UNIVERSITY OF TURKU
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Climate Litigation and Shareholder Activism in Finland and the United Kingdom

A Comparative Analysis of Corporate Law Regulation on Derivative Claims: Exploring the Contrasting Approaches Regarding Access to Court

OT00BE39 Comparative Legal Research
Bachelor's Thesis

Author:
Laura Repo

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Abstract page

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This thesis explores the evolving role of shareholder activism in contemporary corporate governance, particularly focusing on climate-related issues. Traditionally, shareholder activism has been associated with financial concerns, but it now increasingly encompasses environmental responsibilities. This study examines the legal frameworks in the UK and Finland to understand how these systems support or hinder shareholder activism in advocating for climate action. The research aims to identify and compare the provisions within the UK Companies Act 2006 and the Finnish Limited Liability Company Act that enable shareholders to bring derivative claims against company management.

By employing a comparative approach, the study seeks to highlight the legislative qualities that effectively promote climate-related corporate responsibility and those that do not. The comparative framework with exactly the UK and Finland offers two contrasting approaches that significantly contribute to this thesis. Exploring the UK derivative claim framework provides insightful remarks on the broader emphasis of minority shareholder protection. Reviewing the framework of Finland, representing the civil law tradition and a less flexible approach, supports to build an intriguing discussion on how the possible limitations of the stricter framework could be approached by adapting principles from the more allowing UK framework.

Previous studies have addressed shareholder activism and its broader implications, but none have specifically focused on the legal provisions supporting derivative claims. This research aims to fill that gap by analysing the mechanisms that allow shareholders to influence corporate decisions on climate issues through legal action. Using a combination of functional method and legal transplantation, the study will interpret relevant legal literature, case law, and international standards. The expected outcome is to demonstrate that shareholder activism for climate action is more feasible in the UK than in Finland, and to argue that a derivative claim is not the right way to engage in climate activism. The legislator should regulate pollution more effectively and companies should also reduce emissions themselves.

Key words: climate change, shareholder activism, derivative claim, company law.

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Abstract page

ON-työ

Oppiaine: Comparative Legal Research
Tekijä: Laura Repo
Otsikko: Ilmastokanteet ja osakkeenomistaja-aktivismi Suomessa ja Yhdistyneessä kuningaskunnassa – oikeusvertaileva analyysi derivatiivisten kanteiden yhtiöoikeudellisesta sääntelystä: eriävät lähestymistavat koskien tuomioistuinkäsittelyyn pääsyä
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Tämä ON-työ tarkastelee osakkeenomistaja-aktivismin kasvavaa roolia nykyaikaisessa yrityshallinnossa erityisesti ilmastokysymysten näkökulmasta. Perinteisesti osakkeenomistaja-aktivismi on liitetty taloudellisiin kysymyksiin, mutta nykyisin se kattaa yhä enemmän myös ympäristövastuun tavoittelun. Tutkimus tarkastelee Yhdistyneen kuningaskunnan ja Suomen derivatiivisten kanteiden, toisin sanoen yhtiön hyväksi ajettujen kanteiden, lainsäädäntöä ymmärtääkseen, kuinka nämä järjestelmät tukevat tai estävät osakkeenomistaja-aktivismia ilmastotoimien puolesta. Työ pyrkii tunnistamaan ja vertailemaan Yhdistyneen Kuningaskunnan Companies Act 2006:n ja Suomen osakeyhtiölain säännöksiä, jotka sääntelevät osakkeenomistajien nostamia, niin sanottuja, johdannaiskanteita yhtiön johdon toimia vastaan.

Lähestymällä aihetta oikeusvertailun keinoin tutkimus pyrkii nostamaan esiin lainsäädännön ominaisuuksia, jotka tehokkaasti tehostavat ilmastoa koskevan yritysvastuun puolustamista derivatiivisen kanteen muodossa, sekä niitä piirteitä lainsäädännössä, jotka eivät tätä tee. Nimenomaan Yhdistyneen kuningaskunnan ja Suomen oikeusjärjestelmiin perehtyminen oikeusvertailevan tarkastelun muodossa on merkityksellistä työn kannalta, koska tämä tarjoaa kahden kutakuinkin vastakkaisen lähestymistavan derivatiivisiin kanteisiin. Yhdistyneen kuningaskunnan sääntelyn tarkastelu tarjoaa arvokkaita huomioita vähemmistöosakkeenomistajien suojelun kattavammasta painotuksesta lainsäädännössä. Suomen oikeusjärjestelmään, edustaen manneroikeudellista traditiota sekä vähemmän joustavaa lähestymistapaa sääntelyyn, perehtyminen luo mielenkiintoisen mahdollisuuden keskustelulle siitä, miten ankaramman sääntelyn mukana tuomio rajoituksia voitaisiin lähestyä hyödyntämällä periaatteita joustavammasta Yhdistyneen kuningaskunnan mallista.

Aiemmat tutkimukset ovat käsitelleet osakkeenomistaja-aktivismia sekä sen laajempia vaikutuksia, muttei kuitenkaan keskittyen derivatiivisia kanteita koskevan sääntelyn tarkasteluun oikeusvertailun keinoin. Tämä työ pyrkii täyttämään kyseisen tutkimusaukon perehtymällä mekanismeihin, jotka mahdollistavat osakkeenomistajien vaikuttamisen yrityksen johdon päätöksentekoon ilmastokysymyksissä derivatiivisen kanteen reittiä käyttäen. Tavoitetta lähestytään hyödyntämällä oikeusvertailevalle tutkimukselle ominaisen funktionalismin metodein sekä käyttämällä työkaluna legal transplant-metodia ja tulkiten relevanttia oikeuskirjallisuutta, oikeuskäytäntöä sekä kansainvälisiä standardeja. Odotettuna tuloksena sekä työtä ohjaavana premissinä on osoittaa että kuvailtua osakkeenomistaja-aktivismia ilmastotoimien tehostamiseksi on helpompi harjoittaa Yhdistyneessä Kuningaskunnassa kuin Suomessa. Lisäksi tutkimus pyrkii perustelemaan, ettei derivatiivinen kanne ole tehokkain keino osakkeenomistajien ilmastoaktivismin edistämiseen. Tämän sijaan lainsäätäjän tulisi tehostaa saastuttamisen sääntelyä, ja yritysten tulisi aktiivisesti pyrkiä vähentämään omia päästöjään.

Avainsanat: ilmastonmuutos, osakkeenomistaja-aktivismi, derivatiivinen kanne, yhtiöoikeus.

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List of Abbreviations

OYL	Osakeyhtiölaki (624/2006), Limited Liability Companies Act
CA 2006	Companies Act 2006
BOD	Board of Directors (of a company)
Foss	*Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189.

Appendices

Annex: Division of Work

This thesis is assembled based on the seminar paper *"Climate Litigation and Shareholder Activism in Finland and the United Kingdom - Comparative Analysis of Corporate Law Regulation on Derivative Claims"*. Both authors, Laura Repo and Waltteri Lindqvist, contributed equally at each stage of the research process of the seminar paper. In order to streamline the work, certain tasks were divided between the authors. However, when conducting the study, key decisions were made in collaboration and each author's written work was continuously reviewed on behalf of the other to achieve a coherent and balanced result. Both authors deeply engaged in all aspects of the research process: conducting a comprehensive literature review, examining the chosen legal frameworks, and assimilating written analysis on the findings.

