

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

CREDITOR PROTECTION IN PRIVATE COMPANIES

Limited liability companies form the backbone of our modern economy. However, there is a persistent risk of moral hazard on the part of directors and shareholders, particularly in closely held or private companies. Like all developed legal systems, both English and German law provide mechanisms designed to protect creditors from such risks. This book investigates some of these mechanisms, including the avoidance of pre-insolvency acts, capital maintenance and creditor-regarding duties of directors. By analysing the different conceptual and doctrinal perspectives inherent in the English and German systems, this book seeks to advance a discourse between audiences with different legal backgrounds. It will be an invaluable guide for those wishing to understand how the protective mechanisms operate and interact with each other, and how they do so in quite different ways in the two jurisdictions.

THOMAS BACHNER is Assistant Professor at WU (Vienna University of Economics and Business).

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

CREDITOR PROTECTION IN PRIVATE COMPANIES

Anglo-German Perspectives for a
European Legal Discourse

THOMAS BACHNER



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
 for a European Legal Discourse
 Thomas Bachner
 Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press
 The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
 Information on this title: www.cambridge.org/9780521895385

© Thomas Bachner 2009

This publication is in copyright. Subject to statutory exception
 and to the provisions of relevant collective licensing agreements,
 no reproduction of any part may take place without
 the written permission of Cambridge University Press.

First published 2009

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Bachner, Thomas.

Creditor protection in private companies : Anglo-German perspectives for a
 European legal discourse / by Thomas Bachner.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-89538-5 (hardback)

1. Corporations—Finance—Law and legislation—Germany.
2. Debtor and creditor—Germany.
3. Corporation reserves—Law and legislation—Germany.
4. Directors of corporations—Legal status, laws, etc.—Germany.
5. Corporations—Finance—Law and legislation—Great Britain.
6. Debtor and creditor—Great Britain.
7. Corporation reserves—Law and legislation—Great Britain.
8. Directors of corporations—Legal status, laws, etc.—Great Britain.

I. Title.

K1330.B33 2009

346.07'7—dc22 2008053262

ISBN 978-0-521-89538-5 hardback

Cambridge University Press has no responsibility for the persistence or
 accuracy of URLs for external or third-party internet websites referred to
 in this publication, and does not guarantee that any content on such
 websites is, or will remain, accurate or appropriate.

CONTENTS

<i>Contents</i>	page	v
<i>Preface</i>		ix
<i>Table of abbreviations</i>		xi
<i>Table of legislation</i>		xv
<i>Table of cases</i>		xxiv
<i>Terminology</i>		xxxv
1 Introduction		1
A Creditor protection – a focal point of current developments		1
1 The <i>Centros</i> case: from Denmark to Delaware		1
2 The European regulation on insolvency proceedings		5
3 The interconnectedness of company law and insolvency law		7
4 Recent developments in a nutshell		12
B Comparative legal methodology and the quest for a European legal discourse		19
1 ‘ <i>Europäische Rechtswissenschaft</i> ’		19
2 A functional approach to creditor protection		20
3 Beyond functionalism		23
4 Understanding foreign law – from <i>Auslandsrechtskunde</i> to a European legal discourse		25
C The scope and aims of this book		31
2 Avoidance of acts that are detrimental to creditors		39
A Introduction		39
B The relevance of insolvency and ‘twilight periods’		43
1 Avoidance remedies outside insolvency proceedings		43
2 Additional grounds for avoidance in insolvency		45

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

VI

CONTENTS

3	Insolvency tests and twilight periods	47
C	Detriment to creditors	50
1	The English approach	50
2	The German approach	55
3	Casting the net wide enough: 'legal act' versus 'transaction'	57
4	Direct detriment, unequal bargains and 'pure detriment' to creditors	62
5	Indirect detriment	67
D	Subjective elements in avoidance grounds	68
1	The debtor's bad faith as justification for avoidance	68
2	The counterparty's awareness and alternative ways to protect commercial certainty	77
E	Connected persons	84
1	Germany	85
2	England	88
F	Summary and outlook	90
3	Capital maintenance and unlawful distributions	94
A	Introduction	94
B	Capital maintenance and the boundaries of lawful distributions	97
1	Capital maintenance defined	97
2	Capital, assets and the nature of distributions	101
3	Components of equity capital and restrictions on distributions	105
4	Equity capital available for immediate distribution	110
5	The potential usefulness for creditors	114
C	Remedies to reverse unlawful distributions	115
1	The statutory basis	115
2	Treating concealed distributions as unlawful distributions	122
3	Distributions by way of value transfers to related third-party recipients	131
D	Excursus: Equity-substituting shareholder credit (<i>eigenkapitalersetzender Gesellschafterkredit</i>)	138
E	Summary and outlook	141
4	Directors' liability for contraventions of capital maintenance rules	145
A	Introduction	145

CONTENTS

VII

B	Directors' duties and contraventions of capital maintenance rules	146
1	Comparative classifications and the need for conceptual clarity	146
2	The German approach to directors' duties and capital maintenance	152
3	The English approach to directors' duties and capital maintenance	158
C	Recipient liability based on a director's breach of fiduciary duty	174
D	Summary and outlook	178
5	Directors' liability for conduct in the vicinity of insolvency	180
A	Introduction	180
B	Directors' duties towards creditors in Germany: a victory of delict over insolvency law	183
1	Directors' personal liability in delict – internal versus external liability	183
2	Delictual liability for <i>Insolvenzverschleppung</i> (delayed filing for insolvency)	188
3	An interim summary and an explanation	204
C	Wrongful trading and directors' duties in English law: variety for its own sake?	208
1	Problems and perspectives – switching between legal systems	208
2	The legal nature of wrongful trading	212
3	Wrongful trading and directors' duty to exercise reasonable care, skill and diligence	229
4	Wrongful trading and directors' fiduciary duty to consider the interests of creditors	235
D	Summary and outlook	244
	Conclusions	248
	<i>Appendix: Statutory provisions</i>	257
	<i>Editorial note on German sources</i>	280
	<i>Bibliography</i>	283
	<i>Company Law Review consultation documents</i>	305
	<i>Index</i>	307

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

PREFACE

This book represents a thoroughly revised and updated version of my Ph.D. thesis approved by the Law Faculty at Cambridge University in 2006. The entire process that has led to this book has occupied the better part of a decade, and the end result is a far cry from the original plan. The book is an attempt – and it cannot be more than that – to write about German law and English law in a manner designed to make the exposition accessible to readers from each of the two jurisdictions by taking account of their respective conceptual and terminological background. My own status as an outsider, being neither German nor English, will hopefully have contributed to a fair balance between the two. Obviously, my legal education and academic roots in Austria, with its proximity to Germany especially in the field of company law, meant that the true voyage of discovery for me started only when I was given the fascinating opportunity to explore English law at Cambridge University.

I owe a sincere debt of gratitude to Eilís Ferran, who took on the charge of being my Ph.D. supervisor – and a charge it must have been with a supervisee constantly venturing off to do things he was not supposed to do – and who subsequently masterminded the publication of the book with Cambridge University Press. I also owe an intellectual debt to Simon Deakin and Brian Cheffins, each of whom taught me in his own manner and style that there is more to company law than I had hitherto thought. Thanks must go to Roderick Munday, Tony Weir and Pippa Rogerson for instilling in me an enthusiasm for the Common Law. Upon the introduction by Eva Micheler, Sarah Worthington and Paul Davies entrusted me with teaching their undergraduate classes at the London School of Economics on company law for two consecutive years (2001–2002 and 2002–2003). It turned into an immensely valuable experience for me, because it forced me to come to terms with English law in a very direct and almost brutal manner. Subsequent to the submission of the thesis, John Armour and Heribert Hirte, being the

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

examiners for the Ph.D., as well as one anonymous German referee made valuable suggestions for the improvement of the text. Over the years all these influences have come together and shaped this book into something I could not have imagined at the outset of the process. In the run-up to publication Vanessa Wilcox, Laurence Marsh and Donna Stockenhuber critically examined the whole text, while Christina Gasser, Olga Horwath, Veronika Korom, Helena Nejedlá and Felix Precht provided technical support. Naturally, I am solely responsible for all mistakes that remain.

