

İstanbul Hukuk Mecmuası



Istanbul Law Review

Research Article

Open Access

Shield or Sword? The Business Judgment Rule and Its Role in Minority Oppression in Close Corporations, Current Approach in US Case Law



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Abstract

The business judgment rule (BJR) is a significant and much-discussed principle in corporate law, designed to protect directors' decisions from judicial intervention, provided those decisions are made in good faith, with due care, and in the best interest of the corporation. The rule operates on the presumption that directors are better positioned to make business decisions, as they possess both the relevant expertise and access to detailed corporate information. Courts, therefore, generally refrain from second-guessing directors' decisions unless there is evidence of fraud, illegality, or gross misconduct.

In close corporations, however, the dynamics are distinctively different from those of public corporations. Close corporations typically feature a small number of shareholders, limited marketability of shares, and a higher concentration of ownership and control. In such companies, the majority shareholders often hold significant influence over corporate decisions, including dividend distribution, employment, and strategic direction. This concentration of power creates a risk of minority shareholder oppression, where the majority may leverage the BJR as a shield against judicial review, potentially enabling actions that undermine minority interests.

In this study, after explaining the fundamental principles of the business judgment rule and the unique characteristics of close corporations, the evolution of the rule in U.S. court decisions will be examined, with a focus on preventing decisions that oppress minority shareholders in such corporations from evading judicial scrutiny.


Keywords


Minority shareholders · Oppression · Controlling Shareholders · Close Corporation · Business Judgment Rule



Citation: Turan, G, 'Shield or Sword? The Business Judgment Rule and Its Role in Minority Oppression in Close Corporations, Current Approach in US Case Law' (2026) 84(1) İstanbul Hukuk Mecmuası–Istanbul Law Review 101. <https://doi.org/10.26650/mecmua.2026.84.1.0008>

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 2026. Turan, G.

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I. Introduction

The business judgment rule aims to shield directors and officers from personal liability, encouraging them to make bold and innovative decisions without fear of repercussions. It acknowledges the inherent risks in business operations, where some choices may result in financial losses. Under this rule, it is primarily the prerogative of directors to assess whether specific business decisions align with the company's circumstances and strategic objectives. Courts are generally advised to avoid intervening in these managerial decisions, focusing instead on ensuring that the decision-making process adheres to standards of good faith, due care, and loyalty.

Established and developed in the US through jurisprudence, the business judgment rule has been practiced in this country for more than 200 years. However, its application in close corporations raises significant concerns, particularly regarding the protection of minority shareholders. Unlike public ones, close corporations tend to have a small group of shareholders, often comprised of family members or close associates. This concentrated ownership creates a unique environment where majority shareholders can exert considerable control over corporate decisions, frequently without adequate checks and balances.

One of the primary risks associated with the application of the BJR in this context is the lack of judicial scrutiny. Courts are generally reluctant to interfere in the business decisions made by directors under the BJR, which may lead to a scenario where minority shareholders have limited recourse when facing decisions that are detrimental to their interests. For instance, majority shareholders may decide to withhold dividends or make investment choices that primarily benefit their interests while disregarding the needs and rights of minority shareholders. In such instances, the BJR can act as a shield, protecting the majority's decisions from challenge, regardless of their fairness or impact on minority stakeholders.

Moreover, the assumption of good faith underlying the BJR may not adequately apply in closely held corporations. In these entities, the relationship between shareholders and directors can be more personal and intertwined, leading to conflicts of interest that may not exist in larger, publicly traded companies. Majority shareholders, who often occupy key management roles, might prioritize their personal or familial interests over the collective well-being of the corporation. Consequently, the BJR, which assumes that directors act in the best interests of the corporation, can be misused to justify decisions that serve the majority's interests at the expense of minority shareholders.

As a result, it is essential to critically evaluate the application of the BJR in close corporations and consider the ways that could enhance protection for minority shareholders against potential abuses of majority power. This study shall examine why there should be a difference of approach in the implementation of the business judgment rule in close corporations in the light of the characteristics that fundamentally distinguish such corporations from public corporations, the philosophy behind the rule and the environment in which it evolved, and the judicial precedents from different US jurisdictions that the BJR would not preclude court supervision.

II. Fundamentals of the Business Judgment Rule

A. Purpose and function

As stated before, the business judgment rule is a corporate law principle established and developed by

American courts, with an approximately 200-year history of application.¹ In the US, the rule is regulated in some states² but not in federal law. On the other hand, US practice has influenced other law systems and triggered a debate whether the rule is to be codified on their positive law.³

According to the philosophy underlying the rule, managers should have the discretion to decide whether or not to make the respective decision within the context of the circumstances of the company, and if a loss is incurred as a result of the application of the decision made, this should be considered normal in the nature of business life, and no liability should be imposed on the managers.⁴ Otherwise, no capable person wants to become a manager, and even if they do, they do not want to make risky decisions.⁵ This is not what shareholders desire. They aim to achieve the highest return from their investment. In this respect, the company should not avoid venturous enterprises when necessary.

In conclusion, although the necessity of the rule is accepted in almost all modern legal systems (and within such a context, it is implemented either through direct legal regulation or through court decisions without legal regulation)⁶, it should be noted that the principles of its application may vary from country to country.

¹Stephen M. Bainbridge, 'The Business Judgment Rule as Abstention Doctrine' (2004) 57 (1) *Vanderbilt Law Review* 83; Samuel S Arshat, 'The Business Judgment Rule Revisited' (1979) 8(1) *Hofstra Law Review* 93; Gordon D Smith, 'The modern business judgement rule' in Claire A Hill and Steven D Solomon (eds) *Research Handbook on Mergers and Acquisitions* (Elgar 2016) 83; Ralph A Peebles, 'Use and Misuse of the Business Judgment Rule in the Close Corporation' (1985) 60(3) *Notre Dame Law Review* 456, 457.

²See e.g. "§309/c of the California Corporations Code" for the state of California. The State of Delaware is among the states that have not explicitly codified the rule, preferring to implement it through jurisprudence. On the other hand, there is a provision in the corporate statute of this state that allows the articles of association to include a nonliability clause for the members of the board of directors with some exceptions (See Delaware General Corporation Law, §102/b-7). Moreover, §8.30 of the Model Business Corporation Act (MBCA), prepared by the American Bar Association as an example for the states in their own codifications, regulates the standards of conduct of the board of directors in the decision-making process. For the current version of the MBCA, see <https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2020_mbcapd.pdf>. On the other hand, in §4.01 of the American Law Institute's Principles of Corporate Governance (ALI PCG) published in 1994, the rule is formulated with a different approach without presumption [American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations*, American Law Institute Publishers 2014) 138]. For the differences between the MBCA and ALI PCG, and for more detailed information, see Stephen A Radin, *The Business Judgment Rule: Fiduciary Duties of Corporate Directors*, (6th edn, Wolters Kluwer 2009) 403-35.

