

Table of Contents

CHAPTER 11. DIRECTORS, OTHER OFFICERS AND AGENTS (CONTINUED)

XXIII. NOTICE TO OR KNOWLEDGE OF OFFICERS OR AGENTS AS CHARGEABLE TO CORPORATION

A. GENERAL RULES

- § 786 Scope of subdivision
- § 787 Application of general rules of agency to corporations
- § 788 General rules of agency—As applying to both tort and contract actions
- § 789 —Overview
- § 790 —As applied to corporations
- § 791 — —Notice to corporate officers or agents as distinguished from their knowledge
- § 792 Necessity for existence of agency
- § 793 Knowledge obtained outside scope of duties or while not acting officially
- § 794 —Types of knowledge
- § 795 —Banks and other companies
- § 796 —Where agent subsequently acts upon knowledge acquired outside scope of duties
- § 797 Time of obtaining knowledge or receiving notice—
In general
- § 798 —Necessity that knowledge be obtained while acting in particular transaction
- § 799 —Knowledge acquired before creation of agency
- § 800 —Knowledge acquired after termination of agency
- § 801 Subsequent termination of office or agency of person having knowledge
- § 802 Reorganization of corporation
- § 803 Constructive notice to officer or agent

B. PERSONS ENTITLED TO RELY ON NOTICE

- § 804 Person in collusion with officer or agent

- § 805 Right of officer or agent to rely on own knowledge
of own act as notice to corporation

C. APPLICATION OF RULES

1. Particular Corporations

- § 806 Generally
- § 806.10 Banking corporations
- § 806.20 Insurance companies

2. Particular Persons

- § 807 In general
- § 807.10 Attorneys
- § 808 Directors
- § 808.10 —Executive committees
- § 809 Sole corporate officers
- § 810 General managers or superintendents
- § 810.10 Insurance agents and employees
- § 811 Presidents
- § 812 Bank cashiers and other bank agents
- § 813 Salespersons
- § 813.10 Promoters
- § 814 Shareholders or members
- § 814.10 Parent or subsidiary corporations

3. Particular Facts

- § 815 In general
- § 815.10 Insurance transactions
- § 816 Bona fide purchaser without notice
- § 817 Establishing negligence
- § 818 Fidelity bond of officer or agent

D. ADVERSE INTEREST EXCEPTION

- § 819 Statement of exception
- § 820 Reasons for exception
- § 821 When interests of officer or agent are deemed
adverse
- § 822 Joint interest distinguished from adverse
interest
- § 823 Illustrations of exception
- § 824 Dual agency—Representing both parties to
transaction

TABLE OF CONTENTS

- § 825 Dealings between corporation and partnership of which officer is a member
- § 826 Independent frauds against the corporation
- § 827 Interested officer or agent as sole representative of corporation in transaction—Sole actor doctrine
- § 827.10 — —Reasons and application
- § 828 — —Sale or discount of negotiable paper by director
- § 829 Fraud perpetrated by officer upon third person for own benefit but acting in official capacity

E. RATIFICATION

- § 830 Ratification by corporation

F. PRESUMPTIONS AND EVIDENCE

- § 831 Stipulation against communication of knowledge
- § 832 Want of notice to particular officer as sufficient to show want of notice to corporation
- § 833 Evidence in general
- § 834 Question as one of law or fact

XXIV. NOTICE TO OR KNOWLEDGE OF ONE OFFICER OR AGENT AS CHARGEABLE TO THAT OR ANOTHER OFFICER OR AGENT

- § 835 Notice to one officer or agent as notice to other officers or agents
- § 836 Knowledge of officer imputed to that officer as an individual
- § 837 Knowledge of officer imputed to another officer as an individual

XXV. DIRECTORS AND OFFICERS AS FIDUCIARIES OR TRUSTEES

A. GENERAL RULES

- § 837.50 General considerations
- § 837.60 Duty of loyalty
- § 837.70 Duty of disclosure
- § 838 Directors and officers as trustees or agents—In general

