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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1, 2018				

LWZ315 – Corporations Law	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<p>Answer ALL questions. Each question is worth 20 marks. Total 60 marks Suggested Time Allocation is 40 minutes for each question</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
No calculators are permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 16 Page Book 2 x Scrap Paper	

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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Question 1

Smart Me Electronics Ltd (“SMEL”) an ASX listed corporation, operates an Australia wide business selling consumer electronics. Its goods are primarily imported from overseas. The Board of SMEL is comprised of:

1. Managing Director – Abe, who has spent most of his working career at SMEL and worked his way through the ranks while studying a Bachelor of Business (majoring in accounting) part-time. He has 25 years experience in every aspect of the business operations.
2. Non Executive Chairwoman – Brigitta, who has 30 years of experience in various executive and non-executive director positions. She chairs a number of other boards. She holds a Bachelor of Commerce and a Masters of Business Administration.
3. Non Executive Director - Elizabeth – who is an electronics engineer (Bachelor of Engineering in Electronic Engineering). Her responsibilities are primarily the strategy of sourcing, development and evaluation of new products. Elizabeth spends much of her time overseas at product fairs and evaluating the manufacturers who supply SMEL’s own branded goods.
4. Non Executive Director - Fred – a former law firm partner who specialised in product liability. He was invited to join the board after SMEL settled a number of significant claims for personal injury and property damage arising from the sale of SMEL branded smart phones that spontaneously combusted. He advised SMEL to establish a separate fund (“the Fund”) to compensate the victims of the smart phone combustion incidents. His responsibilities are primarily the strategies regarding the management of risk, legal compliance and litigation resolution.

David is the Chief Financial Officer of SMEL and was responsible for the preparation of all financial information. He is a trained and qualified accountant. He initially prepared the financial statements and executive summary (“the First Report”) on the basis that all liabilities of the Fund had been met, and the Fund could be closed, returning \$2 million to SMEL. (The board had discussed these outstanding claims in detail at the previous month’s meeting and approved a strategy to expedite settlements.) On further review David realised that approximately 200 claims with an anticipated settlement value of \$1.5 million were still in progress. He prepared revised financial statements (“the Second Report”) that correctly stated the Fund’s financial position and he updated the external auditors.

The board recently met to approve SMEL’s annual accounts. The board papers comprised 2 large folders. The first folder contained:

- an executive summary of the financial statements,
- the audit reports and the financial statements; and
- detailed spreadsheets providing the underpinning details for each area of responsibility.

All documents stated that they have been prepared in accordance with the relevant accounting standards. The second folder contained documents on various other issues for the board’s consideration.

The board papers were compiled in accordance with Abe’s instructions and in close consultation with Brigitta. Abe & Brigitta diligently read and checked all of the papers for the meeting several times prior to their distribution. Unfortunately they failed to notice Sara Sloppy, Abe’s secretary carelessly included the First Report, instead of the Second Report (which was the version they had approved for distribution).

The First Report showed a \$2 million asset in the fund when it should have shown a \$1.5m liability and a remaining reserve of \$500,000. The error was easily detected on a close reading of the spreadsheet data in respect of the compensation claims and the Fund, but not easily detected otherwise.

Elizabeth flew in from China on a red eye flight the day of the Board meeting. She received her copy of the board papers a few hours before the meeting. She carefully read as much as she could, paying close attention to the financial information. She carefully checked the relevant spreadsheets for errors in her own areas of responsibility. She did not have time to consider the underlying spreadsheets in other areas. She assumed that in accordance with the board's written policy and procedures on allocation of responsibilities, the other directors would carefully check the spreadsheets in their own areas of responsibility.

The other directors received the board papers a week before the meeting. Fred, carefully read only the executive summary of the financial statements. He scanned the financial statements themselves and didn't read any of the spreadsheets. He relied on the external audit and internal accounting teams to ensure correctness.

