

ASSESSMENT 3 --- ASSIGNMENT

Course Title and Code	Corporate Law LAW2001
Assessment Description	Assignment Topics 3.1, 3.2, 3.3 and 4.1
Individual/Group	Individual
Modules	3 and 4
Learning Outcomes	<p>5. Identify the risks of liability arising from diverse sources for both the company and its officers and, in particular, define directors' duties and the consequences of breaching those duties;</p> <p>10. Use skills, including analytical and deductive reasoning, in applying the above knowledge, rules and principles of corporations' law to factual situations which could arise in practice, in order to solve a problem perceptively and creatively or to have sufficient understanding of the legal issues to know what questions to ask when referring the matter for legal advice.</p>
Weighting	30%
Total Marks	60 marks

Task Description

Students will be presented with three case studies on directors' and officers' duties incorporating legal issues taken from Modules 3 and 4 up to and including Topic 4.1.

Students are to answer either a single question or a series of questions about each of these case studies in approximately 2 500 --- 3 000 words in total and submit their written responses via Turnitin on Blackboard.

Instructions

- The assignment is to contain a header which includes the following:
 - Student's name
 - Course title and code
 - Assessment description
 - Trimester and year
- Pages are to be numbered.
- The assignment guidance and/or referencing guide attached to the assignment should not be included in your assignment submission.
- Each individual assignment submitted is to be a student's own work. Any other sources used (including by consultation with any other person) are to be acknowledged and appropriately referenced.
- The assignment is to be referenced using footnotes in accordance with the Australian Guide to Legal Citation ('AGLC').
- A bibliography is to be provided in accordance with the AGLC.
- Guidance for the assignment, a referencing guide and a marking guide for the assignment are attached to the assignment.
- When submitting the assignment on Turnitin, the following are NOT to be included:
 - Assignment questions
 - Assignment guidance
 - Referencing guide
 - Marking guide

Assessment of answers

The factors listed below will be taken into account in the assessment of answers to the assignment questions. Please refer to the Assessment Rubric in the Assessment Brief on Blackboard for more detail.

1. Knowledge, content and application
 - demonstration of knowledge of the relevant course material
 - correct application of course concepts and the law
 - conclusions to be based on legal reasoning
 - relevance to the questions
 - evidence of critical thinking and analysis
 - appropriate use of authority (case law and legislation) to support analysis and conclusions
 - completeness / comprehensiveness of the answer
2. Expression and convention
 - logic and clarity of expression
 - use of academic and professional conventions (e.g., correct use of language, legal terminology and appropriate referencing)

NOTE: In your answers, please focus on the main directors' duty breached and only briefly refer to any other duties which may have also been breached.

CASE STUDY 1

NOTE: In your answer to Case Study 1, you need not deal with the restrictions on a company in providing financial assistance for the purchase of its own shares.

Uninest Limited ('Uninest') is a student accommodation provider. A competitor, Urbanlodge Limited ('Urbanlodge'), is planning a takeover of Uninest as the current management of Uninest is underperforming, its share price is declining and it is experiencing cash-flow problems. Uninest's shares are valued at \$10.00 per share. Urbanlodge makes an offer of \$12.00 per share. The board of directors of Uninest is aware that Urbanlodge intends to replace the entire management team (board of directors) at Uninest with a new management team, if Urbanlodge is successful in its takeover bid.

Christine Neales ('Neales') acts as a consultant for Uninest and has negotiated on behalf of Uninest in a number of important transactions in the past, including the acquisition and development of new properties and the negotiation of long leases. Due to her experience in the field, Neales is given great autonomy in decision making in Uninest and the board of directors always follows her directions. Neales devises a strategy to ensure that Urbanlodge's takeover bid will not succeed. Neales instructs the directors to pass a resolution for Uninest to lend \$30 million interest-free to one of its directors, Gilligan, to enable him to purchase shares in Uninest, as this would inflate the share price of Uninest. This would mean that Urbanlodge would have to offer a significantly higher share price in order to succeed in its takeover offer. The directors of Uninest know that Urbanlodge would not be in a position financially to make a higher offer and therefore its takeover bid would not succeed and the directors' positions on the board of Uninest would not be at risk. All of the directors of Uninest vote in favour of the resolution proposed by Neales, Uninest makes the loan and the directors issue the shares in Uninest to Gilligan.

Advise whether the directors of Uninest have breached any of their **general law** directors' duties and also their directors' duties under the **Corporations**

Act 2001 (Cth). In your answer, discuss whether Neales would have any liability. Give reasons for your answer and provide relevant statutory law and/or case law as authority for your answer.

15 marks

CASE STUDY 2

Primo Construction Limited ('Primo') is an industrial construction company. Shane is a director and shareholder of Primo.

