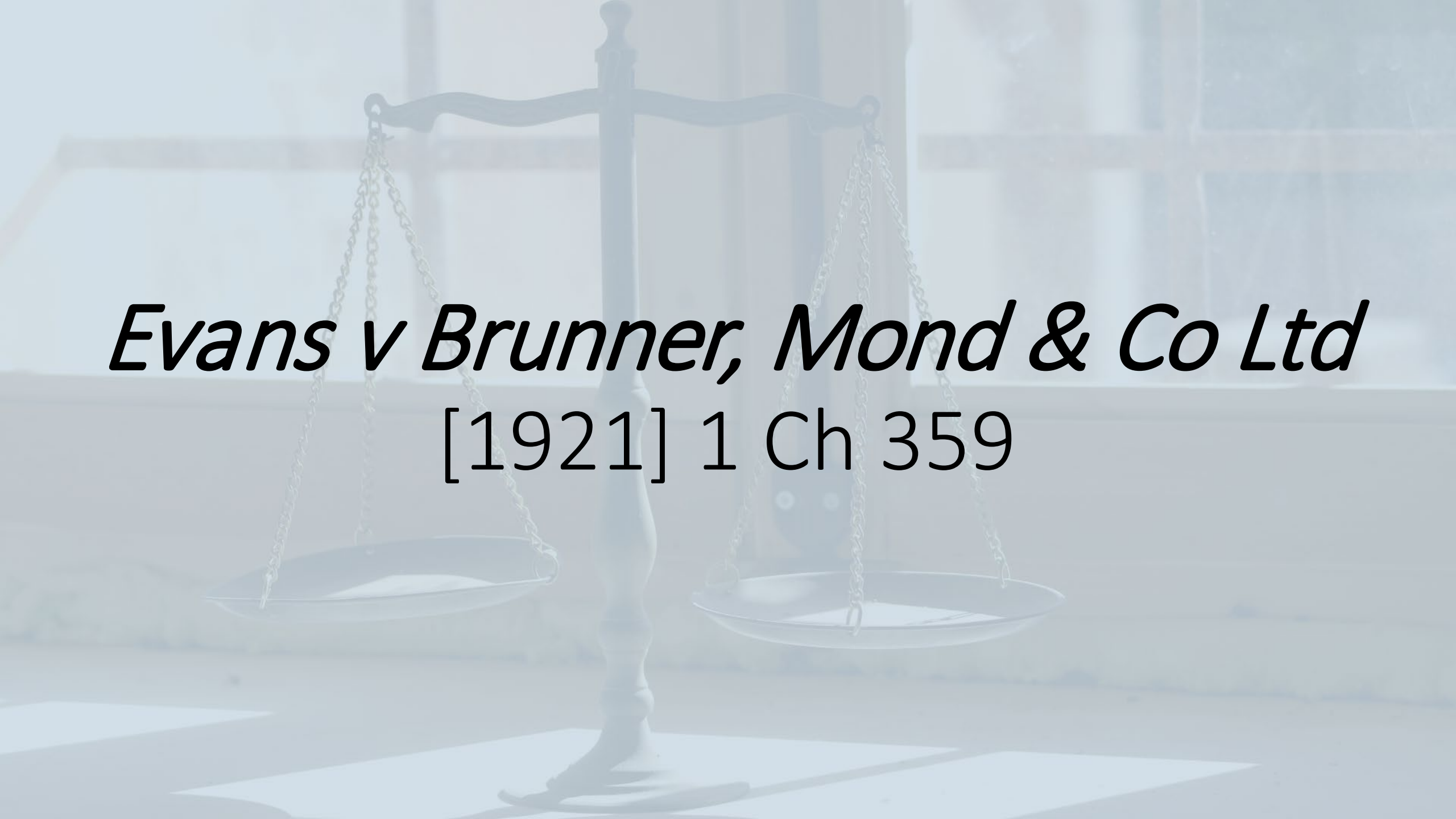




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