributed Chapters 1, 2, 3, 5, 8, 12, 15 and 16; John Lowry contributed Chapters 4, 6, 7, 9, 10, 11, 13, 14 and 17.

We have tried to state the law as at 8 April 2016.

Alan Dignam and John Lowry
London

New to this edition

- Coverage of the aftermath of the Supreme Court veil lifting case *Prest v Petrodel Resources Ltd* (2013)
- *Eclairs Group Ltd v JKK Oil & Gas plc* (2015) SC
- *Jetivia SA v Bilta (UK) Ltd* (2015) SC
- The impact of the Small Business, Enterprise and Employment Act 2015
- On Corporate Governance: Updates to the UK Corporate Governance and Stewardship Codes, the introduction of remuneration equality transparency provisions and the revised targets for women on boards.
- Latest developments with the EU proposals for the revision of the Shareholders Rights Directive and the Transparency Directive Amending Directive (2013/50/EU).

Guide to using the book

There are a number of features throughout the textbook designed to help you in your studies.

SUMMARY

Introduction
The background to the UK debate
A word on UK corporate theory
The corporate governance debate: the industry response
The corporate governance debate: the Government response
Corporate governance failure and the financial crisis
The Walker Report 2009
Ongoing reform

Chapter summaries highlight what will be addressed in each chapter, so you are aware of the key learning outcomes for each topic.

FURTHER READING

This chapter links with the materials in Chapter 19 of *Hicks Company Law*, (Oxford, OUP, 2011, xl +649p).

Campbell, 'Protection by Elimination: Winding up of Com [2001] *JL & P* 129.

Cooke and Hicks, 'Wrongful Trading—Predicting Insolvency Finch, 'Re-invigorating Corporate Rescue' [2003] *JBL* 527.

Finch, 'Pre-Packaged Administrations: Bargains in the Shad gains?' [2006] *JBL* 568.

At the end of each chapter is a list of recommended **further reading**. These suggestions include books and journal articles, and will help to supplement your knowledge, and develop your understanding of key topics.

SELF-TEST QUESTIONS

- 1 Explain concession theory.
- 2 What was the importance of the Berle and Means thesis?
- 3 Explain corporate realism.
- 4 How does economic theory aid company lawyers?
- 5 In your view does corporate law matter?
- 6 What are the alternatives to shareholder oriented corporate governance?

Each chapter concludes with a selection of **self-test questions**. These allow you to check your understanding of the topics covered, and help you engage fully with the material in preparation for further study, writing essays, and answering exam questions.

Acknowledgements

Special thanks to the Financial Reporting Council for allowing us to reproduce extracts from the UK Corporate Governance Code and the Stewardship Code.

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