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Minority Shareholders: Applicability Of unfair Prejudice

by

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Abstract

A minority shareholder is not completely powerless. There are always provisions included in the Companies Acts that influence a minority shareholder to restrain the excesses of the majority. Nevertheless, these provisions are not frequently used against majority shareholders determined to perform their plans. In such situations, the minority shareholder will have to seek protection and relief from the court. Therefore, a statutory remedy is provided for shareholders in the situation where an unfairly prejudicial conduct of the affairs of a company has occurred. Initially, the courts were reluctant to interfere in the decisions of the management since the unfair prejudice remedy previously, had a restrictive meaning. However, after the statutory changes, aiming at the removal of these restrictions, both the law and the courts are more in favour of providing relief towards minority shareholders through the unfair prejudice remedy, which is considered as being a major source of relief and protection for the minorities.

This dissertation aims to focus on the minority shareholders issue and specifically to shed some light on the ground of unfair prejudice, under the United Kingdom jurisdiction, and whether such a ground is effective at all for their protection. In order for this to be achieved, this paper will be divided into three chapters. According to the first chapter, a consideration of the background of the law behind minority shareholders will be made, and particularly how it was previously, how that law has been developed and how it has become nowadays. Then, moving on to the next chapter, it would be worth considering in depth the ground of unfairly prejudicial conduct under section 994 of the Companies Act 2006 and particularly what the provisions of the section mean. A clarification will be made of what we mean by unfairly prejudicial conduct and also types of such conduct will be mentioned. Particularly, some examples of how has the law been applied by the English courts through case law will be provided. At this point another important thing to talk about is the remedies that are available under section 996 of the Companies Act 2006. Finally, coming to the third chapter, a comparison will be made with other remedies that are available for a minority and also it would be worth making a criticism in order to determine whether the ground of unfair prejudicial conduct is effective or whether it has to be developed.

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Introduction

The basic part of a company is constituted, under the company law, by the directors and shareholders; where the directors are responsible for the management of the company and the shareholders are the owners of the company and have the ultimate control of that company through their shareholdings¹. However, the shareholders of a corporation are divided into two types, the majority and minority shareholders. Minority shareholders are those who have a small number of shares in a company and as a result they lack of any power to control the company or to have any influence over the matters in the corporation. On the other hand, in relation to the majority shareholders, who have the majority of the shares in the company, there is a majority rule under which ‘the will of the majority of the members of the company should in general prevail in the running of its business’². Moreover, most of the disputes that may arise involve minority shareholders who seek redress as the majority can secure redress for themselves through the exercise of their voting power³. Since the decisions in a company are taken by a majority vote, in the situation where a minority shareholder is not satisfied with a decision, he can only bring an action against the majority if the decision is illegal or it infringes the member’s personal rights⁴. According to Lord Hoffman:

‘The rights of minority shareholders is an important and rapidly developing branch of law. It raises difficult questions of principle: the conflicts between the letter and the spirit of the company’s constitution; between the sanctity of the bargain between shareholders embodied in the articles and the prevention of unfair treatment; between giving a remedy which is effective and allowing to become an instrument of abuse; between the attainment of fairness and the amount of money which the parties can afford to spend on litigation’⁵.

Therefore, the protection of minority shareholders has been introduced with the aim that the approach towards them will be fair since they lack of any control over the company⁶ and also, to re-

¹ Brenda Hannigan, *Company Law* (2nd edition, Oxford University Press 2009) p 4

² Law Commission, ‘Shareholder Remedies: A Consultation Paper’ (1997) Law Commission No 142
<http://lawcommission.justice.gov.uk/docs/cp142_Shareholder_Remedies_Consultation.pdf> accessed 7 July 2012 at para 1.6 p 2

³ Brenda Hannigan, *Company Law* (2nd edition, Oxford University Press 2009) p 415

⁴ S H Goo, *Minority Shareholders’ Protection: Study of Section 459 of the Companies Act 1985* (Cavendish Publishing Limited, 1994) p 2

⁵ Lord Hoffman in P Paterson, ‘A criticism of the contractual approach to unfair prejudice’ (2006) 27 *Comp Law* 204

⁶ P Paterson, ‘A criticism of the contractual approach to unfair prejudice’ (2006) 27 *Comp Law* 204



spect freedom of contract and efficiency in private ordering between shareholders⁷. Generally, a minority shareholder may take an action for a wrong done to the company based on the following grounds; the statutory derivative claim which falls under sections 260-264 of the Companies Act 2006, the just and equitable winding up of the firm under section 122(1)(g) of the Insolvency Act 1986 and the third one is the petition on the ground of unfairly prejudicial conduct under section 994 of the Companies Act 2006.

For the purposes of this paper, an examination of the issue relating to the minority shareholders under the United Kingdom jurisdiction will take place and particularly an analysis of the unfair prejudice remedy will be made with the aim of identifying whether such a ground is effective at all for their protection. In order for this to be achieved, this paper will be divided into three chapters. Based on the first chapter, a reference will be made to the historical background of the law behind minority shareholders and specifically in relation to the unfair prejudice remedy. Basically, this chapter will refer to how the law on that remedy was previously, how it has been developed and how it has become today. The law that will be analysed for the purposes of this chapter is the section 210 of the Companies Act 1948, section 75 of the Companies Act 1980, section 459 of the Companies Act 1985 and section 994 of the Companies Act 2006. Moving on to the second chapter, the unfair prejudice remedy will be further analysed. In particular, an in depth discussion will be made of section 994 of the Companies Act 2006, under which the ground of unfair prejudicial conduct falls. This chapter will focus its discussion on the analysis and explanation of the provisions provided in section 994 of the 2006 Act and also, how these provisions have been applied. This will be mainly achieved by considering examples of how has the law been applied by the English courts through case law. At this point, an additional provision to talk about is the remedies that are available under section 996 of the Companies Act 2006. Coming to the third and last chapter of this paper, it would be worth making a critical evaluation of the unfair prejudice remedy in order to determine whether the ground of unfair prejudicial conduct is effective and provides an adequate protection to the minority shareholders or whether it has to be further developed. Also, the relationship of the unfair prejudice remedy with the other grounds, the derivative claim and the winding up on the just and equitable ground remedy, that are available to the minority shareholders will be examined.

⁷ I H Chiu, 'Contextualising shareholders' disputes – a way to reconceptualise minority shareholder remedies' (2006) JBL 312

CHAPTER I

Historical background of the unfair prejudice remedy

Coming to the first chapter of this paper, a reference will be made to the historical background of the unfair prejudice remedy in order to see how the law has been developed during the years. The remedy dates from 1948, when the original ‘oppression remedy’ was enacted in the United Kingdom⁸. Prior to the introduction of section 210 of the Companies Act 1948, a minority shareholder was often unable to obtain any redress from the courts to stop the majority shareholders from acting in an oppressive way⁹. However, in rare occasions the remedy for winding up on just and equitable grounds existed. The issue in relation to minority shareholders was taken into consideration in the report of the Committee on Company Law Amendment namely, the Cohen Committee in 1945. Therefore, since the protection of minority shareholders, and in particular based on the ground of unfair prejudice, derives from the past years, a reference will be made below to the various Companies Acts that dealt with the unfair prejudice remedy until nowadays.

i. Companies Act 1948

As said above, previously, in limited situations, the court used the winding up on just and equitable ground remedy but due to its remedial inflexibility there was a need for an alternative remedy. For that reason, section 210 was introduced in the Companies Act 1948. According to the section ‘where the company’s affairs were being conducted in a manner which was oppressive to some part of the members and the circumstances were such that a just and equitable winding up would be available but it was inappropriate to grant this remedy, the court could instead grant such other remedy as it thought fit’¹⁰. The impact of this section was to bring the full force of litigants’ and judges’ attention to bear on what was meant by the term ‘oppression’, the scope of which concept would determine the rigour of the standard by which the majority’s conduct was reviewed¹¹. In *Scottish Co-operative Wholesale Society v Meyer*¹² Lord Simmonds said that the term ‘oppression’ meant

⁸ Matthew Berkahn, ‘Unfair Prejudice: Who has it right, economically speaking?’ Journal of the Australasian Law Teachers Association p 55

⁹ Law Commission, ‘Shareholder Remedies: A Consultation Paper’ (1997) Law Commission No 142 <http://lawcommission.justice.gov.uk/docs/cp142_Shareholder_Remedies_Consultation.pdf> accessed 7 July 2012 at para 7.5 p 56

¹⁰ Paul Davies, *Introduction to Company Law* (2nd edition, Oxford University Press 2010) p 233

¹¹ *ibid* p 233

¹² [1959] AC 324

‘burdensome, harsh and wrongful’. However, the courts were restrictive in their application of this remedy and it was often more difficult to obtain than a just and equitable winding up¹³.

