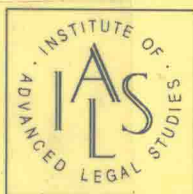


STUDIES IN
COMPARATIVE CORPORATE
AND FINANCIAL LAW

Directors' Duties

A New Millennium,
A New Approach?

Bruce S. Butcher



Directors' Duties

A New Millennium, A New Approach?

Bruce S. Butcher

B Juris (UWA), LLB (UWA), LLM (Lond), PhD (Cantab)
Solicitor of the Supreme Court of England and Wales,
Barrister and Solicitor of the Supreme Courts of New South Wales,
Victoria and Western Australia



KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / BOSTON

Library of Congress Cataloging-in-Publication Data

Butcher, Bruce S.

Directors' duties : a new millenium, a new approach? / Bruce S. Butcher.

p. cm. -- (Studies in comparative corporate and financial law ; v. 7)

Includes index.

ISBN 9041197885 (alk. paper)

1. Directors of corporations--Legal status, laws, etc.--Australia. 2. Directors of corporations--Legal status, laws, etc.--Great Britain. I. Title. II. Series.

K1328.B88 2000

346'.06642--dc21

00-024919

ISBN 90-411-9788-5

Published by Kluwer Law International,
P.O. Box 85889, 2508 CN The Hague, The Netherlands

Sold and distributed in North, Central and South America
by Kluwer Law International,
675 Massachusetts Avenue, Cambridge, MA 02139, USA

In all other countries, sold and distributed
by Kluwer Law International, Distribution Centre
P.O. Box 322, 3300 AH Dordrecht, The Netherlands

Printed on acid-free paper

All Rights Reserved

© 2000 Kluwer Law International

Kluwer Law International incorporates the publishing programmes of
Graham & Trotman Ltd, Kluwer Law and Taxation Publishers,
and Martinus Nijhoff Publishers.

No part of the material protected by this copyright notice may be reproduced or
utilized in any form or by any means, electronic or mechanical,
including photocopying, recording, or by any information storage and
retrieval system, without written permission from
the copyright owner.

Printed and bound in Great Britain by Antony Rowe Limited.

Volume 7

Series Editor

Barry Rider
Institute of Advanced Legal Studies
University of London
Charles Clore House
17 Russell Square
London WC1B 5DR

The titles published in this series are listed at the end of this volume.

Preface

This book is written from a practising company lawyer's perspective and is principally concerned with two broad directors' duties: to act honestly, in good faith and for proper purposes, and to exercise care and diligence. Within this remit, this book examines the duties owed by directors of British and Australian companies and inquires into the role of parliament and the judiciary as the law responds to changes in public attitudes to corporate governance. Since the mid-1980s, public sentiment has altered towards directors and the business community's expectations in this respect have risen considerably. Parliament and the judiciary have come to recognise this and are adopting a new approach to directors' duties. This has led to case-law and statutory enactment which has widened the scope and applicability of duties imposed upon directors, focused upon areas previously regarded as being not properly the subject of attention and intervention, and adopted and encouraged a more robust approach to corporate governance. This new approach is to be welcomed.

There are strong historical links between English and Australian company law: legal, equitable and statutory. These links lend themselves to a comparative study across two jurisdictions with common roots, but at times different approaches and outlooks. This book draws from the rich experience of the English judiciary and the British Parliament, and from the significant contribution which Australian company law has recently made to the jurisprudence in this area. Over the past decade or so, the Australian judiciary has come to favour commercial certainty, tempered with a degree of commercial pragmatism in the light of the business community's expectations, in order to resolve the complex commercial disputes which today's companies face. This approach to directors' duties is gaining acceptance in English company law and is reflected in recent decisions by the English courts.

The cases mentioned throughout this book have been chosen very deliberately. Many have been analysed in detail. Moreover, there are many examples of Canadian and New Zealand company law cases which are cited and referred to throughout this book. Some of these are also analysed in detail as English and Australian company law are very much the richer for their influence: so too the jurisprudence of other Commonwealth countries. These cases serve to emphasise not only theoretical aspects of English and Australian company law, but very important practical aspects as well. This is important to the application of company law in every day practice and should prove useful to directors of British and Australian companies and those who advise them, and also to practitioners and students of this demanding and fascinating subject.

The law as it relates to the duties upon directors of British and Australian companies has proven to be unusually dynamic during the twilight years of the 20th century. It has been difficult keeping up with the many changes which have been made and those that

are mooted to be made. On 4 March 1998, for instance, the President of the Board of Trade announced the launch of a fundamental review of the framework of core English company law. In February 1999, the Department of Trade and Industry released its consultation document entitled *Modern Company Law: The Strategic Framework*. This document identifies as an issue of general importance to the review those interests which English company law in the 21st century should serve and the means by which it should do so. It is intended that the review be completed in time for a detailed White Paper to be published in or about March 2001. Moreover, in September 1999, the Law Commission published its eagerly awaited report entitled *Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties*. This report *inter alia* revives the push for the partial codification of the duty upon directors of British companies to exercise care, skill and diligence.