In order to carry out my research at Cambridge I was on leave from the University of Economics and Business Administration in Vienna during the years 2000 to 2004. This would not have been possible, first, without the understanding of my academic mentor Peter Doralt, who greatly encouraged me to go abroad. It would also not have been possible without generous funding from a number of sources. The Austrian Science Fund (FWF), the Austrian Federal Ministry of Education and the Emil-Boral-Stiftung, Zurich provided living allowances at various stages. Smaller grants were made available by the University of Economics and Business Administration (from its OeNB-Förderpreis), the Cambridge European Trust, the Helmuth H. Merlin-Stiftung, the Graf Hardegg'sche Doktoren-Stiftung and the Walther Kastner-Stiftung. I am grateful to all of them.

Last, but not least, I wish to thank the team at Cambridge University Press for their valuable advice and for their patience in the face of numerous postponements of submission.

I have endeavoured to present the law as it was available to me on 6 April 2008. The book takes full account of the Companies Act 2006, notwithstanding that some of the new provisions may not yet be in force by the time of its publication. References in the text or in the footnotes guide readers to the respective provisions in the Companies Act 1985 and in earlier Companies Acts, where appropriate, thereby facilitating the work with secondary literature on the old and the new law. Moreover, the book already takes account of the German Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen (MoMiG), which entered into force on 1 November 2008. All references to websites were last checked as live on 6 November 2008.

Thomas Bachner
Vienna, November 2008

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF ABBREVIATIONS

Names in ‘...’ designate journals (which also function as case reports in Germany).

ABGB	Allgemeines bürgerliches Gesetzbuch – the Austrian Civil Code
AC	Appeal Cases (The Law Reports – House of Lords and Judicial Committee of the Privy Council)
ACLC	Australian Company Law Cases
AcP	‘Archiv für die civilistische Praxis’
ACLR	Australian Company Law Reports
AG	Aktiengesellschaft – the German Joint Stock Company; ‘Die Aktiengesellschaft’
AktG	Aktiengesetz – the German Joint Stock Companies Act
All ER	[The] All England Law Reports
AnfG	Anfechtungsgesetz – the German Act on the Avoidance of Legal Acts of a Debtor outside Insolvency Proceedings
App.Cas.	Law Reports, Appeal Cases [Second Series, 1875–1890]
Art., art.	Article, article
BayObLG	Bayerisches Oberstes Landesgericht – the Bavarian Superior Court of Appeal [now abolished]
BB	‘Der Betriebsberater’
BCC	British Company Cases
BCLC	Butterworths Company Law Cases
BGB	Bürgerliches Gesetzbuch – the German Civil Code
BGBl.	Bundesgesetzblatt – Federal Law Gazette
BGH	Bundesgerichtshof – the German Federal Court of Justice
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen – the official law reports of the German Federal Court of Justice in civil law matters
BPIR	Bankruptcy and Personal Insolvency Reports
CA	Companies Act; Court of Appeal

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XII

TABLE OF ABBREVIATIONS

ch.	chapter(s)
Ch.	The Law Reports – Chancery Division
ChD	Chancery Division (of the High Court); Law Reports, Chancery Division [Second Series, 1875–1890]
CFILR	Company Financial and Insolvency Law Review
CJ	Chief Justice
CLJ	‘Cambridge Law Journal’
CMLR	Common Market Law Reports
CoLaw	‘[The] Company Lawyer’
DB	‘Der Betrieb’ (Germany)
DStR	‘Deutsches Steuerrecht’
DTI	Department of Trade and Industry
EBLR	‘European Business Law Review’
EBOR	‘European Business Organization Law Review’
ECFR	‘European Company and Financial Law Review’
ECR	European Court Reports
ed.	editor(s)
edn	edition
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuch – the ‘Introductory Act’ to the German Civil Code (a statute containing transitional and supplementary provisions, including the rules on the conflict of laws)
EuZW	‘Europäische Zeitschrift für Wirtschaftsrecht’
EWCA Civ	England and Wales Court of Appeal (Civil Division)
EWHC	England and Wales High Court
EWiR	‘Entscheidungen zum Wirtschaftsrecht’
EWS	‘Europäisches Wirtschafts- und Steuerrecht’
f., ff.	and subsequent [page(s), paragraph(s) etc.]
fn.	footnote(s)
GmbH	Gesellschaft mit beschränkter Haftung – the German Limited Liability Company
GmbHG	Gesetz betreffend die Gesellschaften mit beschränkter Haftung – the German Limited Liability Companies Act
GmbHR	‘GmbH-Rundschau’
HGB	Handelsgesetzbuch – the German Commercial Code
HL	House of Lords
IA	Insolvency Act
ICCLJ	‘International and Comparative Corporate Law Journal’
ICCLR	‘International Company and Commercial Law Review’
ICLQ	‘International and Comparative Law Quarterly’

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF ABBREVIATIONS

XIII

IIR	‘International Insolvency Review’
IL&P	‘Insolvency Law & Practice’
InsO	Insolvenzordnung – the German Insolvency Code
J	Justice
JBL	‘Journal of Business Law’
JCLS	‘[The] Journal of Corporate Law Studies’
JuS	‘Juristische Schulung’
JW	‘Juristische Wochenschrift’
JZ	‘Juristenzeitung’
KG	Kammergericht – a traditional designation for the OLG Berlin
KO	Konkursordnung – the Austrian Bankruptcy Act
KTS	‘Zeitschrift für Insolvenzrecht – Konkurs, Treuhand, Sanierung’
LC	Lord Chancellor
LJ, LJJ	Lady Justice/Lord Justice, Lord Justices
LG	Landgericht – a regional court of first instance in Germany
LMCLQ	‘Lloyd’s Maritime and Commercial Law Quarterly’
LR	Law Reports [First Series, 1865–1875]
LR Ch.App.	Law Reports, Chancery Appeal Cases
LR Eq.	Law Reports, Equity Cases
LR Ex.	Law Reports, Court of Exchequer
LR HL	Law Reports, English & Irish Appeals
MDR	‘Monatsschrift für Deutsches Recht’
MLR	‘Modern Law Review’
mn.	marginal number – Randzahl, Randziffer
MoMiG	Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen – Act to modernise the law governing private companies and to combat abuses (Germany)
n.	note; number – Nummer (in German statutes)
NJW	‘Neue Juristische Wochenschrift’
NJW-RR	‘Neue Juristische Wochenschrift – Rechtsprechungsreport’
NSWLR	New South Wales Law Reports
NZG	‘Neue Zeitschrift für Gesellschaftsrecht’
NZI	‘Neue Zeitschrift für das Recht der Insolvenz und Sanierung’
ÖBA	‘Österreichisches Bankarchiv’ (Austria)