FLETCHER CYCLOPEDIA CORPORATIONS

- § 839 Difference between directors, officers and agents
- § 839.10 Difference between directors or officers and agents—Corporate counsel
- § 840 Statutes governing fiduciary duty
- §§ 841 to 844 *[Reserved]*
- § 844.10 Particular kinds of corporations—Charitable or nonprofit corporations
- § 844.20 —Close corporations
- § 844.30 —Subsidiary corporations
- § 845 —Banking corporations
- § 845.50 —Investment companies
- § 846 Duties of nondirector officers, employees or others
- § 847 *[Reserved]*
- § 848 Duties owed to individual shareholders
- §§ 849 to 850 *[Reserved]*
- § 851 Corporation and officer or director in effect the same
- § 852 *[Reserved]*
- § 853 Title to and possession of corporate property—
In general
- § 854 —Estoppel to dispute title or allege adverse title
- § 855 —Resuming possession
- § 856 Officers and directors engaging in competing businesses
- § 857 —Agreements not to compete
- § 857.10 Confidential or inside information
- § 858 —Trade secrets
- § 858.10 —Damages
- § 859 *[Reserved]*
- § 860 Termination of fiduciary relationship
- § 860.50 Damages

**B. ACQUIRING ADVERSE INTERESTS/
CORPORATE OPPORTUNITY DOCTRINE**

- § 861 In general
- § 861.10 Corporate opportunity doctrine
- § 861.20 —Line of business test
- § 861.30 —Interest or expectancy test
- § 861.40 —Fairness test

TABLE OF CONTENTS

- § 861.45 —American Law Institute guidelines
- § 861.50 —Remedies
- § 862 —Limitations and exceptions
- § 862.05 — —Corporate rejection of opportunity
- § 862.10 — —Inability of corporation to avail itself of opportunity
- § 862.20 — —Ratification by shareholders
- § 862.30 — —Statutory safe harbors
- § 863 Illustrations—In general
- § 864 —Obtaining assignment of corporate contract from other party
- § 865 —Renewal of lease or purchase of leased property
- § 866 —Redemption from judicial sale
- § 866.50 Close corporations
- § 867 Purchases by director from trustee selected to sell land

C. PURCHASE OF CLAIMS AGAINST THE CORPORATION AND ENFORCEMENT

- § 868 In general
- § 869 Right to enforce for face value of the debt
- § 869.10 —Insolvency, bankruptcy or reorganization
- § 870 Before fiduciary relationship accrued
- § 871 After fiduciary relationship is terminated

D. PURCHASE OF CORPORATE PROPERTY AT JUDICIAL, EXECUTION OR TAX SALE

- § 872 General considerations
- § 873 Purchase voidable where a breach of trust or not in good faith
- § 874 Purchase voidable regardless of fairness or good faith
- § 875 Purchase not voidable where fair and in good faith
- § 876 Purchase to protect debt or rights of officer
- § 877 Insolvent corporations
- § 878 Where property sold by assignee or receiver
- § 879 Judicial sale of property of debtor of corporation
- § 880 Tax sales
- § 881 Ratification, laches and estoppel
- § 882 Who may attack sale
- § 883 Relief granted where sale subject to attack

E. PROFITS MADE BY DIRECTOR OR OFFICER

1. Liability for Profits

- § 884 General rules
- § 884.10 —Contracts
- § 884.30 —Sales to corporation
- § 884.50 —Use of corporate assets
- § 884.70 —Actions to recover profits
- § 884.90 — —Constructive trusts
- § 885 Exceptions to general rules—In general
- § 886 Limitations of rule—Exception where corporation insolvent or unable to act
- § 887 Secrecy as essential element
- § 888 Good faith of officer or want of damage to corporation as immaterial
- § 889 Lawfulness of means used to secure profit as immaterial
- § 890 Ultra vires acts
- § 891 Contracts as contrary to public policy
- § 892 Bribes or gifts from third persons
- § 893 Right to patents or inventions
- § 894 Right of corporation to earnings of officer
- §§ 895 to 896 *[Reserved]*

