

-

IS A NEW WORLD ORDER IN THE MAKING ?

If it is held that a material shareholder of a publicly listed company owes a duty of fidelity to the other shareholders of that publicly listed company, may it equally be held that, on a global scale, the same principle applies?

It is held that a person, who is in the habit of issuing orders to employees of a company, those employees, being in the habit of following those orders, then the party, issuing the orders, is deemed to be a director, de facto.

As such, he can be held responsible for his acts should such acts be detrimental to the affairs of the company in which he has some degree of control.

This company law axiom prevents individuals from holding positions of power in a company, but not having that power recorded in company Minute Books, or having such power recorded with Registrars, in accordance with the law, governing the formation and operations of companies.

Mr Bill Gates is, today, said to be the richest man on the planet.

As such, does he owe a special duty of fidelity to some, if not all, of the other members of the planet?

A wild idea: Perhaps?

But does it have merit?

This concept is, today, being considered in certain quarters of government in the Western World as the statistics are compiled as to who owns what, and where.

It is generally held, in the Western World, that minority shareholders of a publicly listed company have a right to be protected from a fraud, perpetrated by the majority shareholder(s), whether or not it is a constructive fraud, brought about by accident or design.

This idea has long been accepted since the law must protect the ignorant and the innocent, especially. That being the case, the majority may not obtain an advantage over the minority in the same way as unfair and dishonest advocacy are proscribed in courts of law.

Similarly, it is widely accepted that it is patently wrong for a large shareholder of a publicly listed company to obtain an advantage over any other shareholder(s) simply because of his shareholding.

The accepted company law logic, underlying this principle, has long been accepted.

The nut of it is that, in a publicly listed company, it matters not as to the amount of shareholding that an individual may have in such an artificial entity as a limited liability company, it is sufficient that he has a standing – by virtue of his shareholding – and, as such, he has the same right as any other shareholder to have a voice in the running of the company in which he has invested, albeit a voice, proportional to his shareholding.

In reality, might will always be right in the governing of a company, for the party with the largest number of shares, normally, has the loudest voice.

But, even so, the majority shareholder(s) may be challenged if a minority can prove that he is not acting in the best interests of the entity.

Class actions in the US are proof of this well-entrenched, jurisprudential concept.

And it follows that, if a majority shareholder(s) obtains an unfair advantage over the minority shareholder(s), due to the majority's privileged position in a company, and, as a direct result of this act, a material advantage is obtained, an advantage which could not have been achieved if that majority shareholding had not wielded his position of power to his advantage, or to the advantage of the majority, then the advantages that the majority obtained belongs to the company -- not to the majority.

Translating this concept outside the realm of company law, there is the question as to whether or not a person, such as Mr Bill Gates, has a special duty of responsibility to people, other than those shareholders/employees of the Microsoft Corporation Empire.

Mr Gates is the richest man who ever lived. He obtained his wealth through his innate entrepreneurial skills, his nous and perspicacity. His physiognomy had nothing to do with his success in business.

But, due to his immense wealth – in the tens of billions of US dollars, it has been reported – his potential for world power, economic and/or political, must be considered, in many quarters, to be frightening.

In the same way, it could be held that persons, of the ilk of Mr Li Ka Shing, Chairman of Cheung Kong (Holdings) Ltd, should be constrained, to some well-defined extent, in order that they do not abuse their privileged positions, due to the huge amounts of money that they have at their disposal.

It is said that Mr Li Ka Shing is among the 16 most powerful men on earth.

He is powerful, not due to his sex appeal or great intellect, but due to his ability to generate great wealth.

Since the Government of the People's Republic of China (PRC), especially, needs his help, it is said that Mr Li Ka Shing can, at any time, talk directly to just about any high-ranking member of the Government of the PRC.

His sons, Victor and Richard, are said to be very powerful, too – and they, thus far, have accomplished very little.

There are great advantages to being born on the correct side of the bed sheets, history has recorded.

The question is whether or not people, such as Mr Bill Gates and Mr Li Ka Shing, should be advised that they have a constructive fiduciary duty to people outside their immediate family, and family of shareholders?

The Question

In capitalism, it is well known that a perceived shortage of a commodity, or product, is the driving force for the generation of profits: Supply/demand factors determine price.

If there is no demand, then there can be no price.

If there is a perceived plentiful supply of a commodity, or product, the price drops.

A surfeit of all commodities and products would mean, theoretically, the death of capitalism.

The capitalist preys on society's needs and greed, and exploits its requirements for commodities, goods and services.

Greed and power are the keys to the success of the capitalist.

But it would appear that, when greed and power become excessive, they might become a danger to a society, as much of a danger as capitalism may be said to have been a boon in the Western World.

The US Antitrust Legislation, brought about at the turn of the 20th Century, was the first powerful attempt by any civilisation to guarantee that the power and greed of the capitalist did not visit itself, wrongly, on the members of a society, members who may suffer as a direct result of that power and greed.

Microsoft Corporation has just been found wanting in this regard; and, the US Government is determined that monopolies, of the likes of Microsoft, do not unfairly impinge on society at large.

The US Government, by its determination, is stating that Microsoft has a moral constructive duty, as well as legal duty, to the people of the US by virtue of its powerful monopoly with regard to its Windows Operating System.

It matters little that Microsoft discovered and developed the operating system, it matters only that there was an unfair advantage, exercised by the company with regard to the system, to the detriment of would-be competitors.

It was an unfair trade practice that Microsoft perpetrated, and the US Court wants to redress the balance.

It follows, logically, then, that any citizen of the US, when he is able to influence the price of a certain commodity or product, is deemed to have a special duty to all the people of the US.

This being the case, it must follow, also, that any member of this planet, a member

who, for any reason, is able to wield great power, be it political or economic, has a special duty to all members of the planet.

The US Government, clearly, feels very strongly about this concept, especially with regard to the spread of Communism since Communism is perceived to be threat to the capitalistic way of life.

Communism has proved to be a failure, thus far, and there is every reason to believe that it will continue to fail, even in countries, such as the PRC, the last major stronghold of this political ideology.

The Communistic ideology may be said to be the political belief that all the people within a society should benefit equally; and, that wealth, and the means of generating wealth, should be in the hands of the people.

It can, also, come to mean that all the people within a society should suffer equally with nobody owning anything.

It is highly unlikely, even in the staunchest Communistic society, that greed can be suppressed to any great extent, and for any appreciable period of time when there are shortages of commodities and goods.

The US Government has been referred to as the world's policeman.

The US Government may not like this nomenclature, but its actions appear to indicate that that is its chosen path.

This has come about because the US Government appears to view the world of today as being a universal world, not one where a country's borders means that what takes place within that country is nobody else's business other than that country's.

The US Government declares, by its actions, that all countries have a duty to each other.

Not all countries agree with the US Government's view, with many countries, maintaining that internal affairs are affairs of the sovereign government and that the US Government has no right to interfere with the internal affairs of a sovereign government.

When a country has the power to destroy the planet with one bomb, it does appear that the affairs of that country can impact on the world.

As such, all countries with such capability have a duty to each other.

The world has changed, from wars, waged with bows and arrows, to wars, waged with weapons that are capable of destroying all forms of life as we know, today.

The same may be said of economic power: When there is a huge concentration of wealth in one sector of the world, or wealth that is concentrated in the hands of a just a few people, it is bound to impact on other people in other parts of the world.

And this could pose a great and ever-present danger.

-- E N D --

 [Site Meter](#)