In addition, there have been a number of fresh legislative initiatives on the part of the Australian Parliament which complement and supplement the recent developments in this area of the law by the Australian judiciary. The recent Corporate Law Economic Reform Program, which has been partially implemented by the Australian Parliament, is an example of the determination which the Australian Government has for progressing a modernised and revitalised Australian company law into the 21st century. This approach to company law is being watched in England with considerable interest.

Whilst the topic of directors' duties might be described by some as a discrete aspect of company law, that would be to oversimplify its overall pervasive nature and the way in which it infects every aspect of modern company law. It is a topic of considerable theoretical and practical importance, and an area of increasing complexity as equitable doctrine more frequently impacts upon such diverse subjects as company law and insolvency law. Hence it invites analysis of the intricate relationship between statutory regulation and fiduciary law. This book suggests that a fundamental reassessment of traditional rules is required in order to refashion principles capable of resolving conflicts spawned by the complexities of modern corporate life. It inquires into the fundamental concepts, principles, policies and trends applicable to such complexities. It then explores the dynamics involved as the English and the Australian courts attempt to wade through the myriad of competing interests found within the morass of legal rules, equitable principles and statutory enactment which comprise modern company law.

Although the footnotes to this book are comprehensive and very detailed, no attempt has been made to refer to every major decision pronounced by the English and the Australian courts which touches upon directors' duties. Equally, not every article and journal which relate to the duties upon directors of British and Australian companies has been referred to. This selective treatment of the authorities was necessitated by the confines of space and the nature of this work. I have deliberately not undertaken a discussion, let alone an analysis, of the broader issues of company law. Even so, an attempt has been made to set the relevant legislation into the context of English and Australian company law, and to address some of the more interesting and sometimes controversial issues which relate to those cardinal duties under discussion. The many references not included can be readily found within any of the leading textbooks or casebooks on English and Australian company law. The views expressed in this book are mine. The law is stated as at 30 September 1999.

Bruce Butcher
London, 3 October 1999

Acknowledgments

It was with some trepidation that I embarked upon this project. As a practitioner in this field, I was only too well aware of the seemingly boundless nature of company law and the recent interest in the topic of directors' duties which has contributed exponentially to the growth of case-law and statutory enactment in this area. I was also very aware of my ongoing work commitments and the neglect that that has inflicted upon my family and friends over the past few years, without adding to my workload. Nonetheless, I pressed onwards as I wanted to write a book upon directors' duties and contribute in some small way to legal scholarship and the study of this intricate and exacting subject. The journey has been long, arduous and at times frustrating. But it has proven to be very rewarding. Even so, I am glad that the journey is now complete. That is largely through the efforts of others.

This book has benefited greatly from the very capable assistance provided by Heather Wilson who has proven to be a wonderful friend, supporter and assistant over the many years that it has been in the writing. My sincere appreciation to her is recorded here. I should also like to thank Professor Barry Rider who has provided me, as he has provided so many others, with his friendship, the opportunity of higher education and now publication of this book. His generosity often goes largely unnoticed, but is always appreciated. In addition, I am indebted to my family and friends for their considerable support. In particular, my parents, Patricia and Roy Heal, my brother Neil, my sisters Nita, Joy and Linda, and also Mark Balfour, who between them have held the fort at home during my many absences. Thank you.

Lastly, I should also express my gratitude to my publisher Kluwer Law International and to the way in which Lukas Claerhout and Nicki Judkins so quickly and so efficiently progressed my manuscript through the various stages and into print. My appreciation and gratitude is theirs. All errors and omissions are mine.

Bruce Butcher

London, 3 October 1999

Table of Abbreviations

ABLR	Australian Business Law Review
ABR	Australian Bar Review
AC	Appeal Cases
ACLC	Australian Company Law Cases
ACLR	Australian Company Law Reports
ACS	Australian Company Secretary
ACSR	Australian Corporations and Securities Reports
ACT	Australian Capital Territory
Adel LR	Adelaide Law Review
AGPS	Australian Government Publishing Service
AJCL	Australian Journal of Corporate Law
ALI	American Law Institute
ALJ	Australian Law Journal
ALJR	Australian Law Journal Reports
All ER	All England Law Reports
All ER Rep	All England Law Reports Reprint
ALR	Australian Law Reports
ALRC	Australian Law Reform Commission
App Cas	Appeal Cases
ASC	Australian Securities Commission
ASIC	Australian Securities and Investments Commission
ASLR	Australian Securities Law Reports
ASX	Australian Stock Exchange Ltd
Atk	Atkyns Reports
ATPR	Australian Trade Practices Reports
BCC	British Company Cases
BCLB	Butterworths Corporation Law Bulletin
BCLC	Butterworths Company Law Cases
Beav	Beavan Reports
BLR	Business Law Review
Bond LR	Bond University Law Review
Bus Law	Business Lawyer
Canta LR	Canterbury Law Review
CBLJ	Corporate and Business Law Journal
CCL	Current Commercial Law
CGPO	Commonwealth Government Printing Office
Ch	Chancery

