

❖ **SECTION 181 – DUTY TO ACT FOR PROPER PURPOSE:**

Good faith-- directors and other officers

1) A director or other officer of a corporations must exercise their powers and discharge their duties:

- a) In good faith in the best interests of the corporations; and
- b) For a proper purpose.

⇒ Contravention of s 181 → ASIC may seek compensation

➤ ***Greenhalgh v Arderne Cinemas Ltd:***

→ duties owed to 'the co as a whole'

- Dirs must balance the interests of majority & minority members while acknowledging that in most circs, the interests of the co be those of the majority of its members.

❖ ***Duty to act for Proper purpose (issuing shares): SECTION 198A:***

A places management in hands of BoD

- ✓ Raising capital by shares is a managerial power
- ✓ What is proper purpose of issuing shares?
 - Raise capital for co?
 - Create a new majority to avoid takeover?
 - To change majority voting power?
 - Some purpose in constitution?
- ✓ Most cases on this relate to share issues by directors - then the share issue is invalidated
- ✓ Proper purpose to issue shares if it involves:
 - Raising capital,
 - Employee incentive schemes,
 - For acquisitions
- ✓ Improper purpose :

- Retain control
- Deprive shareholders of rights

❖ **Duty to avoid conflicts of interest:**

Conflicts of interest:

- Undisclosed personal profits from contracts with co;
- Competes with the company;
- Takes up corporate opportunity/property;
- Misuse of confidential company information
- Obtains personal profits;
- Holds directorship of 2 companies;
- Is a nominee director.

General law rule:

- ✓ Directors must not place themselves in a position of conflict with their duty to act in the interests of the co UNLESS co gives permission.
Under general law, consent only thru resolution of shareholders at GM. In practice, clause in constitution under which BoDs have power to permit a dir to place herself in CoI.

EXAMPLES:

- ✓ Director enters into transaction with company to sell property to company:

Aberdeen Railway Co v Blaikie Bros:

FACT: ARC entered into K to buy iron seats from BB. Dir of ARC did not tell other dirs he was a partner in BB.

HELD: Director had breached his duty to not place himself in CoI. His personal interest was to get highest price for K – ARC was able to have K set aside.

- ✓ Director takes opportunity that belongs to company:

Furs Ltd v Tomkies:

MD T conducted negligent to sell business

(\$8.5k for equips & \$5.5k for trade secrets). T agreed to work for purchasers & recd \$5k whilst Furs got only \$8k.

Peso Silver Mines v Cropper

FACT: C was director of P. BoDs rejected offer to purchase mining claims. C formed syndicate to buy claims. Later C fell out with P & was dismissed. P sued C for breach of duty.

HELD: No CoI because C was in same position as any other purchaser & P had made good business decision to reject claims

- ✓ Director may have conflicting duties (e.g. to 2 different companies)
- Breach of duty for a director of two companies to be put themselves in a position where the duties they owe to each company conflict.
- Director must not divulge information obtained as a director of one company to the other company
- Note that if an executive director they can not be director of 2 competing companies.

ASIC v Vizard

- ✓ Vizard used his position on the board of Telstra to trade in shares of co's that Telstra was planning to acquire.
- ✓ Breach of s 183.

Banned from managing any corporation for 10 years and ordered to pay pecuniary penalties of \$390,000)