Contents

Appendix of Sources	xi
Editors' Introduction: Themes in International Business Law	
Stephen Hardy and Mark Butler	xxi

VOLUME 1

Part I: Corporate Personality, Incorporation, Registration, Memo and Articles

Corporate Personality and Incorporation

1.	Ascription of Legal Responsibility to Groups in Complex Patterns of	
	Economic Integration Hugh Collins	1
2.	Corporate Liability: Smoke and Mirrors Neil Hawke and	
	Pamela Hargreaves	18
3.		
	S. Ottolenghi	31
4.		
	Lynn Gallagher	51
5.	Lifting the Corporate Veil [Case Comment] John P. Lowry	71
6.	Metaphysics and the Corporate Veil Christopher Ruane	73
7.	Salomon under Attack Claire Howell	80
8.	Section 459 on Parent and Subsidiary Companies Jonathan Mukwiri	85
9.	The European Company, the Successful Conclusion of Protracted	
	Negotiations Frank Wooldridge	93
10.	The Incorporation Theory – The United Kingdom Dan Prentice	110
11.	The Limited Liability Partnership: Pick and Mix or Mix-up?	
	Judith Freedman and Vanessa Finch	120
12.	The Veil of Incorporation - Fiction or Façade? Georgina Andrews	155
13.	"A Temple Built on Faulty Foundations": Piercing the Corporate	
	Veil and the Legacy of Salomon v Salomon Marc Moore	163
14.	Lifting the Veil of Incorporation: Creasey v. Breachwood Motors:	
	A Right Decision with the Wrong Reasons Cheong Ann Png	186
15.	To Pierce or Not to Pierce the Corporate Veil - Why Substantive	
	Consolidation is Not an Issue under English Law Simon Bowmer	194

vi contents

Registration, and the Memo and Articles

16.	The Constitution of the Company: Mandatory Statutory	
	Provisions v Private Agreements Clare M.S. McGlynn	203
17.	Competing Interests and Conflicting Principles: An Examination	
	of the Power of Alteration of Articles of Association F.G. Rixon	216
18.	The Relative Nature of a Shareholder's Right to Enforce the	
	Company Contract R.R. Drury	243
19.	The Controversy on the Section 20 Contract Revisited	
	G.D. Goldberg	266
20.	The European Company – Essential Tool or Eviscerated Dream?	
	Vanessa Edwards	275
21.	The SE Company – A New Common European Company from 8	
	October 2004 Erik Werlauff	293

Part II: Limited Liability Partnership

22. 23.	Partnership Law in the Twenty-First Century Elspeth Deards What's on Offer? A Consideration of the Legal Forms Available for Use by Small- and Medium-sized Enterprises in the United Kingdom	1
	Michael Lower	19
24.	Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative	1,
	Perspective J.J. Henning	26
	Part III: Shares and Ownership, Shareholders	
25.	Company Law and the Myth of Shareholder Ownership Paddy Ireland	42
26.	Contracting Out of Company Law: Section 459 of the Companies	
	Act 1985 and the Role of the Courts Christopher A. Riley	70
27.	Derivative Actions by Beneficial Shareholders Jennifer Payne	93
28.	Limitations on a Shareholder's Right to Vote - Effective Ratification	
	Revisited Brenda Hannigan	96
29.	Limited Liability: Large Company Theory and Small Firms	
	Judith Freedman	114
30.	Management Deficiencies and Judicial Intervention: A Comparative	
	Analysis Ruth Redmond-Cooper	155
31.	Section 459 of the Companies Act 1985 – A Code of Conduct for	
	the Quasi-Partnership? Brenda Hannigan	178
32.	Share Capital and Creditor Protection: Efficient Rules for a Modern	
	Company Law John Armour	200
33.	Shareholder Actions: The Rule in Foss v Harbottle D.D. Prentice	226
34.	Shareholder Primacy and the Distribution of Wealth Paddy Ireland	230
35.	Shareholder Remedies – Corporate Wrongs and the Derivative	
	Action Pauline Roberts and Jill Poole	262
36.	The Courts and Capital Reductions David Milman	287
37.	The Problem of the Preference Share Murray A. Pickering	289
38.	Company Law - Class Rights Kenneth Polack	307
39.	Company Law - Beneficial Interests in Shares L.S. Sealy	309
40.	The No Reflective Loss Principle <i>Fonathan Mukwiri</i>	312

Part III: Shares and Ownership, Shareholders (continued)