The initial idea for the research topic was proposed by Lindqvist, which sparked a mutual interest to collaborate on the seminar paper. When approaching the study, the clearest division of work was made regarding the country reports. Lindqvist was primarily responsible for constructing research and exploring the derivative claim framework in Finland, whereas I led the review of the UK Companies Act 2006, its developments, and the current framework. Throughout this part of the process, thoughts and findings were shared to maintain a coherent approach to the work. Additionally, I was primarily responsible for chapters 2, 5 and 1.2 of the Introduction. Nevertheless, Lindqvist actively participated in perfecting these sections of the seminar paper by sharing ideas with me and reviewing my work. Chapter 4 of the seminar paper, including the comparison of the findings from the previous chapter, was drafted by Lindqvist, however, was based on the joint discussions regarding the topic. Other parts, originally written by Lindqvist are the chapter 1.1. of the Introduction and chapter 6, the Conclusions. These sections of the work, as well as those written by me, were edited, and revised in a mutual effort throughout the research process. That being said, the seminar paper remains a collaborative piece and a product of joint effort. Both authors were active participants in conducting the comparative analysis, compiling of the written work, and revising it later based on the feedback received in the seminar sessions.

In course of this thesis' development, parts of the seminar paper were used with modifications and revisions to create an even more balanced final product. To deepen the perspective established in the seminar paper, I broadened the focus on the social, historical, and economic factors influencing divergence between the two systems. Chapter 4.2 reflects

this broader focus. Additionally, the legal transplant perspective in the chapter 5 was further developed, with increased discussion on the way said method facilitates the research. Also, quite many sections were expanded of chapter 1.1 to further clarify the approach of the study. Apart from these focal points of improvement, several sections of the seminar paper were rephrased and revised to seek more clarity and depth. While the groundwork – the research and drafting – of the current piece of study in lies the collaborative seminar paper completed by Lindqvist and myself, altogether this thesis is a separate piece of work made by me.

1 Introduction

1.1 Climate Litigation and Derivative Claims – An Overview

In 2023, the combined turnover of the world's 500 largest companies alone was around $41 trillion.[1] Additionally, there were approximately 359 million companies worldwide in 2023.[2] Companies play a tremendous role in the global economy. They create jobs, provide services and products that people need in their daily lives, and, as a unifying factor, fundamentally generate profit for their shareholders. Nevertheless, these advantages are not obtained without incurring costs. Indeed, companies produce the highest level of greenhouse emissions of any institutions, which is a key contributor to climate change.[3] Therefore, it is obvious that corporate responsibility must be addressed, as reducing their greenhouse gas emissions would be the most effective way to slow climate change.

Banks and banking supervisory authorities, for example, have also considered that climate and other environmental risks are also a viable risk factor for the solvency of the debtor.[4] This means that the bank must consider the environmental risks inherent in the debtor's sector when granting credit. Reducing emissions is therefore not only for "common good" but also for reducing the financial risk for the company.

As stated in the opening paragraph, the purpose of a limited liability company is to generate profit for its shareholders. This obligation can quite simply be derived directly from Chapter 1, Section 5 of the Finnish Limited Liability Companies Act (OYL) and, for example, in the UK, from the Companies Act 2006 (CA 2006) Section 172(1). This could even be the reason for most people to set up a company. As a rule, the foundation decision of the company can be based on, for example, risk mitigation and the limited liability company -model can be an excellent business type to be established because the risks of the business are limited to the company's responsibilities (OYL 1:2 § or CA 2006, Section 3).

Both the British Companies Act and OYL highlight the company's management's responsibility to act with consideration to the company's best interest. This responsibility is safeguarded by provisions on sanctions for the management if they don't successfully act with

1 Fortune 500, 2024.
2 Statista 2024.
3 Wright – Nyberg 2024, p. 1.
4 Lehtonen – Wuolijoki 2022, pp. 290-291.

accordance to their obligations. For instance, a director may be required to pay damages to the company in such case. Similarly, if a director has caused damage to the company through negligence, such damage must be compensated (OYL 1:8 § & 22:1 §). However, the company's interests and general objectives go beyond merely making a profit. For instance, human rights, biodiversity, and climate change standpoints require consideration being involved in corporate endeavours. Legal scholars have also challenged the idea that making a profit is the only way to promote the interests of the company.[5] In such a situation, companies disregarding the concern for corporate responsibility could be seen as systematically acting in violation of the LLC Act. This said, the government proposal regarding the LLC Act, HE 109/2005, does not produce an exhaustive list of all the ways in which the interests of the company can be promoted.[6]

Since environmental risks can have a negative impact on the future of a company, it can be proposed that management's liability could also arise in a situation where a company's failure to address the environmental and climate risks it poses could result in the company's project being ruined by a natural disaster caused by climate change. This, in turn, could lead to a decrease in the value of the company's shares, and the damage to shareholders caused by negligence could be realized. Although this scenario might sound far-fetched, it has already been addressed in courts in the Netherlands and the UK.[7] In these cases, attempts have been made to hold the management liable through a derivative claim. This is one of the key reasons the UK was selected for the study, as its legal system has already tried the remedy of derivative claims as a method for climate litigation. The case law becomes significant in the context of the thesis, as it demonstrates how the remedy is applied to address emerging climate change issues. Therefore, the study approaches the theme by considering the UK system as somewhat more permissive and advanced, as it has already shown to have acknowledged the derivative claim as a method for climate litigation.

To clarify the central terms, it is appropriate to first describe how shareholder activism is understood. Generally, a shareholder activist is defined as a member of the company that pressures the company’s Board of Directors (BOD) to consider certain matters in the managements’ decision making and possible adopt a specific approach. The right to voice

5 Nyström 2016, p. 230.
6 HE 109/2005 vp. s. 129.
7 Milieudefensie et al. v. Shell Plc. (2024) and ClientEarth v. Shell’s Board of Directors (2023).

their concerns in this way is acquired through the ownership of shares within the company.[8] In the context of this thesis, a shareholder activist is understood as a shareholder who seeks to influence the company's climate strategy through the remedies available to them. With the derivative claim mechanism, this likely considers a larger group of the shareholders in UK due to the more permissive framework. Climate litigation, in broader sense, considers all claims – whether brought by authorities, private individuals in their own name, or for instance claims against state for breaching the environmental standards – where climate-related questions are central to the issue. Naturally, in the context of this study, climate litigation refers to a as a successful claim concerning climate matters brought in applying the derivative claim remedy in particular.

Altogether, shareholder activism is to some extent seen as an important function, but on the other hand there are also critics of it. Therefore, comparing two very different legal systems is a timely topic - especially when we consider the development of climate change as a result of sustainable business.[9] In broader sense, the thesis aims to discuss possibilities to foster meaningful change in modern corporate governance by maintaining adequate climate strategies.

1.2 Research questions, scope, and structure of the seminar work

This chapter explains the scope and structure of the study. It also presents the main research questions of this study:

1) How do the provisions in the UK Companies Act 2006 and the Finnish Limited Liability Companies Act serve to grant the shareholders a right to access the court with a derivative claim?; and
2) How derivative claims and shareholder value protection may be used as a tool for climate litigation?

