BEYOND THE BOARDROOM: RETHINKING CORPORATE GOVERNANCE IN THE AGE OF ALGORITHMIC DECISION-MAKING

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ABSTRACT

Corporate governance has always assumed that a natural person stands behind every decision a company makes, someone who can deliberate, be persuaded, and ultimately be held to account. Boards now routinely delegate substantive parts of that deliberation to algorithmic systems: AI tools screen credit risk, flag related-party transactions, model scenario outcomes for capital allocation, and, in a small but growing number of firms, sit in the boardroom itself as non-voting observers. This paper examines whether the fiduciary architecture of the Companies Act, 2013 built around Sections 149, 166 and 134, and premised on the natural-person director as the locus of judgment and accountability can absorb this shift without dilution of substance. It surveys the doctrinal debate on AI legal personhood and the case for and against a Board Service Provider model, examines the Securities and Exchange Board of India's new Regulation 16C regime assigning regulated entities sole responsibility for AI/ML tool outputs as a template for board-level accountability, and situates the Indian position against comparable developments in Delaware oversight jurisprudence and the EU AI Act's obligations for high-risk systems. It argues that the central risk is not that AI will formally displace directors, but that the duty of independent judgment under Section 166(3) will be hollowed out through uncritical reliance on algorithmic recommendations a phenomenon this paper terms 'rubber-stamp liability'. It proposes a governance framework built around mandatory algorithmic-decision registers, a heightened 'meaningful contestability' standard for director reliance on AI outputs, board-level AI risk committees for companies above a materiality threshold, and statutory clarification that delegation to an algorithmic system does not, without more, discharge the duty of care under Section 166(3).

Keywords: *Corporate Governance; Companies Act, 2013; Fiduciary Duties; Artificial Intelligence; Algorithmic Decision-Making; Board of Directors; Duty of Care; SEBI*

I. Introduction

In 2014, the venture capital firm Deep Knowledge Ventures announced that it had appointed an algorithm named VITAL to its board, with voting rights over investment decisions in life-sciences start-ups; the firm's managing partner stated publicly that no investment would proceed without VITAL's approval. A decade later, Abu Dhabi's International Holding Company inducted an AI system, Aiden Insight, as a non-voting board observer with a standing invitation to every board meeting. These episodes are still outliers, but the underlying trend they signal is not: artificial intelligence tools now shape board-level decisions on capital allocation, risk appetite, related-party screening, executive compensation benchmarking, and merger valuation across a widening set of companies, including in India, well before any board formally admits a machine to the table.

Corporate law has traditionally organised accountability around the natural person. A company is, in the classical formulation, an artificial person that can act only through human agents, and the entire apparatus of fiduciary duty care, skill, diligence, good faith, independent judgment is built to locate a state of mind that can be examined, tested, and, where necessary, condemned. The Companies Act, 2013 codifies this premise directly: Section 2(34) read with Sections 149, 152 and 153 contemplates directors as individuals possessing legal identity and capacity, and Section 166 imposes personal duties of good faith, care, skill, diligence and independent judgment that only a mind can discharge. The difficulty algorithmic decision-making poses is not, in the first instance, whether a machine can formally become a director Indian law, examined closely, makes that exceedingly difficult but whether the substance of independent human judgment can survive when the analytical work behind a decision is increasingly performed by systems no director in the room fully understands.

This paper argues that the more urgent governance risk is not algorithmic displacement of directors but algorithmic erosion of the duty of independent judgment from within a phenomenon this paper calls ‘rubber-stamp liability’: directors who retain the formal office and legal exposure of a fiduciary while, in substance, deferring to outputs they are neither equipped nor incentivised to interrogate. *Part II* examines the current architecture of board decision-making and the ways AI tools are being embedded within it. *Part III* analyses the fit between that reality and the fiduciary duties in Sections 149 and 166 of the Companies Act, 2013, including the debate on AI legal personhood and the Board Service Provider proposal. *Part IV* examines SEBI's new Regulation 16C regime as a template for allocating responsibility for AI outputs. *Part V* places India in comparative context against Delaware's oversight jurisprudence and the EU AI Act. *Part VI* proposes a governance framework centred on algorithmic-decision registers, a meaningful-contestability standard, mandatory AI risk committees, and statutory clarification of non-delegable duty. *Part VII* concludes.

