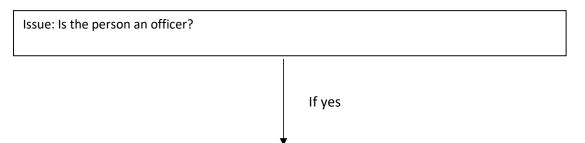
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		Comparete Covernance & Directors Duties	
		Corporate Governance & Directors Duties Week 6 : Template for Good Faith & Proper Purpose (s 181)	
er?	Duly Appointed Director	[Name]'s is a duly appointed Director of [Company] and therefore is defined as an "Officer" (s9 CA)	
Offic	De Facto Director	[Name]'s is considered an Officer as he/she falls within the definition in s9 CA as a	
an C		defacto director. This is because [Name]'s has exercised top level management	
Issue 1: is the persona an Officer?		functions of the company for an extended period of time [insert how long] , despite	
per		not being formally appointed (s9 (b)(i) CA and DFC of T v Austin)	
the	Shadow Director	[Name]'s is considered an Officer as he/she falls within the definition in s9 CA as a	
1: is		Shadow director. This is because [Name]'s is/are accustomed to act in accordance	
Issue		with [Name]'s instructions or wishes, plus consult him/her about any significant	
		decisions (S9(b)(ii) Standard Chartered Bank of Australia v Antico.)	
ith	[Describe the	ne duties discharged and/or the powers exercised by]	
od fa :؟	A reasonab	le person in the Officer's position and given the company circumstances would	
in go :erest	consider that the duty/power was/was not in the best interest of the corporation (s181(1)(a) CA		
uties st in	and ASIC v Adler)		
ers/d	This is because a reasonable person in the position of would not have [refer to case facts		
Were powers/duties in good corporations best interest?	& list reasons here] as such action was contrary to		
Issue 2: Were powers/duties in good faith in corporations best interest?	Furthermore such action <u>is/is not</u> in the best interests of the corporation and shareholders as a collective group [insert case example]		
lssue	• Cas	e Example if solvent: Darvall v North Sydney Brick & Tile	
		e Example if insolvent: Walker v Wimborne	
cise	-	ower – what did Officer do?] urpose – why did they do it?]	
ex و.	1 -	ant purpose for doing was to(Whitehouse v Carlton Hotel)	
rties pose		was improper because + [select case law below]:	
rs/dı		e example of not in good faith: Mills v Mills and- s181(1)(b) CA	
Issue 3: Were posers/duties exercise for a proper purpose?		e example of not for proper purpose: <i>Howard Smith Ltd v Ampol Petroleum Ltd</i> and s (1)(b) CA)	
for a		e example of in best interest of corporation & shareholders: Darvall v North Sydney	
sue 3	Bric	k & Tile - s181(1)(b)	
<u>s</u>	• **CI	heck summary of case law for other examples ***	
are	h	has breached section 181 CA which would enable ASIC to claim remedies:	
lssue 4: What are Remedies?	PecuInjur	pensation to the company (s1317H) uniary penalty maximum \$200,000 (s 1317G). nction (s 1324) ninal Offence: reckless or intentionally dishonest conduct (s 184)	
351		ualification from managing corporations (s 206C)	



Issue: Were the powers/duties in good faith in corporation's best interests?

Law:

- Section 181(1)(a)
- "Good faith": Objective test (ASIC v Adler)
- "Corporations' interests" (solvent): shareholders as a collective group (*Darvall v North Sydney B&T*)
- "Corporations' interests" (insolvent): creditor (Walker v Wimborne)
- The appointer (nominee directors): may act in the interests of their appointer (which may be a holding company) provided that they honestly (subjective) and reasonably (objective) believe that there is no conflict of interest between appointer and company (Scottish Co-Operative Society v Meyer)
- Wholly-owned subsidiaries: see section 187

If yes If no

Issue: Were the powers/duties exercised for a proper purpose?

- → Identify power
- → Identify purpose(s) of power
- → Dominant purpose: "but for" test (Whitehouse v Carlton Hotel P/L)
- → Proper / improper purpose: see cases in textbook dealing with similar purpose (*Ampol; Darvall, Mills v Mills*)

Law: Section 181(1)(b)

Issue: What are the remedies?

Law:

- Compensation to the company (s1317H)
- Pecuniary penalty maximum \$200,000 (s 1317G).
- Injunction (s 1324)
- Criminal Offence: reckless or intentionally dishonest conduct (s 184)
- Disqualification from managing corporations (s 206C)

Week 8: Template for Improper use of Position (s181 & 182)					
	Duly Appointed Director	[Name]'s is a duly appointed Director of [Company] and therefore is defined as an "Officer" (s9 CA)			
<i>ر</i> ي	De Facto Director	[Name]'s is considered an Officer as he/she falls within the definition in s9 CA			
ffice		as a defacto director. This is because [Name]'s has exercised top level			
an O		management functions of the company for an extended period of time			
sona		[insert how long], despite not being formally appointed (s9 (b)(i) CA and DFC			
Issue 1: is the persona an Officer?		of T v Austin)			
: is th	Shadow Director	[Name]'s is considered an Officer as he/she falls within the definition in s9 CA			
sue 1		as a Shadow director. This is because [Name]'s is/are accustomed to act in			
<u>s</u>		accordance with [Name]'s instructions or wishes, plus consult him/her			
	Director	about any significant decisions (s9(b)(ii) Standard Chartered Bank of Australia			
		v Antico.)			
	[Describe &	identify conduct: Detail here what did or didn't they do] +			
vhat	[Name]'s co	onduct was inconsistent with legal and contract duties of an Officer and			
Issue 2: Identify what did/didnt do?	therefore improper, in breach of section 182 because:				
: Ider /didr	• it was inconsistent with [Name]'s legal duty, obligation and responsibility to				
sue 2 did	disclose and seek consent of the company before [insert conduct] (Grove v Flavel)				
<u>s</u>	 duites/conduct was inconsistent with company's own regulations and [Name]'s duty to disclose (ASIC v Adler) 				
		e of [Name]'s involvement in [insert description of conduct] was to [select			
Issue 3: Identify Officers duties relevant to conduct	one or more]				
ify Offic slevant duct	make a personal gain				
e 3: Identify duties rele to condu	make a gain for somebody else				
sue 3: dut t	• caus	se detriment to the company (ASIC v Vizard)			
<u>s</u>					
t		ct is inconsistent with duties required of an Officer and therefore the improper			
npuo	[insert cond	uct] by [Name] is in breach of section 181 & 182.			
vith o	Examples o	f case law for action which have breached s 182:			
ties v		g company funds for own purpose (ASIC v Adler; Diakyne Pty Ltd v Ralph)			
Issue 4: Compare duties with conduct		rsion of corporate opportunity (Regal Hastings (Ltd) v Gulliver; Cook v Deeks, decai v Mordecai)			
ошра		ayment of loans to director ahead of other creditors (<i>Grove v Flavel</i>)			
4: Cc		pany consent to take commercial opportunity suggests that conduct is not			
Issue	impr	oper (Queensland Mines (QM) v Hudson)			
	REMEDIES:	REFER ISSUE 4 OF TEMPLATE FOR Good Faith & Proper Purpose (s 181)			