

fifteenth edition

Smith and Keenan's
company law

Charles Wild
and Stuart Weinstein



Smith and Keenan's
COMPANY LAW

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Fifteenth Edition

Smith and Keenan's **COMPANY LAW**

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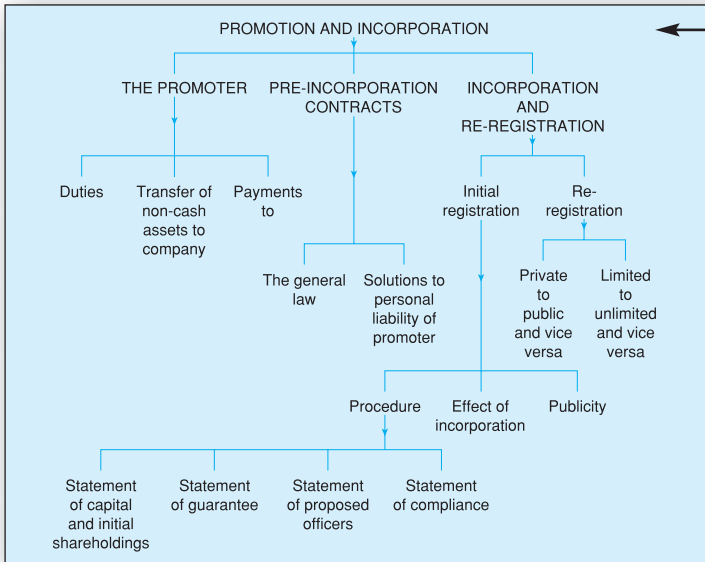
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Guided tour



Topic maps – at the start of each chapter topic maps are used to illustrate complex legal structures and processes.

Marginal cross references – Clear in-text cross-references come in handy to help you identify where to discover more information on key topics.

- See p. 162
- (g) *As regards distribution of profits and assets.* Where interim accounts are used for proposed distribution these accounts must, in the case of a public company, be filed with the Registrar of Companies, whereas there is no filing requirement for private companies. Private companies need only fulfil the basic requirement of profits available for distribution. Public companies must also comply with the capital maintenance requirements. Private companies need not (see further Chapters 8 and 9).
- (h) *As regards loans to directors, etc.* Quasi-loans and credit transactions, etc. for directors of the company's holding company are prohibited with certain exceptions. In the case of public companies, as are loans, etc. to persons connected with the company and the directors of any holding company. Quasi-loans and credit are not so prohibited for private companies nor are, in general, such dealings with connected persons (see Chapter 17).
- (i) An essential feature of more recent company legislation has been the move towards the deregulation of private companies. In particular, company legislation now allows for written resolutions of private companies which can be passed by members without the need to call or hold a meeting. Private companies may also opt out of the automatic application of the provisions relating to written resolutions. These matters are considered in more detail in appropriate parts of the book.
- See p. 334

La Société Anonyme des Anciens Etablissements Panhard et Lavassée v Panhard Levassor Motor Co Ltd [1901] 2 Ch 513

In this case, which we can call the *Panhard* case, the claimant was a French company and its shares were sold in England. The French company wished to set up an English company to act as an agent in England to improve the sales of its cars there. To try to stop this the defendant English company was registered, its promoters hoping that the French company would not be able to register its name for its English corporate agent, there being a company of 'too like' name already registered, and that this would prevent increased competition in the car market. It was held that the members of the English company must change the name of their company or wind up the company or the company would be taken off the register.

Case summaries – throughout the chapters essential case summaries detail key decisions in company law clearly explaining the decision.

Essay questions

- 1 'There are occasions when the courts will look behind the formality of legal personality and will appear to disregard it, but it is impossible to find any consistent principle upon which they will do so.'
Discuss. *(Kingston University)*
- 2 In 2005 Archie, Bert, Colin and David, as shareholders and directors, set up a company to acquire a disused mill to renovate into single-person flats. David had bought the mill in 2000 and sold it to the company once it was formed. Bert has now become concerned that this deal has caused the company to suffer a loss. Advise Bert on what the common law position is regarding the company, the transaction and the protection of his interests. *(University of the West of Scotland)*
- 3 Eric and Stanley have been carrying on business in partnership as building contractors in

Essay questions – end of chapter essay questions allow you to hone your essay writing skills while asking you to reflect on and consider what you have learnt from the chapter. Answer guidance may be found on the website.