II. The Changing Anatomy of Board Decision-Making

From Decision-Support to Decision-Shaping AI's presence in the boardroom has moved through three overlapping stages. The earliest and least controversial is administrative automation AI tools that summarise board packs, transcribe minutes, and flag scheduling conflicts, which raise no distinct governance question because they do not touch the substance of judgment. The second stage is analytical decision-support, in which AI systems model scenarios, stress-test financial projections, screen related-party transactions for conflict indicators, and benchmark executive compensation against peer data functions that inform but do not formally replace a director's vote. The third and most consequential stage, now emerging in ESG risk scoring, credit and counterparty risk assessment, and increasingly in M&A target screening, is decision-shaping: the algorithm does not merely inform the board's view but substantially constructs it, presenting a narrowed set of options, a risk-ranked shortlist, or a single recommended course of action that the board is procedurally free, but practically ill-equipped, to reject.

The scale of this adoption-governance disconnect is illustrated by recent data from the Indian market. According to the Cisco 2024 AI Readiness Index, only 18 per cent of firms in India were assessed as fully ready to deploy and leverage AI-powered technologies, a finding that sits uneasily with the accelerating use of algorithmic tools across board-level functions in the same period.[1] A survey of board directors conducted by Deloitte in the same year found that nearly half of respondents globally reported that AI had not yet reached their board agendas, underscoring a structural disconnect between organisational deployment rates and governance preparedness.[2] This gap between adoption and oversight capacity is precisely the condition in which decision-shaping AI carries its greatest governance risk: tools are embedded in board processes faster than the institutional capacity to interrogate them can develop.

The legal significance of this progression is that liability exposure does not track it. A director who refers to a decision-shaping AI tool bears exactly the same statutory duty of care under Section 166(3) as one who reaches a conclusion through unaided deliberation, but has materially less insight into the reasoning behind the decision she is nonetheless accountable for. Indian commentary on this shift has converged on the view that the introduction of AI into board decision-making does not itself expose a gap in company law, since the Companies Act, 2013 continues to rest governance in accountable human actors through Sections 149 and 166; the difficulty lies in ensuring those duties retain substantive meaning as decision-making becomes increasingly mediated through systems whose internal reasoning even trained directors cannot readily audit.

III. The Fiduciary Architecture and the limits of Companies Act,2013

- The Natural-Person Premise

Section 149(1) requires every company to have a board of directors consisting of individuals; Section 2(34) defines a director as a person appointed to the board. The natural-person requirement is not incidental drafting but structural: the entire fiduciary apparatus of the Act presumes a mind capable of good faith, of weighing conflicting interests, and of bearing consequences civil, and in appropriate cases criminal for a failure to do so. Section 166(2) requires a director to act in good

[1] 'Boardroom Revamps Loom on the Horizon as AI Demands New Tech Expertise' (Outlook Business, 27 December 2024) <https://www.outlookbusiness.com/columns/boardroom-revamps-loom-on-the-horizon-as-ai-demands-new-tech-expertise> accessed 30 August 2026, citing Cisco, 'AI Readiness Index 2024'.
[2] Farhang Salehi, 'Boardroom AI: The Governance of AI-Assisted Corporate Decision-Making' (2025) 2(4) Global Journal of Economic and Finance Research 232, 233, citing Deloitte, 'State of Generative AI in the Enterprise' (July/September 2024 Survey).

faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, shareholders, the community, and the environment. Section 166(3) requires the exercise of due and reasonable care, skill and diligence, and the exercise of independent judgment. Section 166(4) and 166(5) prohibit decisions involving a conflict of interest and the pursuit of undue personal gain. None of these provisions can sensibly be predicated on a system that has no interests of its own to set aside, no capacity for good faith because it has no capacity for faith of any kind, and no legal personality against which a judgment for breach of duty could be enforced.

- Can Indian Law Accommodate an AI Director?