Later on, in 1962 the Jenkins Committee suggested a number of changes to the oppression remedy, including widening the provision to contain complaints of unfairly prejudicial conduct¹⁴. Although slow to respond, Parliament based the enactment of section 75 of the Companies Act 1980, which subsequently became section 459-461 of the Companies Act 1985, on the recommendations of the Committee¹⁵. Also, a small change was made by the Companies Act in 1989 to make clear that the unfairly prejudicial conduct could affect all members.

ii. Companies Act 1980 and 1985

Section 75 of the Companies Act 1980 in its effort to overcome the restrictions of section 210, replaced the term ‘oppressive’, stated in section 210 of the 1948 Act, with the term ‘unfairly prejudicial’. According to section 75 of the 1980 Act, ‘the affairs of the company were being conducted in a manner which was unfairly prejudicial to the interests of any of its members’¹⁶. The express link of the winding up remedy disappeared but the wide remedial flexibility of the section was retained¹⁷. Moreover, the requirement of unfairly prejudicial conduct, established in section 75 of the 1980 Act, was embodied in section 459 of the Companies Act 1985. Section 459 provided the court with an unfettered discretion to grant relief where, upon a member's petitioning, it is established that the company's affairs have been conducted in a manner which is unfairly prejudicial to him alone, a group of members, or all of the members¹⁸.

iii. Companies Act 2006

The latest Act that dealt with the unfair prejudice remedy is the Companies Act 2006 and in particular, section 994 of the Act. Section 994 is identical to its predecessor, section 459 of the 1985 Act, providing that a shareholder may petition for relief suggesting that ‘the affairs of the company

¹³ Dov Ohrenstein (Radcliffe Chambers), ‘Minority Shareholders & Unfair Prejudice’ (2011) p 1 <<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

¹⁴ P Paterson, (n 6) above

¹⁵ *ibid* at 204-205

¹⁶ John McMullen, ‘Minority Protection and Section 75 of the Companies Act 1980’ *The Cambridge Law Journal* Vol 42, No 2 (November 1983), pp 204-206

¹⁷ Paul Davies, (n 10) above p 233

¹⁸ R Goddard, ‘Enforcing the hypothetical bargain: sections 459-461 of the Companies Act 1985’ (1999) 20 *Comp Law* 66

are being or have been managed in a way which is unfairly prejudicial to the interests of shareholders generally or some part of its shareholders'¹⁹. Generally speaking, section 994 of the 2006 Act provides a statutory right to a shareholder, which aims at protecting the minority shareholders in the situations where majority shareholders act in a way which is unfairly prejudicial to the minorities.

¹⁹ Companies Act 2006: section 994

CHAPTER II

The unfair prejudice remedy

Moving on to the next chapter, a discussion will be made in detail of section 994 of the Companies Act 2006, under which the unfair prejudice remedy falls. Particularly, an analysis and explanation of the provisions contained in section 994 of the 2006 Act will be made in order to see how these provisions have been applied in practice. In order to identify the application of those provisions, an analysis of the English case law will take place to see how the English courts applied the relevant law under section 994. Also, after the analysis of section 994, there will be a discussion of section 996 of the 2006 Act which provides the remedies that are available for a minority shareholder.

i. Analysis of the provisions of unfair prejudice remedy

To start with it is significant to mention that the unfair prejudice remedy is the most important and at the same time popular remedy available to the minority shareholders. It arises mainly in small private companies. Section 994, in which the unfair prejudice remedy is contained, specifically provides that ‘a member of a company may apply to the court by petition for an order on the ground (a) that the company’s affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial’²⁰. When interpreting this section, four issues arise namely, who has a right to petition, what is meant by the term ‘company’s affairs’, what is considered as being the ‘interests of the members’, and finally what does the term ‘unfairly prejudicial conduct’ mean. These issues are the provisions of section 994 that are going to be further analysed below by giving examples of situations where they have been applied.

²⁰ Companies Act 2006: section 994(1)

Who may petition?

Only ‘members of a company have a right to petition’²¹ under section 994 of the 2006 Act. However, section 994(2) allows non-members ‘to whom shares have been transferred or transmitted by operation of law’²² to petition for relief under the section, ‘such as personal representatives and trustees in bankruptcy’²³. Therefore, if not within this extension, a non-member will not be able to petition under section 994, in the situation where the registered shareholder is a nominee and the person with the beneficial interest in the shares seeks to petition²⁴. However, in the case of *Atlasview Ltd v Brightview Ltd*²⁵ it was held that a nominee shareholder could be considered as being a legitimate petitioner. In that case the court refused to strike out a petition holding that it was arguable that the ‘interests’ of a nominee shareholder were capable of including the economic and contractual interests of the beneficial owners of the shares²⁶.

Alternatively, the following irrational outcome would arise where the registered shareholder, being a member, would be able to petition even though he lacks the relevant ‘interest’ in such a situation²⁷. Yet the beneficial owner who is not a member would have no standing to petition, even though he has ‘interests’. Furthermore, there is no prohibition placed on a majority shareholder’s ability to seek a petition. Nevertheless, it would be assumed by the court that a majority shareholder would have been able to influence the course of conduct in question²⁸. Equity’s maxim that the applicant should come to court with ‘clean hands’ is not an essential pre-requisite in this type of procedure. This does not mean however that the petitioner is immune from any responsibility. Factors that will be taken into account by the court refer to how significant and relevant the issue is. In effect the court may refuse relief despite the fact that the settings are favourable to the petitioner’s claim²⁹.

Conduct of the company’s affairs

The alleged conduct should be relevant to the conduct of the company’s affairs and it should concern a series of events or a single act. It has to be noted that the conduct must be the consequence of

²¹ Companies Act 2006: section 112

²² Companies Act 2006: section 994(2)

²³ *Re McCarthy Surfacing Ltd, Hecquet v McCarthy* [2006] EWHC 832

²⁴ Gower and Davies, *Principles of Modern Company Law* (8th edition, Sweet & Maxwell 2008) p 682

²⁵ [2004] 2 BCLC 191

²⁶ Brenda Hannigan, (n 1) above p 418

²⁷ *ibid* p 418

²⁸ See *Re Legal Costs Negotiators Ltd* [1999] 2 BCLC 171 at 199, 201

²⁹ *Richardson v Blackmore* [2006] BCC 276



acts or omissions by the company or by those who have the authority to act on behalf of that company and not merely the actions or inactions of an individual acting in personal capacity³⁰. Thus, as it was affirmed in *Re Unisoft Group Ltd (No 3)*³¹ the conduct of shareholders regarding disputes between themselves cannot be complained of and a shareholder cannot seek a petition³². According to Harman J, ‘the acts of the company must be kept separate from the acts of an individual acting in his personal capacity since the latter cannot get relief under section 994 of the Companies Act 2006’³³.

This was well illustrated in *Re Legal Costs Negotiators Ltd*³⁴, where there was an issue when one of the four individuals who had set up the company failed to dispose of his shareholding upon a complaint of the others. The four founding shareholders established the company in equal shares, all of them being directors and employees. ‘Later on, three of the directors disapproved of the fourth’s continued existence as a member in their flourishing business and the first step was to dismiss him from being an employee. The others tried unsuccessfully to convince the fourth member to sell his shareholding to them and thus they petitioned for an order so that he transfer or sell his shares to them’³⁵. However, it was ruled that the complaint about the defendant’s retention of shares could not be substantiated as concerning the company’s affairs and it was rather personal; thus the petition was rejected.

A similar outcome had been reached in *Re Leeds United Holdings plc*³⁶, where the court rejected a petition that concerned personal differences between the shareholders. It was stressed again that the subject matter needs to be connected to the company’s acts or omissions. Comparably, in *Arrow Nominees Inc v Blackledge*³⁷, the majority of the shareholders were important lenders and suppliers of the company, something that was irrelevant to the company’s affairs. The Court of Appeal underlined that no petition was allowed; the allegations essentially concerned the terms of the loan and supply contracts and did not bear any significance on the company’s conduct since there was nothing wrong with lending the company at a certain rate³⁸. The petition would be substantiated only if the majority shareholders were engaged in unfairly prejudicial conduct by exploiting their position

³⁰ *Re Legal Costs Negotiators Ltd* [1999] 2 BCLC 171; *Re Unisoft Group Ltd (No 3)* [1994] 1 BCLC 609

³¹ [1994] 1 BCLC 609

³² Brenda Hannigan, (n 1) above p 419

³³ *Re Unisoft Group Ltd (No 3)* [1994] 1 BCLC 609 at 623

³⁴ [1999] 2 BCLC 171

³⁵ Brenda Hannigan, (n 1) above p 419

³⁶ [1996] 2 BCLC 545

³⁷ [2000] 2 BCLC 167

³⁸ Brenda Hannigan, (n 1) above p 419

to constrain the company in accepting the terms of their own contracts at the expense of more favourable rates offered by others³⁹.

A conduct can be considered as unfairly prejudicial when something has already been done regarding the company's affairs although future acts of the company can also amount to unfair prejudicial conduct if they are planned to have this effect⁴⁰. In that situation a petition will be successful but the petitioner needs to be cautious in filing a complaint. For example, in *Re Astec (BSR) plc*⁴¹, the complainant rushed to make a petition when there were only speculations/statements about the company's acts in the future. At the specific time when the petition came into consideration none of those plans were carried out.

To avoid any technicalities or manoeuvres, which might restrain the wide scope of section 994 of the Companies Act 2006, in *Re CityBranch Group Ltd, Gross v Rackind*⁴² it was decided that the affairs of the subsidiary comprise the conduct of the holding company and vice versa⁴³. In effect, unfair prejudicial order can arise by the conduct of the subsidiaries of the company, particularly when they are entirely owned or controlled by the majority of directors. In that way, shareholders of the parent company are able to petition for relief in relation to the subsidiary's conduct⁴⁴.