³For example, for the first time in Germany, the business judgment rule was incorporated into the law with the amendment of §93 of the German Shareholders' Partnership Act by UMAG in 2005. Czech Republic, Austria, Greece, Croatia, Portugal, Spain and Romania are the other European countries that have codified the principle [See Carsten Gerner-Beuerle, 'The duty of care and the business judgment rule: a case study in legal transplants and local narratives' in Afra Afsharipour and Martin Gelter (eds) *Comparative Corporate Governance* (Elgar 2021) 221, fn 7 and accompanying text]. In terms of Türkiye, although the Turkish Commercial Code (TCC) does not expressly regulate the business judgment rule, Art. 553/3 can be regarded as a reflection of this principle. Moreover, in the reasoning of Art.369, which governs directors' duties of care and loyalty, it is explicitly stated that, according to the prudent businessperson standard, a board member may take a "business decision" in line with corporate governance principles, and that the member shall not be held liable where the risk arises from the very nature of such decision [For further information, see Semih S Özdemir, *İş Adamı Kararı İlkesi (Business Judgment Rule) ve Türk Hukukunda Uygulanabilirliği* (Yetkin 2017) 159; Ali M Sevi, *Anonim Ortaklıkta Yönetim Kurulu Üyeleri ve Yöneticilerin Özen Yükümlülüğü* (On İki Levha 2021) 293; Serpil B Yaşar, *Anonim Şirketlerde İşadamı Kararı İlkesinin (Business Judgment Rule) Uygulanması* (On İki Levha 2015) 268; Sibel Hacımahmutoğlu, 'The Business Judgment Rule: İşadamı Kararı mı Yoksa Ticari Muhakeme Kuralı mı?' (2014) 30(4) *Banka ve Ticaret Hukuku Dergisi* 139; Kürşat Gökçürk, 'Amerikan, Alman, İsviçre ve Türk Hukukunda İşadamı Kararı İlkesi' (2011) 2(2) *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 235. For an analysis classifying the countries within the European Union according to their implementation of the rule, see Carsten Gerner-Beuerle, Philipp Paech and Edmund-Philipp Schuster, 'Study on Directors' Duties and Liability in Europe', <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3886382> accessed 27 October 2024, 108 ff.

⁴The following sentence succinctly summarizes the philosophy of the approach: "the law does not command company management to take the right decision, but to comply with certain obligations of conduct in making the decision" [William T Allen, Reiner Kraakman and Khanna S Vikramaditya, *Commentaries and Cases on the Law of Business Organizations* (6th edn, Aspen Publishing 2021) 273. See also ALI PCG (n 2) 135.

⁵Stephen Bainbridge, *Corporate Law* (4th edn, Foundation Press 2020) 135; Arthur Pinto and Douglas M Branson, *Understanding Corporate Law* (5th edn, Carolina Academic Press 2018) 224; Alan R Palmiter, *Corporations* (8th edn, Wolters Kluwer 2015) 255. For the verdict emphasizing this point, see *Percy v. Millaudon* 8 Mart. (n.s.) 68 (1829).

⁶Although the necessity of the rule is generally accepted, it should be noted that it has been criticized as to why the discretionary irresponsibility, which is not granted to other professional groups (such as doctors, lawyers, etc.) for their professional mistakes, is granted to corporation managers. For a rigid opinion on nonapplication of the rule at all, see Franklin A Gevurtz, 'The Business Judgment Rule: Meaningless Verbiage or Misguided Notion?' (1994) 67(2) *Southern California Law Review*, 287.



B. Conditions of application

The principles of application of the rule consist of particular conditions and elements agreed upon through jurisprudence and doctrinal opinions as a result of 200 years of practice in the US. Accordingly, the rule basically provides the following: Courts may not carry out a review of expediency or suitability on decisions made by the corporate directors with adequate information, without conflict of interest, and with an honest belief that the decisions are in the best interest of the company. When these circumstances are present, courts may not substitute their own judgment for that of the directors. Directors are presumed to have taken their decisions in accordance with these specified conditions. The burden of proof to rebut the presumption is on the plaintiff.

It is noted in the doctrine that in US practice, the presumption provided by the business judgment rule is rarely rebutted by the plaintiffs, the courts mostly abstain from examining the director's decision in material by deferring the rule, and in this sense, the rule protecting the directors against liability functions effectively in the US.⁷

C. Ineffectiveness of the subject of the director's decision with respect to the scope of application of the rule

In the doctrine, it is stated that all decisions (e.g., dividend distribution, hiring/firing of employees, capital increases, structural changes, sale of company assets, dissolution, etc.) normally fall within the scope of the rule, as long as they are attributable to the directors.⁸ Indeed, in US practice, the rule is applied by the courts regardless of whether the decision is internal (such as profit distribution or capital increase) or external (such as sale of company assets or shares in a merger).

Considering the underlying idea of the rule (protecting directors from liability), BJR applies when directors are accused of harming the company but it is more controversially applied when directors are accused of oppressing a minority shareholder.⁹

III. Implementation of the Rule in Close Corporations

A. Typical features of close corporations

Close corporations do not exhibit the characteristic of separation of ownership and control, which is considered one of the fundamental doctrines of US corporate law.¹⁰ In this sense, the structure of share ownership is not dispersed but rather concentrated in a few individuals¹¹ or groups. They are also involved in the management of the company. Namely, the management of the company is in the hands of the

⁷Lyman Johnson, 'Rethinking Judicial Review of Director Care' (1999) 24 *Delaware Journal of Corporation Law* 792; Lori McMillan, 'The Business Judgment Rule as an Immunity Doctrine' (2013) 4(2) *William & Mary Business Law Review* 524.

⁸See Peeples (n 1) 468-9, fn 97-98 and accompanying text.

⁹In corporations, disputes among shareholders are mostly internal matters (e.g., non-distribution of profits, dismissal of a shareholder, rejection of requests by the management, etc.) and those are often linked to the oppressive conduct by the majority over the minority in close corporations. Given the main purpose of the rule as protecting directors from liability, it can be argued that internal disputes should be outside the scope of application of the rule (For a similar approach, see Hodge F O'Neal and Robert B Thompson, *O'Neal and Thompson's Oppression of Minority Shareholders and LLC Members* (Thomson Reuters 2004) §10-5, para 7. See also Douglas K Moll and Robert Ragazzo, *Closely Held Corporations* (2023 ed, LexisNexis), Ch 7, fn 39.

¹⁰Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Rev edn, Harcourt, Brace and World 1968) 66; Eugene F Fama and Michael C Jensen, 'Separation of Ownership and Control' (1983) 26(2) *Journal of Law & Economics* 301. That is to say, they demonstrate "integration of ownership and management" characteristics rather than "separation of ownership and control."

