Company Law | Statutory Minority Protection Cheat Sheet

by daniya (daniya) via cheatography.com/183845/cs/38320/

summary of facts

- briefly state case facts

- mention issues at hand

- topics to which question relates

general introduction

in continuation of the 'majority rule' which commands a weighty part of company law as a whole, minority SHs are bound to the decisions voted in general meetings.

Although this rule generally posses a great many advantages, as a concequence, the minority might, at times, may find themselves unfairly discriminated against.

By way of protection, Statute law henceforth furnishes out some remedial provisions so as to prevent such discrimination to stand

section 994 (CA, 2006)

section 994 (CA, 2006) (cont)

exclusion fromm management (**Phoenix Office Supplies v. Larven**)

Mismanagement - breach of DD's skill & care) (**Re Macro**)

Excessive renumeration by D + failure to pay dividends (**Re CF Booth**)

Breach of fiduciary duties (**Re LOEW**)

▸ refers to legal rights of SH proviso CA, 2006 | constitution | SH agreements

▸ SH rights are quite limited in

▸ hence Courts delibrately read 'interests' widely

✱ especially in 'quasi-partnership' (QP) companies

Ebrahimi v WG - QP require (1) personal rel. b/w SH involving mutual confidence ||| (2) agreement some/all to paricipate in compant management ||| (3) restrictions placed on share transfer

✱ QP may exist b/w some SH but not others (**Waldron**)

› QP 'interests' = legitimate expectations || equitable considerations || informal agreements (**Re Sam Weller**) (**Re a Company**)

3. *Unfairness*

▸ prejudice harms petitioner's interests *unfairly*

▸ sometimes, conduct is prejudicial *BUT* not unfair

(a) where petitioner's own disruptive behaviour resulted in unreasonable conduct (**Waldron**)

(b) petitioner given reasonable offer for shares but unreasonably refused that offer (**O'Neill v Phillips**)

SHARE VALUATION

- one petitioners wins case, will most likely want to buyout (**Grace v. Biagiolo**)

shares must be valued by 'inidependant valuer' (**O.Neil v. Phillips**)

valuation will normally be done on 'pro rata' basis (no discount to share value applied)

▸ *BUT*, where person being bought-out worked to company's detriment/ no improvements even if no loss, valuation will be discounted

section 994 (CA, 2006) (cont)

▸ *OR*, where share was acquired by petitioner through investment (**Re Blue Index**)

section 122(1)(g) (insolvency Act, 1986)

- winding up of company on just & equitable grounds

✱ ***measure of last resort***

✱ ***petitioner to exhaust alternate remedies first***

✱ ***only issued where depth of disagreement is severe***

- based on partenership laws (Courts have power to dissolve partnership → also have power to order 'winding up'

- where SH can show tangible interest in winding-up, can file ***u/s.112(1)(g)***

- examples include:

4. failure of company's foundation

▸ company's objects become impossible or illegal (**Re German Dates Coffee**)

5. deadlock

▸ relation b/w parties breaks down w/o any chance of reconciliation

6. lack of probity (**quasi-partnership**)

▸ lack of confidence in management's competence in **quasi partnership** (**Lock v. John Blackwood**)

7. exclusion for management (***quasi partnership**)

▸ since such operate company through partnership (**Ebrahimi v. Westbourne Galleries**)

8. fraud

▸ where company was founded to perpetuate fraud + winding up is only solution for SH to recover investment (Re Thomas Edward Brinsmead**)

- where the company's affairs or an act/omission of or on behalf of the company results in SH being 'unfairly prejudiced'

- non-exhustive list of remedies

✱ *BUT*, petitioners gen. seek order for buyout (purchse of shares by defendant) (**Grace v Biagioli**)

need do not only apply to Ds. Can also be used against other SH or 3rd parties

- need to prove three elements to succeed

Complained Conduct is an Act/Omission of Company

- behaviour MUST concern runnig of business

- courts have adopted an exapnsive approach to this critera

- actions taken by SH or Ds taken outside the 'organs' of the company (**Oak Investements**)

Graham v Every - pre-emption does'nt fall into ambit of 'running of company'

Prejudical to the SH's Interests*

1. ***Prejudicial***

{{fa-cf SH proviso CA, 200aret-right}} conduct harms petitioner's interests

- tested objectively = delibrate harm or bad faith needn't be shiwn (**Re Saul**)

2. ***Interests***

- petitioner must be SH ***BUT*** conduct of complaint needn't affect them in their capacity as SH