CONTENTS

Acknowledgements page xii
Table of Cases xiv
Table of Legislation xxiv

1 Introduction 1

1.1 General 1

1.2 Definition of Corporate Group 3

1.3 Definition of Network 5

1.4 Growth of Groups 6

1.5 Problems of Corporate Groups and Networks 6

1.6 Regulation 8

1.7 Compensation 12

1.8 Development of Liability Rules 15

1.9 Summary of Recommendations 18

1.10 Structure of Book 19

PART I Business Context 21

2 The Formation of Corporate Groups and Networks 23

2.1 Introduction 23

2.2 The Growth of Business 24

2.3 Business Form 34

vii
## Table of Contents

2.4 International Dimension 51  
2.5 Conclusions 62  

3 Structuring of Corporate Group Relations 64  
3.1 Introduction 64  
3.2 Separate Legal Personality 64  
3.3 Corporate Capacity 68  
3.4 Limited Liability 69  
3.5 Judgment-Proofing and Malpractice 79  
3.6 Multinationals and Private International Law 90  
3.7 Position of Tort Creditors 94  
3.8 Conclusions 100  

4 Insolvent Entity Case Studies 102  
4.1 Introduction 102  
4.2 Case Study I: Asbestos Claims 103  
4.3 Case Study II: Pharmaceutical Claims 122  
4.4 Case Study III: ‘The Next Catastrophe’ 137  
4.5 Legal Responses 144  
4.6 Conclusions 146  

PART II Theory 147  

5 Conceptions of Group and Network Liability 149  
5.1 Introduction 149  
5.2 Theorising the Group of Persons 149  
5.3 Theorising the Organisation 159  
5.4 Theorising the Corporate Group 167  
5.5 The Network: A Brief Contrast 172
## Table of Contents

5.6 Entity or Enterprise Approach? 174  
5.7 Conclusions 185  

**PART III Statute** 187  

6 General Protections for Creditors 189  
6.1 Introduction 189  
6.2 Ex ante Protections for Creditors 189  
6.3 Ex post Protections for Creditors 197  
6.4 Conclusions 203  

7 Group-Specific Protections for Creditors 204  
7.1 Introduction 204  
7.2 Statutory Recognition of Groups 204  
7.3 Protections in Administration and Insolvency 212  
7.4 Conclusions 233  

8 Statutory Torts 235  
8.1 Introduction 235  
8.2 Extended Liability: Products 235  
8.3 Extended Liability: Polluter-Pays Legislation 254  
8.4 Conclusions 266  

9 Modified Limited Liability 268  
9.1 Introduction 268  
9.2 Existing Proposals for Reform 270  
9.3 Control as the Basis for Shareholder Liability 282  
9.4 Modified Limited Liability 287  
9.5 Conclusions 303
PART IV Common Law

10 Veil-Piercing 309
10.1 Introduction 309
10.2 Defining Veil-Piercing 309
10.3 Power to Pierce the Veil 313
10.4 Recent History of Veil-Piercing 314
10.5 Corporate Groups 318
10.6 Elements of a Veil-Piercing Action 324
10.7 Grounds of Veil-Piercing 327
10.8 US Position 339
10.9 Deficiencies in Veil-Piercing Doctrine 342
10.10 Alternatives to Veil-Piercing 343

11 Direct Liability in Tort 346
11.1 Introduction 346
11.2 Tort of Negligence 352
11.3 Unlawful Means Conspiracy 381
11.4 Multiple Entity Recklessness 389
11.5 Conclusions 395

12 Vicarious and Joint Liability in Tort 396
12.1 Introduction 396
12.2 Vicarious Liability 396
12.3 Non-delegable Duties 405
12.4 Joint Liability 406
12.5 Conclusions 412

13 Conclusions 413
13.1 The Problem 413
13.2 Current Law 414
CONTENTS

13.3 Assumptions Underlying the Present Law 417
13.4 Proposals 420

Bibliography 423
Index 451