

# Ten things you need to know about company law

## The reason for including a summary of the ten key concepts of company law

This very brief introductory chapter is intended to give you a list of ten basic propositions about company law which it would be helpful for you to know about before we begin in earnest. Briefly put, if you are aware of these ten concepts, then you will probably find reading the rest of this book much easier.

Of course, I will explain all of these propositions organically – telling you where they came from, why they were introduced, and what they mean. But I am conscious that many of my readers will be modern internet users who want their information immediately. You may be reading this book on a portable electronic reader while emailing your local ethnic restaurant to upload a takeaway dinner for you while your i-pod tinkles through a shuffle of your entire music collection at high-speed. It is possible that you have picked up this book in a bookshop because you have started to study company law but it has not started to make any sense yet, or even worse you are about to start revision and have realised that you do not understand much about company law, or you have had a difficult year and now you need something which will fast-forward through the key principles and help you to get the mark you want.

If all these things are true, then, ironically, you are probably even more impatient at having read the previous paragraph which told you nothing about company law. But maybe the previous paragraph chimed in with your personal experience in picking up this book and just possibly has made you realise that this book has been written straightforwardly with you in mind. So, let me tell you the ten things that it would be useful for you to know, and then we chat again afterwards.

## The ten things you need to know about company law

1. Ordinary companies have limited liability. That means that their shareholders will not be personally liable for the debts or losses of the company. Instead, the liability of the shareholders will be limited to an amount set out in the company's constitution (usually £1). This concept was first introduced in the Companies Act 1856.
2. Companies have separate legal personality. This is a result of the decision of the House of Lords in *Salomon v A Salomon & Co Ltd* in 1897. What this means is that a company is recognised by the law as being a distinct legal person from all of the human beings who operate it (such as the company's directors, its shareholders, its employees and so forth). This in turn means that companies can own property, they can create contracts in their own name, and they can sue or be sued in their own name, and lots of other things besides. In law, a company can do almost anything a human being can do because companies are considered to be "people" too. There is an important side-effect though. Because companies are legal persons, no human being is responsible for anything for which a company is solely responsible, like a debt. Therefore,

even if a company is created by a single human being as a vehicle for conducting her business, then that human being will not be liable for any legal obligations of the company because the company is a separate legal person from her. It is very rare for our company law to look behind this so-called “veil of incorporation” to recognise that the company is simply a device for conducting a business. This also means that companies may be organised into “groups of companies” which are operated by the same human beings but which are treated by the law as being distinct legal people.

3. The principal statute governing company law in the UK is the Companies Act 2006 (“CA 2006”). It applies to the entire UK as one legal jurisdiction.
4. The directors of companies owe their various statutory, case law and specific constitutional duties to the company itself, and not to its shareholders personally (CA 2006, s.170). The directors of companies are fiduciaries. Their general obligations are set out by the CA 2006, although the statute explicitly recognises that the statutory obligations must be interpreted in accordance with the case law principles in a delicious combination of the old and the new.
5. The powers of the company and the rules which govern how a company operates are set out primarily in the company’s constitution (“the articles of association” specifically after the CA 2006). Because companies began life originally as associations of people governed by the law of contract, modern company law still provides that the articles of association constitute a contract which is binding on the shareholders (CA 2006, s.33). The CA 2006 adds other principles which govern the operation of companies (as discussed in Chapter 6).
6. A company’s ultimate democratic body is the “annual general meeting” (or any specially convened general meeting) of shareholders, which may agree that the company can do certain things or that the company can amend its constitution by certain majority votes (“resolutions”) identified by the CA 2006. The directors are responsible for the management of the company; whereas the ultimate ownership of the company is said to reside with its shareholders (even though the shareholders do not own the company’s property directly). The shareholders do have statutory powers to replace the directors (CA 2006, s.[163]) at the annual general meeting. In practice then, particularly in relation to large public companies, the inter-relationship between shareholders with large shareholdings and the directors will be a particular sensitive one.
7. Shareholders may not sue on behalf of the company. If the company has acted in accordance with its constitution or if a majority of the shareholders have voted for a course of action, then the minority shareholders may not sue on behalf of the company unless they can demonstrate that they have been oppressed in accordance with the specific provisions in ss.[ ] of the CA 2006. This aspect of shareholder democracy is the principal focus of Chapter 8.
8. There may be different classes of shares in a company: ordinary shares, preference shares, convertible securities, and so on. Ordinary shares grant the

shareholders one vote at a company meeting per share; they also grant their shareholders a right to receive a dividend (which is equal for shares of the same class) if the directors decide that there are sufficient distributable profits to be divided among the shareholders; but the shareholders do not have property rights in the company's property except that if the company is wound up then they have a right to receive a proportionate share of the company's property. Usually the owners of preference shares have a right to receive a fixed dividend from the company. The shareholding of a company may be divided between different classes of shareholders. The rights of shareholders within a given class of shares will be identical to one another, except that owning more shares acquires proportionately larger rights to receive dividends or to exercise more votes at a general meeting.

