INFORMATION ASYMMETRY AND SHAREHOLDER REMEDIES IN CONTEMPORARY COMPANY LAW*

Abstract

The modern corporation is based on a key division between the owners of capital and those who control it. Shareholders provide capital and take on the residual risk; Directors and managers have better knowledge of the activities, finances and prospects of the company. 'Information asymmetry' is a structural imbalance in economics that allows for opportunities to exploit others, engage in self-dealing and diminish shareholder value. The article looks at the nature of information asymmetry in corporate governance and challenges its effectiveness in mitigating its effects through shareholder remedies under modern company law. The article builds on the foundational economic concepts of adverse selection and signaling, the agency-cost theory, and comparative statutory and case law from Nigeria, the United Kingdom, and the United States as it chronicles the development of disclosure requirements, insider-dealing bans and corporate governance codes to reduce the information gap between controllers and outsiders. It then examines the detailed doctrines of the key remedies available for oppression, mismanagement or fraud where the relationship becomes unfairly prejudicial: the derivative action, the statutory remedy for unfairly prejudicial and oppressive conduct, the statutory right of access or inspection of company information, appraisal and buy-out rights, and the equitable remedy of winding up on the just and equitable ground. The rule in Foss v. Harbottle and its exceptions are reviewed, as well as the landmark decisions of the courts on oppression and unfair prejudice, and the reforms in the Companies and Allied Matters Act 2020, Investments and Securities Act 2025 and Companies Act 2006. The article suggests that although current statutory reform has made minority shareholder remedies more liberal, structural, procedural and institutional barriers remain that have a dampening effect on their actual power, especially when minority ownership is concentrated and institutional enforcement is weak, such as in the United States. It also argues that remedies are not sufficient to eliminate information asymmetry; they need to be backed up by a strong ex ante disclosure framework and empowered regulatory oversight, alongside transparency that is enabled through technology. The article concludes by suggesting a multi-layered agenda for reform, which includes mandatory disclosure, cost-shifting litigation funding provisions, qualified judicial capacity and regulation-led enforcement, to make shareholder remedies more than just theoretical in modern corporate law.

Keywords: Information Asymmetry, Shareholder Remedies, Corporate Governance, Derivative Action, Unfair Prejudice, Minority Shareholders

1. Introduction

The goal of company law is, to some degree, to 'mediate' between those who invest capital and those who are charged with deploying it profitably.[1] The typical public company is characterized by the separation of ownership and control: shareholders, who may be many and far-flung, entrust the day-to-day management of the company to a board of directors and management team.[2] This division, which is necessary if the various parts of the economic system are to be specialized and capital pooled, is also the source of a constant and constant problem information asymmetry. Directors and managers, being close to the business, always have more information about the company's real financial situation, risks and prospects than the shareholders who they represent.[3] In a market context, where this informational advantage is not regulated by law or market discipline or governance arrangements, it gives management the ability to engage into managerial opportunism, self-dealing, earnings manipulation and even outright fraud at the shareholders' expense.[4]

The issue isn't just limited to public companies with widely scattered bases of ownership. In Nigeria, where ownership of the business is often concentrated in a few hands, namely the family, individual entrepreneurs, or state, information asymmetry often takes the form of a contest between the controlling and minority shareholders, the latter of which are sometimes denied access to 'material information about the business they invest in'.[5] The law in both settings has traditionally taken two complementary paths: imposing disclosure and transparency responsibilities to reduce the information gap in advance of its occurrence; and providing remedies to enable shareholders to seek remedies for misconduct where information asymmetry has played a role in the misconduct.

This article focuses on the second track that is the effectiveness of shareholder remedies as a remedy against information asymmetry in modern company law, and does so in the context of the disclosure regime and system which result in the occurrence of information asymmetry. It is presented in nine sections. Part 2 provides further explanations of the concepts

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[1] Easterbrook, F.H. and Fischel, D.R., *The Economic Structure of Corporate Law*, Harvard University Press, 1991.

[2] Berle, A.A. and Means, G.C., *The Modern Corporation and Private Property*, Macmillan, 1932.

[3] Coffee Jr, J.C; 'Market Failure and the Economic Case for a Mandatory Disclosure System'; *Virginia Law Review*, Vol 70, 1984, 717.

