

## 6. Contracts with outsiders

Company powers and how they are exercised

- s. 124 Legal capacity and powers of a company
- s. 125 Constitution may limit powers and set out objects
- s. 126 Agent exercising a company's power to make contracts
- s. 127 Execution of documents (including deeds) by the company itself

Assumptions people dealing with companies are entitled to make

- s. 128 Entitlement to make assumptions
- s. 129 Statutory assumptions that can be made under s. 128
- s. 130 Information available to the public from ASIC does not constitute constructive notice

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### **ANSWER GUIDE**

#### **DIRECTLY**

**For a contract entered into directly (s. 127) (signature, seal, or other means authorised by const.)** by two directors, or a director and a company secretary, or a sole director/secretary of a pty coy.

**DETERMINE IF DIR/SEC:**

- Is validly appointed
- If on ASIC register as director/secretary, can assume they are: [s. 129\(2\)](#)
- If being held out as someone with that office under [s. 129\(3\)](#) (by someone with actual authority: *Brick and Pipe v Occidental* – extends to implied actual authority by conduct and ostensible authority)
- if a D states next to signature: sole director/C secretary, person may assume that is correct: [s. 129\(5\)](#) – even if there are, in fact, multiple directors

**CONSIDER**

- Whether it is appropriate to use the assumptions in [s. 129\(1\)](#)/ *Turquand* (useful if there has been a failure to comply with an internal governance rule)

**THEN**

- Rely on [s. 129\(5\)/\(6\)](#) to bind the company
- If you have used IMR/[s. 129](#) YOU MUST consider exceptions under [s. 128\(4\)](#)/*Northside Development*
- Also ref [s. 130\(1\)](#) where appropriate (ASIC register not assumed knowledge if they haven't actually checked it)

If the answer is no, check if the company ratified the contract.

#### **INDIRECTLY**

**Contract entered into indirectly – [s. 126](#): Company able to appoint agent**

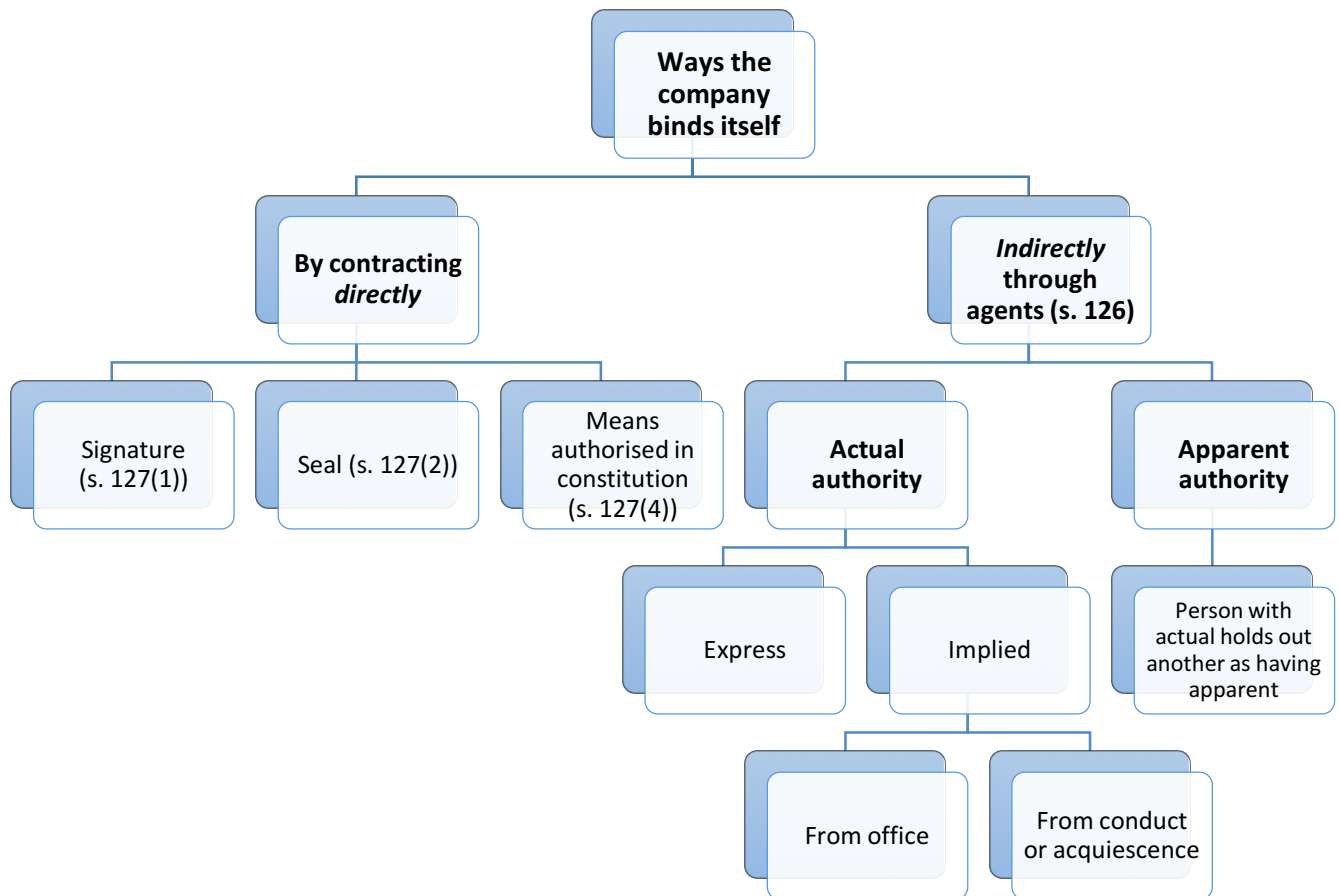
- Was express authority given by someone with *actual* authority?

