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convincingly that the main avenue for protecting stakeholder interests is via actions initiated by shareholders, such as board dialogue or derivative actions. This view is accurate from a company law perspective, but incomplete from a corporate governance angle. It fails to take into account the disclosure side of the concept of enlightened shareholder value. Indeed, the Company Law Review's vision of the enlightened shareholder value principle encapsulated in the codified duty of loyalty is built on two pillars. The first one is the duty to take into account stakeholders' interests while promoting the success of the company (enshrined in s.172). The second one consists of meaningful disclosure duties concerning employees, suppliers, and environmental, social and community matters (set forth in the now repealed s.417 on the business review). The philosophy behind the two facets of the codified duty of loyalty was that the new duty will acquire its force not through threat of litigation, but through an increased disclosure obligation and the ensuing market scrutiny.[2] The legislators' commitment to meaningful disclosure as a tool for enforcement is evidenced by the newly introduced duty to prepare a strategic report[3] which imposes on directors of quoted companies a duty to disclose their policies on, among others, the company's employees and environmental, social, community and human rights matters. While such disclosure obligations are aimed primarily at the company's members, they are also widely studied by would-be investors and other stakeholders.

The legal provisions regulating conflicts of interest form another key aspect of directors' fiduciary duties. Keay's extensive analysis of these provisions spreads across four chapters: Chs 9 to 12. Similar to the other chapters in this book, the discussion of the legal provisions as interpreted and applied by the courts is very meticulous. From a doctrinal point of view, however, these chapters are a missed opportunity to engage critically with the justifications that courts and commentators have provided for the peculiar strictness of the rule against conflicts of interest. The author lists briefly the two main justifications of the no-conflict rule, namely deterrence and evidentiary difficulties, but a critical evaluation of the soundness of these arguments is absent. Arguably, engaging with these debates is beyond the scope of this work. Nevertheless, identifying a solid theoretical foundation for the strictness of this rule is vital for its survival, especially in the light of recent judicial pronouncements arguing for its relaxation.[4]

Finally, a point on the consequences of breach of the duty not to accept benefits from third parties established by s.176 CA 2006. The nature of the remedy for breaching this duty by accepting secret commissions or bribes has been a highly controversial fiduciary law issue for the past century. The author summarises the personal versus proprietary remedies controversy in section H of Ch.15, and concludes, in the light of the applicable law at the time, that the personal claim view established *Metropolitan Bank v Heiron*[5] and *Lister & Co v Stubbs*[6] is the valid approach. This is no longer accurate. In the very recent decision of *FHR European Ventures LLP v Cedar Capital Partners LLC*.[7] the UK Supreme Court ruled unanimously that these two decisions should be regarded as overruled. When an agent or another fiduciary acquires a benefit as a result of his fiduciary position or pursuant to an opportunity resulting from his position, that benefit is held on trust for the principal.

The second edition of *Directors' Duties* consolidates the position of this book as a reference text in this area of company law. It is hoped that the future editions will strengthen this book's contribution to a coherent set of rules, principles and concepts governing the fiduciary duties of company directors.

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Governance of Distressed Firms, by Professor David Milman, (Edward Elgar Publishing Ltd, 2013), 208pp. (available in e-book form, via ElgarOnline.com, E-ISBN 978-1-78100-0190-9), £78, ISBN: 978-1-78100-018-2.

With zombie companies omnipresent, Professor David Milman's *Governance of Distressed Firms* would make a welcome addition to the libraries of insolvency practitioners ("IPs"), turnaround accountants, lawyers, financiers, regulators and the one stakeholder perhaps overlooked in the book, director and officer ("D & O") insurers.

As the author notes, corporate governance books abound. But as the author further correctly notes, consideration of the governance of SMEs and of the distressed is patchy. Professor Milman has courageously ploughed this untilled field.

As with all practitioners, my copy of *Sealy & Milman: Annotated Guide to the Insolvency Legislation* never leaves my desk. The practitioner in me was pleased at the prospect of this often tumultuous and controversial area being addressed by a leading academic. But this is a big ambition monograph. The monograph seeks to be practical, yet academic, comparative and also policy questioning—all within 156 pages, excluding the appendices.

[2] John Lowry, "The Duty of Loyalty of Company Directors: Bridging the Accountability Gap through Efficient Disclosure" (2009) 68(3) *Cambridge Law Journal* 607, 618.
[3] Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013/1970.
[4] See, for example, *Murad v Al-Saraj* [2005] EWCA Civ 959; [2005] W.T.L.R. 1573 at [82], per Arden LJ.
[5] *Metropolitan Bank v Heiron* (1880) 5 Ex. D. 319 CA.
[6] *Lister & Co v Stubbs* (1890) 45 Ch. D. 1 CA.
[7] *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45; [2014] 3 W.L.R. 535.