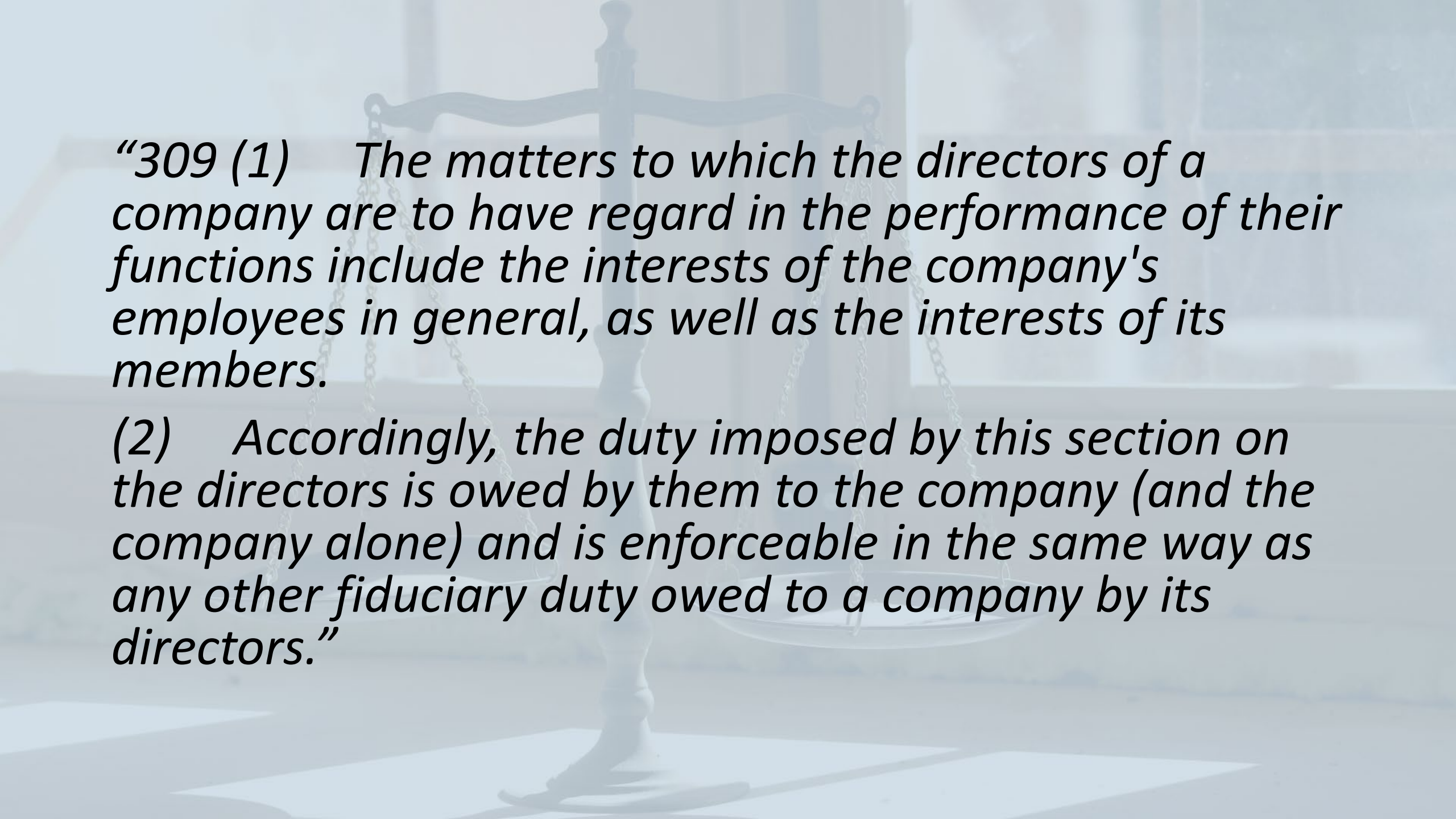
Lecture by the Right Hon Lady Arden DBE
Justice of the UK Supreme Court 2018-2022