[4] Gilson, R.J. and Kraakman, R.H., 'The Mechanisms of Market Efficiency'; *Virginia Law Review*, Vol 70, 1984, 549.

[5] La Porta, R., Lopez-de-Silanes, F. and Shleifer, A; 'Corporate Ownership Around the World'; *Journal of Finance*, Vol 54, 1999, 471.

of information asymmetry, the shareholder-company relationship and shareholder remedies. In part 3, the theoretical foundations of information asymmetry are explored, using the theories of agency theory and the economics of adverse selection and signaling. In part 4, the role of information asymmetry in corporate governance in the form of insider dealing and selective disclosure and related party transactions is discussed. In Part 5, the statutory and regulatory disclosure structure in Nigeria, the United Kingdom and the United States is surveyed. Part 6 provides a comprehensive doctrinal analysis of the most important shareholder remedies. Part 7 examines certain important judicial decisions affecting the nature of these remedies. Part 8 points to the problems that remain with shareholder remedies. A short comparative synthesis is included in part 9. The article ends with a conclusion and recommendations.

2. Conceptual Clarifications

Information Asymmetry

Information asymmetry is a condition in any type of transaction or relationship in which one party has important information that is not known by the other party, and the party with the advantage can use that information to their own benefit.[6] The informed parties in the corporate setting are mainly those who hold the majority of shares (directors, controlling shareholders and management) and the less-informed parties are the minority or outside shareholders, as well as prospective investors, and sometimes creditors.[7] The existence of information asymmetry is not a legal violation per se, and some amount of information advantage is an unavoidable consequence of splitting the labor between owners and managers. The law is concerned with the improper use of such advantage to the detriment of shareholders' economic interests or the breach of their statutory and equitable rights.

Shareholder-Company Relationship

A shareholder is an individual who agrees to be a member of a company and has their name recorded in the companies' register of members.[8] From a strictly legal perspective in light of the doctrine of separate corporate personality established in Salomon v Salomon & Co Ltd shareholders have a bundle of proprietary, participatory and remedial rights, including rights to vote, dividend, information and remedy when the company's affairs are conducted unfairly prejudicial to the fortunes of shareholders.[9]

Shareholder Remedies

Shareholder remedies are a range of statutory, equitable and common law remedies that a shareholder may have against the company, or against itself, in respect of acts which cause it harm. They comprise of the derivative action, the statutory remedy for unfair prejudice and oppression, the right to petition for winding up on the just and equitable basis, appraisal or buy-out rights and statutory rights of inspection and information.[10] Their core purpose is to corrective – to re-establish the position that information asymmetry and associated misbehavior have skewed.

3. Theoretical Framework

Agency Cost Theory

Jensen and Meckling's agency-cost theory, in which they viewed a firm as a collection of contracts, in which the shareholders (the principals) were responsible for making decisions on behalf of the firm and they delegated that authority to the managers (the agents), was the most influential theory of information asymmetry in the context of corporate law.[11] Agency costs occur due to an agents' superior information and his or her interests not being fully aligned with those of principals, in the form of monitoring costs, bonding costs and residual loss. The agency problem is both cause and effect: Managers' informational advantage allows them to engage in perquisite consumption and empire building at the shareholders' cost, and monitoring managerial conduct is harder because of the informational advantage.

Market for Lemons and Adverse Selection

In the case of a used car market, this adverse-selection situation arises because of George Akerlof's seminal analysis of when sellers know more about the quality of goods than buyers and when buyers cannot tell good products from bad: when that's the case, buyers discount prices to offset the risk of purchasing a 'lemon', which drives the best sellers out of the market, and reduces overall market quality.[12] Applied to finance, this principle is the basis for the under-investment and mispricing in unregulated securities markets: investors know little about the quality of a company's governance and