Test your knowledge

Four alternative answers are given. Select ONE only. Circle the answer which you consider to be correct. Check your answers by referring back to the information given in the chapter and against the answers at the back of the book.

- 1 When a private company wants to re-register as a public company it must file a balance sheet with the Registrar. The balance sheet must be one which is not more than:
 - A Fifteen months old at the date of re-registration.
 - B Seven months old at the date of re-registration.
 - C Fifteen months old at the date of application.
 - D Seven months old at the date of application.
- 2 Thames was re-registered from a limited to an unlimited company. It wishes to re-register as

Test your knowledge – end of chapter test your knowledge sections challenge you to check that you understand each topic fully. Answers can be found at the back of the book.



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Preface to the fifteenth edition

The major feature of this edition has been the continued exploration and analysis of the impact of the Companies Act 2006. The introduction of the 2006 Act has, quite literally, represented a ‘wholesale rethink’ of modern company law and, as such, had a significant impact on every aspect of the subject area. While this represents an exciting and challenging period for practitioners, academics and students alike, it has nonetheless meant that our considerable reworking of the fourteenth edition has been continued in order to keep pace with the changes brought about by the new Act.

By now the majority of readers will be sufficiently familiar with the new section numbering of the 2006 Act or, as in the case of the majority of students, will be approaching this area for the first time since continued references to the 1985 Act have become redundant. Consequently, details of the Companies Act 1985 have either been removed entirely or, in specific chapters, been retained only where a comparison with the previous wording is absolutely necessary.

In addition, we have sought to continue our analysis of the fundamental change in approach to corporate regulation at the small and medium-sized company level, which the Companies Act 2006 has represented. This has not only impacted on the chapters dealing with shares and the capital of companies but also the internal management and operations of companies. In this regard, the new Model Articles that accompany the 2006 Act, and which have replaced *Table A* as the template for corporate constitutions from 1 October 2009, represent a dramatic shift away from the ‘one size fits all’ mentality to that of a ‘think small first’ approach, providing bespoke model articles for private companies limited by shares, private companies limited by guarantee, and public companies limited by shares. However, *Table A* remains an important consideration when dealing with any company incorporated before this date. Consequently, we have sought to introduce the new Model Articles, together with their impact on the day-to-day management and running of both public and private companies while, at the same time, maintaining a thorough analysis of *Table A* with respect to a company’s constitution. Given the complexity of this issue, the natural overlap between the various Model Articles, as well as the obvious need to compare and contrast *Table A* with the new Model Articles, we have inserted Appendices which contain copies of these documents. Readers are referred to them throughout the text to help them to familiarise themselves with these key provisions.

We have continued to expand and enrich reference to case law throughout. This includes current cases relating to the new statutory derivative action and the unfair prejudice head, as well as a broader analysis of traditional common law and equitable duties imposed on directors, which underpin the statutory duties introduced by the 2006 Act. As with the previous edition, this is supported by reference to an increased selection of academic articles at the end of certain chapters, in order to ensure that the text is as current and relevant as possible for readers.

Finally, this edition includes an extended analysis of the constitution of a company, in the light of the new Model Articles, as well as a significant reworking of the section dealing with

directors' duties and management of the company. We have also reworked the chapter focusing on meetings and resolutions so as to set down a comprehensive, yet easily accessible, account of the procedures and processes introduced by the Companies Act 2006 and which are at the heart of this subject area. In addition, the chapters on minority protection and the statutory derivative action have been reworked to provide the reader with greater detail and insight into the processes involved as well as current case law.

We would like to thank those members of staff at Pearson Education who have helped to produce this edition, particularly Zoe Botterill, Acquisitions Editor – Law, and Gabriella Playford. We would also like to thank Mary Keenan for her continued support with the ongoing development of this book. Our thanks are also due to those who designed, set, printed and bound the book.

We would also like to thank our respective families who have shown considerable patience and understanding over the past few months. The production of any text requires a significant support network and for that we are both truly grateful.

Any errors and omissions at the level at which the text is aimed are down to the authors.

Charles Wild and Stuart Weinstein
St Albans, March 2011

Law report abbreviations

The following table sets out the abbreviations used when citing the various series of certain law reports which are in common use, together with the periods over which they extend.

