Overview

Rationale and historical background

Corporations Act provisions

Guiding principles

Case study

James Hardie

Discussion
Rationale and historical background

Role of director

Practical need to delegate and rely

Duty of care – elevating standard

Effect on delegation and reliance
Corporations Act provisions

Part 2D.1 – Duties and powers

Section 180: Duty of care and diligence

Section 198D: Power to delegate

Section 190: Responsibility for delegates

Section 189: Reliance on information / advice
Delegation and reliance principles

Directors must…

Guide and monitor the management of the company

Bring an inquiring mind

Make further enquiries if required

Be particularly careful when approving financial statements
Case: James Hardie

**Facts**

- JHIL
- Board papers
- Foundation
- ASX

**First Instance**

- Gzell J
  - Directors and officers breached duties of care
  - ASX announcement was significant
  - Not entitled to abdicate responsibility to fellow director
  - Not entitled to rely on management, co-director or adviser

**Court of Appeal**

- Court (unanimous)
  - ASIC failed to establish draft announcement tabled and approved
  - Otherwise agreed with Gzell J

**High Court**

- Court (unanimous)
  - Minutes were a formal record of what happened at the meeting
  - Directors and officers breached duties of care
Discussion