A body of Indian scholarship has tested this premise directly, asking whether the natural-person requirement in Section 149 could be diluted to accommodate what Professors Stephen Bainbridge and M. Todd Henderson have termed a Board Service Provider an institutional entity, rather than an individual, providing board-level services and bearing collective, insurable liability for the quality of its output. The strongest version of this argument treats the existing construct of fiduciary duty under Section 166 as broadly adequate but in need of adaptation, since the doctrine already tolerates institutional and delegated performance of board functions in other contexts, such as nominee directors and corporate directors in some foreign jurisdictions. The weaker but more widely held position is that the Companies Act's fiduciary architecture has always worked by locating a natural person's state of mind and holding it to account, and that an AI system, however sophisticated, cannot bear fiduciary responsibility because it has no legal personality, agency, or capacity for judgment in the sense Section 166 requires. On this view, the live question is not whether AI can formally become a director, but whether AI's growing role in shaping board decisions risks altering how judgment itself is exercised without any corresponding change in who is legally deemed to have exercised it.

This paper adopts the second position as the more legally sound and, for governance purposes, the more urgent. Diluting the natural-person requirement to accommodate an AI board member would solve a problem India's corporate sector does not yet face at any scale no Indian company has appointed an AI system as a formal director while leaving unaddressed the problem it already faces: human directors exercising diminished, if legally undiminished, judgment over decisions substantially shaped by systems they cannot fully interrogate.

- ‘Rubber-Stamp Liability’ and the Independent Judgment Standard

Section 166(3)'s requirement of independent judgment is the provision under greatest strain from decision-shaping AI. Independent judgment cannot be discharged through uncritical reliance on an AI-generated output any more than it could historically be discharged through uncritical reliance on a single external consultant's report, but the practical dynamics of algorithmic recommendation differ from those of a human consultant in ways that make erosion harder to detect. A consultant's report can be questioned in a meeting, its author can be asked to defend an assumption, and its limitations are typically stated in prose a director can read. A machine-learning model's output arrives as a score, a ranking, or a recommendation, frequently without an explanation a non-technical director can meaningfully contest, and often with a degree of apparent precision that discourages the very scepticism Section 166(3) demands. This tendency to defer uncritically to algorithmic outputs has been studied under the label of automation bias, the well-documented disposition of human decision-makers to over-rely on automated recommendations, particularly when those recommendations are presented in numerical or quantified form.[3] The phenomenon is sufficiently consequential that Article 14(4)(b) of the EU AI Act expressly requires that individuals assigned to oversee high-risk AI systems be equipped to remain aware of the possible tendency of automatically relying or over-relying on algorithmic outputs, embedding a specific guard against this behavioural tendency in the legal obligation of human oversight itself.[4] The result is a form of liability this paper terms ‘rubber-stamp liability’: directors remain fully exposed under Section 166 and, in relevant cases, under Section 134's requirement that the board's report reflect the company's true state of affairs, while the actual locus of analytical judgment has migrated to a system that owes no duty to anyone. Directors are held accountable for decisions even when AI tools are used, precisely because Section 166(3) fixes responsibility on the director regardless of the analytical apparatus used to reach a conclusion but a standard that assigns full

[3] Saar Alon-Barkat and Madalina Busuioc, 'Human-AI Interactions in Public Sector Decision Making: "Automation Bias" and "Selective Adherence" to Algorithmic Advice' (2023) 33(1) Journal of Public Administration Research and Theory 153.
[4] Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (AI Act) [2024] OJ L 1689, art 14(4)(b).

accountability without a corresponding practical capacity to interrogate the tool generating the recommendation risks becoming either unenforceable in substance or unfairly punitive in the rare cases it is enforced.

