

MLP331 CORPORATE LAW

Sample Extract — Comprehensive Exam Notes

Sample only — the complete notes cover the full examinable subject and include legislation tables, case summaries, problem-solving frameworks, directors' duties, shareholder remedies, insolvency and an exam toolkit.

DIRECTORS' DUTIES — EXAM GUIDE

1. Overview

Directors and certain other corporate officers are subject to statutory and general-law duties regulating the way they exercise corporate power.

The central statutory duties appear in the *Corporations Act 2001* (Cth):

Provision	Duty
s 180(1)	Care and diligence
s 180(2)	Business Judgment Rule
s 181(1)(a)	Good faith in the corporation's best interests
s 181(1)(b)	Proper purpose
s 182	Improper use of position
s 183	Improper use of information
s 184	Criminal offences concerning good faith, position and information
s 189	Reliance on information or advice
s 190	Responsibility for delegated powers

Exam approach

When a director appears to have acted improperly, **do not stop after identifying one duty.**

Work through:

s 180 → s 181 → s 182 → s 183 → conflicts → criminal liability → defences/remedies

A single transaction can breach several duties.

2. DUTY OF CARE AND DILIGENCE — s 180(1)

Section 180(1) requires a director or other officer to exercise their powers and discharge their duties with the degree of care and diligence that a **reasonable person** would exercise if they:

1. were a director or officer of a corporation in the corporation's circumstances; and
2. occupied the same office and had the same responsibilities as the defendant.

The test is therefore **objective but contextual**.

It does not ask:

“Did this particular director personally think they were being careful?”

Instead, it asks:

“What would a reasonable person occupying this position, with these responsibilities, have done?”

What does s 180(1) require in practice?

A director should ordinarily:

- remain informed about the company;
- attend to important corporate affairs;
- monitor management appropriately;
- read and understand significant financial information;
- investigate warning signs;
- ask questions where information appears incomplete;
- give proper attention to major transactions before approving them.

***Daniels v Anderson* (1995) 37 NSWLR 438**

This case helped establish the modern expectation that directors cannot simply remain passive.

Directors are expected to take reasonable steps to place themselves in a position to guide and monitor the company.

ASIC v Healey (2011) 196 FCR 291

The Centro litigation demonstrates that directors cannot treat important financial statements as somebody else's responsibility.

Directors must bring their **own minds** to important financial information and cannot avoid responsibility simply by relying on management or auditors.

Exam fact triggers for s 180(1)

Think **care and diligence** where the facts say that a director:

- did not read documents;
- missed repeated meetings;
- approved a major acquisition with limited information;
- ignored financial warning signs;
- accepted assurances without investigation;
- failed to supervise a senior employee;
- failed to understand the company's financial position.

Application example

Facts:

A board approves the purchase of a \$15 million business after receiving only a short management presentation. One director knows that the target company recently lost its major customer but says nothing.

Application:

The size of the acquisition suggests that a reasonable director would obtain sufficient financial and commercial information before approving it. The absence of proper financial forecasts, combined with information that the target had lost a major customer, strengthens the argument that further inquiry was required. Approval without investigating those matters may therefore fall below the standard required by s 180(1).

Exam tip

Do not write:

“The investment failed, therefore the directors breached s 180.”

A bad commercial result does **not itself prove negligence**.

The question is whether the decision-making process satisfied the required standard at the time.

3. BUSINESS JUDGMENT RULE — s 180(2)

The Business Judgment Rule can protect a director from liability concerning a qualifying **business judgment**.

A business judgment is, broadly, a decision to take or not take action concerning the company’s business operations.

For the rule to operate, the director must satisfy the statutory conditions.

Checklist

Ask whether the director:

1. made the judgment in **good faith for a proper purpose**;
2. had **no material personal interest** in the subject matter;
3. informed themselves about the subject matter to the extent they reasonably believed appropriate; and
4. rationally believed the judgment was in the corporation’s best interests.

Important limitation

The Business Judgment Rule is relevant to **s 180(1)** and equivalent duties at common law or in equity.

It is **not a general defence to every directors’ duty**.

Common exam mistake

A failure to act is not automatically a “business judgment”.

Examples such as:

- failing to read financial reports;

- failing to monitor the company;
- failing to investigate warning signs,

may involve neglect of basic responsibilities rather than a protected commercial judgment.

Quick memory formula

GOOD FAITH + NO INTEREST + INFORMED + RATIONAL BELIEF

4. GOOD FAITH AND BEST INTERESTS — s 181(1)(a)

Section 181(1)(a) requires directors and other officers to exercise their powers and discharge their duties:

in good faith in the best interests of the corporation.

The duty is owed to the **corporation**.

It should not ordinarily be stated as a direct duty owed individually to shareholders or creditors.

What are the corporation's interests?

The answer depends on context.

In an ordinary solvent company, the corporation's interests will often substantially correspond with the collective interests of its members.

However, where the company is insolvent or approaching insolvency, the interests of creditors become increasingly important in identifying what acting in the corporation's interests requires.

Exam warning

Avoid writing:

"Once insolvency approaches, directors automatically owe creditors a direct fiduciary duty."

That is too broad.

A safer proposition is:

The duties remain owed to the company, although creditor interests become increasingly significant where insolvency threatens.

5. PROPER PURPOSE — s 181(1)(b)

Even where a director genuinely believes they are helping the company, the director must still exercise corporate powers for a **proper purpose**.

The analysis usually involves:

1. identifying the power exercised;
2. identifying the purpose for which that power exists;
3. identifying the director's actual purpose;
4. deciding whether the power was used properly.

