BUSINESS LAW ASSIGNMENT

Student’s Name

Course

Professor’s Name

University

Date

**HYPOTHETICAL ILAC QUESTION:**

It is clear from the case that the main issue is molarity. Brad is a very irresponsible partner of the business. He made misleading information when he told Elena and Jack regarding the illiquidity of IDesign. As a result , he made the company Digital10 to make the acquisition of IDesign regardless of the fact that it was not a profitable business. In addition , instead of working on improving the company , Brad went further to waste more money on drugs and gambling . This led to the ultimate liquidation of Digital 10. According to the Corporations Act 2001, directors and officers in an organization ought to discharge their duties in a way that is considered as beneficial to the organization to the company .

In this case , Brad was not able to discharge his obligations for the benefit of the company and as a result he gave way to various self-dealings thus leading to the downfall of the company . In addition , Elena had suspicions regarding Brad’s activities but chose not to disclose anything to Jack which demonstrate neglect on her side. Therefore, we can conclude that Brad was liable for the liquidations of the company . Elena was also liable for turning a blind eye on her suspicions.

ASIC was encouraged to take a number of administrative , civil and criminal actions in relations to director misconducts . A cooperative framework to deal with ASIC might benefit a person in multiple ways .For instance; early notification or a cooperative approach during such an investigation will usually be relevant to the consideration of what kind of actions would be necessary to pursue and what kind of remedies would be better to seek. In any case involved by ASIC , the court always offers due credit for any cooperation received from the person or entity against who such proceedings are brought .

**Question 1**

**(a)**“Digital 10” is not registered but “IDesign” is already registered.

**(b)** Name: VOCATION LIMITED

ACN: 166 631 330

Locality of registered office: NORTH SYDNEY NSW 2060.

**Question 2**

1. The court determined that Vocational Limited breached its obligation under section 180 (1) of the Corporations Act by failing to work out a degree of care and diligence that they could have exercised reasonably during an appropriate period to withhold and suspend evidence and further determine whether the company was essential to disclose such evidence in compliance with Listing rule 3.1. However , the court didn’t find the company as a liable accessory for the contravention of section 674(2) (Finney, 2017). The court further turned down the contention by ASIC that understanding of the fundamental facts , rather than knowledge that withholding or suspending information was substantial on the grounds that it was not adequate to establish liability under section 674(2A) of the Corporations Act .
2. **Lodgment of a defective Cleansing Notice** -In relation to share placement , Vocation wen ahead and lodged a “Cleansing notice” in compliance with Section 708A(5), which contained misleading information concerning the company’s compliance with disclosure obligations. Nevertheless , the court declined to consider Vocation as liable for this , as there was no sufficient evidence that the defendant had prior knowledge of the matter , as required by the law. Generally, is was found that the diretors failed to properly inform themselves of the key issues by constantly relying in information provided to them by senior management .

**(c)** Vocational Limited made misleading information as well as deceptive statements while at the same omitting information that was necessary for disclosure . As a result, it went against the constant disclosure requirements under the corporations Act 2001(Cth). Second, the company made statement that were not accurate resulting to losses particularly on the persons that had bought shares during the period between 27 November 2013 and 4 December 2014

**Question 3:**

**(a)**Mark Hutchinson (CEO), John Dawkins (Chair), and Manvinder Gréwal (CFO).

**(b)** ASIC argued that Vocation acted in contravention of s 674(2) of the Corporations Act 2001 (Cth) by not being notified about the concealment and suspension information.

**Question 4:**

1. Mark Hutchinson was the CEO of the company and thus he was in a better position to ensure that everything went the right manner .One of his major responsibilities was to offer the board with prompt and accurate information that ASX.
2. Yes, A director can be considered as liable under s180 for a company’s breach of the Act even if they don’t have actual familiarity regarding the infringement . This is a lesser threshold than other provisions of individual liability such as section 674(2A).

In relation to s 180 and the relevant findings of breach :

* It is important for a CEO to adequately understand the nature as well as the scope of various business issues.
* The management ought to provide the board with the necessary records that would enable the board to gather appropriate information . Such information would assist the board to discharge its duties .
* The management must further analyze the information more critically and scrutinize all the assumptions based on the guidelines provided.

**Question 5:**

1. The business judgement rule is only pertinent in only one corporations Act – duty of care and diligence . Other requirements such as section 180(2) often lead to liability issues for the managements but the judgment rule is not applicable. A new wide-ranging defense can be used to overcome such limitations together with those of other provisions thus creating an environment where reasonable risk taking is encouraged .
2. In determining the case , the court looked into the decision In ASIC v Fortescue Metals to affirm that verdicts regarding compliance with the requirement of the corporations Act , . This included the choice of making the right disclosure as part of business judgement defense. It was determined that irrespective of whether the rule was applicable , it was the obligations of the director to ensure that everything was conducted properly and accurate documentation.