¹¹It is common for such to be members of a family. In this regard, it would not be wrong to state that close corporations are often small-scale family businesses.

controlling shareholders. The connection between partners is strong, similar to that of partnerships. Thus, close corporations can be referred to as incorporated partnerships.¹²

Since there is no open market (stock exchange, etc.) available for shareholders to sell their shares in close corporations, the ability to transfer shares is extremely limited. This is the feature that characterizes the corporation being closely held.¹³

Shareholders in public corporations are generally investors not knowing each other who do not expect to have a say in the management and who have acquired shares in primary or secondary market transactions. In contrast, in close corporations with a small number of shareholders, there is a close relationship based on trust between the owners, and they are also involved in the management of the company. These characteristics reflecting the typology of close corporations fundamentally distinguish them from publicly held ones.¹⁴ Despite this significant distinction, however, they are generally subject to the same regulations, except in states that have specific regulations for close corporations.¹⁵

Such distinctive features of close corporations provide an opportune environment for majority shareholders to oppress minority shareholders in the event of a dispute between them. Relying on the majority rule, one of the fundamental principles of corporate law, the majority shareholders can exert intense pressure on the minority depending on the severity of the dispute, since they control the management and can make any decision (eg they can remove them from management, dismiss them if they are employed by the company, decide not to distribute dividends, transfer company profits to themselves through high fees, incentives, related party transactions, etc., take no account of their words, refuse their requests for information). Since there is no ready market where shares can be sold at any time, as in public corporations, the opportunities for the minority to evade the pressure by selling their shares and exiting the company are extremely limited. Accordingly, the majority may force the minority, which wants to eliminate oppressive practices, to sell their shares to themselves at a low price.¹⁶

To mitigate these unjust consequences of the majority rule, "judicial oversight" has been considered an important factor in balancing the majority rule in almost all legal systems.¹⁷ This is because judicial review is perhaps the most effective mechanism for protecting minorities who are helpless in the face of the oppressive acts of the majority.

¹²For a court decision pointing out the striking similarity between close corporations and partnerships, see *Donahue v. Rodd Electrotype Co.* 328 N.E.2d 505 (1975). See also John A C Hetherington and Michael P Dooley, 'Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Corporation Problem' (1977) 63(1) *Virginia Law Review* 1, 2; Daniel S Kleinberger, 'Why Not Good Faith? The Foibles of Fairness in the Law of Close Corporations' (1990) 16 *William Mitchell Law Review* 1143, 1152; Peebles (n 1) 467; Douglas K Moll, 'Minority Oppression & the Limited Liability Company: Learning (or Not) from Close Corporation History' (2005) 40(3) *Wake Forest Law Review* 883, 967, fn 265.

¹³ALI PCG §1.06 also mention the small number of shareholders and the absence of a market where they can sell their shares as determining characteristics in the definition of a close corporation. See ALI PCG (n 2) 2.

¹⁴Bainbridge (n 5) 519-520; Krishnan S Chittur, 'Resolving Close Corporation Conflicts: A Fresh Approach' (1987) 10(1) *Harvard Journal of Law & Public Policy* 129, 155-6; Kleinberger (n 13) 1148-9; Arthur Pinto, 'Protection of Close Corporation Minority Shareholders in the United States' (2014) 62 *The American Journal of Comparative Law* 361. See also *Donahue v. Rodd Electrotype Co.* 328 N.E.2d 505 (1975).

¹⁵Eg Delaware General Corporation Law §342 ff. See also Peebles (n 1) 467, fn 90 and accompanying text; Edward B. Rock and Michael L. Wachter, 'Waiting for the Omelet to Set: Match-Specific Assets and Minority Oppression in Close Corporations' (1999) 24 *The Journal of Corporation Law* 913, 914.

¹⁶For some case scenarios that raise the issue of minority oppression, see Rock and Wachter (n 16) 914.

¹⁷John Coffee, 'Mandatory/Enabling Balance in Corporate Law: An Essay on the Judicial Role' (1989) 89(7) *Columbia Law Review* 1618, 1689-91; Sheng Xuan Guo, 'Judicial Intervention to Corporate Governance: Causes and Approaches' (2015) 10(1) *Journal of Law and Governance* 11, 12-5; O'Neal and Thompson (n 10) §10-7, para 4; Moll (n 13) 908 (As the author correctly points out: "Despite the lack of exit rights and the norm of majority rule, the potential harm from oppressive conduct would be minimized if judicial oversight offered adequate protection to the minority shareholder." See also Robert K Fleck and F Andrew Hanssen, 'Judicial Review as a Constraint on Tyranny of the Majority' (2013) 29(2) *Journal of Law, Economics & Organization* 303, 304; Norman E Veasey, 'The Role of the Judiciary in Corporate Law, Corporate Governance and Economic Goals' Company Law Reform in OECD Countries A Comparative Outlook of Current Trends, Stockholm, 7-8 December 2000) 2.



B. Evaluation of the rule's assumptions in close corporations

In American practice, the rule assumes that directors make decisions impartially and independently, without any conflict of interest, in good faith and in the best interests of the company. This assumption is to some extent affiliated with the dispersed ownership structure (eg the shares are held by a large number of shareholders who are not acquainted, and the management of the company is assigned to independent professionals), which is typical of the American corporations mentioned above.

Professionals to whom shareholders entrust the management of the company within the framework of a trust relationship are under fiduciary duties to the shareholders to manage the company assets with duties of care and loyalty. The business judgment rule, on the other hand, presumes that professional managers, who are independent of shareholders, make management decisions by complying with the abovementioned conditions in accordance with their duties of care and loyalty.

As stated earlier, unlike in public corporations, minority shareholders in close corporations do not have a ready market to sell their shares whenever they wish. In such corporations, ownership and control are not separated; there is no dispersed shareholding but rather a concentration of shares in the hands of a family or a small group. The family or group that holds the majority of the capital, thereby exercising controlling power, is typically also dominant in the management of the company.

Accordingly, managers do not make decisions independently but under the control or influence of the majority.¹⁸ The specific characteristics of close corporations reveal that the assumption underlying the rule, namely that directors are generally deemed to act in good faith, is not necessarily valid, at least with respect to such corporations.

As noted in the doctrine¹⁹, the business judgment rule has evolved in publicly traded corporations where directors are independent (and feel the indirect scrutiny of the takeover market). In this respect, the dynamics and characteristics applicable to public corporations and the assumptions of the rule based on such dynamics do not apply to close corporations. Thus, in close corporations and especially in cases where the minority claims to be oppressed, the court should examine the motive behind the business decisions taken, whether they were taken solely for the purpose of oppressing the minority by virtue of the majority's influence in the management.

C. Dividend withholding/termination of employment as an example of oppressive practice and application of the BJR

Some (relatively old) court decisions abstain from reviewing directors' decisions in close corporations not to distribute dividends and to dismiss employees by considering such within the scope of business discretion and, accordingly, within the scope of application of the rule are noteworthy in terms of precisely illustrating the issue I am addressing.²⁰ At this point, it may be useful to point out a fundamental difference between US and Continental Europe law system with regard to the body authorized to decide on profit distribution. In US corporate law, the decision of whether, when, how and how much to distribute the profit is

¹⁸Thus, management is a formality [O'Neal and Thompson (n 10) §10-5, para 1; Peebles (n 1) 483].

¹⁹Peebles (n 1) 486.