To address the main research questions, several points require consideration. Simply, "What is a derivative claim?" needs an answer in order to examine it in the context of shareholder activism and climate litigation. Chapter three provides an overview of relevant legislative frameworks in both countries as well as insights into how the derivative claim works according to statutory provisions. Moreover, it is important to analyse how the frameworks

8 Corporate Finance Institute: Shareholder activist.
9 Mäntysaari 2005, p. 1.

support and hinder bringing a derivative claim. Finally, the work seeks to meet new perspectives to the study by exploring what elements of the UK framework could potentially be introduced into the Finnish system. The comparison preceding this discussion offers a valuable opportunity to assess the benefits and shortcomings of varying approaches to providing shareholders with access to court through a derivative claim. With the study's premise of observing further development of the UK system, a comparison to Finland can provide valuable insights. Building an understanding of the contrasts between the two system's approaches can help identify opportunities for development in the Finnish framework.

This research focuses on shareholder activism within the context of the derivative claim since I believe in the mechanism's potential for holding company's BOD accountable in environmental matters. This research taps into how the mentioned systems are adapting to the trend of shareholder activism and how Finland could increase minority shareholders' chances of advocating within limited liability companies. Inclusivity within the system could hopefully lead to development of companies' climate strategies. The significance of the study lies in its relevance to current societal problems. Society is in need of modern measures to foster addressing of climate issues, and the study explores a potential one.

To my current understanding, previous research hasn't taken a comparative approach to this topic. Instead, the effectiveness of shareholder activism has garnered attention (e.g., the work of Jukka Mähönen). Current research likewise dabbles into the effectiveness of shareholder actions; however, the work of Mähönen primarily analyzes the significance of shareholder-driven proposals in corporate policies.[10] Again, shareholder activism has been explored with focus in the broader scope of human rights aspects, as in Alexandra Pensar's thesis, as well as examining the strategies and dynamics of shareholder activism applying empirical material, as in the thesis of Valtteri Hautanen.[11] While my current research shares the common interest of shareholder activism, there is no research specifically examining provisions that support shareholders' rights to a derivative claim through a comparative approach. The thesis aims to not only close the research gap but bring depth to the topic by examining two distinct frameworks regulating derivative claims. This aim is approached by evaluating them side-by-

10 See: Mähönen 2022, Shareholder Activism: A Driver or an Obstacle to Sustainable Value Creation?
11 See: Pensar 2019, Climate Change and the EC(t)HR: a Study of the Potential and Limitations of a Climate Change Litigation Case in the Context of the EC(t)HR; Hautanen 2024, Exploring the Dynamics of Shareholder Activism in the Equity Market : Empirical Evidence From the UK Activist Campaigns in 2014—2023.

side to assess the strengths and limitations of each approach as well as proposing potential ideas for reforms to enhance the less advanced Finnish framework.

Following this chapter, I begin by discussing the methodological choices. After this, I explore the central research materials, which are the UK Companies Act 2006 and the Finnish Limited Liability Company Act. Having discussed the Acts, the study continues to conduct the comparison between them. Next, I will focus on reviewing the potential lessons Finland may draw from the UK framework. This marks a conceptual shift in the work since the aforementioned chapter seeks to draw insights from the completed comparison. Finally, the "Conclusions" chapter answers the main research questions and discusses the ways in which the methods facilitated answering each research question while also providing some reflections on the future developments of the area.

As an author, I recognize the challenges and limitations of conducting the research on the topic. Naturally, a significant risk is the writer's personal opinions influencing the work. To mitigate this, I have strived to ensure more than one perspective to the topic by exploring multiple references. Nevertheless, shareholder activism is a new phenomenon, which limits sources to support the research. However, this provides space for insightful speculation. Also, Finland has a background of using preliminary materials to support interpretation of the law.[12] I acknowledge that such sources might include politically charged outlooks and need to be approached critically. Furthermore, it can be tricky approaching the topic by assuming differences and having a strong focus on the UK system. Nevertheless, the starting points set for the study hopefully support answering the research questions and sensibly limit the work. Additionally, the concept of legal transplant has been commonly associated with the direct borrowing of legal material in a stricter sense, and some researchers suggest that it is impossible due to the inherent characteristics of each system.[13] Conforming to a more flexible definition, as the adaptation of central ideas, to facilitate this research might be risky. It is recognized that, in practice, the broader understanding might cause misalignments with the adapting state's values. However, the discussion in the thesis aims to merely offer initial proposals and provide insightful speculation as well as perspectives on the subject. I am prepared to challenge the premises set for the study.

12 Määttä 2024, p. 3.
13 Legrand 1997, p.114.

2 Methodological Choices and Theoretical Framework

This work is a bilateral, cross-jurisdictional study of micro constructs – specifically the derivative claim provisions – applying a functional approach that follows Zweigert and Kötz's view on comparative research techniques. It is (conceptually) structured into two sections. The first one focuses on a comparison between the UK and Finnish derivative claim frameworks. The second part reflects on the potential of adapting elements from the UK framework into Finnish jurisdiction, which is guided by the legal transplant method. The legal framework draws influence from legal transplant method's potential to be used as a tool for introducing possible modifications to one system by borrowing them from another, more advanced one. The approach mirrors those discussed in legal literature for acquiring a methodological remedy to discuss legal reforms and thus promote development of legal systems as well as, in broader sense, the rule of law.[14] That said, the thesis employs a comparative approach, combining functionalism with legal transplant method, to assess why the UK legal system is more forward in protecting shareholders with the derivative claim mechanism. This perspective helps to highlight elements that could be introduced into Finnish company law to empower shareholders to advocate for climate matters. The focus is quite strongly on the UK framework and the study presumes that Finland could draw lessons from it. This is precisely why the comparative approach is great for conducting the study.

With the objective of highlighting elements that enhance opportunities for shareholder activism, a comparison of exactly the UK and Finland supports the research well. The derivative claim mechanism in the UK provides a tool that is to some extent better than the equivalent in Finnish framework. UK case law already addressing the minority shareholder's right to pursue a claim motivated by climate matters reflects this. In Finland, on the contrary, as of now there have not been any climate litigation cases applying the derivative claim legislation. The comparison truly helps to explore the frameworks' suitability in protecting shareholders' rights to address corporate climate responsibilities.