Because of the book's clarity and succinctness, it is a handy *précis* of directorial insolvency duties. For that reason alone, it will move from my library to my desk. It will also become a practitioner field book, being small and accessible, taken to and reviewed on site.

The academic in me enjoyed the jurisdictional comparatives. Titbits from worldwide legal systems abound. For someone with an interest in the subject, it is one of the most pleasurable works I have read in recent years.

But sometimes the book is defeated by its own ambitions. Given the author's focus on SMEs, I ask, "what do distressed, especially SME, directors see before them?" When distressed, directors see asset based lending ("ABL"), personal guarantees ("PGs") and personal financial ruin, with, if they are lucky, D & O insurance cover possibly helping. ABL, PGs and especially D & O insurance have for some time needed a dispassionate academic, yet practical review, set within that twilight zone between solvency and insolvency. In this ever more litigious world, directors in the twilight zone are now looking more to D & O cover than even to their professional advisers.

I recommend that practitioners buy this book; not only is it an enjoyable field book, but Professor Milman has an aptitude for the quixotic "policy line bite". Policy wonks and regulators may see, within this monograph, the green light for reforms. Some of the author's implicit and "in passing" reform suggestions may not be to the liking of this reviewer, nor indeed to the profession at large. For instance, I for one have never been convinced of the "in passing" suggested benefit of "reducing the number of IP regulatory bodies". If competition is good, why is it not "good for regulators too"? But reading the book may the point the practitioner "to the lie of the regulatory land". If such policy reforms are implicit within "a Milman book", policy-makers will latch on to its authoritative statements. Some policy pleas are set more in the legal, as opposed to the regulatory, arena, where Milman has true authority. Milman empathises with the "problem of 'retrospective' judicial rulings". Practitioners do not know the legal lie of the land until they have walked into the problem area. Milman argues for "a system of prospective overruling in commercial litigation". Hear, hear. Distress financiers, as well as practitioners, would welcome such a prospective system.

Some enormous policy considerations are only teasingly considered: "is the standard limited liability really suited to the very small company?" Now, that topic is worthy of a tome, not a monograph. But the reality is that micro-companies have already deviated from the limited liability norm, via the ubiquitous PG. But not addressing such coalface realities is excusable, given the work's brevity.

The author's *Sealy & Milman: Annotated Guide to the Insolvency Legislation* understandably allows for little stylistic input. Annotated guides, by their nature, are dry. Contrariwise, this monograph is a most enjoyable read because of its stylistic turn of phrases. "Utilitarian sentiments dictating efficient realisation of assets tend to prevail over ethical qualms about opportunism" is the best contraposing of the *Re Farepack* and *Wedgewood Museum Trust* cases I've read. Insolvency students may find such memorable phrases an exam aide memoire.

While the monograph does not cover D & O insurance, I recommend that every D & O insurer provide a copy of this most readable document *gratis* to every insured director. After all, it is in the distressed environment that the director looks for guidance. Such an intelligent layman, the SME director, will be guided effortlessly from the "Introductory Concepts and Dramatis Personae" of Ch.1 to the concluding "Reflections and Reform" of Ch.6. The intervening chapters segue from the practical pre-insolvency twilight zone of Ch.3 to the post-insolvency regime of Ch.4. Academics, students and IP nerds, myself included, will enjoy the jurisdictional comparatives of Ch.5.

The leitmotif of Ch.3 ("The Insolvency Twilight Zone") is that of the "director trustee", charged with asset stewardship. The layman, the practitioner and the academic can all understand the discussed directors' duties, set within a trustee theme. For me, the prospective collision between the newly imposed "Companies Act s.172 director duties" and the traditional "director creditor duties" in the insolvency twilight zone has never been, and possibly never will be, clarified. The author's review is one of the best attempts at such clarification I have seen.

The stewardship theme continues in the post-insolvency chapter, Ch.4, but with the IP, rather than the director, maintaining the stewardship role. Insolvency students will find Ch.4 both a first-principle elucidation of the IP concept and a guide to recent IP case law.

Chapter 5 ("Comparative and EU Perspectives on the Governance of Distressed Firms") commences with the caveat: "We have made a number of comparative points in passing … This chapter will now seek to offer more systemic comparative insights." As noted, one of the more enjoyable aspects of this book is the "in passing jurisdictional comparative and other titbits". Understandably, Milman struggles with finding an international theme, over and above the "central stewardship issues". Yes, he notes that common streams, especially among Commonwealth jurisdictions, exist. But for the reviewer, the simple truth is that insolvency represents the mores of any given society, and moral relativism will always pervade international insolvency. For me, therefore, this chapter's importance is its knowledgeable jurisdictional introductions, not its search for themes.

