

Preface

This book has had a long gestation (far too long, for those who have been closely involved in its production). What sparked it off was the decision of the Australian High Court in *Gambotto v WCP Ltd* in 1995, which upheld the claim of a minority shareholder not to have his shares compulsorily bought from him by the majority shareholder in the corporation. My sense was that the High Court had made an important contribution to corporate jurisprudence, although one that required more explanation and justification than could be found in the pages of the judgements. But I was also struck by the speed with which the many critics of that case were able to muster their counter-attack (and I don't think that 'attack' overstates the nature of some of the responses). Several articles, books, and conference papers appeared within a short period after the decision was handed down. Without wanting to down-play the diversity of those responses, it is accurate to say that most of the criticisms were anchored, one way or another, in a law and economics framework. It occurred to me that these critics had something of a strategic advantage — the well-established law and economics framework supplied them with a ready-made conceptual model which could be used to respond quickly to the High Court's decision. On the other hand, those corporate law scholars who found something of value in the decision, and who were troubled by some of the criticisms, were largely (but not entirely) silent, myself included. Perhaps, I thought, a competing conceptual framework was needed, from which to mount a response to the issues raised by that case and future developments.

This book is the outcome of my attempt to develop such a framework. As the work continued, the specific issues raised by the *Gambotto* decision ceased to be my central concern (indeed, the case is mentioned only occasionally in what follows). But my wish to develop a conceptual framework for analysing corporate law issues, that could work as an alternative to the widely accepted law and economics model, persisted. Whether the ideas presented in this book are successful in achieving this goal is, of course, for readers to decide.

The book draws on a number of previously published articles, book chapters and conference papers. It is not, however, a simple compilation of that work. In attempting to integrate that work I found that my ideas had changed at many points. Also, the task of 'putting it all together' for the purposes of the book revealed inconsistencies and conceptual gaps, forcing me to re-think, develop and (I hope) clarify my arguments.

Over the years many people have helped me in the process of organising my thoughts for this book. Given the passage of time, it is quite likely that some have forgotten their contribution, but every argument and idea presented here has been assisted by the questions, comments and gentle critique of others. Here, at last, is the chance to acknowledge and thank John Braithwaite, Angus Corbett, Christine

Parker, Philip Pettit, Colin Scott, Peta Spender (who read through many of the chapters in their near final form), Daniel Stewart, the late Michael Whincop, and John Williams. Thanks also to Tom Campbell for urging some last minute revisions. I have listened to their ideas and suggestions, although I confess that I have not always acted on them. In line with customary practice, I absolve them from any responsibility for what lies between the covers of this book, although I don't see why I should. After all, they encouraged me to continue with the project.

Thanks also to Jenna Bottomley for her work in compiling the tables of statutes and cases, and to Vera Joveska for formatting and preparing the text for publication.

The real driving force behind this book, however, has been my wife, Sheri. She has the good sense not to be engrossed in corporate law, but nevertheless she has continually challenged, urged and encouraged me to write this book (occasionally enlisting the aid of our daughters, Kristen, Sarah, Taryn and Jenna). Moreover — and here is my greatest debt — she has made space for me to do so. Acknowledging her support and patience in this, the final product, seems to be both an appropriate and a perverse way of thanking her.

Finally, the long period during which this book was being written witnessed the untimely and unexpected deaths of two corporate law scholars whose work is referred to on a number of occasions in the following chapters. Michael Whincop (Professor of Law at Griffith University) died in June 2003. I knew Michael, and his death was a great shock. John Parkinson (Professor of Law at Bristol University) died in February 2004, and although I didn't know him (we were to have met at a conference I was organising, but he died shortly before this), the news of his death was nevertheless saddening. They were scholars of different theoretical persuasions, but I have great admiration for their contributions to corporate law scholarship. I hope that this book might be regarded as being in the same company as theirs.

Stephen Bottomley