

§Law in
context

Company Law and Capitalism

Second Edition

Tom Hadden

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SECOND EDITION

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PREFACE

British company law is not unworkable. But it is tied to a conception of capitalism which has been discarded by all but the most ardent free-market economists. It has also ceased to reflect the realities of the commercial and industrial world.

The intention of this book is to explain and analyse the existing law as it is applied in practice to the three main types of business enterprise which operate as limited companies under the Companies Acts : small private businesses, larger unquoted or family companies and quoted companies. This restructuring on functional lines has in itself suggested a number of ways in which the law might be restated or reformed in order to provide a more realistic framework for the regulation of each class of enterprise. It has also highlighted the triviality of some of the topics traditionally dealt with at some length in company law texts. These have accordingly been excluded or drastically pruned. In dealing with changes in substantive law since the first edition of this book appeared in 1972 I have adopted the same approach. The main statutory reforms and developments in the case-law have been incorporated. But I have paid equal attention to developments in the practical operation of the law and to the likely impact of current proposals for industrial democracy and of current practice in governmental intervention on the future of the capitalist system in a mixed economy.

I have also tried to meet some of the criticisms with which the generally favourable response to the first edition was tempered. In the first chapter I have attempted to live better up to my title by including a good deal more material on the origins of capitalism and

by dealing more fully with the alternative theoretical explanations of free market and Marxist economists. In the second I have added some material on multi-nationals and the mixed economy to bring up to date the analysis of trends in modern capitalism. These two chapters now form Part I which is intended as a general non-legal introduction to the development and organization of the capitalist system.

As a result of this rearrangement I have been able to gather together in Part II all the chapters which deal with the basic rules of company law and practice, dealing in turn with small participatory companies, unquoted or family companies, quoted (listed) companies, and the administrative regulation of stock market dealings, of take-overs and mergers and of investment institutions. By abolishing the chapter on the concepts of company law and reallocating some of the material in it on a more functional basis I hope to meet the criticism that the material on certain topics was too scattered for teaching, or indeed any other, purposes. I have also attempted to remedy some of the errors and omissions which my more attentive readers have pointed out. In this Part the principal new material will be found in the section on inflation accounting in Chapter 3, in the discussion of oppression and its remedies, including the important new case of *Wallersteiner v. Moir*, in Chapter 5, and in the reorganized section on groups in Chapter 9. The main provisions of the Companies Act 1976 and the revised version of the City Code of April 1976 have been incorporated.

Finally I have attempted in Part III to analyse the practical choices facing the capitalist system. What is now Chapter 13 on Industrial Democracy has been completely rewritten, excising the material on individual and collective rights of employees and bringing in a much more detailed discussion of the experience of co-determination in Germany and of the proposals of the Bullock Committee in Britain. The final section on governmental intervention in Chapter 14 has been expanded to cover the provisions of the Industry Act 1975 and the operations of the National Enterprise Board.

I should like to thank a number of people who have read and commented on drafts of various sections of this new edition or otherwise assisted in its preparation: they are Phyllis Bateson (Queen's University), Ben Buchan (Weidenfeld and Nicolson), Rosemary Chesney (Queen's University), Mike Chesterman (University

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February 1977

Derrybroughas
Portadown
Co. Armagh

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