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[6] Akerlof, G.A; 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism'; *Quarterly Journal of Economics*, Vol 84, 1970, 488.
[7] Stiglitz, J.E; 'Information and the Change in the Paradigm in Economics'; *American Economic Review*, Vol 92, 2002, 460.
[8] Companies and Allied Matters Act 2020 (Nigeria), s.122.
[9] *Salomon v Salomon & Co Ltd* [1897] AC 22.
[10] Orojo, J.O; *Company Law and Practice in Nigeria*, 5th edn, LexisNexis Butterworths, 2008.
[11] Jensen, M.C. and Meckling, W.H; 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure'; *Journal of Financial Economics, Vol 3*, 1976, 305.
[12] Akerlof, G.A; 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism'; *Quarterly Journal of Economics,* Vol 84, 1970, 488

prospects, so they demand a discount or will simply pull out, and the cost of capital will rise for well-governed firms that will create room for poorly-governed firms to continue to exist undetected.[13]

Signaling Theory

A complementary insight comes from Michael Spence's signaling theory: parties who have information can reduce adverse selection by voluntarily sending out signals of quality, which are costly enough to be easily faked by low-quality firms, but not by high-quality ones.[14] In this sense, mandatory disclosure regimes and corporate governance codes and gatekeeper institutions like auditors and credit rating agencies are also institutionalized forms of market signaling, which complement voluntary market signaling where it is missing.

4. Examples of Information Asymmetry in Corporate Governance

Within the practice of corporate governance, information asymmetry takes several forms. Insider dealing is defined as the sale or purchase of a company's securities by persons with an insider relationship with the company (directors, officers, major shareholders) who have access to unpublished price-sensitive information and make a profit on the sale or purchase at the expense of the persons who do not have that information.[15] Nigerian law explicitly deals with the issue: section 111 of the (now repealed) Investments and Securities Act, 2007, prohibited dealing by insiders who have access to unpublished price-sensitive information, and this prohibition was largely preserved and enhanced under the Investments and Securities Act, 2025 which repealed the 2007 Act and broadened the regulatory and enforcement mandate of the Securities and Exchange Commission in the capital market, including by introducing the Legal Entity Identifier requirements to enhance the transparency of transactions.[16]

Selective and delayed disclosure occurs when management provides material information to favored investors, analysts or counterparties before it provides the same information to the broader market or before the information is required to be disclosed under the laws and regulations.[17]

The most significant type of information asymmetry that can arise is related-party transactions, where the party that would potentially know best about the terms and reasons for a transaction is also the party with a motive to hide its self-interest in that transaction, namely the controlling shareholder or director.[18]
However, corporate collapses like Enron and WorldCom, which highlight the use of the discretion provided by financial reporting standards to present a company's financial position more favorably than it deserves, vividly demonstrate the ways in which earnings management and creative accounting are used in financial reporting.[19]

In Nigeria and many other developing countries, the concentrated ownership structure creates a form of information asymmetry in which information is easily available to the controlling group (family members and founder-directors), but not to the minority outside owners, giving rise to a 'principal-principal' conflict, as opposed to the classic 'principal-agent' conflict of dispersed-ownership jurisdictions.[20]

5. The Disclosure Framework: A Comparative Overview

Nigeria

Under the Nigerian Company Law, there are various overlapping disclosure requirements. The Companies and Allied Matters Act 2020 stipulates that companies have to keep statutory registers, submit and file annual returns, financial statements and interest of the directors in contracts.[21] The Investments and Securities Act 2025 enacts the Securities and Exchange Commission as the top regulator of the capital market, and gives it significantly greater powers to require ongoing disclosure from public companies; to approve or disapprove takeovers and business combinations; and to take enforcement action for failure to comply, such as via the Investments and Securities Tribunal.[22] The Nigerian Code of Corporate Governance 2018 adds to these statutory requirements disclosure expectations grounded in good corporate governance in respect of the composition of the Board, related party transactions and risk management.[23] The Nigerian