Primo performs construction work for Landstock Limited ('Landstock') on an ongoing basis. Shane knows that Landstock is going to call for tenders (offers to perform work) from various construction companies, for a new construction contract to build an industrial warehouse near a major port. The warehouse is to be used for the unpacking and storage of goods from shipping containers.

Before the tender process begins, Shane forms a new company called Iconstruct Limited ('Iconstruct'). Shane is the managing director and a shareholder of Iconstruct. The other directors and shareholders of Primo are unaware of the existence of Iconstruct. Stanley knows that Primo will submit a tender for the contract with Landstock and he also knows what Primo's tender price will be, based on its construction costs. Iconstruct submits a tender for the contract with Landstock for a lower tender price than Primo's tender price. The construction contract is awarded by Landstock to Iconstruct due to its lower tender price. If it were not for Iconstruct's lower tender price, the contract would have been awarded to Primo.

Please answer the following questions and in each case give reasons for your answer and support your answer with authority in the form of relevant statutory law and/or case law.

- a. Discuss whether Shane has breached any of his **general law** and/or **statutory** duties as a director. 15 marks
- b. Outline the **remedies and/or penalties** which would apply if both the **general law and statutory** director's duties referred to in Question (a) above were breached.

5 marks

CASE STUDY 3

Dronebotics Limited ('Dronebotics') is a start-up company which designs, manufactures and supplies autonomous drone systems, using automatic flying robots. The robots are programmed by software to complete tasks such as monitoring oil pipelines, inspecting equipment or surveying land and then to return to the base station. The use of the flying robots instead of humans to perform these tasks increases cost efficiencies and productivity.

Dronebotics is approached by an agribusiness, CorpGrain Limited ('CorpGrain'). CorpGrain wants to use the autonomous drone system to inspect towering grain silos, a task which is very dangerous for employees to perform and which requires compliance with onerous safety regulations.

Frank and Diane are executive directors of Dronebotics and Ron and Kelly are non-executive directors. Frank and Diane are entrepreneurial risk-takers and are keen to expand Dronebotics into as many different industries as possible. Frank and Diane want to enter into a contract to supply the autonomous drone system to CorpGrain.

Ron and Kelly are concerned that the current technological capabilities of the autonomous drone system would not cope with the complexity of the proposed task of inspecting the grain silos at enormous heights and that it would require considerable and costly further research to develop the appropriate software. Ron and Kelly are more cautious and use their voting power on the board of directors to commission an expert report on the feasibility of the proposed task being successfully executed by the autonomous drone system with its existing software.

Scenario A

The expert report concludes that it would not be feasible for the proposed task to be successfully executed by the autonomous drone system with its existing software. Frank and Diane refuse to attend the board meeting at which the decision is taken to commission the expert report and also refuse to attend the board meeting at which the outcome of the report is discussed. Frank and Diane are subsequently given the written report to read, but neither of them

read the report nor do they make any enquiries about the report of Ron and Kelly (who have read, assessed and accepted the contents of the report).

Frank and Diane are both very optimistic and are convinced that the autonomous drone system has the required capabilities to carry out the proposed task with the existing software. They are very domineering and stubborn personalities and, in the end, Ron and Kelly are persuaded to vote in favour of the proposal to enter into the contract with CorpGrain.

Have Frank, Diane, Ron and/or Kelly breached any of their **general law** and/or **statutory** directors' duties? Give reasons for your answer and provide relevant statutory law and/or case law as authority for your answer.

15 marks

Scenario B

Assume that, in the same circumstances as described in Scenario A, the results of the expert report instead indicate that the autonomous drone system in fact has the capability to complete the task required by CorpGrain and that it would be feasible to successfully execute the task. Dronebotics is therefore in a position to enter into a very profitable contract with CorpGrain.

All four directors vote in favour of the proposal to enter into the contract with CorpGrain for the supply of the autonomous drone system.

After purchasing the autonomous drone system, CorpGrain experiences ongoing technical difficulties with the system and is unable to use it for the inspection of its grain silos. CorpGrain states that its own expert can produce evidence that the existing software is not adequate and it intends to claim substantial damages from Dronebotics.

Discuss whether any **statutory defences** could be raised by the directors in the circumstances. Give reasons for your answer and provide relevant statutory law and/or case law as authority for your answer.

10 marks

TOTAL

60 MARKS

Please see following pages for assignment guidance, referencing guide and marking guide.