*In whose interests should the law
require companies to be run?*



Evans v Brunner, Mond & Co Ltd

[1921] 1 Ch 359



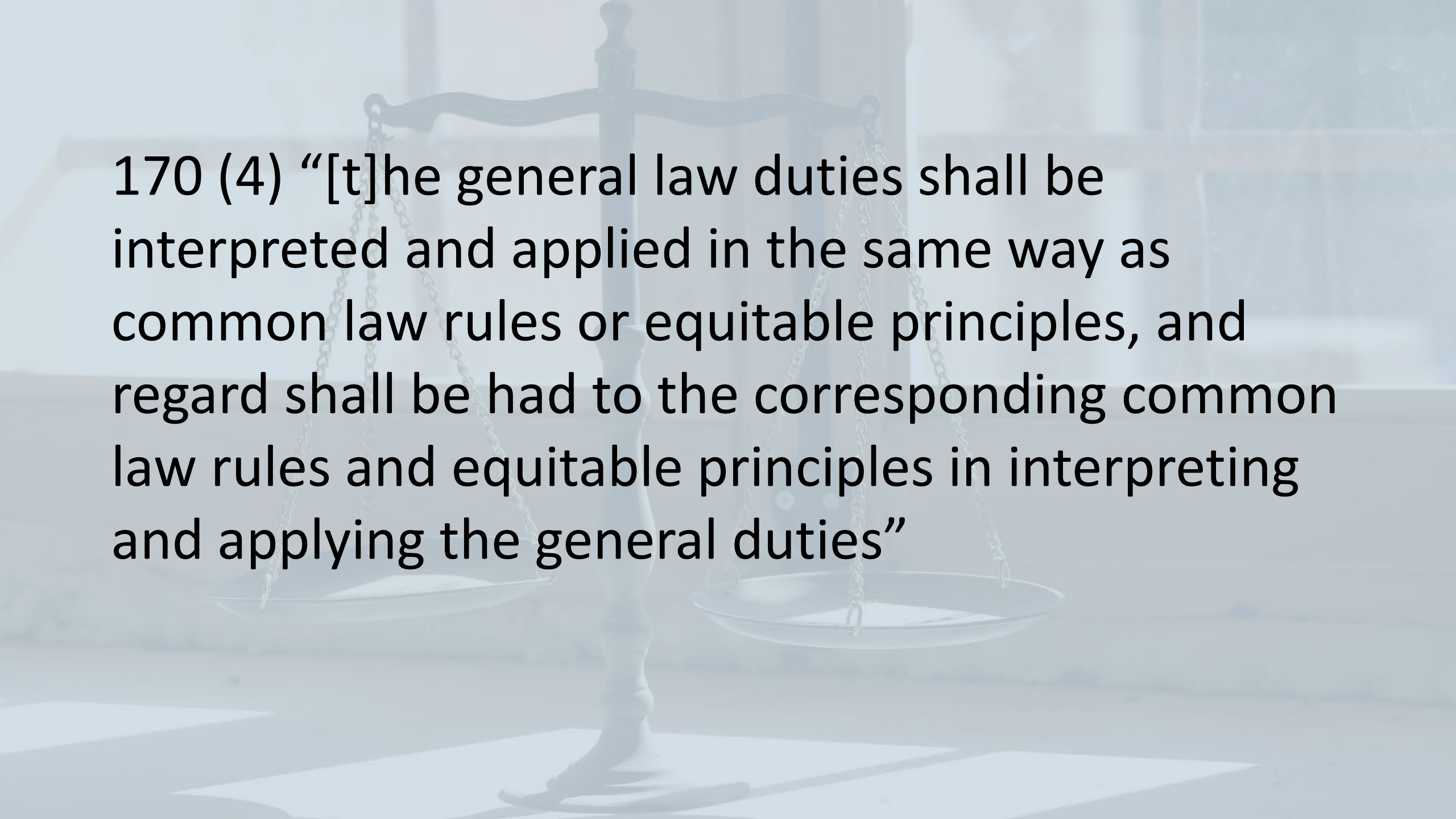
“309 (1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this section on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.”



UK Companies Act 2006 section 172(1) *Duty to promote the success of the company*

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.



170 (4) “[t]he general law duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties”



Section 414CZA(1):

(1) A strategic report for a financial year of a company must include a statement (a “section 172(1) statement”) which describes how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172.