²⁰See *Gottfried v. Gottfried* 73 N.Y.S.2d 692 (Sup. Ct. 1947); *Gay v. Gay's Supermarkets* 343 A.2d 577 (1975); *Zidell v. Zidell, Inc.* 560 P.2d 1086 (1977). It should be noted that such decisions reflect the old understanding, as there have been decisions to the contrary in the past, as well as more recent decisions holding that the BJR does not preclude court supervision of close corporations (see decisions mentioned under the heading IV).

²¹Although there is no federal law provision regarding this, for some state laws that regulate the authority of the board of directors, see Delaware General Corporation Law §170; New York Business Corporation Law §510 and §701; California Corporations Code §§ 500–501; Texas Business Organizations Code §21.301; Florida Business Corporation Act §607.06401. For the related provision of MBCA, see §6.40(a). See also Bainbridge (n

under the discretion of the board.²¹ This authority, however, is legally vested in the general assembly in many European countries such as Germany²², France²³, Spain²⁴, Italy²⁵, Belgium²⁶, Switzerland²⁷ and Turkey²⁸.

I have already mentioned that close corporations generally have few shareholders and are often family-owned. It is typically observed that family members who are shareholders in such corporations are also in an employment relationship with the company. Underlying such is the desire of family members to participate (or have a say) in the operations and/or management of the company, as well as tax reasons. To put it more clearly, if the company income is distributed to shareholders as dividends, this amount is added to the taxable amount, whereas when paid to shareholders as salaries, it is deducted from the tax. Therefore, in close corporations, the partners' expectation of a return on their capital investment is usually fulfilled through remuneration (and other benefits) rather than through profit distribution.²⁹ As a result, one of the strong drivers of profit retention is the policy to reduce taxable corporate profits and avoid double taxation. Thus, on the one hand, the financial structure of the company is strengthened by means of the retention of profits within the company, and on the other hand, the return expectations of the shareholders from their investments are fulfilled. However, this win-win situation is only valid as long as the employment relationship with the company is maintained, eg as long as salaries (and other fringe benefits) continue to be received. When conflicts arise between family members who are shareholders of the company, family members with a majority of shares can exclude others and terminate minority shareholder employment by using their control power over management. In such a case, the minority shareholder has become oppressed by the majority, as s/he loses her/his salary and cannot receive any dividends.³⁰ In this context, in terms of close corporations, the issues of dividend distribution and termination of employment, though seemingly unrelated, are in fact strongly connected.

For example, in the "*Gottfried v. Gottfried*" case, although the plaintiff minority shareholders conceded that dividends were rarely paid and their compensation was substantial, and besides the court acknowledged that there was a severe dispute and personal hostility between the parties, the court nevertheless dismissed the plaintiffs' claim for dividends, based on the business judgment rule, on the grounds that the bad faith of the directors had not been demonstrated at the required level.

In my opinion, even though it can be argued that non-distribution of profit is in the interest of both the company and the shareholders in view of strengthening the financial position of the company and avoiding double taxation (thus, it seems a rational decision), in cases where the minority shareholders are in an employment relationship with the company and this relationship is terminated solely for the purpose of expelling them from the company, it can no longer be said that the decision to not distribute the profits and

5) 515, fn 37 and accompanying text; James Cox and Thomas L Hazen, *Corporation Law* (American Bar Association 2012) 126; Peeples (n 1) 469, fn 100 and accompanying text; American Bar Association Committee on Corporate Laws, *Managing Closely Held Corporations A Legal Guidebook* (American Bar Association 2003) 61.

²²See German Stock Corporation Act (Aktiengesetz), §119.

²³See French Commercial Code, Art. L232.12.

²⁴See Capital Companies Act (LSC), Art. 273.1

²⁵See The Italian Civil Code, Art. 2364 and 2364-bis.

²⁶See Belgian Company and Association Code, Art. 5:141.

²⁷See Swiss Code of Obligations (Obligationenrecht), Art. 698.

²⁸See Turkish Commercial Code, Art.408.

²⁹In this respect, the relationship between dividend distribution and compensation (fringe benefits) received by the shareholders from the company should be taken into consideration.

³⁰Robert B Thompson, 'Corporate Dissolution and Shareholders' Reasonable Expectations' (1988) 66(2) *Washington University Law Quarterly* 193, 197.

dismissal is taken independently and without any interest. That is why the business judgment rule should not be applied in such a case.³¹

IV. Decisions That The Business Judgment Rule Does Not Preclude Judicial Review

In US practice, despite the decisions mentioned above in which the allegations of oppression were not examined on the merits by the court due to the business judgment rule³², there were also decisions to the contrary. In these decisions, the courts relied on the following grounds: in close corporations, shareholders owe strict fiduciary duties to one another similar to those in partnerships; conduct that oppresses the minority is contrary to such fiduciary duties; the reasonable expectations of the minority should be protected; and adherence to the business judgment rule in all cases constitutes an overly rigid approach. Several cases reflecting these grounds are examined below.³³

A. Donahue v. Rodd Electrotpe Co.

In this case; Rodd Electrotpe Co. was a close corporation. Harry C. Rodd held controlling shares and was the company's dominant figure. Donahue, by contrast, held minority shares. The company repurchased 45 shares from Harry Rodd at \$800 per share. Minority shareholders, including Donahue, were not offered the same opportunity to sell their shares under identical terms. Donahue alleged that this selective repurchase constituted a breach of duty by the majority against minority shareholders.

In the decision by the Supreme Judicial Court of Massachusetts³⁴; the plaintiff's lawsuit was accepted on grounds of *"...Because of the fundamental resemblance of the close corporation to the partnership, the trust and confidence which are essential to this scale and manner of enterprise, and the inherent danger to minority interests in the close corporation, we hold that stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another. In our previous decisions, we have defined the standard of duty owed by partners to one another as the "utmost good faith and loyalty". Stockholders in close corporations must discharge their management and stockholder responsibilities in conformity with this strict good faith standard. They may not act out of avarice, expediency or self-interest in derogation of their duty of loyalty to the other stockholders and to the corporation."*

In Donahue v. Rodd Electrotpe Co., the Supreme Judicial Court of Massachusetts fundamentally transformed the understanding of shareholder relations in closely held corporations. The Court observed that, due to the partnership-like character of such entities, majority shareholders owe the minority shareholders a duty of the utmost good faith and loyalty. It further held that the majority's repurchase of its own shares with corporate funds, without extending the same opportunity to the minority, amounted to oppressive conduct warranting close judicial scrutiny. By doing so, the Court deliberately departed from the judicial restraint commonly associated with the business judgment rule, instead prioritising the principle of fair

³¹Among the cases examined in Section 4 below, where it was concluded that the BJR does not preclude judicial review, Wilkes v. Springside Nursing Home, Inc.; Brodie v. Jordan; McCann v. McCann; and Gerring Props. Inc. v. Gerring, the **termination of employment** was also among the grounds on which the plaintiffs based their **claims of oppressive conduct**.

³²See fn 21.

³³The decisions were examined in chronological order.