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CORPORATE LAW --- LAW2001

Module 3 to Module 4

DIRECTORS' & OFFICERS' DUTIES

GUIDANCE FOR ASSIGNMENT

A. GENERAL

- The general law consists of common law and equity. Statutory duties are those found in legislation. In this instance the relevant legislation is the Corporations Act 2001 (Cth) ('the Act').
- Do not mix the general law and statutory duties in your answer – deal with one at a time.
- In your answer, deal with the general law duty first and then the statutory duty (unless only one is asked for).
- If the general law duty and statutory duties are the same and you are asked for both duties, you need not repeat the principles and analysis of the law, but need merely state that they are the same.
- If more than one general law or statutory duty is applicable to a case study then identify, analyse and apply the dominant duty in your answer and refer to the other duties in passing only.
- You need not include remedies in your answer, unless this is required by the question.
- Where possible, cite at least one case as authority for each key principle, key statement, rule, test, etc. in your answer.

- Study the key cases and case examples in the textbook to gain a better understanding of how the legal principles are applied in practice and also to familiarise yourself with different factual scenarios, which might be of assistance when answering case study questions.
- Use the Flowchart of Directors' and Officers' Duties and Remedies on page 417 of the textbook, *Australian Corporate Law*, 5th edition, as a starting point. The general law duties are in the top half of the flowchart and the statutory duties (Corporations Act provisions) are in the bottom half.
- See too the flowcharts:
 - Overview of Fiduciary Duties, page 429
 - Comparison between Fiduciary Duties and Statutory Duties, page 436
- Read the following portions of the textbook as an introduction:
 - 'Overview of duties' on page 416 to 419, paragraph 15.1
 - 'Fiduciary Duties – Overview' on pages 427 to 429, paragraph 15.9

B. CASE STUDIES

1. **Identify** the directors' duty which is relevant to the facts in the case study, based on the conduct of the director/s. State the name of the duty. Identify both the general law duty and statutory duty (unless only one is required in the question).
 - eg. Duty to act with care, skill and diligence at general law
Duty to act with care and diligence in Section 180(1) of the Corporations Act 2001 (Cth)
 - a. **Classify** the directors' duty as general law (common law or equitable; fiduciary or non-fiduciary) or statutory.
 - eg. The duty to act in good faith and in the best interests of the company and the duty to act for proper purpose are fiduciary duties under the law of equity.
 - b. **Define** the duty: state the general law definition or the statutory definition from the relevant section of the Act and explain the meaning of the duty, eg.

- At general law, directors have a fiduciary duty to act in good faith in the best interests of a corporation. The meaning of 'good faith' is honesty.
- The statutory duty of care and diligence as defined in Section 180(1) of the Act is:

"A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a corporation in the corporation's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer."

2. Analyse the duty:

- a. State the **principles** which apply to the duty,

eg. At general law, in equity, directors have a fiduciary duty not to misuse confidential company information.

The principle which applies to this duty is that a director cannot use confidential company information for his/her own benefit without disclosure and approval of the members and, in some instances, the directors.

This principle includes the misuse of trade secrets and lists of customers and suppliers.

- b. State any **rules** which may apply,

eg. At general law, in equity, the fiduciary duty to avoid conflicts of interests requires directors to make full disclosure of their potential conflict of interest to the company's members at a general meeting and obtain the members' informed consent.

The equivalent statutory duty under Section 191 requires directors who have a material personal interest in a matter that relates to the affairs of a company to disclose that to the other directors.

- c. Examine the **tests** used to determine compliance with or breach of the duty, for example:

eg. In order to establish whether a power was exercised for proper purpose, the following tests are applied:

- (i) The 'two step' test:

- the reason for the existence of a directors' power compared to
- the actual purpose of a director when he/she exercises the power

Howard Smith Ltd v Ampol Petroleum Ltd (cite in full)

(ii) The 'but for' test:

The test used when there are multiple (more than one) possible purposes, in order to determine the actual purpose for which the power was exercised by a director --- *Mills v Mills* (cite in full)

- d. State what **standard** is used in certain circumstances, for example, for assessing a director's conduct or state of mind,
- eg. Both the general law duty of care, skill and diligence and the statutory duty of care and diligence impose an objective 'reasonable person' standard.
- e. Provide **authority** as support for the law you have analysed, in the form of relevant case law and/or statutory law. Cite at least one case for every key principle, key statement, rule, test, etc.

3. **Apply the law to the facts**

- a. Apply only the relevant law to the facts of the case study,
- eg. There are three common situations involving the rule against conflict of interests:
1. diversion of business opportunities
 2. misappropriation of company property; and
 3. secret profits (undisclosed commissions).

Choose only the situation/s relevant to the facts of the case study.

- b. Ensure that you have applied the law to all the relevant facts in the case study, without omitting any relevant facts, eg.

The 'corporation's circumstances' in Section 180(1)(a) include: the type of company, the size and nature of its business, the provisions in its constitution, the composition of its board and the distribution of work between the board and other officers.

Therefore, any facts in the case study which provide information about these different factors are relevant when applying the law to the facts.