Conduct unfairly prejudicial to the interests of the members

It has been firmly established that when a shareholder seeks a petition for unfairly prejudicial conduct, the latter must be related to the interests of the former as a member of the company and not as an individual⁴⁵. As it has been approved in *Re J E Cade & Son Ltd*⁴⁶, no claim can be brought when it is irrelevant to the interests of the member as a member of the company. In this particular case the petition failed since the shareholder who tried to get it was actually trying to defend his interests as a freeholder of a farm instead of protecting his interests as a member of the company⁴⁷. Yet, it has not been clearly defined what the member's interests comprises and for that reason the court has

³⁹ *ibid*

⁴⁰ *Re Kenyon Swansea Ltd* [1987] BCLC 514

⁴¹ [1998] 2 BCLC 556

⁴² [2004] 4 All ER 735 at 743-4

⁴³ Brenda Hannigan, (n 1) above p 420

⁴⁴ Goddard and Hirt, 'Section 459 and corporate groups' (2005) JBL 247

⁴⁵ *Re a Company (No 004475 of 1982)* [1983] 2 All ER 36 at 44

⁴⁶ [1992] BCLC 213

⁴⁷ Brenda Hannigan, (n 1) above p 420

proved to be reluctant in striking out a petition. The meaning of the member's interest as a member should be examined carefully and the court should take a wide view of what it may refer to.

It has been noticed that 'it is very common for a director to be removed from the company but the courts have steadily accepted that if it has been agreed for a member to participate in the management of the company, it would be considered as unfairly prejudicial to remove him as a director'⁴⁸ and he will thus be able to petition for relief under section 994 of the 2006 Act.

Moreover, the courts should adopt a fair and an all-encompassing approach before making their decision in order to be allowed in some situations to consider the members' interests as creditors and not just as members of the company. This was illustrated in *R & H Electrical Ltd v Haden Bill Electrical Ltd*⁴⁹ where a shareholder petitioned for relief under section 994. More specifically, the relationship between the four equal shareholders and directors has broken down even though some there were joint activities between the parties regarding the loans from the petitioner's company⁵⁰. The majority shareholders voted for his removal from management and when the latter petitioned, the plaintiffs claimed that the conduct complained of was irrelevant to his membership of the company and to his interests as a member generally.

Yet, their claim was rejected since Robert Walker LJ believed that the activities which the shareholder was dealing with were closely related to his interests as a member of the company⁵¹. His removal from the company was considered to be unfair and prejudicial since he had an essential role to the management and he was therefore allowed to seek a petition under section 994 and get relief.

The wide-ranging approach of the courts was further followed in *Gamlestaden Fastigheter AB v Baltic Partners Ltd*⁵² where again a shareholder was offering loans to the company from his working capital. It was found that the proper way to approach the case was that the interests of the petitioner as a creditor should also be taken into consideration before the court make a decision as to whether to allow a petition and let the petitioner be entitled to relief⁵³. In that case, Lord Scott stressed that, 'the fact that there were arrangements as to the funds between the petitioner and his fellow shareholders is highly important and influential to the court's decision'.

⁴⁸ *O'Neill v Phillips* [1999] 2 BCLC 1 at 14-15

⁴⁹ [1995] 2 BCLC 280

⁵⁰ Brenda Hannigan, (n 1) above p 421

⁵¹ *R & H Electrical Ltd v Haden Bill Electrical Ltd* [1995] 2 BCLC 280 at 293-4

⁵² [2007] a All ER 164

⁵³ Brenda Hannigan, (n 1) above p 421

Conclusively, no shareholder can be removed from the management on grounds of non-conformity or conflicts of beliefs regarding the accounting and funding arrangements⁵⁴. This would constitute an unfairly prejudicial conduct and the minority shareholder will have the right to petition and would be entitled to relief under section 994(1A) of the Companies Act 2006. This particular provision, not only provides a protection to the statutory auditors' individuality from compression by the directors but it also confirms that they will only be removed from the company on fair and right grounds⁵⁵.

Unfairly prejudicial conduct

A further provision of section 994 to consider is the term 'unfairly prejudicial conduct'. In order to assess whether the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of the petitioner, is an objective issue⁵⁶. 'It is not necessary for the petitioning shareholder to show that anybody acted in bad faith or with the intention of causing prejudice but the courts will regard the prejudice as unfair if a hypothetical reasonable bystander would believe it to be unfair'⁵⁷. The test of unfairness is vital due to the fact that the courts are usually unwilling to interfere with the management of the company. The courts will not therefore step in following any technical or trivial breach of fiduciary duty by the directors⁵⁸. In order for a petition to succeed, the conduct must be proved to be unfair. 'Whether the conduct is unfair will be decided in the context of a commercial relationship, the contractual terms of which are set out in the articles of association of the company and in any shareholder's agreement that may be present. The first step to take is, to consider whether the conduct complained of is found to be in accordance with the articles and the shareholder's agreement and in the situation where it is not then it should be considered whether the conduct is unfair'⁵⁹.

⁵⁴ Companies Act 2006: section 994(1A)

⁵⁵ Brenda Hannigan, (n 1) above p 422

⁵⁶ *Saul D Harrison & Sons plc* [1994] BCC 475 at 488; A Hicks and S H Goo, *Cases and Materials on Company Law* (6th edition, Oxford University Press 2008) p 450

⁵⁷ *Re Bovey Hotel Ventures Ltd* unreported but quoted and followed in *RA Noble & Sons Clothing Ltd* [1983] BCLC 273 at 290

⁵⁸ Bermans, 'Shareholder Dispute' <<http://www.bermans.co.uk/publications.php?6.articles.view.571>> accessed 13 July 2012

⁵⁹ Ashfords Solicitors, 'Guide to Unfair Prejudice Against Shareholders' (8th February 2010) <http://www.ashfords.co.uk/news/shareholders_disputes_guide> accessed 20 July 2012



The prejudice ‘must be real, rather than merely technical or trivial’⁶⁰ and the petitioner does not have to prove that the persons who control the company have acted purposely in bad faith, or with a conscious intent to treat him unfairly⁶¹. The conduct complained of ‘must be prejudicial in the sense of causing prejudice or harm to the interest of the particular member’⁶² and also, once the court shows that the conduct complained of is prejudicial, then it will have the task to show that it was unfairly so and ‘it is not sufficient if the conduct satisfies only one of these tests’⁶³. Therefore, both unfairness and prejudice must be established but none of them has been defined⁶⁴. In the case of *Saul D Harrison*⁶⁵ a number of guidelines were set out for identifying when a conduct is unfairly prejudicial. Hoffmann LJ in that case, acknowledged that the test of unfairness was objective but he stated that instead of referring to a ‘reasonable bystander’ it was more useful ‘... to examine the factors which the law actually takes into account in setting the standard’⁶⁶.

For instance, if a member is removed from office as a director, this may be considered as being prejudicial but not unfair, if his conduct was worthy of removal as it was happened in the case of *Grace v Biagioli*⁶⁷. Additionally, in the case of *Re Metropolis Motorcycles Ltd, Hale v Waldock*⁶⁸ it was held that the conduct not to consult a minority shareholder was prejudicial but not unfair because it was the choice of the petitioner not to be actively involved in the business⁶⁹. Also, a case where the conduct may be unfair but not prejudicial is the *Irvine v Irvine (No1)*⁷⁰. In that case the court held that the task of meeting the statutory requirements of the business was unsuccessful but, this could not amount to an unfair prejudice against the petitioner.

Moving on, an important and at the same time leading case on the issue of unfair prejudice is the *O’Neill v Phillips*⁷¹. Lord Hoffmann in that case concluded to the same test as the one set out in *Saul D Harrison*, that ‘a member will not ordinarily be entitled to complain of unfairness unless there has been, (a) some breach of the terms on which the member agreed that the affairs of the company should be conducted; or (b) some use of the rules in a manner which equity would regard

⁶⁰ *Re Saul D Harrison & Sons plc* [1994] BCC 475 at 489

⁶¹ *Re R A Noble & Sons (Clothing) Ltd* [1983] BCLC 273 at 290-1

⁶² Brenda Hannigan, (n 1) above p 422

⁶³ *Re Saul D Harrison & Sons plc* [1994] BCC 475 at 499

⁶⁴ Robert Goddard, ‘The unfair prejudice remedy’ (2008) Edin L R 93 at 94

⁶⁵ [1995] 1 BCLC 14

⁶⁶ *ibid* at p 17

⁶⁷ [2006] 2 BCLC 70

⁶⁸ [2006] 1 BCLC 520

⁶⁹ [2006] EWHC 364 (Ch) at para 77-78

⁷⁰ [2007] 1 BCLC 349

⁷¹ [1999] 2 BCLC 1

as contrary to good faith, such as cases where equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers'⁷².

Furthermore, it is important to mention that Lord Hoffmann adopted the view of Lord Wilberforce in the case of *Ebrahimi v Westbourne Galleries*⁷³ in order to support the second point⁷⁴ that he pointed out in the case of *O'Neill v Phillips*, moving therefore towards a more private law orientated approach⁷⁵. Of greater importance, though, is Lord Hoffmann's elucidation of the meaning of the 'equitable considerations' to which legal rights may be subjected⁷⁶. What clearly underpins this approach is a concern not to allow vague notions of unfairness to be used to fuel litigation and create uncertainty for the business community⁷⁷. Based on the above it can be said that the case of *O'Neill* adopted a narrow interpretation for the term of unfair prejudice⁷⁸.

