

Directors' Duties An Overview

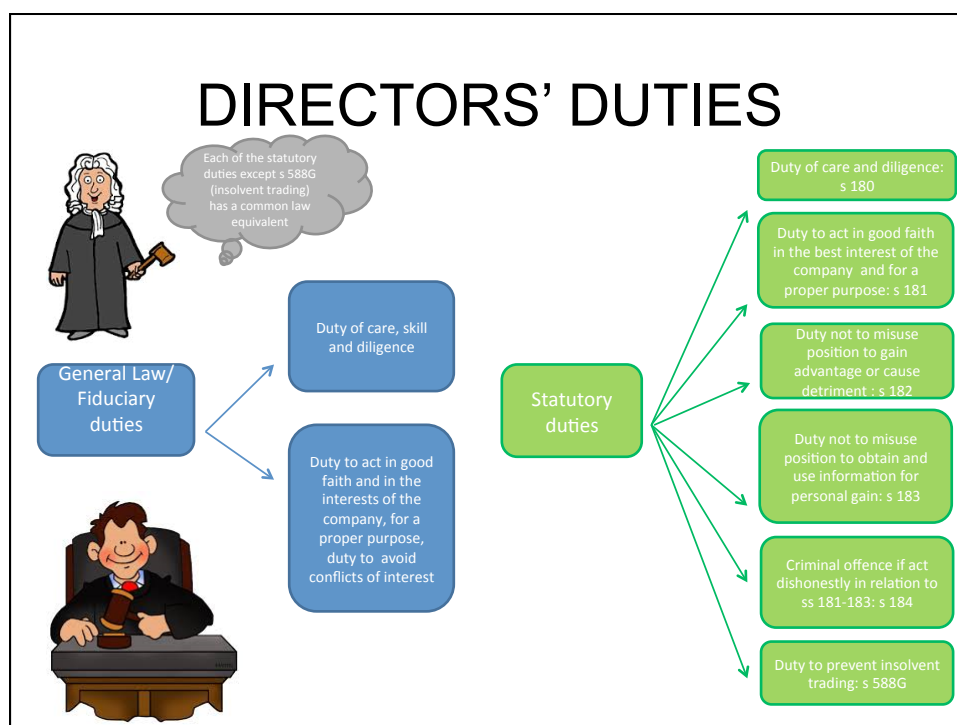
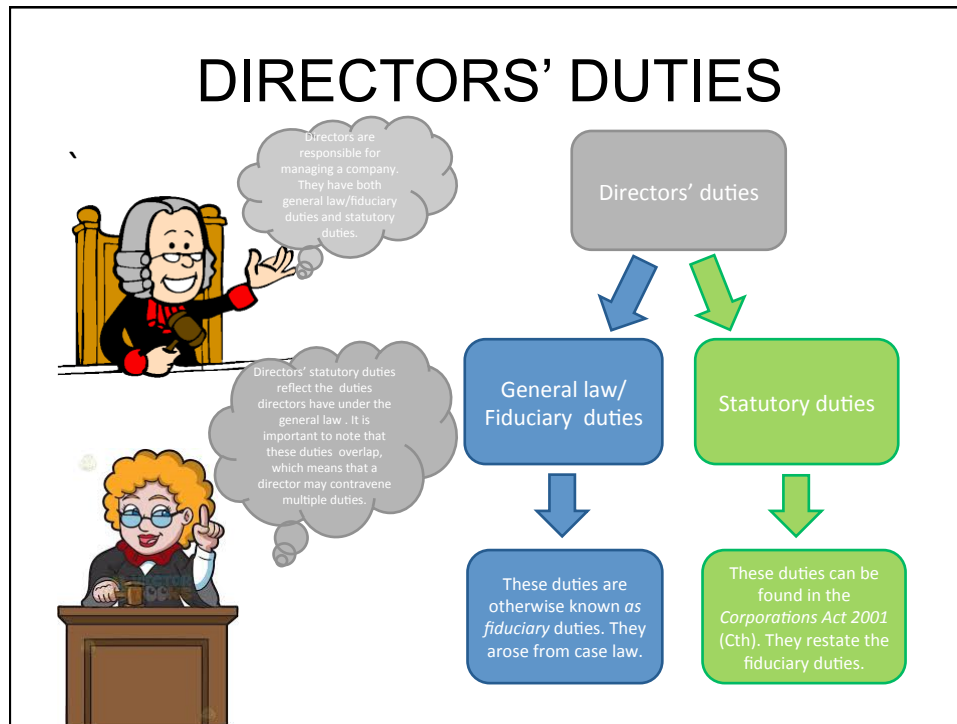
BTC1110 Commercial Law
and
BTF1010 Business Law



