

1. The minimum standard of financial competence and knowledge

- Directors were found liable for insolvent trading in circumstances where they had not obtained at least a general understanding of the business of the company and the effect that a changing economy might have on that business
- The effect of these cases was to establish that directors must possess at least a **minimum standard of financial competence and knowledge** of the company's affairs so that they can reach an informed opinion about a company's financial position

2. Objectively assessed the duty of care, skill and diligence (CL position)

AWA v Daniels (1992)

- Finding that the question as to whether executive directors had performed their duty to act with care, skill and diligence was a question which needed to be **objectively assessed**
- The executive directors were held liable. By contrast the non-executive directors were entitled to rely on management (including the managing director) in the discharge of their duties and were not held liable [old law]

Daniels v Anderson (1995)

3. Directors duties assessed objectively and ignorance by directors of internal problems will not be a defence against liability for negligence:

1. Directors should acquire at least a **rudimentary (basic) understanding of the business** of the corporation and should become familiar with the fundamentals of the business
2. Directors are under a **continuing obligation** to keep informed about the activities of the corporation
3. Directors **may not shut their eyes to corporate misconduct** and then claim that because they did not see the misconduct, they did not have a duty to look. The sentinel (guard) asleep at his post contributes nothing to the enterprise he is charged to protect
4. Directorial management does not require a detailed inspection of day-to-day activities, but rather a **general monitoring of corporate affairs and policies**. Accordingly, a director is well advised to attend board meetings regularly
5. While directors are not required to audit corporate books, they should **maintain familiarity with the financial status** of the corporation by a regular review of financial statements which may give rise to a duty to inquire further into matters revealed by those statements
6. A director is not an ornament, but an essential component of corporate governance. Consequently, a director **cannot seek protection behind a paper shield** bearing the motto 'dummy directors'
7. The concept of a sleeping or passive director has not survived and is inconsistent with the requirements of current company law
8. If a director feels that he or she has not had sufficient business experience to qualify and to perform the duties of a director, he or she should either **acquire the knowledge** by inquiry, or **refuse to act** (that is, resign)
 - a. Understand key **financial reports** and statements e.g. company profits and loss account and balance sheet
 - b. That case established the proposition that there is no definite difference in the standard of care applicable to executive and non- executive directors.

4. Factors: standard of care

- What constitutes reasonable care regard must be had to factors such as the type of company, the size of the company and the distribution of functions within the company

5. Non-executive directors & particular experience & skills

ASIC v Rich [2004] – One.Tel

- ASIC argued that a reasonable chairman of the company in One.Tel's circumstances would have **known about the group's financial position**
- An action which a reasonable chairman would have taken in One.Tel's circumstances would have been **promptly to recommend to the board that the group cease trading** or appoint an administrator unless that cash injection was obtained
- Mr Greaves was not only a NON-EXECUTIVE chairman of the company but he was also chairman of One.Tel's **finance and audit committee**. (these skills are relied upon – not merely procedural responsibilities as chair)