

Revision Summary Chapter 23

Members' remedies

The derivative claim

- The rule in *Foss v Harbottle* consists of three principles: 1. The 'proper claimant' principle provides that only a company can sue in respect of wrongs committed against it. 2. The 'internal management' principle provides that the courts will not interfere in the internal management of a company. 3. The 'irregularity' principle provides that a member cannot bring an action for an irregularity that could be ratified by a simple majority of the members.
- Today, the only form of derivative action available is known as a 'statutory derivative claim' and may be brought where a director commits an act or omission involving negligence, default, breach of duty, or breach of trust.
- A derivative claimant will require the permission of the court in order to continue with the claim and the claim will be dismissed if the claimant cannot establish a *prima facie* case.
- The courts will not allow a personal claim to proceed where the member's loss is merely reflective of the loss of the company.

Unfair prejudicial conduct

- Section 994 allows a member to petition the court where the conduct of the company's affairs has unfairly prejudiced his interests as a member.
- The conduct complained of must be both unfair and prejudicial to the interests of the members.
- In most companies, the members' interests will not extend beyond the rights found in the company's constitution, but in certain cases, the members may have legitimate expectations not found in the constitution that are deserving of protection.

The winding up petition

- Section 122(1)(g) of the Insolvency Act 1986 allows the court to wind up a company where it considers it just and equitable to do so.
- The conduct complained of must be both unfair and prejudicial to the interests of the members.
- In most companies, the members' interests will not extend beyond the rights found in the company's constitution, but in certain cases, the members may have legitimate expectations not found in the constitution that are deserving of protection.
- Section 122(1)(g) of the Insolvency Act 1986 allows the court to wind up a company where it considers it just and equitable to do so.
- The court will not wind up a company where an alternative remedy is available and the petitioner is acting unreasonably in seeking the winding up.