Corporations and Business Structures

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# Answer 1

## Issues

In this paper the issue to be discussed is whether Sam, Rosa, Mia and Charlotte have any lawful responsibilities under the Corporations Act, 2001 (Cth).

## Rule

The given scenario is discussed on the basis of the provisions of the Corporations Act, 2001 (Cth). Many authors are of the view that directors are the key assets of the company. In order to run a company effectively the directors determine and implement policies, make decisions, prepare and file official documents, call meetings such as annual general meeting, meeting with shareholders and maintain and keep financial reports. Section 9 of this Act[[1]](#footnote-1) defines the term director which include persons lawfully selected as an additional director, or ‘de facto’ director, or ‘shadow’ director[[2]](#footnote-2). The said Act[[3]](#footnote-3) describes that the directors have certain duties that must be performed adequately to maintain the organization appropriately and its member as well. The duties can be divided into two categories, such as Fiduciary duties under the Australian General law and Statutory duties under the Corporations Act, 2001 (Cth). The fiduciary duties include:

* Duties to act in good faith and not against the interest of the company;
* Duty of not using power improperly;
* Duty to dodge encounters; and
* Duty to preserve discretion[[4]](#footnote-4).

On the other hand, duties under the Corporations Act, 2001 (Cth) include the following duties, such as:

 Section 180 of the Corporations Act, 2001 states that it is the duty of a director to act diligently and with proper care like a prudent person while taking significant decisions for the business.

According to Section 181 of this Act[[5]](#footnote-5) it is the duties of the director to act in good faith and for the benefit of the organization. It also describes that the duties must be done for a proper purpose. A director also have the duty to resolve the disputes of the organization. This duty is considered to be a mandatory duty of trust and belief under this Act[[6]](#footnote-6).

Section 182 of the said Act[[7]](#footnote-7) states that it is the duty of the director to not to use the position improperly to take undue advantage for personal benefit or for the benefit of the others because it may cause harm to the business.

In addition, section 183 elaborates that a director must not disclose any material information for illegitimate purpose and for taking undue advantage either for personal benefit or for the benefit of the others[[8]](#footnote-8). This type of illegitimate activity may cause harm to the business.

Section 191 of the said Act[[9]](#footnote-9) elaborates that it is the duty of the director to reveal all the important matters connected to the affairs of the organization. The matters include those important matters where the personal benefit of the director is connected[[10]](#footnote-10).

Section 588G of the said Act[[11]](#footnote-11) deals with the issue of insider trading. This issue states that a director will be held responsible for insolvent trading only when any arrangement has been confirmed by the director after taking debt, when the organization is bankrupt or may turn bankrupt or there exists admissible grounds which requires that the organization may turn bankrupt[[12]](#footnote-12).

# Analysis

 In this given problem, Rosa and Sam, both of them are the directors and shareholders of the organization, the name of which is SRT Pty Ltd. They are also the receivers of the trust, the name of which is Tipping Trust. The Trust mainly involved with the trade of locksmith.

 On the other hand, Mia and Charlotte are recognized as partners of a wholesale trade. After a specific period, all the shares of the organization are sold by Rosa and Sam. Not only that, both of them have utilized a small part of the revenue to make a trip to Australia. The wholesale business governed and directed by Charlotte and Mia amalgamated with the locksmith trade of Rosa and Sam. A decision relating to the alteration of tax statement for which additional ten percent has been charged not informed to Mia by Charlotte. The additional amount of expense is charged from a bank account and the Charlotte the main role in operating it.

In order to operate the organization, such as SRT Pty Ltd, some decisions have been taken by Rosa and Sam. They appointed their niece Phillipa to run and direct SRT Pty Ltd. While managing the organization Phillipa took various major economic decisions to make the situation of the business better. However, the main thing is that she took all those steps even after knowing all important material information and financial condition about the business. Henceforth, the economic position of the organization has not been improved after taking several steps by Phillipa. Therefore, the organization goes into liquidation and all debts taken for the creditors stayed unpaid.

