

Case management essay

Business



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Indoor Management Rule 1. Indoor management rule. Royal British Bank v Turquand; A rule was formulated to the effect that while a third party who dealt with the company was taken to be aware of the contents of that company's public documents, they were not bound to ensure that the company's internal proceedings were properly carried out. See Morris v Kanssen [1946]AC 459 at 474. " A person dealing with a company in good faith may assume that acts within its constitution have been duly performed and are not bound to inquire whether acts of internal management have been regular. 2.

Northside Developments Pty. Ltd v Registrar-General (1990) 170 CLR 146; Northside mortgaged its land to Barclays, the mortgage was executed under the company's common seal, signed by a director and counter-signed by a company secretary. The articles were not complied with as the company secretary had not been properly appointed. The other directors also had no knowledge of the mortgage and had not authorised the director to affix the company seal. When Barclays exercised its power of sale as mortgagee, after the mortgagor defaulted, a company unrelated to Northside, Northside argued that it did not execute the mortgage. Northside sued the Registrar-General who attempted to rely on the in-door management rule to prevent Northside from denying execution of the mortgage. Issue: whether Northside was bound by the mortgage. Held: High Court held that Northside was not bound by the mortgage.

The bank should have been put to inquiry and that it had failed to carry out inquiries. The nature of transaction was such as to put the bank to inquiry (that is, the purpose was unrelated to the company's business) 3. Brick and

Pipe Industries v Occidental Life Nominees(1991) 6 ACSR 464. A director and secretary of Brick and Pipe attested the execution of the deed of guarantee and indemnity.

Both were directors but the secretary had never been formerly appointed. The articles of the company required attestation to be made by a director and a secretary. The execution of the deed took place without the need of the other directors. Issue: whether the company was bound by the deed of guarantee. Held: That s129(5) had been met. That the director had actual authority to hold out that the individual who signed as secretary was the actual secretary of the company. 4.

Pacific Carriers Limited v BNP Paribas [2004] HCA 35, the High court took a broad approach to this issue. The actions of Ms Dhiri who was manager of the Documentary Credit Department of a bank. She signed two letters of indemnity addressed to the charterer of a cargo ship and fixed a special stamp commonly used by banks involved in trade finance. Under these letters of indemnity, the bank for which Ms Dhiri worked agreed to indemnify the ship charterer in respect of loss or damage the ship charterer might sustain as a result of delivering cargo without proper documentation being produced by the receiver of the cargo. When the ship was delivered without proper documentation, the ship charterer sued the bank, seeking to be indemnified. One of the arguments for the bank was that it was not liable coz Ms Dhiri had no authority to bind the bank on the indemnity.

All parties agreed that Ms Dhiri had no express actual authority to bind the bank. This was because the issuing of indemnities was the function of the

bank's guarantee loan department, not the documentary credit department. Also the bank's policies required the indemnities to be signed under power of attorney. All indemnity documents were to be signed by two people one of whom had to be an 'A' signatory. Ms Dhiri was an ordinary signatory, not an 'A' signatory. The NSWCA of Appeal held that Ms Dhiri had no apparent authority to bind the bank to an indemnity.

On appeal however, the High Court noted that a 'holding out' might result from permitting a person to act in a certain manner without taking proper safeguards against misrepresentation". The company structure presents to outsiders appearances as to authority. The organisational structure at the time was that Ms Dhiri was the bank officer to whom requests (the ship charterers) would be communicated. That response involving her signature of the letters would signify to third party agreement of what was requested. There were no procedures in the bank that she was to seek legal advice about the manner and form of the bank's signature. She was placed in a position to sign and stamp the documents but without any internal check.

Court held that the bank had made a representation about the authority of Dhiri and by failing to establish proper safeguards to protect itself from unauthorised conduct. 5. *Story v Advance Bank* (1993) 31 NSWLR 722 Mr & Mrs Story were directors and shareholders of F Pty Ltd. Mr S was the company secretary. S borrowed \$1 million to start a business from the bank and partly for household use. The bank took a third party mortgage from F company over the matrimonial home. The bank searched against the company and found that Mr & Mrs S were directors and company secretary.