As mentioned, methodologically, the research begins with functionalism. When conducting comparative legal research, a foreign legal system or legislation is partly the centre of attention. Therefore, reviewing the material requires careful attention to ensure that personal biases regarding the culture in question don't influence the research. Cahn and Donald

14 Peerenboom 2013, pp. 4–7.

suggest that neutrality can be pursued by examining *"the functional values of rights, duties, procedures, and forms as components within their broader contexts."*[15] In the manner of the comparative process established by Zweigert and Kötz, the study begins by posing the functional research question. The first research question aims to assess how the derivative claim frameworks enable shareholders to access justice with a derivative claim. Next, a descriptive overview of both the UK and Finnish frameworks seeks to achieve a proper understanding of how the systems address the subject. The analysis proceeds to the comparison of the systems' approaches in addressing the equivalent question, specifically evaluating the similarities and differences of the frameworks. A new perspective is introduced as I aim to deepen the understanding of the issue by exploring a bit the social, cultural, and historical factors that influence findings from the previous part of the process.[16]

Functionalism aspires to highlight the essential role that elements of legislation play in legal systems as well as society.[17] It is a popular approach among comparative scholars and has been applied by researchers with quite different objectives, for instance, to compare the legislation using tertium comparationis.[18] Tertium comparationis refers to the shared function between comparable frameworks. In this research, it considers the access to shareholders' right to a derivative claim, more specifically how the shareholder can access the justice or access the court with a derivative claim.[19] These two expressions are used as synonyms in the thesis and in the context of the work refer to a shareholder's ability to get their claim considering company-related matter addressed in the court proceeding applying the derivative claim mechanism. There have been equivalent pursues to fulfil the goal of protecting the minority shareholders. However, regarding a derivative claim, only the UK system has allowed it to happen in practice. Zweigert and Kötz's blueprint in particular, provides tools to create a solid understanding of the frameworks and reveal how function is addressed in the legislation. This brings valuable insights, particularly into what in the UK system is "advanced" and makes it seamless to continue to the following section of the study.

The second section, with the established information, seeks to explore what Finnish company law could draw from the UK system. The legal transplant method supports the study in doing this, particularly by highlighting parts of UK frameworks that could be adapted into the

15 Cahn – Donald 2018, pp. 4–8.
16 Husa 2024, pp. 18–21.
17 Cahn – Donald 2018, p. 11.
18 Hoecke 2015, p. 9.
19 Oderkerk 2015, p. 610.

Finnish legislation. This is the final objective of the study. Similarly, to the functionalist approach, this part of the work pursues to determine the better law.[20] The study includes an assumption that giving shareholders a broad platform to advocate for climate is beneficial. Naturally, it could also be assumed that legal transplantation of texts is more effortless within civil law systems. However, the theory of legal transplants suggests that legal transplantation refers not merely to the word-for-word adoption of a text but also to the assimilation of central ideas, which may be adapted more freely in the context of the receiving legal system.[21] Thus, it makes sense to discuss the possible transplants, even with two very distinct systems. The study's understanding of legal transplant, complying to the Tuula Linna's views on the subject, and the way it is used as a tool in this research, is further discussed in the chapter 5. The added value of this method is in its potential to introduce parts of frameworks into the Finnish system that have already demonstrated effectiveness in the UK system. This section of the research resembles a de lege ferenda analysis, as it is interested in the future development of the frameworks.[22]

20 Hoecke 2015, p. 9.
21 Husa 2015, p. 106 and 234.
22 Leskinen 2022, p. 1158.

3 What is a derivative claim? Company Acts as Central Research Material

3.1 UK Company Act 2006 – Access to Justice Through the Years

3.1.1 From Foss to the UK Companies Act 2006

In UK shareholders' right to access the justice is regulated by the Companies Act 2006 that serves as an essential pillar in UK company law. Part 11 of the act introduces the right to a derivative claim, which, according to CA 2006, refers to a *"proceeding in England and Wales or Northern Ireland by a member of a company (a) in respect of a cause of action vested in the company, and (b) seeking relief on behalf of the company"*. The mechanism grants the shareholders a right to seek justice on behalf of the company in cases where the company has endured harm, but the BOD is not seeking to pursue the situation themselves. Previously, the established common law rule *Foss v Harbottle* restricted the shareholders' right to access the court with a derivative claim.[23] According to the Foss rule, the claim had to fall within one of its exceptions. In other cases, an individual shareholder didn't have the right to bring legal action if the alleged harmful matter could be resolved and made binding within the company and the shareholders using a majority vote.[24] Since then, the framework considering shareholder's rights has been modernized, primarily due to the instruction put forward by the Law Commission of the UK,[25] however without completely overruling the Foss rule.

According to section 260(2), a derivative claim can only be brought by a shareholder in two cases. The first being, that the process adheres to the precise rules provided in the 1st chapter of the 11th part of the CA 2006. The second possibility to pursue a derivative claim is if it falls under the specific regulations of section 994. This would consider the claims brought in due to unfair prejudice where the court allows a derivative claim to proceed due to a member's right to protection because of the company's harmful actions towards the interest of a minority shareholder.

23 Wooldridge – Davies 2012, p. 5.
24 Jailani 2018, p. 75. The mentioned exceptions were that the brought-up act was 1) ultra vires; 2) breached a requirement that could only be properly carried out or sanctioned by special majority of the members; 3) was an infringement of the claimant's personal rights as a member; 4) or constituted to a fraud against the company, with the wrongdoers controlling the company.
25 Law Com No. 246, 1997, para 6.15.

It has been argued that the legislation passed in the 11th part of the UK Companies Act doesn't define a specific rule to overrule the established law of Foss but rather introduces methods for seeking action on the grounds of a derivative claim. Nevertheless, the mentioned shareholder's right to action due to "unfairly prejudicial conduct" creates a quite remarkable statutory exception to Foss. Likewise, the derivative claim itself, that can be brought in the name of the company, is a notable statutory exception to the Foss rule and has further fostered shareholders' right to access the court in UK. The statutory provision for bringing a derivative claim has supported and allowed the scope for said action to increase widely whereas previously it existed merely as a potential remedy under common law.

The section 260(3) establishes the conditions that a shareholder could apply if they wish to access the court by bringing a derivative claim. The exceptions to Foss in the section noteworthy of highlighting include: 1) the wider scope of grounds for a claim against the BOD, 2) the lack of demand for demonstrating "fraud on minority" and "wrongdoer control" and lastly 3) the possibility to bring a derivative claim against a third party in case that they *"dishonestly assist the director's breach of fiduciary duty or one who knowingly receives property in breach of fiduciary duty."*[26] In broader sense, these exceptions, compared to Foss, are perchance gradually building towards a system that embraces the shareholders' right to access justice with claim concerning a company-related matter, such as an environmental claim concerning the company.

3.1.2 The Two-Stage Process for Accessing Court Under the UK Companies Act 2006

The two-stage procedure to achieve permission to continue with a derivative claim is regulated by sections 261 and 262 of the CA 2006. In other words, this section of the CA 2006 includes the rules regulating whether a shareholder can truly access the court, meaning that they proceed forward with their derivative claim process and get to receive a judgement to the claim they are bringing. Section 261 outlines the process that should be followed in case the shareholder has initiated a derivative claim whereas section 262 considers a situation where legal action is initiated by the company, but a shareholder seeks to take over it as a derivative claim. Both provisions emphasize the importance of prima facie when first approaching the claim. The purpose of said stage can be seen as an assessment to the

26 Bawah 2019, pp. 156–161.

achievable advantages and significance of going forward with the process, with consideration to the inevitable inconveniences and expenses of the court process.[27] As a matter of fact, this wasn't one of the UK Law Commission's recommendations but something the Parliament decided to include to the legislation. The Commission suggested that the so-called preparatory test may result in tedious and expensive extra process, while the opposite view saw it as an essential tool to avert the risk of setting up a mechanism that would grant everyone a right to a, similarly, time consuming court process.[28]

