SUMMARY

Legal principles play a significant role in the process of application of law where they serve as corrections of the often ambiguous, inconsistent legal norms, or legal norms contradicting the purpose of law. The doctrine and the practice of courts agree that legal principles are also an important source of law. In law of joint stock companies, the functions of legal principles manifest themselves to a great extent.

The general principles of private law, such as the principle of good morals, principles valid in whole business law, such as the principle of fair trade, principles of company law, principles valid only within the scope of law of joint stock companies, and also the very special principles of particular institutions in law of joint stock companies, manifest themselves in law of joint stock companies.

The need to protect creditors against an abuse of legal form of a corporation by its shareholders is currently one of the most discussed issues of law of joint stock companies. A substantive part of this thesis is therefore dedicated to the protection of creditors.

The law strives to provide creditors of a corporation with a special protection by admitting that their position in the relation with a stock corporation is weaker than the position they occupy in relations with natural persons or personal company. The weaker position results from the character of the obligor – a corporation, especially from its limited liability. The law strives to forestall abuse of the limited liability by shareholders. If the limited liability is abused after all, the law strives to provide the injured person with a chance of compensation. The law endeavours to do the same in situations where an adherence to the limited liability would lead to an unfair outcome. It uses the following tools.

The principle of publicity that imposes a number of duties on a corporation, is used to prevent abuse of the limited liability.

The disqualification of directors is another tool introducing rules for the suspension of directors (generally, the directors who gravely derogated from their duties and those who bankrupted the corporation).

The rules aiming at a preservation of corporate assets are also supposed to improve the position of creditors. They strive to assure that a corporation has sufficient funds for the particular business, that shareholders don´t unlawfully drain the corporation of funds, and (in some countries) lay down an obligatory cumulation of funds when establishing a corporation.

Another tool the law uses to fight abuse of the limited liability, is the option to partially remove the limited liability in certain situations and make the shareholders (or directors) standing behind the corporation liable for (or guarantee) the obligations of the corporation. This can be achieved either by provisions of law that partially pierce the limited liability under certain conditions or (in some countries) by decision of court. One of the provisions of law breaking the limited liability is for example the British "Wrongful Trading". In some countries, courts break the limited liability even though the law does not offer this option explicitly. Different countries take different ways and use different arguments to come to that result. In Anglo-Saxon countries, courts developed the doctrine of "lifting the veil of incorporation". This doctrine is explored in more detail in this thesis (mainly from the point of view of the U.S. law). Courts in the Czech Republic do not break the limited liability in that way. However, such practice is not unthinkable, the application of general tort liability seems natural. Courts could apply these rules to make shareholders liable to creditors for damages caused to creditors by abuse of the corporation resulting from shareholder´s wilful acting in conflict with good morals.

Another, traditionally a much discussed issue in law of joint stock companies, is the liability of directors. Here, the thesis deals with the duty of loyalty of directors that represents an important means of correction of their conduct.

Duty of loyalty to the corporation is, together with the duty of due care, regarded as one of the two fundamental duties a director has in relation to

the corporation. The assessment of those duties is at the same time one of the main issues of corporate law.

In many countries, the duty of loyalty of directors is not codified. Nevertheless, it is inferred from particular legal provisions, from the character of the relationship between the director and the corporation, eventually it is inferred as a principle forming grounds for legal regulation of the corporation. The former also applies to our legislation. Some authors and jurisdictions consider the duty of loyalty to be an autonomous duty, other consider it to form a part of the requirement of due care (or care of careful manager). This duty constitutes a basis from which all other duties are derived.

Duty of loyalty can be defined as an obligation to act in the corporate´s best interest and to its benefit. The interest of the corporation is a key notion here.

What is the (best) interest of the corporation has for years been and still is a subject of discussions in many countries. Particularly in the U.S., shareholder value approach caught on in the second part of the 20th century. It was by far not the only approach used in the U.S. and around the world. A model focusing on managers („manager model") was dominant for a long period in the U.S., a model focusing on state („state model") caught on in the Asian countries and for example in France, stakeholder value model is associated with a number of European countries. It could be said that shareholder value model has recently pushed through worldwide.

The notion of „shareholder value" focuses on shareholders and their assets. The interests of shareholders as a group (or class) should be put ahead of the interests of any other group participating in the corporation´s life cycle. A corporation should be operated in the best interest of all its shareholders, that is the shareholders of all types, both the minority shareholders as well as the shareholders controlling the corporation; in the best interest of not only the present but also prospective shareholders. The shareholder value model is considered to be easier for application; it gives

the directors a fairly clear answer to what kind of conduct is expected from them.

"Stakeholder value", also called "pluralistic", model is currently considered to be the closest alternative of the "shareholder value" approach. It rejects the privileged position of the shareholders above the other interest groups. It deems necessary to respect when operating a corporation the interests of all groups that are somehow related to the corporation, and from the economic perspective contribute (no matter if voluntarily or involuntarily) to the corporate equity.

According to the stakeholder value model, the welfare of all stakeholders is the main concern of the corporation and should be given priority. The group of stakeholders includes especially employees, subcontractors, customers, creditors, rival entrepreneurs operating in the same area, business associations, local community, local governments, public-sector institutions operating in the same area (e.g. schools, charity and non-profit organizations, associations of citizens) and also the environment as an object of protection by law. Shareholders also rank among the stakeholders. „Stakeholder value" theory fulfils the concept of social responsibility of a corporation at the most. Nevertheless, the theory is criticized for not fulfilling the requirements of foreseeability of law, which enables the subjects of law to know what duties they have, and where these duties are laid down.

So called „enlightened shareholder value model", a theory currently promoted in Great Britain, represents yet another, maybe more balanced, alternative to the shareholder value model. It is a revised shareholder value model focusing not just purely and blindly on the interests of shareholders. It can be considered as an approach that takes into consideration the concept of corporate social responsibility. Directors are, in compliance with the ESV, obliged to take into account a broader spectrum of interests when making decisions, not only the interests of shareholders.

Some authors assume the existence of duty of loyalty to a corporation (but also to the other shareholders) also for the shareholders of a corporation.

Though, the experts are not united in their opinions about the existence of this duty. Contrary to the duty of loyalty of directors that results from the director´s role of a fiduciary administering the assets of a corporation, shareholder´s loyalty is based on different principles. A number of authors do not accept it as a general duty, but they more willingly admit its reverberation in specific situations.