

CHARLESWORTH'S COMPANY LAW

EIGHTEENTH EDITION

Stephen Girvin, Sandra Frisby and Alastair Hudson



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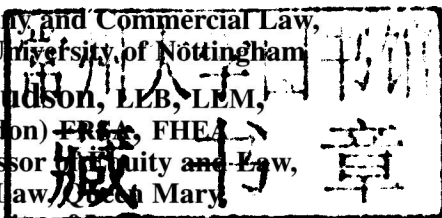
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CHARLESWORTH'S

COMPANY LAW

FOREWORD

For most students, coming to company law for the first time is a daunting experience. It is not that company law is any more intrinsically difficult than any other branch of the law but that the factual matrix upon which it operates seems to be more difficult to comprehend. Company law, of necessity, deals with all aspects of corporate activity but the subject cannot be taught in that way. It has to be divided into topics. Each topic may be understandable on its own but the relationship and overlap between them is not really comprehensible until the end of the course. Company law is like the proverbial elephant, difficult to comprehend unless the whole animal is in view. This can lead to misunderstandings. I once asked a particularly bright student why she had answered question 8 on the exam paper on issues of minority protection whereas the question was aimed at directors' duties. The answer was that tutorial 8 had been on minority protection and so . . .

Against that background how does one set out to write a student textbook? In 1932 His Honour Judge Charlesworth, who sat in the North Riding of Yorkshire, produced the first edition of his book on company law. Those were very different times (one edition was produced in war time). The volume of the law was far less, but there was still a substantial amount of detail and procedure which had to be sifted through to produce a coherent text. The result was an excellent balance between giving sufficient information so as to produce a coherent whole and not simply providing endless lists so as to drown the reader. So successful was his book that Judge Charlesworth wrote five further editions, ending in 1956. The mantle was then taken over by Tom Cain who wrote five more editions between 1960 and 1977. I took over in 1982, having been lunched at the Savoy by the publishers to discuss this—how times have changed. The combined effect of the 1980 and 1981 Companies Acts required a significant rewrite but I always bore in mind the need to retain the balance achieved in the previous editions. In all I have been responsible for a total of six editions (the same number as the Judge), although pressure of work and the increasing specialisation involved allowed me to bring in the editors of this edition. I also had the great benefit of both Richard Morris as accounting editor and Enid Marshall as Scottish editor (and a fearsome critic of my grammar in the proofs!).

Charlesworth's Company Law has now been in existence for nearly 70 years. During that time company law teaching has become more sophisticated and the subject more open to scholarly (in RAE terms) analysis. This can be legal, social or economic and there have undoubtedly been more scholarly books on company law and more academically comprehensive ones. Jim Gower's, and latterly Paul Davies', *Modern Company Law* and Brenda Hannigan's *Company Law* are outstanding examples, respectively, of each of those. There have also been many

other “basic” textbooks on company law. *Charlesworth* remains unique, however. It manages to carry a substantial amount of information but in an understandable way which does not frighten the reader. For some students and courses it will be sufficient; for others it will be a useful (for some indispensable) safety net below the more erudite texts. Any scholarly analysis depends first upon mastering the often quite complex fundamentals of the subject and no book does that better than *Charlesworth*.

Having now reached a stage in life when grandchildren seem at least as important as academic work, and given the need to reshape *Charlesworth* again (as I did in 1982) following the 2006 Companies Act, I decided that it was time to hand over the baton. That decision was made much easier by the knowledge that Stephen, Sandra and Alastair were already involved in, and had absorbed the unique ethos of, the book. The book is in excellent hands—it must continue to evolve to meet the dictates of the subject but not so as to destroy its qualities. That is not an easy task (deciding what not to include is often the hardest part) but as the reader will see from this edition, that constructive evolutionary process is still evident. Long may it continue to be so.

Geoffrey Morse
Worcestershire, May 2010.

PREFACE

It is customary, when writing book prefaces for new editions of textbooks, to refer to the many changes in the subject since the last edition. This is no less the case with this new edition of *Charlesworth*. The five years since the publication of the previous edition have been marked by continuing change in the field of company law. The previous edition focused at many points on the work of the Company Law Review (CLR) undertaken by what was known then as the DTI (the Department of Trade and Industry) but which has during the years since the last edition changed its name twice, first as BERR (the Department for Business Enterprise and Regulatory Reform) and currently as BIS (the Department for Business, Innovation and Skills). At the time of writing that previous edition in 2005, a Draft Companies Bill had just been published.