The mortgage bore the seal of F company and the signature of Mr S. Mr S forged his wife's signature. After the loan was not repaid, the bank tried to get possession of the home. Held: That no employee of the bank had actual knowledge that the mortgage had not been duly executed. The statutory assumptions protected the bank.

6. Lennard's Carrying Co. v Asiatic Petroleum A ship and her cargo were lost because the ship was unseaworthy. Buyers of the cargo sued the company that owned the ship. The Merchant shipping Act gave a statutory defence to ship owners where the loss occurred without their fault. Thus attention was directed to the conduct of the company itself. There was fault of the managing director of another company which managed the ship on behalf of the shipowner. He knew or ought to have known of the ship's unseaworthiness, but did nothing to stop it going to sea.

Held: The fault of the manager-company's managing director was imputed to the ship owning co. so that it was not entitled to the exemption. Viscount Haldane said, " A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is the directing mind and will of the corporation, the very ego and centre of the personality of the corporation".

6. Brick and Pipe Industries Ltd v Occidental Life Nominees Pty Ltd [1992] 2 VR 279 All shares in Brick and Pipe Ltd had been taken over by a company belonging to a group of companies controlled by an entrepreneur, G. Brick and Pipe became a wholly owned subsidiary co. of G's company.

The board of Brick and Pipe remained with the same directors and G and his associate F were added to the Board. To make the takeover, G and F had borrowed large sums of money. In rearranging the loan and to meet requirements of the lenders for more security and guarantees, G, without the knowledge of Brick and Pipe board, caused it to give a guarantee of loans made to a company in the G group. The common seal of Brick and Pipe was used and witnessed by F as secretary and G as director. The board of Brick and Pipe had never appointed F to be secretary. But in the presence of G, a finance executive employed in the G group had told the lender's lawyers that F was secretary of Brick and Pipe.

After the financial collapse of G group, the board of Brick and Pipe refused to be bound by the guarantee. Held: That Brick and Pipe by allowing G and who controlled the parent co. to act as if he had been appointed managing director of Brick and Pipe had given G actual authority. G had implied actual authority to make representations on behalf of Brick and Pipe. When a representation was made about F and G did not intervene, G was taken to have made a representation on behalf of Brick and Pipe. So the co. was bound.

7. Insolvent Trading: Non-executive Directors ASIC v PLYMIN [2003] VSC 123 (5 May 2003), involved John Elliott, the Victorian Supreme Court did not distinguish on the evidence in the case between the knowledge of an executive director and the knowledge of a non-executive director for the purposes of liability for insolvent trading. The court said there is an increasing need for non- executive directors to ensure that they have enough information to be able to do their jobs. The Court of Appeal (2004) 48 <https://assignbuster.com/case-management-essay/>

ACSR 621 rejected the appeal of John Elliott and gave a broad view of the liability of directors including non-executive directors for insolvent trading. A director may contravene the law by not preventing a company from incurring a debt. [pic] 8. ASIC v VINES (2003) 48 ACSR The defendant was a director of GIO Insurance and also the chief financial officer of the GIO Group. The court stated that the position of chief financial officer is a recognized position in large corporations, such that there are identifiable specialized skills attaching to that office.

Consequently, the court held that evidence of what a reasonably competent chief financial officer would have done is relevant to the determination of whether the defendant breached his statutory duty of care and diligence. In relation to non executive directors there's no objective standard of a reasonably competent company director against whom the conduct of a particular director can be measured to determine whether there has been a breach of duty. Courts have explained that this is not possible given the variety of companies. All non executive directors must have those basic skills which allow a director to have basis understanding of the business of the company and be aware of its financial status. If a non-executive director is appointed to a company because of a special skill or expertise, then when he breaches the duty of care will be measured or tested by reference to the knowledge and expertise possessed by other people with that same skill and expertise. 5.