*Keep in mind: if board resolution/GM resolution invalid e.g. because no quorum, not properly convened, no notice given, not within express authority. Refer to early notes re decision-making by board or general meeting*

- Was the contract entered into by someone with **implied actual authority from office?** (MD, officer may have authority for some types of contracts) Consider: Were they validly appointed? Also consider [s. 129\(2\)\(b\)](#) for MD, large/complex contracts outside scope of MD: *Crabtree Vickers*
- Was contract entered into by someone with **implied actual authority from conduct?** *Hely Hutchison*: acquiescence of Board to a similar pattern of conduct.
  - If no evidence of pattern of behaviour by coy, say no evidence and therefore unlikely implied by conduct)
- Was the contract entered into by someone with **ostensible authority?** (Have criteria in *Freeman* been satisfied? Trickiest is usually whether representation has been *by someone with actual authority*. Remember: Holding out must be by someone with actual authority (*Crabtree Vickers*)).

**CONSIDER [s. 129](#) assumptions** (in particular consider use of [\(1\), \(3\) and \(4\)](#))/*Re Turquand's*

- If you have used IMR/[s. 129](#) YOU MUST consider exceptions under [s. 128\(4\)](#)/*Northside Development*



## SUMMARY

Where an organ contracts in the name of the C, its act is an act of the C itself. The position is different when the C contracts through an agent whose act is an act *for*, but not *of*, the company. The ability to contract with other legal entities arises because a C has the legal capacity and powers of an individual: [s. 124\(1\)](#)

- Compliance with constitution can be assumed (IMR: [Royal British Bank v Turquand](#))
- Authority to contract, concept of holding out: [Freeman and Lockyer](#); [Crabtree-Vickers](#)
- Board of Ds may manage C: [s. 198A](#)
- Board may elect MD: [ss. 201J, 198C](#)
- C execution of docs: [s. 127](#)
- CA creates assumptions in favour of outsiders dealing with C: [s. 129](#)
- The benefit of assumptions are lost if knowledge or suspicion of an irregularity exists: [s. 128](#), [Sofyer v Earlmaize](#)

