summary of facts

- briefly state case facts

- mention issues at hand

- topics to which question relates

general introduction

following the shift of view by the Courts towards directors (Ds) come the 20th centuary, a stricter approach towards skill & DoC was expected. Subsequenlty, scope of duties & liabilities was clarified via case law based upon overriding policy objectives. However, due to their scattered nature, reference to such by D's proved increasingly difficult, resulting in the CLRSG recommending codification of common law so as to promote clarity & increase ease of accessability. Consequently, these duties have been ratified under Part X of Company's Act, 2006 (CA 2006).

section 170 (CA, 2006)

- duties are owed by Ds (including *'shadow Ds'*) to the 'company as a whole' (**Percival v. Wright**)

✱ *thereby, in case of breach, proper claimaint would be the company itself (**Foss. Hartbottle**)*

COMPANY AS A WHOLE

Greenhalgh - means corporation as a general body

2nd Savoy Inv. Report - decision making to consider intrests of the company in the long term, including interests of fututre shareholders (SHs)

✱ *where takeover occurs,"future SH" interests irrelevant (**Coleman v. Myers**) & general duty primarily towards current SHs (**Peskin v. Anderson**)

- duties' effect is cumilative in nature & multiple may apply concurrently (***s.179 CA, 2006***)

section 171 (CA, 2006)

Ds to act within powers conferred through AoA for the purposes they were conferred for (proper purpose)

PURPOSES

Re Smith v. Fawcett - requirement of '*good faith*' & '*interest of the company*' + decision shouldn't result in acheiving some secondary purpose

- liability of Ds where action done in 'good faith' according to them but not carried out for proper purposes (**Ampol Petrol**)

Eclairs Group - seeking to control outcome of SH's decisions in gen. meeting via share allotment is not 'proper'

Bamford - where multiple puporses for exercise of power, principal purpose to be identified by Courts

Teck Corpn. v. Miller - share issuance for purposes other than capital raising is allowed (inconsistent with **Facwett**)

Scattergood - identified factors to determine 'improper use' of powers

1. identify conferred power

2. identify proper purpose of power

3. idenity substantive (actual) purpose of power as exercised

4. was purpose of exercise proper?

Miller - onus on claimat to prove improper purpose(***Austranial Metropolitan Life Assurance***)

section 172 (CA, 2006)

- duty to *bona fide* promote success of company for SH's benefit (**Percial v. Wright**)

- ***Company Law Review*** - Ds to promote 'enlightened stakeholder value'

PDS v. Wide - SC Canada stated 'best intrests' of company encompass employees and other stakeholders

DISCHARGING DUTY

section 172 (CA, 2006) (cont)

- by 'having regard' to factores enlisted ***s.172(1)***

5. concequences of decisions long-term

6. interests of stakeholders (CSR)

7. need to act fairly b/w members

Fassihi - duty of Ds to inform SH of breach

Charterbridge v. Lloyd - test is qualified objective (**Regent Crest v. Cohen** = subjective element of *D honestly believing his act/omission was in company's interests*)

✱ subjective element needed to ensure Ds don't become too risk averse just to save themselves from liability

RELATING TO GROUP COMPANIES/ SUBSIDIARIES

Scattergood - where subsidarial realtions, D to act in interests of company they are poistioned in

✱ *though parent/subsidary may TANGENTIALY benefit*

INSOLVENCY *s.172(3)*

- in event of finanical crisis (BUT insolvency not yet occured), greater weight placed on creditor interests (**W. Mercia Safteyware v. Dodd**) (**BTI v. Sequana**)

- insolvent risk must be 'probable', 'some risk' won't suffice (**BTI v. Sequana**)

! orbiter ! *'sliding-scale' approach - as risk increases, interests slide towards creditors + breach can't be ratified by SH resolution*

section 173 (CA, 2006)

- duty of Ds to exercise independant judgement

Boulting - to prevent Ds transferring their discretion to 3rd parties

HOWEVER, where such conferrence is establsihed to be *bona fide* for the comapny's benefit, duty discharged

- if final judgement is exercised by D, duty discharged

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section 173 (CA, 2006) (cont)

Madoff Securities v. Raven - D must be aware of company's affairs (even those delegated) --***duty to supervise***

Fulham Football - exercising discretion which may restrict future discretion doesn't amount to breach

section 174 (CA, 2006)

- duty ot exercise reasonable skill, care & diligence

HISTORY

- 19th centuary courts had low standards of care for Ds as their role was more symbolic in nature

Donaghue v. Stevenson - cases were now based on 'reasonable foresight', making Ds accountable under general DoC principles

CURRENT LAW

- qualified obejctive test i.e.; subjective & objective elements

✖ objective - Ds acts/omissions measured against conduct expected of a reaosnably diligent individual (**Gregson v. HAE Trustees**)

✖ subjective - according to the special skills that D possesses

DELEGATION OF POWERS

Re FInch - delegating powers doesn't relieve D from duty to supervise, should be aware of company's affairs