On the other hand, there are situations in which the approach taken in *O'Neil* appeared to play a pioneering and illustrative role⁷⁹. The acceptance of the language of 'unfair prejudice' was a deliberate attempt to evade the narrow rights-based protection that existed previously⁸⁰: 'in section 459 Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief. It is clear... that it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable'⁸¹. Also, in a situation where a company has the features of a quasi-partnership, the petitioner may bring his claim under heading (a) and/or (b) and as a result the section⁸² applies more broadly in that context⁸². The term 'quasi-partnership' has been derived from the *Ebrahimi v Westbourne Galleries* case and means that the basic characteristics of a company are very similar to a partnership. In particular, if the shareholders have equal shares within the company therefore, they are able to take part both as directors and shareholders in that company and this is considered to be a quasi-partnership.

Finally, it must be noted that Lord Hoffmann in *O'Neill v Phillips* refused to rely on 'legitimate ex-

⁷² *O'Neill v Phillips* [1999] 2 BCLC 1 at 8; 1 WLR 1092 at 1098-1099

⁷³ [1973] AC 360 at 379

⁷⁴ A J Boyle, 'Unfair Prejudice in the House of Lords' (2000) 21 Comp Law 253

⁷⁵ J Payne, 'Sections 459-461 Companies Act 1985 in Flux: The Future of Shareholder Protection' (2005) 64 CLJ 647 at 648

⁷⁶ P Paterson, (n 6) above at 209

⁷⁷ D Milman, 'The rise of the objective concept of "unfairness" in UK company law' (2010) 286 Co L N 1 at 3

⁷⁸ I H Chiu, 'Contextualising shareholders' disputes – a way to reconceptualise minority shareholder remedies' (2006) JBL 312 at 316

⁷⁹ A J Boyle, 'Unfair Prejudice in the House of Lords' (2000) 21 Comp Law 253

⁸⁰ J Payne, (n 75) above at 648

⁸¹ *O'Neill v Phillips* [1999] 1 WLR 1092, 1098 per Lord Hoffmann

⁸² Brenda Hannigan, (n 1) above p 424



petitions' to base the petition. This reliance had become a prominent element of the case law prior to this decision with petitions being brought effectively based on the fact that a petitioner was aggrieved that his legitimate expectations in relation to the conduct of the company's affairs had not been met⁸³. The courts have used the concept of legitimate expectations to describe the types of interests that may be protected by a petition under section 994⁸⁴. Members have a legitimate expectation that the company will be managed in a lawful manner, in accordance with its articles and the duties of directors but in the situation where there is no illegality the task of identifying legitimate expectations is harder⁸⁵. Lord Hoffman in *O'Neill v Phillips* mentioned that the fact that he used the phrase 'legitimate expectations' previously in the case of *Re Saul D Harrison & Sons plc*⁸⁶, was a mistake and that the phrase 'should not be allowed to lead a life of its own'. 'He wanted to make clear that petitions under section 994 do not give a general power to the courts to assess whether the conduct of those controlling the company was fair. He said that he preferred to use the phrase 'equitable considerations' to describe the circumstances when the courts should grant relief to petitioners'⁸⁷.

Examples of unfairly prejudicial conduct

Moving on, it is both useful and necessary to present a classification of the cases, in order to subsequently analyze the conceptual foundation of the remedy⁸⁸. Below, the most important situations where the conduct occurred constituted an unfairly prejudicial conduct will be considered in order to have a greater understanding of what may lead to such a conduct.

a. Mismanagement:

The courts are reluctant to interfere in the affairs of companies and impede management prerogative and therefore, they cannot easily accept that disagreements over managerial decisions may constitute an unfairly prejudicial conduct⁸⁹. Basically, the judicial view is that complaints in relation to

⁸³ Brenda Hannigan, (n 1) above p 424

⁸⁴ *Re a Company* [1986] BCLC 376, per Hoffman J

⁸⁵ Dov Ohrenstein (Radcliffe Chambers), 'Minority Shareholders & Unfair Prejudice' (2011) p 5 <<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

⁸⁶ [1995] 1 BCLC 14

⁸⁷ Dov Ohrenstein (Radcliffe Chambers), 'Minority Shareholders & Unfair Prejudice' (2011) p 5 <<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

⁸⁸ P Paterson, (n 6) above at 206

⁸⁹ Brenda Hannigan, *Company Law* (2nd edition, Oxford University Press 2009) p 427; Paul Paterson, 'A criticism of the contractual approach to unfair prejudice' (2006) *Comp Law* 204 at 208

mismanagement often involve differences as to commercial judgment which, are not for the courts to resolve⁹⁰. In order for a claim of unfair prejudice to be established, the complainant will need to show more than just a breach of the common law directors' duty of care and skill⁹¹. Gross, serious and persistent mismanagement will be required in order to establish a claim⁹². However, the courts have not made clear what constitutes a serious mismanagement. Also, due to the fact that the directors are appointed by the shareholders, shareholders as a result, have the power to dismiss the directors in the situation where they are not satisfied with the management. If the mismanagement causes actual financial loss to the company, however, the petition is more likely to succeed⁹³.

An illustration of the above is the case of *Re Macro (Ipswich) Ltd*⁹⁴ where the shareholder did not manage to organise a good maintenance system for the properties or to ensure that they were properly let and rents duly paid with the result that the value of these assets had been depleted⁹⁵. It was held that the conduct occurred in that case was unfairly prejudicial. However, in the case of *Re Elgindata Ltd*⁹⁶ the complaint was about a shareholder who was not satisfied by the poor management of the company⁹⁷. Nevertheless, it has been concluded that such a conduct was not sufficient enough as to amount to an unfairly prejudicial conduct.

b. Majority taking financial benefits from minority/ misappropriation of assets:

Another example of unfairly prejudicial conduct is the situation where a majority shareholder arranges the company affairs so that he obtains unjustified financial benefits at the expense of the minority⁹⁸. An example of such a situation is when a majority transfers to himself the business and thus depriving the minority shareholder of a share of profits⁹⁹. Therefore, this will constitute a strong basis for a petition under section 994. A further case which constitutes an example of misappropriation of assets is the *Re Little Olympian Each-Ways Ltd (No 3)*¹⁰⁰, where the assets of the company were transferred at an undervalue to another company which was owned by the majority

⁹⁰ Brenda Hannigan, (n 1) above p 427

⁹¹ P Paterson, (n 6) above at 208

⁹² A J Boyle, *Minority Shareholders' Remedies* (Cambridge University Press, Cambridge 2002) p 101

⁹³ Brenda Hannigan, (n 1) above p 427

⁹⁴ [1994] 2 BCLC 354

⁹⁵ Brenda Hannigan, (n 1) above p 427

⁹⁶ [1991] BCLC 959

⁹⁷ [1991] BCLC 959 at 993-4

⁹⁸ Dov Ohrenstein, 'Minority Shareholders & Unfair Prejudice' (2011) p 7

<<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

⁹⁹ *ibid*; *Re London School of Electronics Ltd* [1986] Ch 211

¹⁰⁰ [1995] 1 BCLC 636

shareholder and as a result, the assets were sold on at their market value to a third party¹⁰¹. Another example is found in the case of *Re Full Cup International Trading Ltd*¹⁰² where the respondents deprived the company of its stocks and business which was transferred to another company in which they, but not the petitioner, had an interest¹⁰³.

c. *Exclusion from management:*

The next example to consider is concerned with cases brought under section 994 due to the exclusion of a shareholder from the management of the company. Such exclusion will normally cause a loss of remuneration for the shareholder¹⁰⁴ and is often the consequence of the breakdown in relations amongst the members¹⁰⁵. Exclusion will often constitute unfair prejudice where it breaches the company constitution, or a common understanding between members that has led to a legitimate expectation of participation¹⁰⁶. However, exclusion from management will not constitute in all situations an unfairly prejudicial conduct and particularly, if it was justified and carried out in a procedurally fair manner¹⁰⁷. An illustration of the above is the case of *Brownlow v G H Marshall Ltd*¹⁰⁸ where an effort was made to exclude one of the sisters in the company, who had equal shares with the other shareholders, from the board of the company. It was therefore held that the attempt made to exclude one of the sisters in the company without giving her a fair offer to buy out her shares, was considered as being an unfairly prejudicial conduct and therefore she was able to seek for relief.