CORPORATE CAPACITY AND POWERS	A company has the legal capacity and powers of an individual <a href="#">s. 124(1)</a>	It is not open to a C/SH to argue a contract is not enforceable because their interests are not served by the contract: <a href="#">s. 124(2)</a>
	The doctrine of ultra vires is now dead to Cs registered under the <a href="#">CA</a>	Breach of constitutional restrictions/prohibitions does not render exercise of the power invalid: <a href="#">s. 125(1)</a> Breach of C's objects (if they have them) does not render act invalid: <a href="#">s. 125(2)</a>
CONTRACTING DIRECTLY <a href="#">s. 127</a>	By signature of directors <a href="#">s. 127(1)</a>	<b>Public:</b> <a href="#">(a)</a> Doc signed by 2Ds, <a href="#">(b)</a> or 1 D and 1 sec. <b>Proprietary:</b> <a href="#">(c)</a> sole D/sec  If a C executes a document in this way, people will be able to rely on the assumptions in <a href="#">s. 129(5)</a> for dealings in relation to the company.

	<p><b>By affixing common seal</b></p> <p><b>s. 127(2)</b></p>	<p><b>Public:</b> (a) Fixing witnessed by 2 Ds, (b) or a D and secretary. <b>Proprietary:</b> (c) Sole D or who is also C sec</p> <p>Execution by common seal is equivalent to execution by company itself: <u>Northside Developments</u></p> <p>If a C executes a document in this way, people will be able to rely on the assumptions in <u>s. 129(6)</u> for dealings in relation to the company.</p>
	<p><b>By other means</b></p> <p><b>s. 127(4)</b></p>	<p><b>Other means authorised in articles of the constitution:</b> <u>s. 127(4)</u></p>
<p><b>CONTRACTING INDIRECTLY</b></p> <p><b>s. 126: Persons acting under the express or implied authority of a C to contract in the name or on behalf of the C in the same manner as if the contract were made by a natural person</b></p>	<p><b>Actual authority</b></p> <p>An express or implied granting of authority to an agent by the principal – the company</p>	<p>Like any other principal, a C is liable in a contract which is entered into on its behalf by persons acting within the scope of the authority vested in them by it: <u>Freeman &amp; Lockyer; Hely-Hutchison</u>.</p> <p>Actual agency authority arises where a principal expressly or impliedly grants, and an agent accepts, authority to perform a specific task on behalf of the principal: <u>Hely-Hutchison</u>.</p> <p>A principal may ratify, or assume responsibility for, unauthorised act of an agent so as to become bound: <u>Northside Developments</u></p> <p>Scope of actual authority of an agent is ascertained by applying ordinary principles of construction of contracts, including any implications from express words used, usages of the C's trade or business, or the course of business between the parties: <u>Freeman &amp; Lockyer; Hely-Hutchinson</u></p> <p><b>Express</b></p> <ul style="list-style-type: none"> <li>Express words, such as when board passes a resolution which authorises an agent to carry out a particular function or do a specific act: <u>Hely-Hutchison</u></li> </ul> <p><b>Implied</b></p> <ul style="list-style-type: none"> <li><b>Implied from office</b> <ul style="list-style-type: none"> <li>MD, Chair, Secretary, Officer</li> <li>The more senior the role within the organisation, the greater, ordinarily, scope of IA: <u>Hely-Hutchison</u></li> </ul> </li> <li><b>Implied from conduct/acquiescence</b> <ul style="list-style-type: none"> <li>Inferable from the conduct of the parties and circumstances of the case: <u>Hely-Hutchison</u></li> <li>It will be implied, in the absence of a contrary agreement, that the agent has C's authority to do whatever is customary or usual for such an agent or officer to do in a business of the kind carried on by the company: <u>Freeman &amp; Lockyer; Hely-Hutchison</u></li> </ul> </li> </ul>
	<p><b>Apparent /ostensible authority</b></p>	<p><u>Freeman &amp; Lockyer</u>: Diplock LJ's conditions to establish OA.</p> <p>A C is estopped, as against a person (agent) acting in good faith, from denying it had given a person authority to bind it into a contract, if the agent can show:</p> <ol style="list-style-type: none"> <li>A representation has been made that a person has authority to enter into a contract of that type on behalf of the company</li> <li>That the representation was made by someone with actual authority</li> <li>That the contractor was induced by the representation to contract</li> <li><del>That the act was not ultra vires the company:</del> NO LONGER RELEVANT – <u>s. 125</u></li> </ol> <p>Legal relationship between principal and contractor created by a representation, made by P to C, intended to be and acted upon by the C, that the agent has authority to enter on behalf of the P into a contract of a kind within the scope of</p>