[13] Stiglitz, J.E; 'Information and the Change in the Paradigm in Economics'; *American Economic Review,* Vol 92, 2002, 460.
[14] Spence, A.M; 'Job Market Signaling'; *Quarterly Journal of Economics*, Vol 87, 1973, 355.
[15] Investments and Securities Act 2025 (Nigeria)
[16] SEC Nigeria; 'Tinubu Signs Investment and Securities Act 2025 into Law', *SEC Press Statement*, March 2025.
[17] Market Abuse Regulation (EU) No 596/2014, as retained in UK law.
[18] Ogowewo, O, 'Related Party Transactions and Corporate Governance in Nigeria'; *Nigerian Journal of Corporate Law*, Vol 10, 2019, 45.
[19] Sarbanes-Oxley Act 2002 (US), Pub L 107-204.
[20] La Porta, R., Lopez-de-Silanes, F. and Shleifer, A; 'Corporate Ownership Around the World', *Journal of Finance,* Vol 54, 1999, 471 (n 5).
[21] Companies and Allied Matters Act 2020 (Nigeria), Parts B and C.
[22] Investments and Securities Act 2025 (Nigeria) (n 15).
[23] Nigerian Code of Corporate Governance 2018.

Exchange Group's Listing Rules also contain other obligations on listed companies for continuous disclosure, including the requirement to notify the market of insider share trading.[24]

United Kingdom

The disclosure framework in the United Kingdom is based on the Companies Act 2006, which contains detailed provisions on directors' duties, related-party transactions and strategic reporting as well as the UK Corporate Governance Code which is enforced by the Financial Reporting Council, a code of conduct that operates on a 'comply or explain' basis and covers issues relating to board effectiveness, remuneration and risk oversight.[25] The insider dealing and disclosure of inside information banned under the EU-derived Market Abuse Regulation (MAR) are now present in UK law as a consequence of Brexit.[26]

United States

Regulatory requirements for public companies generally include both periodic disclosure and continuous disclosure. Periodic and continuous disclosure are two fundamental elements of United States federal securities law, especially the Securities Exchange Act of 1934. The most important means of private securities fraud lawsuits is Rule 10b-5 of Securities Exchange Act of 1934.[27] The Sarbanes-Oxley Act 2002, which was passed in the wake of large accounting scandals, imposed strict new regulations on the certification of internal controls, auditor independence, and the criminal liability of corporate fraud, explicitly addressing information asymmetry that allowed in the past for the big scandals.[28]

Despite these disclosure frameworks, no jurisdiction has been able to eradicate information asymmetry: while it reduces the gap, disclosure does not eliminate it; disclosure efforts are not perfect, and it is because they are not perfect that there must be ex post shareholder remedies.

6. Shareholder Remedies: A Doctrinal Analysis

The Rule in *Foss v Harbottle* and its Rationale

The proper-plaintiff rule, which was laid out in Foss v Harbottle, is the starting point of any discussion of shareholder remedies: when a wrong is committed to a company, the company, taken as a whole, is the proper plaintiff and individual shareholders have little standing to sue on the company's behalf.[29] It is based on respect for the legal personality of the company and the principle of majority rule, but has been long criticized as a potential barrier to holding wrongdoing directors and controllers liable for their misconduct, particularly when the issue is one of information asymmetry and it is the majority directors whose actions are wrongdoing which prevent the company from bringing an action against them.[30]

Exceptions to the Rule and the Statutory Derivative Action

The Rule is not applicable in all cases, and there are, in fact, exceptions. There are exceptions to the Rule, and the Rule is not applicable in all cases. Courts saw the rule as open to abuse, and created exceptions allowing for a minority's action for a wrong done by the wrongdoers who are also in control: exceptions based on a 'fraud on the minority'.[31] Courts recognized the rule as open to abuse and created exceptions where a minority could sue for a wrong done by the wrongdoers who are also in control – exceptions based on a 'fraud on the minority'. These common law exceptions were often very narrow and had a tenuous basis in procedure, which led to reform of the statute in all common law jurisdictions. The companies and allied matters act 2020, sections 346 to 352 establishes a wide ranging statutory regime for derivative actions, which allows a member (or a former member), a director or the corporate affairs commission to apply for leave to institute an action on behalf of, and in the name of, the company, including crucially actions on behalf of a subsidiary, which were not available under the predecessor act, companies and allied matters act 2004.[32] The applicant is required to establish the prima facie case and convince the Court that the action is taken in good faith and it seems to be in the interest of the company, which addresses the situations where controlling insiders, by taking advantage of their information advantage, cause or allow damage to the company.[33] The equivalent statutory derivative claim under the Companies Act 2006 is located in sections 260-269 which also require leave of court and allow claims based on negligence, default, breach of duty or breach of trust of a director.[34]

