

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	 <p>Self-dealing (a.k.a., conflict of interest) (Bayer v. Beran) & (MBCA 8.60-8.63)</p>	<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
Loyalty/care	 <p>Takeover defenses (Unocal)</p>	<ul style="list-style-type: none"> Enhanced scrutiny BJR if motive and proportionality test satisfied Fairness otherwise
Loyalty/care	 <p>Sale of control (Revlon)</p>	<ul style="list-style-type: none"> Enhanced scrutiny BJR if no Revlon triggers If Revlon triggers, then reasonable efforts to enhance short-term value