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XIV

TABLE OF ABBREVIATIONS

OGH	Oberster Gerichtshof – the Austrian Supreme Court
OJ	Official Journal of the European Communities/of the European Union
OLG	Oberlandesgericht – a regional appellate court in Germany
OLGZ	Entscheidungen der Oberlandesgerichte in Zivilsachen
p.	page(s)
para.	paragraph(s)
PC	Privy Council
QB	The Law Reports – Queen’s Bench Division
QBD	Queen’s Bench Division (of the High Court)
r., rr.	rule, rules
RabelsZ	‘Rabels Zeitschrift für ausländisches und internationales Privatrecht’
RG	Reichsgericht – the German Imperial Court (until 1945; see now BGH)
RGBL.	Reichsgesetzblatt – Imperial Law Gazette (until 1945; see now BGBL.)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen – the official law reports of the German Imperial Court in civil law matters
RIW	‘Recht der internationalen Wirtschaft’
s., ss.	section, sections
SI	Statutory Instrument
SLT	Scots Law Times
SZ	Entscheidungen des österreichischen Obersten Gerichtshofes in Zivilsachen – the official law reports of the Austrian Supreme Court in civil law matters
UKHL	United Kingdom House of Lords
vol.	volume
WLR	[The] Weekly Law Reports
WM	‘Wertpapier-Mitteilungen’
ZEuP	‘Zeitschrift für Europäisches Privatrecht’
ZGR	‘Zeitschrift für Unternehmens- und Gesellschaftsrecht’
ZHR	‘Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht’
ZIP	‘Zeitschrift für Wirtschaftsrecht’, formerly ‘Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis’
ZPO	Zivilprozessordnung – the German Civil Procedure Code

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF LEGISLATION

European Community

EC Treaty

Art. 43 1–3, 6

Art. 48 1–3, 6

Convention on the law applicable to contractual obligations (80/934/EEC)

Art. 3 40–41

Council Regulation (EC) 1346/2000 on insolvency proceedings 5–7

Art. 2 (b) 43

Art. 3 6, 40

Art. 4 6–7

Art. 4 (2) (m) 39–40, 50, 55

Art. 13 40, 50

Art. 16 (1) 40

Second Company Law Directive (77/91/EEC) 95–96, 98, 100, 167

Art. 6 5, 107

Art. 15 (1) (c) 109, 113

Art. 16 116, 119–120

Art. 32 108–109

Directive 2006/68/EC amending Council Directive 77/91/EEC 95

EnglandAct for facilitating the winding up the Affairs of Joint Stock Companies unable to meet
their pecuniary Engagements (7 & 8 Vict., c. 111) 10

Agricultural Holdings Act 1986 (c. 5)

Schedule 14, paragraph 12 63–64

Agricultural Tenancies Act 1995 (c. 8)

s. 31 64–65

Bankruptcy Act 1869 (32 & 33 Vict., c. 71) 10

Bankruptcy Act 1883 (46 & 47 Vict., c. 52) 10, 77, 207

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XVI

TABLE OF LEGISLATION

Bankruptcy Act 1914 (4 & 5 Geo. 5, c. 59)	10
s. 42	58
s. 44	10
Companies Act 1862 (25 & 26 Vict., c. 89)	10, 106
s. 165	163, 218
Companies (Winding up) Act 1890 (53 & 54 Vict., c. 63)	207
s. 10	163
Companies Act 1907 (7 Edw. 7, c. 50)	
s. 32	169
Companies (Consolidation) Act 1908 (8 Edw. 7, c. 69)	10
s. 215	163
s. 279	169
Companies Act 1929 (19 & 20 Geo. 5, c. 23)	10, 26
s. 276	163
s. 372	169
Companies Act 1947 (10 & 11 Geo. 6, c. 47)	
s. 72	109
Companies Act 1948 (11 & 12 Geo. 6, c. 38)	10
s. 54	166–167
s. 320	10
s. 332	212
s. 333	163
s. 448	169, 171
Companies Act 1980 (c. 22)	98
Part III, ss. 39 to 45	111
s. 43 (3) (c)	118
s. 44 (1)	116, 118
s. 44 (2)	118
Companies Act 1985 (c. 6)	10, 18, 98, 101
ss. 117, 118	107
s. 130	109
ss. 136 to 138	107
Part V, Chapter V	98
s. 151	6
Part VIII, ss. 263 to 281	111, 166
s. 263 (1)	111, 129
s. 263 (3)	111
s. 270	111
s. 271 (4)	118
s. 277 (1)	116–120, 176
s. 277 (2)	118

Cambridge University Press
 978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
 for a European Legal Discourse

Thomas Bachner
 Frontmatter

[More information](#)

TABLE OF LEGISLATION

XVII

- Part XII 219
- s. 631 163
- s. 727 169–171, 233–234, 243–244
- Companies Act 2006 (c. 46) 18–19, 94, 100, 107–111, 147, 157–160, 164,
 166–168, 179, 181, 213, 231, 236, 245–246, 249–250
- Part 10, Chapter 2, ss. 170 to 181 18, 158
- s. 170 257
- s. 170 (3) 159
- s. 170 (4) 159–160, 166
- s. 170 (5) 214
- ss. 171 to 177 147–148
- s. 171 257
- s. 172 236, 257–258
- s. 172 (3) 236–237
- s. 174 148, 170, 231, 234, 258
- s. 178 147–148, 166, 258
- s. 178 (1) 147, 160
- s. 178 (2) 148, 150, 157, 179, 236, 246
- s. 251 214
- ss. 394 to 397 112
- s. 442 (2) (a) 114
- s. 610 109
- Part 17, Chapter 10, ss. 641 to 653 18
- s. 641 (1) 108
- s. 641 (4) (b) (ii) 107
- ss. 642 to 644 108, 110–111
- ss. 645 to 649 108
- Part 18, Chapter 2, ss. 677 to 683 167
- Part 20, Chapter 2, ss. 761 to 766 107
- s. 763 5
- Part 23, ss. 829 to 853 18, 111–112, 166, 179
- s. 829 258–259
- s. 830 111–113, 259
- s. 830 (1) 111–113, 129
- s. 830 (2) 111, 113
- s. 831 112
- s. 836 111–112, 259–260
- s. 837 (4) 118
- s. 847 260
- s. 847 (1) 116, 131, 138
- s. 847 (2) 116, 120, 131, 137–138, 143
- s. 847 (3) 118, 174

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XVIII

TABLE OF LEGISLATION

- Part 25 219
- s. 1003 (6) 207
- s. 1157 167, 169–173, 179, 233–234, 243, 260
- s. 1282 18, 225
- s. 1300 18
- Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings)
Order 2006, SI 2006/3428 19
- Companies Act 2006 (Commencement No. 2, Consequential Amendments,
Transitional Provisions and Savings) Order 2007, SI 2007/1093 19
- Companies Act 2006 (Commencement No. 3, Consequential Amendments,
Transitional Provisions and Savings) Order 2007, SI 2007/2194 19
- Companies Act 2006 (Commencement No. 4 and Commencement No. 3
(Amendment)) Order 2007, SI 2007/2607 19
- Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings)
Order 2007, SI 2007/3495 19
- Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3
and 5 (Amendment)) Order 2008, SI 2008/674 19
- Companies Act 2006 (Commencement No. 7, Transitional Provisions and Savings)
Order 2008, SI 2008/1886 19
- Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings)
Order 2008, SI 2008/2860 19
- Company Directors Disqualification Act 1986 (c. 46) 203, 207
- Contracts (Applicable Law) Act 1990 (c. 36) 41
- Contracts (Rights of Third Parties) Act 1999 (c. 31) 61
- Enterprise Act 2002 (c. 40) 32, 226
- Insolvency Act 1985 (c. 65)
 - s. 15 210
- Insolvency Act 1986 (c. 45)
 - s. 107 48
 - s. 122 261
 - s. 122 (1) (f) 47
 - s. 123 46–49, 261–262
 - s. 123 (1) (a) and (b) 84
 - s. 123 (1) (a) to (d) 47
 - s. 123 (1) (e) 47–49
 - s. 123 (2) 47–49
 - s. 125 (1) 206
 - s. 128 58
 - s. 132 207
 - s. 136 207
 - s. 176A 226, 235
 - s. 176ZA 18, 225, 227

