

LAWS5014
CORPORATIONS LAW
MID SEM AND FINAL TOPICS

DUTIES OWED

DUTY OF GOOD FAITH AND PROPER PURPOSE	
ISSUE	Has XX exercised their power in good faith and for a proper purpose
<p>1. State XX is a director, Directors are fiduciaries at general law and also subject to statutory duties under the Corporations Act, so their duty is owed to the company [Therefore, CA and general law apply concurrently]</p>	
TEST: DUTY TO ACT IN GOOD FAITH IN THE BEST INTERESTS OF THE COMPANY (S 181(1)(A))	
<p>Rule: Directors must exercise their powers in good faith in the best interests of the company (s 181(1)(a)); and for a proper purpose (s 181(1)(b)) [equitable duties operate in addition to statutory duties s185; (Bell Group (No 9); Re IW4U)]. Onus is on one seeking to prove that conduct was tainted to bad faith (Aust Metro Life v Ure (1923) 33 CLR 199)</p>	
TEST - GOOD FAITH IN THE BEST INTERESTS OF THE CORPORATION	
<p>(A) Subjective Honesty test</p> <p>Directors must genuinely believe they are acting in the company's interests (Ure (1923); ASIC v Maxwell [2006]) BUT honesty must be rational (Sunny v He).</p> <p>Therefore contravened only where a director engages deliberately in conduct, knowing that it is not in the interests of the company' (ASIC v Maxwell [2006])</p>	
Evidence For	<ul style="list-style-type: none"> • A director's sworn evidence of their belief/ own testimony is admissible, but the court is not bound by it. (Bell Group (No 9)) • Actual belief is assessed through conduct, context, and objective indicators, not just testimony. (Bell Group (No 9); Australian Metropolitan Life v Ure) • A director will not breach s 181 merely because the decision turns out to be wrong, provided they did not know it was contrary to the company's interests (ASIC v Maxwell; Holyoake) • Directors authorised promotional schemes involving high-risk, arguably unlawful fundraising structures, Court found no subjective dishonesty by Nahed because he was inexperienced, he relied heavily on others, and there was no evidence he understood the breaches or that the conduct harmed the company (ASIC v Maxwell) <p>Ure: The directors refused to register the transfer, concern that husband had a bad reputation and intended to join the board; because the directors' actual belief that registering the transfer would harm the company was honest and motivated by company interests here this was a honesty believe</p>
Evidence Against	<ul style="list-style-type: none"> • Dishonesty, lying, concealment or manipulation <p>Byrnes v The Queen - They executed documents using Magnacrete's seal without authority, knew they lacked power, concealed the arrangement from board, could not support good faith because they acted with dishonesty, acted knowingly without authority, hid information</p>

Here, it is clear XX is not in the best interests of the company

- “Acting under a conflict or to secure a personal benefit is inconsistent with an honest belief that the decision serves the company’s interests (Maxwell; Sunnya). Here, the director’s [benefit/conflict] means the decision cannot be in the best interests of the company.”
- “The decision appears directed toward [insert legitimate corporate objective], and not to benefit any individual or faction, suggesting it aligns/does not align with the company’s best interests.”
- “A decision favouring one shareholder group or shifting control is not made for the company as a whole (Ngurli; Mills v Mills; Howard Smith). Here, the director acted to [dilute votes/entrench control], which is incompatible with acting in the company’s best interests.”
- “When insolvency is imminent, acting in the company’s interests requires protecting creditors (Kinsela; Bell). By [disposing assets/prejudicing creditors], the director failed to act in the company’s best interests.”
- “A belief in the company’s interests must be rational (Sunnya). Here, the decision lacks any reasonable business foundation and therefore cannot satisfy s 181(1)(a).”

“The director must act with subjective honesty and rational belief in the company’s interests (Ure; Sunnya). The court then considers whether the action aligns with legitimate corporate interests (Greenhalgh; Bell). Acting for [personal benefit or under conflict] is inconsistent with good faith and breaches s 181(1)(a).”

DUTY TO ACT FOR A PROPER PURPOSE — s 181(1)(b); (+ equitable ‘fraud on a power’ doctrine) ADD ON FROM ABOVE

Rule: Even if in good faith, a director must not exercise their power for an improper purpose (s 181(1)(b), it must not be used for a cloak for a improper purpose (Ngurli)

Proper

- Raising capital
- Rewarding employees
- Pursuing commercial opportunities

Improper

- Manipulate voting majority
 - *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821
- Entrench position
 - *Ngurli Ltd v McCann* (1953) 90 CLR 425
 - *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285

Two-Stage Test — Howard Smith

1. Identify the legal scope and purpose of the power

- a. Here the legal purpose is [raise capital or implement employee schemes]
- b. In Howard: Legal purpose of the share issue: to raise necessary capital for the company’s construction projects.