Directors' Duties

Ch App	Chancery Appeals
Ch D	Chancery Division
Chan Rep	Chancery Reports
CLJ	Cambridge Law Journal
CLP	Current Legal Problems
CLR	Commonwealth Law Reports
Cmd/Cmnd	Command Paper
Co Dir	Company Director
Co Law	Company Lawyer
Colum LR	Columbia Law Review
Conv	Conveyancer and Property Lawyer
CP	Common Pleas
CPD	Common Pleas Division
CSLJ	Company and Securities Law Journal
Cth	Commonwealth
De G&J	De Gex and Jones Reports
De GJ&Sm	De Gex, Jones and Smith Reports
De GM&G	De Gex, Macnaghten and Gordon Reports
DLR	Dominion Law Reports
Dr&Sm	Drewry and Smale Reports
DTI	Department of Trade and Industry
EB&E	Ellis, Blackburn and Ellis Reports
E&B	Ellis and Blackburn Reports
Eden	Eden Reports
Eq	Equity
Eq Rep	Equity Reports
ER	English Reports Reprint
Ex D	Exchequer Division
F 2d	Federal Reporter 2nd series
FCT	Federal Commissioner of Taxation
Fed	Federal Reporter
FCR	Federal Court Reports
FLR	Federal Law Reports
H&M	Hemming and Miller Reports
Hare	Hare Reports
Harv LR	Harvard Law Review
HL	House of Lords
HLC	House of Lords Cases (Clark)
HMSO	Her/His Majesty's Stationery Office
ICLQ	International and Comparative Law Quarterly
ILJ	Insolvency Law Journal
IR	Irish Reports
JBFLP	Journal of Banking and Finance Law and Practice
JBL	Journal of Business Law
JCL	Journal of Contract Law
KB	King's Bench
LJ Ch	Law Journal Chancery
LJ PC	Law Journal Privy Council
Lloyd's Rep	Lloyd's List Law Reports

Table of Abbreviations

LQR	Law Quarterly Review
LR	Law Reports
LR (NSW)	Law Reports (New South Wales)
LR Eq	Equity Cases
LR HL	English and Irish Appeals
LSE	London Stock Exchange Ltd
LS Gaz	Law Society Gazette
LT	Law Times Reports
Mac&G	Macnaghten and Gordon Reports
Macq	Macqueen Reports
Melb ULR	Melbourne University Law Review
MLR	Modern Law Review
MULR	Monash University Law Review
My&Cr	Mylne and Craig Reports
NCSC	National Companies and Securities Commission
NE	North Eastern Reporter
NLJ	New Law Journal
NSW	New South Wales
NSWLR	New South Wales Law Reports
NSWR	New South Wales Reports
NT	Northern Territory
NZ	New Zealand
NZCLC	New Zealand Company Law Cases
NZLC	New Zealand Law Commission
NZLR	New Zealand Law Reports
NZULR	New Zealand Universities Law Review
OECD	Organisation of Economic Co-operation and Development
OHLJ	Osgoode Hall Law Journal
OJLS	Oxford Journal of Legal Studies
Ph	Phillips Reports
Plc	public limited company
PLR	Public Law Review
QB	Queen's Bench
QBD	Queen's Bench Division
Qd R	Queensland Reports
Qld	Queensland
RLV	Restitution Law Review
RSC	Rules of the Supreme Court
SA	South Australia
SASR	South Australian State Reports
Sc LR	Scottish Law Reporter
Sel Cas t King	Select Cases in Chancery
SI	Statutory Instrument
SLR	Stanford Law Review
SLT	Scots Law Times
Sm & Giff	Smale and Gifford Reports
Sol Jo	Solicitors' Journal and Reporter
SR(NSW)	State Reports (New South Wales)
St R (Qd)	State Reports (Queensland)

Str	Strange Reports
Syd LR	Sydney Law Review
Table A	Companies (Tables A to F) Regulations (SI 1985/805)
Tas	Tasmania
TLR	Times Law Reports
TSEC	Toronto Stock Exchange Committee
UCA	Uniform Companies Act
UCLR	University of Chicago Law Review
UK	United Kingdom
UNSWLJ	University of New South Wales Law Journal
US	United States Supreme Court Reports
USA	United States of America
UTLJ	University of Toronto Law Journal
UTLR	University of Tasmania Law Review
UWALR	University of Western Australia Law Review
V&B	Vesey and Beames Reports
V Conv R	Victorian Conveyancing Law and Practice
Ves Jun	Vesey Junior Reports
Ves Sen	Vesey Senior Reports
Vic	Victoria
VLR	Victorian Law Reports
VR	Victorian Reports
VUWLR	Victoria University of Wellington Law Review
WA	Western Australia
WAR	Western Australian Reports
WLR	Weekly Law Reports
WN	Weekly Notes
WN (NSW)	Weekly Notes (New South Wales)
Y&CCC	Younge and Collyer Reports
YLJ	Yale Law Journal