The board approved the accounts. The error in the accounts was discovered by a media analyst. In response the board took immediate and appropriate steps in accordance with the continuous disclosure regime. ASIC investigated and now seeks your advice as to whether it can successfully take action for breach of duty under the Corporations Act against:

1. Abe;
2. the non-executive directors;
3. David; and
4. Sally

20 Marks – suggested time **40 minutes**

Question 2

Sail Shade Pty Ltd ("SSP") manufactured and sold shade sails and awnings that provided shade protection to areas such as carports, verandas and pools. The directors and only shareholders of SSP are John and Joan, a husband and wife team.

During the recent stormy summer SSP received a large number of customer complaints that its shade sails had become torn or detached. The flapping edges and attached mounting clips of the damaged sails had caused damage to many customer's cars, windows and buildings.

SSP arranged testing of several samples of the failed shade sails. The test results confirmed that:

1. The fabric did not meet Australian Standards and was not of sufficient strength and durability to be used externally;
2. The joins and edges of the shade sails had faulty stitching, which made it very likely that the shade sails would become detached.

The fabric was manufactured overseas, and unfortunately the Australian importer and supplier went into liquidation. John and Joan became concerned that they may face legal action from their disgruntled customers after they received a statement of claim for \$6,000 from Cara Careful for the damage caused to her car by a faulty sail. Joan had inadvertently failed to pay the insurance premium on SSP's product liability insurance, so there was no insurance available to pay for any claims.

SSP's only employee, Harry Halfgood performed all of the stitching in the manufacture of the sails. Joan and John had repeatedly warned him about sloppy workmanship, however, they were too worried about an unfair dismissal claim to terminate his employment. Harry had been employed by SSP for 20 years. He had never taken any long service leave, and had rarely taken annual leave. Harry said he was 'banking' his leave for his retirement. The value of Harry's accrued leave is approximately \$120,000.

SSP's accountant, Terry Toosmart arranged:

1. the registration of another company, called Top Shade Pty Ltd (TSP), of which John and Joan are shareholders and directors
2. the transfer of all SSP's assets to TSP;
3. payment of \$30,000 by TSP to SSP for the assets (mainly plant and equipment at market value);
4. a labour hire agreement between SSP and TSP for the provision of Harry's sewing services to TSP. SSP was reimbursed by TSP for the exact amount of Harry's weekly wages; and
5. repayment to John and Joan of the directors' loans legitimately made by them to SSP several years before.

The effect of the transactions was that SSP became a company with no assets or substantive business. Do the arrangements put into place by Terry Toosmart successfully protect John and Joan, and TPL from claims by:

1. Harry, regarding his accrued leave; and
2. Cara, regarding her claim for damages.

Could Terry Toosmart face any consequences for his role in advising and affecting these transactions?

20 Marks – suggested time 40 minutes

Question 3

Carlos, Ferdinand and Giorgio are directors and shareholders in Highrollers Pty Ltd (HPL). HPL's constitution is comprised of the Replaceable Rules. Each of the directors holds 30 shares. The remaining 10 shares are held by Anneke who received them 5 years ago in return for investing \$100,000 in HPL. At the time Anneke was Carlos's fiancé and he assured her that the investment would provide for her future and he would always look after her interests. A year later, Carlos broke off their engagement and soon after married someone else.

Since then HPL has successfully established and operated a casino business and now has assets of \$20 million and liabilities of \$10 million. It had an operating profit of \$5 million last financial year. Carlos, Ferdinand and Giorgio are all employed by HPL and receive extremely lucrative salaries, including lavish performance bonuses. HPL regularly pays for them and their families to travel first class to conferences and trade shows on various business related topics.

Anneke has not received a dividend since she acquired her shares. The directors told her that the surplus assets and profits are required to build up working capital for further development of the casino business. Anneke is unhappy that her funds are tied up in HPL and she is not receiving a return. She seeks your advice as to:

1. whether HPL is legally able to declare a dividend;
2. if so, whether she can force HPL to pay her a dividend; and
3. what action (if any) she can take to obtain a return on her investment or otherwise improve her position.

20 Marks – suggested time **40 minutes**