

# Book review

## Minority Shareholders: Law, Practice & Procedure (7th Edition)



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 Publisher: Oxford University Press  
 ISBN: 9780192899637  
 RRP: £295

The seventh edition of this key text on minority shareholders is an essential guide to a fast-moving area of law. Complex company law is broken down into bite-sized chunks, accompanied by expert analysis on the current practice, procedure and nuance of managing disputes involving minority shareholders.

In addition to its impressive range and depth of content, the true value of this book is that it walks the practitioner through the whole process of each kind of dispute, from the letter before action (including the actual precedent in the appendix) in an unfair prejudice petition, to the costs position at the end of a derivative claim. While the text is detailed, the writers have also succeeded in making it readable. Where the position is unclear from recent case law or statute, a suggested interpretation is offered, with relevant authorities (including from other common law jurisdictions) cited.

### Reshaped structure

Because the law affecting minority shareholders is contained in so many different places (from statute to a range of different common law rights and remedies), structure could have been a problem. However, the authors have cleverly avoided this obstacle and in this edition have reshaped their approach. The helpful chapter explaining the thinking behind the book's logical structure describes how the sources from which minority shareholders' rights typically arise are addressed, followed by the relevant remedies.

For example, the first chapter deals with directors' duties. Chapter two then considers derivative claims, typically only brought when those duties have been breached. As well as analysis on the current legal test for permission, including the relevance of motive or bad faith in seeking to bring a derivative claim (see *ClientEarth v Shell plc and others* [2023] EWHC 1897 (Ch)), the book also clearly addresses the procedural requirements. Useful, practical guidance is given on a

range of topics, including when it may be appropriate to delay notifying the company that the claim is being brought. The analysis of when a minority shareholder might prefer a statutory derivative claim to an unfair prejudice petition is insightful. In addition to the procedural differences, the authors explore whether future climate derivative claims may have more success where companies are under more specific disclosure obligations, with useful cross-references to the position in other jurisdictions and recent case law, including *McGaughey and another v Universities Superannuation Scheme Ltd and others* [2023] EWCA Civ 873, [2024] 1 All ER 962.

### Key developments, practical guidance

New for this edition is an extensive re-working and analysis of the law on reflective loss. As the last edition was published in 2018, the Supreme Court's decision in *Sevilleja v Marex Financial Ltd* [2020] UKSC 31, [2021] 1 All ER 585 features heavily. However, this work also delves deeper into the complexities of the current law on reflective loss, examining the influence and interpretation of conflicting decisions in subsequent judgments (including *Primeo v Bank of Bermuda* [2023] UKPC 40 [2023] All ER (D) 73 (Nov), *Nectrus Ltd v UCP plc* [2021] EWCA Civ 57 and *Burnford and others v Automobile Association Developments Ltd* [2022] EWHC 368 (Ch), [2022] All ER (D) 12 (Mar)).

The section on unfair prejudice is perhaps the most detailed, reflecting its importance as a remedy for minority shareholders unfairly prejudiced by a majority (although the fact that it is not the shareholder's minority status but 'whether they lack the power to stop the unfairly prejudicial acts' that is relevant, is the kind of detail usefully highlighted throughout). The chapter is also comprehensive and thoughtful in its analysis of key case law. Recent decisions including *Loveridge and another v Loveridge* [2021] EWCA Civ 1697 on the meaning of 'unfairly prejudicial' conduct and *Re*

*Compound Photonics Group Ltd* [2021] EWHC 787 (Ch) on the meaning of 'good faith' provide expert insight enabling practitioners to anticipate and advise on the full range of issues when considering bringing or defending an unfair prejudice petition.

One of the key considerations for minority shareholders contemplating litigation, is knowing how the court will determine the value of their shareholding. This is an area of law replete with conflicting and confusing case law. While the writers make it clear that this is not a textbook on valuation, they recognise the central importance of the topic and dedicate an entire chapter to analysing and informing the reader on the valuation principles and process likely to apply, including accounting and practical issues as well as the relevant factors when making offers and specifically *O'Neill v Phillips* [1999] 2 All ER 961 offers.

Of practical relevance to litigators, this edition also provides a comprehensive update on the application of the new disclosure process under PD 57AD to unfair prejudice petitions. It also addresses the thorny issue of privilege between companies and shareholders in the disclosure context by reference to recent case law.

Finally, in terms of substantive remedies, this work covers in detail the law, practice and procedure of the just and equitable winding up process. Not only are the core tenets explained and referenced, but the text draws on authorities from other common law jurisdictions including Bermuda and the Cayman Islands and the key Privy Council decision in *Chu v Lau* [2020] UKPC 24.

### Essential companion

The management and resolution of shareholder disputes represents an increasing challenge for today's companies. Not only has there been a marked increase in shareholder activism, but turbulent economic and political conditions have resulted in prolonged litigation over shareholder exits and the rights and obligations of all those involved. This is an invaluable work for those interested in or advising on shareholder disputes. Its reworked content since the 2018 edition will be an essential companion to legal practitioners and given the very recent developments on the law of limitation in unfair prejudice petitions, future editions will no doubt be welcomed.

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