Nevertheless, 'in small quasi-partnership companies there is often an informal agreement or arrangement that the shareholders will be involved in the management of the company and a common basis for a successful petition is the removal of the petitioner from the board of directors'¹⁰⁹ such as in *Quinlan v Essex Hinge Co Ltd*¹¹⁰. Yet, a petition on this ground will not be successful when the

¹⁰¹ Brenda Hannigan, (n 1) above p 425

¹⁰² [1995] BCC 682

¹⁰³ Brenda Hannigan, (n 1) above p 425

¹⁰⁴ The [English] Law Commission, *Shareholder Remedies: Law Commission Consultation Paper 142* (226-425-21) at para 9.34

¹⁰⁵ *Latimer Holdings Ltd v DEA Holdings NZ Ltd* [2005] NZLR 328

¹⁰⁶ Paul Paterson, (n 6) above at 206

¹⁰⁷ The [English] Law Commission, *Shareholder Remedies: Law Commission Consultation Paper 142* (226-425-21) at para 9.34

¹⁰⁸ [2000] 2 BCLC 655

¹⁰⁹ Dov Ohrenstein, 'Minority Shareholders & Unfair Prejudice' (2011) p 7

<<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

¹¹⁰ [1996] 2 BCLC 417

company has a commercial character such as in *Re a Company (No 005134 of 1986), ex p Harries*¹¹¹.

d. Non-payment of dividends:

Where a petitioner is no longer or never has been a director, a frequent cause of complaint is that the directors are paid excessive remuneration resulting in a diminished or no dividend¹¹². An example is the case of *Grace v Biagioli*¹¹³ where a dividend has actually been declared but the respondents then deliberately chose not to pay it and instead distributed the available profits as management fees to themselves¹¹⁴. Therefore it was held that the non-payment of dividend amounted to an unfairly prejudicial conduct. Also, in the *Irvine v Irvine (No1)*¹¹⁵ case, the respondents awarded themselves excessive and unauthorized remuneration without reference to the board or the shareholders. As a result the petitioner received less of dividend than he should have received. However, in the case of *Re Metropolis Motorcycles Ltd, Hale v Waldock*¹¹⁶ it was said that if the company's financial situation prevents the company declaring dividends, then the minority shareholder was not able to complain¹¹⁷.

e. Improper allotments:

A further example to mention is related to the improper allotment of shares. A dispute will arise in the situation where directors make an allotment of shares in order to dilute the petitioner's interest in the company¹¹⁸. Such a conduct by the directors is found to be in breach of their duty to exercise their powers for the purposes for which they are conferred¹¹⁹. The court has been willing to find such conduct as being unfairly prejudicial. The allotment of shares is limited to some extent by section 561 of the 2006 Act which requires the allotment of shares to existing shareholders in proportion to existing holdings¹²⁰.

¹¹¹ [1989] BCLC 383

¹¹² Dov Ohrenstein, 'Minority Shareholders & Unfair Prejudice' (2011) p 7
<<http://www.radcliffechambers.com/articleDocs/573.pdf>> accessed 5 July 2012

¹¹³ [2006] 2 BCLC 70

¹¹⁴ Brenda Hannigan, (n 1) above p 430-431

¹¹⁵ [2007] 1 BCLC 349

¹¹⁶ [2007] 1 BCLC 520

¹¹⁷ Brenda Hannigan, (n 1) above p 431

¹¹⁸ *ibid* p 426

¹¹⁹ Companies Act 2006: section 171

¹²⁰ Brenda Hannigan, (n 1) above p 426

Moreover, a failure to allot on a rights basis when required to do so is without any doubt an unfairly prejudicial conduct¹²¹. This can be illustrated in the case of *Re a Company (No 005134 of 1986), ex p Harries*¹²² where the majority shareholder and director made an allotment of shares on a non-rights basis aiming at increasing the respondent's holding in the company and decreasing the holding of the petitioner¹²³.

ii. Remedies under section 996 of the Companies Act 2006

Once we have established that the conduct occurred was unfairly prejudicial, then section 996 of the Companies Act 2006 provides the court with a power to grant relief. According to the section, 'if the court is satisfied that a petition under section 994 of the Act is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of'¹²⁴. Without prejudice to the generality of the powers given to the court, the court is able to make a number of orders¹²⁵. Such orders may be to regulate the conduct of the company's affairs in the future¹²⁶, or requiring the company to refrain from doing or continuing an act complained of¹²⁷, or to do an act that the petitioner has complained it has omitted to do¹²⁸. Also, an order may authorise civil proceedings to be brought in the name and on behalf of the company¹²⁹, or it may prevent the company from amending its articles without any permission by the court¹³⁰, and finally, the court may order the purchase of shares¹³¹. The shareholder is required to indicate the relief he seeks¹³². The most commonly used remedy is the purchase order meaning that, the minority shareholder's shares are to be purchased at a fair value by those who control the company or the company itself.

However, the discretion of the court under section 996 has been characterised as being very wide. Therefore, in the situation where the court will make an order under section 996 of the 2006 Act, 'it

¹²¹ *ibid*

¹²² [1989] BCLC 383

¹²³ Brenda Hannigan, (n 1) above p 426

¹²⁴ Companies Act 2006: section 996(1)

¹²⁵ Companies Act 2006: section 996(2)

¹²⁶ Companies Act 2006: section 996(2) (a)

¹²⁷ Companies Act 2006: section 996(2) (b) (i)

¹²⁸ Companies Act 2006: section 996(2) (b) (ii)

¹²⁹ Companies Act 2006: section 996(2) (c)

¹³⁰ Companies Act 2006: section 996(2) (d)

¹³¹ Companies Act 2006: section 996(2) (e)

¹³² *Re Antigen Laboratories Ltd* [1951] 1 All ER 110

will have to consider all the possible remedies and it is not limited merely to reserving or putting right the immediate conduct that justifies the order, but it must also look to cure for the future the unfair prejudice suffered by the petitioner¹³³ so any likelihood of the conduct requiring is a relevant consideration¹³⁴. Additionally, there are also some interim remedies according to which the court may make an order against third parties¹³⁵ and for the benefit of the company¹³⁶. According to the case of *Gamlestaden Fastigheter AB v Baltic Partners Ltd*¹³⁷ the court made an order requiring that the wrongdoers who were the directors of the company, had to pay damages to the company.

Purchase order

As it was mentioned above, the most popular remedy under section 996 is the purchase order which requires that the respondents will purchase the petitioner's shares. In particular, section 996(2)(e) states that, 'the court's order may provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly'¹³⁸. In the case of *Grace v Biagioli* the Court of Appeal stated that 'in most cases of unfairly prejudicial conduct, nothing less than a clean break between the parties is likely to be required'¹³⁹. This remedy, to purchase the petitioner's shares, 'has the advantage of realising the value of the petitioner's shares without winding up the company; it is particularly appropriate where it would be unfair for the petitioner to be 'locked in' as minority in the company and there is no practicable way of regulating the future conduct of the company's affairs'¹⁴⁰. Moreover, according to the *Irvine v Irvine (No 1)* case, the payment of excessive and unauthorised remuneration was considered as being an unfairly prejudicial conduct. However, the court thought that the breakdown in trust between the parties had gone too far to be rectified by an order requiring the respondent to repay the excessive amount and fixing the level of his remuneration as to the future¹⁴¹. Therefore, it was held that a purchase order was the most suitable remedy in that situation.

¹³³ *Re Bird Precision Bellows Ltd* [1985] BCLC 493 at 499-500

¹³⁴ Brenda Hannigan, (n 1) above p 436

¹³⁵ *Clark v Cutland* [2003] 2 BCLC 393

¹³⁶ *Bhullar v Bhullar* [2003] 2 BCLC 241; *Anderson v Hogg* [2002] BCC 923

¹³⁷ [2008] 1 BCLC 468

¹³⁸ Companies Act 2006: section 996(2)(e)

¹³⁹ [2006] 2 BCLC 70

¹⁴⁰ S H Goo, *Minority Shareholders' Protection: Study of Section 459 of the Companies Act 1985* (Cavendish Publishing Limited 1994) p 126; see *Re Elgindata Ltd* [1991] BCLC 959 at 1005

¹⁴¹ Brenda Hannigan, (n 1) above p 438

Valuation of shares

In the situation where the court's decision results to an order for the purchase of the petitioner's shares, then the issue of the valuation of shares comes into play. It is yet unclear what would amount to a fair value for the shares and therefore, various factors are taken into consideration when dealing with the valuation of shares. The most important of the factors are the basis on which the valuation must be carried out and the exact date of the valuation. However, the statute does not contain any provisions in relation to the valuation of shares and as a result it is up to the court to decide whether the value of the shares was a fair one.

CHAPTER III

Critical evaluation of the unfair prejudice remedy and its relationship with other remedies

Coming to the last chapter of this paper it would be imminent to make a reference to the relationship of unfair prejudice remedy with the other grounds that are available to the minorities; namely, the derivative claim and the winding up on the just and equitable ground. In addition, it is also important to critically evaluate the unfair prejudice remedy. That critical examination of the remedy aims at the determination of whether unfair prejudice is an effective ground of redress for the minority shareholders or whether there is a need to be further developed.

i. Relationship of unfair prejudice with other remedies

The range of conduct covered and the flexibility of the relief offered means that petitioning for relief under section 994 of the 2006 Act, is almost invariably the most attractive solution for an aggrieved shareholder but there are also other options available which may be of relevance in some circumstances, including various statutory rights under the Companies Act 2006¹⁴². The alternative options to the unfair prejudice remedy will be considered below and the relationship between them will be examined.

Derivative claim

The law in relation to the ability of a minority shareholder to bring a derivative action has been criticized as being complex and obscure¹⁴³. The Law Commission has recognized the severe limitations which attach to the current derivative action regime, and has recommended its replacement by a new statutory derivative action, a view authorized by the Company Law Review and now contained in the Company Law Reform Bill¹⁴⁴. On the other hand, section 994 is considered as being a flexible remedy and it is the most likely one to be used by shareholders. ‘The case of *Clark v Cutland*¹⁴⁵ makes section 994 even more attractive for minority shareholders, as it expands the circumstances

¹⁴² Brenda Hannigan, (n 1) above p 440-441

¹⁴³ Law Commission, *Shareholders' Remedies* (Law Com CP 142, 1996) para 6.6

¹⁴⁴ J Payne, (n 75) above at 654

¹⁴⁵ [2003] EWCA Civ 810; [2004] 1 WLR 783



in which minority shareholders can make use of the statutory oppression remedy. Indeed *Clark v Cutland* may lead to section 994 entirely superseding the derivative action¹⁴⁶.