- Independent Directors and Systemic Oversight

The provisions on independent directors in Sections 149–150 assume a distinct oversight function, a check exercised by directors without material pecuniary relationships with the company, precisely so that oversight is not captured by management's incentives. Algorithmic decision-shaping introduces a structurally similar capture risk that the existing independent-director framework was not designed to address: a system procured or trained by management, optimised against management-selected objectives, can shape board outcomes in management's favour without any single individual on the board having acted in bad faith. The practical significance of this concern is heightened by the limited presence of technology and AI competency on Indian boards. Russell Reynolds Associates' 2024 India Board Analytics and Insights study, which examined the NSE Top 200 companies, found that technology expertise remains a comparatively underrepresented skill set on Indian boards even as the digital and AI strategies those boards are expected to approve grow in scale and systemic complexity.[5] Where directors lack the baseline technical literacy to interrogate a system's design assumptions or assess its error rates, the oversight function that Sections 149 to 150 are designed to secure cannot be reliably performed regardless of the formal structures in which it is housed. Extending the logic of independent oversight to algorithmic inputs for instance, by requiring that AI systems materially shaping board decisions be subject to review by a party independent of the function whose output they inform is a natural, though currently unenacted, extension of the existing statutory design.

IV. SEBI's Regulation 16C: A Template for Allocating Algorithmic Accountability

While the Companies Act, 2013 has not been amended to address AI-assisted board decision-making directly, the Securities and Exchange Board of India has moved considerably further in

[5] Russell Reynolds Associates, 'Deciphering the Indian Boardroom: 2024 India Board Analytics and Insights' (October 2024) <https://www.russellreynolds.com/en/insights/reports-surveys/deciphering-the-indian-boardroom-2024-board-analytics-insights> accessed 30 August 2026.

the adjacent field of AI use by regulated market entities, and its approach offers a workable template for board-level reform. Following a consultation paper issued in November 2024 and approval at the SEBI Board's December 2024 meeting, SEBI notified amendments, with effect from February 2025, inserting a new Regulation 16C (and parallel provisions) into the SEBI (Intermediaries) Regulations, 2008 and related regulations governing stock exchanges, clearing corporations and depositories. The new regime provides that any regulated entity using AI or machine-learning tools and techniques whether designed in-house or procured from third-party technology providers, and irrespective of the scale or manner of adoption is solely responsible for the privacy, security and integrity of investor and stakeholder data processed through those tools; for the output arising from their use, where that output is relied upon or dealt with; and for ensuring compliance with all applicable law, regardless of the degree to which a decision was AI-assisted.

SEBI's regulatory attention to AI governance has extended beyond Regulation 16C. In June 2025, the regulator issued a consultation paper proposing guidelines for responsible usage of AI and machine learning in Indian securities markets, which, if implemented, would require all regulated institutions to maintain a board-approved AI governance framework incorporating internal controls, algorithmic audits, and model explainability measures.[6] The consultation paper also proposed that designated senior management be made accountable for the oversight, testing, deployment, and monitoring of AI systems, on terms that closely mirror the oversight committee structure this paper proposes in Part VI.[7] That SEBI has moved in this direction, explicitly situating accountability for AI governance at board level, provides additional regulatory momentum for comparable reform under the Companies Act, 2013.

The significance of Regulation 16C for board-level governance lies in the structure of the allocation it makes, not merely its subject matter. It refuses to treat procurement of a third-party AI tool as a basis for shifting or diluting responsibility, closing off the argument already rejected

[6] Securities and Exchange Board of India, 'Consultation Paper on Guidelines for Responsible Usage of AI/ML in Indian Securities Markets' (20 June 2025) <https://www.sebi.gov.in/reports-and-statistics/reports/jun-2025/consultation-paper-on-guidelines-for-responsible-usage-of-ai-ml-in-indian-securities-markets_94687.html> accessed 30 August 2026.

[7] Sameer Avasarala and Aryashree Kunhambu, 'SEBI's Consultation Paper and the Winds of AI Governance' (Lakshmikumaran & Sridharan Attorneys, 2 July 2025) <https://www.lkslaw.com/insights/articles/sebi-s-consultation-paper-and-the-winds-of-ai-governance> accessed 30 August 2026.

in European regulatory statements to similar effect that a regulated entity can attribute an unfavourable outcome to a vendor's algorithm rather than to its own decision to rely on it. It applies irrespective of the scale of adoption, foreclosing an argument that light-touch or advisory use of an AI tool attracts a lower standard of accountability than wholesale reliance. And it fixes responsibility on the entity relying on the output, rather than attempting the far harder task of regulating the design of the AI system itself. Each of these features maps directly onto the rubber-stamp liability problem identified in Part III: a comparable board-level rule would foreclose directors from treating an AI system's recommendation as a shield against, rather than a component of, their Section 166 duty of independent judgment, regardless of whether the tool was built internally or purchased from a vendor, and regardless of how central or peripheral the tool was to the ultimate decision.

