# Fiduciary Duties: The Duty of Care

- This duty requires that the officer and director act with reasonable care and diligence

- **Breaches:**
  - **Misfeasance:** Taking actions on behalf of the corporation without conducting a proper amount of research etc.
    - (objective test: what the “reasonable” person would have done under the circumstances)
  - **Nonfeasance:** Failing to take action that a reasonable person would assume necessary to adequately perform duties under the circumstances

# Fiduciary Duties: The Duty of Care 2

- Even though the above standards are objective, they do take into account the level of experience, training, etc. of the officer or director; i.e., the person will be held to the standard of a reasonable person with his level of experience and training…

- **Liability:**
  - The director or officer will be liable to the corporation for harm suffered as a result of the breach of care

# Business Judgment Rule

- This rule protects directors and officers from liability for decisions that they make that later turn out bad:
  - If a director makes a corporate decision in good faith, the court will not “second guess” that decision under ordinary circumstances.

- Reason: To avoid discouraging people from acting as directors by making it impossible for them to use their judgment in making decisions

# Business Judgment Rule 2

- **The Business Judgment Rule Does NOT apply where:**
  - The officer or director has not been "reasonably prudent" in the transaction
  - The officer or director has failed to adequately research the transaction or has entered the transaction hastily without "due diligence"
  - The officer or director has acted in "bad faith" in the transaction
  - The officer or director has breached the duty of loyalty in the transaction
  - Where the officer or director has a stake in the transaction (the "entire fairness" standard applies instead)

# QUIZ TIME!