³⁴328 N.E.2d 505 (1975).



dealing.³⁵

B. Wilkes v. Springside Nursing Home, Inc.

A year later, the same court developed the reasoning of Donahue decision in the case of “Wilkes v. Springside Nursing Home, Inc.”³⁶ and applied a two-step test to determine whether the majority breached the **fiduciary duties**.

In this case, four individuals (Wilkes, Riche, Quinn, and Connor) jointly invested in real estate and later formed Springside Nursing Home, Inc. to operate a nursing home in 1951. Each shareholder initially participated in management, held equal shares, and contributed actively to the enterprise. By 1967, conflicts emerged. Wilkes indicated he might sell his shares, and soon after, the majority shareholders voted to cut off his salary, excluded him from management, and refused to re-elect him as a director. Wilkes had not failed in his duties, nor was there evidence of misconduct; his exclusion was a majority-driven decision. Wilkes claimed that these developments had not provided him with equal benefits from the majority shareholders, that he had been virtually excluded, and that this was a violation of the bond of loyalty and trust among shareholders.

The Massachusetts Supreme Judicial Court reversed the lower court’s dismissal and remanded the case. It held that the majority shareholders had violated their fiduciary duty to Wilkes by freezing him out without a valid business purpose. In its decision, the Supreme Court reaffirmed that close corporations share the relational dynamics of partnerships: because of the small number of participants, lack of market for shares, and overlapping ownership/management, shareholders owe one another heightened fiduciary duties. However, the Court sought to balance this fiduciary obligation with the need for majority shareholders to retain legitimate business discretion.

The Court formulated a two-step test: a) Majority shareholders must demonstrate a legitimate business purpose for their actions, b) If such a purpose is shown, the minority may still prevail by proving that the same objective could have been achieved through a less harmful alternative. Applied to the facts, the decision to cut off his salary and remove him from management was not supported by corporate necessity but rather served to deprive him of his fair share of corporate benefits. So, the majority’s decision to exclude Wilkes from salary and management lacked any objective justification, thereby failing the first step; the Court thus concluded that the action constituted an impermissible freeze-out.³⁷

Wilkes decision built upon the earlier decision in Donahue, but refined the doctrine by articulating a balancing test: while majority shareholders owe strict fiduciary duties, courts must also allow them reasonable leeway to pursue legitimate business goals. This case became a leading precedent in the law of close corporations, particularly in addressing minority shareholder oppression and freeze-outs.

³⁵Douglas K Moll, Protection of Minority Shareholders in Closely Held Corporations: Donahue v. Rodd Electrotype Co. in Jonathan R. Macey (ed), *The Iconic Cases In Corporate Law* (Thomson West 2008) (available at SSRN: <https://ssrn.com/abstract=1663388>) 13 ff; Robert C Clark, *Corporate Law* (Aspen 1986) 798-799; *Wilkes v. Springside Nursing Home, Inc* 370 Mass 842, 846-848 (Mass 1976). The question may arise as to why the court did not apply the principle of “equal treatment” in this case. In common law legal system, unlike Continental Europe legal system, there is no codified general rule directly expressed as the “equal treatment principle”. Instead, similar functions are ensured through different mechanisms. For example in US, fiduciary duties (particularly the duty of loyalty and the fairness doctrine) serve to protect minority shareholders. The “entire fairness test” (applied by Delaware courts) imposes standards of fair price and fair process in transactions. “Shareholder oppression” lawsuits, especially in close corporations, function as a tool to limit unfair treatment of minorities by the majority (Note that corporate law is regulated at the state level, not federal in US. However, Delaware General Corporation Law is the most influential one). For two comparative analyses on this issue, see Carsten Gerner-Beuerle and Michael Anderson Schillig, *Comparative Company Law* (Oxford University Press 2019) 465 ff (Chapter 6 - Constraints on Discretion: Part 1—Directors); Gaia Balp and Marco Ventoruzzo, ‘Controlling shareholders and their duties’ in Afra Afsharipour and Martin Gelter (eds) *Comparative Corporate Governance* (Elgar 2021) 324 ff. In the end, for my view that the same solution could be adopted in Turkish law, see below Section 5.2.

³⁶370 Mass. 842 (1976).

³⁷Ibid 852-853.



Subsequent Massachusetts cases have cited Wilkes as a cornerstone of minority-oppression doctrine, while also grappling with the evidentiary burdens created by the “less harmful alternative” standard.³⁸ Commentators have praised the test for balancing shareholder loyalty with managerial discretion, yet have also noted difficulties in its practical administration and the risk of judicial overreach into business decisions.³⁹

C. Romanik v. Lurie’s Home Supply Center, Inc

In the case of “Romanik v. Lurie’s Home Supply Center, Inc”⁴⁰; Lurie’s Home Supply Center, Inc. was a closely held, family-run corporation, largely controlled by the Lurie family. Peter Lurie had been the dominant shareholder until his death, after which his wife, Edna W. Lurie (as executrix of his estate), and his son, Ronald U. Lurie, assumed control. The plaintiffs, Joan Abby Romanik, Marlene Linda Katz, Bruce Edward Lurie, Etta C. Lurie, and Dan Lurie, were minority shareholders. They alleged that the majority shareholders and directors engaged in self-dealing transactions that benefited themselves at the expense of both the corporation and the minority.

The Illinois Appellate Court agreed in part with the plaintiffs. It held that the majority had indeed breached **fiduciary duties** in certain respects:

- The loan to the trust,
- The issuance of preferred shares,
- And the gift to the widow

were declared improper and void. These transactions diverted value to the controlling group without any legitimate corporate justification. At the same time, the Court emphasized that not every majority decision is subject to judicial invalidation. Under the BJR, courts will defer to decisions made in good faith and for legitimate business purposes. Therefore, not all of the plaintiffs’ claims succeeded, and notably, the demand for punitive damages was rejected.

Romanik v. Lurie’s Home Supply Center, Inc represents a pivotal precedent in Illinois corporate jurisprudence concerning minority shareholder oppression in close corporations. The decision illustrates a balanced judicial approach. The court intervened to invalidate clear breaches of fiduciary duty, including loans made to the controlling shareholder’s trust, a gratuitous death benefit, and the issuance of preferred stock intended to entrench control. At the same time, it maintained deference under the BJR for legitimate, good-faith managerial decisions, such as dividend discretion, where no fraud, dishonesty, or waste was shown.⁴¹ This equilibrium reflects the Illinois courts’ consistent effort to protect minority shareholders from majority self-dealing while maintaining managerial autonomy and functional efficiency in corporate governance.

In addition to such relatively earlier decisions, similar approaches can be seen in the following more recent decisions:

³⁸E.g. Smith v. Atlantic Properties, Inc. (12 Mass App Ct 201 (1981)); Leslie v. Boston Software Collaborative, Inc. (14 Mass. L. Rptr. 379 (2002)).

³⁹Robert B Thompson, ‘The Shareholder’s Cause of Action for Oppression’ (1993) 48(2) *Business Lawyer* 711-714; Ethan Z. Davis and Kurt S. Kusiak, ‘Gaining the Advantage in Close-Corporation Disputes: Examining Key Differences between Massachusetts and Delaware Fiduciary Duty Law’ (2015) (97(2) *Massachusetts Law Review* 30.