2. Applications of Rules

- § 897 In general
- § 898 Speculation
- § 899 Sales or leases by or to the corporation
- § 900 Sale of stock
- § 901 Loans
- § 902 Surrendering corporate office for consideration
- § 903 Money paid to procure election to corporate office
- § 904 *[Reserved]*
- § 905 Liability to account to third person as officer or trustee
- § 906 *[Reserved]*

F. RIGHTS AS CREDITORS OF CORPORATION

- § 907 In general
- § 908 Security for or payment of debt
- § 909 *[Reserved]*

TABLE OF CONTENTS

- § 910 Right of officer to appropriate property for payment of claim
- § 911 Subrogation
- § 912 Estoppel of officers by reason of mismanagement

**XXVI. CONFLICTS OF INTEREST
TRANSACTIONS BETWEEN DIRECTORS
OR OFFICERS AND THE CORPORATION**

- § 913 Conflicts of interest—General considerations
- § 914 What law governs
- § 915 Model Business Corporation Act
- § 915.10 Effect of state statutory provisions
- § 915.20 ALI Principles of Corporate Governance
- § 915.30 Charter and bylaw provisions
- § 916 General rules without reference to whether interested officer represents corporation or whether corporation represented by other officers
- § 917 —Dealings as voidable
- § 918 —Transaction as subject to careful scrutiny by courts
- § 919 —Necessity that transaction be fair and not a breach of trust
- § 920 —Effect of insolvency of corporation
- § 921 —Presumptions and burden of proof
- § 922 Dealings where officers adversely interested represent the corporation—General considerations
- § 923 —Dealings invalid because two persons are necessary to a contract
- § 924 —Dealings voidable or void because of fiduciary relationship
- § 925 Extent of interest
- § 926 —Fairness of contract or injury to corporation as immaterial
- § 927 —Directors as to whom rule applies
- § 928 —Ownership of all of stock by contracting directors
- § 929 Dealings between director or other officer and the corporation when it is represented by other directors or officers—General rules
- § 930 —Former rule that transaction is voidable although fair and entered into in good faith

FLETCHER CYCLOPEDIA CORPORATIONS

- § 931 —Modern rule that contract or transaction is valid if fair and in good faith
- § 932 Under what circumstances officer may be said to represent corporation—General considerations
- § 933 —Interested officer presides at directors' meeting
- § 934 —Interested director is present at meeting, but it does not appear whether or not the director voted
- § 935 —Interested director votes in favor of contract but there is a majority without the director's vote
- § 936 —Vote of interested officer necessary to a majority vote
- § 937 —Majority of directors are self-dealing
- § 938 —Presence of interested director necessary to make a quorum
- § 939 —Interested director dominates other directors
- § 940 —Corporate officer or agent acting under immediate instructions of superior officer
- § 941 Manner and extent individual interest of officer is evidenced—General considerations
- § 942 —Officer acting as agent both for corporation and for adverse party
- § 943 —Transactions between corporation and firm of which officer is a member
- § 944 —Transactions between corporate officers as such and another corporation in which they are shareholders
- § 945 —Contracts between corporation and subsidiary corporation
- § 946 —Dealings between corporation and spouse of officer
- § 947 —Validity of contracts and transactions as to third parties
- § 948 Application of general rules to particular transactions—In general
- § 949 —Purchase of corporate property by director or other officer
- § 950 —Sales by directors or other officers to corporation
- § 951 —Leases by or to directors or other officers
- § 952 —Loans to corporation