Table of Cases

- 3M Australia Pty Ltd v Kemish (1986) 4 ACLC 185: 209, 217n, 218n
 3M Australia Pty Ltd v Watt (1984) 2 ACLC 621: 186n, 199n, 213n
 Aberdeen Railway Company v Blaikie Brothers (1854) 1 Macq 461: 17n, 20n, 102n, 302
 Adamson, Ex parte (1878) 8 Ch D 807: 307n
 Advance Bank Australia Ltd v FAI Insurances Ltd (1987) 5 ACLC 725: 122, 124n, 141n, 156n, 349n
 Airpeak Pty Ltd v Jetstream Aircraft Ltd (1997) 15 ACLC 715: 139n, 269n, 270n
 Aleyn v Belchier (1758) 1 Eden 132; 28 ER 634: 99n, 105n
 Allen v Atalay (1994) (unreported, Victorian Supreme Court No. 2126/93, Hayne J, 16 August 1994): 191n
 Allen v Atalay (1994) 12 ACLC 7: 182n, 191n
 Allen v Gold Reefs of West Africa Ltd [1900] 1 Ch 656: 104, 106-107, 107n, 110n, 120n, 125, 126, 140n, 151n
 Allen v Hyatt (1914) 30 TLR 444: 110n, 277n, 306n, 324n, 346
 Amatek Ltd v Botman (1995) 13 ACLC 1729: 218n
 Androvin v Figliomeni (1996) 14 ACLC 1461: 47n, 52n, 55, 56n, 63n, 81n, 90n, 146n, 150n, 169n, 202n, 206n, 211, 218n, 223, 240n, 249n, 254, 325n, 326, 327n, 328n, 333n, 350n, 353n
 ANZ Executors & Trustee Co Ltd v Qintex Australia Ltd (1990) 8 ACLC 980: 96, 99n
 ASC v Donovan (1998) 28 ACSR 583: 70n, 78n, 86, 139n, 228n, 267-268, 270n
 Ashburton Oil NL v Alpha Minerals NL (1970-1971) 123 CLR 614: 105n, 115n, 117n, 121n
 Attorney General for Hong Kong v Reid [1994] 1 All ER 1: 16, 102n, 109n, 190n, 230n, 274n, 302n, 304n, 307n, 309n, 310, 311, 315, 316, 344n, 347
 Attorney General v Blake [1996] 3 All ER 903: 317n
 Attorney General v Blake [1998] 1 All ER 833: 280n, 293n, 305n, 306n, 312-313, 342n, 344n, 345n
 Australasian Venezolana Pty Ltd, In Re (1962) 4 FLR 60: 42
 Australian Growth Resources Corporation Pty Ltd v van Reesema (1988) 6 ACLC 529: 19n, 101n, 102n, 103n, 108n, 110n, 114n, 135n, 140n, 141, 142n, 143, 144, 147n, 151n, 174n, 178n, 222n, 256n, 274n
 Australian Metropolitan Life Assurance Company Ltd, The v Ure (1923-1924) 33 CLR 199: 20n, 21n, 95n, 99n, 105n, 106n, 109n, 110, 117n, 118n, 144n, 162n, 167
 Australian Securities Commission v AS Nominees Ltd (1995) 133 ALR 1: 5n, 10n, 17n, 18n, 28n, 234n, 236n, 241n, 320n, 339n, 340n, 341

- Australian Securities Commission v Forem-Freeway Enterprises Pty Ltd (1998-1999) 30 ACSR 339: 70n, 78n, 137n, 139n, 185n, 195n, 201n, 215n, 218n, 219n, 222n, 229n, 246n, 262n, 264n, 265n, 267
- Australian Securities Commission v Gallagher (1993) 11 ACLC 286: 20n, 38n, 40n, 74n, 79n, 83, 84, 89n, 91, 106n, 146, 206n, 298
- Australian Securities Commission v Major (1996) (unreported, Federal Court of Australia, Queensland District Registry No. QG3011/96, Drummond J, 16 August 1996): 139n, 270n
- Australian Securities Commission v Spencer (1997) 25 ACSR 143: 139n, 270n
- Automatic Self-Cleansing Filter Syndicate Company Ltd v Cuninghame [1906] 2 Ch 34: 99n
- Avon Chambers Ltd, Re [1978] 2 NZLR 638: 172n, 175, 184n
- AWA Ltd v Daniels (1992) 10 ACLC 933: 40n, 48, 53n, 55, 69, 78-80, 89n, 134, 170, 211, 212n, 222n, 251n, 329, 335n, 340n, 350
- Balli Trading Ltd v Afalona Shipping Ltd [1992] TLR 406: 51n, 285
- Bamford v Bamford [1970] Ch 212: 115n, 117
- Bank of Australasia v Hall (1907) 4 CLR 1514: 182n
- Bank of New Zealand v Equiticorp Finance Ltd (1993) 11 ACLC 84: 153n
- Barings plc, Re [1998] BCC 583: 47n, 52n, 53, 55n, 60, 63n, 74n, 75, 80n, 81n, 90n, 92, 146n, 169n, 204n, 206n, 219n, 240n, 243n, 247n, 248n, 249n, 250-251, 253n, 254, 325n, 326, 327n, 328n, 333n, 334, 335n
- Barings plc (No 2), Re [1999] 1 All ER 311: 245n, 248
- Barings plc (No 5), Re [1999] 1 BCLC 433: 34n, 52n, 55, 60, 74n, 75, 80n, 81n, 82n, 88n, 92, 101n, 126n, 192n, 204n, 206n, 210n, 219n, 228, 230n, 240n, 242, 243n, 245n, 248n, 249n, 250n, 252-253, 254, 325n, 326, 330, 334
- Barnes v Addy (1874) 9 Ch App 244: 276n, 278, 304n, 307n, 309n, 314, 344n, 346n
- Barrett v Duckett [1995] BCC 362: 191n
- Barton Manufacturing Co Ltd, Re [1999] 1 BCLC 740: 188n, 256n
- Bath Glass Ltd, Re (1988) 4 BCC 130: 198n, 245n, 247, 248n, 259n
- Bath v Standard Land Company Ltd [1911] 1 Ch 618: 165n
- Biala Pty Ltd v Mallina Holdings Ltd (1993) 11 ACSR 785: 45n, 74n, 80n, 83n, 84n, 152n, 156-157, 158n, 281n, 292n, 299n
- Bike World (Wholesale) Pty Ltd, Re (1991-1992) 6 ACSR 681: 204n, 221n
- Bishopsgate Investment Management Ltd v Maxwell [1993] BCC 120: 98n, 114n, 281n
- Bishopsgate Investment Management Ltd v Maxwell (No. 2) [1994] 1 All ER 261: 1, 6n, 9n, 11n, 34n, 44, 46n, 50n, 51, 52n, 61n, 63n, 65n, 93n, 97n, 103n, 109, 112n, 124, 126, 141n, 143n, 146n, 148n, 158n, 169n, 207n, 211n, 219n, 249n, 273n, 274n, 285n, 286-287, 288, 289-90, 304n, 307n, 308, 321n, 322n, 325n, 327n, 328n, 336n, 341n, 344n, 347n, 348n, 349n, 351n, 352n
- Blackspur Group plc, Re [1998] 1 BCLC 676: 225n, 242n, 246n, 264n, 267n, 332n
- Boardman v Phipps [1967] 2 AC 46: 25, 278n, 302, 303n, 304n, 307n, 312, 344n, 346n
- Bonus Breaks Ltd, Re [1991] BCC 546: 262n
- Boulting v Association of Cinematograph, Television and Allied Technicians [1963] 2 QB 606: 25
- Brady v Brady (1987) 3 BCC 535: 107n, 154n, 166n, 179n, 180-181, 183, 352n
- Brady v Brady [1989] 1 AC 755: 105n, 125n
- Bray v Ford [1896] AC 44: 303

