



JARDINE STRATEGIC LTD V OASIS INVESTMENTS LTD

[2025] UKPC 34

KEY TAKEAWAYS:

1. As a result of this successful appeal from the Court of Appeal for Bermuda, and a Willers v Joyce direction made by the Privy Council, "the Shareholder Rule" is abrogated for the purpose of litigation in the courts of England and Wales.
2. The original proprietary justification for the Rule has fallen away as it is inconsistent with the established notion of separate legal personality.
3. There is no, or at least no sufficient, analogy that can be drawn between a company shareholder relationship and those relationships recognised as falling within the joint interest family of relationships to justify its inclusion.
4. A circumstances-based approach to determining whether legal advice is subject to legal professional privilege in such circumstances would be unacceptably uncertain and, therefore, unsuitable.

ISSUE

Whether there exists, and should exist, a "Shareholder Rule" that a company cannot, in the course of litigation between it and shareholders or former shareholders, withhold documents from inspection on the ground that the documents are covered by legal professional privilege.

FACTUAL BACKGROUND

Two companies within the Jardine Matheson group, Jardine Strategic Holdings Ltd and JMH Bermuda Ltd, were amalgamated to form Jardine Strategic Ltd (the Appellant). This amalgamation meant that all the shares in Jardine Strategic Holdings Ltd were cancelled. Statutory provisions in the Companies Act 1981 provide that the Appellant Company is required to pay fair value for those cancelled shares to shareholders who voted against the proposed amalgamation. However, those shareholders (the Respondents) were not satisfied with the figure offered to them as fair value for their shares. As such, the Respondents triggered the statutory mechanism under which the court is required to determine the fair value of the shares. In doing so, an issue arose regarding whether the Respondents are entitled to see the legal advice that was given to the JMG when it was setting the value offered as fair value to the Respondents. The Respondents recognised, however, that this advice was of a type which would usually be protected by legal professional privilege, and so they seek to rely on an overriding exception.

LEGAL PROFESSIONAL PRIVILEGE

[R v Derby Magistrates' Court, Ex p B \[1996\] AC 487, 507D and 507H](#)

Lord Taylor of Gosworth described privilege as a fundamental condition on which the administration of justice as a whole rests and acknowledged it as a fundamental right.

[R \(Morgan Grenfell & Co Ltd\) v Special Commissioner of Income Tax \[2002\] UKHL 21, \[7\]](#)

Lord Hoffmann said that it was common ground that the privilege is a fundamental human right long established in the common law and a necessary corollary of the right of any person to obtain skilled advice about the law.

[Three Rivers District Council v Governor and Company of the Bank of England \(No 6\) \[2004\] UKHL 48, \[10\], \[25\] and \[34\]](#)

Lord Scott of Foscote recognised two categories within legal professional privilege, namely legal advice privilege and litigation privilege, and described the features of the former as:

1. Arising out of a relationship of confidence between lawyer and client;
2. Absolute;
3. Giving the person entitled to it the right to decline to disclose or to allow to be disclosed the communication in question; and
4. Being able to arise in circumstances which have nothing to do with litigation.

Lord Scott also described the policy behind the privilege: "the idea that it is necessary in our society ... that communications between clients and lawyers ... should be secure against the possibility of any scrutiny from others ..."

" ... a party cannot resist production of documents which have been obtained by means of payment from the moneys belonging to the party applying for their production. I think that this is the general principle, and one which, to my mind, applies as between a shareholder and the directors who manage his property, when the documents are paid for out of his property."

[Chitty J in Gouraud v Edison Gower Bell Telephone Co of Europe \(1888\) 57 LJ Ch 498](#)

The Shareholder Rule, that companies cannot claim privilege against their shareholders, developed by analogy with "the Trustee Rule", that trustees could not claim privilege against their beneficiaries for materials which they had obtained at the beneficiaries' expense.

[Pearson J in Mayor and Corp of Bristol v Cox \(1884\) 26 ChD 678](#)

As such, the Shareholder Rule was initially justified on the basis that shareholders had their own proprietary interest in the company's money from which the legal advice is paid for (para 30).

However, it has since been recognised that a company is both the legal and beneficial owner of its property.

[Lord Halsbury LC in Salomon v Salomon \[1897\] AC 22](#)

Therefore, the original proprietary justification for the Shareholder Rule, in the words of the Privy Council, "faded quietly away, without anyone apparently noticing" (para 33).

Other justifications for the rule have been suggested, including the Shareholder Rule being a sub-set of joint interest privilege, however this justification has also been previously rejected by the courts.

[Nugee J in Sharp v Blank \[2015\] EWHC 2681 \(Ch\)](#)

The Shareholder Rule was recently subject to scrutiny in the courts of England and Wales in [Various Claimants v G4S plc \[2023\] EWHC 2683 \(Ch\)](#) and [Aabar Holdings SARL v Glencore plc \[2024\] EWHC 3046 \(Comm\)](#). The latter's ruling that the Shareholder Rule should be abandoned is subject to pending appeal.

JUDGMENT - PRIVY COUNCIL

Strict Status-Based Shareholder Rule

"The Board is satisfied that the Shareholder Rule forms no part of the law of Bermuda, and that it **ought not to continue to be recognised in England and Wales** either" (para 80).

The Privy Council found that the Shareholder Rule's disadvantages **easily outweighed** its advantages.

ADVANTAGES

- Ancient lineage
- Creation of a bright line

DISADVANTAGES

- Original proprietary justification inconsistent with current understanding of separate legal personality
- Joint interest justification cannot sensibly justify an automatic status-based denial of legal professional privilege - there is not always a community of interest between every company and its shareholders

"The status-based automatic Shareholder Rule is therefore now, and in truth has always been, a **RULE WITHOUT JUSTIFICATION**. Like the emperor wearing no clothes in the folktale, it is time to recognise and declare that the Rule is altogether unclothed" (para 82).

Joint Interest Privilege

The Privy Council considered that the company shareholder relationship does **NOT** fall within the supposed general principle of joint interest privilege.

"When the company shareholder relationship is looked at squarely on its own, it is clear that **there is no, or at least no sufficient, analogy with those other relationships to justify its inclusion within the joint interest family of relationships**" (para 84).

The inclusion of the company shareholder relationship within the joint interest privilege family was based on "**unthinking habit**" rather than "in-depth analysis" (para 91).

Circumstances-Based Analysis

Kawaley LJ in the Court of Appeal advanced an approach which would require an **assessment** to be made as to whether the interests had been joint in the **particular circumstances**.

The Privy Council found that the approach would "make it all but impossible for directors to know, when deciding whether or not to seek legal advice, whether the advice once received would be privileged" (para 93).

The Board found that this "**unacceptable uncertainty**" would deprive privilege of its intended objective.

The Privy Council emphasised how **unsuitable** such an approach would be, at least in a **corporate context**, "as marking the boundary of a **fundamental right** to seek legal advice in confidence" (para 101).

Willers v Joyce Direction

This case was an appeal from the Court of Appeal for **Bermuda**, and therefore its impact on the courts of England and Wales had to be considered.

In this case it was unclear whether a **Willers v Joyce (No 2) [2016] UKSC 44** direction was formally required.

Nevertheless, for the avoidance of doubt, **the Board did make such a direction**.

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IF WE CAN ASSIST FURTHER, PLEASE
FEEL FREE TO CONTACT -
NO5 CLERKS - BP@NO5.COM
ALEXANDER HEYLIN - AHE@NO5.COM
0845 210 5555