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<b>Authors(s)</b>	Brennan, Niamh
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### **A Concentration of Minds**

*Prof Niamh Brennan discusses some corporate governance implications in  
the context of the recent Clery's closure*

Corporate governance, as the phrase implies, is about the governance of companies. To fully understand corporate governance, we must understand the nature of companies. This is all the more so following the Clerys' debacle in June 2015.

The primary purpose of companies is to provide the protection of limited liability to their owners (shareholders, members). This means that the liability of shareholders is limited to the capital they put into their companies. To be successful, risks have to be taken. The thinking is that the provision of limited liability will encourage entrepreneurs to take risks, by establishing new businesses, which will employ more people, which will then create more wealth, to the overall betterment of society.

Entrepreneurs' assets are not on the line if the business fails. All entrepreneurs lose is the capital they put into the business. The capital contributed to businesses by their owners can be substantial.

In a judgment in January 2015 in respect of Pierce Contracting (in liquidation) – which found in favour of the directors – the shareholders/directors put almost €15 million of their own money into the company (over and above the capital already tied up in the company) to try and keep it going.

Companies are legal constructs – virtual entities. In law, they are treated as separate legal persons, separate from their owners. Companies, as separate legal persons, have features that distinguish them from natural persons. A comparison of some of the differences is illuminating.

Companies have the potential to generate wealth, but they also have the potential to abuse their power at the expense of ordinary people. Limited liability is a privilege – a gift from society to encourage entrepreneurship – not a right. The issue for society is the rights of individuals over overly powerful institutions.

The profit made by US “turnaround” specialists, Gordon Brothers, appears to have been achieved by playing around with group structures, moving the valuable O'Connell Street property into a separate company (probably a subsidiary company) and selling it on to property investment consortium Natrium, co-owned by chartered accountant Deirdre Foley's D2 Private and a London-based fund manager, Cheyne Capital. This left the trading company without its most valuable asset. Thus it had to be put into liquidation immediately.

Gordon Brothers purchased Clerys' in 2012 for €14 million. They sold the fine building on O'Connell Street for a reputed €29 million. They made a tidy profit of €15 million in three years. While Gordon Brothers' shareholders have made millions in a short three-year period, approximately 460 Clery's employees have lost their jobs. The law appears to

allow the use of legal persons (subsidiary companies) to abuse natural persons (460 Clery's employees) with impunity.

Society, through its parliamentarians and law makers, gifts to entrepreneurs protection through limited liability companies so that they can pursue profitable projects for their own benefit and reward, and for the benefit and reward of company stakeholders such as employees.

The objective of limited liability is that shareholders and stakeholders be rewarded. It was never intended that such a gift from society would be used to reward shareholders through harming stakeholders.

If limited liability were a privilege rather than a right, the State would have more power. It could threaten a company with losing its right to limited liability. This would concentrate the minds of company owners somewhat. We should have laws that value the freedom of individuals over manmade institutions.

### **Matters of Governance**

These, and many other issues, form the basis of discussion and debate at lectures in UCD. Now in its 11<sup>th</sup> year, UCD's successful Diploma in Corporate Governance is of interest to those who wish to obtain an accredited qualification demonstrating expertise in governance. The programme is suitable for company directors, senior managers and all those with an interest in governance. The wealth of business experience of participants, together with the expertise of the lecturers, enriches the learning experience. The programme runs two evenings a week over two 12-week semesters and covers all aspects of corporate governance. Applications are currently being accepted.

For more information

*w: [corporategovernance.ie](http://corporategovernance.ie)*

*e: [liz.knight@ucd.ie](mailto:liz.knight@ucd.ie)*

*t: 01 716 8801*