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[24] Nigerian Exchange Group; Rulebook, Circular NSE/RD/LRD/CIR2/20/01/15 on Notification of Share Dealing by Insiders.
[25] Companies Act 2006 (UK), ss.172–177, 414A. See Also Financial Reporting Council; *The UK Corporate Governance Code*, 2018.
[26] Market Abuse Regulation (EU) No 596/2014 (n 17).
[27] Securities Exchange Act of 1934 (US), s.10(b); 17 CFR § 240.10b-5.
[28] Sarbanes-Oxley Act 2002 (US), Pub L 107-204 (n 19).
[29] *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189.
[30] Ferran, E. and Ho, L.C; *Principles of Corporate Finance Law*, 2nd edn, Oxford University Press, 2014.
[31] *Edwards v Halliwell* [1950] 2 All ER 1064.
[32] Companies and Allied Matters Act 2020 (Nigeria), ss.346–352.
[33] Companies and Allied Matters Act 2020 (Nigeria), s.346 (2).
[34] Companies Act 2006 (UK), ss.260–269.

The Remedy for Unfairly Prejudicial and Oppressive Conduct

Perhaps the most important shareholder remedy of modern times is the remedy of relief from unfairly prejudicial or oppressive conduct, which directly addresses the instances where minority shareholders are adversely affected by information asymmetry, whether by excluding them from management, by failing to provide them with information about the company's financial affairs, by diverting company opportunities away from them or by otherwise disadvantaged. The Companies and Allied Matters Act 2020 (sections 353-357), provides powers for the petitioner to petition the court where the affairs of a company have been or are being conducted in a manner prejudicial or oppressive to the interests of a part of the members, including the petitioner.[35] The court has wide powers of remedy, including the ability to vary or set aside transactions, to regulate the way in which the company carries on its business, to order the purchase of the shares of a member by the company or by other members of the company and, in extreme cases, to wind the company up.[36] The protection afforded to the members against unfair treatment in the interests of the company by the equivalent English remedy under section 994 of the Companies Act 2006 is also comprehensive, in that English courts have upheld a wide range of claims that are considered to be unfairly prejudicial to the interests of the members – including claims for breach of legal rights – and claims for breach of legitimate expectations, which are based on the understandings on which members entered the company, are particularly welcome in this context.[37]

Winding Up on the Just and Equitable Ground

When there is an irretrievable breakdown in the relationship of the parties and, in particular, when one party has monopolized the information of the company and excluded the other party from any genuine participation in the management of the company, a shareholder may petition for the company to be wound up on the just and equitable ground.[38] The remedy is not so much used these days, following the more flexible unfair prejudice remedy but it remains available and is particularly suited in small, closely held or quasi-partnership companies where the exclusion of a member from the management of the company, together with withholding financial information, undermines the basis on which the parties entered into the association in the first place.[39]

Statutory Rights of Inspection and Access to Information

A more direct approach to information asymmetry is the statutory rights to disclose information to shareholders in the first place, as opposed to only after damage is done. They involve the right to inspect the register of members, the minutes of general meetings, and financial statements of the company (in some jurisdictions) and minutes of the directors' meetings. They also include the receipt of audited financial statements and the directors' reports at the annual general meeting.[40] Such rights act as a preventative remedy because they make it more cost-effective for shareholders to check management's actions, thus limiting the potential for information asymmetry to lead to unchecked opportunism, and an informed shareholder stands a greater chance of identifying actions that would justify a derivative and/or unfair prejudice claim.

Seller's Appraisal and Buy-Out Rights

In certain transactions like mergers, schemes of arrangement or fundamental changes in the company's constitution, the rights of dissenting shareholders to call for appraisal or to receive a buy-out are frequently included, thus giving dissenters the option of doing so or a right to be bought out at a fair price instead of being forced to remain a shareholder in the company for which they did not agree to the transaction.[41] Appraisal rights act as a check against those who can use their superior information about the actual value of the company and the fairness of the proposed transaction for an undervalue to force it on minority shareholders.