The process continues to the permission hearing-stage with the condition that the case doesn't get dismissed due to lack of prima facie. Furthermore, the following section 263 of CA 2006 insists on courts to withhold the process if the BOD would not have pursued it, considering that their procedures and working align with the duty to promote success of the company. This duty is set out in section 172 of CA 2006.[29] Alongside this, the court must take into consideration (among other things) if the shareholder's actions are in good faith as well as whether they have the right to seek action in their own right. Typically, the hearing part of the process is where several claims don't reach success and shareholders' aims to truly access the court fails.[30] The section 264 of CA 2006 takes notice of the situations where one shareholder wishes to continue with a derivative claim initially brought up by a different member of the company. Some suggest that the provision partly reflects the legislators' interest in preventing possible manipulation of the trial and collusion of the participants where, for instance, defenders buy off the claimant in derivative claim case.[31]

All in all, the introduction of the statutory provisions of CA 2006 under part 11 marks a significant shift in company legislation, though the remedy somewhat existed prior to this. The remarkable note is that shareholders' possibilities to hold directors accountable for harmful actions have been manifested into the statutory provisions when it used to be severely narrow and rarely applicable process in practice. Even though the CA 2006 shows significant development in corporate governance, it remains an intriguing question, how the evolving landscape of climate litigation it will fit into current framework. If the trend continues to

27 Keay 2016, p. 43.
28 Tang 2015, pp. 181–182.
29 Reisberg 2008, p. 348.
30 Reisberg 2009, pp. 222–224.
31 Keay 2016, p. 51.

grow, perhaps the boundaries of derivative claim provisions will have to be pushed in the future.

3.2 The Finnish Limited Liability Company Act (Osakeyhtiölaki) – Access to Justice

This chapter explores the derivative claim framework in Finland, with focus on the regulations central to the access to court theme, however alongside this highlighting the rules related to the process, for instance regarding the management's liability in cases of negligence. In Finland, the Limited Liability Companies Act (OYL) defines the responsibilities and obligations of a limited liability company (LLC) and its owners and management. Accordingly, LLC sets out regulations on derivative claims and hence in which circumstances shareholders may access the court with such claim. It is noteworthy, that in addition to LLC's, corporate activities can also take the form of limited partnerships or general partnerships, for instance, and these also have their own law (Partnerships Act (398/1988)). However, it should be noted that practically all major companies are LLC's, such as listed companies, as their shares must be tradable on a trading floor (Securities Market Act 2:1 §). The limitation of the LLC to the capital invested is also an important issue for the thesis, which is why it does not examine other types of company in more detail.

As mentioned, derivative claims are regulated by the OYL and, more specifically, by Article 22:7 thereof. The negligence of the management can lead to consequences and liability for damages. However, it might not be likely for the BOD to deliberately compensate for the negligence. Correspondingly, the general meeting of shareholders may not be willing to pursue a claim for damages even if it is clearly in the interests of the company. An example of such a situation is given in the submissions where an act, which has caused damage to the company has benefited the company's majority shareholders.[32] This could be considered a case where the majority does not agree with the minority and the minority considers the matter to be liable for damages. For this purpose - and in practice for the shareholders belonging to the minority - OYL 22:7 provides for the right to bring a derivative claim in their own name behalf of the company. At an idea level, this would consider the part of the Act granting the shareholders the opportunity to access the court with, for instance, a case related

32 HE 109/2005, p. 198.

to a climate question as well as pertinent to the company's interests. According to OYL 22:7.1:

> *"One or several shareholders have the right to pursue an action in their own name for the collection of damages to the company under sections 1–3 or under chapter 10, section 9 of the Auditing Act, if it is probable at the time of filing of the action that the company will not make a claim for damages and: (623/2016)*
>
> *1) the plaintiffs hold at least one tenth (1/10) of all shares at that moment; or*
>
> *2) it is proven that the non-enforcement of the claim for damages would be contrary to the principle of equal treatment, as referred to in chapter 1, section 7."*

Firstly, the provision requires demonstration that the company is unlikely to pursue the claim for damages, i.e., to bring an action. In this case, it must be assessed whether the company is likely to claim compensation. In the potential process, the burden of proof is on the claimant and assessed based on the probabilities at the time the action is brought. In any event, the action cannot be pursued until the company has been informed of its potential right to damages.[33] On the other hand, this condition can be deemed to be fulfilled if the general meeting or the board of directors has decided not to bring an action for damages. Similarly, the condition must be deemed to be fulfilled where the general meeting has granted discharge.[34]

Significantly to the scope of the thesis, the provision also contains two additional alternative conditions. The first additional condition requires that the shareholders bringing the action hold at least one tenth of all shares. Shareholders holding one tenth of the company's shares can always access the court with their claim, strictly speaking, bring a compensation action, if the probability condition is met. The shareholding – the meaningful threshold for accessing justice with the claim – is calculated based on the date on which the action for compensation is brought. Thus, changes in the ownership of the shareholder bringing the action are not in themselves relevant for the purposes of bringing the action, as long as at least one shareholder is bringing the action. It is therefore possible that, while the action is pending, the shareholding of the shareholders bringing the action falls to less than one tenth or that some of

33 Savela 2015, p. 261.
34 Mähönen – Villa 2007, p. 668.

the shares of the shareholders bringing the action are sold.[35] In addition, the legal literature has suggested that new shareholders may also be entitled to participate in the pending action if the shares have been purchased from the shareholder bringing the action and in this way participate in seeking justice with a derivative claim.[36]

An additional alternative condition for accessing court is that it must be possible to show that not pursuing the claim would be contrary to the principle of equality. As stated above, in principle, the decision on a particular claim for damages is a matter for the board of directors or the general meeting. The outcome of the discretion of these bodies may be that the action is not worth pursuing, for example because of the associated cost risk or negative publicity. However, it is entirely possible that a decision not to bring an action is likely to give an unjustified advantage to the person liable, for example, at the expense of the company or its shareholders. In such situations, the explanatory memorandum of the law has considered it necessary to allow for the granting of an independent right of action to the individual shareholder.[37]

Since the shareholder accesses the court on behalf of the company, under OYL 22:7, in case the BOD is held liable in the event of a claim for damages, the compensations are paid to the company instead of the shareholder pursuing the process. Additionally, the legal costs of court proceeding are in all cases borne by the shareholders bringing the action. However, the third paragraph of OYL 22:7 allows that shareholders might be entitled to be reimbursed by the company to the extent that the funds available to the company through the legal proceedings are sufficient. Also, the assessment of liability under company law must consider the general conditions of tort law in accordance with the general principles. Hence, liability cannot arise without the damage having been caused. Accordingly, liability under company law requires that the compensable damage has been caused, the damage was caused by negligence, there is a causal link between the damage and the decision or act giving rise to liability, and the damage was foreseeable.[38] If we assess this fact in the context of a company suffering a concrete loss in this way through environmental damage or climate change, it may be a challenging task to draw a clear link between tort liability and climate change precisely in order for the company's interest to be clearly compromised by the situation.

35 HE 109/2005, p. 200.
36 Savela 2015, p. 265.
37 HE 109/2005, p. 200.
38 Savela 2015, pp. 305–306. See also Villa 2020, p. 239.