		<p>the “apparent” authority, rendering P liable to perform obligation imposed by contract: <u>Freeman and Lockyer</u></p> <p>Rep may be made by words, but usually made by conduct, e.g. permitting a person to act in the management or conduct of the relevant aspect of the company’s business: <u>Freeman &amp; Lockyer</u></p> <p><b>A representation of a person with OA <i>cannot</i> create OA in another person (<u>Crabtree-Vickers</u>)</b></p>
<p><b>THE INDOOR MANAGEMENT RULE</b></p> <p><b>A common law wrinkle</b></p>	<p><u>Royal British Bank v Turquand</u>:</p> <ul style="list-style-type: none"> <li>Parties contracting with a C are deemed to have notice of its constitution, but are not bound to enquire further (e.g. if the internal rules are not complied with)</li> <li>Third parties are entitled to assume matters occurring behind the closed doors of the C are in order</li> </ul>	
<p><b>STATUTORY ASSUMPTIONS</b></p> <p><u>ss. 128 – 130</u> (statutory formulations of the IMR)</p>	<p>These statutory provisions do not codify or exclude the common law rules, but are understood to work in tandem (<u>Northside Developments</u>)</p> <p><u>s. 128(1)</u>: a person having dealings with a C is entitled to make assumptions in <u>s. 129</u>. This is, however, qualified by <u>s. 128(4)</u>:</p> <p><u>s. 128(4)</u>: A person is not entitled to [assume the C’s act was validly effected] if at the time of the dealings they knew or suspected that the assumption was incorrect</p> <ul style="list-style-type: none"> <li>Suspected ≠ being put on enquiry, i.e. no ‘constructive’ notice</li> <li><u>Sunburst Properties</u>: a subjective test</li> <li><u>MDN Mortgages</u>: actual knowledge or suspicion that assumption of regularity was unwarranted</li> </ul> <p><b>A person may assume:</b></p> <ul style="list-style-type: none"> <li>The C’s constitution (if any), and any applicable replaceable rules, have been complied with: <u>s. 129(1)</u></li> <li>Proper appointment of <ul style="list-style-type: none"> <li>Director or company secretary – customary powers <u>s. 129(2)</u> <ul style="list-style-type: none"> <li>Entitled to assume anyone who appears, from info provided by C publicly available on ASIC, to be a D or sec, has been duly appointed can may perform the duties customarily exercised</li> </ul> </li> <li>Person held out to be <b>officer</b> or <b>agent</b> <u>s. 129(3)</u> <ul style="list-style-type: none"> <li>May assume anyone held out by C as officer or agent has been duly appointed and has authority to exercise the powers/perform the duties customarily exercised</li> <li>C may hold someone out as an agent through words/conduct of a person who has authority to manage a relevant aspect of the business (<u>Brick and Pipe v Occidental</u>), make the appointment on the C’s behalf (<u>Freeman and Lockyer</u>), or identify a person as an officer/agent of the C (<u>Northside Developments</u>)</li> </ul> </li> </ul> </li> <li>Proper performance of duties by officers and agents: <u>s. 129(4)</u></li> <li>Documents duly executed, seal affixed: <u>ss. 129(5), (6)</u> <ul style="list-style-type: none"> <li>Not dependent on proof the C complied with constitution/authorised the doc, may be made even if no description with signature (<u>Brick and Pipe v Occidental</u>)</li> </ul> </li> <li>Authority to issue a document extends to warranty of document’s authenticity: <u>s. 129(7)</u></li> </ul>	
<p><b>LIMITS TO STATUTORY ASSUMPTIONS</b></p>	<p>A person is not entitled to make an assumption referred to in <u>s. 129</u> if, at the time of the relevant dealings with the C/person, they <b>knew or suspected that the assumption was incorrect</b>: <u>s. 128(4)</u></p> <p>Company has the burden of est. the subjective knowledge or suspicion of a person who claims to be entitled to make one or more of the statutory assumptions: <u>Brick and Pipe v Occidental</u></p> <p><i>Knowledge</i> assumption was incorrect:</p> <ul style="list-style-type: none"> <li>Must have actual knowledge to that effect: <u>Eden Energy</u></li> <li>What amounts to ‘actual knowledge’ is largely dependent on the facts and circumstances in a particular case and the inferences they allow: <u>Eden Energy</u></li> </ul>	

