

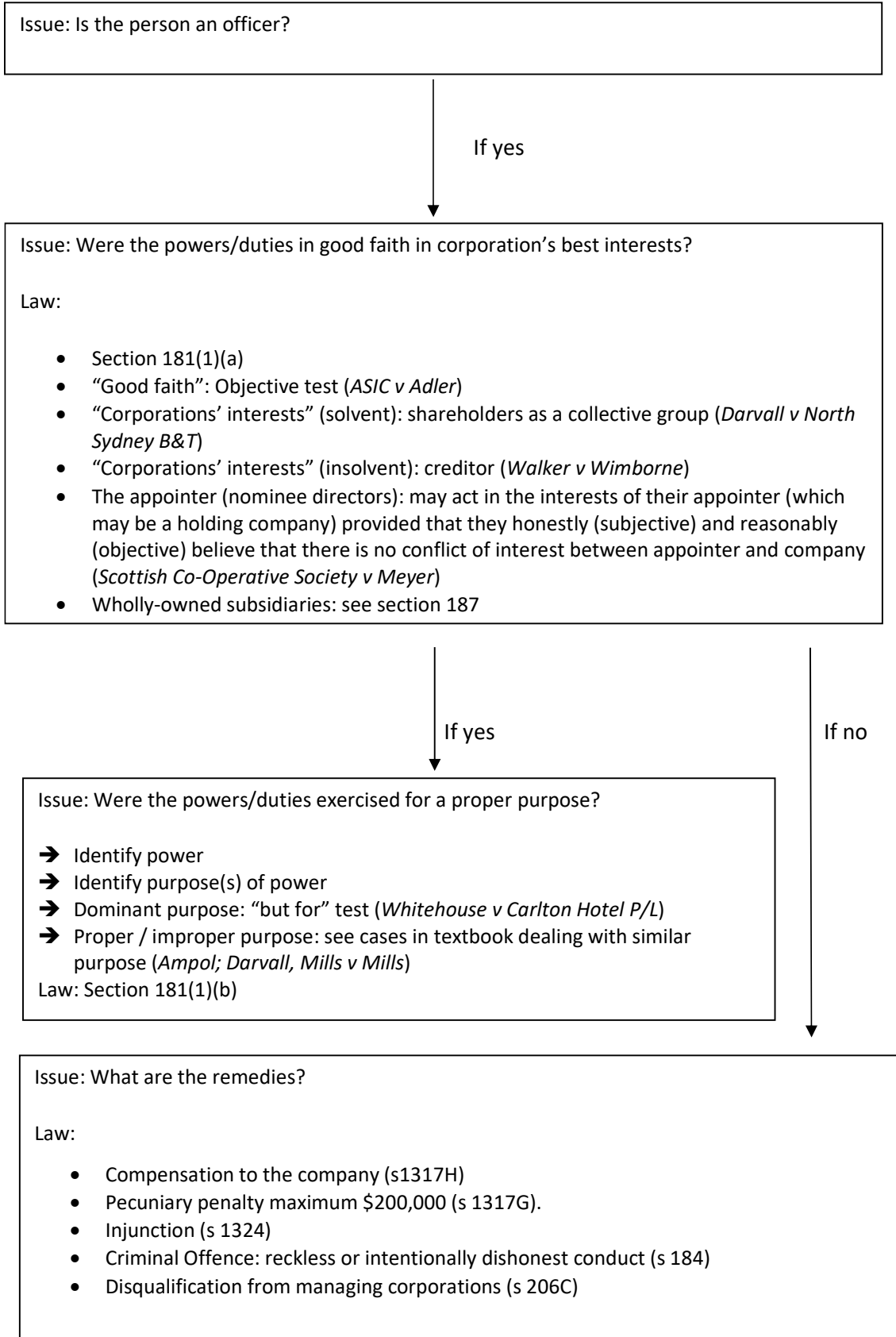
## Part B: Company Law Exam Templates

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<p style="text-align: center;"><b>Corporate Governance &amp; Directors Duties</b>  Week 6 : Template for Good Faith &amp; Proper Purpose (s 181)</p>		
Issue 1: is the persona an Officer?	<b>Duly Appointed Director</b>	[Name]'s is a duly appointed Director of [Company] and therefore is defined as an "Officer" (s9 CA)
	<b>De Facto Director</b>	[Name]'s is considered an Officer as <u>he/she</u> falls within the definition in s9 CA as a defacto director. This is because [Name]'s has exercised top level management functions of the company for an extended period of time [insert how long] , despite not being formally appointed ( s9 (b)(i) CA and <i>DFC of T v Austin</i> )
	<b>Shadow Director</b>	[Name]'s is considered an Officer as <u>he/she</u> falls within the definition in s9 CA as a Shadow director. This is because [Name]'s <u>is/are</u> accustomed to act in accordance with [Name]'s instructions or wishes, plus consult him/her about any significant decisions ( S9(b)(ii) <i>Standard Chartered Bank of Australia v Antico.</i> )
Issue 2 : Were powers/duties in good faith in corporations best interest?	[Describe the duties discharged and/or the powers exercised by ____]	
	<p>A reasonable person in the Officer's position and given the company circumstances would consider that the duty/power <u>was/was not</u> in the best interest of the corporation (s181(1)(a) CA and <i>ASIC v Adler</i>)</p> <p>This is because a reasonable person in the position of ____ would not have .... [refer to case facts &amp; list reasons here] as such action was contrary to _____.</p> <p>Furthermore such action <u>is/is not</u> in the best interests of the corporation and shareholders as a collective group [insert case example]</p> <ul style="list-style-type: none"> <li>• Case Example if solvent: <i>Darvall v North Sydney Brick &amp; Tile</i></li> <li>• Case Example if insolvent: <i>Walker v Wimborne</i></li> </ul>	
Issue 3: Were posers/duties exercise for a proper purpose?	<p>[Identify Power – what did Officer do?]  [Identify purpose – why did they do it?]  The dominant purpose for doing _____ was to ____ (<i>Whitehouse v Carlton Hotel</i>)  This action was improper because _____ + [select case law below]:</p> <ul style="list-style-type: none"> <li>• Case example of not in good faith: <i>Mills v Mills and- s181(1)(b) CA</i></li> <li>• Case example of not for proper purpose: <i>Howard Smith Ltd v Ampol Petroleum Ltd</i> and s 181(1)(b) CA)</li> <li>• Case example of in best interest of corporation &amp; shareholders: <i>Darvall v North Sydney Brick &amp; Tile - s181(1)(b)</i></li> <li>• <b>**check summary of case law for other examples ***</b></li> </ul>	
