DIRECTORS DUTIES

- Problem with having a concentration of power vested in directors:
  - may be tempted to use their powers to benefit themselves,
  - or engage in acts that are not in the company’s interests.
- Law aims to discourage behaviour in several ways
  - Principal method - the imposition of a certain legal duties to protect shareholders.
  - Typically makes the party account for their ill-gotten gain.

CODIFICATION

- Duties previously set out in old case law, based on common law of negligence and equitable duties.
  - unclear, inaccessible and out of date
  - Difficult to codify very subjective common law
- Therefore, the law relating to directors’ duties was collected and set out in statute
  - Provided authoritative, accessible, and more modern statement of directors’ duties.
  - Common law duties have been abolished (although case law remains very relevant) and replaced by duties found in ss171-177 CA 2006.
  - Reflects political agenda – government wanted to change the law to a wider stakeholder approach.
  - List is not exhaustive (even in company law terms) – e.g. does not include corporate homicide.
  - Wide in scope (s180(5)) possibility of non-company law statutory liability
- Introduction of the Fraud Act 2006 criminalises breaches of fiduciary duties (including certain director’s duties).
  - Law Review suggest directors should not be criminalised for economic reasons as the law is still developing and provisions are vague.

WHO ARE DUTIES OWED ‘BY’ AND ‘TO’

- Duties owed by Directors (as defined by s250), former directors for some purposes (s170(2)), and shadow directors in certain circs (s170(5) and s223).
  - ODL Securities Ltd v McGrath
    - Extends to others? (Job Title: ‘Head of Risk’)
- Duties owed to the company (s170(1))
  - Common law is much broader and is therefore the deemed interpretation.
  - Percival v Wright (Shareholders)
  - Platt v Platt (Shareholders)
  - West Mercia Safetywear Ltd v Dodd (Creditors)
GENERAL DUTIES

- Newly codified duties are referred to as ‘general duties’ - they are ‘based on certain common law rules and equitable principles as they apply in relation to directors’ (s170(3)).
  - Relief for Parliament’s concerns that common law was viewed as more efficient and flexible than statute.
- Content not radically altered, but has merely restated in a more appropriate manner (although some notable reforms).
- Lack of change ensures that the significance of pre-2006 body of case law remains relevant.
  - s170(4) - ‘regard shall be had to the corresponding common law rules and equitable principles in interpreting and apply the general duties’.
  - s178(1) - provides that remedies under the common law continue to apply to statutory successors.
  - It would not have been unduly burdensome for Parliament to set out what remedies are available for each general duties, but it chose not to.
    ▪ Would’ve made law clearer and more accessible
    ▪ But remains flexible as the courts can continue to develop existing case law
- As under common law - directors owe duties to the company (s170(1)) and do not generally owe duties to members, creditors, employees, or anyone else.
- Generally only the company itself can commence proceedings to remedy a breach of director’s duties.
  - Members may be able to commence proceedings via a derivative claim.

S171-177 – GENERAL DUTIES (plus supplementary duty in s182)

DUTY TO ACT WITHIN THE COMPANY’S POWERS (s171)

- s171 (JKX Oil v Éclairs) - amalgamation of two prior common law duties:
  (a) duty to act in accordance with the company’s constitution
    - Powers of the company are predominantly set out in the company’s articles
      ▶ However, it’s common for companies to impose limitations on director’s power
      ▶ Directors who breach limitations (e.g. acting ultra vires) will likely breach s171(a)
        ▪ A director who breaches s171(a) is liable to compensate the company for any loss sustained due to the breach.
  (b) duty to exercise powers only for the purposes for which they are conferred
    - Arguably more important
      ▶ Based on common law ‘proper purpose’ doctrine
      ▶ Wide-ranging applying to all powers of directors