4 Comparative Analysis on Derivative Claims – UK and Finland

4.1 A Comparative Overview: Points of Similarities and Differences in Derivative Claims

Chapter three discussed UK and Finnish company law in relation to the shareholder's derivative claim. This chapter represents the part of Zweigert and Kötz's functionalist process that includes the comparison of the frameworks. It can be concluded that in both countries the management of the company owes a duty of care and loyalty to the company. Before diving into more detail on the content of the provisions, it is worthy to note that for the purposes of the thesis, UK and Nordic company law differ to some extent in their objectives. According to Nyström, there is some disagreement among legal scholars who have studied the different company laws as to whether Nordic company law is more stakeholder- or shareholder-centred compared to the UK Companies Act from 2006.[39] A shareholder – by definition – is a person who is entitled to certain rights, such as receiving part of the company's profits, as well as the right to voice their opinion through voting on matters that concern the company, due to the fact that the person owns shares in the company.[40] By "stakeholders," I refer to a broader range of people and groups. This includes not only the shareholders – those who have purchased shares in the company – but also other people and groups such as customers, suppliers, employees, and communities who are related to the company in a way that they could potentially benefit from the company's actions.[41] This said, in this sense stakeholder-oriented company law, as opposed to shareholder-oriented law, supports legislation that acknowledges and embraces interests of broader range of individuals and groups beyond focusing merely on shareholder profits. Such understanding is of high importance to the topic of the thesis, as the difficulty of bringing a derivative claim from the perspective of a minority shareholder is in the interest of the stakeholder. By making it easy for the minority shareholder to bring a derivative claim, stakeholders may be more likely to defend the claim in court.

By looking at the results of the legal comparison between UK and Finland, it can be observed that there are significant differences between the areas compared. The main differences are

39 Nyström 2016, pp. 180–182.
40 Cambridge Dictionary: Shareholder.
41 Business roundtable, 2019.

already mostly related to the "*access to courts*" or "*access to justice"* theme.[42] By this I mean that the very limits to the existence of a right of action are somewhat different in the two countries. In the UK, the shareholder's right of claim as such is not subject to any obligations under the Companies Act, which at first glance seems to imply that the existence of a right to derivative claim in the sense of "access to justice" is constituted by the ownership of just one share in the company. In Finland, on the other hand, the company must be owned by 10% of the total share capital or there must be a clear breach of the principle of equality. If the principle of equality aspect is not met, a person would need to own more than €450,000 worth of shares in even the smallest company (e.g., Trainer's House), let alone more than €3.5 billion worth of shares in the largest companies (e.g., Nordea).[43] This is a considerable amount of money in the sense that the right for the derivative claim exists.

The stricter right of derivative claim in the Finnish legal system might be due to the fact that Finland is a more stakeholder-centred country at least according to some scholars of company law.[44] Thus, the interest of the company is not limited to the interest of the shareholders, but it is generally perceived in Finland that the company may also have an interest of its own, but interests can also be found in other stakeholders such as the company's creditors.[45] With this, Nyström wants to highlight the idea that a shareholder cannot pursue interests on behalf of the company through a derivative claim solely according to his own preference. One could say that such a personal preference could be, for example, a climate lawsuit, even if the real basis for the climate lawsuit was financial. From such a theme, it can be inferred that Finland wants to avoid "unnecessary" lawsuits that could be brought by anyone who owns even a single share. By reviewing at it through the lens of "futility", it is interesting assess how the UK views the issue.

In the UK, this has been approached on a *prima facie* basis, which was discussed in more detail in section 3.1. The difference with Finland, however, is that in simplified terms, access to justice is based on lighter criteria than in Finland. Ultimately, the question of whether a claimant has a final opportunity to advance his claim before the court is decided in the first

42 OECD 2019, p. 230. "Access to justice is defined as the ability of individuals and businesses to seek and obtain a just resolution of legal problems through a wide range of legal and justice services."
43 Share data from Trainer's House Oyj 2024 and Nordea Oyj in 2024. (The calculations have been made by comparing the number of shares to the quoted value of Nordea and Trainer's House shares on Friday 20 December 2024 after the close of the Nasdaq Helsinki stock exchange.)
44 Nyström 2016, pp. 181–182.
45 Nyström 2016, p. 176.

instance based on prima facie evidence. How exactly this prima facie argument is applied is discussed in more detail in Chapter 5.

4.1 Underlying Drivers for Divergence – Social, Historical and Economic Factors

This section aims to explore the social, historical, and economic factors that may play a role in the distinct characteristics of each country's derivative claim framework. It is important to mention and acknowledge that the factors causing the differences are, of course, hardly ever purely historical, or economic. As in the legal environment, all development is intertwined with pertinent societal and historical factors, and the chapter aims to highlight a few that may influence the different approaches in the frameworks. Moreover, the importance of contextual factors has also been highlighted by the critics of functionalism. The functional approach has been deemed simplistic for focusing on comparison of mere rules and overemphasizing the similarity of jurisdictions. This path, slightly resembling the cognitivist approach, might be prone to overconfident fallacies that fail to recognize relevant differences of legal systems as well as acknowledge the factors behind them.[46] This said, the chapter aims to discuss comparison beyond just listing the similarities and differences but rather exploring factors driving the divergence between the two legal systems.

The main reasons for the difference in the right to derivative claim likely stem from the long tradition of the British common law system on the one hand, and the continental European civil law system on the other. In Finland, as in civil law jurisdictions traditionally, the emphasis is on codified statues. This is likely to result in a less permissive approach, which reflects the system's traditional preference for accurate and strict provisions, as opposed to the more discretional and flexible interpretations typical to common law systems. Also, it is not unusual for two different economies to develop differently in different legal systems. The current Companies Act, and in particular the derivative claim in the UK, is based in part on the Foss case, through the so-called precedent. Finnish company law, on the other hand, has acquired a pan-European dimension since the 21st century, as Finland's accession to the European Union, and in particular to the European Economic Area, affects the way in which company law can be regulated in Finland.[47] Excessive restrictions on, for instance, a company's activities might cause competition difficulties if a company is allowed more

46 Frankenberg 2006, pp. 443-445.
47 European Parliament 2024.

freedom in another country. For this reason, Finland may have wanted to refrain from giving excessive power to minority shareholders.

As discussed briefly in chapter 3.1, the current derivative claim framework in UK has developed from the so-called Foss rule. The essential driver for changing the Foss rule, which was considered somewhat outdated and ambiguous, was a recommendation put forward by the Law Commission of the UK.[48] In particular, the Law Commission stated in its recommendation that *"there should be a new derivative claim procedure with more modern, flexible and accessible criteria for determining whether a shareholder can pursue action."*[49] The request insisted on reconsidering the law established in Foss, which essentially lead to repeal of the Foss rule. Additionally, one of the government's goals was for shareholders to have an opportunity at a successful derivative claim against the BOD of a widely held company. Again, the government sought for the rule to support claims that considered negligence even if it wasn't possible to display whether or how the directors had profited from the negligence as well as reach a reasonable balance between directors' decision making abilities and shareholders' rights. The new legislative framework, established by the 11th part of the CA 2006, aimed to set out rules for a further developed, faster, and economically efficient mechanism to access the derivative claim remedy. Furthermore, the Law Commission appears to have recognized the growing concerns regarding corporate governance towards the end of the 20th century, hence acknowledging that a more transparent legislative framework than the Foss rule was necessary. The recommendation of the Law Commission reflects efforts to protect minority shareholders in the development of the current frameworks.[50] With consideration of the outlined historical background regarding the development of the frameworks, it is notable how the lawmakers in UK have at least attempted to move the frameworks towards a more permissive and progressive approach already since the 1990's.

