

Law revision

Law



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She care for her own self interest and has not bring a new product opportunity to FAA Case: Re Come 191 1 Fact: A father had been assisted in his business by his second son. After the father's death, the mother transferred the business assets to that second son. After her death, the elder son sought the transfer Of those assets back into her estate, saying that in the absence of her having taken independent advice, the younger son's position brought an implication of undue influence.

Director's fiduciary duties are owed only to the company, not to the individual share holders. Case: Percival v Wright 1902 Facts: Percival wished to sell his shares in the company and wrote to the company secretary asking if he knew f anyone willing to buy. After negotiations, the chairman of the board of directors arranged the purchase of 253 shares, 85 for himself and 84 for each of his fellow directors at a price based on Percival valuation of the shares. The transfers were approved by the board and the transactions completed.

Soon afterwards, Percival discovered that prior to and during the negotiations for the sale of his shares, another person was negotiating with the board for the purchase of the whole company and was offering various prices for shares, all of which exceeded the price paid to Percival. Percival then brought n action against the directors asking for the sale of his shares to be set aside for non-disclosure. Held: The directors are not trustee for the individual shareholders and may purchase their shares without disclosing that they are negotiating for the sale of the entire company.

Fruity has not informed to the board of FAA when she set up a company called Cure Life Ltd (CLC) and become majority shareholder. Case: The board of trustees of the Saba Foundation & Or's v Dates Seed chick bin Seed Mohamed & nor [1 999] 'A fiduciary is someone who has undertake to act for or on behalf of another in a particular tater in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation ofloyalty. The principal is entitled to the single minded loyalty of his fiduciary... This core liability has several facts.

A fiduciary must act in good faith; he must not make for his own benefit or the benefit of a third person without the informed consent Of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations.. They are the defining characteristics of the fiduciary... E is not subject to fiduciary obligations because he is fiduciary; it is because he is subject to them that he is a fiduciary. ' The key fide carry obligations of the directors are To act Boniface in the interest of the company Directors are required to act Boniface for the benefit of the company as a whole.

The Act also imposes similar duty on directors: SSL 32 (1) Case: Re Lee Barrens Ltd [1932] Facts: A dispute arose over the purchase by the company of pension policies for the benefit of employees and their spouses. It was claimed that the particular policy issued was a misuse of the directors' power. Held: The judge set out a three part test for determining whether the directors were using their powers properly: (1) Was the transaction entered into in good faith? (2) Was the transaction reasonably incidental to the carrying on of the company's business? (3) Was the transaction done for the

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benefit of the company and to promote its prosperity? 1) No (2) NO (3) Yes
TO exercise their power under the company's constitution for proper purpose
Because directors are fiduciaries they can only exercise powers given to them for the purpose for which those powers were given and for no other purpose or which those powers were given and for no other purpose, and the exercise of a power for an improper purpose can be challenged even if the directors' good faith is not in question To avoid conflict of interest and not to profit from their position In the situation, Fruity has proposed FAA enters into a contract with CLC to buy supplies of the organic fruit drink product for resale.

The board agrees and as part of the contract Fruity negotiates with the board that she will be paid RUMOR, 000 commission because she drew the board's attention to this new product opportunity. The board of FAA did not know that Fruity is the majority shareholder of CLC. There is a conflict of interest between the two position Managing Director of Freshness Always Sad Bad and as the majority shareholder of CLC. Fruity also has set up the price for commission of RUMOR, 000 to draw attention towards the new product opportunity.

Case: Aberdeen Railway co v Blaine Brose [1843-60] Facts: The railway company agreed to buy chairs from a partnership, Blaine Brose. Blaine, a member of the partnership was also a director of the company. When the partners tried to enforce the contract the company successfully claimed that the contract was avoidable owing to the director's conflict of interest. Held: Lord Charwoman said: " His duty to the company imposed on him the obligation of obtaining these iron chairs at the lowest possible price.

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His personal interest would let him in an entirely opposite direction - would induce him to fix the price as high as possible. This is the very evil against which the rule is directed. " A director has a duty not to make a personal profit out of his connection with the company. This rule applies even if no loss is suffered by the company. However, if he does he must count for the profit to the company. Fruity has make a personal profit in connection with FAA and CLC. The FAA may suffer no loss due to FAA makes large profits selling the organic green product.

Case: Industrial Development Consultants Ltd v Cooley [1 972] Facts: The managing director of IDS attempted to secure a contract on Id's behalf with the Eastern Gas Board. KGB indicated to him that they were not prepared to deal with IDS but might be prepared to contract with the director (Cooley) personally. Cooley then represented to IDS that he was ill and was allowed to terminate his contract t short notice. He then negotiated with KGB and obtained the consultancy for himself. Held: He must account to IDS for the profit he obtained for the contracts.

He was in breach of duty and it was immaterial that IDS could not have obtained the contract itself. Case: Cook v Deeds [1 91 6] Facts: Three directors of the Toronto Construction Co Ltd were supposed to be negotiating a construction contract on behalf of the company. Instead they formed another company and took the Contract for themselves. They were holders of 75% of the share capital of Toronto Construction, and used this charity to pass a resolution at general meeting that the company had no interest in the contract.

Held: A director can normally keep a personal profit the company consents, but this consent is invalid if the director concerned controls the voting at general meeting. This was fraud on the minority. Section 131 (1) requires a director who is directly or indirectly interested in a contract with his company to declare promptly the nature of that interest at meeting of directors. Section 132(1) imposes a broad duty on directors at all the times to act honestly and exercise reasonable diligence in the exercise of their power and the discharge of the duties of their office.

This is based on a question of fact: case *Yen Hing enterprise Sad Bad v Dates Dry Eng pooh Aka* [1988] Regarding the extend of the meaning of "honesty", the case of *Multi Pack Singapore pet Ltd (In Receivership) v Interact Ltd & Or's* [1994] explains that this does not mean that the directors had acted fraudulently, it means that he must act bona fide in the interests of the company and that in exercising his creation, the director should act only to promote and advance the interest of the company'. Misuse of confidential information