

CORPORATIONS LAW –SUMMARIES

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DIRECTORS' DUTIES

DIRECTORS' DUTIES - INTRODUCTIONS

STEP 1: WHAT DOES THE CLIENT WANT?

*Consider what the client is seeking and set out an overview of how they can achieve

it* Examples:

If compensation: C seeks compensation from X. Under s 1317H, C will be entitled to compensation if X has contravened a civil penalty provision of the Corporations Act (CA). X may have contravened through a breach of directors' duties. C may also seek compensation under general law (GL).

If injunction: C is seeking to prevent {action}. This can be done through a s1324 injunction, which may be granted if there is a {contravention / attempted contravention} of the Corporations Act (CA). X may have contravened through a breach of directors' duties.

Also consider possibility of:

⇒ **Members remedies** e.g. through oppression remedies, statutory derivative action etc.

STEP 2: ARE THEY SUBJECT TO DIRECTORS' DUTIES?

If the facts state they are directors: The facts state they are directors so I can assume they come within the s9 definition of director and are subject to directors' duties.

If appointed as director:

- X is subject to directors' duties because they are an appointed director of {company} under s 9(a)(i)
- X is subject to directors' duties because they are an alternate director of {company} under s 9(a)(i)

If not appointed but appears to be a director:

- As X is acting in the position of a director, they are subject to directors' duties as a de facto director (s 9(b)(i), *Mistmorn*)
- As the directors of {company} are accustomed to act in accordance with X's interests or wishes, they are subject to directors' duties as a shadow director (s 9(b)(ii), *AS Nominees*)

If an officer:

- X is an officer of {company} because they:
 - o Participate in making decisions that affect the whole/substantial part of the business of the company (s9(c)(i))
 - o Have the capacity to significantly affect the company's financial standing (s9(c)(ii))
- Therefore, they will be subject to statutory directors' duties (i.e. all but not MPI)

Note: At general law, directors and senior company officers who can be considered to be fiduciaries owe duties

STEP 3: CONDUCT AND DUTIES

Identify specific conduct and any potential duties breached

Examples:

- ⇒ By deciding to enter into the transaction, X may have breached {duty of care / duty to act in best interests / etc.}
- ⇒ By allotting more shares, X may have breached {duty to act for proper purposes}

Potential duties:

- Duty of care, skill and diligence – s 180(1) and general law
- Duty to avoid conflicts (duty, interests and profits) – general law
- Duty to disclose MPIs – s 191
- Improper use of position – s 182
- Improper use of information – s 183
- Duty to act in good faith in best interests of company – s 181(1)(a) and general law
- Duty to act for proper purposes – s 181(1)(b) and general law
- Related party transactions – Chapter 2E

STEP 4: WORK THROUGH EACH DUTY ONE AT A TIME

⇒ See next pages