Table of Cases

- Brazilian Rubber Plantations and Estates Ltd, In re [1911] 1 Ch 425: 36n, 40, 47n, 52n, 73n, 249, 325, 329n
- Brian D Pierson (Contractors) Ltd, Re [1999] BCC 26: 35n, 51n, 59, 90n, 198n, 204n, 205n, 210n, 228n, 230n, 245n, 260, 261n, 334n
- Brick and Pipe Industries Ltd v Occidental Life Nominees Pty Ltd (1991-1992) 6 ACSR 464: 138n, 268n
- Brickenden v London Loan & Savings Co [1934] 3 DLR 465: 302n, 305, 344
- Bristol and West Building Society v Mothew [1996] 4 All ER 698: 33, 101n, 102n, 230n, 276n, 277n, 279, 285n, 292-293, 295, 300n, 341n, 342, 346n
- Bryan v Maloney (1995) 128 ALR 163: 281, 282n
- BSB Holdings Ltd (No. 2), Re [1996] 1 BCLC 155: 97n, 103n, 107n, 112n, 125n, 146n, 158n, 169n, 327n, 328n, 349n
- Bugle Press Ltd, In re [1961] Ch 270: 125n
- Burland v Earle [1902] AC 83: 37n, 97n, 107n, 118n, 151, 152n, 159n, 184n, 349n
- Burnie Port Authority v General Jones Pty Ltd (1993-1994) 179 CLR 520: 281n
- Byrne v Baker [1964] VR 443: 71-72, 131n, 132, 134
- Caerphilly Colliery Company, In re (1877) 5 Ch D 336: 17n, 276n
- Camiller v Commissioner of Police of the Metropolis: The Times, 8 June 1999: 35n
- Canadian Aero Service Ltd v O'Malley (1974) 40 DLR (3d) 371: 129n, 216n, 353n
- Canadian Land Reclaiming and Colonizing Company, In re (1880) 14 Ch D 660: 170n, 235
- Canson Enterprises Ltd v Boughton & Co (1992) 85 DLR (4th) 129: 22n, 32n, 280n, 285n, 288n, 289n, 291, 292, 301n, 306n, 307n, 308n, 337n, 343, 345n
- Caparo Industries Plc v Dickman [1990] 2 AC 605: 186n
- Caparo Industries Plc v Dickman [1990] BCC 164: 20n:
- Cape Breton Company v Fenn (1881) 17 Ch D 198: 157n, 188n, 216n:
- Capricorn Society Ltd v Linke (1996) 14 ACLC 431: 89n, 199n, 205n, 210n, 211n, 219n, 223, 224n
- Cardiff Savings Bank, In re [1892] 2 Ch 100: 16n, 35, 36, 42n, 47n, 52n, 206n, 249n, 325n
- Carlen v Drury (1812) 1 V&B 154; 35 ER 61: 38, 97n, 107n, 125, 151, 152n, 159n, 184n, 349n
- Carrier Air Conditioning Pty Ltd v Kurda (1993) 11 ACSR 247: 43n, 209n, 210, 218, 223
- Carter v Drake (1992-1993) 9 WAR 82: 140n, 142n, 148n, 150n, 151n, 327n, 350n
- Castlereagh Motels Ltd v Davies-Roe (1966) 67 SR (NSW) 279: 18n, 31n, 91n, 102n, 129n, 133n, 190n, 280n, 282n, 340n
- Cayne v Global Natural Resources plc (1982) (unreported, Ch D, Megarry VC, 12 August 1982): 123n
- Cayne v Global Natural Resources plc [1984] 1 All ER 225: 123n
- Chan v Zacharia (1983-1984) 154 CLR 178: 19n, 33n, 109n, 190n, 277n, 278n, 279n, 304n, 306n, 307n, 309-310, 315, 316, 341n, 344n, 346n, 347
- Chapman v Hearse (1961-1962) 106 CLR 112: 281n
- Charitable Corporation, The v Sutton (1742) 2 Atk 400; 26 ER 642: 9n, 29n, 30, 31n, 34n, 63n
- Charterbridge Corporation Ltd v Lloyds Bank Ltd [1970] Ch 62: 145, 153, 154
- Chew v R (1992) 10 ACLR 816: 101n, 121n
- Chew v The Queen (1991) 4 WAR 21: 105, 168, 170n, 174n, 222n:
- Chew v The Queen (1991-1992) 173 CLR 626: 138n, 268n