Re Barings - *guiding principle* Ds to acquire & maintain **sufficient knowledge** of company's business

Raithata v. Baig - proper execution of delegated tasks can't be assumed by D

✱ decisions leading to loss for company cant automatically be presumed to breach ***s.172*** ('hindsight principles') - D's thought process to be considered

section 175 (CA, 2006)

- duty to avoid conflict of interests

- broad duty as not only actual but also possible conflicts are encompassesd

Bray v. Ford - individual in a position of fiduciary duty can't place himself in position where his interests & duty are in conflict

Broadman v. Phipps - possibility of conflict must be real & not 'theoretical'

CORPORATE OPPORTUNITIES

- these opportunities are considered as assets of company, hence shouldn't be misappropriated (**Cook v. Deeks**)

- Ds shouldn;t be unjustly enriched

- extends to opportunities personally presented to Ds, outside their capacity as one(**IDC v. Cooley**)

✱ *regardless of whether company could've taken advantage of opportunity itself*

Regal (Hastinga) - liability arises from mere fact of profit having

O'Donnell v. Shanahan - doesn't matter is opportunity outside company's line of business

POST-RESIGNATION BREACH

-resignation in itself doesn't amount to breach but doesn't immunise D from potential breach either

Balston v. Headline Filters - intention to set competing business after resignition doesn't amount of breach

Tranez Anstalt v. Hayek - D can utilize confidential information & know-how acquired while in business but not 'trade secerets'

❗ 'trade secerets' company database, customer lists, business strategies, supplier agreements (**Fassihi**) (**QM v. Pyke**)

Foster Bryant Servicing v. Bryant - criteria for breach ➔ relied upon judgement in ***CMS Dolphin v. Simonet***

section 175 (CA, 2006) (cont)

a) relevant connection b/w *mala fide* intent of D's future exploitation of company's opportunity &

b) resignation of D

COMPETING DIRECTORSHIPS

- *INITIALLY*, it was hed that Ds could hold office in 2 competing businesses

Bristol - 'double-employement' is a clear conflict of interest (**IPG v. Pyke**)

ratification of breaches

- can be approved by Board only, no need for SH approval

✱ if private limited company (PLC) - can be done as per other D's discretion

✱ if public limited (LTD) discretionary powers to be mentioned within AoA

✱ breaching D cannot vote

section 176 (CA, 2006)

- duty not to accept benefits from 3rd parties

Novoship - only those benefits conferred to Ds b/c of the position they hold

- if benefit cannot reasonaly be inferred to give rise to conflict of interest, no breach

- D won't be liable for breach if SH authorize acceptance of benefit***s.180***

section 177 (CA, 2006)

- duty to disclose Ds interests in a transaction of/by company

- interests exist even where D himself doesn't directly accrue benefit (family/friends)

- duty discharged where D merely informs/declares interest to Board before transaction is finalized

Lee Lighting - informal disclosure will suffice

if Board is already aware or should reasonably be aware, duty discharged

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section 177 (CA, 2006) (cont)

GDV v. Koshy - information of interest needs to be precise

- breach caries civil sanctions & compliments criminal sanctions of s.182

relief from liability

CONSENT/APPROVAL/AUTHORIZATION OR RATIFIATION BY MEMBERS

1. authorization- approval by SH *before* action is undertaken via ordinary resolution

✱ *BUT*, full-disclosure to be given BEFORE voting transpires (**Cullen Investments v. Brown**)

2. ratification - approval by SH *after* action is undertaken via ordinary resolution

✱ only effective if any Sh connected to D or D (also an SH) can't vote (***s.239(4) CA, 2006***)

SUBSTANITAL PROPERTY TRANSACTIONS

- where D is buying/selling 'substanital' non-cash asset (***s.190-196 CA, 2006***)

✱ 'substantial' = asset whose value exceeds £100,000/- or 10% of company's net worth (whichever is lower)

- failure to attain approval will result in transation being ***voidable*** at company's behest

Re Duckwari - D to compensate company for any losses incurred

THROUGH COURT ORDER (***s.1157***)

- where negligence, default, breach of duty or trust occured ***BUT*** act carried out honestly and reasonably,

‣ D claimed against may apply to court for relief under this section

Court may excuse officer in part or wholly from liabilty & withdraw case against him

remedies

- enshrined in ***s.178 CA, 2006*** for civil breaches

8. compensation - where company suffers loss (**JSD v. Brown**)

9. restoration of company property (**JJ Harrison (Properties)**)

10. account of profits made b y D (**Regal (Hastings)**)

11. injunction or decleration (**CPE v. Bryant**)

12. reccision of contract where D faild to disclose interest (**Transvaal Lands**)

section 190 (CA, 2006)

substanital property transactions of non-cash assets

for amounts exceeding £100,000/- made by D or someone connected to D, prior SH approval required

- transaction could be by D for company or from company

- if no prior SH authorisation, contract VOID

- does not apply to services (such as loans taken by D for company ➔ these filed for breach u/s.177)

breach u/s.177 = contract VOIDABLE at company's behest

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