2. Determine whether the director’s substantial purpose fell within that purpose

- a. Whether acts were performed for the benefit of the company is to be objectively determined (i.e. a proper purpose being a purpose to benefit the company). However, evidence as to the subjective intentions or beliefs is nevertheless relevant (pp J in *PBS v Wheeler*)
- b. Shareholders control voting rights, appointment/removal of directors, alteration of constitution, etc; Directors Cannot Use Their Powers to Manipulate Voting Control

STATUTORY DUTY OF AVOID CONFLICTS

ISSUE

Has XX placed themselves in a position of conflict?

1. **State XX is a director (s9)**, and is a fiduciary at general law (if applicable) though also subject to statutory duties under the Corporations Act [CA and general law therefore apply concurrently]

RULE

s 182 improper use of position

A director, officer or employee must not improperly use their position to gain an advantage or cause detriment.

s 183 improper use of information

A person must not improperly use information obtained in their role to gain advantage or cause detriment; continues post-employment.

TESTS

a) Is the conduct improper?

Conduct is **'improper'** if a reasonable people would view it as falling below the standards expected of someone in the offender's position, given their duties, powers, authority, and the circumstances (**Byrnes**) (Subjective consciousness of impropriety is irrelevant (**Byrnes**)).

No need to prove the advantage was actually obtained; it is enough that the person believed their use would achieve an advantage or cause detriment (**Chew v The Queen**).

R v Byrnes (1995)

- 2 directors of 2 companies, one of the companies faced serious debt and needed a underwriter for note issue; to secure this they arranged for a 1.7m loan n supported by a \$2m deposit and guarantee from the other company they were directors; without board knowledge or consent; misrepresented the true nature of the arrangement when seeking approval
- This was improper because used their position to benefit Jeffcott (and themselves), not Magnacrete the company: improper use of position (s 182); Misleading the board breached their duty to act in good faith and for proper purpose (s 181); Using company property (funds, seal, guarantee) in an unauthorised way was misuse of information/position (ss 182–183).
- **Principle:** directors act improperly when they divert corporate assets or authority for purposes unconnected with the company's interests.

Holyoake Industries (Vic) Pty Ltd v V-Flow Pty Ltd

- Director of company was visiting competitor V-Flow, he learned the business was for sale; secretly planned to acquire V-Flow for himself and other H executives; used confidential information (incl. financials) obtained through his directorship to secure a bank loan for the purchase; resigned opportunity arose **only because of his directorial role**—it was a corporate opportunity; Using confidential information to advance a personal acquisition was misuse of position/information (ss 182–183); Taking the opportunity for himself, even after resignation, breached proper purpose and good faith (s 181)
- **Principle:** resigning or acting "after hours" does not neutralise misuse of position; corporate opportunities cannot be appropriated for personal gain.

1. Failing to prevent company from contravening law does not amount to an “improper” use of director’s position (ASIC v Maxwell)

APPLICATION

“X is a director of the company [s 9], meaning they must uphold their fiduciary conflict duties at general law and their statutory duties under s 182,182 to not improperly use their **position** and/or information obtained through that position to gain advantage/cause detriment (s182,183). Impropriety involves falling short of the expected standards of a director in the same position (R v Byrnes). By [brief fact], X has used their position/information for the purpose of securing [personal/related-party] advantage, so ss 182–183 are breached. This is similar to [XX case] therefore clear breach. The statutory duties reflect fiduciary obligations under the general law” and thus this is also breach of the general law. (Manildra Laboratories v Campbell; Dreamtime Supply Co v Steadfast).

STATUTORY DISCLOSURE REQUIREMENTS

ISSUE

Has Director **X** failed to disclose a **material personal interest** in accordance with **s 191**, and are they consequently restricted from being present/voting under **s 195** (public companies) or permitted under **s 194** (Pty Ltd)?

[Does X have a material personal interest requiring disclosure under s 191, and are they prohibited from participating under s 195?]

RULES

s 191 – Duty to Disclose a Material Personal Interest

A director must disclose a material personal interest in a matter that relates to the affairs of the company

NOTE: s 191 does not apply to a sole-director proprietary company (s 191(5))

TEST - What is a “material personal interest”?

An interest is material if it has real substance and could influence the director’s decision (McGellin v Mount King Mining NL (1998) at 304 (followed in Grand Enterprises v Aurium))

Statutory duty to disclose (s 191), subject to narrow exceptions (s 191(2)); “material” interest requires real substance and capacity to influence the vote (McGellin; Grand Enterprises). [Public companies trigger prohibition on presence/voting (s 195); proprietary companies rely on s 194]

EXAMPLES

Director has interest in proposal to convene a meeting to remove them from the board (McGellin).

Director affected by resolution to commence proceedings against the board (Anglo Australian Resources v Bloom).

Indirect shareholdings may still create a material personal interest (Grand Enterprises v Aurium).

SHAREHOLDINGS