

Seventeenth Edition

SMITH AND KEENAN'S COMPANY LAW



Charles Wild and Stuart Weinstein

Smith and Keenan's
COMPANY LAW

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Seventeenth Edition

Smith and Keenan's COMPANY LAW

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Preface to the seventeenth edition

This edition represents a significant change in approach from that adopted previously. The Companies Act 2006 can no longer be described as being in its infancy and, as such, it has been important to acknowledge this in terms of both the content and focus of this edition. The opportunity has also been taken to update the order and structure of the text so as to reflect the needs of students studying company law.

As such, the front section of this edition includes a new chapter on corporate governance, alongside a more detailed discussion of directors, their duties and the way in which the day-to-day management of companies is undertaken. This is core to many LLB company law courses and, as such, it is prioritised within this text. The second part of this edition deals predominantly with the area of corporate finance, with a particular focus on shares and shareholders, membership rights and company flotations. Alongside this, we take the opportunity to cover discrete, yet important, topics, such as insider dealing, corporate insolvency, derivative actions, and the protection of minorities within the company context.

Building on the previous edition, the front section of this text has been reworked so as to include a more detailed discussion of the corporate form, the veil of incorporation (together with when it may be lifted), as well as the rules of attribution. We have also continued to expand and enrich reference to case law throughout, together with reference to an increased selection of academic articles at the end of each chapter, so as to ensure that the text is as current and relevant as possible for readers.

We would like to thank those members of staff at Pearson who have helped to produce this edition, particularly Cheryl Cheasley. 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
June 2015

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

QB	<i>Law Reports Queen's Bench Division</i> , 1891–1901; 1953–(current)
SJ	<i>Solicitors' Journal</i> , 1856–(current)
STC	<i>Simon's Tax Cases</i> , 1973–(current)
Tax Cas (or TC)	<i>Tax Cases</i> , 1875–(current)
TLR	<i>Times Law Reports</i> , 1884–1952
WLR	<i>Weekly Law Reports</i> , 1953–(current)

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Chapter 1

An overview of company law

This text is concerned almost entirely with the law relating to registered companies which, in turn, are governed in the main by the Companies Act 2006, Insolvency Act 1986, the UK Corporate Governance Code, a range of European Union directives and, of course, associated case law. Indeed, while the United Kingdom was one of the first countries to develop modern corporate statutes, more recently it has been influenced quite significantly by our membership of the European Union, in particular with respect to matters relating to directors' duties and corporate governance.

Company law may be divided into two main areas of activity and interest: the way in which companies are financed, coupled with the methods by which money is raised, and the way in which companies are internally managed and governed. At a macro level, these areas are usually referred to as 'corporate governance' and 'corporate finance', though these terms can, on occasion, be misleading. Rather, it is important to understand and appreciate from the outset that the company form is the primary legal mechanism by which investment capital and entrepreneurial activity are brought together with the intention of organising and running a business. In other words, at the most basic and simplistic level, money is invested in a company by individuals in exchange for shares. They do not own the company, they simply own shares in that company which, among other things, entitles them to attend and vote at the company's General Meeting. The day-to-day management and entrepreneurial expertise is provided by individuals who are employed as directors of the company. Once again, they do not own the company, but are merely employees of the company and come together to form the board of directors.

Therefore, returning to these two areas, corporate governance focuses on the balancing act to be achieved within a company between the rights, duties and expectations of shareholders, employees, creditors and directors; in other words, a company's stakeholders. If the new Model Articles are adopted by a company, the board of directors will possess the power to manage the business on a day-to-day basis, with the power to make a few key decisions retained by the General Meeting (e.g. to change the company's constitution, issue resolutions and remove members of the board of directors). Given this concentration of power in one group of people, a significant question arises as to what mechanisms exist