V. Comparative Perspectives

- Delaware: Oversight Duties and the Caremark Standard

Delaware corporate law's Caremark doctrine, requiring directors to make a good-faith effort to establish and monitor reasonable information and reporting systems, has become the principal vehicle through which US courts assess board oversight failures, and it translates naturally to algorithmic decision-making. A board that adopts an AI-driven risk-monitoring or compliance-screening system without any process for periodically testing whether the system is functioning as intended, or without escalation protocols when the system flags an anomaly, is exposed to a Caremark-style oversight claim in terms structurally identical to a board that ignored a human compliance officer's warnings. Delaware's jurisprudence in this area has developed case by case rather than through statutory amendment, and its central lesson for Indian reform is that the relevant legal question is rarely whether a board used an algorithm, but whether the board maintained a good-faith, documented process for overseeing what the algorithm was doing a standard this paper's proposals in Part VI seek to operationalise for Indian law through the algorithmic-decision register. Subsequent scholarship has elaborated on what this procedural standard demands in practice. A March 2026 analysis published by the Oxford Business Law Blog observed that board reliance on officers, experts, or vendors remains permissible under Delaware law but must be informed and periodically reassessed: a board that adopts an AI system and delegates all oversight to it without subsequently reviewing the reasonableness of that reliance may find that formal reliance affords it little protection under Caremark.[8] The inquiry is procedural rather than technical: courts will ask not whether the algorithm was well-designed, but whether directors made a genuine, documented, good-faith effort to supervise the system on which they relied.

- The European Union: High-Risk AI Systems and Governance Obligations

The EU AI Act classifies certain AI systems used in essential private and public services, including some categories of employment and creditworthiness assessment relevant to corporate decision-making, as 'high-risk', triggering obligations on providers and deployers including risk management systems, human oversight measures, and record-keeping sufficient to enable traceability of the system's outputs. The Act's human-oversight requirement is instructive for corporate governance reform because it does not merely require that a human be nominally present in the decision loop a standard easily satisfied by rubber-stamping but that the human overseer be given the information, training, and authority necessary to meaningfully decline or override the system's output. The Act's treatment of automation bias further sharpens this framework. Article 14(4)(b) specifically requires that designated human overseers be equipped to recognise and resist the possible tendency of automatically relying or over-relying on the output produced by a high-risk AI system, embedding a concrete guard against this phenomenon in the legal obligation of oversight rather than leaving it to individual diligence.[9] Behavioural research corroborates this concern: the International AI Safety Report 2026 described automation bias as the tendency to over-rely on automated outputs while discounting contradictory information, and found that it undermines competence by discouraging active reasoning and verification in high-stakes decision-making contexts, precisely the contexts in which board-level reliance on algorithmic recommendations is most consequential.[10] This 'meaningful oversight' formulation is the

[8] Pierluigi Matera, 'Algorithmic Oversight: What Directors and Officers Must Do to Comply with Caremark Duties in the Age of Artificial Intelligence' (Oxford Business Law Blog, 27 March 2026) <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/03/algorithmic-oversight-what-directors-and-officers-must-do-comply-caremark> accessed 30 August 2026.
[9] Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (AI Act) [2024] OJ L 1689, art 14(4)(b).
[10] Yoshua Bengio and others, 'International AI Safety Report 2026' (2026) 4 <https://arxiv.org/pdf/2602.21012> accessed 30 August 2026.

conceptual ancestor of the meaningful-contestability standard this paper proposes for Section 166 in Part VI.

VI. Towards a Governance Framework for Algorithmic Decision-Making

The reforms proposed here do not require displacing the natural-person premise of the Companies Act, 2013, and this paper does not endorse diluting Section 149 to accommodate AI directors, whether as voting members or as a Board Service Provider entity. The natural-person architecture remains the correct locus of accountability; what requires reform is the practical content given to the duties that architecture imposes.

