

Conflicts of Interest

General Law fiduciary duty	ABERDEEN RAILWAY v BLAIKIE
Statutory duty	s182 and s183

General Law and statute contain different obligations. Statute Mirrors the general law but is slightly different (Unlike acting in best interest and acting for proper purpose).

General Law fiduciary duty:

- I. Directors must avoid (or properly manage) conflict of interest: **ABERDEEN RAILWAY v BLAIKIE**
*can't always guarantee that there isn't a conflict.
- II. Fiduciary must not place themselves in position where the duty they own to the company is in conflict with their personal interest: **PHIPPS v BOARDMAN**
- III. Liability can be avoided if:
 - Full disclosure (nature of the conflict/all relevant facts know to assist the shareholders' assessment) AND
 - Shareholder approval
- IV. Can be modified by constitution: **WOOLWORTHS v KELLY**
Directors are allowed to enter into the K with the company/ be a director in another company.
- V. Examples:
 - A. **Contracting with company – direct and indirect*** **TRANSVAAL v NEW BELGIUM**
Indirect: not a direct party but have an interest in it:
 - B. **Personal profits: REGAL HASTINGS v GULLIVER**
MD took a bribe from the new company buyer and passed on secret information. The money had to be given to the seller
 - C. **Bribes: FURS v TOMKIES**
 - D. **Misuse of information: ARTEDOMUS v DEL CASALE**
 - E. **Misuse of company funds: DAVIES v DAVIES**
Directors borrowed some money from the company with financial difficulty and the money could be used to improve the company's prospect. Documented loan was not sufficient.
 - F. **Taking up corporate (business) opportunity: COOK v DEEKS**
Where a director, without proper disclosure or approval, takes up an opportunity that should have been taken up by the company
 - *Arranges for the K to be diverted from the company to the director personally or a company that the director is involved in.*

He Bought action to restrain the four shareholders. The court held that:

- taking away the existing business of the old business was a conflict of interest, Taking up corporate (business) opportunity