 As per the conditions of section 180 of the said Act[[13]](#footnote-13), there are several duties that must be performed by Rosa and Sam for the betterment of the business and those duties must be performed just like a prudent person with accurate care and diligence. Similarly, as per the directions made under section 181, both the directors of the business Rosa and Sam need to perform their duties in good faith for a valid reason. According to section 182, it is the duty of Sam and Rosa to not to take any undue advantage by using their positions which may results into damage to their trade. It is also their duty to not utilize material information of the organization for taking any undue advantage which may damage their business u/s 183 of this Act[[14]](#footnote-14). Not only that, they have a duty to reveal all the important matters connected to the affairs of the organization. There is also a chance of breaching the provisions of section 588G as Rosa and Sam have adequate knowledge regarding the poor economic condition of SRT Pty Ltd.

Similarly, it is the legal responsibility of Charlotte and Mia to carry out their obligations for the interest and betterment of the partnership business. Charlotte and Mia legally and solely accountable for their obligations towards the partnership business. All contractual arrangements made by the other partners held them responsible. The main thing is that it is the duty of them to perform their activities with honesty and in good faith. They must take impartial decisions for the members related to the business. It is the duty of Mia and Charlotte to perform their obligations like a prudent person as per the duty of care provisions to handle and administer the business. Almost in cases of all the partnership business it has been observed that the partners need to disclose every probable chances of risks or welfares accessible to each other to take important decisions for the partnership business.

## Conclusion

Therefore, to conclude the discussion it can be said that all the legal duties previously discussed above shall be regarded as the legal duties of all the parties.

# Answer 2

## Issue

In this paper, the issue to be discussed whether any legal responsibilities of the parties have been breached under the provisions of the Corporations Act, 2001 (Cth).

# Rule

In *Daniels vs. Anderson* [1995] 37 NSWLR 438 case the court stated that it is the duty of a director to act diligently and carefully like a sensible person while taking significant decisions for the business[[15]](#footnote-15). The same observation has been made in *ASIC vs. Healy* [2011] FCA 717 case regarding the violation of a duty of a director related to accept and agree wrong and false financial records under section 180(1) of the said Act[[16]](#footnote-16).

In the famous case of *Patterson v Humfrey* [2014] WASC 446 case a landmark judgment was made in this regard. In this case the court held that the directors must apply their incomes and reserve fund of the business adequately and only for the benefit of the business. The directors must ensure that the funds and revenues are not used for the benefit of them[[17]](#footnote-17).

In another famous case of *Martin v Australian Squash Club Pty Ltd* [1996] the court described that violation of the fiduciary duties take place within the business only when the revenues and reserve funds are not utilized by the organization properly[[18]](#footnote-18).

The *Queensland Mines Ltd vs. Hudson* [1978] UKPC 2 case has a great importance regarding the position of a director. In this case the court was of the view that it is the duty of the director to not to use his position inappropriately in order to attain undue advantage either for personal interest or for the interests of the others. This type of activity may harm the business[[19]](#footnote-19).

In *Adler vs. ASIC* [2003] NSWCA 131 case the court elaborated that the directors must not use any material information of the organization inappropriately to attain undue advantage form the organization either for director’s personal benefit or for the benefit of the others. The court also held that if the information of the organization used inappropriately that may harm the interest of the business organization[[20]](#footnote-20).

In the case of *Boardman vs. Phipps* [1967] 2 AC 46 the court held that the stringency of the duties elaborated u/s 191 of the Corporations Act, 2001 (Cth) became free from hassle over time to require a ‘substantial useful chance of clash’[[21]](#footnote-21).

The case of *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115 dealt with the provisions of sections 588G. In this definite case, regarding the provisions of section 588G under the Corporations Act, 2001 (Cth) the court held that the director is liable secretly for the continued credits within the organization because it was identified that the debts continued by the organization because a loan was taken purposely after knowing the financial situation of the organization. More to that, the director’s sign was missing in the yearly financial reports but the assets were registered and verified[[22]](#footnote-22).

