



CORPORATIONS LAW

ALL CASES SUMMARISED

Table of Contents

<i>Insider trading</i>	2
Who is an insider:	2
Information not generally available:.....	2
Possession of information:	2
Criminal penalties of insider trading:.....	3
<i>Directors Duties</i>	4
Duty to act in the best interest of the individual shareholders	4
Beneficiaries of a trust	5
Nominee Directors	5
Employees interests not considered over shareholders.....	6
Creating or destroying a majority of voting power	6
The “but for” test.....	7
Use of company funds to promote re-election of directors	7
Exercise of management powers	7
Exercising the powers for the benefit	8
Statutory duty to act in good faith and for a proper purpose as per s181.	8
Directors who permit the corporation to contravene the Corps Act.....	8
Failure in corporations circumstances	9
Non-executive directors.....	9
Non-executive directors who have a special skills or experiences has to provide that benefit or skill	10
Chair obligations and special responsibilities.....	10
Executive directors and officers responsibilities	11
Managing directors breach of duty of care by failing to monitor management effectively	11
Standard of care of company secretaries and other officers.....	12
Directors requiring to have a knowledge of the company’s financial position.....	12
Directors must have the ability to read financial statements	12
Duty to safeguard the company’s interests	13
Directors who permit the company to contravene the law	13
Reliance on others: s189	14
Interest of creditors	15
Phoenix company arrangements	15
Shareholders cannot ratify a breach of duty.....	16

Reasonable grounds for suspecting insolvency.....	16
Reasonable grounds to expect solvency	16
Delegation and reliance on others	17
Absence from management.....	17
<i>Members remedies.....</i>	<i>18</i>
Who may apply?	18
Conduct where a remedy may be sought.....	18
Examples of oppressive and unfair conduct – diverting a corporate opportunity.....	19
Examples of oppressive and unfair conduct – refusal to pay dividends	20
Examples of oppressive and unfair conduct – exclusion from management.....	20
Directors failure to act in the interests of the company.....	21
Improper share issue	21
Remedies – Share buy out	21
Remedies – replacement of directors	21
Remedies – Authorisation of legal action	22
Remedies – Director not to participate in management	22
Winding up of a company	22
Winding up – Directors act in their own interests.....	22
Winding up – Oppressive and unfair conduct	22
Winding up – Just and equitable ground.....	23
Winding up – Deadlock	23
Winding up – Fraud, misconduct or oppression	23
Winding up – Public interest	24
Winding up – Failure to substratum.....	24
Members right to inspect books – good faith and proper purpose	24
<i>Antecedent transactions.....</i>	<i>25</i>
Unfair preference.....	25
Uncommercial transactions	26
Unreasonable director-related transactions	26
Transactions to defeat creditors	26
Defences to antecedent transactions.....	27

Case summaries

Insider trading

Who is an insider:

R V Rivkin

- McGowan was a CEO of an airlines company that was being bought out by Qantas.
- McGowan wanted to buy a house from Rivkin on the basis that his company was bought by Qantas.
- McGowan told Rivkin not to trade Qantas shares as he was an insider, Rivkin disregarded this and bought shares in Qantas and sold the shares after the acquisition at a profit.
- Rivkin was found to have breached s1043 (A).
- **It was held** that Rivkin was an insider because he possessed information that was not generally available. Moreover, had this information been generally available then it might have had a material impact on the share price.

Information not generally available:

R V Firms

- Firm's father was a director of a publicly listed company that was in business to explore for gold in PNG.
- The company won a legal case granting them a license to mine for gold in PNG, in which the defendant was at the court hearing.
- Immediately following this result, Firms bought a large parcel of shares in the business.
- The ASX was notified of the court decision 3 days later and thus the information was made available on that day.
- **It was held** that the judgement was readily available, understandable and accessible to a significant number of the public. Information may be readily observable even if no-one observed it.

Possession of information:

Hannes V DPP

- Hannes was found to be an insider under S1042A of the insider trading provision.
- Hannes was a director of an investment bank, and used a false identity to purchase options in a company prior to the announcement of an acquisition his bank had been charged with to perform due diligence of the acquisition.
- **The court held** that Hannes possessed "information" for the purposes of the insider trading laws. Whilst he was not directly able to gain information. He drew inferences, based on the conduct of his company that there was an impending takeover.