- Chez Nico (Restaurants) Ltd, Re [1991] BCC 736: 20n, 155n, 165n;
Christianos v Aloridge Pty Ltd (1995) 18 ACSR 272: 157n, 188n, 216n;
City Equitable Fire Insurance Company Ltd, In re [1925] Ch 407: 10n, 17n, 27n, 32n, 33, 39, 40n, 41, 42, 47n, 48, 71, 72, 77n, 80, 81n, 83, 84n, 91, 106n, 132, 134, 146n, 149n, 170n, 188n, 202, 207n, 249, 320n, 321n, 329;
Claridge House Ltd, In re (1981) 28 SASR 481: 79n
Claridge's Patent Asphalte Company Ltd, In re [1921] 1 Ch 543: 223n
Clark Boyce v Mouat [1994] 1 AC 428: 230n, 283n, 284-285
Clemens v Clemens Bros Ltd [1976] 2 All ER 268: 103n, 104, 106n, 108n, 166n
Clough v Bond (1838) 3 My & Cr 490; 40 ER 1016: 307n, 346n
Coleman v Myers [1977] 2 NZLR 225: 20n, 154n, 155n, 165n, 277n, 279n, 292n, 306n, 324n, 339n, 346n
Commonwealth Bank of Australia v Friedrich (1991) 5 ACSR 115: 6n, 10n, 27n, 50n, 52, 69, 76-77, 88n, 91-92, 134, 146n, 148n, 204, 206, 207, 208, 210, 213, 214n, 222n, 249, 320n, 321n, 322n, 325n, 335n, 353
Commonwealth Bank of Australia v Friedrich (1991) 9 ACLC 946: 218n;
Commonwealth Bank of Australia v Smith (1991) 102 ALR 453: 287-288, 300-301, 302n;
Consul Development Pty Ltd v D P C Estates Pty Ltd (1974-1975) 132 CLR 373: 276n, 301n, 302n, 303, 304n, 307n, 309, 344n, 346n
Continental Assurance Co of London plc, Re [1997] 1 BCLC 48: 225n, 242n, 246, 264n, 267n, 332n
Coomber, In re [1911] 1 Ch 723: 18n, 285
Cooper Brookes (Wollongong) Pty Ltd v The Commissioner of Taxation of the Commonwealth of Australia (1980-1981) 147 CLR 297: 89n
Corporate Affairs Commission v Papoulias (1990) 8 ACLC 849: 131n, 133, 136n, 142n
Corporate Affairs Commission v Papoulias (1990-1991) 20 NSWLR 503: 138n, 268n
Couve v J Pierre Couve Ltd (1933) 49 CLR 486: 170n, 171, 188n
Cummings v Claremont Petroleum NL (1993) 11 ACLC 125: 82-83, 86n, 88, 147
D P C Estates Pty Ltd v Consul Development Pty Ltd [1974] 1 NSWLR 443: 311n
D'Jan of London Ltd, Re [1993] BCC 646: 47n, 52n, 55, 59-60, 63, 74n, 81n, 90n, 146n, 188-189, 198n, 207n, 254, 256, 260-261, 325n, 326, 327n, 334n
Dairy Containers Ltd v NZI Bank Ltd [1995] 2 NZLR 30: 10n, 320n
Daly v Sydney Stock Exchange Ltd (1986) 60 ALJR 371: 311n, 315n;
Daniels v Anderson (1995) 13 ACLC 614: 9n, 15n, 30n, 31n, 34n, 38n, 39n, 40n, 45n, 46n, 47n, 48, 52, 64n
66n, 78n, 79n, 80-81, 83, 84n, 85, 88, 89n, 90n, 91n, 92n, 93n, 140n, 143n, 146n, 150n, 169n, 192, 206n, 211n, 212n, 219n, 240n, 249n, 251n, 252, 253, 254, 273n, 274n, 282n, 325n, 326, 327n, 328n, 329, 330n, 331, 333n, 335n, 340n, 341n, 348n, 350n, 351n, 352n, 353n
Darvall v North Sydney Brick & Tile Co Ltd (1988) 6 ACLC 154: 114, 115n
Darvall v North Sydney Brick & Tile Co Ltd (No. 2) (1989) 7 ACLC 659: 15n, 18n, 31n, 38n, 46n, 56n, 64n, 78n, 92n, 105, 111n, 112n, 116n, 119n, 120n, 122n, 123, 124n, 140n, 141n, 142n, 151n, 152, 156, 159n, 274n, 328n, 348n, 349, 350n
Dawson, Re [1966] 2 NSWLR 211: 277n, 286, 289n, 290n, 291, 292n, 298, 299, 300n, 301n, 306n, 307n, 342n, 343n, 345n
Day v Mead [1987] 2 NZLR 443: 31n, 32n, 280n, 282n, 289n, 292, 300n, 307n, 345n