Bank of New Zealand v Fibern Pty Ltd (1992) 8 ACSR 790 D and A formed F company to hold title to their principal family home and they were appointed its directors. D without the knowledge of A caused the company seal to be
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affixed to a mortgage and guarantees in relation to debts owed by other companies controlled by him. The affixing of the seal was attested by D and his son, who purported to be secretary of F company although he had never been appointed.

Held: The company was liable under s68A. Court rejected the argument that A had by acquiescence given D implied actual authority to the extent of the usual authority of the managing director. Court considered that the connection or relationship of BNZ with Fiberi was such that BNZ ought to have known that D did not have the authority of Fiberi to execute the guarantees on behalf of Fiberi in the way that they did. 9. Crabtree -Vickers Pty Ltd v Australian Direct Mail Advertising (1975) 133 CLR 72 The main issue was whether a purchase order signed by an employee bound the company where the employee purported to act on the authority of a person who had been appointed managing director. The company had limited the actual authority of the managing director in such a way that the managing director did not have actual authority to make the purchase in question. Because he had been appointed managing director there was a representation that he had the usual authority of a managing director.

Under the usual authority the managing director, would have had authority to sign the purchase order. If the purchase order had been signed by the managing director the company would have been liable because of his apparent authority. Held: because the managing director lacked actual authority to sign the purchase order, he could not represent that anybody else had the company's authority to sign. Company not liable on the purchase order. If there had been evidence that the board had acquiesced in <https://assignbuster.com/case-management-essay/>

past transactions in the managing director exceeding the limited actual authority expressly given to the MD then that would have supported a finding of implied actual authority.

The implied actual authority would have enabled the MD to make a representation on behalf of the company that the employee had authority. Interests of the company 0. *Park v Daily News Ltd* The company published two newspapers that had been making substantial losses over a long period. The directors proposed to sell the company's newspapers and to use the proceeds to make ex gratia payments to employees who were going to lose their jobs due to the sale. A minority shareholder challenged the proposed payments. *Plowman J* agreed with the minority shareholder that there was no duty on directors to have regard to the employees' interests. Held: Not in the best interests of the company as the company would not benefit from the gratuitous payments to former employees.

P183 BOROS 11. *Equiticorp Finance Ltd (in Liq) v Bank of New Zealand* (1993) 32 NSWLR 50 *Equiticorp* comprised companies located in NZ and Australia. Mr Hawkins was director on the boards of many companies in the group and was described as the groups chief executive with general authority for the conduct of the group's business. The BNZ had provided a loan of \$200 million to *Uruz*, one of the companies in the group to finance a takeover. The holding company had guaranteed the loan. There were difficulties in making the takeover and BNZ was concerned about the level of exposure to the *Equiticorp* group. Mr Hawkins wanted to restore good relations with BNZ.

He applied the liquidity reserves of other companies to discharge the debt. Two of the companies challenged the payments as having been made in breach of the directors duties to those companies. Clarke J and Cripps J held that there was no breach of the duty to act bonafide in the interests of the company as a whole. The directors believed that the welfare of the group was tied up with the welfare of the individual companies in the group. If the guarantee had been called on that would have been disastrous for each company.

12. Charterbridge Corporation v Llyods Bank[1970] Ch 62 The test that was applied was whether an intelligent and honest person in the position of the director of the company could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company. Compare with Walker v Winbourne. 13.

Walker v Winbourne- the principle that directors must not act in disregard of the interests of the company. Each company in the group must be treated as having its own interest even when they are wholly owned subsidiaries. And directors have to consider interests of creditors of each member company. Dividend rights Preference shareholders are presumed to carry a right to cumulative dividends. This means that if a company does not pay full % of dividends in any year the preference shareholders will be entitled to have the amount of the deficiency made up in a later year before any dividend is paid on ordinary shares. Webb v Earle.