	<p><i>Suspicion</i> assumption might not be correct:</p> <ul style="list-style-type: none"> <li>• 'Suspicion' is a state of conjecture or surmise without sufficient evidence to be certain of the truth: <u><i>Queensland Bacon</i></u></li> <li>• Person must have actual opinion or belief it may be incorrect: <u><i>Queensland Bacon</i></u></li> <li>• A person does not lose the benefit of the assumptions merely because their suspicions should have been aroused: <u><i>Sunburst Properties</i></u></li> </ul>
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## 7. Directors duties under statute and common law

### General duties

- s. 180 Care and diligence – civil obligation only*
- s. 181 Good faith – civil obligation*
- s. 182 Use of position – civil obligation*
- s. 183 Use of information – civil obligation*
- s. 184 Good faith, use of position, and use of information – criminal offences*
- s. 190 Responsibility for actions of delegate*

### Powers

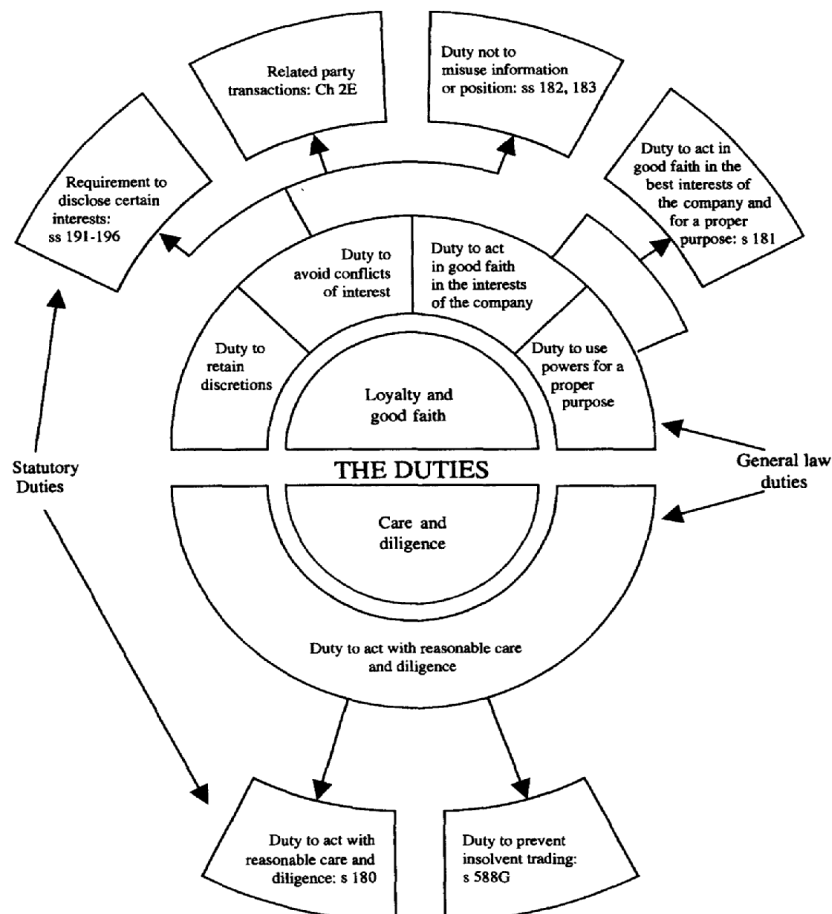
- s. 198D Delegation*

### Civil consequences of contravening civil penalty provisions

- s. 1317E Declarations of contravention*
- s. 1317H Compensation orders – corporation/scheme penalty provisions*
- s. 1317J Who may apply for a declaration or order*
- s. 1317S Relief from liability for contravention of civil penalty provisions*