Personal Actions and the Reflective Loss Principle

A shareholder may institute a personal action (as opposed to a derivative action), if a wrong has been committed against him personally, for example where he has been denied voting rights, his shares are not registered, or he has been breached by a shareholders' agreement. But courts have always enforced the ‘reflective loss’ principle to preclude personal claims for loss that is simply a reflection of loss suffered by the company, thus reinforcing the primacy of the derivative action as the mechanism for company-level loss.[42]

7. Judicial Treatment: Key Case Law

Judicial rulings have significantly influenced the actual development of shareholder remedies. In Ebrahimi v Westbourne Galleries Ltd the House of Lords acknowledged that in companies where personal relationships and mutual trust are the foundation, common law rights may be outweighed by the interests of equity and that the exclusion of a member from

[35] Companies and Allied Matters Act 2020 (Nigeria), ss.353–357.
[36] Companies and Allied Matters Act 2020 (Nigeria), s.355.
[37] Companies Act 2006 (UK), s.994.
[38] Companies and Allied Matters Act 2020 (Nigeria), s.571
[39] *Ebrahimi v Westbourne* Galleries Ltd [1973] AC 360.
[40] Companies and Allied Matters Act 2020 (Nigeria), ss.245, 374–378.
[41] Companies and Allied Matters Act 2020 (Nigeria), s.715 (schemes of arrangement and dissenting shareholder valuation).
[42] *Johnson v Gore Wood & Co* [2002] 2 AC 1.

the management of a company (which was often accompanied by the withholding of information concerning the company's affairs) could amount to an injustice to justify a petition for winding up for just and equitable reasons.[43] In Re Jermyn Street Turkish Baths Ltd, the English court clarified that there must have been a 'visible departure from the standards of fair dealing' in order for there to be oppression and in Re R.A. Noble & Sons (Clothing) Ltd the court decided that the requirement for unfair prejudice does not require the conduct to be a deliberate wrong and may be a conduct that is unintentionally prejudicial to a shareholder's interests.[44] The *House of Lords in O'Neill v Phillips*[45] further elaborated on the concept of unfair prejudice, which is generally based on a failure to observe the terms on which the parties entered into the relationship and have agreed to run the company's affairs – whether those terms are reflected in the articles of association or there are additional informal understandings. The ruling of the Supreme Court in *Yalaju-Amaye v Associated Registered Engineering Contractors Ltd.*[46] provided good guideline for the statutory changes that have since been captured in the Companies and Allied Matters Act 2020 as regards minority shareholders' rights against oppressive act of controlling shareholders. More recently, however, in *Ogunade v Mobil Films (WA) Ltd,*[47] Nigerian courts faced the practical application of the statutory language of 'oppression' and 'unfair prejudice', as core terms were left undefined by the statute, and the problems of interpretation remain as they continue to do so. The principle of separate corporate personality, which is the basis of all these remedies, is set out in *Salomon v Salomon & Co Ltd,* which clarifies why, generally speaking, the company is the right party to sue for wrongs done to it, and why the exceptions to this rule for actions brought by the shareholders must be strictly limited.[48]

8. Challenges Impeding the Efficiency of Shareholder Remedies

While today's shareholder remedies are quite sophisticated in their doctrinal structure, there are some ongoing problems that inhibit their utility as remedies for information asymmetry.

The need for leave of court to proceed with a derivative action is meant to prevent frivolous claims, but is still a heavy burden on minority shareholders, who by definition have an information disadvantage and may find it difficult to get a prima facie case without access to the very corporate records that would form the foundation of that case.[49]

Second, the costs of litigation are also a major obstacle, especially in jurisdictions lacking well-developed derivative or class action funding arrangements; shareholders may face the prospect of incurring a cost that outweighs the pro-rata value they would derive from a successful company action, creating a collective action problem that inhibits the filing of meritorious cases.[50]

Third, in most jurisdictions, neither the term 'oppression' nor the term 'unfair prejudice' is defined by statute, and so courts have had to flesh out the terms over time through case law, leading to uncertainty and unpredictability that may stop potential claimants in their tracks and make legal advice difficult.[51]

