

## CLAW1003 - Company Law

### Week 7: Directors' Duties Part 1 – Best Interests and Proper Purpose

#### Categories of Duties

#### Duties of loyalty and good faith:

##### Duty to act in good faith in best interests of company

- **General Law Principles:** Directors must act “bona fide” in best interests of company: **GREENHALGH v ARDERNE CINEMAS**
- **Statute: s 181(1)(a):** **Directors and officers** must exercise powers / discharge duties in good faith in best interests of company

**NOTE:** Both forms of duty have same requirements

**'Best interests of the company'** refer to the best interests of the company as whole - Primary focus is the interests of shareholders as collective group **GREENHALGH v ARDERNE CINEMAS**

Consider if the interests of other people within the company should be taken into account:

**Employees:** **PARKE v DAILY NEWS**

- Interests have previously **not** been considered but there is a great shift these days to take into account their interests but no authority on this

**Interests of Creditors and the effect of insolvency:** **RING v SUTTON**

- Interests of creditors are not considered **unless** the company is insolvent or about to be insolvent where the interests of creditors must be considered

**Nominee Directors:** **SCOTTISH CO-OPERATIVE WHOLESALE v MEYER**

- Although a nominee director represents the interests of a particular shareholder, nominee directors must act in the best interests of the company as a whole.

**Corporate Groups: WALKER v WINBOURNE / s 187A**

**A director of subsidiary not in breach of the duty to act in the best interests of a company if:**

- A constitution authorises action in best interests of parent
- Director acts in good faith in best interests of parent AND
- Subsidiary not insolvent or made insolvent by action

**Examples - transactions with little/no benefit for company:**

- Overpayment for goods/services: **ASIC v ADLER**
- Loan unlikely to be repaid: **WALKER v WIMBORNE**
- Guarantee of debt unrelated to business activities: **ANZ v QINTEX**
- Sale at undervalue: **COLEMAN v MYERS**

### **Duty to exercise powers for proper purpose**

General Law Principles

**PERMANENT BUILDING SOCIETY v WHEELER** → Directors must exercise powers for a proper purpose

**Statute: s 181(1)(b)** → Directors + officers must exercise powers / discharge duties for a proper purpose.

**Both general law and statutory duties have the same requirements**

**Establishing if it was for a purpose purpose we must consider:**

- **Objective element:** Consider why the director / officer was granted that power
- **Subjective element:** Why did the director / officer use that power

If conflict exists, we use the 'but for' test as per **WHITEHOUSE v CARLTON HOTEL**

- But for a subjective desire to exercise of power for an improper purpose, would the duty still be breached if exercised?