BTI 2014 LLC v Sequana [2022] UKSC 25

Clarifies the directors' duty in relation to creditors for the first time

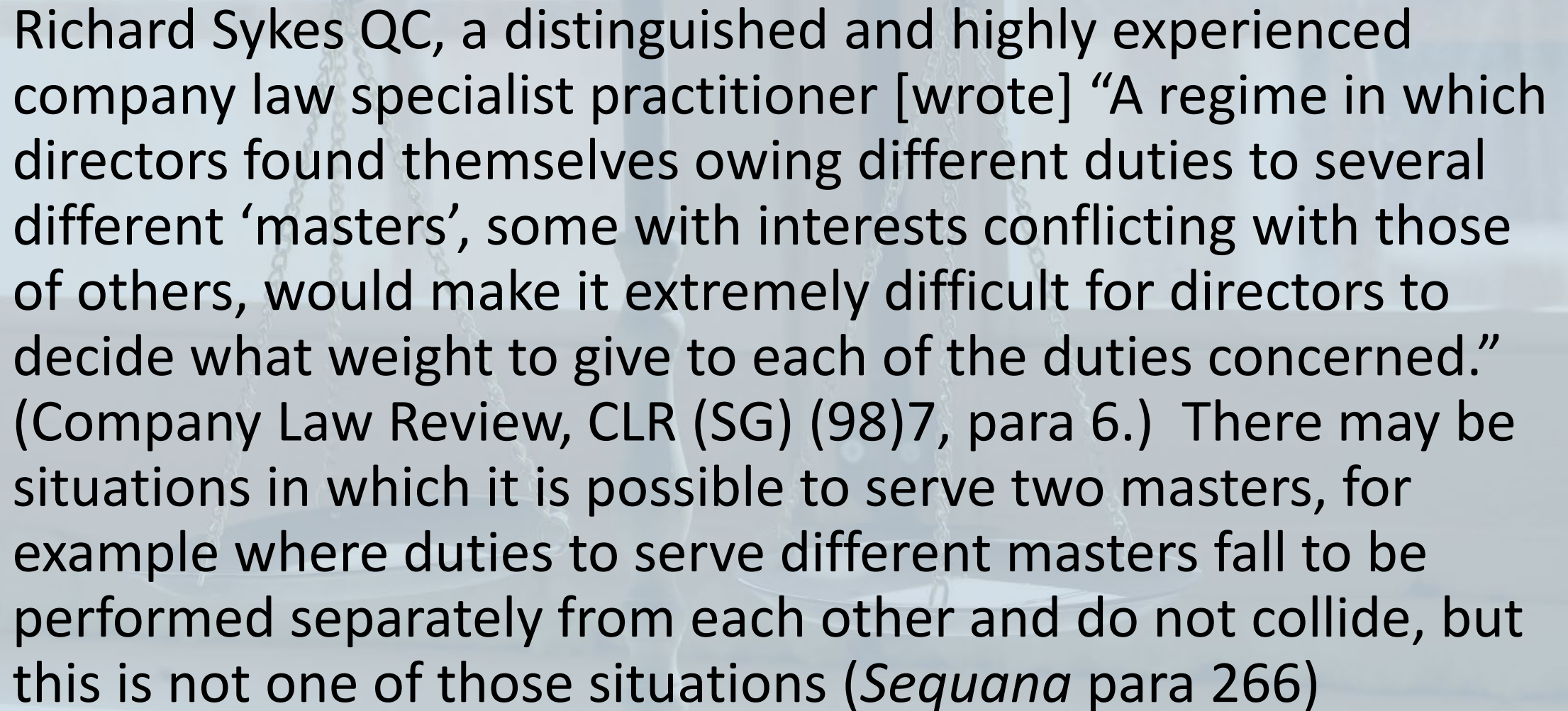
Subsection (3) of section 172 provides:

“(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.



Street CJ in *Kinsela v Rusell Kinsela Pty Ltd* (1986) 4 NSWLR 722, 730:

“In a solvent company the proprietary interests of the shareholders entitle them as a general body to be regarded as the company when questions of the duty of directors arise. If, as a general body, they authorise or ratify a particular action of the directors, there can be no challenge to the validity of what the directors have done. But where a company is insolvent the interests of the creditors intrude. They become prospectively entitled, through the mechanism of liquidation, to displace the power of the shareholders and directors to deal with the company’s assets. It is in a practical sense their assets and not the shareholders’ assets that, through the medium of the company, are under the management of the directors pending either liquidation, return to solvency, or the imposition of some alternative administration.”



Richard Sykes QC, a distinguished and highly experienced company law specialist practitioner [wrote] “A regime in which directors found themselves owing different duties to several different ‘masters’, some with interests conflicting with those of others, would make it extremely difficult for directors to decide what weight to give to each of the duties concerned.” (Company Law Review, CLR (SG) (98)7, para 6.) There may be situations in which it is possible to serve two masters, for example where duties to serve different masters fall to be performed separately from each other and do not collide, but this is not one of those situations (*Sequana* para 266)

A pair of scales of justice is centered in the frame, resting on a desk with several papers. The scales are slightly out of focus, and the background shows a window with a view of a building. The text "Thank you." is overlaid in the center in a bold, italicized black font.

Thank you.