

Consequences of breach of duty

Approval

- Person **can avoid breaching** their duties by making **full disclosure** of all relevant information **to the company** in response to which the company **grants through ordinary resolution**:
 - **Authorisation**
 - Statute law and General law
 - Approval before taking the action
 - **Ratification**
 - General law only, not statute: **Angas Law Service Pty Ltd v Carabelas**
 - Approval after taking the action
- **Approval only available if company is solvent**: **Kinsela v Russell Kinsela Pty Ltd**
- **Approval by company does not prevent**:
 - ASIC bringing action
 - Statutory Derivative Action: S239(1)
- **Approval is not effective if**:
 - **Director(s)** use power as shareholders to **ratify** their **own breach**: **Cook v Deeks**
 - If **oppressive** to members: **Hannes v MJH Pty Ltd**

Breach of General Law Duty

- Directors owe duties to the company, that is, to the members as a whole
Greenhalgh v Arderne Cinemas
- Company is proper plaintiff for wrongs done to the company:
Foss v Harbottle
- Under General law, **only company may bring action** for remedies available to company:
 - **Damages**: **Daniels v Anderson**
 - **Account of profits**: **Paul A Davies (Aust) Pty Ltd v Davies**
 - **Rescission**: **Transvaal lands Co v New Belgium**
 - **Constructive trust**: **Cook v Deeks**

- **Injunction:** Parke v Daily News Ltd
- If company is in liquidation, then liquidator can bring action on company's behalf

Breach of Statute Law Duty

Compensation order (S1317H)

- May be brought by:
 - ASIC: S1317J(1)
 - Company: S1317J(2)
 - Liquidator (If company is in liquidation)

Injunction for breach of Corporation Act (S1324)

- May be brought by:
 - ASIC
 - Person whose interests are affected
 - Liquidator: AGBC Pty Ltd & Anor v Dessa & Ors
 - Creditor: Phoenix Constructions Queensland Pty Ltd

ASIC - Civil Penalty Provisions (S1317J(1))

- **SS 1317DA + 1317E:** Civil penalty provisions Include
 - S180(1); S181; S182; S183
- Breach of civil penalty provisions
 - Actions available to ASIC:
 - **Management banning order:** S206C
 - **Pecuniary penalty order** (up to \$200,000): S1317G
 - **Statutory compensation order:** S1317H

DPP - Criminal offense

- **S184:** Criminal offence
 - Conduct amounting to breach of SS 181, 182, 183, AND
 - Conduct is either:
 - **Reckless**, OR
 - Intentionally **dishonest**

- Actions available to DPP for S184:
 - S1311 + Schedule 3: Item 30 - Penalty (max):
 - \$360,000 fine (2000 penalty unit) / 5 years of jail / both