# 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  - unclear, inaccessible and out of date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
    - *Bungay v Saini* [UKEAT]
- 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 statue.
- 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.



**<u>S171-177 – GENERAL DUTIES</u>** (plus supplementary duty in s182)

***<u>DUTY TO ACT WITHIN THE COMPANY'S POWERS (s171)</u>***

- **s171** (*<u>JKX Oil v Éclairs</u>*) - 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