### Power of courts

- s. 1318 Power to grant relief*



## FIDUCIARY DUTIES

- Ds roles result in special (fiduciary) duty to C
- Good faith, proper purpose, no conflict
- Shareholders can sometimes ratify a breach, but not possible if C insolvent (*Kinsela*)
- Remedies for breach: damages, rescission, constructive trust (*Paul A Davies*)

## STATUTORY DUTIES

- General law re Ds still relevant – [s. 185](#)
- Statutory duties target Ds, officers, employees
- FD of good faith and loyalty are repeated in [ss. 181, 182, 183](#) – civil penalty breaches, subject to civil penalty orders, e.g. [s. 1317G](#) (fine)
- A civil penalty breach allows courts to disqualify Ds: [s. 206C](#)
- Where breaches involve dishonesty, criminal offences apply – [s. 180](#) (objective standard)
- Defences: [s. 180\(2\)](#) e.g. BJR (reliance on BJR includes good faith, no material personal interest)
- Ds obliged to disclose material personal interest: [s. 191](#)
- Aim of good governance and corporate social responsibility

### OVERVIEW

At general law, Ds owe a duty to the C to take reasonable care in performing functions of their office: *Daniels v Anderson*

The duty is not take *all* possible care but a *degree* of care: *Re City Equitable Fire Insurance*

Ds are required to take the necessary steps to enable them to guide and effectively monitor the management of the company: *Daniels v Anderson*

The test as to the standard of care required of Ds is an 'objective one in the sense that the question is what an ordinary person, with the knowledge and experience of the defendant might be expected to have done in the circumstances if he was acting on his own behalf': *ASC v Gallagher*

At common law and equity, the causal connection between breach of DOC and loss suffered will not be proved unless it can be established a reasonable person acting in the position of the D would have acted differently—that is, 'but for the breach of duty those losses would not have occurred': *Permanent Building Society*

### TO WHOM IS THE DUTY OWED?

#### The company

Ds owe a duty to the C as a whole, that is, to the general body of SHs: *Greenhalgh and Arderne Cinemas Ltd*

#### Shareholders

Normally, Ds do not owe a duty to individual SHs (*Percival v Wright*), however, where it can be shown that a **FR** (one of trust and confidence) exists between individual Ds and individual SHs, a duty may be owed to those SHs specifically (*Bunninghausen*; *Crawley v Short*)

#### Creditors

Normally, Ds do not owe a duty to creditors. However, when the C is insolvent, Ds must consider the interests of creditors (*Walker v Wimborne*). Consider also [s. 588G](#) which imposes a positive obligation on Ds to ensure they prevent the C from insolvent trading