The Companies Act 2006, which has the dubious distinction of being the largest statute on the statute book, was passed by Parliament and achieved Royal Assent later that year. Following a complicated implementation timetable, during which parts of the Act were brought into force with over ten commencement orders, the Act came fully into force on October 1, 2009. Few areas of company law have been left untouched in the new Act which, though also consisting of many provisions imported verbatim from the Companies Act 1985, nevertheless contains much that is new or re-ordered. Two well-known instances of new law in the Act are the codifying provisions on directors duties in Part 10 (discussed in Chapter 17 of this book) and the new provisions on statutory derivative actions in Part 11 (discussed in Chapter 22). However, statutory development did not end with the 2006 Act and, indeed, even before the Act was finally brought fully into force in October last year, further changes, mostly at European level, but also consequential changes, had to be made to the Act. In addition to the Act itself there are, at last count, well over sixty statutory instruments concerned with the further development and elaboration of its substantive provisions. Many of these have, of necessity, had to be dealt with in this new edition. There have also been substantial changes to securities, takeover and merger regulation in the United Kingdom to implement successive EU directives, and to the UK's financial regulations (in the *FSA Handbook*): all of these changes are explored here in detail. Other new statutes with some impact on company law include the Fraud Act 2006 and the controversial Corporate Manslaughter and Corporate Homicide Act 2007, both of which are also considered in this new edition.

The law relating to corporate insolvency continues to evolve at a bewildering rate. The decision of the House of Lords in *Buchler v Talbot* has, since the previous edition of this work, been reversed by statute and the Insolvency Rules have been subject to a raft of amendments, many in anticipation of their eventual consolidation, planned for April 2011.

It is not only in the area of statute law that much has changed. The courts continue with their vital role of interpreting the statute and throughout this new edition will be found illustrations and examples of cases which do just that and, in some instances, set down new and important principles. And while no new case is likely to have the impact of *O'Neill v Phillips*, the Privy Council, the House of Lords, the Court of Appeal, as well as the Companies Court have added to the store of that which requires account to be taken in this new edition. In corporate insolvency, the major case law developments have been in relation to the administration procedure, streamlined by the Enterprise Act 2002, and the rise of the “pre-pack” administration has received some judicial attention. Moreover, the decision of the House of Lords in *Re Spectrum Plus* on the fixed/floating charge dichotomy has gone some way to resolving this troubled area.

The new Companies Act and this new 18th edition has brought with it the opportunity to freshen up *Charlesworth*. While the essential character of the book remains unchanged, namely the provision of a comprehensive analytical overview of the subject as a whole, we have taken the opportunity to reorder some of the chapters and the substantive content and also to expand the treatment of some topics. Some areas of the law have inevitably required more detailed treatment. An important change for some will be the fact that this new edition no longer attempts to cover developments in Scots law. Although the Companies Act 2006 applies throughout the United Kingdom and the courts in Scotland continue to play a vital role in the development of company law jurisprudence, none of us can claim contemporary and informed expertise in Scots law. We therefore thought it better to leave coverage of those developments to our colleagues north of the border.

This new edition also marks a change in authorial responsibility. After his involvement in the last seven editions of the book, starting with the 12th edition in 1983, Professor Geoffrey Morse, presently Professor of Corporate and Tax Law at the University of Birmingham, decided that the new Act was the time to hand over the reins to us, his three colleagues who had assisted him in the writing of the 17th edition. Each of us have had a connection with Geoffrey over many years. Stephen and Sandra were his colleagues at the School of Law, University of Nottingham and Stephen also for a short time at the University of Birmingham. Sandra was a student of both Geoffrey and Stephen at Nottingham. All of us share the unique privilege, with Geoffrey, of being members of the Editorial Board of *Palmer's Company Law*, the leading practitioner work on company law from the publishers of this book. As General Editor for many years, Geoffrey brought each of us onto the *Palmer* team. It is therefore right to record our gratitude and appreciation to him for entrusting us with that important task. We hope that he feels that the new *Charlesworth*, very much his baby for the last 22 years, has been left in capable hands. Also retiring from *Charlesworth* after many years involvement in the chapters on accounts and auditors, is Professor Richard Morris, Professor Emeritus of Accounting at the University of Liverpool. We pay tribute to them and indeed to all those who have gone before us. The influence of their work will be apparent to all who use this book.

The division of the labour in this new edition has been as follows: Stephen Girvin, Chapters 1–6, 16, 18–24; Alastair Hudson, Chapters 7–15, 17, 32–34; and

Sandra Frisby, Chapters 25–31. Stephen has (loosely) held the reins together for the new edition.

We should like to thank those who have had to put up with us during the writing of this new edition. They know who they are! Final responsibility for this new edition of course remains with each one of us individually and collectively. It is entirely right and proper to record here our appreciation to our publishers and Nicola Thurlow, in particular, for patiently steering us through the new edition and putting up with several requests for extensions to the deadline for submission of the manuscript.

We have all worked to the law as we understood it to be as on December 1, 2009, but have also included later developments, wherever possible.

Stephen Girvin
Alastair Hudson
Sandra Frisby

Singapore, London and Nottingham
March 31, 2010

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