

Duty to promote success of co -

s172(1)(a)-(f)–A director of a co must act in the way he considers, in good faith, would be most likely to promote the success of the co for the benefit of its members as a whole and in doing so have regard (amongst other matters) to consequences of decisions, co's employees, relationships with suppliers/customers, impact of the co's operations on the community and the environment; co's reputation; act fairly.

*Reassertion of 'shareholder primacy'. Enlightened shareholder value. 2 elements: acting in good faith and in doing so have regard to the other factors.

*Internal Management rule – in discharging this duty and in particular, taking account of the factors listed in subsection 1, directors are bound to exercise reasonable care, skill and diligence.

**Re Smith & Fawcett Ltd* – directors must exercise their discretion bona fide in what they consider, not what they court may consider, is in the interests of the co.

*s417(2) requires that the directors' business review inform members of the co and help them assess how the directors have performed their duty under s172.

*Emphasising need for disclosure & loyalty.

**Charterbridge Corporation Ltd v Lloyd's Bank Ltd* – reasonable believe that transactions were for the benefit of the co.

*s173-a director must exercise independent judgement

Duty to exercise independent jment – s173

*This duty is not infringed by his acting in accordance with an agreement duly entered into by the co that restricts the future exercise of discretion by its directors or in a way authorised by the co's constitution.

*Prohibition on the fettering of discretion.

Duty to exercise reasonable care, skill & diligence – s174

*Would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company and the general knowledge, skill and experience that the director has.

*Duties apply equally to executive and non-executive directors

*Object test – *Dorchester Finance v Stebbing*

Duty to avoid conflicts of interest – s175

*This applies to exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, info or opportunity) – *Regal Hastings Ltd v Gulliver*

*This duty does not apply to conflict of interests arising to a transaction or arrangement with the company.

*s175(4)-This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or if the matter has been authorised by the directors.

**Boardman v Phipps* – Fiduciary will only be liable were a reasonable man looking at the relevant facts and circumstances would think that there is a real and sensible possibility of conflict.

*A corporate opportunity is viewed as an asset of the co, which may not therefore be misappropriated by the directors – *Cook v Deeks*.

**Industrial Development Consultants Ltd v Cooley* – s177 must declare the nature and extent of that interest to the other directors.

**Aberdeen Rly Co v Blaikie Bros* – personal goals v professional = conflict of interests.

**Tito v Waddell* –the self-dealing rule is that if a trustee sells the trust property to himself, the sale is voidable by any beneficiary ex debito justitiae, however fair a transaction.

Duty not to accept benefits from third parties

*s176-A director must not accept a benefit from a third party conferred on him or her by reason of his being a director or his doing (or not doing) anything as a director.

Cases within more than one of the general duties

*The way in which the duties are framed results in an overlap between them.

*Section 179 serves to emphasise that the effect of the duties is cumulative. It is therefore necessary for directors to comply with every duty that may be triggered eg the duty to promote the success of the co (s172) will not authorize the director to breach his duty to act within powers (s171), even if he considers that would be most likely to promote the success of the co.

BREACH OF DUTIES BY DIRECTORS

*Requirement to make up loss suffered by the co.

*Secret profit can be claimed by the co.

*If director has interest in an transaction, the co can make contract voidable.

*Co can seek an injunction

*Joint and several liability of the directors

CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

*Companies manage the business processes to produce an overall positive impact on society – about making money in the right way (moral/ethics).