Table of Cases

- Denham & Co, *In re* (1884) 25 Ch D 752: 35, 36, 47n, 52n, 63n, 81n, 206n, 249n, 325n
- Deputy Commissioner of Taxation v Austin (1998) 16 ACLC 1555: 5n, 10n, 17n, 27n, 52n, 69n, 77n, 88n, 129n, 134n, 146n, 214n, 216n, 234n, 235n, 236n, 241n, 250n, 321n, 326n, 353n
- Derry v Peek (1889) 14 App Cas 337: 138n, 268n
- Dimbleby & Sons Ltd v National Union of Journalists [1984] 1 WLR 427: 14n
- DKG Contractors Ltd, *Re* [1990] BCC 903: 59, 260
- Dominion International Group plc (No 2), *Re* [1996] 1 BCLC 572: 246n
- Donoghue v Stevenson [1932] AC 562: 31, 282
- Dorchester Finance Co Ltd v Stebbing [1989] BCLC 498: 42-43, 48
- Dovey v Cory [1901] AC 477: 26, 35n, 40, 41n, 48n, 49n, 80n, 88n, 249, 329n
- Downs v Chappell [1996] 3 All ER 344: 285n, 290n, 293, 343n
- Dowsett v Reid (1912-1913) 15 CLR 695: 19n, 155n
- Duke Group Limited, *The v Pilmer* (1998) 16 ACLC 567: 73n, 132n, 133n, 141
- Dunn v Shapowloff [1978] 2 NSWLR 235: 218n
- Duomatic Ltd, *In re* [1969] 2 Ch 365: 223n:
- Earl of Oxford's Case, *The* (1615) 1 Chan Rep 1; 21 ER 485: 9n, 25
- Edwards v Idaville Pty Ltd (1996) 19 ACSR 556: 35n
- El Ajou v Dollar Land Holdings plc [1993] 3 All ER 717: 310n, 347n
- El Ajou v Dollar Land Holdings plc [1994] 2 All ER 685: 310n, 347n
- El Ajou v Dollar Land Holdings plc (No. 2) [1995] 2 All ER 213: 310n, 347n
- EL Bell Packaging Pty Ltd v Allied Seafoods Ltd (1990) 8 ACLC 1135: 186n, 202n
- Elder's Trustee and Executor Company Ltd v Higgins (1963-1964) 37 ALJR 132: 20n
- English Bank of the River Plate; *Ex Parte* Bank of Brazil, *In re* [1893] 2 Ch 438: 22n
- Equiticorp Finance Ltd v Bank of New Zealand (1993) 11 ACLC 952: 6n, 8, 9n, 16n, 21n, 46n, 50n, 92n, 93n, 103n, 112n, 118n, 124n, 143n, 146n, 148n, 150n, 152-154, 169n, 174, 178n, 181n, 183n, 213n, 222n, 273n, 322n, 328n, 341n, 350n, 351, 352n
- Eromanga Hydrocarbons NL v Australis Mining NL (1988) 6 ACLC 906: 19n, 133, 135n, 142n, 144, 146n, 158n, 277n, 287n, 342n
- Esal (Commodities) Ltd, *Re* [1997] 1 BCLC 705: 229n, 234n, 261n, 331n
- Esso Petroleum Co Ltd v Mardon [1976] QB 801: 186n
- Etic Limited, *In re* [1928] Ch 861: 170n, 171, 188n, 189n, 257n:
- Facia Footwear Ltd v Hinchliffe [1998] 1 BCLC 218: 51n, 69n, 220n, 224n, 247n
- Fargro Ltd v Godfroy [1986] 1 WLR 1134: 157n, 188n, 216n
- Farmizer (Products) Ltd, *Re* [1995] BCC 926: 261n
- Farmizer (Products) Ltd, *Re* [1997] BCC 655: 58n, 196n, 1997n, 234n, 236n, 255n, 256, 257n, 331n
- Feil v Commissioner of Corporate Affairs (1991) 9 ACLC 811: 138n, 142n, 268n
- Ferguson v Wallbridge [1935] 3 DLR 66: 157n, 163n, 186n, 188n, 195n, 216n
- Ferguson v Wilson (1866) 2 Ch App 77: 163n, 195n
- Fitzgerald v Penn (1954-1955) 91 CLR 268: 295n, 296, 297n:
- Fitzsimmons v R (1997) 23 ACSR 355: 73n, 80n, 101n, 130, 199n, 204n, 206n, 340
- Flavel v Roget (1990) 8 ACLC 237: 135, 136
- Forest of Dean Coal Mining Company, *In re* (1879) 10 Ch D 450: 17n, 35n, 49n, 170n, 188n, 207n, 221n, 276n
- Foss v Harbottle (1843) 2 Hare 461; 67 ER 189: 157
- Foxcroft v The Ink Group Pty Ltd (1994) 12 ACLC 1063: 221n

