

September Update: Snark Found

The summer is over and the team have been hard at work on the project for much of it. The desk-based side of the project is now moving on to address the view that tends to be regularly espoused by academic commentators, lawyers and judges that courts in England and Wales defer to the judgments of directors. We are examining the articulation of this view by both judges and commentators in the case law and literature. This involves a wide range of causes of action, namely breach of directors duty of care; directors disqualification; wrongful trading; unfair prejudice petition; permission to bring a derivative action; duty to promote the success of the company; the duty to consider creditor interests; proper purpose cases. We are considering whether judges in England and Wales do actually defer to directors' judgments and if they do, to determine whether this is the case with all of the business judgments of directors and if the courts take different approaches to business judgment, what factors might influence this. Coding of the data from the cases is underway, both in Liverpool and Leeds, with input from all project participants.

The fieldwork is also underway with the interviewing of directors, legal officers and judges and involving Professors Keay, Loughrey and McNulty. The data from this empirical study will be analysed and coded in due course to compliment the analysis of the case law.

We are preparing to submit papers on Business Judgment for publication, one of which addresses the issue of what is a business judgment, as explained in 'Hunting the Snark' and the other discussing 'business judgement', as it is situated in judicial practices, and the institutional context in which these practices occur. These ideas have been presented at conferences this summer.

Over the summer Professor Joan Loughrey presented 'The Concept of Business Judgment at the Financial Law and Development Conference, Centre for Business Law and Practice, School of Law, University of Leeds, 6th June 2017; and on 7th September 2017 at the Society of Legal Scholars conference at University College Dublin. A full version of the paper is available on the conference web-site. Professor Andrew Keay presented; "Business Judgments of Directors and Court Deference: But What is a Business Judgment?" at the University of Huddersfield's Business School Research Conference, in January 2017.

Professor Terry McNulty and Abigail Stewart at the University of Liverpool Management School presented a working paper at the (9th International Process Symposium –*Institutions and Organizations: a Process View*, 22-24 June 2017), and (33rd European Group for Organizational Studies Symposium –, 6-8 July 2017).

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