

# Directors' duties problem question



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The establishment of Shine Ltd was with the sole intent to produce industrial solvents and cleaning solutions. Appointment of the office of managing director was given to John to cover that post. During this course, the company acquired an agreement with XYZ plc a conglomerate. While still under the directorship of John the company came up with a new super glue. In his capacity as a director, he presented this to the manager with the hope that it would be supported, and the production would continue since he felt it would be a lucrative business. The board of trustees were however of a different opinion, and they ended up rejecting the project. The managing director of XYZ plc is a friend of John, and so he disclosed their intentions not to renew their contract with Shine Ltd. Their reason was that the partnership had not born as much success as they had hoped. He would, however, continue his dealings with John if only he were not attached to Shine Ltd. With this in mind, he resigned and instead formed his company, Flush Ltd. A company that later partnered with XYZ plc. The company also took up the project of manufacturing the glue Shine Ltd board of directors had rejected, and it has proved very profitable.

The corporate opportunity dictates that the director is not allowed to take for themselves any business opportunity that otherwise would have been beneficial to the corporation. It falls within the fiduciary duty of loyalty applications. The conditions in the act are clearly stipulated. It becomes limited to the Director, officers, and controlling shareholders (Esser, 2007). The act specifies that it is applicable whether the transaction harms the corporation. That is to say should the director go against this rule in the process make the cooperation benefit it does not mean he gets exempted

from having broken particular law. The other part of this rule is that the corporation should not have obtained information regarding the opportunity that was presented. In the case where the board is aware and declines to take the opportunity then the fiduciary would take the opportunity for himself. Should the rule apply however the corporation becomes entitled to the profit earning for the fiduciary from the transaction?

Having considered all the activities that took place in case study this particular rule might not apply to John. While being the director of Shine Ltd, he took the idea to the board of trustees and following the rules stipulated in the Company act that would have been his responsibility. In this case, both John and the board of directors were aware of opportunity yet the board choose to ignore. With this in mind, it then becomes apparent that the opportunity would now belong to John. However, that does not mean that he gets to walk (Lowry, 2009).

Section 170 deals with the responsibility of the director of an organization. In as much as they are given the top most job, this section dictates what is expected of them from the daily operation of the group. Section 174 deals with the responsibility of the director to exercise care, skill and diligence. Their knowledge needs to be such that they are helpful to the organization. The manager has to handle the activities of the organization about his or her skills in that position. A factor also emphasized in Section 175. The part worth highlighting would be the second rule that specifies that it would be in conflict of interest to exploit information or opportunity gotten as a result of the position they hold in the company. Section 176 talks about Duty not to accept benefits from third parties. Of note is the second part where the <https://assignbuster.com/directors-duties-problem-question/>

aspect of the third party gets explained into details. Anyone who falls within the organization as a partner or an associate falls within this section. Section 177 deals with the responsibility of the organization's director who might find himself in a conflict of interest. He has to offer the board with a declaration letter to announce the presence of a conflict of interest before they get to discover on their own. Section 178 deals with the consequences of a breach of duty. It highlights that the section 171 to 177 having the same kind of punishment should the director have breached that contract. However, section 174 makes the management have an open idea concerning what can pass as a breach of contract since it is a section open to interpretation. Section 180 deals with the parts that can be considered to be in a position to assume. Having examined the effects and the position that they take make them be applicable or be ignored depending on the location.

Examining the case studies the duties mentioned above of the director were never fulfilled by John in his capacity as director of the organization. He stands liable for all accounts of the negligence of functions of the Director. He exploited the chances that they had to make better the body and instead used this privilege to gain as an individual. The company is on the right to take legal action concerning the negligence of duties as director.

The seems to be a violation of the equitable principle. That means that the data collected from the manager was wrongfully acquired. The breach of confidence in the English law gives room for a person to claim compensation for the violation of trust. The responsibility of the manager to have the clause of confidence falling within his doctrines translates to having a civil complaint. The rule applies specifically to situations where it would be unfair

should the information be revealed. There exist three very fundamental aspects that would determine if a breach has taken place. Before ruling out that the case is worth being given a civil claim the three rules need to get approved to have existed. The information that is being shared should contain a certain degree of confidence. That is to say, it gets classified as being confidential. The provision of the information falls into the category of imposing on the application of obligation confidence. The information received was unauthorized when being used (Payne, 2008).

Considering the case study provided it is clear that the above conditions were all fulfilled. Working as the director of Shine Ltd the information that he shared with his friend would best fit this category. The information should not have been disclosed to anyone since the company owned it. While the information was being given he was working as the director of Shine. While there seems to be no documentation on the issue of permission to use this product for profit. Lack of proper authority to present the solution in this case ruling out the possibility that the process was ever legal (Payne, 2008).

Section 178 talks about the enforcement of the laws that govern the director's duties. In cases where the company has incurred losses due to the actions of the director then he becomes liable as a person. The director is to be made to restore the property of the company should he have lead to the destruction of any other property under his care. The director will have to account for any of the other profits they might have made while using the secrets acquired from the organization. It, therefore, becomes necessary for the board of directors to take into account section 178(2) when dealing with John (Sheikh, 2013). The director should defend himself on the grounds that <https://assignbuster.com/directors-duties-problem-question/>

he had presented the idea to the board and he had been told it would not be approved. In as far as production of the product it was well in his duty in accordance with section 174, and 175 to take up the deal for himself.

When coming up with the verdict for the case study it will be prudent to consider the case of Cooley. In his capacity in the company, he exploited the information he got from the company for personal gain. His conditions, as presented, make a clear example of the exact position that John is in with his company. Following the verdict passed in the case of *IDC v Cooley* (1972), John should be found guilty of misuse of office and as such ought to pay the profits from the contract. It becomes irrelevant that his actions were not causing the company to lose the deal.

The rule of conflict of interest stems from the fact the one might have exploited an opportunity that was rightfully in breach of his position. The opportunity might have gotten it in a way that is legal. The position John held concerning the company gave him the upper hand in the acquisition of the project. He is liable for damages regarding the section of the act that touches on conflict of interest. Following the verdict of *Regal (Hastings) v Gulliver*, (1942) John should be held liable for his choices. He should pay the company for the damages he inflicted using his profits he accumulated in the project that he got from the deal.

The formation of Flush Ltd was for the sole purpose of making sure that the start of the contract with XYZ plc. John created a legal person as a shield against the legal actions with his former company. The action he took the lead to the company losing some of its clients and its long-time partner. All

this he did knowing full well that his responsibilities to Shine Ltd would not allow him do what he was doing. The board of shine Ltd should also look into pursuing a lawsuit against Flush Ltd. The reason being that they have violated their position and in the process acquired some of its clients in the process. Following the case of *Gilford Motor Co v Horne (1933)*, the court should grant an injunction against the company from soliciting Shine Ltd clients.

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