- c. In developing an argument for both parties, what follows below should be taken into account. The extent of detail required in dealing with defences and relief from liability will depend on the scope of the assignment, as determined by the wording of the assignment question. If you are not specifically required by the assignment question to deal with defences and/or relief in your answer, you need only include them, or either of them, briefly and not in detail. It appears that defences relate to the issue of breach, whereas relief applies to the issue of liability.

i. Breach:

Identify and analyse the duty, then apply the law to the facts to determine whether or not a duty has been breached.

ii. Defence:

1. If there is a defence, there is **no breach** and the director will not be liable.
2. If there is no defence, there will be a **breach** and the director will be liable.

iii. Relief:

An application may be made to Court for relief from a breach or contravention, in certain circumstances:

1. If relief is granted, the director will **not be liable**.
2. If relief from liability is not granted, the director will be **liable**.

- d. **Remedies and penalties** will apply if the director is liable. Remedies and penalties need only be included in your answer if specifically required by the assignment question. These may be:

1. **Statutory** and/or **general law (common law or equitable)**
2. **civil** and/or **criminal**

4. Conclusion

This is the short answer to the question posed in the case study and should follow logically from the reasoning in part 3 of your answer.

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CORPORATE LAW – LAW2001

REFERENCING GUIDE - - - AGLC

In your assessments, **in order to avoid plagiarism, you are to use your own words and not merely copy from other sources**, eg. the textbook. You will be penalised for plagiarism and in serious cases you may fail the assessment.

The usual copyright provision is that you may directly quote up to 10% of your assessment from other sources, however, as you need to provide authority in the form of case law and legislation in law assessments, a further allowance will be made when you are quoting directly from case law and statutory law.

A reference in accordance with the **Australian Guide to Legal Citation (AGLC)** is to be provided for every quotation. All quotations must be in quotation marks:

- for short quotations of three lines or less, use single quotation marks;
- for long quotations of more than three full lines, do not use quotation marks but indent the quotation and type it in a smaller font size.

You are also to provide a reference for every idea which is not your own and which is taken from another source, even if the idea is expressed in your own words.

All quotations and sources referred to in the body of your assessment are to be referenced in **footnotes** at the bottom of the page. In addition, a **bibliography** is to be provided at the end of the assessment, which is a list of all resources read or consulted, whether or not you actually used or referred to them in the body of your assessment.

(Click on 'Subject Guides' then 'LAW2001Corporate Law' then 'Legal Citation and Referencing').

The portions of the AGLC which you are most likely to need for referencing are:

- **Footnotes – page 1**
- **Subsequent references – page 7**
- **Quotations – page 12**
- **Cases – page 37**
- **Legislation – page 64**
- **Journal articles – page 81**
- **Books --- page 89**
- **Newspaper articles – page 107**
- **Internet materials – page 116**

CORPORATE LAW --- LAW2001**MARKING GUIDE FOR CASE STUDIES**

		TOTAL
1. Identify legal issue/s	<ul style="list-style-type: none"> -Identify the legal issue/s correctly -Interpret the given facts holistically, where applicable, to identify multiple legal issues arising from different areas of law 	5%
2. Analyse legal issue	<p>A. Analysis</p> <ul style="list-style-type: none"> -identify relevant law -break down into essential parts/components including rules, principles, tests and/or standards (must be comprehensive) -define and explain legal rules, principles, tests and/or standards --- show knowledge, understanding and correct interpretation of legal concepts -explain different interpretations of the law, where applicable <p>B. Authority</p> <ul style="list-style-type: none"> -support principles, rules, tests and standards with relevant statutory law and/or case law -use case law for interpretation of statutory law, where applicable -show evidence of reading beyond key readings (for higher grades) 	30%
3. Apply law to facts	<p>Synthesis of law and facts:</p> <p>Facts</p> <ul style="list-style-type: none"> -select relevant facts (show understanding of legal significance of relevant facts) <p>Assumptions</p> <ul style="list-style-type: none"> -make assumptions ('if ... then') in order to clarify the facts, if and when necessary, in order to apply a particular rule or principle of law <p>Law</p> <ul style="list-style-type: none"> -apply relevant law to the relevant facts --- show understanding and correct interpretation in applying law to facts -show relevance of key case/s to facts 	

	<p>of case study -use logic and reasoning in applying law to the facts</p> <p>Argument -provide legal argument, position or point of view of each party -take into account defences and/or exceptions -take into account different interpretations of the law, where applicable</p> <p>Distinguish between personal opinion and information supported by evidence/authority</p>	50%
4. Conclusion	Arrive at correct conclusion using analytical reasoning; use critical reasoning where appropriate.	5%
5. Language, structure, Referencing	See Assessment Rubric on Blackboard	
Ability to explain legal concepts (communication skills)	See Assessment Rubric on Blackboard	10%

TOTAL**100%**