Cases

2.1.1 – Lifting the Veil page 14

After 'considers that justice so requires'…

Companies are thus able to sue for defamation. See the Mclibel case, McDonalds Corporation and Another v Steel and Morris [1997] EWHC QB366, and the case of Steel and Morris v UK (Application No. 6846/01) 15 February 2005, and Jameel v Wall Street Journal Europe Sprl [2006] UK HL 44. It is possible for companies to sue without showing special damage.

2.1.1 – In Clark v Clark Construction Initiatives Ltd [2008] EWCA Civ 1446.

After 'no breach of the provision'…

Clark ran a small building contractors. He transferred shares to Grew to try to avoid them getting into the clutches of his wife as divorce proceedings were taking place. Clark and Grew then fell out and Clark was dismissed. It was accepted that he was an employee at the time of the dismissal but it was argued that he was not earlier than that, so that he had not got the qualifying period for an unfair dismissal claim.

The question was whether there was a genuine contract of employment. It was held on the facts that there was not but the case is consistent with Salamon because it raised the possibility that there could be and it was only on the facts that there was not.

2.3 – Companies: Crimes and Torts page 25

At end of penultimate paragraph after 'the company in a shipyard'…

In R v Bowles Transport Limited (unreported 10 December 1999) two directors of the company received suspended sentences for the manslaughter of two people who were killed in a pile up on the M25 when the company's driver fell asleep at the wheel. They knew of the long hours the drivers worked. No company was prosecuted in this case.

6.4 – Alteration of the Articles and Association, page 78

After 'then the alteration should be permitted'…

Citco Banking Corporation NV v Pusser's Ltd 2007 UK PC 13, a Privy Council case, on appeal from the British Virgin Islands was concerned with the alteration of a company's articles. Pusser's was incorporated in the British Virgin Islands. It had class A shares which had one vote each. The proposal was to create a new class of shares, B shares, with 50 votes each by alteration of the Articles. Some of the A shares owned by the Chairman would be converted to B shares. The effect of this would be to give the Chairman the control of the company. Citco, who was a minority shareholder in Pusser, objected to this. The Court of Appeal held, in reversing the

first instance court that the test in determining if an alteration was bona fide was whether reasonably shareholders could regard the resolution as benefiting the company. The Privy Council upheld this alteration.

10.2.1 – Shadow Director page 123

After the end of section 'brought the company into being'…

In Gemma Ltd (In Liq) v Davies and Another [2008] EWHC 546, the court held that in order to establish that a person was a de facto director of a company, it was necessary to show inter alia that the person undertook functions in relation to the company which could properly be discharged only by a director. The Judge held that there was insufficient evidence to demonstrate that Mrs Davies was a de factor director of Gemma Ltd, or that she was concerned in the promotion, formation or management of the company.

12.3 – alter heading to 'Independent Judgement'

At the end of 12.3…

Andrew Keay, in his article 'The duty of directors to exercise independent judgment' notes that the duty provided for in s173 that directors are to exercise independent judgment is clearly based on the duty at common law that directors are not to fetter their discretion.

Again, as under the common law, there are exceptions to the general rule and the duty is not breached if directors act in accordance with an agreement entered into by the company that restricts the future exercise of discretion by the directors, or in a way authorised by the company's constitution. While the section is based on a common law duty, notes Keay, the provision, it is submitted, has a different ambit. It is possible to construe the exceptions under the section as not being as broad as with common law, notes Keay.

12.4.4. – Other Powers

After (d)…

An example of where the court had to consider the exercise of directors' powers is Oxford Legal Group Ltd v Sibbasbridge Services Plc [2008] EWCA Civ 287 (CA). The appellant company, Oxford, was a director of the respondent company Sibbasbridge. The appellant company was appealing against a refusal to allow inspection of accounting records of the company. The clear inference in the case is that the shareholder was using Oxford as a director, when this was the shareholders creature and nominee, to see the accounts to help him with his unfair prejudice claim. The Court of Appeal held upholding the judge at first instance that the director could not see the accounts as it was in relation to an improper purpose.

12.5.3 – Delegation

After 'This would stand under the new law….'

This does not apply where there is no official delegation e.g. from a full board to a few directors. In Re AG (Manchester) Ltd (2008) 1BCLC 321 the Official Receiver sought disqualification orders against former directors of a company. They were part of an inner group which usurped the functions of the full board of the company inter alia in relation to the declaration of dividends. The court held that first of all it was a duty of the finance director to assess the company's ability to pay dividends. There had been no formal delegation of powers to an inner group of directors. The two directors concerned should be disqualified it was held.

14.2.4 – page 180

After (261 CA 2006) third paragraph…

In Franbar Holdings Ltd v Patel and Others [2008] EWHC 1534 (Ch) the question of ratification arose in the context of an application to continue a derivative claim under the Companies Act 2006. The Deputy High Court Judge held that the court should ask itself whether the ratification had the effect that the claimant was being improperly prevented from bringing the claim on behalf of the company. The Judge refused an application by the claimant for permission to continue the derivative claim proceedings. He held that since the claimant should be able to achieve all it could properly want through its petition under s994 of the 2006 Act, justice was best achieved by refusing permission to continue the derivative claim.

14.3.2. – The Remedy Post 1980

At the end of section after 'all would be so prejudicial'…

In Re Starlight Developers Ltd (2007) BCC 929, before Briggs, J, there was a dispute as to locus standi. A shareholder was saying that he should have been on the company's register. The court decided to stay proceedings for this to be determined considering this was the appropriate course of action rather than to dismiss the proceedings.

24.2 – Fair Dealing

After 'Re Exchange Travel (Holdings) Ltd (In Liq) (1996)…

In Hawkes Hill Publishing Co Ltd (in liquidation) 2007 BCC 937, the liquidator made claims against the two defendants who were directors that they had caused the liquidator company to give them a preference by paying a sum and reducing their liability as guarantors. The company produced a golf magazine. On the facts it was held that there was no preference as reducing their liability was not what had

influenced the payment. It was also held that there was no wrongful trading in this case.

24.4. – The Conduct of Liquidation page 303

After (Insolvency (Prescribed Part) Order 2003)…

In Re Airbus UK Ltd, Thorniley v Revenue & Customs Commission [2008] EWHC 124 (Ch) concerned s176 of the Insolvency Act which requires, as stated above, that a portion of a floating charge be set aside for claims of unsecured creditors. The question in this case was whether a secured lender could participate in the prescribed part of the floating charge for unsecured shortfall in its security position. The court held that it could not. Clearly this was a good decision for the HMRC as the largest unsecured creditor so that there would be a larger pool of assets available for them.