- Fraser Edmiston Pty Ltd v AGT (QLD) Pty Ltd [1988] 2 Qd R 1: 277n, 306n, 308n, 309n, 346n
- Fraser v Whalley (1864) 2 H & M 10; 71 ER 361: 113n, 115, 116n, 328n
- Furs Ltd v Tomkies (1935-1936) 54 CLR 583: 301n, 302
- Gaiman v National Association for Mental Health [1971] Ch 317: 149n
- Gamble v Hoffman (1997) 15 ACLC 1314: 70n, 74n, 78n, 79n, 85, 91n, 188n, 209n, 213n, 256n, 261n
- Gambotto v WCP Ltd (1995) 13 ACLC 342: 97n, 103n, 104, 106n, 107, 108n, 110n, 112, 117n, 125-126, 146n, 158n, 196n, 327n, 328n, 349n
- Gemstone Corporation of Australia Ltd v Grasso (1994) 12 ACLC 653: 25n, 144-145, 148n, 299n, 301-302, 345n
- Girardet v Crease & Company (1987) 11 BCLR (2d) 361: 18n, 19n, 32n, 274n, 275n, 276, 278n, 280n, 293n, 306n, 342n, 345n
- Glandon Pty Ltd v Strata Consolidated Pty Ltd (1993) 11 ACSR 543: 20n, 103n, 154-155, 169n, 174n, 181n, 183n, 222n, 277n, 306n, 324n, 346n, 351n
- Glavanics v Brunninghausen (1996) 19 ACSR 204: 12n, 15n, 17n, 20n, 50n, 82n, 130n, 147n, 148n, 155n, 282n, 310n, 324n, 347n
- Gluckstein v Barnes [1900] AC 240: 82n, 100, 102n, 147n
- Goldcorp Exchange Ltd, In re [1995] 1 AC 74: 308n
- Goodwin v Agassiz (1933) 186 NER 659: 49
- Gould v The Mount Oxide Mines Ltd (1916-1917) 22 CLR 490: 88, 101, 134n, 352n
- Governor and Company of The Bank of England, The v Vagliano Brothers [1891] AC 107: 22n, 23n, 26n, 28n, 39n, 70n, 71n, 73n, 91n, 131n, 132n, 135n, 136n, 337n, 339n
- Gray Eisdell Timms Pty Ltd v Combined Auctions Pty Ltd (1995) 13 ACLC 965: 21n, 92n, 121n, 152n, 154n, 169n, 181n, 183n, 351n, 352n
- Gray v New Augarita Porcupine Mines Ltd [1952] 3 DLR 1: 302n
- Grayan Building Services Ltd, Re [1995] BCC 554: 8n, 9n, 11n, 27n, 44n, 46n, 60n, 61n, 65n, 140n, 142n, 146n, 196n, 220n, 225n, 228n, 240n, 242n, 246n, 254n, 264n, 267n, 272n, 321n, 324n, 331n, 332n, 333n, 334n, 335n, 336n, 339n, 348n
- Green v Bestobell Industries Pty Ltd [1982] WAR 1: 301n
- Greenhalgh v Arderne Cinemas Ltd [1951] Ch 286: 20n, 108, 113n, 125n, 144n, 167, 328n
- Grimm v Roy Galvin & Co Pty Ltd (1988) 6 ACLC 852: 209n, 217n
- Group Four Industries Pty Ltd v Brosnan (1991) 9 ACLC 1181: 139n, 204-205, 210
- Group Four Industries Pty Ltd v Brosnan (1992) 8 ACSR 463: 43n, 76, 202n, 203n, 204n, 205, 206, 211n, 212, 213, 217n, 221n, 223
- Grove v Flavel (1986) 11 ACLR 161: 104, 166n, 171-172, 196n
- Guinness Plc v Saunders [1990] 2 AC 663: 83n, 98n
- Halt Garage (1964) Ltd, Re [1982] 3 All ER 1016: 105, 106n
- Hannes v MJH Pty Ltd (1992) 10 ACLC 400: 147-148
- Hardie v Hanson (1960-1961) 105 CLR 451: 138n, 268n
- Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Company NL (1969-1970) 121 CLR 483: 20n, 46n, 104n, 120, 121n, 126, 133, 149-150, 151, 167, 184n, 223n, 349n
- Harris v S (1976-1977) 2 ACLR 51: 320n
- Haselhurst v Wright (1991) 9 ACLC 728: 121n, 122n
- Hatty v Pilkinton (1992) 108 ALR 149: 138n, 268n