Fourth, the structural disadvantage of minority shareholders, when coupled with weak judicial capacity, slow court processes and limited resources for regulatory enforcement, can make a technically available remedy become practically non-existent.[52]

Fifth, remedies designed to do something after the event (ex post) will not be able to cure the economic loss that has been caused by the information asymmetry, as the value of the company will have been irretrievably lost by the time the remedy is granted by a party who can successfully demonstrate that they have suffered unfair prejudice.[53]

9. Comparative Synthesis

The analysis made above indicates that generally speaking, the jurisdictions reviewed have moved away from the Foss v Harbottle, 'rigid and majority-protective' principle to more flexible, discretionary types of statutory remedies based on fairness and reasonable expectations. The Companies and Allied Matters Act 2020 in Nigeria has introduced derivative standing in respect of wrongs to subsidiaries as well as widened standing to seek relief from oppression, which is similar

[43] *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (n 40).
[44] *Re Jermyn Street Turkish Baths Ltd* [1971] 3 All ER 184. See Also; *Re R.A. Noble & Sons (Clothing) Ltd* [1983] BCLC 273.
[45] *O'Neill and Another v. Phillips and Others* [1999] UKHL 24
[46] *Yalaju-Amaye v AREC Ltd & Others* (SC 198/198) [1990] ...
[47] *Ogunade v. Mobile Films (W.A) Ltd* (1976) 2 FRCR 10
[48] *Salomon v. Salomon & Co Ltd* [1897] AC 22
[49] Davies, P.L. and Worthington, S, *Gower's Principles of Modern Company Law*, 10th edn, Sweet & Maxwell, 2016.
[50] Armour, J, 'Enforcement Strategies in UK Corporate Governance: A Roadmap and Empirical Assessment'; in Armour, J. and Payne, J. (eds); *Rationality in Company Law,* Hart Publishing, 2009.
[51] Omaplex Law, 'Protecting Minority Shareholders in Nigeria: A Comparative Analysis of the Remedy for Oppressive or Unfairly Prejudicial Conduct in Nigeria and Canada'; Omaplex Legal Insights, 2023.
[52] Akanki, E.O, 'Minority Shareholders' Protection under the Companies and Allied Matters Act', *Nigerian Current Law Review*, Vol 6, 2015, 1.
[53] Nolan, R.C., 'Indirect Investors: A Greater Say in the Company?'; *Journal of Corporate Law Studies, Vol 3, 2003, 73.*

to the Companies Act 2006 in England and Wales.[54] However it is important to note that there is also a critical structural difference between the two countries – UK company law is set against a backdrop of dispersed public ownership, deep capital markets, and a well-resourced Financial Reporting Council and Financial Conduct Authority that are generally not the same obstacles to opacity in Nigerian company law, with often concentrated and family based ownership structures and comparatively weak regulatory enforcement capacity leading to formal but materially different outcomes when faced with similar remedies.[55] This means that remediation's cannot be simply replicated across jurisdictions without consideration to the jurisdictional context with regard to the nature of the underlying ownership arrangement and institutional capacity.

10. Conclusion and Recommendations

Information asymmetry is not a byproduct of the corporate form of organization, but rather a structural characteristic of the separation of ownership and control that is the hallmark of modern company. But, no matter how complex and sophisticated the legal system is, the possibility of withholding, manipulating or misusing information in favor of less informed shareholders and at their expense will exist where capital is invested in managers or controlling shareholders who have superior knowledge of the affairs of the company. The asymmetry which what company law has achieved by decades of statutory development and judicial refinement is not that it is removed, but that it is layered: Disclosure requirements which limit the gap before it has caused harm, and a series of shareholder remedies (the derivative action, the unfair prejudice and oppression remedy, just and equitable winding up, appraisal rights and statutory inspection rights) which provide a way of redressing the balance when the gap has been exploited. The trajectory in the doctrinal history of these cases from Foss v Harbottle to modern unfair prejudice analysis represents a greater understanding that an equal footing, formal equality of shareholders is futile without substantive access to information and remedies to hold controllers accountable.

