

Duty to Avoid Conflicts

GENERAL LAW

1. DO THEY OWE THE DUTY?

- ___ owes this duty/duties because they are a Director/senior executive and are in a fiduciary position in relation to the Co ([Bell Group](#))

2. WHAT IS THE RULE? Pick which applies on the facts

- **CONFLICTS RULE:** ___ will breach the rule if they have an interest that conflicts or may possibly conflict with his or her duty to the company, except with the company's fully informed consent ([PBS v Wheeler](#))
 - Note there are 2 types - decide which applies:
 - *Interest/interest* - where there is a conflict between the Co (or principal's) interest, and the Ds own personal interest
 - *Duty/duty conflict* - where there is a conflict between a duty to the principal and a duty to another principal.

3. PROFITS RULE: ___ will breach the rule if they have misused their position for personal or 3P advantage, except with the Co's fully informed consent ([Warman; Chan](#))

4. ON THE FACTS, WHAT IS THE ALLEGED CONFLICT, OR PROFIT MADE? POINT TO IT.

5. IS THERE A "REAL SENSIBLE POSSIBILITY OF CONFLICT?" [Boardman v Phipps; Regal Hastings](#)

- We additionally consider whether there was a possibility that ___ could have been swayed by the interest? ([Bell Group](#))

Relevant factors - conflicts rule

• INTERESTS CAN BE:

- **Direct:** SH or D on board
- **Indirect e.g. Chairperson:** [Aberdeen Railway Co v Blaikie Bros](#): Chairman was chair of board for Aberdeen and MD for BB - his duty to A was to get shares for cheapest price, but duty for other co was to obtain the highest price possible. **Impossible to resolve this conflict.**
- **BENEFIT** to D **does not always equate to breach**, depends on their motives: [Mills v Mills](#), where it was held Ds voting to increase their own voting power for the purpose of paying dividends was bona fide
- **BEING A D OF TWO COS** will not always equate to breach:
 - So long as the confidential info belonging to each Co stays confidential: [Bell v Lever Bros](#)
 - However principle rests on **fragile grounds** - fact dependent: [Western Areas Exploration](#)
 - **Extraordinary** circumstances might make it okay: [In Plus Group v Pyke](#) where he had a **stroke**, had been **actively excluded from cos management**, was a nominal D, and then later started his own Co and obtained a lucrative contract with IP client.
- **D CANNOT "BURY HEAD IN THE SAND"** whilst Co-Director discussed/enters into transaction: [PBS v Wheeler](#)
- **IF YOU CANNOT UPHOLD BOTH DUTIES, YOU HAVE TO RESIGN FROM ONE DIRECTORSHIP:** [R v Fitzsimmons](#)