

## TESTS:

### *INTRINSIC FAIRNESS*

#### Process:

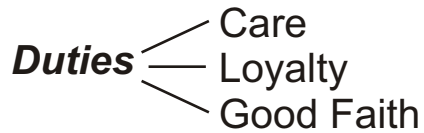
Disinterested vote after full disclosure and reasonable investigation.

#### Substance:

Directors and effect on the corporation.

## **Self-Dealing**

### **( Common Law )**

**Duties** 

- Care
- Loyalty
- Good Faith

## ARISES

- 1) Personal loans by or to the corporation;
- 2) Retirement plans;
- 3) Compensation;
- 4) Distribution to shareholders / directors;
- 5) Purchase of director's property.

## **Interested Transactions**

Apply intrinsic fairness test if no disinterested vote.

## **Bad Faith Fraud**

- Material fact
- Intent to deceive
- Intend to rely
- Actual reliance
- Actual damages

## **Corporate Opportunity**

- Test to see if Corporate Opportunity:
  - Line of business;
  - Expectation;
  - Capacity as an officer.
- If Corporate Opportunity then full disclosure and rejection required after reasonable investigation.

## **10b5 / Insider Trading**

- Materiality
- Intent to deceive (*Ernst*)
- Purchaser or seller (*Blue Chip*)

## **Misappropriation**

- Stealing
- Corporate waste