⁴⁰435 N.E.2d 712 (Ill. App. Ct. 1982).

⁴¹Timothy J Storm, ‘Remedies for Oppression of Non-Controlling Shareholders in Illinois Closely-Held Corporations: An Idea Whose Time Has Gone’ (2002) 33 *Loyola University Chicago Law Journal* 410-414, 430-432; Charles W Murdock, ‘Why Illinois? A Comparison of Illinois and Delaware Corporate Jurisprudence’ (1994) 19 *Southern Illinois University Law Journal* 1 n99-103.



D. In re Bal Harbour Club Inc.

In re Bal Harbour Club Inc.⁴² illustrates the limits of the business judgment rule. In this case, the management of the Bal Harbour Club filed for Chapter 11⁴³ protection with the sole purpose of frustrating a \$34 million land sale agreement with Ava Development, rather than pursuing a legitimate reorganization. The Eleventh Circuit dismissed the petition, holding that the bankruptcy filing was made in bad faith and therefore constituted an abuse of the process. The decision demonstrates that judicial deference under the BJR is **conditional**: it applies only where directors act in good faith, on an informed basis, and in the honest belief that the decision is in the best interests of the corporation. Where **decisions are tainted by fraud, bad faith or illegality, the presumption of the rule is rebutted and judicial intervention is justified**. In this sense, Bal Harbour reflects a broader corporate law principle: the BJR protects honest mistakes of judgment, but not manipulative or abusive uses of corporate processes to the detriment of counterparties or minority shareholders.⁴⁴

E. Brodie v. Jordan

In the case of Brodie v. Jordan⁴⁵, the Massachusetts Supreme Judicial Court addressed a classic “freeze-out” dispute in a closely held corporation. The company, Malden Centerless Grinding Co., was owned by three shareholders who had long operated it as a small, family-style enterprise. After one of them, Walter Brodie, was removed from management and subsequently died, his widow, Mary Brodie, inherited his shares but was excluded from participation in the company. The remaining majority shareholders, Jordan and Barbuto, continued to draw financial benefits while refusing dividends, withholding corporate information, and preventing any involvement by the minority shareholder. These actions were alleged to constitute a breach of fiduciary duty owed by majority shareholders to the minority in a close corporation context.

The Supreme Judicial Court affirmed that majority shareholders in a close corporation owe one another a duty of **utmost good faith and loyalty**, analogous to that among partners. It agreed that the defendants’ conduct effectively deprived the minority of her “**reasonable expectations**” of participation and financial return, amounting to a freeze-out.⁴⁶

The decision is a leading authority on minority shareholder protection in closely held corporations. It refined the Massachusetts “reasonable expectations” doctrine by emphasizing proportional remedies

⁴²316 F.3d 1192 (11th Cir. 2003).

⁴³It refers to Chapter 11 of the U.S. Bankruptcy Code. The provisions of Chapter 11 are set forth in Sections 1101–1174 of Title 11 of the United States Code (11 U.S.C. §§ 1101–1174). In other words, “Chapter 11” designates the eleventh chapter of the Code, which governs reorganization procedures.

⁴⁴(Quoting from the text of the decision) “In using the word “presumption” or “presumed” in articulating the business judgment rule, the courts have not intended to create a presumption in the classical procedural sense—as a vehicle that puts the burden of going forward with the evidence on the party without the burden of proof. Rather, the courts are merely expressing the substantive rule of director liability. As the panel in Stahl expressed it, “directors are protected by the [business judgment rule under Florida law], no matter how poor their business judgment, unless they acted fraudulently, illegally, oppressively, or in bad faith. Said differently, so long as due care was exercised, the [rule] protects a ‘good director’ (one who did not act fraudulently, illegally, oppressively, or in bad faith) who made an honest error or mistake in judgment, but not a ‘bad director’ (one who acted fraudulently, illegally, oppressively, or in bad faith) who made a bad decision.” Stahl, 89 F.3d at 1517 (internal citation omitted). The question before the bankruptcy judge was a question the business judgment rule envisions—whether the Board acted in bad faith when it filed the instant petition. AVA had the burden of proof on that issue, and, as the bankruptcy court’s findings indicate, it fully satisfied that burden. Section 1112(b) authorized the court to dismiss the petition on a finding that it had been filed in bad faith, for the purpose of abusing the judicial process and the reorganization afforded by Chapter 11. In sum, the bankruptcy court did not misapply the law in reaching its decision. The court’s decision is therefore due to be upheld. We uphold it by affirming the judgment of the district court.”

⁴⁵447 Mass. 866 (2006), 857 N.E.2d 1076 (Mass.)

⁴⁶However, the Court reversed the trial court’s order requiring the majority to purchase the minority’s shares. It reasoned that a compulsory buy-out was inappropriate where there was no evidence that such a right formed part of the shareholder’s reasonable expectations. The appropriate remedy, the Court explained, should aim to restore or protect those expectations rather than confer a windfall (Ibid 870-71).



tailored to the nature of the oppression.⁴⁷ *Brodie v. Jordan* thus stands for the principle that the measure of relief must correspond to the specific expectations that have been frustrated, not to a general notion of fairness.

F. McCann v. McCann

In the case of *McCann v. McCann*⁴⁸, Ronald McCann (Ron) brought suit against his brother, William McCann, Jr. (Bill), Gary Meisner (Meisner), and the McCann Ranch & Livestock Company, Inc. (the Corporation). The litigation stemmed from disputes concerning the management and operation of the closely held family corporation following the death of their father, William McCann, Sr. Upon William Sr.'s death, his shares passed into a trust established for the benefit of his wife, Gertrude, with Meisner serving as trustee. Ron contended that Bill and Meisner had breached their fiduciary duties and engaged in oppressive conduct amounting to a shareholder "squeeze-out," thereby harming his interests as a minority shareholder. He therefore sought judicial dissolution of the Corporation. The district court dismissed his claims on the ground that he had failed to comply with the statutory demand prerequisites for derivative actions and further restricted discovery to events occurring after January 2001. Ron appealed both the dismissal and the discovery limitations. The case also followed an earlier proceeding, *McCann I*, in which Ron's similar claims had been characterized as derivative and consequently dismissed.⁴⁹

The Idaho Supreme Court determined that Ron's allegation of breach of fiduciary duty constituted an individual, rather than a derivative, claim. Accordingly, it was not subject to the procedural prerequisites applicable to derivative suits. The Court further held that the record contained sufficient evidence of a potential irreparable injury to the Corporation to warrant reversal of the summary judgment entered against Ron on his dissolution claim.