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF LEGISLATION

XIX

- s. 202 207
- s. 212 162–163, 218, 220, 226–227, 231–232, 234, 235, 238, 240–241, 262
- s. 212 (3) 234
- s. 212 (3) (b) 218, 226
- s. 213 212, 263
- s. 214 10, 190–191, 193, 196, 197, 210, 213–218, 220–238, 241, 245, 263–264
- s. 214 (1) 216–218, 226, 233
- s. 214 (2) (b) 213
- s. 214 (3) 213
- s. 214 (4) 231, 234
- s. 214 (4) (a) 231
- s. 214 (4) (b) 231
- s. 236 207
- s. 238 46, 48–49, 50–60, 62–67, 72–73, 75, 77, 79, 81, 86, 88–89, 91, 103, 105,
130, 143–144, 224–225, 240–241, 264
- s. 238 (4) 50, 53, 72
- s. 238 (5) 66, 72–73, 130
- s. 239 46, 48–49, 51–57, 73–76, 77, 81–82, 88–89, 91, 191, 219–222, 224–225,
237, 239–241, 265
- s. 239 (4) 51
- s. 239 (5) 52, 73–75
- s. 239 (6) 88
- s. 240 56, 57, 265–266
- s. 240 (1) 89
- s. 240 (2) 48, 89, 144
- s. 241 56, 57, 240
- s. 241 (2) 77
- s. 245 42, 46, 48–49, 51–52, 81, 88–90, 267–268
- s. 245 (3) 89–90
- s. 245 (4) 48, 90
- s. 249 84, 144
- s. 251 214
- s. 423 43–46, 51–53, 62–67, 68–72, 75, 77, 79, 81, 89, 268
- s. 423 (1) 53
- s. 423 (1) (a) 44
- s. 424 (1) (a) 45
- s. 435 84, 144
- s. 436 58–59
- s. 444 10
- Schedule 4, paragraph 6 223, 228
- Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097 226

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XX

TABLE OF LEGISLATION

Insolvency Rules, SI 1986/1925

r. 4.181 48

r. 4.218 222–225

r. 4.218 (1) (a) 223–224

r. 4.218 (2) (a) (i) 225

rr. 4.218A to 4.218E 225

r. 4.218E (1) 226

Insolvency (Amendment) (No. 2) Rules 2002, SI 2002/2712 223, 225–226

Insolvency (Amendment) Rules 2008, SI 2008/737 225

Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations
2008, SI 2008/410 112

Law of Property Act 1925 (c. 20)

s. 99 63

s. 172 68

Limitation Act 1623 (21 Ja. 1, c. 16) 161

Small Companies and Groups (Accounts and Directors' Report) Regulations 2008, SI
2008/409 112

Supreme Court of Judicature Act 1873 (36 & 37 Vict., c. 66)

s. 16, s. 31, s. 34 160

Trustee Act 1888 (51 & 52 Vict., c. 59) 161

Other Commonwealth jurisdictions

Australian Corporations Law

s. 588FA 50

s. 588FB 50

United States Bankruptcy Code

§ 547 50

§ 548 50

Germany

Aktiengesetz (AktG)

§ 57 (3) 113

§ 93 (2) 158

§ 150 110

§ 158 113

§§ 223, 224, 225, 227 108

Anfechtungsgesetz (AnfG) 43

§ 3 43–45, 69, 75, 77

§ 4 44–45, 79

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF LEGISLATION

XXI

Bürgerliches Gesetzbuch (BGB)

- § 252 202, 204
- § 276 156–157
- § 328 61
- § 708 157
- § 823 156
- § 823 (1) 184–185, 187, 205
- § 823 (2) 187, 189, 204

Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB)

- Art. 27 41

Gerichtsverfassungsgesetz (GVG) 11

Gesetz über Gesellschaften mit beschränkter Haftung (GmbHG)

- § 5a 16
- § 13 (1) 21
- § 19 (2) 122
- § 29 269
- § 29 (1) 112
- §§ 30, 31 12, 117, 120–121, 132–137, 139, 142, 152
- § 30 31, 116, 123, 132, 153, 178, 269–270
- § 30 (1) 113, 121, 140
- § 31 116–117, 120–122, 132–133, 135, 270–271
- § 31 (1) 116, 121, 122
- § 31 (2) 116
- § 31 (3) 117, 120
- § 31 (5) 120
- § 32 271
- §§ 32a, 32b 139–140
- § 43 152–158, 167, 191, 271–272
- § 43 (1) 153–154, 156, 167, 169, 178
- § 43 (2) 153–154
- § 43 (3) 153–154, 167
- § 58 108
- § 64 188–195, 198–200, 204, 272–273
- § 64 (1) 188–189, 195, 198–200
- § 64 (2) 189–190, 195
- § 84 189

Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von

- Missbräuchen (MoMiG) 15–17, 40, 107, 113, 140–141, 143, 188–189, 195, 204,
250, 251, 270, 272–273

Handelsgesetzbuch (HGB)

- § 325 (1) 114

Konkursordnung (KO) 11

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XXII

TABLE OF LEGISLATION

Insolvenzordnung (InsO)

- § 1 48
- § 15a 188–189, 193, 195, 198, 204, 274
- § 16 274
- § 17 47, 49, 71, 188–189, 246, 274
- § 17 (2) 47
- § 19 47, 49, 155, 188–189, 246, 275
- § 26 (1) 206
- § 39 (1) n. 5 139–140
- § 39 (4), (5) 140
- § 89 186
- § 92 201, 204
- § 129 55–57, 62, 66, 80, 275
- §§ 130–146 56, 62
- §§ 130–134 92
- §§ 130–132 45, 49, 70, 76–77, 93
- §§ 130, 131 56–57, 70, 76, 79–81, 192
- § 130 58, 70–71, 78, 79–81, 276
- § 130 (1) 80
- § 130 (2) 83
- § 130 (3) 85
- § 131 79–81, 93, 276–277
- § 131 (1) 80–81
- § 131 (1) n. 1 46, 76, 79, 80–81
- § 131 (1) n. 2 79, 81
- § 131 (1) n. 3 46, 76, 78, 81
- § 131 (2) 83, 85
- § 132 60–62, 65, 70, 78, 86, 277–278
- § 132 (1) 61
- § 132 (2) 61–62
- § 132 (3) 83, 85
- § 133 45, 49, 57, 58, 69–72, 75, 77, 78, 85–88, 93, 278–279
- § 133 (1) 83, 85, 87
- § 133 (2) 62, 65, 75–76, 85–88, 92
- § 134 45, 49, 66, 79, 86, 93, 279
- § 135 139–140
- § 138 84–85
- § 143 (1) 66
- § 143 (2) 66
- § 144 (2) 66
- § 226 48

Cambridge University Press
978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner
Frontmatter

[More information](#)