Issue 4: What are Remedies?	<p>_____ has breached section 181 CA which would enable ASIC to claim remedies:</p> <ul style="list-style-type: none"> <li>• Compensation to the company (s1317H)</li> <li>• Pecuniary penalty maximum \$200,000 (s 1317G).</li> <li>• Injunction (s 1324)</li> <li>• Criminal Offence: reckless or intentionally dishonest conduct (s 184)</li> <li>• Disqualification from managing corporations (s 206C)</li> </ul>	

## Flowchart: Good Faith and Proper Purpose



Week 8 : Template for Improper use of Position (s181 & 182)

Issue 1: is the persona an Officer?	<b>Duly Appointed Director</b>	[Name]'s is a duly appointed Director of [Company] and therefore is defined as an "Officer" (s9 CA)
	<b>De Facto Director</b>	[Name]'s is considered an Officer as <u>he/she</u> falls within the definition in s9 CA as a defacto director. This is because [Name]'s has exercised top level management functions of the company for an extended period of time [insert how long] , despite not being formally appointed ( s9 (b)(i) CA and DFC of T v Austin)
	<b>Shadow Director</b>	[Name]'s is considered an Officer as <u>he/she</u> falls within the definition in s9 CA as a Shadow director. This is because [Name]'s <u>is/are</u> accustomed to act in accordance with [Name]'s instructions or wishes, plus consult him/her about any significant decisions (s9(b)(ii) Standard Chartered Bank of Australia v Antico.)
Issue 2: Identify what did/didnt do?	<p><u>[Describe &amp; identify conduct: Detail here what did or didn't they do]</u> +</p> <p>[Name]'s conduct was inconsistent with legal and contract duties of an Officer and therefore improper, in breach of section 182 because:</p> <ul style="list-style-type: none"> <li>it was inconsistent with [Name]'s legal duty, obligation and responsibility to disclose and seek consent of the company before <u>[insert conduct]</u> (Grove v Flavel)</li> <li>duites/conduct was inconsistent with company's own regulations and [Name]'s duty to disclose (ASIC v Adler)</li> </ul>	
Issue 3: Identify Officers duties relevant to conduct	<p>The <b>purpose</b> of [Name]'s involvement in <u>[insert description of conduct]</u> was to [select one or more]</p> <ul style="list-style-type: none"> <li>make a personal gain</li> <li>make a gain for somebody else</li> <li>cause detriment to the company (ASIC v Vizard)</li> </ul>	
Issue 4: Compare duties with conduct	<p>Such conduct is inconsistent with duties required of an Officer and therefore the improper <u>[insert conduct]</u> by [Name] is in breach of section 181 &amp; 182.</p> <p><b>Examples of case law for action which have breached s 182:</b></p> <ul style="list-style-type: none"> <li>Using company funds for own purpose (ASIC v Adler; Diakytne Pty Ltd v Ralph)</li> <li>Diversion of corporate opportunity (Regal Hastings (Ltd) v Gulliver; Cook v Deeks, Mordecai v Mordecai)</li> <li>Repayment of loans to director ahead of other creditors (Grove v Flavel)</li> <li>Company consent to take commercial opportunity suggests that conduct is not improper (Queensland Mines (QM) v Hudson)</li> </ul> <p><b>REMEDIES:</b> REFER ISSUE 4 OF TEMPLATE FOR Good Faith &amp; Proper Purpose (s 181)</p>	