14. Will v United Lankat Plantation Co Ltd [1914] AC 11A company needed money and decided to issue new preference shares carrying the right to a

cumulative preferential dividend of 10% per annum. The resolution provided that the shares should rank for dividend and capital in preference to other shares.

A preference shareholder claimed entitlement to share in profits of the company after he had received his preferential 10%. The House of Lords rejected it. If a share is given a preference as to payment of dividend ahead of other shares, it is presumed that it carries no right to share in profits available for distribution after the preferential dividend has been paid. 5. *Re Plashett Pastoral Com Pty Ltd*.

It was stated that where the terms of issue set out the rights attached to a class of shares to participate in the company's property in a liquidation, prima-facie, the rights set out are exhaustive. 16. *Burland v Earle*. Where there is no rule set out regarding the distribution of dividends, there is no assumed right to arrears of preferential dividends and court will not intervene to order the payment of a dividend. 17. *Greenhalgh v Ardenne*[1946] 1 All ER 512.

A company had issued ordinary shares of 10 shillings each and other ordinary shares of 2 shillings each which ranked pari passu (equally with existing shares) for all purposes. Every member had one vote for each share held. *Greenhalgh* held enough 2 shilling shares to block any special resolution. The holders of 10 shilling shares by ordinary resolution subdivided each 10 shilling share into five 2 shilling shares each ranking pari passu with the 2 shilling shares issued previously. Held: the subdivision did not fall within the

variation of rights provision in Table of A of the relevant Act. *Re Saltdean Estate Company Ltd* [1968] 1WLR 1844.

A reduction of capital, whether in the form of return of capital and cancellation of shares or other reduction has been held not to fall within a variation of rights provision of a constitution unless expressly deemed to be a variation. The reduction is a fulfillment of rights rather than a variation.

Duty to act for a proper purpose 18. *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 82. Howard Smith and Ampol wanted to takeover RW Miller, a ship building company.

The directors of Miller issued further shares to Howard Smith reducing Ampol's stake in the company. The directors wished to facilitate Howard Smith's takeover bid as it intended to pay shareholders more value for their shares. Issue: whether there was proper exercise of the power by the directors .

Held: that although there was no personal gain, or advantage the directors improperly exercised the powers. 19. *Kokotovich Constructions Pty Ltd v Wallington* (1995) 13 ACLC 1, 113 Mr K & Mrs W were the only shareholders and directors of the co. There was a close relationship between them. Mr K had 3 shares, one of which was a governing director's share. Mrs W, who was company secretary had 2 shares. After the relationship broke down, Mr K called an extraordinary general meeting which passed a special resolution removing Mrs W as director and company secretary. Mr K then called another meeting and allotted 9795 shares to his children supposedly to raise

funds for the company although the evidence showed that no cash was ever paid for the shares.

Held: That the allotment was made for an improper purpose and should be set aside. It's dominant purpose was to dilute and devalue Mrs W's shares so that her proprietary rights became worthless. It was for an improper purpose. 10. *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285 The constitution may be framed such that it gives a governing director authority to exercise a power to allot shares for the purpose of diluting the voting power or other rights of existing shareholders. 10. *Metropolitan Fire Systems Pty. Ltd.*

v Miller [2007] 399. Look it up from: www.austlii.edu.au. Read the cases referred to in Topic guide 4 and 5.

11. *ASIC v PLYMIN; ELLIOT v ASIC; HALL v POOLMAN* 12. *Regal Hastings* [1967] 2 AC 134n. Directors of R company formed a subsidiary company to acquire certain leases. The subsidiary company was required to increase its paid up capital. Company R did not have sufficient capital to assist the subsidiary. The directors of R took up shares.

When the shares in both companies were sold, the directors made profits and the new owners of the company claimed that the directors were accountable to the company for the profits they had made. 13. *ASIC v VIZARD* (2005) 219 ALR 14. Look up cases on directors duties 15.

Disclosure of conflict of interest s191; s194 of the CA.