TABLE OF LEGISLATION

XXIII

Zivilprozessordnung (ZPO) 11
§ 78 228
§§ 828 ff. 186

Austria

Allgemeines Bürgerliches Gesetzbuch (ABGB)
§ 1095 63

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF CASES

European Court of Justice

- CARTESIO Oktató és Szolgáltató Betéti Társaság, C-210/06 2
- Centros Ltd v Erhvervs- og Selskabsstyrelsen, C-212/97 [1999] ECR I-1459; [1999] 2 CMLR 551; [2000] Ch. 446; [2000] 2 WLR 1048; [2000] All ER (EC) 481; [1999] BCC 983; [2000] 2 BCLC 68; GmbHR 1999, 474; NJW 1999, 2027; NZG 1999, 298; ZIP 1999, 438 1–2, 4–5, 6, 12, 15, 26, 40, 131, 140, 143
- CILFIT Srl v Ministro della Sanità, Case 283/81 [1982] ECR 3415; [1983] 1 CMLR 472; NJW 1983, 1257 2
- Eurofood IFCS Ltd, Bondi v Bank of America NA, C-341/04 [2006] ECR I-3813; [2006] Ch. 508; [2006] 3 WLR 309; [2006] All ER (EC) 1078; [2006] BCC 397; [2007] 2 BCLC 151; NJW 2006, 2682; NZG 2006, 633; NZI 2006, 360; ZIP 2006, 907 40
- innoventif Limited [Re], C-453/04 [2006] ECR I-4929; GmbHR 2006, 707; NJW 2006, 3195; NZG 2006, 662; ZIP 2006, 1293 13
- Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, C-167/01 [2003] ECR I-10155; [2005] 3 CMLR 34; GmbHR 2003, 1260; NJW 2003, 3331; NZG 2003, 1064; ZIP 2003, 1885 3
- Queen [The] v HM Treasury, ex parte Daily Mail and General Trust plc, Case 81/87 [1988] ECR 5483; [1988] 3 CMLR 713; [1989] QB 446; [1989] 2 WLR 908; [1989] 1 All ER 328; [1989] BCLC 206; JZ 1989, 384; NJW 1989, 2186 1–2
- Überseering BV v NCC Nordic Construction Company Baumanagement GmbH, C-208/00 [2002] ECR I-9919; [2005] 1 CMLR 1; [2005] 1 WLR 315; GmbHR 2002, 1137; NJW 2002, 3614; NZG 2002, 1164; ZIP 2002, 75 2, 12

England

- Agip (Africa) Ltd v Jackson [1990] Ch. 265; [1989] 3 WLR 1367; [1992] 4 All ER 385 (ChD); [1991] Ch. 547; [1991] 3 WLR 116; [1992] 4 All ER 451 (CA) 175
- Agricultural Mortgage Corporation Plc v Woodward [1994] BCC 688; [1995] 1 BCLC 1 (CA) 63–67, 91
- Allied Carpets Group plc v Nethercott [2001] BCC 81 (QBD) 119, 162
- Allied Domecq Plc [Re] [2000] BCC 582; [2000] 1 BCLC 134 (ChD) 107
- Anglo-Austrian Printing and Publishing Union [Re] [1895] 2 Ch. 891 (ChD) 219

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF CASES

XXV

- Arab Bank Plc v Merchantile Holdings Ltd [1994] Ch. 71; [1994] 2 WLR 307; [1994] 2 All ER 74; [1993] BCC 816; [1994] 1 BCLC 330 (ChD) 6
- Ashbury Railway Carriage and Iron Co Ltd v Riche (1875) LR 7 HL 653 (HL) 165
- Aveling Barford Ltd v Perion Ltd [1989] BCC 677; [1989] BCLC 626 (ChD) 104, 126–128, 131–132, 138, 143–144
- Ayala Holdings [Re] [1993] BCLC 256 (ChD) 228
- Ayala Holdings (No 2) [Re] [1996] 1 BCLC 467 (ChD) 228
- B Johnson & Co (Builders) Ltd [Re] [1955] Ch. 634; [1955] 3 WLR 269; [1955] 2 All ER 775 (CA) 163
- Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France SA [1993] 1 WLR 509; [1992] 4 All ER 161; [1983] BCLC 325 (ChD) 175
- Bairstow v Queens Moat Houses plc [2000] BCC 1025; [2000] 1 BCLC 549 (QBD); partly reversed [2001] EWCA Civ 712; [2002] BCC 91; [2001] 2 BCLC 531 (CA) 112, 166, 168, 170, 172–173, 228, 243
- Bank of Credit and Commerce International (Overseas) Ltd v Akindele [2001] Ch. 437; [2000] 3 WLR 1423; [2000] 4 All ER 221; [2000] BCC 968 (CA) 174–175, 177, 229
- Barton Manufacturing Co Ltd [Re] [1998] BCC 827; [1999] 1 BCLC 740 (ChD) 73
- Beacon Leisure Ltd [Re] [1991] BCC 213; [1992] BCLC 565 (ChD) 88
- Belmont Finance Corporation Ltd v Williams Furniture Ltd [1979] Ch. 250; [1978] 3 WLR 712; [1979] 1 All ER 118 (CA) 166–167, 175
- Belmont Finance Corporation Ltd v Williams Furniture Ltd (No 2) [1980] 1 All ER 393 (CA) 162, 167
- Brady v Brady [1987] BCC 535; [1988] BCLC 20 (CA); reversed on other grounds [1989] AC 755; [1988] 2 WLR 1308; [1988] 2 All ER 617; [1988] BCC 390; [1988] BCLC 579 (HL) 239
- Brazilian Rubber Plantations and Estates Ltd [Re] [1911] 1 Ch. 425 (ChD) 170, 230
- Brian D Pierson (Contractors) Ltd [Re] [1999] BCC 26; [2001] 1 BCLC 275; [1999] BPIR 18 (ChD) 88, 234
- Bristol & West Building Society v Mothew [1998] Ch. 1; [1997] 2 WLR 436; [1996] 4 All ER 698 (CA) 150, 242, 244
- Buchler v Talbot [2004] UKHL 9; [2004] 2 AC 298; [2004] 2 WLR 582; [2004] 1 All ER 1289; [2004] BCC 214; [2004] 1 BCLC 281 (HL) 54, 222, 224–225
- Canadian Land Reclaiming and Colonizing Co [Re], Coventry and Dixon's case (1880) 14 ChD 660 (ChD, CA) 163
- Cardiff Savings Bank [Re], The Marquis of Bute's case [1892] 2 Ch. 100 (ChD) 229
- City Equitable Fire Insurance Co Ltd [Re] [1925] Ch. 407; [1924] All ER Rep. 485 (ChD, CA) 170, 230
- City Index Ltd v Gawler [2007] EWCA Civ 1382; [2008] Ch. 313; [2008] 2 WLR 950; [2008] 3 All ER 126 (CA) 174