A. The Algorithmic-Decision Register

Companies above a materiality threshold calibrated, for instance, to the listed-company and large-unlisted-company thresholds already used elsewhere in the Companies Act and SEBI (Listing Obligations and Disclosure Requirements) Regulations should be required to maintain a register recording every AI or algorithmic system materially informing board-level decisions, the category of decision it informs, the nature and source of its training data, and the identity of the function or vendor responsible for its maintenance. The register should be available to the board's audit or risk committee and, in summary form, disclosed in the annual board report under Section 134, extending that section's existing requirement that the report reflect the company's true state of affairs to cover the analytical apparatus behind material decisions, not merely their outcomes.

B. A Meaningful-Contestability Standard for Section 166(3)

Statutory or regulatory clarification should establish that a director's reliance on an AI-generated recommendation satisfies the independent-judgment requirement of Section 166(3) only where the director had a genuine, documented opportunity to contest the recommendation meaning access to an explanation of the recommendation's basis in terms a reasonably diligent non-technical director could evaluate, awareness of the recommendation's known limitations or error rates, and a real institutional avenue to depart from it without disproportionate procedural friction. This standard, adapted from the EU AI Act's meaningful-oversight requirement and from Delaware's Caremark emphasis on good-faith monitoring processes, would not require directors to become data scientists; it would require companies deploying decision-shaping AI to build the explanatory and procedural infrastructure without which independent judgment is impossible in substance, whatever its formal appearance in the boardroom.

C. Mandatory AI Risk Committees for Companies Above a Materiality Threshold

Following the logic already embedded in Sections 177 and 178 of the Companies Act, which mandate audit and nomination and remuneration committees for specified classes of company, companies above a comparable threshold should be required to constitute a board-level AI risk or technology committee, including at least one independent director with demonstrable technical literacy, charged with periodically reviewing the algorithmic-decision register, commissioning independent audits of high-impact systems, and reporting materially significant findings to the full board. This addresses the systemic capture risk identified in Part III.D by locating oversight of algorithmic inputs in a body structurally analogous to, but distinct from, the management function whose decisions those inputs shape.

D. Statutory Clarification of Non-Delegable Duty

Finally, Section 166 should be clarified, whether by amendment or by authoritative Ministry of Corporate Affairs guidance, to state expressly what is currently only inferable from general principle: that delegation of analytical work to an algorithmic system does not, without more, discharge a director's duty of care, skill and diligence under Section 166(3), and that the standard of scrutiny expected of a director increases, rather than decreases, in proportion to the materiality of the decision the system informs. This mirrors the allocation logic of SEBI's Regulation 16C, extended from regulated financial intermediaries to the board-level context, and forecloses any argument that procurement of a third-party AI tool operates as a liability shield rather than a component of the duty it is meant to serve.

VII. Conclusion

The prospect of an algorithm formally occupying a board seat remains, for Indian companies, a remote and largely theoretical concern; the Companies Act, 2013's natural-person architecture in Sections 149 and 166 is not seriously threatened by it, and this paper has argued that it should not be diluted to accommodate it. The prospect that already exists, unevenly regulated and inconsistently understood by the boards experiencing it, is quieter and more consequential: the substantive content of independent judgment migrating away from the humans who remain legally accountable for it, toward systems that owe no duty to anyone. SEBI's Regulation 16C shows that Indian regulators are capable of closing an equivalent gap decisively once they turn their attention to it, by refusing to let procurement or scale of AI adoption operate as an accountability shield. Corporate governance now needs the same clarity applied to the boardroom itself — not a new category of director, but an old duty of independent judgment given new, and enforceable, content for an age in which the analysis behind a decision and the person accountable for it are no longer reliably the same

References

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[2] Securities and Exchange Board of India (Intermediaries) Regulations, 2008, reg 16C, as amended February 2025 (India).

[3] Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, as amended February 2025 (India).

[4] Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, as amended February 2025 (India).

[5] SEBI Consultation Paper on Assigning Responsibility to Regulated Entities Using Artificial Intelligence Tools (November 2024).

[6] Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 1689, arts 14, 26.

[7] In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996); Marchand v Barnhill, 212 A.3d 805 (Del. 2019).

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