

## SAMPLE NOTES - LAW2450 CORPORATIONS ACT EXAM SUMMARY NOTES

588G	DIRECTOR'S DUTY TO PREVENT INSOLVENT TRADING BY COMPANY	DIVISION 3 - DIRECTOR'S DUTY TO PREVENT INSOLVENT TRADING BY COMPANY			DEFENCES - s558H
588G(1)	<p><b>[APPLICATION]</b></p> <p>This section applies if:</p> <p>(a) A person is a director of a company at the time when the company incurs debt</p> <p>(b) the company is insolvent at the time, or becomes insolvent by incurring that debt, or by incurring at the time debts that debt;</p> <p>(c) at the time, there was no reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be</p> <p>(d) that time is at or after the commencement of this act</p>		<p>When is a company insolvent? <i>S95 Insolvent when a company is unable to pay its debts as and when they fall due</i></p> <p>Directors must have reasonable grounds for suspecting insolvency court will look at whether the director has basic understanding of the company's financial status</p> <p>"a positive feeling is actually apprehension and not a mere speculation" - <i>Queensland Bacon Pty v Rees</i></p> <p>AWARE - director was aware at the time the debt was incurred there was reasonable grounds to suspect the company was insolvent, a reasonable person would have suspected, a reasonable person is a director of ordinary competence.</p> <p>AWARE → calls from creditors</p> <p>→ overdue bill notices</p> <p>→ tax debts not been paid</p> <p>→ suppliers suing for debt</p> <p>→ staff complaining about wages not being paid on time</p>		<p>→ Director has reasonable grounds to expect the company to be solvent s558H(2)</p> <p>→ Reasonable reliance on information supplied by another person s 558H(3)</p> <p>→ Due to illness or some other good reason being absent from management s558H(4)</p> <p>→ Director did take all responsible steps to prevent company incurring debts s558H(5)</p> <p>Expectations of solvency means that the director has some confidence that the company is solvent</p> <p>Reliance on others, the issue of delegation and competence of a person is relied on</p> <p>Absence because of illness, ignorance is no excuse. Always look at actions taken by director</p>
588V	[WHEN HOLDING COMPANY IS LIABLE]				