Finnish company law, on the contrary, has developed drawing from EU regulation as well as objectives of Nordic harmonization influencing its development. It could be speculated that a few different matters may have led to stricter company law framework. One being, that Finland has sought to consider the Nordic company law traditions. The previous Finnish Limited liability Company Act, which came into force in 1980, had a relevant committee of

48 Tang 2015, p. 178.
49 Law Com No. 246, 1997, para 6.15.
50 Reisberg 2008, pp. 339–342.

experts working on the it. It was mandatory for the Finnish committee to collaborate with equivalent ones in the Nordic countries and overall work towards achieving a highly harmonized and consistent framework between the Nordic countries.[51] As a matter of fact, the first official Finnish piece of legislation concerning the limited liability companies, a regulation published in 1864, was broadly similar to the Swedish Limited Liability Company Act of 1848.[52] Therefore, a tradition of Nordic harmonization can be observed to have influenced Finland for many decades, even a century now. Additionally, once Finland joined the EU, it became bound to implement several directives. The numerous aims for harmonization may, in some ways, shifted the Finnish company law further into a stricter system and away from a more permissive model, as in the UK.

Finland, like the other Nordic countries, suffered a remarkable banking crisis at the turn of the 80s and 90s, which was even described as a catastrophe for the Finnish economy.[53] Obviously, the situation affected society not only by shaking up the economy but also by most likely increasing the sense of insecurity within the society and its citizens. The uncertainty may have fostered the urgency to approach the law-making with a stricter tone to respond to the insecurity brought by the crisis.

Additionally, the differences in the countries' economies may contribute to different approaches in the frameworks. While both Finland and the UK are considered capitalist market economies, they have developed at quite different times. First of all, where UK served as one of the starting points for Industrial Revolution, Finland's industrial development began only in the 1800's, more specifically around the reign of Alexander II of Russia.[54] Moreover, Finland has a particularly strong tradition in state ownership of domestic companies' shares.[55] One could argue that the later development of the Finnish economy as well as differences in the companies' ownership structure (such as the greater involvement of the state), may have cultivated a more strict and controlled model of regulating the shareholders' actions, whereas the earlier-established, market-driven capitalist economy in the UK may have remained a more flexible climate towards the more permissive derivative claim regulations.

51 Työryhmämietintö 2003:4, p. 11, 30.
52 Pönkä 2012, p. 50. The regulation of 1864 in question was called "keisarillisen majesteetin armollinen asetus nimettömistä eli osake-yhdyskunnista 28/1864."
53 Vihriälä 1993, p. 581.
54 Poropudas 2012, pp. 97–100.
55 Valtioneuvoston kanslia 5/2014, p. 32.

5 Could Finland Benefit from UK's derivative claim frameworks? Legal transplant approach

5.1 Defining Legal Transplants: Key Interpretations and Perspectives and Application in the Thesis

The chapter uses the legal transplant method to discuss how the gap between the countries' frameworks could be addressed by adapting a couple of the central principles set out in the UK derivative claim framework into Finnish framework. In doing so, the work strives to partly support the premise that the UK system has developed a more advanced remedy for accessing justice in climate litigation cases. To disclose how this objective is approached, it is sensible to further consider how the legal transplant method is understood and used as a tool in this thesis. Alongside this, I present some alternative definitions of legal transplant established in comparative law literature.

The precise meaning and understanding of legal transplant vary even between the renowned comparative scholars. Where Legrand has argued that legal transplanting is practically impossible due to the fundamental differences of each legal system,[56] some researchers, as Watson recognize the long-establish tradition of legal transplanting. Watson suggests that legal transplanting is considered "*moving of a rule or a system of law*" into another country, nevertheless, still in the stricter sense.[57] Watson's approach is less sceptical compared to Legrand who, on the contrary, argues that the written rule, embodying the meaning of it, can't be extracted from its social context and environment. Teubner, on the other hand, has given some critique on the "legal transplant" metaphor, and responded to the previous discussion by providing an alternative perspective centered around the concept of "legal irritants". In short, Teubner argues that the initial term and metaphor of "legal transplant" disregards the elaborate and complex nature of the process and hence prefers the introduced term of "legal irritants". Teubner's definition of this phenomenon, whether you call it a "transplant" or an "irritant", implies that the transplanted legal material is either rejected by the receiving system causing irritation or it successfully integrates. Even with a successful transplant, the adapted

56 Legrand 1997, p. 114.
57 Watson 1993, pp. 21–25.

material might affect dynamics between the other legal and societal elements in the receiving country.[58]

Then again, a legal scholar Tuula Linna has in her work defined the legal transplant quite broadly. She suggests that a legal transplant is an existing or known legal phenomenon – such as a principle or idea – of one jurisdiction that has migrated into another system.[59] The somewhat more flexible understanding of legal transplants Linna has proposed aligns with the one used as a method in this thesis. By interpreting the legal transplant more extensively, the thesis provides an opportunity to outline the central ideas and principles of the UK derivative claim framework that could be introduced to Finland. This reflects how the legal transplant method is understood in this thesis and thus, how it is used as a tool to facilitate the research. Moreover, the legal transplant method seeks to deepen the discussion of the study even further and offer an additional perspective. As functionalism has occasionally been blamed for its lack of acknowledgment for perspectives beyond the "*rule based approach*", Örücü suggests that embracing multiple methods could "*only enrich research possibilities*".[60]

5.2 Breakthroughs and Hindrances in Shareholder Activism

The case ClientEarth v. Shell Plc's Board of Directors demonstrates an example of a derivative claim that aimed to hold the BOD accountable for the harm caused to the company. Notably, the derivative claim was brought on due to directors' inadequate measures regarding climate change risks. The claimant, a minority shareholder organization ClientEarth, argued that the BOD breached their statutory duties to promote the success of the company, which are set out in the CA 2006 section 172. In addition, the duties expressed in the CA 2006 section 174, which requires BOD to exercise reasonable care, skill, and diligence, were allegedly breached.[61] Although the High Court ultimately dismissed the case and ruled against ClientEarth, the outcome is significant. The case marks a shift towards a system in which climate-related concerns are becoming central to the derivative claim mechanisms that are traditionally serving the traditional shareholder value, financial profits.[62]

58 Teubner 1998, pp. 11–15.
59 Linna 2010, p. 835.
60 Örücü 2006, p. 31.
61 ClientEarth v. Shell's Board of Directors. (2023).
62 Kauppalehti 2020.

In Finland the appearance of shareholder activism has been persistently rare and there has not been a derivative claim case concerning climate matters as of now. As explained in the previous chapter Finnish derivative claim frameworks impose requirements for bringing a derivative claim such as the 10 % threshold. As a matter of fact, quite many legal systems of Continental Europe have demands on minimum share ownership to bring a derivative claim. The justification for such obligations can be seen as pursue to prevent bringing of illegitimate suits. However, these strict requirements in such jurisdictions, as in Finnish one, can restrict minority shareholders to follow with possible claims as they don't have the resources to do so otherwise.[63] Perhaps a more opportunistic legislation on derivative claims could enhance shareholder activists' opportunities to defend sustainable climate strategies in Finnish companies as well.