In its reasoning, the Court emphasized that Ron's grievances concerned harm unique to him as a minority shareholder in a closely held corporation, rather than harm suffered generally by the Corporation. Acts such as excluding Ron from employment, denying him dividends, and preventing his participation on the board, the Court explained, could amount to a "squeeze-out," directly infringing upon his personal shareholder interests. Moreover, the Court concluded that the financial distributions to Gertrude and the Corporation's resulting tax exposure presented a concrete and immediate threat of irreparable harm, rather than a speculative one. Finally, the Court found that the district court erred in restricting discovery to post-2001 events, as evidence from prior years was material to demonstrating the continuous and cumulative nature of the alleged misconduct.

G. Parker v. Parker

In the case of *Parker v. Parker*⁵⁰, two brothers, Richard and Steven Parker, were co-owners of two closely held companies, Plant Interior Landscapes (PIP) and Parker Wholesale Florists (PWF). Over time, the relationship between the brothers deteriorated as Richard alleged that Steven had mismanaged the businesses by allowing PWF to accumulate losses that were effectively borne by PIP, thereby diminishing Richard's equity interest. Richard claimed that Steven's conduct constituted shareholder oppression under New Jersey's closely held corporation jurisprudence.

⁴⁷Margaret H. Paget, 'Corporate Law- Shareholder Breach of Fiduciary Duty in Close Corporations: Brodie v Jordan' (2007) 91 *Massachusetts Law Review* 32; Nicholas Nesgos and Benjamin Greene, 'Fiduciary Duties in Massachusetts and Delaware Closely Held Corporations' (2020) 64 *Boston Bar Journal* 4.

⁴⁸152 Idaho 809 (2012).

⁴⁹See *McCann v. McCann*, 47 P.3d 854 (Idaho 2002).

⁵⁰2016 N.J. Super. Unpub. LEXIS 2720, 24 (Ch. Div. Dec. 22, 2016).



The Chancery Division found that Steven had engaged in conduct oppressive to Richard as a shareholder. The court ordered a compulsory buyout of Steven's shares but applied a *discount for lack of marketability (DLOM)* in valuing the interest. Although New Jersey's "fair value" standard typically excludes such discounts to prevent penalizing the oppressed shareholder, the court determined that the specific circumstances, particularly Steven's wrongful conduct and the need to ensure an equitable outcome, justified applying a marketability discount.

The decision is significant in New Jersey corporate law because it illustrates judicial flexibility in valuation remedies under shareholder oppression statutes. By applying a DLOM even within a "fair value" context, *Parker v. Parker* reaffirmed that courts may tailor equitable relief to the facts of each case, balancing the protection of minority shareholders with fairness to all parties involved.⁵¹

H. Frank v. Frank

The case of *Frank v. Frank*⁵² arose from a dispute among siblings who were shareholders in a closely held family corporation. The plaintiff, one of the brothers, alleged that his brother, who was the controlling shareholder and manager, had engaged in conduct that was oppressive under Michigan's minority shareholder protection statute, MCL 450.1489. Specifically, the plaintiff claimed exclusion from management, denial of financial information, and actions diminishing his ownership value and role within the company. These acts, he argued, frustrated his **reasonable expectations** as a minority shareholder and co-founder.

The defendant, in turn, contended that his decisions fell within legitimate business discretion and were protected under the business judgment rule, asserting that all actions were taken in good faith and in the corporation's best interests.

The Michigan Court of Appeals affirmed the trial court's finding that the controlling shareholder's conduct was oppressive under MCL 450.1489. The court emphasized that "shareholder oppression" encompasses not only illegal acts or breaches of fiduciary duty, but also conduct that substantially interferes with a minority shareholder's reasonable expectations. The court interpreted "willfully unfair and oppressive conduct" broadly, focusing on the effect on the minority shareholder rather than the subjective intent of the majority.

The court rejected the defense that the business judgment rule insulated the controlling shareholder's actions. It clarified that when the alleged acts constitute oppression or breach fiduciary duties owed to a co-owner, the presumption of good-faith business judgment does not apply. Thus, equitable relief, including a buyout, was appropriate.

The ruling in *Frank v. Frank* highlights the delicate balance between preserving managerial discretion and protecting shareholder rights. Directors require the freedom to make strategic decisions without fear of constant litigation. However, this discretion must be **exercised within the boundaries of fairness and legality**. The court's reasoning underscores the importance of protecting shareholders from abuses of power while ensuring that corporate governance remains functional and efficient. By allowing claims under the shareholder oppression statute to override the business judgment rule, the court provides a mechanism for addressing egregious conduct without unduly restricting directors' decision-making authority.

⁵¹*Parker v. Parker* was decided under the oppression statute rather than in the context of a corporate governance dispute. Thus, it may illustratively demonstrate that judicial intervention is permissible where a controlling shareholder or manager acts in bad faith, pursues self-interest, or behaves in a manner oppressive to a co-owner, and that such circumstances similarly defeat the presumption of good-faith business judgment.

⁵²330 Mich. App. 69 (Mich. Ct. App. 2019).



I. Vanco v. Mancini

In the case of “Vanco v. Mancini”⁵³, the plaintiff, David K. Vanco, was one of the original shareholders of a closely-held company, Chicago Flameproof and Wood Specialties Corp., incorporated in 1991. Vanco loaned the company \$610,000 on favorable terms to acquire a lumber-treating business, and purchased 160 of 1,000 shares for US \$1 each. The company’s bylaws and a shareholder agreement awarded one of the other shareholders, Vincent Mancini, life-long control of the company as director and CEO, and effectively froze Vanco out of management and opportunity.

Vanco alleged that the majority shareholders: (i) failed to hold annual or special shareholder meetings, (ii) issued new shares without proper notice, diluting Vanco’s stake, (iii) diverted corporate opportunities and assets to a separate company controlled by the majority, (iv) paid excessive salaries to the majority, and (v) blocked his access to company records.

He raised claims for shareholder oppression, refusal to permit inspection of corporate records, breach of fiduciary duty, breach of contract, and a derivative action on behalf of the company.

The United States District Court for the Northern District of Illinois granted in part the defendants’ motion to dismiss, and denied in part. The court allowed significant parts of his complaint to advance, finding plausible allegations of oppressive conduct, dilution, exclusion, diversion of corporate opportunity, and breach of governance rights.

In Vanco v. Mancini, although the court did not explicitly apply the business judgment rule, its reasoning implicitly reflects the limits of judicial deference under that doctrine. The court scrutinized **whether the majority shareholders’ actions, such as exclusion from management, dilution, and diversion of corporate opportunities, were taken in good faith and for legitimate corporate purposes**. In doing so, it signaled that judicial restraint under the business judgment rule does not extend to decisions tainted by bad faith, self-dealing, or oppressive intent toward minority shareholders.

J. Gerring Props. Inc. v. Gerring

The dispute in Gerring Props. Inc. v. Gerring⁵⁴ arose among family members who jointly owned a closely held corporation. Martin Gerring, a minority shareholder and employee, was terminated from his position by the majority shareholders, who were also his relatives. Martin alleged that his dismissal and exclusion from management constituted unfairly prejudicial conduct under Minn. Stat. § 302A.751, which entitles minority shareholders or employees in closely held corporations to seek equitable relief when their reasonable expectations are violated. The district court found that although Martin had engaged in some misconduct, his termination was partly motivated by improper considerations unrelated to legitimate business reasons.