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XXVI

TABLE OF CASES

- Cityspan Ltd [Re], *Brown v Clark* [2007] EWHC751 (Ch); [2008] BCC 60; [2007] 2 BCLC 522 (ChD) 88
- Cohen v Selby* [2002] BCC 82; [2001] 1 BCLC 176 (CA) 162, 231–234
- Coleman Taymar Ltd v Oakes* [2001] 2 BCLC 749 (ChD) 170, 171, 172
- Colin Gwyer & Associates Ltd v London Wharf (Limehouse) Ltd* [2002] EWHC 2748 (Ch); [2003] BCC 885; [2003] 2 BCLC 153; [2003] BPIR 1099 (ChD) 238
- Conegade Ltd [Re]*, *Saxton v Clarke* [2002] EWHC 2411 (Ch); [2003] BPIR 358 (ChD) 88
- Continental Assurance Company of London plc (in liquidation) [Re]*, *Singer v Beckett* [2007] 2 BCLC 287; [2001] BPIR 733 (ChD) 190–191, 196, 231–233
- D’Jan of London Ltd [Re]*, *Copp v D’Jan* [1993] BCC 646; [1994] 1 BCLC 561 (ChD) 163, 168, 170, 172, 230–231, 233
- DKG Contractors Ltd [Re]* [1990] BCC 903 (ChD) 88, 235
- Dovey v Cory* [1901] AC 477 (HL) 168, 243
- Droitwich Patent Salt Company Ltd v Curzon (1867) LR3 Ex. 35 (Court of Exchequer)* 106
- Drown v Gaumont-British Picture Corporation Ltd* [1937] Ch. 402; [1937] 2 All ER 609 (ChD) 109
- Dubai Aluminium Co Ltd v Salaam* [2002] UKHL 48; [2003] 2 AC 366; [2002] 3 WLR 1913; [2003] 1 All ER 97; [2003] 1 BCLC 32 (HL) 174, 175
- Duckwari Plc [Re]* [1999] Ch. 253; [1998] 3 WLR 913; [1999] BCC 11; [1998] 2 BCLC 315 (CA) 162
- Duomatic Ltd [Re]* [1969] 2 Ch. 365; [1969] 2 WLR 114; [1969] 1 All ER 161 (ChD) 171–172
- Eagle Trust Plc v SBC Securities Ltd* [1993] 1 WLR 484; [1992] 4 All ER 488; [1991] BCLC 438 (ChD) 175
- Eagle Trust Plc v SBC Securities Ltd (No 2)* [1995] BCC 231; [1996] 1 BCLC 121 (ChD) 175
- El Ajou v Dollar Land Holdings plc* [1993] 3 All ER 717; [1993] BCC 698; [1993] BCLC 735 (ChD); [1994] 2 All ER 685; [1994] BCC 143; [1994] 1 BCLC 464 (CA) 174, 177
- Equitable Life Assurance Society v Bowley* [2003] EWHC 2263 (Comm); [2003] BCC 829; [2004] 1 BCLC 180 (QBD) 170
- Exchange Banking Co [Re]*, *Flitcroft’s case (1882) 21 ChD 519 (ChD, CA)* 161–162, 166
- Exchange Travel (Holdings) Ltd (No 3) [Re]*, *Katz v McNally* [1996] BCC 933; [1996] 2 BCLC 524; [1997] BPIR 623 (ChD); affirmed (on the liquidator’s indemnity for costs) *Re Exchange Travel (Holdings) Ltd (No 3), Katz v McNally* [1997] BCC 784; [1997] 2 BCLC 579; [1998] BPIR 30 (CA) 223
- affirmed (on the recovery of preferences) *Re Exchange Travel (Holdings) Ltd (No 4), Katz v McNally* [1999] BCC 291 (CA) 88

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF CASES

XXVII

- Facia Footwear Ltd (in administration) v Hinchliffe* [1998] 1 BCLC 218 (ChD) 238, 241, 243–244
- Fairway Magazines Ltd* [Re] [1992] BCC 924; [1993] BCLC 643 (ChD) 88
- Faure Electric Accumulator Co* [Re] (1888) 40 ChD 141 (ChD) 165
- Floor Fourteen Ltd* [Re], *Lewis v Inland Revenue Commissioners* [2001] 3 All ER 499; [2002] BCC 198; [2001] 2 BCLC 392 (CA) 217, 223–224
- Forest of Dean Coal Mining Company* [Re] (1878) 10 ChD 450 (ChD) 161–162
- Freeman v Pope* (1870) LR 5 Ch.App. 538 (CA) 44
- Guinness v Land Corporation of Ireland* (1882) 22 ChD 349 (ChD, CA) 106
- Guinness Plc v Saunders* [1990] 2 AC 663; [1990] 2 WLR 324; [1990] 1 All ER 652; [1990] BCC 205; [1990] BCLC 402 (HL) 172
- Halt Garage (1964) Ltd* [Re] [1982] 3 All ER 1016 (ChD) 102–103, 104, 126–130, 143–144
- Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465; [1963] 3 WLR 101; [1963] 2 All ER 575 (HL) 183, 209
- Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145; [1994] 3 WLR 761; [1994] 3 All ER 506 (HL) 183
- Hill (as Trustee in Bankruptcy of Nurkowski) v Spread Trustee Co Ltd, Nurkowski* [Re] [2006] EWCA Civ 542; [2007] 1 WLR 2404; [2007] 1 All ER 1106; [2006] BCC 646; [2007] 1 BCLC 450; [2006] BPIR 789 (CA) 44, 53, 71–72
- Howard Holdings Inc* [Re] [1998] BCC 549 (ChD) 232
- Industrial Development Consultants Ltd v Cooley* [1972] 1 WLR 443; [1972] 2 All ER 162 (Birmingham Assizes) 156
- Inland Revenue Commissioners v Hashmi* [2002] EWCA Civ 981; [2002] BCC 943; [2002] 2 BCLC 489; [2002] BPIR 974 (CA) 68, 72
- Inland Revenue Commissioners v Richmond, Loquitur Ltd* [Re] [2003] EWHC 999 (Ch); [2003] 2 BCLC 442 (ChD) 112, 173, 234
- Inn Spirit Ltd v Burns* [2002] EWHC 1731 (Ch); [2002] 2 BCLC 780; [2003] BPIR 413 (ChD) 131
- International Sales & Agencies Ltd v Marcus* [1982] 3 All ER 551; [1982] 2 CMLR 46 (QBD) 164
- It's a Wrap (UK) Ltd (in liquidation) v Gula* [2006] EWCA Civ 544; [2006] BCC 626; [2006] 2 BCLC 634 (CA) 119–120, 143
- Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244; [2004] BCC 994; [2005] 2 BCLC 91 (CA) 147
- Karak Rubber Co Ltd v Burden (No 2)* [1972] 1 WLR 602; [1972] 1 All ER 1210 (ChD) 175
- Kingston Cotton Mill Co (No 2)* [1896] 1 Ch. 331 (ChD); [1896] 2 Ch. 279 (CA) 163, 168, 243
- Knights (Liquidator of Taylor Sinclair (Capital) Ltd) v Seymour Pierce Ellis Ltd, Taylor Sinclair (Capital) Ltd* [Re] [2001] 2 BCLC 176; [2002] BPIR 203 (ChD) 59, 91

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XXVIII

TABLE OF CASES

- Lagunas Nitrate Co v Lagunas Syndicate [1899] 2 Ch. 392 (ChD, CA) 230
- Lands Allotment Co [Re] [1894] 1 Ch. 616 (ChD, CA) 161–162, 167
- Leyland Daf Ltd [Re] – see Buchler v Talbot
- Lipkin Gorman (a firm) v Karpnale Ltd [1991] 2 AC 548; [1991] 3 WLR 10; [1992] 4 All ER 512 (HL) 177
- Liquidator of Marini Ltd v Dickenson [2003] EWHC334 (Ch); [2004] BCC 172 (ChD) 119, 173
- London & General Bank [Re] [1895] 2 Ch. 166 (CA) 163
- Lord (Liquidator of Rosshill Properties Ltd) v Sinai Securities Ltd [2004] EWHC 1764 (Ch); [2004] BCC 986; [2005] 1 BCLC 295; [2004] BPIR 1244 (ChD) 73
- MacPherson v European Strategic Bureau Ltd [2002] BCC39; [2000] 2 BCLC 683 (CA) 121, 123, 125–126, 129–130
- MC Bacon Ltd [Re] [1990] BCC 78; [1990] BCLC 324 (ChD) 52–55, 73–74, 91, 221
- MC Bacon Ltd (No 2) [Re] [1991] Ch. 127; [1990] 3 WLR 646; [1990] BCC 430; [1990] BCLC 607 (ChD) 220–224, 240
- MDA Investment Management Ltd [Re], Whalley v Doney [2003] EWHC 2277 (Ch); [2005] BCC 783; [2004] 1 BCLC 217; [2004] BPIR 75 (ChD) 88
- MDA Investment Management Ltd [Re], Whalley v Doney (No 2) [2004] EWHC 42 (Ch); [2005] BCC 783 (ChD) 170
- Menzies v National Bank of Kuwait SAK [1994] BCC 119; [1994] 2 BCLC 306 (CA) 53
- Montagu's Settlement Trusts [Re], Duke of Manchester v National Westminster Bank Ltd [1987] Ch. 264; [1987] 2 WLR 1192; [1992] 4 All ER 308 (ChD) 176
- Morris v C W Martin & Sons Ltd [1966] 1 QB 716; [1965] 3 WLR 276; [1965] 2 All ER 725 (CA) 28
- National Funds Assurance Co [Re] (1878) 10 ChD 118 (ChD) 166
- National Westminster Bank plc v Jones [2001] 1 BCLC 98; [2000] BPIR 1092 (ChD); affirmed [2001] EWCA Civ 1541; [2002] 1 BCLC 55; [2002] BPIR 361 (CA) 64–65, 91
- Norman v Theodore Goddard (a firm) (Quirk, third party) [1992] BCC 14; [1991] BCLC 1028 (ChD) 168, 230–231
- Nurkowski [Re] – see Hill (as Trustee in Bankruptcy of Nurkowski) v Spread Trustee Co Ltd
- Oasis Merchandising Services Ltd [Re], Ward v Aitken [1995] BCC 911; [1995] 2 BCLC 493 (ChD); [1998] Ch. 170; [1997] 2 WLR 764; [1997] 1 All ER 1009; [1997] BCC 282; [1997] 1 BCLC 689 (CA) 216–218, 223–226, 228
- Orleans Motor Co Ltd [Re] [1911] 2 Ch. 41 (ChD) 51
- Pantmaenog Timber Co Ltd [Re] [2003] UKHL 49; [2004] 1 AC 158; [2003] 3 WLR 767; [2003] 4 All ER 18; [2003] BCC 659; [2003] 2 BCLC 257; [2004] BPIR 139 (HL) 207
- Pantone 485 Ltd [Re], Miller v Bain [2002] 1 BCLC 266 (ChD) 238, 243–244