Chapter 6, "Reflections and Reform", starts with stewardship comparisons, notably between the director and the IP. Unlike many ivory tower academics, Milman is sympathetic to the IP position: "IPs are now tightly controlled in terms of access to the profession and their entitlement to hold office." Milman juxtaposes this tight access with the absence of directorial prerequisite qualifications. "Should not all stewards possess minimal

barriers to entry and qualifications?", he questions. Fair point. But the biggest financial disasters usually had qualified directors to the fore. RBS's Sir Fred was a Scottish chartered accountant and IP. And before the civil servant classes see in Milman's suggestion an opportunity for greater state control, let us not forget that government officials have no sanction and yet oversee many a financial disaster. For those of us practising in the distressed arena, the moral overload presented by s.172 of the Companies Act is difficult enough. This is without what Milman considers as the "gender promoting diversity schemes" promulgated elsewhere within academia. Thankfully, Milman notes that this "alleged inefficiency inducing gender imbalance hypothesis" is "difficult to establish"; and more especially that the apparently "relatively poor performance of UK businesses" should not be linked to the "lack of boardroom diversity". I was unaware of the UK's apparently relative poor performance and can see no causal link to the alleged lack of diversity. The industry needs practical academics like Milman to scotch such hypotheses. The practitioner has a friend in *Milman*, the author's annotated insolvency legislation guide. This learned, wide-ranging monograph will also become an industry friend.

If directors are to have a prerequisite qualification, as mooted by Milman, may I suggest that this monograph is the core text. Further, that every D & O insurer provide a copy *gratis* to their director insureds.

Though the book is printed in its first edition as a self-styled monograph, its quality justifies much expansion.

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Shareholder Primacy and Corporate Governance: Legal Aspects, Practices and Future Developments, by Shuangge Wen, (Routledge, 2013), £95, ISBN: 978-0-415-53626-4.

This impressive work of scholarship is meticulously researched and referenced, and gives an informed and comprehensive view of the potentially contentious area of shareholder primacy and possible alternative approaches to corporate governance. It is a useful addition to the literature. But it is also, for this reviewer at least, itself contentious in a few areas where judgments are made, or appear to be made, about putative theoretical and pragmatic rationales for shareholder primacy and its acceptance or otherwise.

While it is not explicit in the title, the main focus throughout is on the UK, and within the UK its subject is "publicly traded corporations regulated by the Companies Act 2006". However, the author clearly locates the discussion in the context of the comparative literature which identifies two broad varieties of capitalism. These have been variously described as the Anglo-American (or "shareholder" or "stock market" or "outsider") approach, in which maximising shareholder value is the traditionally assumed objective of companies; and the "stakeholder" or "insider" approach found in much of continental Europe and Japan, which traditionally seeks to balance the interests of a range of stakeholders.

This capitalist dichotomy is significant for the attempts within the EU to achieve a harmonised corporate governance framework, and I particularly commend the section of the book which deals with this subject. The apparent incompatibility of certain German and UK values and institutional arrangements provides for a fascinating and illuminating discussion. Such discussions are informed too by some nuanced consideration of path dependence.

Elsewhere the book considers, within the UK context, the nature of shareholder primacy and attempts to modify or challenge it. There is consideration of the concept of "enlightened shareholder value" ("ESV") which featured in the UK Company Law Review and is embodied in the UK Companies Act 2006, although the term itself does not appear there. Views may differ as to the practical relevance of the form of words in s.172, about having regard to various interests while pursuing the benefit of members. It has been called a fudge, and its description by Wen as being "recognised by stakeholder proponents as a major sign of the UK departing from the shareholder oriented pattern" is disputable to say the least. The same is true, in my view, about it being widely agreed by both shareholders and stakeholders that more time is needed for s.172 to achieve cultural change, in particular regarding short-termism. However, in fairness the clear preservation of shareholder primacy in CA 2006, notwithstanding ESV, is clearly spelt out.

In the concluding chapter some unsubstantiated rhetoric from the Company Law Review that "to generate maximum value for shareholders — is in principle the best means also of securing overall prosperity and welfare" is uncritically accepted as evidence of what is "broadly understood"—not all that "broadly", I would suggest! Notwithstanding such implicit leaning towards the status quo in this work, there is a wealth of scholarship and marshalling of information which makes the book valuable—if it is occasionally mixed with questionable assertions.

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