

LS Sealy

Cases and Materials in Company Law

Fifth Edition

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Preface to the First Edition

Although there have been Companies Acts in regular succession from 1844 to the present day, these enactments have never contained more than a partial statement of the law governing the limited liability company. Company law is uncodified, and a student needs to look far beyond the statute for his material. Many traditional principles have roots which go back into the distant past; their origin can sometimes be found in the old law of corporations or of partnership, and sometimes in wider doctrines of equity and contract. Other rules, newer in point of time but quite as fundamental in importance, have been developed on the basis of the Companies Acts, but are not so much an interpretation of specific provisions of the statutes as a revelation of the underlying spirit or genius of the institution whose creation the Acts have made possible. The ultra vires doctrine is one example; and the various rules designed to ensure the maintenance of capital are others; the code of fiduciary duties of promoters and directors, the constitutional rights of members, indeed, the very concept of the company's own personality—all owe their existence to the pioneering decisions of the courts in another age, but find no statement in the Act itself. The first aim of this book is to provide students with a ready means of access to the leading cases in which these principles have been established and developed. Other cases have been included which throw light on more detailed provisions of the Companies Acts presently in force, or on formulae which have by hallowed usage become more or less standard in the modern company's constitutional documents.

A second need of the student which it is hoped that this work will go some way to meet is that of seeing for himself what these documents look like. For a study of the subject which is based only on the statute-book and the law reports is bound to emphasise those things which a company may *not* do on the one hand and things which a company has done badly on the other. It is salutary for the student to be reminded that there is more to company law than its pathology, and that the great majority of companies are well conducted, healthy and prosperous. I have been indeed fortunate in securing the goodwill and ready co-operation of a number of such companies, who have generously allowed me to include the specimen documents from their files which make up the larger part of the Appendix. I am sorry that considerations of space have prevented some of them from being reproduced in full, and that for practical reasons their coloured illustrations and typographical embellishments have had to be sacrificed.

It has been assumed that the reader will have guidance from a text book or course of lectures on company law; for this book is intended to provide supplementary materials for study and illustration rather than to stand on its own. Again, it would have been pointless to endeavour

to reproduce the whole text of the Companies Act: this is readily available and it is expected that the student will have his own copy.

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Preface to the Fifth Edition

When the fourth edition of this book was going to press, the Companies Bill 1988 (destined to become the Companies Act 1989) was in the middle of its passage through Parliament. This was the latest in a steady succession of legislative amendments to company law which have seen the subject in a state of continuous flux for over three decades, gradually losing whatever claims it may once have had to shape or focus. This unhappy state of affairs has generally been received by practitioners with resignation and by students with understandable bewilderment. Against such a background, it is vital that every effort should be made to identify the underlying principles which are fundamental to the subject and, perhaps more interestingly, to differentiate between those which seem to be unshakeable and timeless and those which are yielding to change.

In the cases and materials collected in this book I believe that it is possible to see basic principles which fall into each of these categories. Judicial respect for the concepts of corporate personality and limited liability – immortalised by the case of Mr Aron Salomon whose company might, but for a twist of fate, have been celebrating its centenary this year – appears, if anything, to have grown in strength and solidarity over the last two or three decades. But the Companies Act 1989 has dealt a body blow to two other principles of equally ancient respectability – the doctrines of *ultra vires* and constructive notice – whose demise is bound to have repercussions in large areas of the rest of company law. These innovations and their consequences, about which we can at present only speculate, are discussed at appropriate places in the commentary to the selected materials.

This new edition takes full account of all the statutory changes and new case material published up to the end of February 1992. Among the new decisions that are discussed are some which show the radical new provisions of the Insolvency Acts of 1985–86 and the Company Directors Disqualification Act 1986 in operation: *Re Harris Simons Construction Ltd* (1989), on the administration regime; *Re Produce Marketing Consortium Ltd* (1989), on wrongful trading; *Re Sevenoaks Stationers (Retail) Ltd* (1990), on director disqualification; and *Re MC Bacon Ltd* (1991), on preferences and transactions at an undervalue. In the mainstream of company law, the new cases include *Adams v Cape Industries plc* (1990), *Byng v London Life Association Ltd* (1990), *Caparo Industries plc v Dickman* (1990), *Guinness plc v Saunders* (1990) and *Kuwait Asia Bank EC v National Mutual Life Nominees Ltd* (1991). And, of course, full account is taken of the Companies Act 1989, which implemented the Seventh and Eighth EC Company Law Directives and made many other changes to the law.

Once again, it is a pleasure to acknowledge the help which I have had from Butterworths and their expert staff at all stages of production.

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I am grateful to the following for kindly allowing the reproduction of copyright material and commercial documents: Her Majesty's Stationery Office for the statutes, the Rules of the Supreme Court, the Report of the Jenkins Committee on Company Law, the Report of the Cork Committee on Insolvency and the statistical tables; the Registrar of Companies for the certificate of incorporation; the Incorporated Council of Law Reporting for England and Wales for the *Law Reports* and *Weekly Law Reports*; Butterworth & Co (Publishers) Ltd for the *All England Law Reports*, *Law Journal Reports*, *Law Times Reports* and *Butterworths Company Law Cases*; the Scottish Council of Law Reporting and Messrs T & T Clark for the *Session Cases*; Lloyd's of London Press Ltd for *Lloyd's Reports*; CCH Editions Ltd for *British Company Cases*; Canada Law Book Ltd for the *Dominion Law Reports*; the Law Book Company Ltd for the *Commonwealth Law Reports* and *Australian Law Journal Reports*; Butterworths Pty Ltd for the *Australian Company Law Reports*; Butterworths of New Zealand for the *New Zealand Law Reports*; the Panel on Take-overs and Mergers for the City Code; Varsity Publications Ltd; Micro Scope plc; the General Electric Company plc; Tricentrol plc; Dunlop Holdings plc; 3i plc; the former NMA Company of New Zealand Ltd; Kleinwort, Benson Ltd; Grant Thornton (formerly Thornton Baker); de Zoete & Bevan Ltd; and the various officers of these companies and firms. De Zoete & Bevan Ltd is part of the Barclays de Zoete Wedd Group, the Barclays Group Investment Bank.

I am particularly grateful to my cousin, Chris Sealy, and his fellow entrepreneurs for allowing me to use the various documents illustrating the remarkable rise to success of their company, Micro Scope. It cannot often have happened that a business should go from a standing start to a full official listing in less than six years, and shortly thereafter be sold on in an agreed bid, at a still further enhanced price, to take its place in the complex network of a major manufacturing enterprise. It gives me great pleasure to demonstrate to my student readers that not all members of the family have chosen a risk-averse way of life (such as legal authorship!).

The case on p 250 is reproduced from *The Times* by permission. The consent of the Controller of Her Majesty's Stationery Office has been obtained for the reproduction of the Tables in Appendix C and the other materials mentioned above.

I wish also to thank my publishers for their help in preparing the tables and index.

The abbreviation 'CA 1985' has been used throughout to refer to the Companies Act 1985, and the letters 'CA' with appropriate dates stand for the earlier and later Companies Acts. 'IA 1985' and 'IA 1986' refer to the Insolvency Acts of 1985 and 1986, respectively, and 'FSA 1986' to the Financial Services Act 1986.

All references to the Companies Act 1985 are to that Act as amended by the Companies Act 1989, even though some of these amendments were not in force at the time of going to press.

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