In the famous partnership case of *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd* [2012] QSC 182 the court dealt with the main issues regarding the duty of a director case related with the duty of a partner and the rights available to a partnership business. In this case the matters enquired by the court that after the transfer of the apartment to the defendant, whether any continuing accountability vested to the defendant in order to deal with the apartment for the gain and benefit of the relationship. However, in this case the entitlement of the plaintiff right was not allowed by the court[[23]](#footnote-23).

In *Say-Dee Pty Ltd v Farah Constructions Pty Ltd* [2005] NSWCA 309 case the court elaborated that if a partner failed to disclose an information which may become vital for the business, then that partner may be held responsible for violating the fiduciary duties of the partner[[24]](#footnote-24).

## Analysis

By putting the rules of *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd* [2012] QSC 182 case, it has been observed that the duties are violated by Charlotte because she failed to disclose the material information of the business to other partners.

Relating to the judgment of *Say-Dee Pty Ltd v Farah Constructions Pty Ltd* [2005] NSWCA 309 case, it has been observed that the fiduciary duties have been breached by Charlotte as she failed to perform for the benefit of the partnership business.

Put on the rules of *Daniels vs. Anderson* [1995] 37 NSWLR 438 case, it has been observed that Sam and Rosa perform their duties unsuccessfully with inappropriate diligence and care within the organization which violates section 180 of this Act[[25]](#footnote-25).

 Put on the rules of *Patterson v Humfrey* [2014] WASC 446 case, it has been observed that Rosa, Sam and Phillipa failed to perform their responsibilities for a proper purpose and in good faith within their organization which violates section 181 of the aforesaid Act[[26]](#footnote-26).

Relating the judgment of *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115 case in the given scenario, it has been observed that the provisions of section 588G have been breached by Rosa, Sam and Phillipa because even after having the knowledge of the financial position of SRT Pty Ltd, further expenses are allowed for the business.

By putting therules of *Boardman vs. Phipps* [1967] 2 AC 46 case, it has been seen that Rosa, Sam and Phillipa failed to reveal all the important matters connected to the affairs of the organization to the other members of the business.

## Conclusion

Therefore, to conclude the discussion it can be said that in relation to the legitimate duties of the parties, those breaches were caused by the directors and partners mentioned above.

# Answer 3

## Issue

 In this paper, on the basis of the given scenario the issue to be discussed is what legal values may be faced by the partners and directors for the breach of legal duties.

## Rule

Apart from the duties of directors, the Corporations Act, 2001 (Cth) enumerates the penal provisions for the violation of director’s legal duties.

If any provisions of section 180, 181, 182, 183, 191 and 588G of the Corporations Act, 2001 (Cth) has been violated by a director, that director shall be held criminally accountable u/s184 of the said Act for dishonest conduct towards the organization[[27]](#footnote-27).

If any provisions of section 180, 181, 182, 183, 191 and 588G of the Corporations Act, 2001 (Cth) has been violated by a director, that director shall be held accountable with civil penalties[[28]](#footnote-28) u/s1317E of the said Act[[29]](#footnote-29).

As stated in the *Wang vs. Rong* [2015] NSWSC 1419 case, when any violation has been observed regarding the fiduciary of the partners of a partnership trade, a lawsuit may be brought against those partners for whom the violation of duties take place.

## Analysis

By applying the provisions of section 184 of the said Act[[30]](#footnote-30), it can be said that Sam and Phillipa are held criminally accountable for carrying out their responsibilities with careless attitude and dishonest intention towards the business and its members.

 By applying the provisions of section 1317E of the said Act[[31]](#footnote-31), it can be said that Rosa, Sam and Phillipa are held responsible for civil penalties under this section.

 Put on the judgment of *Wang v Rong* [2015] NSWSC 1419 case, it can be stated that a claim can be lodged by Mia against Charlotte because the fiduciary responsibility to act for the benefit of the organization and to disclose relevant information to the other partners involved with the business was violated by Charlotte.

## Conclusion

Therefore, to conclude the discussion it can be said that lawful consequences discussed above related to the violation of duties by the directors and partners shall be applied in the given scenario.

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*Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd* [2012] QSC 182

## Legislation

*Corporations Act, 2001 (Cth)*

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