

Charlesworth & Cain
Company Law

Twelfth Edition
Geoffrey Morse



Charlesworth and Cain Company Law

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PREFACE

The development of company law since the previous edition of this work has been of a magnitude unprecedented in recent years. United Kingdom membership of the European Economic Community which required compliance during that time with two harmonising directives, provided the *raison d'être* for the Companies Acts of 1980 and 1981. Opportunity was taken on both occasions, however, to amend the existing law in many areas not required by the directives. Two examples, the regulation of insider dealing and the disclosure of substantial interests in shares, suffice to show that the scandals of the 1970s provided this further impetus for reform, once the EEC requirements had persuaded the Government to allow company law legislative time. The result is that company law has a far more statutory basis than it used to have—and, what is more, a basis founded not on one statute but on nine. It is therefore imperative that the consolidation of the legislation into one or more coherent statutes, promised for 1984, actually appears, whatever the political situation then appertaining.

This trend from case to statute law would appear to be irreversible in modern society, but there are many other important areas of company law, still untouched by statute, which have not stood still. In particular, the Court of Appeal has further examined the rule in *Foss v. Harbottle* in the case of *The Prudential Assurance Co. Ltd. v. Newman Industries Ltd. (No. 2)*, and there have been important developments in the law of *ultra vires* and the duties of majority shareholders.

The present edition attempts to incorporate these developments into what remains, hopefully, a basic framework for those wishing to study company law. Because there is now simply more company law, the length of the book has increased but some attempt has been made to keep it within reasonable bounds by omitting the chapters on foreign companies and taxation which appeared in the previous edition. Instead references to tax law are made in the text where appropriate and readers are referred to Pinson, *Revenue Law* for further study.

There are four new chapters, reflecting in the main the new legislation. Chapter 12 is concerned with the revolutionary new powers of purchase and redemption by a company of its own shares. Chapter 13 sets out the new, complex, rules on the giving of financial assistance by a company for the acquisition of its shares by another. This topic was formerly incorporated in Chapter 10 but is now thought to merit

specific consideration. Chapter 21 sets out the new criminal sanctions for the much publicised topic of insider dealing. Finally, Chapter 31 on take-overs has been separated from the chapter on re-constructions and amalgamations. The new chapter takes into account the development of self-regulation in the securities industry by the Council for the Securities Industry and the City Panel on Take-overs and Mergers. There are also many other changes too numerous to mention.

One important new development, however, has been the appointment of a specialist accounting editor. The events of the 1970s proved above all that lawyers could not just leave everything to the accountants and wash their hands of the consequences. In the light of the many changes introduced by the 1981 Act it is now more than ever essential for those wishing to claim a knowledge of company law to have a grasp of the accounting rules both in the legislation and in practice. The chapter on accounts has accordingly been rewritten and expanded by the Professor of Accounting at Liverpool, Richard Morris. I owe him a great debt for his ability to find in the mire of accountancy a path that even an innumerate lawyer may follow.

I also owe a considerable debt to my Scottish Editor, Dr. Enid Marshall, of Stirling University. In addition to providing an update on Scots law, and incidentally keeping within the bounds of reasonableness in the process, she has also corrected many of my errors and infelicities of style with a modesty I found impossible to resent. Scottish cases are, of necessity, for the most part mentioned only by way of footnotes; for fuller treatment of most of these cases the reader is referred to Dr. Marshall's *Scottish Cases on Partnerships and Companies* published by W. Green & Son Ltd. (1980).

Other contributors require a mention. My colleague, Christopher Ryan, being a specialist in criminal law as well as company law, was, I felt, in an ideal position to contribute the new chapter on insider dealing, and I am most grateful to him for that. He also contributed the section on the disclosure of substantial share interests in Chapter 10, having annotated that part of the 1981 Act for me in the Current Law annotations. He has not let me down. To my colleagues, Robert Upex, who assisted me on points involving labour law, and Ann Arora, who read the page proofs and corrected yet more errors, I am also in debt and tender my thanks. The secretaries in the Faculty of Law at Liverpool, in particular Mary Jenkins, also deserve my thanks for translating parts of my manuscript from hieroglyphics into legible English.

Finally I must, on behalf of a generation of law students, pay tribute to Tom Cain, whose work on this book now ends. He has achieved the

difficult task of maintaining the essential character of a successful book developed by another. It is that task which now falls to me.

To my wife Christine, and children, Nigel and Carolyn, I owe a debt for their support, encouragement and patience, and, above all perhaps, for their ability to bring me down to reality whenever that appeared to them to be necessary.

The final responsibility for all errors and defects is of course mine. The law is stated as known to me on March 1, 1983.

Liverpool,
April 1983.

GEOFFREY MORSE

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