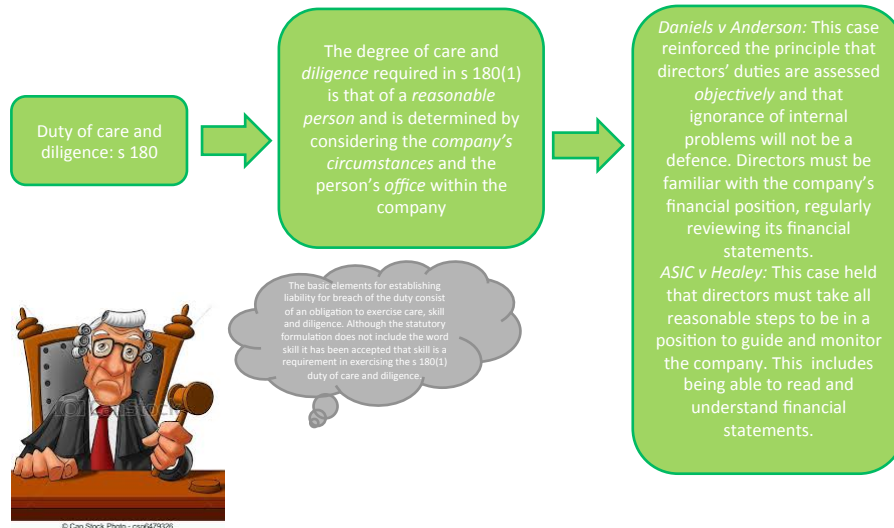
Introduction

- This slideshow offers you a summary of the topic of directors' duties.
- The slideshow focuses on chapter 17 'Corporations Law' at pages 463-494 of CACL (4th edition).
- The slideshow presupposes that you have attended the lecture on this topic or listened on line. It is also assumed that you have undertaken the prescribed reading.
- Once you have viewed the slideshow you are encouraged to write an answer to question 11 at page 494 of CACL. This question was discussed during tutorials in week 12. You may also benefit from writing an answer to question 4 of the document titled 'Previous exam questions' available on Moodle.

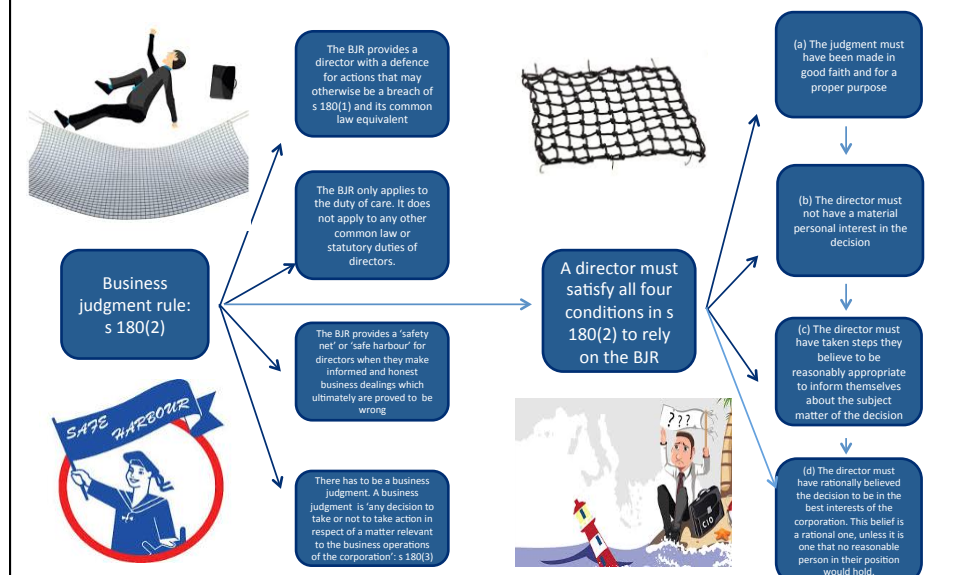




DUTY OF CARE AND DILIGENCE: s 180



The business judgment rule: s 180(2)



DUTY TO ACT IN GOOD FAITH: S181

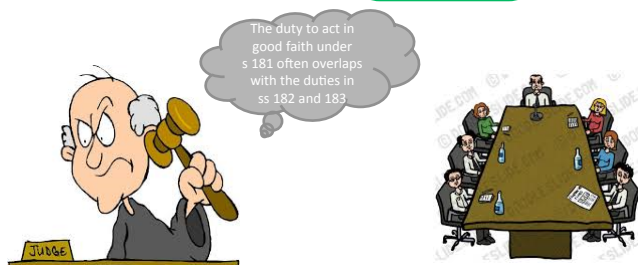
Duty to act in good faith in the best interests of the company and for a proper purpose: s 181



The duty to act in good faith in the best interests of the company: s 181(1)(a)
This duty requires directors to act honestly in the best interests of the corporation as a whole (ie the members as a whole).