Meanwhile, this article has made it clear that a remedy provided by statutory instruments of law is not necessarily accessible or effective. The evidentiary requirements of derivative actions, the complexity and expense of oppression litigation, the ambiguity of undefined statutory terms, and the institutional weaknesses of concentrated ownership all leave a gap between promise and delivery of shareholder protection. The shortfall is especially felt by minority shareholders in closely held and family-owned businesses, who typically do not have access to any information to detect misconduct nor sufficient means to pursue it if it is detected. The comparative analysis of Nigeria, the United Kingdom and the United States has shown that the doctrinal machinery that is available in these jurisdictions has come together significantly, but the level of protection that they provide are very different due to factors such as the depth of capital markets, the strength of regulatory institutions and the nature of corporate ownership.

The core theme of this inquiry thus is that the regulation of information asymmetry and shareholder remedies cannot be separated from each other and should be viewed as two parts of the same regulatory problem. If a legal system has a lot of remedies for damages, but weak ex ante disclosure requirements, the courts will be filled with cases of harm that could have been avoided if there had been stronger disclosure requirements; and if the legal system is strong on disclosure and weak on ex post remedies, disclosure requirements will be observed more on the form than in the spirit. The lawfully effective modern company law is one that makes disclosure and remedy mutually reinforcing aspects of one system of accountability that is continuously adjusted to meet changing company practices, ownership structures and the realities of the shareholders whose interests it serves.

In light of the above analysis, company law reform should focus more on improving the *ex ante* disclosure framework which minimises the need for information asymmetry to arise in the first place, and less on ex post litigation to deal with its effects. It involves increasing disclosure of related-party transactions, director dealings and material corporate developments, through new and granular disclosure, coupled with technology-driven reporting systems that enable regulatory and shareholder viewing and verification of corporate information in near real time. Regulatory agencies like the Nigeria's Securities and Exchange Commission (SEC) and the Corporate Affairs Commission (CAC) should be well resourced and empowered to proactively monitor disclosure compliance, rather than being merely reactive complaint-handling agents; and corporate governance codes should be endowed with greater normative authority, either by adoption of the mandatory 'comply or explain' approach with sanctions for failure to comply, or by direct incorporation of key corporate governance standards into statutory obligations.

Remedial, on the other hand, the focus of reform should be on reducing the practical obstacles now inhibiting meritorious shareholder claims. Court and/or legislative consideration of creating more explicit statutory guidance, or non-exhaustive statutory factors, of what constitutes 'oppressive' or 'unfairly prejudicial' conduct, so to limit the interpretation issue and allow the courts to adapt to new cases. Mechanisms for cost-shifting and litigation funding, such as indemnity orders to

[54] Cronfa/Swansea University Research Repository; 'A Comparative Analysis of Minority Shareholder Protection under CAMA 2004, CAMA 2020 and the Companies Act 2006'; 2021.

[55] La Porta, R., Lopez-de-Silanes, F. and Shleifer, A; 'Corporate Ownership Around the World', *Journal of Finance,* Vol 54, 1999, 471 (n 5).

successful derivative claimants, and the seeking of contingency and third-party litigation funding within the confines of regulation should be explored to overcome the collective action problem that presently makes it disincentive for minority shareholders to bring meritorious claims. Judiciary systems should create specialized commercial or company law divisions, where judges have prior experience in corporate and securities law and where the judges are well resourced, to ensure that the shareholder remedies are not rendered impracticable due to the time it takes to hear and review cases in general civil litigation in the jurisdictions where such remedies are practiced.

Lastly, reform measures need to be considered in terms of the prevailing nature of ownership in the jurisdiction in question. Remedies and disclosure requirements should be tailored to suit markets like Nigeria, where the majority of markets are concentrated in the hands of the founder(s) and the state, with greater protections around exclusion from management boards, mandatory representation of minority shareholders on key committees, and pre-emptive rights to protect against dilution from information-rich share sales. Shareholder education programmes to enhance the ability of minority shareholders to exercise their rights, monitor them and understand their rights should also be supported by regulators, professional bodies and law reform commissions, as even the most effective remedy is of little value if the shareholders whom it is intended to protect are not aware of it, or are unable to exercise their rights. These measures, combined, would help bring company law closer to its original promise to those who contribute capital to an enterprise to be not only given a nominal right of ownership, but the information and means to be truly held accountable by those who control it.