AC	Law Reports, Appeal Cases, 1891–(current)
ATC	Annotated Tax Cases, 1922–75
All ER	All England Law Reports, 1936–(current)
All ER (D)	All England Direct (an online service)
All ER Rep	All England Law Reports Reprint, 36 vols 1558–1935
App Cas	Law Reports, Appeal Cases, 15 vols 1875–90
BCC	British Company Law and Practice (CCH editions)–(current)
BCLC	Butterworths Company Law Cases, 1983–(current)
B & CR	Reports of Bankruptcy and Companies Winding-up Cases, 1918–(current)
CL	Current Law Monthly Digest, 1947–(current)
CLJ	Cambridge Law Journal
CLY	Current Law Yearbook, 1947–(current)
CMLR	Common Market Law Reports, 1962–(current)
Ch	Law Reports Chancery Division, 1891–(current)
Com Cas	Commercial Cases, 1895–1941
Fam	Law Reports Family Division, 1972–(current)
ICR	Industrial Court Reports, 1972–74; Industrial Cases Reports, 1974–(current)
IRLB	Industrial Relations Law Bulletin, 1993–(current)
IRLR	Industrial Relations Law Reports, 1971–(current)
ITR	Reports of decisions of the Industrial Tribunals, 1966–(current)
KB	Law Reports, King’s Bench Division, 1901–52
LGR	Local Government Reports, 1902–(current)
Lloyd LR or (from 1951) Lloyd’s Rep	Lloyd’s List Law Reports, 1919–(current)
LRRP	Law Reports Restrictive Practices, 1957–(current)
LSG	Law Society Gazette Reports
NLJ	New Law Journal
P	Law Reports, Probate, Divorce and Admiralty Division, 1891–1971
P & CR	Planning and Compensation Reports, 1949–(current)
PIQR	Personal Injuries and Quantum Reports
QB	Law Reports Queen’s Bench Division, 1891–1901; 1953–(current)
SJ	Solicitors’ Journal, 1856–(current)
STC	Simon’s Tax Cases, 1973–(current)
Tax Cas (or TC)	Tax Cases, 1875–(current)
TLR	Times Law Reports, 1884–1952
WLR	Weekly Law Reports, 1953–(current)

Table of cases

- A & BC Chewing Gum Ltd, *re* [1975] 1 All ER 1017 [338](#)
- ABC Coupler & Engineering Ltd, *re* [1961] 1 All ER 354 [595](#)
- ASRS Establishment Ltd, *re* (1999) *The Times*, 17 November [484](#)
- Abbott v Strong (1998) *The Times*, 9 July [524](#)
- Accidental Death Insurance Co, Allin's Case, *re* (1873) LR 16 Eq 449 [251](#)
- Adair v Old Bushmills Distillery [1908] WN 24 [148](#)
- Adams v Cape Industries [1990] Ch 433, CA [1](#), [13](#), [30](#)
- Adelaide Electric Co v Prudential Assurance [1934] AC 122, HL [151](#)
- Advantage Healthcare (T10) Ltd, *re* [1999] All ER (D) 1294 [494](#)
- Aerators Ltd v Tollitt [1902] 2 Ch 319 [81](#)
- Agnew v Inland Revenue (The Brumark Case) [2001] All ER (D) 21 [485](#), [486](#)
- Airey v Cordell [2006] EWHC 2728 (Ch) [303](#)
- Al Saudi Banque v Clarke Pixley [1989] 3 All ER 361 [524](#)
- Albacruz (Cargo Owners) v Albazero (Owners), *The Albazero* [1977] AC 774 [31](#)
- Alexander v Automatic Telephone Co [1900] 2 Ch 56 [234](#)
- Allen v Gold Reefs of West Africa Ltd [1900] 1 Ch 656 [114–117](#), [120](#), [146](#)
- Allen v Hyatt (1914) 30 TLR 444 [386](#)
- Allied Carpets Group plc v Nethercott [2001] BCC 81 [205](#)
- Allin's Case *see* Accidental Death Insurance Co, Allin's Case, *re*
- Al-Nakib Investments (Jersey) Ltd v Longcroft [1990] 3 All ER 321 [217](#)
- Aluminium Industrie Vaassen BV v Romalpa Aluminium [1976] 2 All ER 552 [489](#), [490](#)
- American Cyanamid Co v Ethicon [1975] AC 396 [490](#)
- Andrews v Gas Metre Co [1897] 1 Ch 361 [144](#)
- Anglesey Colliery Co, *re* (1886) 1 Ch App 555 [594](#)
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- Antal International Ltd [2003] EWHC 1339 (Ch), [2003] 2 BCLC 406 [573](#)
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