

56.2 An exercise on risk and ownership

It is sometimes argued that the shareholders of a limited company should have the exclusive right to control the affairs of the company, because they (the shareholders) are the ultimate bearers of risk, if the company's affairs miscarry.

Comment.

Response

If we grant the premise that the shareholders are the *ultimate* bearers of risk, it does not follow in logic or morality that they should therefore have the *exclusive* right to control the company. Others (lenders, customers, suppliers, and employees, for example) also bear some risk of loss and suffering if the affairs of the company should miscarry, and if there is to be a match between degree of risk and power to control (which is, perhaps, an attractive moral doctrine), then those who bear any part of risk should also enjoy a share of control.

However, in the case of a limited company, the basic premise stated above is false – shareholders are *not* the ultimate bearers of risk in a limited company. It is true that the shareholders' claim on a limited company is last in line for settlement, after the claims of all creditors, but in the case of insolvency, the shareholders' losses are limited to the value they have agreed to invest. Likewise the losses of voluntary creditors (lenders and unpaid suppliers) is limited to the value of the credit they have agreed to give. By contrast the potential losses of any involuntary creditors (members of the public who may have been damaged by the activities of the company) are limited only by the extent of the damage the company may be able to commit.

Arguably, therefore, it is the general public in the form of potential involuntary creditors who are the ultimate bearers of risk in a limited company – though few would argue, therefore, that the general public should be given control of the affairs of every limited company.