A couple of years back the American association Business Roundtable stated that they see a shift in the corporate world regarding the purpose of companies. An essential point of the statement was an emphasis on long-term value for all stakeholders.[64] The former Finnish business professor Bengt Holmström suggests that the Business Roundtable's statement aligns with the recent, growing discussion surrounding to ESG matters. Topics such as climate change are increasingly on the minds of consumers, affecting their expectations.[65]

5.3 Reflections on the Opportunities for Finland of Adopting Elements from the UK Derivative Claim Framework

Even as a small country, Finland has a remarkable and quickly developing limited liability business sector.[66] In the context of efficient climate activism as well as sufficient climate efforts, a more allowing framework like in UK may benefit the Finnish system. Furthermore, with the context and objective of fostering respectable climate measures, giving value to the rights of minority shareholders might be the wise, modern approach.

As possible legal transplant from the UK frameworks Finland could introduce the central principle of no ownership limits for derivative claims. Such change is a remarkable difference

63 Gelter 2012, pp. 856–857.
64 Business roundtable, 2019.
65 Kauppalehti 2020. The term "shareholder value", simply put, refers to the BOD's duty to prioritize the collective interests of shareholders, which is primarily understood as the maximization of the company's profits. This in turn leads to the increase in the value of shareholders' investments. The term can be interpreted to extend to the intentions of individual shareholders, that seek to protect the value of their shares.
66 Kaupparekisteri 2024.

to the Finnish principle of 10% ownership demand of the total share capital however, again with the objective of sufficient climate efforts, the change could empower Finnish shareholders to take action with inadequacies concerning the companies' actions or climate strategies. This might foster appearance of climate litigation. Additionally, eliminating the percentage requirements hence easier opportunities of holding companies accountable, may in turn support the consideration of environmental values and preserving of the environment in Finland.

What may be the concern with establishing a more allowing legislation, is that the claims that will emerge are not feasible either economically or in terms of time. The UK framework has sought to address this with the prima facie stage in derivative claim process. However, in Finland as well, there are sufficient procedural conditions to review the significance of going forward with the derivative claim. Firstly, according to 5:6 of the Finnish Code of Judicial Procedure the court has the obligation to dismiss the actions that aren't clear or complete enough to go forward with the case based on the application for a summons that claimant provides. Additionally, the "need for legal protection" is a widely held principle within Finnish procedural law. Said principle is and has consistently been an unconditional procedural requirement and the court is obligated to take it into account ex officio.[67] When considering climate litigation cases towards a company concern for senseless cases is mitigated by the necessary assessment court shall take regarding the need for legal protection that in the context of the research topic could be understood as review of whether the case has grounds strong enough to bring a derivative claim, the claims connection to the company and the realistic significance of bringing a derivative claim e.g. required consequences for BOD for breaching their duties. In addition to this, a further screening procedure to continue with a derivative claim, as the prima facie stage in the CA 2006, could be introduced to the Finnish system that is, as a civil law system, not as flexible to case-by-case interpretations. The prima facie stage beside the other procedural requirements could introduce more certainty into the process to discard the ambiguous cases.

To challenge my initial premise, that the UK model is more effective at providing shareholders' the right to pursue climate litigation with a derivative claim, it is insightful to explore why the minority shareholder-oriented approach in legislation might not be the most advantageous. Furthermore, there might be risk in establishing a legislation that is favourable

67 KKO 2019:42 and KKO 2024:57.

towards the minority shareholders. For instance, a potential risk of increase of financial losses can rise in case the access to court becomes more effortless. Where there are increasingly opportunities to address climate issues, a more allowing framework may also open opportunities for abuse of the mechanism. Ultimately, ways to hold directors accountable with environmental matters could be discovered through other mechanisms. However, the issue might be that while the effective procedures to advocate for climate don't develop quickly enough into companies' own internal compliance guidelines or legislation concerning corporate responsibility concerned shareholders seek these effects through other ways as the derivative claim mechanism.

6 Conclusions

In conclusion, this study has examined the provisions of Finnish and UK company law on derivative rights by means of a legal comparison. The study has shown that the United Kingdom has somewhat less stringent grounds for bringing a derivative claim, although there are several requirements for bringing a claim and there appears to be no successful climate-related derivative claims in the UK. In Finland, on the other hand, there is already a more cautious approach to the right of derivative claim. There can be pro and contra-arguments to be drawn between the two systems, at least from the point of view of the shareholder or company director.

The rights of a minority shareholder in the UK are therefore somewhat broader than in Finland - at least in the sense of *access to courts*. The success of a derivative claim is based on the search for *prima facie.* If you are a minority shareholder in the United Kingdom, your rights are better, regardless of other factors, because you do not have to own hundreds of thousands or even billions of euros worth of shares in the company. On the other hand, if you are a stakeholder in a company, there is a greater chance that company resources and expensive working time will be wasted responding to a derivative claim. In Finland, on the other hand, a minority shareholder must make a significant investment in the company in order to benefit from a derivative claim, unless the second condition of the provision is met - which is usually the case, at least in well managed companies. On the other hand, if you are a stakeholder in Finland, you do not have to worry about being sued in court on an ongoing basis.

Reflecting on the first research question, it has become clear in which ways a shareholder in both countries can exercise their rights to protect the interests of the company. However, the derivative claim seems to be mainly a safeguard for the minority shareholder, as usually the need for a derivative claim arises from the majority of shareholders being passive in decision making and them going along with the board's decisions, leaving the shareholder activism at the general meeting rather thin on the ground. Zweigert and Kötz’s blueprint on functionalist study guided answering of this question. In particular the beginning stages of composing country reports offered plenty insights to how the derivative claim mechanism is set out in the frameworks.

The second research question was propositional in nature in that it considered the idea of using a derivative claim as a climate litigation tool, as was the case in the Dutch (Milieudefensie v. Shell Plc) and UK (ClientEarth v. Shell) Shell cases. The lawsuits were ultimately unsuccessful, which partly mirrors my conclusions on the subject. The suggestion is that derivative claim is not the right tool to reduce climate change. Companies are undoubtedly the biggest contributor to climate change, but in a legal sense, derivative claim is not intended for that purpose, but rather to secure the objectives of company law. The exploring of the second research question was, as well, supported by the Zweigert and Kötz's functionalist approach as well as the discussion guided by the legal transplant method. In particular, the country reports, along with the concluded comparison aligned with the functional approach, provided a strong foundation to deepen the perspective and continue the discussion with the support of the legal transplant method.

The solutions to climate change and corporate responsibility must therefore be found outside the legislator, specifically in the sense of derivative claim. Climate and environmental responsibilities should be included in corporate sustainability regulations and internal corporate compliance guidelines, rather than in court proceedings. To this end, steps have been taken, particularly in the EU, to amend legislation, including through corporate sustainability laws. These and other climate-related legislative constraints are part of the larger Agenda2030 and EU Green Deal programmes, which I believe should also be incorporated more effectively in other parts of the world. Perhaps the derivative claims and climate litigation that is already taking place through the courts are evidence from the fact that neither business nor the legislator has taken enough effective action to reduce climate change, even though we are already living in a time of climate crisis.