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF CASES

XXIX

- Paragon Finance plc v DB Thakerar & Co (a firm) [1999] 1 All ER 400 (CA)
176
- Pepper (Inspector of Taxes) v Hart [1993] AC 593; [1992] 3 WLR 1032; [1993] 1 All
ER 42 (HL) 133–134
- Phillips (Liquidator of AJ Bekhor & Co) v Brewin Dolphin Bell Lawrie Ltd [2001]
UKHL 2; [2001] 1 WLR 143; [2001] 1 All ER 673; [2001] BCC 864; [2001] 1
BCLC 145; [2001] BPIR 119 (HL) 60–61, 68
- Precision Dippings Ltd v Precision Dippings Marketing Ltd [1986] Ch. 447; [1985] 3
WLR 812 (CA) 112, 117–118, 166, 168, 175, 243
- Produce Marketing Consortium Ltd (in liquidation) [Re], Halls v David [1989] 1
WLR 745; [1989] 3 All ER 1; [1989] BCC 399; [1989] BCLC 513 (ChD) 234
- Produce Marketing Consortium Ltd (in liquidation) (No 2) [Re] [1989] BCC 569;
[1989] BCLC 520 (ChD) 220, 233
- Purpoint Ltd [Re] [1991] BCC 121; [1991] BCLC 491 (ChD) 197, 216
- R (The Queen) v G [2003] UKHL 50; [2004] 1 AC 1034; [2003] 3 WLR 1060; [2003] 4
All ER 765 (HL) 69
- Regal (Hastings) Ltd v Gulliver [1967] 2 AC 134n; [1942] 1 All ER 378 (HL) 156
- Ridge Securities Ltd v Inland Revenue Commissioners [1964] 1 WLR 479; [1964] 1 All
ER 275 (ChD) 101
- Rolled Steel Products (Holdings) Ltd v British Steel Corporation [1986] Ch. 246;
[1985] 2 WLR 908; [1985] 3 All ER 52 (CA) 162
- Russell v Wakefield Waterworks Co (1875) LR 20 Eq. 474 (Master of the Rolls)
161–162
- Salomon v Salomon & Co Ltd [1897] AC 22 (HL) 21, 32, 104
- Selangor United Rubber Estates Ltd v Cradock (No 3) [1968] 1 WLR 1555; [1968] 2
All ER 1073 (ChD) 162, 166–167, 175, 176
- Shapland Inc [Re], Mills v Edict Ltd [2000] BCC 106; [1999] BPIR 391 (ChD) 88
- Sharpe [Re], Bennett [Re], Masonic & General Life Assurance Co v Sharpe [1892] 1 Ch
154 (ChD, CA) 161, 165–166
- Smith & Fawcett Ltd [Re] [1942] Ch. 304; [1942] 1 All ER 542 (CA) 236
- Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada) [1987] AC 460; [1986] 3
WLR 972; [1986] 3 All ER 843 (HL) 255–256
- Standard Chartered Bank v Pakistan National Shipping Corporation [2002] UKHL 43;
[2003] 1 AC 959; [2002] 3 WLR 1547; [2003] 1 All ER 173; [2002] BCC 846;
[2003] 1 BCLC 244 (HL) 183–184
- Stocznia Gdanska SA v Latreefers Inc [2001] BCC 174; [2001] 2 BCLC 116 (ChD,
CA) 232
- Taylor Sinclair (Capital) Ltd [Re] – see Knights (Liquidator of Taylor Sinclair
(Capital) Ltd) v Seymour Pierce Ellis Ltd
- Trevor v Whitworth (1887) 12 App.Cas. 409 (HL) 104, 166
- Turquand v Marshall (1869) LR 4 Ch.App. 376 (Lord Chancellor) 229

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XXX

TABLE OF CASES

- Twinsectra Ltd v Yardley [2002] UKHL 12; [2002] 2 AC 164; [2002] 2 WLR 802;
[2002] 2 All ER 377 (HL) 177
- Ultraframe (UK) Ltd v Fielding [2005] EWHC 1638 (Ch) 214
- Wallersteiner v Moir [1974] 1 WLR 991; [1974] 3 All ER 217 (CA) 166–167
- Wallersteiner v Moir (No 2) [1975] QB 373; [1975] 2 WLR 389; [1975] 1 All ER 849
(CA) 166–167
- Weisgard v Pilkington [1995] BCC 1108 (ChD) 88
- West Mercia Safetywear Ltd (in liquidation) v Dodd [1988] BCC 30; [1988] BCLC 250
(CA) 237–244, 246, 247
- Westdeutsche Landesbank Girozentrale v Islington London Borough Council [1996]
AC 669; [1996] 2 WLR 802; [1996] 2 All ER 961 (HL) 177, 229
- Westlows Storage & Distribution Ltd (in liquidation) [Re] [2000] BCC 851; [2000] 2
BCLC 590 (ChD) 231
- Wightman v Bennett [2005] BPIR 470 (ChD) 162
- Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830; [1998] 2 All ER 577;
[1998] BCC 428; [1998] 1 BCLC 689 (HL) 183–184
- Wills v Corfe Joinery Ltd (in liquidation) [1997] BCC 511; [1998] 2 BCLC 75; [1997]
BPIR 611 (ChD) 88
- Winkworth v Edward Baron Development Co Ltd [1986] 1 WLR 1512; [1987] All ER
114; [1987] BCC 4; [1987] BCLC 193 (HL) 209
- Yagerphone [Re] [1935] Ch. 392 (ChD) 219–222, 240
- Yukong Line Ltd of Korea v Rendsburg Investments Corporation of Liberia (No 2)
[1998] 1 WLR 294; [1998] 4 All ER 82; [1998] BCC 870; [1998] 2 BCLC 485
(QBD) 238