The duty to exercise powers for a proper purpose: s 181(1)(b)
Directors are also required to exercise their powers for a proper purpose and not any collateral purpose (such as attempting to obtain a private benefit from using the company's assets or their powers as directors). Powers conferred on directors are to be exercised in order to benefit the company and not themselves.



DUTY NOT TO MISUSE POSITION: s 181 DISCLOSURE OF INTERESTS BY DIRECTORS: S 191

Duty not to improperly use position for personal gain, gain by a third party or to cause detriment to the company: s 182



ASIC V Adler: Breach of s 182 occurs where a director uses their position and causes a company to enter into an agreement that confers unreasonable personal benefits on the director.

An *objective* test is applied to determine whether the director has breached s 182.

Cummings v Claremont: The court held that the directors of a mining company who provided themselves with generous termination benefits (including luxury motor vehicles) misused their position breaching s 182 as well as other directors' duties.



Directors must disclose to the other directors any material personal interest in a matter that relates to the affairs of the company: s 191



DUTY NOT TO USE INFORMATION IMPROPERLY: S183

Duty not to improperly use inside/corporate information for personal gain, gain by a third party or to cause detriment to the company: s 183



As you may know I was found to have contravened s 183 and was banned from being a director for 10 years and fined \$390,000

Corporate information refers to information directors find out in the course of carrying out the company's business. Even if the director created the information, the information still belongs to the company if it was created in the course of carrying out his or her duties as a director.

ASIC v Vizard: Vizard a high profile businessman and non-executive director misused his position as a director of Telstra to gain confidential information to purchase shares in companies that Telstra was planning on taking over. He was found to have breached s 183.

CRIMINAL OFFENCES: S 184

Certain intentional or reckless breaches of duty amount to a criminal offence: s 184

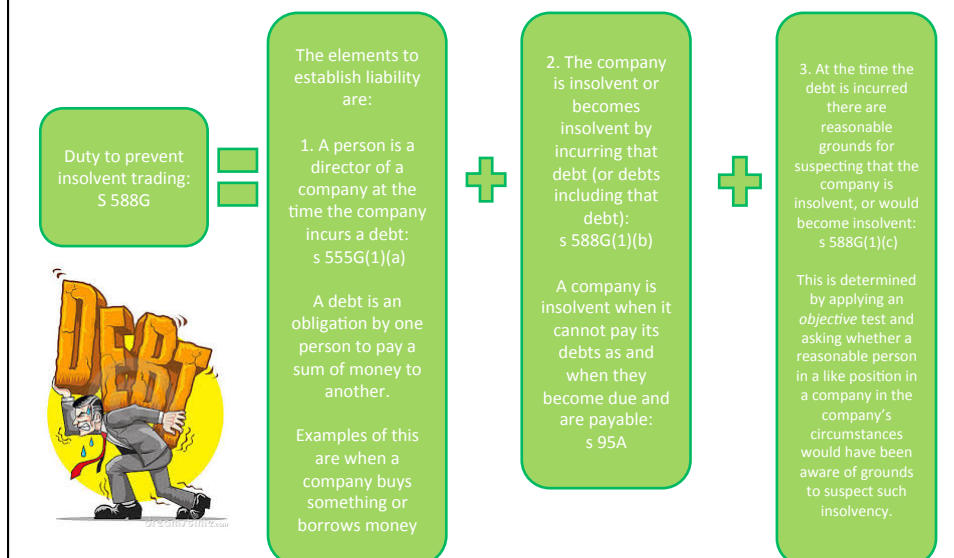


If directors act dishonestly or are reckless in relation to:

- S 181-fail to exercise powers in good faith, in the best interests of the company or for a proper purpose: s 184(1)
 - S 182-misuse their position dishonestly: s 184(2)
 - Misuse company information: s 184(3)
- they also commit a criminal offence

ASIC V Adler: The court held the directors committed serious offences including breach of s 184(1) and the *Crimes Act* which involved obtaining money by deception. In the words of the presiding judge the acts of the directors were 'not stupid errors but deliberate lies.'

INSOLVENT TRADING: S 588g



Insolvent trading-DEFENCES: S 588g

There are a number of defences to insolvent trading actions available under s 588(H)

