

## LEC 6 & 7– DIRECTOR DUTIES

- General Law (fiduciary duty) → care, skill and diligence; good faith; proper purpose; no conflict/secret profit.
- Statutory Law
  - **Section 180** – care and diligence (civil obligation) → applies to director & officers.
  - **S 181 (1) (a)** – good faith (civil obligation)
  - **S 181 (1) (b)** – proper purpose (civil obligation)
  - **Section 182** – use of position (civil obligation) → director, secretary, officers
  - **Section 183** – use of information (civil obligation) → director, officer, employee
  - **Section 184** – criminal penalties for director acted deliberately or recklessly when in breach of ss181, 182, 183 → director & officers
  - **Section 191** – duty to disclose material personal interest
  - **Section 195** – restriction for voting (directors of public co only)
  - **Section 588G** – duty to prevent insolvent trading
- Remedies (company's remedies)
  - ⇒ General law:
    - Damages/Equitable compensation → remedies when company suffer from loss
    - Account for profits → when making secret profit, the money will be given back to the company.
    - Constructive trust → gain is held for co's benefit under a trust created by a court (when injunction is too late)
    - Injunction → court stop order (before anything happens)
    - Rescission of contract → cancel to contract. addition to injunction, when the contract has been won but the work hasn't started yet.
  - ⇒ Statutory Law: (ASIC remedies)
    - **Section 1317** – Civil Penalties. Step 1: declaration of contravention (breach) (s 1317E). Step 2: choose any of the following (asked by ASIC)
      - ✓ **Section 1317G** – pecuniary penalty (Fines)
      - ✓ **Section 1317H** – Compensation
      - ✓ **Section 206C** – Disqualification
      - ✓ **Section 1324** – Injunction
    - **Section 184** – Criminal penalties. Not applicable for s 180.

### Duty of Care and Diligence (s 180)

- **Section 180(1)** – Objective Test (to see whether s 180 has been breached)
  - ⇒ Rule: Would a reasonable director have done the same thing in the situation?
  - ⇒ Application: put down the facts + duties from AWA case. Eg. Luke is co's A ED + COO in a large ASX listed company.
  - ⇒ Conclusion: applying the OT, no reasonable director would do..... Thus, Luke has breached s 180 and general law.
- Cases (Common Law):
  - *Re City Equitable Fire Insurance Co Ltd [1925] Ch 407 Chancery Court (UK)* – **(Traditional standard)**
    - a) Director must exercise degree of skill and diligence as would amount to the reasonable care.
    - b) Not bound to give continuous attention to the affairs of the company because the duties of directors are nature to be performed at periodical board meetings.
    - c) May properly rely on the actions of company's officials, unless there are reasonable grounds for suspecting that the officials are not adequately performing their roles.
  - *Daniels v Anderson (AWA case) (1995) 37 NSWLR 438*
    - a) Directors are under a continuing obligation to keep informed about the activities of a corporation
    - b) Directors may not shut their eyes to corporate misconduct and then claim that because they did not see the misconduct, they did not have a duty to look
    - c) Duty to keep informed of business affairs