9. There are two types of companies which are particularly important for our purposes: private limited companies (which must have "Ltd" after their name) and public limited companies (which must have "plc" after their name). Private companies may not offer their shares to the public. It is only the public companies which may have their shares offered to the public, for example by being traded on the London Stock Exchange. The issue and trading of the shares of public companies on regulated markets like the London Stock Exchange are governed by the securities regulations considered in Chapter 11. There are general principles governing the transfer and dealing with the shares of all companies, as discussed in Chapter 10.
10. There are numerous restrictions on dealings with, or alterations to, a company's capital so that the position of third parties is not adversely affected. This includes limitations on giving financial assistance to people to buy shares in the company, or buying back or cancelling shares, or paying dividends out of the company's capital, or restructuring the company's capital. There are detailed statutory and case law principles governing the way in which such things can be done in limited circumstances, as discussed in Chapter 10.

### **How this book can help you to understand company law**

So, there are the ten things that I think you really need to know about company law to make this book make sense if you are determined to read it in a hurry, tearing through its pages seeking knowledge like the hordes of an invading army pillaging the countryside. If you are not in such a hurry, then knowing those ten things will make reading the rest of this book must easier.

As a writer, I would like to develop the ideas slowly and to have the confidence that you will wait from chapter-to-chapter for the ideas to come to you in their own time. If you are using this book alongside your study of company law as your course progresses, then it is more likely that you have the time to meet each idea as it comes. Ideally, before your course begins, you will be able to afford to set aside the three or four hours that it might take to read this book from cover-to-cover in one go (including coffee and text message breaks), in which case you will see that each idea is explained patiently as it arises. However, I am also aware that other readers will be in a hurry to ingest information at high speed because exam day is looming, or

because coursework must be handed in, or because the pressure is too much and you need something to help you halfway through. Textbooks may be the only books that some readers ever read assiduously, because their lifestyles do not allow them to read novels or non-fiction books for pleasure. This book has been written both as a single book to be read from cover-to-cover expounding a central thesis and also as a book which can be from which you can dip in and out.

So, as a writer I have to be aware that my readership may be comprised of people with very different characteristics, and so I need to cater for all-comers if I can. The “ten things you need to know” will help all readers by supplying some general, background knowledge to those who are coming to company law completely new. I think it is important for a textbook writer to explain everything from first principles. The index and the detailed contents at the beginning of each chapter will direct you to the precise detail you need. In truth, however, the only way to read this book is sitting comfortably, ideally in one go before the course begins, or section-by-section reading the appropriate portions in advance of each of your lectures. If you read a textbook even in outline before lectures, then your work in lectures is more informed than otherwise it would be, and consequently your notes and your preparation for seminars and exams will improve markedly.

This book is in fact written as an essay about the nature of company law. It begins with the opening metaphors of Frankenstein’s monster and of the company as an abstract device which helps us to achieve very real objectives. The use of these metaphors throughout the text, together with observations of some key moments in British history (such as the South Sea Bubble and the industrial revolution powering the Victorian British empire), will help to explain a number of seemingly abstract principles of UK company law which you will need to know about but which may otherwise seem somewhat impenetrable. If something does not make sense, the easiest means of understanding it is to ask why it was put there in the first place. By understanding the genesis of the company and the purpose of some of the key principles, we will be able to reflect on the usefulness and desirability of those rules in the modern world. Successful essay writing for students involves the use of metaphor and “big picture” ideas to bring formulaic discussion of the law to life. This little book is packed with those sorts of ideas, and suggestions of avenues down which your work in company law might progress. For example, the later chapters on “Corporate Social Responsibility” and “Thinking About Company Law” are intended to deal with exactly those sorts of ideas, many of which are staples of the more progressive company law courses.

Well, I must just say how much I have enjoyed this time we have spent together, but I think it is time that we got to work. We will begin with an outline of the history of company law, before then considering the foundational decision of the House of Lords in *Salomon v A Salomon & Co Ltd* in Chapter 2.