Other Commonwealth jurisdictions**Australia**

- Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821; [1974] 2 WLR 689; [1974]
1 All ER 1126 (Privy Council on appeal from the Supreme Court of New South
Wales) 236
- Kinsela v Rusell Kinsela Pty Ltd (1986) 4 ACLC 215; (1986) 10 ACLR 395; (1986) 4
NSWLR 722 (New South Wales Court of Appeal) 237, 239, 240
- Steen v Law [1964] AC 287; [1963] 3 WLR 802; [1963] 3 All ER 770 (Privy Council on
appeal from the Supreme Court of New South Wales) 166–167

Brunei

- Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378; [1995] 3 WLR 64; [1995] 3 All
ER 97; [1995] BCC 899 (Privy Council on appeal from the Court of Appeal of
Brunei Darussalam) 170

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

TABLE OF CASES

XXXI

New Zealand

Nicholson v Permakraft (NZ) Ltd [1985] 1 NZLR 242 (New Zealand Court of Appeal) 209, 237–239

Scotland

Clydebank Football Club Ltd v Steedman [2002] SLT 109 (Court of Session, Outer House) 105, 119, 125–126, 128

Germany**Reichsgericht, Bundesgerichtshof**

- 17.3.1885, II 467/84, RGZ 13, 298 62
 28.1.1890, IV 244/89, RGZ 25, 34 49
 11.3.1902, VII 13/02, RGZ 51, 76 87, 88
 1.12.1904, VI 48/04, RGZ 59, 236 187
 4.10.1912, II 225/12, RGZ 80, 148 123
 5.6.1935, II 228/34, JW 1935, 3301 189
 20.12.1935, III 113/35, RGZ 150, 28 123
 15.12.1941, II 103/41, RGZ 168, 292 117
 24.3.1954, II ZR 23/53, BGHZ 13, 49; NJW 1954, 1157 123
 3.12.1954, V ZR 96/53, BGHZ 15, 333; NJW 1955, 259 66
 18.12.1954, II ZR 281/53, BGHZ 16, 50; NJW 1955, 501 151
 30.6.1958, II ZR 213/56, BGHZ 28, 77; NJW 1958, 1351; GmbHR 1958, 149 117
 16.12.1958, VI ZR 245/57, BGHZ 29, 100; NJW 1959, 623; GmbHR 1959, 110
 198–199
 14.12.1959, II ZR 187/57, BGHZ 31, 258; NJW 1960, 285; GmbHR 1960, 43
 (*Lufttaxi*) 104, 122, 123, 133–134, 139
 29.1.1964, Ib ZR 197/62, BGHZ 41, 98; NJW 1964, 1319 66
 9.11.1967, II ZR 64/67, BGHZ 49, 30; NJW 1968, 396 156
 22.12.1971, VIII ZR 136/70, BGHZ 58, 20; NJW 1972, 495; GmbHR 1972, 64 88
 25.9.1972, VIII ZR 216/71, BGHZ, 59, 230; NJW 1972, 2084 46
 29.3.1973, II ZR 25/70, BGHZ 60, 324; NJW 1973, 1036; GmbHR 1973, 163 102, 124
 18.3.1974, II ZR 2/72, NJW 1974, 1088; GmbHR 1974, 131, 190, 191–192, 193
 29.9.1977, II ZR 157/76, BGHZ 69, 274; NJW 1978, 160; GmbHR 1978, 64 122
 24.3.1980, II ZR 213/77, BGHZ 76, 326; NJW 1980, 1524; GmbHR 1980, 178; ZIP
 1980, 361 138
 21.9.1981, II ZR 104/80, BGHZ 81, 311; NJW 1982, 383; GmbHR 1982, 133; ZIP 1981,
 1200 135, 137, 139

Cambridge University Press

978-0-521-89538-5 - Creditor Protection in Private Companies: Anglo-German Perspectives
for a European Legal Discourse

Thomas Bachner

Frontmatter

[More information](#)

XXXII

TABLE OF CASES

- 28.9.1981, II ZR 223/80, BGHZ 81, 365; NJW 1982, 386; GmbHR 1982, 181; ZIP 1981, 1332 136–137, 139, 142
- 10.10.1983, II ZR 233/82, NJW 1984, 1036; GmbHR 1984, 18; ZIP 1983, 1448 137
- 14.12.1983, VIII ZR 352/82, BGHZ 89, 189; NJW 1984, 1557; ZIP 1984, 190 85
- 26.3.1984, II ZR 14/84, BGHZ 90, 370; NJW 1984, 1891; GmbHR 1984, 313; ZIP 1984, 698 140
- 23.9.1985, II ZR 246/84, NJW 1986, 585; GmbHR 1986, 42 156
- 14.10.1985, II ZR 276/84, NJW-RR 1986, 579; GmbHR 1986, 113; ZIP 1986, 456 102–103, 137, 142, 199
- 20.3.1986, II ZR 114/85, NJW-RR 1986, 1293; GmbHR 1986, 302; ZIP 1987, 1050 137
- 1.12.1986, II ZR 306/85, NJW 1987, 1194; ZIP 1987, 575 123–125, 137
- 3.2.1987, VI ZR 268/85, BGHZ 100, 19; NJW 1987, 2433; ZIP 1987, 509 198
- 11.5.1987, II ZR 226/86, NJW 1988, 139; GmbHR 87, 390; ZIP 1997, 1113 121
- 19.9.1988, II ZR 255/87, BGHZ 105, 168; NJW 1988, 3143; GmbHR 1989, 19; ZIP 1988, 1248 135, 139
- 20.2.1989, II ZR 167/88, BGHZ 107, 7; NJW 1989, 1800; GmbHR 1989, 196; ZIP 1989, 440 135
- 26.6.1989, II ZR 289/88, BGHZ 108, 134; NJW 1989, 3277; GmbHR 1990, 69; ZIP 1989, 1341 198
- 16.10.1989, II ZR 307/88, BGHZ 109, 55; NJW 1990, 516; GmbHR 1990, 118; ZIP 1989, 1542 138
- 5.12.1989, VI ZR 335/88, BGHZ 109, 297; NJW 1990, 976; GmbHR 1990, 207; ZIP 1990, 35 (the *Baustoff* case) 185–187, 205
- 5.2.1990, II ZR 114/89, NJW 1990, 1730; GmbHR 1990, 249; ZIP 1990, 451 102–103
- 15.2.1990, IX ZR 149/88, NJW 1990, 2687; ZIP 1990, 459 87
- 16.12.1991, II ZR 294/90, NJW 1992, 1167; GmbHR 1992, 165; ZIP 1992, 242 137, 139
- 30.4.1992, IX ZR 233/90, BGHZ 118, 151; NJW 1992, 2026; ZIP 1992, 781 40
- 15.6.1992, II ZR 88/91, NJW 1992, 2894; GmbHR 1992, 605; ZIP 1992, 1152 104, 125
- 1.3.1993, II ZR 292/91, GmbHR 1993, 420; ZIP 1993, 763 200
- 20.9.1993, II ZR 292/91, NJW 1993, 2931; GmbHR 1993, 733; ZIP 1993, 1543 200
- 6.6.1994, II ZR 292/91, BGHZ 126, 181; NJW 1994, 2220; GmbHR 1994, 539; ZIP 1994, 1103 200–201, 255
- 20.3.1995, II ZR 205/94, BGHZ 129, 136; NJW 1995, 1739; ZIP 1995, 819 (*Girmes*) 151
- 13.11.1995, II ZR 113/94, NJW 1996, 589; GmbHR 1996, 111; ZIP 1996, 68 124–125
- 18.12.1995, II ZR 277/94, BGHZ 131, 325; NJW 1996, 850; GmbHR 1996, 211; ZIP 1996, 420 193
- 24.9.1996, IX ZR 190/95, NJW 1996, 3341; ZIP 1996, 1907 67
- 24.10.1996, IX ZR 284/95, ZIP 1996, 2080 62