The unfair prejudice remedy is normally applicable where misconduct has occurred in the company and as a result the company suffered losses. ‘This application actually blurs the distinction between this remedy and the derivative action. Much of the conduct presently regulated by the section 994 petition might have fallen within the scope of derivative actions before the introduction of this petition’¹⁴⁷. Based on this ambiguity, a question has arisen as to whether the derivative claim should be entirely replaced by the unfair prejudice remedy, or whether the derivative action should remain as a separate remedy. Indeed, the relationship between the two remedies under English law is still blurred. The clear overlap between the jurisdictions does not concern the courts and the mere fact that the conduct would merit a derivative claim is not a reason to strike out the petition¹⁴⁸. In the situation where ‘the only substantive relief sought on the petition is a claim brought on the part of the company against a third party, the court therefore, will not let the claimant to proceed by petition instead of bringing a derivative claim’¹⁴⁹; and where the derivative action and the petition raise substantially the same issues, the court may require that the proceedings be consolidated, typically in the petition^{150,151}.

Accordingly, under the derivative claim, the claimant must take the consent of the court in order to carry on with his claim, which is a long-lasting procedure; where a petition under section 994 of the 2006 Act has the advantage of avoiding such obstacles. Also, the petition provides to the petitioner a personal remedy, which the derivative claim lacks since it provides a remedy for the company. However, there are situations where the derivative claim may be considered as being a useful option ‘such as in the case where the shareholder is not willing to sell his shares but rather he is seeking for a remedy for misconduct and the recovery of assets which belong to the company, aiming to take advantage of the indemnity for costs which is available with respect to a derivative action’¹⁵². Therefore, the fact that a derivative claim is available under Part 11 of the Companies Act 2006 should give rise to more clear lines between these two remedies.

Moreover, the relationship between the petition on the ground of unfair prejudice and the derivative

¹⁴⁶ J Payne, (n 75) above at 654

¹⁴⁷ Xiaoning Li, *A comparative study of shareholders’ derivative actions* (Kluwer 2007) p 40

¹⁴⁸ Brenda Hannigan, *Company Law* (2nd edition, Oxford University Press 2009) p 442; *Re a Company (No 005287)* [1986] BCLC 68; *Re Little Olympian Each-Ways Ltd (No 3)* [1995] 1 BCLC 636 at 665

¹⁴⁹ *Lowe v Fahey* [1996] 1 BCLC 262

¹⁵⁰ *Cooke v Cooke* [1997] 2 BCLC 28; *Clark v Cutland* [2003] 2 BCLC 393 at 396

¹⁵¹ Brenda Hannigan, (n 1) above p 442

¹⁵² Brenda Hannigan, (n 1) above p 442

claim in relation to the situation where a wrong is done to the company ‘becomes more unclear when we turn to the remedies awarded in the petition in relation to corporate losses. This is because the petitioner may be compensated, either directly or indirectly, for those losses which are derived from the losses of the corporation’¹⁵³. For instance, ‘there may be a compensatory element in the form of valuation for the purchase order; furthermore, a petitioner may be awarded direct compensation for his reflective losses. In addition, a corporate relief rather than a personal one may be awarded in the petition’¹⁵⁴.

Winding up on the just and equitable ground

Another alternative remedy to the unfair prejudice is the winding up order on the just and equitable ground which falls under section 122(1)(g) of the Insolvency Act 1986 (winding up remains a remedy that the court cannot grant under section 996 of the 2006 Act). ‘The seeking of a winding up order is rather an extreme measure, and might well be something that a shareholder would not want to consider. Courts certainly have tended to be against making such an order when a company is clearly solvent except where the company cannot conduct its affairs, such as where there is an impasse in closely-held companies’¹⁵⁵. Moreover, courts will not make such an order in the situation where an alternative remedy is available and the petitioner has no reason to avoid using that alternative. Therefore, despite the existence of the winding up remedy, petitioners are not encouraged to use it since the unfair prejudice remedy is available, unless the winding up order is the one that they are really looking for or it is thought that it may be the only relief to which they are entitled. The latter point however, has been overtaken by the decision in *Re Guidezone Ltd*¹⁵⁶. Moreover, petition to wind up the company can operate unfairly on the majority for it tends to make the day-to-day conduct of the company’s business impossible or very difficult, because the company’s assets come close to being frozen¹⁵⁷.

In practice, it is uncommon for a petitioner to choose the winding up remedy since a successful petitioner is able under section 996 of the 2006 Act to obtain a purchase order and exit the company and therefore, he has no reason to pursue a winding up order¹⁵⁸. On the other hand, petitioners

¹⁵³ Xiaoning Li, *A comparative study of shareholders’ derivative actions* (Kluwer, 2007) p 43

¹⁵⁴ *ibid* p 43

¹⁵⁵ A Keay, ‘Company directors behaving poorly: disciplinary option for shareholders’ (2007) JBL 656 at 677-678

¹⁵⁶ [2000] 2 BCLC 321

¹⁵⁷ Paul Davies, (n 10) above p 238

¹⁵⁸ Brenda Hannigan, (n 1) above p 441



would have an incentive to use the winding up remedy in the situation where the grounds upon which the courts could make a winding up order were wider than those leading to an unfair prejudice remedy¹⁵⁹, so that there might conceivably be cases where the petitioner would not succeed on a petition but might get a winding up order under the Insolvency Act 1986¹⁶⁰. This issue was discussed in the case of *Re Guidezone Ltd*, where Jonathan Parker J stated that ‘conduct which is not unfair within section 994 of the Companies Act 2006, cannot found a petition for winding up for that jurisdiction is, at the very least, no wider than section 994 of the Companies Act 2006’¹⁶¹. This approach has been criticized as a ‘conflation of the two jurisdictions’¹⁶² but the practical position is that shareholders are not looking anymore for the winding up remedy. In particular, on the one hand, it would be extremely odd if the effect of the *O’Neill* decision, restricting the grounds of unfair prejudice, were to drive litigants to seek the less appropriate remedy of a winding up¹⁶³. On the other hand, the just and equitable provision has usually been used to provide a remedy in the situation of deadlocks within the company which have arisen without any fault on the part of those involved¹⁶⁴. However, the way that courts will balance these two considerations is not certain, but it is not likely that they will expand the winding up remedy so as to include instances outside the power of the unfair prejudice remedy¹⁶⁵.

Furthermore, in the case of *Hawkes v Cuddy*¹⁶⁶ the Court of Appeal did not follow the approach taken in *Re Guidezone Ltd* by Jonathan Parker J. Later on, in the case of *Amin v Amin*¹⁶⁷, the trial judge Warren J took into consideration the decision of the Court of Appeal and also, the relationship between the winding up and the unfair prejudice remedy and concluded that ‘the petitioners’ allegations of unfair prejudice were unfounded but nevertheless he acknowledged that the circumstances may well have founded a successful petition for just and equitable winding up, although the petitioners had not sought this’¹⁶⁸. He also underlined that ‘if the facts are such that a winding up petition on the ‘just and equitable’ ground would succeed but the majority refuse to agree to a winding up out of court, that conduct might amount to unfair prejudice, the unfairness being to compel

¹⁵⁹ Paul Davies, (n 10) above p 238

¹⁶⁰ Brenda Hannigan, (n 1) above p 441

¹⁶¹ [2000] 2 BCLC 321

¹⁶² A J Boyle, *Minority Shareholders’ Remedies* (1st edition, Cambridge University Press 2002) pp 96-100

¹⁶³ Paul Davies, (n 10) above p 238

¹⁶⁴ *ibid* p 238

¹⁶⁵ *ibid* p 238

¹⁶⁶ [2009] EWCA Civ 261

¹⁶⁷ [2009] EWHC 3356 (Ch)

¹⁶⁸ [2009] EWHC 3356 (Ch) para 613

the minority to continue to participate in the company when the court would, on this hypothesis, wind it up¹⁶⁹.

ii. Critical evaluation of unfair prejudice remedy

At this point, having in mind the above, it would be imminent to make a critical evaluation of the unfair prejudice remedy based on the above discussion. Does section 994 provide an adequate protection to minority shareholders?

The wording of section 994 has purposely a broad meaning in order for the minority shareholders to be protected in many different instances. The flexibility that characterise the section can be proved from the use of certain terms within the section. Firstly, the ‘interests’, rather than merely the legal rights, of a member are protected¹⁷⁰. Those interests are protected by the unfair prejudice remedy and are usually known as a member’s legitimate expectation. Although generally no informal agreements are recognised as legitimate expectations in public companies, especially listed companies, in private companies, especially small ones, legitimate expectation is generally recognised as existing in informal agreements among members, as well as in the articles and formal contracts¹⁷¹. Therefore, section 994 applies both to situations where there is illegality and to situations where no illegality exists but a mere breach of an informal agreement in private companies¹⁷².