<b>WHO OWES THE DUTIES?</b>	<p><b>At general law and equity, directors and senior executive officers</b> (empowered to make decisions on behalf of the C)</p> <p><b>CA</b> – much broader: directors and officers (<a href="#">s. 9</a>)</p> <p><b>NB: Under CA, directors make decisions as a board</b> (unless appointed by the board as an agent)</p> <ul style="list-style-type: none"> <li>• s. 198A – ordinary business managed by Ds <ul style="list-style-type: none"> <li>◦ Appoint managing director (<a href="#">ss. 201J, 198C</a>)</li> <li>◦ Ordinary delegate (<a href="#">s. 198D</a>)</li> <li>◦ Appoint alternates (<a href="#">s. 201K</a>)</li> <li>◦ Appoint agent)</li> </ul> </li> <li>• Board acts collectively <ul style="list-style-type: none"> <li>◦ At properly convened and conducted board meetings (<a href="#">s. 248A-G</a>) and minuted (<a href="#">s. 251A(6)</a>)</li> </ul> </li> </ul>
<b>EXEMPTIONS AND INDEMNIFICATIONS UNDER THE CA</b>	<p><a href="#">s. 199A(1)</a> – the C may not exempt a person from liability to the C incurred as an officer or auditor of the C</p> <p><a href="#">s. 199A(2)</a> – the C cannot indemnify for:</p> <ul style="list-style-type: none"> <li>• Liability owed to the C</li> <li>• Pecuniary penalty or corps order</li> <li>• Owed to someone other than the C, not arising out of good faith</li> </ul> <p><a href="#">s. 199A(3)</a> – limits indemnity for legal costs in certain circumstances</p> <ul style="list-style-type: none"> <li>• The C cannot indemnify you if you contravene the CA – no legal costs</li> </ul> <p><a href="#">s. 199B(1)</a> – limits the C paying insurance premiums covering wilful breach of duty or contravention of <a href="#">ss. 182, 183</a></p>
<b>DEFENCES</b>	<p><b>Specific statutory defence to <a href="#">s. 180</a></b></p> <ul style="list-style-type: none"> <li>• Statutory business judgment rule (<a href="#">s. 180(2)</a>)</li> <li>• Directors of wholly owned subsidiaries (<a href="#">s. 187</a>)</li> </ul> <p><b>General statutory defence</b></p> <ul style="list-style-type: none"> <li>• Reliance on others (<a href="#">s. 189</a>)</li> <li>• <a href="#">s. 1317S</a> – crucial for those who have acted honestly and with regard to all of the circumstances of the case and the person ought fairly to be excused</li> </ul> <p><b>Uniquely equitable defence</b> – bar to relief, laches, clean hands</p> <p><b>Uniquely common law defence</b> – contributory negligence</p>



## 8. Directors' duty of care and diligence

s. 180 Care and diligence – civil obligation only

s. 184 Good faith, use of position and use of information – criminal offences

Present in equity (however, not a fiduciary duty), statute, and common law

**STARTING POINT:** “(Directors and officers) (s. 9) owe a duty to the corporation to take reasonable care in the performance of their powers and duties. This duty may be derived from common law (negligence), equity (*PBS v Wheeler*), or s. 180(1) as requiring the degree of care and diligence a reasonable person, who occupied the same office and had the same responsibilities, would exercise in the (corporation's) circumstances.” The content of the duty is the same regardless of where the obligation arises.

“In determining whether a breach has occurred, it is necessary to balance the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to (the company) (*ASIC v Doyle*; *Vrisakis v ASIC*). This is an objective test (*ASIC v Adler*; *Vines v ASIC*) and will not occur by a mere error in judgement (*ASIC v Rich*).”

STATUTE	<p><b>s. 180 Care and diligence – civil obligation only</b>  <i>Care and diligence – directors and other officers</i></p> <p>(1) A director other officer (s. 9) of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:</p> <ul style="list-style-type: none"> <li>(a) were a director or officer of a corporation in the corporation's circumstances</li> <li>(b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer</li> </ul> <p><i>Daniels v Anderson</i> held that the statutory duty also incorporates a requirement of skill</p>
	<p>The test is <b>objective</b>: Taking into account the circumstances of the company, would a reasonable person in the position of a director of a similar company act in the same way as the D who allegedly breached the duty? <i>ASIC v Adler</i>; <i>Vines v ASIC</i></p>
COMMON LAW	<p><b>‘exercise their powers and discharge their duties’</b></p> <p>Regardless of whether the D is exec or non-exec, the test will be objective.</p> <p>As per general law, Ds are required to take necessary steps to enable them to guide and effectively monitor the management of the C (<i>Daniels v Anderson</i>)</p>
	<p><b>‘degree of care and diligence’</b></p> <p>Minimum expectations: basic understanding of business/financial position, attend board meetings, monitor Cs activities: AWA</p> <p>Whether a D has exercised a reasonable degree of care and diligence “can only be answered by balancing the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to the company from the conduct”: <i>ASIC v Doyle</i></p> <p>Lack of personal knowledge and experience of the D will not affect the standard applied. Ignorance is no defence: <i>AWA</i></p> <p>The duty recognises a distinction between negligence and mere mistakes, with liability arising for the former and not for the latter: <i>ASIC v Vines</i></p>