Classic example — issuing shares

Directors ordinarily have power to issue shares for legitimate corporate purposes such as:

- raising capital;
- acquiring assets;
- employee incentive arrangements.

But the power may be improperly exercised if its dominant purpose is to manipulate voting control.

***Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821**

The directors issued shares in circumstances involving a takeover contest.

The case is a leading authority for examining the **purpose for which directors exercise corporate powers**.

Exam trigger

If the facts say:

“The directors issued additional shares immediately before a shareholder vote...”

you should immediately consider **proper purpose**.

6. MISUSE OF POSITION — s 182

Section 182 prohibits a director, secretary, officer or employee from improperly using their position to:

- gain an advantage for themselves;
- gain an advantage for someone else; or
- cause detriment to the corporation.

Typical examples

- directing business to a relative;
- diverting a corporate opportunity;
- arranging a favourable company contract for a friend;
- using company funds for a private purpose;
- exploiting corporate influence for another business.

Exam trap

The defendant does **not** necessarily need to personally receive money.

A benefit obtained for **someone else** can be enough.

7. MISUSE OF INFORMATION — s 183

Section 183 addresses information obtained because a person is, or has been:

- a director;
- other officer; or
- employee.

The information must not be improperly used to:

- gain an advantage for themselves or another person; or
- cause detriment to the corporation.

The statutory duty can continue after the person has left the company.

Example

A director learns through confidential board papers that the company intends to purchase a particular block of land.

Before the company acts, the director secretly arranges for another business they control to purchase the land.

Potential issues include:

- s 181;
- s 182;
- s 183;
- general-law conflict rules;
- possible remedies requiring surrender of any improperly obtained benefit.

8. DIRECTORS' DUTIES — RAPID ISSUE-SPOTTING TABLE

Fact pattern	First issue
Director failed to investigate	s 180(1)
Director approved risky commercial decision	s 180(1), then consider s 180(2)
Shares issued to influence voting	s 181 proper purpose
Director favours own interests	s 181
Position used to help relative	s 182
Confidential information exploited	s 183
Personal interest in transaction	ss 191–195 may also arise
Company financially distressed	creditor interests + s 588G
Director relied on CFO/accountant	consider s 189
Director delegated responsibility	consider s 190
Dishonesty/recklessness alleged	consider s 184 separately

EXAM PROBLEM-SOLVING TEMPLATE

ISSUE

State the issue using the **person + conduct + provision**.

Weak

“s 180.”

Better

“The issue is whether Noah breached s 180(1) by approving the acquisition without obtaining adequate financial information.”

RULE

Give the relevant:

statutory provision + legal test + leading authority

Keep this section reasonably short.

APPLICATION

This should usually be the strongest part of the answer.

Use:

FACT

What actually happened?

LEGAL SIGNIFICANCE

Why does that fact matter?

ARGUMENT

Why does it support breach or non-breach?

COUNTERARGUMENT

What could the opposing side argue?

WEIGH

Which argument is stronger?

CONCLUSION

Use appropriately qualified language:

- likely;
- unlikely;
- strong argument;
- probably;
- depends on whether;
- insufficient facts to conclude definitively.

Avoid pretending that every corporate-law problem has a certain answer.

SAMPLE EXAM APPLICATION

Scenario

Amelia is a non-executive director of Horizon Energy Ltd. Management recommends purchasing a smaller competitor for \$40 million. The board receives the proposal the morning of the meeting. Amelia reads only the executive summary before voting in favour. The papers contain a warning that the target faces substantial environmental remediation costs.

Issue

Whether Amelia breached the duty of care and diligence in s 180(1) by approving the acquisition without adequately considering the transaction documents.

Rule

Section 180(1) requires a director to exercise the degree of care and diligence that a reasonable person would exercise in the corporation's circumstances while occupying the same office and having the same responsibilities.

Authorities including *Daniels v Anderson* and *ASIC v Healey* demonstrate that directors are expected to remain informed and personally engage with significant information relevant to their responsibilities.

Application

The acquisition is substantial, involving expenditure of \$40 million. A reasonable non-executive director would therefore be expected to devote meaningful attention to the material supporting the proposal.

Amelia received the complete papers but read only the executive summary. The environmental liability was apparently disclosed in those materials and could materially affect the value and risk of the acquisition. Her failure to examine the papers meant she voted without considering information directly relevant to the transaction.

Amelia might argue that non-executive directors are entitled to rely to some extent on management. However, the magnitude of the acquisition and availability of the warning suggest that personal review was required. Reliance cannot simply substitute for the director exercising independent judgment.

Conclusion

There is a strong argument that Amelia failed to exercise the care and diligence required by s 180(1).

QUICK EXAM CHECKLIST

Before moving to the next issue, ask:

- ☐ Who owes the duty?
- ☐ What statutory provision applies?
- ☐ What are the elements?
- ☐ Which facts support breach?
- ☐ Which facts support the defendant?
- ☐ Is there a defence or qualification?
- ☐ What is the likely conclusion?

END OF SAMPLE

The complete notes also cover:

- company formation and separate legal personality;

- types of companies;
- constitutions and replaceable rules;
- contracting and authority;
- pre-registration contracts;
- fundraising;
- shares, membership and dividends;
- debentures and personal property securities;
- corporate governance;
- directors and officers;
- directors' duties;
- conflicts of interest;
- related-party transactions;
- insolvent trading;
- shareholder meetings;
- oppression and derivative actions;
- ASIC powers;
- corporate insolvency;
- receivership;
- voluntary administration;
- restructuring;
- liquidation;
- legislation and case tables; and
- exam issue-spotting and IRAC guides.