Secondly, the restrictive term of ‘oppression’ referred in section 210 of the Companies Act 1948 has been replaced by the more widely interpreted terminology of ‘unfair prejudice’. However, it is not yet clear what the term ‘unfair prejudice’ means since there is not a definition provided for that term but, there are some guidelines, that have derived from case law, indicating situations that a conduct can be considered as being unfairly prejudicial. A major problem with the section 210 remedy was the rigidity of the judicial interpretation applied to the term oppressive conduct¹⁷³. The term ‘oppressive’, as mentioned earlier, meant ‘burdensome, harsh and wrongful’¹⁷⁴ and as a result of this strict interpretation, the application of section 210 was limited to only two successful actions¹⁷⁵. Further problems with the section 210 remedy included the need to establish that the op-

¹⁶⁹ [2009] EWHC 3356 (Ch) para 584

¹⁷⁰ Xiaoning Li, *A comparative study of shareholders’ derivative actions* (Kluwer 2007) p 36

¹⁷¹ Xiaoning Li, *A comparative study of shareholders’ derivative actions* (Kluwer 2007) p 37

¹⁷² *ibid* p 37

¹⁷³ Stephen Griffin, ‘The statutory protection of minority shareholders: Section 459 of the Companies Act 1985’ (1992) *Comp Law* 83

¹⁷⁴ *Scottish Co-operative Wholesale Society v Meyer* [1959] AC 324, 342 by Lord Simmonds

¹⁷⁵ *Scottish Co-operative Wholesale Society v Meyer* [1959] AC 324 and *Re H Harmer* [1959] 1 WLR 62



pressive conduct was of a continuous nature right up to the time of the petition and that the conduct affected the petitioning member, *qua* member and not in some outside capacity¹⁷⁶. Therefore, the replacement of the term oppression, made by section 75 of the 1980 Act, was a successful movement from a restrictive approach to a broader one, which provides flexibility to the courts to interpret the term in such a way as to provide protection to minority shareholders.

Thirdly, another issue that needs to be considered is the term ‘part of the membership’ contained in section 459 of the Companies Act 1985. Basically, this issue has been regarded as a major one and it has been subject to much discussion. Prior to the amendment of section 459 by the Companies Act 1989, that section provided that ‘a member of a company may apply to the court by petition for an order... on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of **some part of its members** (including himself) or that any actual or proposed act or omission on the part of the company (including an act or omission on its behalf) is or would be prejudicial’¹⁷⁷. ‘The judicial interpretation of this requirement concentrated itself around a discussion of the emphasis to be attached to the word ‘part’. It was contended in some quarters that when using the word ‘part’ the legislature had only intended section 459 to operate in instances that involved discriminatory conduct’¹⁷⁸. Consequently, in situations where a conduct, which is unfairly prejudicial, applied in an equal manner to all of the members, then section 459 was not likely to be applicable. As it was argued, the literal interpretation of the concept ‘unfairly prejudicial conduct to a part of the membership’ could unquestionably lead to such a result¹⁷⁹. But what ‘equality of conduct’ indicated in this situation?

Basically, two questions were emerged by its interpretation; ‘whether the fact that the conduct applied equally to all the membership was adequate to exclude the application of the section, or whether the section would be excluded merely if the conduct affected the collective membership in an unfairly prejudicial way’¹⁸⁰. The difference between these two questions regarding the interpretation of the term of ‘equality of conduct’ was seen as a significant one. ‘On the one hand, if all shareholders were provided by the same advantages or the same loss, then the conduct was objectively regarded as equal in relation to its nature. On the other hand, the conduct, which was objec-

¹⁷⁶ Stephen Griffin, (n 173) above

¹⁷⁷ Companies Act 1985: section 459(1) (prior to the amendment by Companies Act 1989)

¹⁷⁸ Stephen Griffin, (n 173) above at 88

¹⁷⁹ *ibid* at 84

¹⁸⁰ *ibid* at 84

tively regarded as equal, may have influenced the interests of a part of the membership in a substantive way where the interests of the shareholders are unlikely to be the same'¹⁸¹.

For that reason, the 1989 Act amended section 459 in order to remove any doubts in relation to the meaning of the term 'part of the members' and provided that an action under section 459 should be brought in situations where the conduct occurred affects the interests of the members generally. To this end, the amendment may be seen as removing any requirement for discriminatory conduct as an essential ingredient for a successful action under section 459¹⁸². Since section 459 is identical to section 994, the 'interests of the members generally' applies also to section 994, which in turn can be credited for its flexibility and for its non-discriminatory conduct.

Taking into account the above arguments, it can be argued that the broad meaning of the wording of section 994 has to a great extent provided flexibility regarding the interpretation of its principles and on the one hand, it can be credited for providing an adequate protection to minority shareholders. It should be stated that one of the most positive aspects of the unfair prejudice remedy is the fact that the petitioner is able to have his shares purchased under section 996 of the 2006 Act, and therefore exit the company. In this respect, the favored method of securing an exit route via litigation is therefore section 994 falling under the 2006 Act¹⁸³. The ability to exit the company is something that is of great importance but what matters the most to the aggrieved shareholder is to exit having his shares purchased at a fair price¹⁸⁴.

However, on the other hand, there are some deficiencies in relation to the 'unfair prejudice' remedy. Initially, despite the guidelines provided by the case law, the term 'unfair prejudice' remains unclear and some clarification is needed. As it was argued, 'the precise ambit of section 994 is yet unclear. The major doubt in relation to the scope of section 994 relates to the terms 'unfair' and 'interests''¹⁸⁵. The term 'unfair' is not possible to be defined and its meaning will be different in each case, depending on the facts of each case. Any understanding of unfairness must also depend upon the justice of the company's decision to instigate the conduct in question¹⁸⁶.

Moreover, in order to interpret and constitute section 994, it is essential to isolate the notion of 'membership interest'. Yet, it is not feasible to explicitly classify this term due to its fluctuating

¹⁸¹ *ibid* at 84

¹⁸² Stephen Griffin, (n 173) above at 88

¹⁸³ D Milman, 'Avenues for shareholder redress in the 21st century' (2011) 295 Co L N 1 at 3

¹⁸⁴ *ibid* at 3

¹⁸⁵ Stephen Griffin, (n 173) above at 88

¹⁸⁶ *ibid* at 88



character. Nevertheless, the term ‘membership interest’ may be classified in two different ways. To begin with, it can be associated with an interest in the statutory and profitable welfare of a company that directly concerns the communal and commercial operative of the business¹⁸⁷. Such interest nature could be characterized as a legitimate right. Secondly, the ‘membership interest’ term could be also equated if an associate has an interest of a secondary nature that, even though it concerns the enterprise’s financial benefits, does not appeal to the appropriate functioning of the company¹⁸⁸. In this circumstance, it is implied that the section 994 pre-requisite would not legitimately defend the case. It is indispensable to note that the interest of a shareholder in an enterprise should unequivocally relate to the corporation’s concerns, as well as correspond to a legitimate right linked to his genuine participation in the business¹⁸⁹. Otherwise, this interest should be discounted.

Moreover, it is important to mention that section 994 has been characterized as a complex provision. Its purpose to provide a minority shareholder with a remedy against a conduct which is oppressive has at times been confused by a wealth of ambiguity¹⁹⁰. Therefore, one likely solution to these problems in relation to section 994 can be the availability of a remedy where it is just and equitable to do so, such as the winding up remedy. On the one hand, such a solution seems to be attractive, but in order to determine whether any given case came within just and equitable principles would it not still be necessary to consider whether or not the conduct was unfair?¹⁹¹ The term ‘unfairly prejudicial’ is in effect synonymous with the phrase ‘just and equitable’¹⁹². As such, it is submitted that the solution of a just and equitable determination of corporate conduct would be a solution without a difference¹⁹³.

Furthermore, and as it was mentioned earlier in this paper, we can come to the conclusion that the unfair prejudice remedy is the most popular and the most likely remedy to be sought for the protection of minority shareholders. However, even if a shareholder has a good ground for initiating proceedings under section 994 of the 2006 Act, it must be realised that the costs involved in fighting such an action can be significant, and was one of the reasons why the Law Commission was of the view that there was a need for reform in this area¹⁹⁴. Equally, the Law Commission recognised that the most serious problems which emerged from the remedy at present, related not so

¹⁸⁷ *ibid*

¹⁸⁸ *ibid*

¹⁸⁹ *ibid*

¹⁹⁰ *ibid*

¹⁹¹ *ibid*

¹⁹² Warner J in *Re JE Cade & Son Ltd* [1991] BCC 360

¹⁹³ Stephen Griffin, (n 173) above at 88

¹⁹⁴ A Keay, ‘Company directors behaving poorly: disciplinary option for shareholders’ (2007) JBL 656 at 678

much to the scope of the provision, but to the length, complexity and cost of the proceedings¹⁹⁵. For example, a shareholder can exit the company by selling his shares, but a precondition to obtaining relief is the existence of unfair prejudice that must be established, meaning that dirty linen will have to be washed in public, which in turn is regarded as an expensive and risky process¹⁹⁶. Therefore, despite the fact that the availability of remedies aims at the protection of the shareholder's rights, the fact that in order to bring an action it is a costly and lengthy procedure, this as a result makes shareholders more sceptical as to bring such action.

Since litigation is an expensive process, then the remedy provided by section 994 of the Companies Act 2006 will be of little use to a shareholder who does not have the financial funds to make use of it¹⁹⁷. In the case of *Wallersteiner v Moir*¹⁹⁸ the court concluded that a shareholder who brings a derivative claim on the part of the company and for the benefit of that company may well apply to the court for an order that the company indemnify him with respects to costs¹⁹⁹. What the court has basically acknowledged in that case was that, in the case where a derivative claim was brought, the claimant should be indemnified for the costs that have arisen during the proceedings, since the rights being vindicated are those of the company and recovery flow to it²⁰⁰. Therefore, what can be concluded is that the shareholder does not look to protect his personal rights and for that reason, the company should have the responsibility to pay the costs that have occurred.