	<b>'reasonable person'</b>	<p>If a D is appointed because they possess a special skill, the objective standard will refer to that skill.</p> <p>Ds must also pay attention to C's affairs which are not linked to the skill for which they were hired, if such affairs may reasonably be expected to attract an inquiry by a D: <i>Re Property Force Consultants</i></p> <p>Reference to a reasonable person is intended to indicate that the standard of care is an objective one (<i>Daniels v Anderson</i>; <i>Permanent Building Society</i>): what an ordinary person, with the knowledge and experience of the defendant might be expected to have done in the circumstances (<i>ASIC v Adler</i>)</p>
	<b>'corporation's circumstances'</b>	Requires consideration be given to the type of C involved, the size and nature of its business/es, whether it is listed/unlisted, whether it is a parent company or not, provisions of constitution, composition of board and distribution of work between the board and other officers ( <i>ASIC v Rich</i> )
	<b>'occupied office/same responsibilities'</b>	Consideration for circumstances of officer's role – including job description, what others within the C expected officer to do, and special tasks/responsibilities the officer had to perform ( <i>ASIC v Vines</i> )
<b>3 MAIN STATUTORY DEFENCES</b>  NB. May also evade liability by indemnification: <i>ss. 199A(2), (3)</i> , or excusal by court: <i>s. 1317S</i>	<b>1. Reliance on others</b>  <i>s. 189</i>	<p>Ds are given benefit of statutory presumption of reasonableness where they rely on info or professional/expert advice prepared by <i>s. 189(a)</i></p> <ul style="list-style-type: none"> <li>(i) A competent and reliable employee</li> <li>(ii) professional adviser/expert</li> <li>(iii) another D or O</li> <li>(iv) a committee of Ds, which the D did not serve.</li> </ul> <p>(b)(i) Reliance must be made in good faith and (b)(ii) based on Ds independent assessment or advice (<i>ASIC v Healey</i>), and reasonable in the circumstances (<i>ASIC v Adler</i>; higher standard for exec. D: <i>Daniels v Anderson</i>)</p> <p>No reliance where director knows, or by exercising ordinary care, should have known, any facts denying reliance (<i>Daniels v Anderson</i>)</p>
	<b>2. Delegation of responsibility to others</b>  <i>s. 190</i>	<p><b>When a D delegates (<i>s. 198D</i>), the action of the delegate is taken to be an action of the director (<i>s. 190(1)</i>), unless <i>s. 190(2)</i> defence is proven</b></p> <p><i>s. 198D</i></p> <ul style="list-style-type: none"> <li>(1) Ds can delegate a power to:             <ul style="list-style-type: none"> <li>(a) A committee of directors, or</li> <li>(b) A director, or</li> <li>(c) An employee, or</li> <li>(d) Any other persons</li> </ul> </li> <li>(2) Delegate must exercise powers in accordance with directions by directors</li> <li>(3) The exercise of the power is effective as if the Ds had exercised it</li> </ul> <p><i>s. 190</i></p> <ul style="list-style-type: none"> <li>(1) Where delegated power under <i>s. 198D</i>, D will still be responsible for exercise of that power as if the power had been exercised by the Ds themselves</li> <li>(2) However, D will not be responsible if: (<b>DEFENCE</b>)             <ul style="list-style-type: none"> <li>(a) D believed on reasonable grounds at all times that the delegate would exercise their power in conformity with the duties imposed by Ds by the CA and the constitution, and</li> <li>(b) D believed                 <ul style="list-style-type: none"> <li>(i) On reasonable grounds; and</li> <li>(ii) In good faith; and</li> <li>(iii) After making proper inquiry if the circumstances indicated the need for inquiry,</li> </ul> </li> </ul> </li> </ul> <p>That the delegate was reliable and competent in relation to the power delegated</p>