The Minnesota Court of Appeals affirmed the district court’s decision, holding that the mixed motives underlying the termination supported a finding of unfairly prejudicial conduct in violation of § 302A.751. The court emphasized that even when certain grounds for termination exist, the equitable character of shareholder and employment relationships in close corporations requires the court to assess fairness and motive, rather than deferring automatically to the majority’s business judgment. This reasoning illustrates that the business judgment rule does not bar judicial scrutiny where majority actions are tainted by bad faith or inequitable treatment, thereby reinforcing the protection of minority shareholders’ reasonable expectations within the distinctive relational context of closely held firms.

⁵³495 F. Supp. 3d 712 (N.D. Ill. 2020).

⁵⁴Minn. App. Unpub. LEXIS 964, 5 (Minn. Ct. App. Dec. 21, 2020).



V. Overall Assessment and Implications for Turkish Law

A. In general

In terms of their characteristics, close corporations bear a strong resemblance to general partnerships. They are typically composed of a small number of shareholders, whose shares are not freely transferable and who often participate directly in management. This structure produces a heightened reliance on personal trust, loyalty, and cooperation among shareholders which is an element far less pronounced in widely held, publicly traded corporations.

Within general partnerships, the relationship among partners is underpinned by an expectation of the highest degree of honesty and fidelity, since the enterprise is sustained through mutual confidence and trust. By analogy, close corporations should be subject to a similar standard: shareholders, especially those in controlling positions, must refrain from exploiting their dominance at the expense of minority investors. They should instead manage corporate affairs with fairness, candor, and loyalty toward their fellow shareholders.

By recognizing the functional resemblance of close corporations to partnerships and imposing a heightened fiduciary duty, U.S. courts provide an effective safeguard against majority opportunism. This solution ensures that liquidity events, particularly selective share repurchases, dividend distributions, and employment opportunities within the corporation, cannot be exploited by majority shareholders to the detriment of the minority. In doing so, it preserves the integrity of the close corporation as a cooperative venture and protects the expectations of all participants.

Therefore, it is both doctrinally consistent and normatively desirable to extend the partnership-like standard of loyalty and good faith to shareholders in close corporations. Such an approach not only aligns legal doctrine with economic and relational realities but also offers a robust judicial mechanism to counteract the problem of majority oppression which addresses one of the central vulnerabilities of the close corporation form.

B. In particular, with respect to Turkiye and Turkish law

In Turkish corporate law, joint stock companies are categorized as capital-intensive enterprises, in which shareholder relations are generally mediated through formal legal structures and the principle of majority rule. Although formally classified as joint-stock (capital) companies, almost all non-public joint-stock companies (also known as close corporations) in Turkey, just like their foreign counterparts, are family-owned or tightly held, their shares are not readily tradable, and the shareholders themselves frequently occupy management positions.

Current Turkish doctrine addresses minority protection primarily through statutory safeguards, such as quorum requirements, information rights, minority rights and dissolution of company for just cause in certain cases under the TCC. While these mechanisms are significant, they may not always provide an adequate remedy where majority shareholders exploit their control in subtle but harmful ways, for example through unequal distributions of corporate benefits, selective repurchases, or exclusion from governance. Although the lawsuit for termination with just cause seems to be an effective solution, when considered these factors that

- i) the right to file a lawsuit is granted to a minority with at least 1/10 of the share,
- ii) procedural law questions specific to this case⁵⁵,
- iii) length of the litigation process in our country,

it is not sufficient to deter the majority from oppressive practice. In this respect, the **fiduciary duty approach** adopted by U.S. courts offers a valuable complement to statutory protections. By recognizing that shareholders in close corporations owe each other a heightened duty of loyalty and good faith, similar to the duties partners owe one another, Turkish law could strengthen its arsenal against majority abuse. Such a doctrinal development would ensure that majority shareholders cannot exploit corporate control to the detriment of minority shareholders without violating their fiduciary obligations.

Consequently, importing or adapting this approach into the Turkish context would promote both **substantive fairness** and **functional efficiency**: it would protect the justified expectations of minority shareholders, preserve the cooperative nature of close corporations, and reduce incentives for opportunistic behavior by controlling groups. This would mark a significant step toward aligning Turkish law with comparative best practices in addressing the perennial problem of minority oppression.

VI. Conclusion

The issue of oppression of minority shareholders is generally considered as a problem of close corporations because of no ready market where shareholders can sell their shares. The fact that shareholders' exit opportunities are limited in close corporations compared to publicly held ones provides a favorable environment for the person or group with majority power to ignore, not listen to, and force minority shareholders who oppose their decisions to sell their shares (at low prices). It is noteworthy that the authors, who examine the origins and causes of minority oppression, also mentioned the business judgment rule to be among the causes (judicial deference to corporate decisions and thus noninterference by the court).

U.S. courts have addressed this tension by adapting the BJR in close corporations: importing partnership-like fiduciary duties, protecting minority shareholders' reasonable expectations, and refusing to treat the rule as an absolute barrier to judicial review. This doctrinal evolution demonstrates that the BJR must be context-sensitive, rather than rigidly applied.

Accordingly, incorporating a fiduciary-duty-based approach, similar to that of U.S. jurisprudence, would provide more effective protection against the problem of oppression compared to existing minority rights. Recognizing enhanced duties of loyalty and good faith among shareholders in close corporations would strengthen protections against covert or prolonged forms of majority oppression.


In conclusion, the purpose is not to undermine the business judgment rule but to prevent it from becoming a tool of majority domination. In close corporations, where the rule's underlying assumptions often collapse, judicial oversight becomes essential for balancing managerial discretion with minority protection. A nuanced application of the BJR -sensitive to the dynamics of closely held firms- is indispensable for ensuring fairness, preventing majority abuse, and maintaining corporate stability.



Peer Review	Externally peer-reviewed.
Conflict of Interest	The author has no conflict of interest to declare.
Grant Support	The author declared that this study has received no financial support.

⁵⁵See Ünal Tekinalp, 'Anonim Ortaklığın Haklı Sebeplerle Feshi Davasının Bazı Usuli Sorunları' in Erol Ulusoy (ed) *Prof. Dr. Ersin Çamoğlu'na Armağan* (Vedat 2013) 215 ff; Aker H, 'Anonim ve Limited Şirketlerde Ortaklık Sifatının Sona Ermesi ve Özellikle Haklı Sebeple Fesih Davasına İlişkin Bazı Değerlendirmeler' (2016) 32(1) *Banka ve Ticaret Hukuku Dergisi* 122 ff; Ayşe Şahin, *Anonim Ortaklığın Haklı Sebeple Feshi* (Vedat 2013) 486 ff; Cengiz Erten, 'Anonim Şirketlerde Haklı Sebeplerle Fesih Hakkının Yargıtay İçtihatları Çerçevesinde Değerlendirilmesi' (2019) 7(13) *Uyuşmazlık Mahkemesi Dergisi* 197 ff.



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