

Director Fiduciary Duty Framework

Duty of:	Fact Pattern:	Level of Scrutiny/ Standard of Review:
Care	Hasty decision (Van Gorkom)	<ul style="list-style-type: none"> •BJR unless P shows gross negligence in becoming informed •Fairness if BJR rebutted
Loyalty	Self-dealing (a.k.a., conflict of interest) (Bayer v. Beran) (MBCA 8.60-8.63)	<ul style="list-style-type: none"> •Fairness, unless ratified by disinterested directors or shareholders •BJR once ratified
Loyalty	Corporate opportunity (CO) (Broz v. CIS) (MBCA 8.70)	<ul style="list-style-type: none"> •BJR/fairness an awkward fit •4-part Broz test to determine if it's a CO •If a CO, must offer to corp and defer if corp pursues
Loyalty/good faith/care	Failure of oversight (MBCA 8.31(a)(iv))	<ul style="list-style-type: none"> •Sustained oversight failure •When facts would alert reasonable director to need