41.	The Pursuit of Effective Minority Shareholder Protection: s.459 of the Companies Act 1985 <i>John Lowry</i>	1
42.	The Theory of the Firm: Minority Shareholder Oppression:	1
	Sections 459–461 of the Companies Act 1985 D.D. Prentice	15
43.	Voting Agreements and Corporate Statutory Powers Giora Shapira	48
44.	Easier Exercise of Shareholder Rights Proposed EU Focus	52
45.	1 0	55
46.	Four Models of Minority Shareholder Protection in Takeovers	7.
47.	Joseph Lee The Role of the Judge in Enforcing Shareholder Rights Colin Baxter	76 101
17.	The Role of the Judge in Emoreing onarchoider ragins comit bunti	101
	Part IV: Insider Dealing, Directors and their Duties,	
	Corporate Governance	
	Insider Dealing	
48.	Insider Dealing – The New Law: Part V of the Criminal Justice	
	Act 1993 Keith Wotherspoon	119
49.	Insider-dealing Regulation in the United Kingdom and Germany:	
	Comparing Regulatory Policy on the Implementation of Key Aspects	
	of the EC Insider Dealing Directive David Stewart Fairbairn	135
50.	The European Community's Directive on Insider Dealing: From	
~ .	Company Law to Securities Markets Regulation? P.L. Davies	157
51.	The House of Lords Rules on Insider Trading Takis Tridimas	170
	Directors and their Duties	
52.	Directors and Officers' Remuneration: The Role of the Law	
	Ian M. Ramsay	174
53.	Directors' 'Tortious' Liability: Contract, Tort or Company Law?	
	Ross Grantham and Charles Rickett	197
54.	Directors' Tortious Liability – Standard Chartered Bank and the	
	Restoration of Sanity Chris Noonan and Susan Watson	205
55.	Fiduciary Duties of Shareholders and Directors Robert Flannigan	215
56.	Non-executive Directors: Self-Regulation or Codification?	220
c 7	Saleem Sheikh	238
57.	The Content of the Director's Duty of Loyalty Ross Grantham The Continuing Value of Policifor Director's Presch of Duty	261
58.	The Continuing Value of Relief for Directors' Breach of Duty Rod Edmunds and John Lowry	279
59.	The Duty of Directors to Take Account of Creditors' Interests:	417
J / •	Has It Any Role to Play? Andrew Keay	309
	The sering two to I lay. Then on theny	507

Part IV: Insider Dealing, Directors and their Duties, Corporate Governance (continued)

Corporate Governance

60.	Board Performance and Cadbury on Corporate Governance	
	Vanessa Finch	1
61.	Continuing Obligations of Listed Public Companies: A Critical	1.0
	Analysis Olu Omoyele	16
62.	Corporate Governance: Rationalising Stakeholder Doctrine in Corporate Accountability <i>Mohammed B. Hemraj</i>	40
63.	Holding Multinationals to Account: Recent Developments in	
	English Litigation and the Company Law Review P.T. Muchlinski	48
64.	"How Can You Be Sure of Shell?" Is Corporate Governance	
	Better Served by Unitary or Two-Tier Boards? Peter Burbidge	71
65.	Secretary of State v Swan and North [Case Comment]	
	Claire Howell	84
66.	Self Regulation and the Financial Aspects of Corporate Governance	
	John Holland	91
67.	Separation of Ownership and Control Eugene F. Fama and	
	Michael C. Jensen	126
68.	Corporate Governance: A Defence of the Status Quo Alistair Alcock	145
	Part V: International Trade, Conflicts of Laws,	
	Insolvency and Liquidation	
	International Trade and Conflict of Laws	
69.	Choice of Jurisdiction in European Corporate Law – Perspectives of	
	European Corporate Governance Tobias H. Tröger	161
70.	Conflicts of Jurisdiction and Conflicts of Law in Company Law	
	Matters within the EU 'Market for Corporate Models': Brussels	
	I and Rome I after Centros Massimo V. Benedettelli	210
71.	Corporations in International Litigation: Problems of Jurisdiction	
	and the United Kingdom Asbestos Cases Peter Muchlinski	234
72.	Freedom of Establishment, International Company Law and the	
	Comparison of European Company Law Systems after the ECJ's	
	Decision in Inspire Art Ltd Hans C. Hirt	255
73.	International Corporate Regulation: Listing Rules and Overseas	
	Companies Iain MacNeil and Alex Lau	284

Part V: International Trade, Conflicts of Laws, Insolvency and Liquidation (continued)

International Trade and Conflict of Laws (continued)

74.	Migrating Companies R.R. Drury	1
75.	Recognition of Companies Incorporated in Other EU Member	
	States Eva Micheler	20
76.	The European Conflict-of-Corporate-Laws Revolution: Überseering,	
	Inspire Art and Beyond Werner F. Ebke	29
77.	1	
	Eva Micheler	71
78.	The Law Applicable to Groups of Companies Involving European	
	Companies (Societas Europaea) Sabine Ebert	79
79.	The Law Determining Directors' Duties Ben Jones	91
	Insolvency and Liquidation	
80.	Creditor's Interests and Director's Duties D.D. Prentice	96
81.	Doctoring in the Shadows of Insolvency Vanessa Finch	110
82.	Insolvency and the Survival of Contracts Meng Seng Wee	127
83.	Recharacterisation after Enron Alan Berg	152
84.	Rethinking Receivership John Armour and Sandra Frisby	185
85.	The Law Commission Consultative Report on Company Security	
	Interests: An Irreverent Riposte Gerard McCormack	214
86.	The Law Commission's Consultation Paper No 164: Some	
	Reflections Regarding the Exclusion of Securities Erica Johansson	237
87.	The Recasting of Insolvency Law Vanessa Finch	259
88.	Wrongful Trading - Predicting Insolvency T.E. Cooke and	
	Andrew Hicks	282
	Part VI: Reform	
89.	Company Law Reform: Part 1 Saleem Sheikh	294
90.	Company Law Reform: Part 2 Saleem Sheikh	308
91.	"Modernising Company Law": The Government's White Paper	500
	Robert Goddard	317
92.	The Company Law Review: Legislating Directors' Duties	311
	Alan Berg	341
	0	2 11