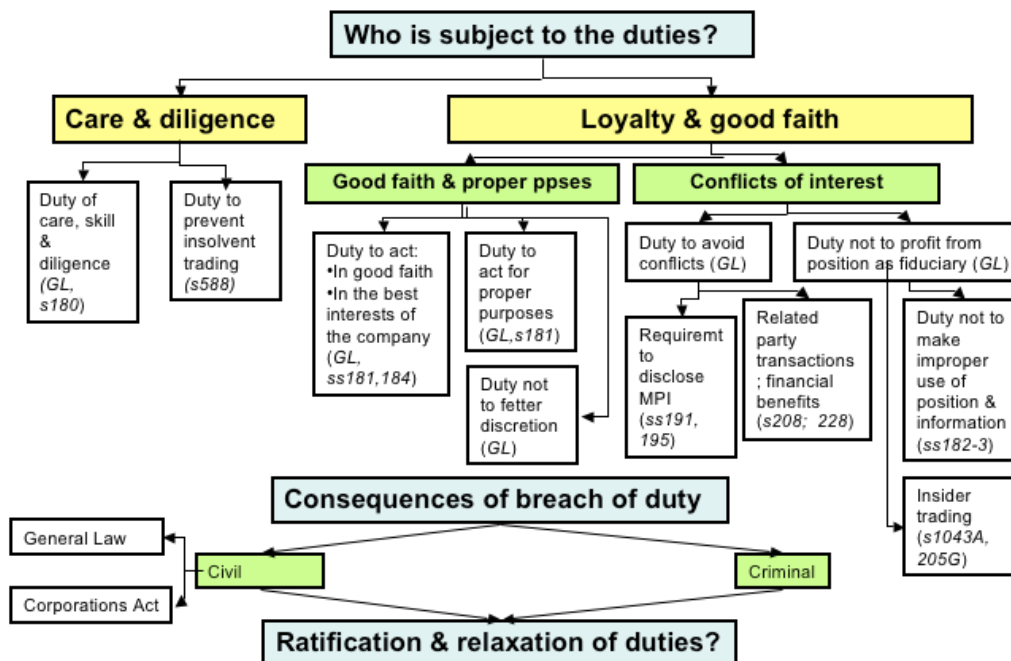


11. ANSWER STRUCTURES

Have any of the Ds breached their DUTIES?

Stat. duties supplement GenLaw duties: s128



STEP 1: Do the duties APPLY to [X]?

- Director (s9): **180 – 181 – 182 – 183 – 191** or GenLaw Duties
- Officer (s9): **180 – 181 – 182 – 183**
- Employee: **182 – 183**
- Ltd Co: **208**
- 3rd P: involved (s79) – **182 – 183** or GenLaw: **Barnes v Addy**

STEP 2: WHO are the duties OWED to/WHO can ENFORCE them?

- **General rule:** Co not Ms: **Charlton v Baber**
 - **Exception:** Particular duty to particular SH not competing w' other duties: **Charlton v Baber** [allowed derivative action *in part*]
- ASIC can bring action in name of Co (**ASIC Act 2001 s50**) if in pub interest: **Brighton Hall Securities**

STEP 3: Consider the CONDUCT in question

- For each questionable conduct – list the duties potentially breached
- Identify potential consequences → choose CA/GenLaw + which duties
- Does the **BUSINESS JUDGMENT RULE** apply? (**180 + 181: Rich**)

STEP 4: If duty applies to [X], what are the duty's ELEMENTS?

- State the duty [See tables below]

STEP 5: Has [X] MET the required STANDARD?

- Are they an **executive D** (CFO, CEO) or have **expert knowledge** (ie. accountant, lawyer)?
- (**180**) Assess at time of breach NOT w' the benefit of hindsight: **ASIC v Rich**

STEP 6: Is there a RELATED PARTY? [Ltd Co only]

STEP 7: If [X] is in BREACH, has there been RATIFICATION or RELIEF?

- **Ratification:** Is the duty able to be ratified? → Has the ratification process been complied with?
- **Relief:** Is it a CPP? (**1317S**) or other **1318**

Sources of Duties

Corps Act

Contract (btw [X] + Co)

Equity – FD?

Duties

180: Care, skill, diligence

181(1a): Good faith + best interests