

Questions Relating to Director Duties

Common Statutes to use

- Start with s198A if debating whether the decision could be made by a director, and mention that it is a decision reserved for the board if it is.
- s 180 – Care and Diligence (Civil Obligation Only)
 - s 180(1)
 - Reasonable person as the director of the corporation in corporation's circumstances would exercise
 - Did the director have
 - Basic understanding of business
 - Information about company's activities
 - Attendance and participation of board meetings
 - Monitoring of company's financial position
- s 181 – Good Faith and Proper purpose
 - Must be done in best interests of the company
 - For proper purpose
 - Two step test (Lawful vs Actual)
 - Can director lawfully do this for the lawful purpose?
 - Does the actual purpose fit into the lawful purpose?
 - Can director issue shares to make money for company?
 - Actual purpose of issue to dilute major shareholder powers as fear of losing jobs.
 - But for test (Mixed Purpose)
 - Would A have issued shares but for the purpose of diluting B's power?
 - If no, then it is improper purpose outweigh proper purpose
 - Would A have paid S (proper purpose to retain capital) but for the fear of S buying more shares and eventually taking over the company?
 - If yes, improper purpose outweighs proper purpose.
- s 182 & s 183– Use of position or information gained in that position
 - Must not use position to gain advantage for themselves/someone else, or cause detriment to company (Most probable is to materially prejudice ability to repay creditors or lost of business deal etc)
- s 190(1)
 - Director responsible for exercise of power by delegate.