TABLE OF CONTENTS

§ 953	—Payment by officer of valid outstanding claims against the corporation
§ 954	—Assignments
§ 955	—Loans by corporation to officers
§ 956	—Compromise of claims
§ 957	—Cancellation of contracts
§ 958	—Issuance of stock to directors or other officers
§ 959	—Directors or officers setting their own compensation
§ 960	—Actions by directors or other officers against corporation
§ 961	Transactions between corporations having common directors or other officers—In general
§ 962	—Where common officer or officers act for both corporations
§ 962.10	— —Statutory, charter and bylaw provisions
§ 963	—Where unfair or fraudulent
§ 964	—Where common directors are a minority and their votes not necessary to creation of contract
§ 965	—Application of rules to agents or officers other than directors
§ 966	<i>[Reserved]</i>
§ 967	Transactions between corporations having common directors or other officers—Necessity that interests be adverse to bring rule into operation
§ 968	—Security for debts
§ 969	—Right to sue
§ 970	—Who are “common” directors
§ 971	<i>[Reserved]</i>
§ 972	Transactions between corporations having common directors or other officers—Who may attack transaction
§ 973	—Presumptions
§ 974	—Burden of proof
§ 975	—Proper procedure in case of common officers
§ 976	—Injunction against contemplated contracts
§ 977	Who may attack dealings between interested officers and the corporation—In general
§ 978	—Other party to contract
§ 979	Ratification or authorization of dealings with interested officer or director—In general
§ 980	—Prior authorization at shareholders’ meeting

- § 981 —Power of board of directors to ratify
- § 982 —Ratification by majority of shareholders as binding on minority shareholders
- § 983 —Right of interested officers to vote as shareholders
- § 984 —What constitutes ratification
- § 985 —Effect of ratification
- § 986 Laches as precluding attack on transaction—In general
- § 987 —Lack of knowledge as an element of laches
- § 987.10 Estoppel as a defense
- § 988 Return of consideration or payment for benefits received as condition precedent to the right to rescind

XXVII. GENERAL DUTIES AND LIABILITIES OF DIRECTORS OR OFFICERS CONNECTED WITH MANAGEMENT OF CORPORATION

A. GENERAL CONSIDERATIONS

- § 989 Scope of subdivision
- § 990 Duties and liabilities—In general
- § 991 Duties of non-director officers or others
- § 992 Liability as dependent upon injury to corporation
- § 993 Statutory liability as precluding common-law liability
- § 994 Persons liable—In general
- § 995 —Where alleged officer has not been notified of election nor accepted the office
- § 996 —Where holding of office has been terminated
- § 997 —Illegality of election or ineligibility to become officer
- § 998 Consent or ratification as precluding liability
- § 999 Right to sue as precluded by laches or estoppel
- § 1000 Contracts inducing disregard of duties
- § 1001 *[Reserved]*
- § 1001.50 Aiding and abetting breach of fiduciary duty
- § 1002 Liability as joint or several
- § 1003 Contribution among directors or officers—In general

TABLE OF CONTENTS

§ 1004	—Where act illegal or forbidden by statute
§ 1005	—Where liability created by statute
§ 1005.50	— —Unlawful distributions
§ 1006	Offer to do equity
§ 1007	Conclusiveness of judgment against corporation—Statutory liability
§ 1008	—Common-law liability
§ 1009	Effect of recovery of judgment by corporation

B. BREACH OF DUTY IN GENERAL

§ 1010	Scope of subdivision
§ 1011	General illustrations of breach of duty
§ 1012	Favoring certain shareholders
§ 1013	Failure of directors or officers to inform shareholders of material facts on transfer of property or merger
§ 1014	Failure to warn company of contemplated misappropriation of funds of subsidiary company
§ 1015	Preference of creditors
§ 1016	Injury to goodwill
§ 1016.50	Duty owed to injured employees
§ 1017	Enticing employees or customers or accounts away
§ 1018	Failure to devote all of time to corporate business
§ 1019	Liability for bad loans or investments—In general
§ 1020	—Payment of overdrafts

C. ACTS ULTRA VIRES OR ILLEGAL OR BEYOND AUTHORITY OF PARTICULAR DIRECTOR OR OFFICER

§ 1021	General rules
§ 1022	Illustrations
§ 1023	Reasonable care as material
§ 1024	Materiality of fact that act is forbidden by statute or charter
§ 1025	Effect of ignorance or mistake—In general
§ 1026	—Acting without advice of counsel
§ 1027	—Advice of counsel as a defense
§ 1028	Effect of consent or ratification