

## Chapter 9

# An Integrated Approach to Statutory Interpretation: Directors' Duties in the UK

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### Introduction

This chapter outlines the integrated approach taken to statutory interpretation of directors' duties in the UK in order to highlight how the interaction between case law and the reading of statutes affects the development of the common law. In 2006 directors' duties in the UK were fully codified by the *Companies Act 2006* (UK). Interestingly, however, the *Companies Act* specifically provides that equivalent general law duties are instructive in interpreting the statutory duties. Remedies have also been left largely to general law. In codifying the core duties of directors, choices have been made. In some cases, one of alternative interpretations of a doctrine has been adopted. In others, a clear change has been effected by the codification. This is particularly evident as concerns the previous general law duties to avoid unauthorised conflicts and profits. The way in which these duties have been codified and interpreted has the potential to affect the duties of other fiduciaries and to affect the development of the general law duties in other jurisdictions such as Australia. This model also has the potential to remedy the marked lack of cohesion in Australia between general law and statutory directors' duties.

Directors' duties in Australia lack coherence. They are, in fact, chaotic. There are a number of reasons for this complexity. The first is that the statutory duties in the *Corporations Act 2001* (Cth) are different from the general law duties. In particular, the statutory duties that correspond to the fiduciary duties to avoid unauthorised conflicts and profits are more specific and, in some cases, require proof of purpose. The second is that the duties in the *Corporations Act* are not owed to the company and also incorporate protection of stakeholders other than shareholders. The third is that, despite these differences, Australian courts often assume that the statutory and general law duties are equivalent and apply them together without distinction. This leads to further nebulosity. In short, the two sets of duties do not form a coherent body of directors' duties as a whole.

By contrast, when directors' duties were fully codified in the UK in 2006 the model adopted was one that integrated consideration of equivalent general law duties. Such duties include those applying prior to codification and also those applying in other fiduciary relationships. Some duties have, in fact, continued to apply in the same way

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