Contrary to the above, when referring to an action which falls under section 994, the shareholder in that situation will look to protect his rights as a member of the company and consequently, the procedure referred to in the *Wallersteiner* case will not be applicable²⁰¹. 'But this will not always be the case, since it is clear that conduct which falls within the scope of section 994, as being unfairly prejudicial, can also constitute a wrong against the company and therefore be the subject matter of a derivative action. However, a question may arise as to whether the procedure followed in the case of *Wallersteiner* should be available for a shareholder in such a case'²⁰².

¹⁹⁵ R Cheung, 'The statutory minority remedies of unfair prejudice and just and equitable winding up: the English Law Commission's recommendations as models for reform in Hong Kong' (2008) 19 ICCLR 156 at 157

¹⁹⁶ D Milman, 'Avenues for shareholder redress in the 21st century' (2011) 295 Co L N 1 at 3

¹⁹⁷ D D Prentice, 'Minority Shareholder Oppression: Section 459-461 Of The Companies Act 1985' (1988) 8 OJLS 55, at p 65

¹⁹⁸ [1975] QB 373 at 403-404

¹⁹⁹ Arad Reisberg, 'Indemnity costs orders under s.459 petition?' (2004) Comp Law 116

²⁰⁰ *ibid*

²⁰¹ D D Prentice, 'Minority Shareholder Oppression: Section 459-461 Of The Companies Act 1985' (1988) 8 OJLS 55, at p 65

²⁰² Arad Reisberg, 'Indemnity costs orders under s.459 petition?' (2004) Comp Law 116



Moreover, the court has a policy not to allow members to rely on the companies for the payment of the costs that have arisen during the petition under section 994²⁰³. The theoretical difficulty lies in the fact that, at common law, the plaintiff's right to sue is derived from the company's right to sue its directors for breach of duties owed to it²⁰⁴. However, this is not the case under section 994. The action is statutory, not 'derived' from anything and it is given, directly, to a member to enable him to complain that the affairs of the company are being conducted in a manner that is unfairly prejudicial to the interests of the members generally or some part of its members²⁰⁵. However, it is not easy to say that the company ought to pay the costs of the proceedings, even if the end result might be for the benefit of the company, as it would for instance, in the case of an order that the respondents replace assets of the company, which they have diverted to themselves²⁰⁶.

Moving on, another issue to consider is the fact that in public companies and particularly in listed companies, the relief of shareholders is not an easy task. However, legislation does not contain anything stating that a shareholder in a public company is not allowed to bring an action on the ground of unfair prejudice under section 994, but it can be seen that this remedy has been used mostly in private companies, where the shareholder can prove that when entering in the company he had legitimate expectations that have not been met²⁰⁷. The reason why disenchanted shareholders of public companies have not invoked section 994 is probably primarily due to the fact that they favour selling their shares on the market rather than resorting to potentially expensive litigation²⁰⁸. In any event, with public companies, where people tend to become involved without the directors and managers of the company provide them with any expectations, a claim under section 994 has not generally been successful²⁰⁹. Yet, in the case of *Clark v Cutland*, was decided that shareholders appear to be able to employ section 994 proceedings as an alternative to derivative proceedings in order to obtain a substantive remedy for their company, and therefore, this might be considered as an attractive approach for some public company shareholders²¹⁰.

Accordingly, it is important to mention that a major obstacle to the success of litigation against a corporate defendant is the difficulty of obtaining sufficient information about a company's internal

²⁰³ *Re Kenyon Swansea* [1987] BCLC 514

²⁰⁴ B G Pettet, *Pettet's Company Law: Company and Capital Markets Law* (1st edition, Pearson Education Limited 2001) p 263

²⁰⁵ Arad Reisberg, 'Indemnity costs orders under s.459 petition?' (2004) *Comp Law* 116

²⁰⁶ *ibid*

²⁰⁷ A Keay, 'Company directors behaving poorly: disciplinary option for shareholders' (2007) *JBL* 656 at 678

²⁰⁸ *ibid* at 678-679

²⁰⁹ *ibid* at 679

²¹⁰ *ibid* at 679

matters to formulate and prove a case²¹¹. Therefore, shareholder claimants have been characterised as being ‘singularly disadvantaged’ by a procedural system which only granted shareholders access to the documentation they needed to formulate their case some time after that case had to be pleaded²¹². As a result, ‘everything that the shareholder needs to know in order to mount his case is accessible only to the defendants’²¹³.

Having in mind the above, it appears that some amendments and clarifications are required in order for the unfair prejudice remedy to establish a greater protection to the minority shareholders. For example, regarding the ‘unfair’ term, a precise definition is needed. Measures should be taken also regarding the costs and lengths of the procedures pursuant to this remedy and sufficient information should be easily accessible to shareholder claimants.

Conclusion

Concluding with, several issues, arising from the concept of unfair prejudice, have been analysed and embodied in this dissertation. The extensive investigation of principles and provisions in relation to this concept were effective and useful in rooting out that the unfair prejudice remedy is an important and useful statutory provision for the protection of minority shareholders. Particularly, in the first chapter of this paper a reference has been made to the background of the remedy, which aimed at showing, how the law on unfair prejudice was when it was first introduced and also, its development through the years and the possible changes that have occurred until the current section 994 of the 2006 Act. Further, according to the second chapter, an analysis of the provisions arising when interpreting section 994 has been made. This was achieved by analysing separately each provision of the section and by giving examples of each situation. Also, examples of situations where the conduct can be considered as being unfairly prejudicial were given which made it easier to understand the various occasions where such a conduct may take place. Once it has been established that the conduct is unfairly prejudicial then the remedies that are available under section 996 of the 2006 Act have to be considered. For that reason, in this chapter a reference was made to the different remedies under section 996 with the purchase order being the most commonly used one.

²¹¹ J Loughrey, ‘Privileged litigants: shareholder rights, information disclosure and corporate privilege’ (2007) JBL 778

²¹² *ibid*

²¹³ L S Sealy, ‘Problems of Standing, Pleading and Proof in Corporate Litigation’ in B Pettet (ed.), *Company Law in Change, Current Legal Problems* (London: Stevens & Sons 1987) p 12



Moving on to the third and last chapter of the paper, the relationship of the unfair prejudice remedy with the two other available remedies, the derivative claim and the winding up remedy, has been discussed. This discussion confirmed that the unfair prejudice remedy is the one that is the most applicable in the majority of situations. In particular, the winding up remedy is unlikely to be sought by a petitioner if the unfair prejudice remedy is available except in the situation where he feels that the winding up order is the remedy that he is looking for, or that is the only sort of relief to which he is entitled. In relation to the derivative claim, again we can see that the unfair prejudice remedy is a better option. There is no doubt that the derivative claim has its positive aspects as is evident from the earlier discussion on the issue but, the fact that has a restrictive nature makes unfair prejudice, which is more flexible, more appropriate. Also, a petition under section 994 provides the petitioner with a personal remedy that the derivative action lacks since it provides a remedy for the company. Therefore, it can be argued that despite the availability of other remedies and the fact that they also have, in some instances, their positive aspects, the unfair prejudice remedy seems to be more appropriate since it covers a wide range of situations.

Moreover, under the third chapter a critical examination of the unfair prejudice remedy has also been made. Based on this examination it can be conclude that there are some negative aspects in relation to the unfair prejudice remedy. Such negative aspects relate to the uncertainty in relation to the meaning of the term ‘unfair’ and ‘interests’, which are two broad terms that cover a wide range of conduct. Also, it must be noted that section 994 is, generally, a complex provision. A further deficiency relates to the high costs that characterise litigation and to the long-lasting procedures, something that may lead shareholders to be more sceptical in bringing an action to the court under the section 994 remedy.

However, a minority shareholder is not totally powerless; there are always provisions contained in the Companies Acts that influence a minority shareholder to control the excess of the majority shareholders²¹⁴. Yet, these provisions are seldom used against the majorities determined to execute their plans²¹⁵. As a result, in such occasions the minority will need to seek relief and protection from the court. Therefore, a statutory remedy is provided for the shareholders where an unfairly prejudicial conduct of a company’s affairs is occurred. The unfair prejudice remedy is, without any doubt, one of the most useful tools available for the minority shareholders and it is the one that is more commonly used by the courts. However, a clear definition of the term ‘unfairly prejudicial’

²¹⁴ **Dinah Spence and James Pheasant, ‘Minority Shareholders and their Rights’ (2003)**

<<http://www2.accaglobal.com/archive/inpractice/62/1047930>> accessed 15 June 2012

²¹⁵ *ibid*

has not been provided in the statute and therefore section 994 constitutes a more complex provision. On the other hand, the fact that the section is so wide rather than being restrictive provides the minority shareholders with flexibility since many different situations are likely to fall under the scope of section 994.

As can be noticed from what have been discussed above, the unfair prejudice remedy has both its positives and negatives. To a great extent it provides adequate protection to the minority shareholders but there is always room for improvement and for further development of the law in order to get better and satisfy to a greater extent the needs of the weaker parts.

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