

# LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

## CONTRACTS

**TIME: Three Hours**

This paper consists of six questions.

Candidates are required to attempt any five questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **5** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Substantial credit will be given to concise well-reasoned answers based upon principles which are clearly stated. Further credit will be given where principles are properly supported by reference to decided authorities.

**Permitted Material:**

**This is an open book exam. Apart from books borrowed from any University of Sydney library, candidates may refer to any other books and printed or handwritten materials they have brought into the exam room.**

**As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.**

*This examination should not be relied on as a guide to the form or content of future examinations in this subject.*

### **Question 1**

West, the owner of a shopping centre in Sydney's eastern suburbs, leased one of the centre's shops to Field for use as a florist shop for a period of four years. Clause 26 of the lease stipulated that 'neither party to the lease is liable to the other for breach of contract or misrepresentation in relation to any pre-contractual statements unless such statements are expressly dealt with as terms of this lease'.

At the time that the lease was executed, West verbally assured Field that he would not lease any other shop in the centre to another florist. However, two years later, West leased a shop in the centre as a florist shop to Harper. Field suffered a dramatic decline in business and, as a result, he was forced to close his shop. He was able to quickly find a new tenant to take over the lease who, with West's consent, opened up a coffee shop on the premises.

**Field now seeks your advice as to the following:**

- (a) Whether he can bring any claim against West for breach of contract;**

**(10 marks)**

- (b) Whether he can seek any relief against West on the basis of principles of equity.**

**(10 marks)**

**(20 marks)**

### **Question 2**

Bill owns a home unit in Bondi. On 24 February 2009 he sent a letter to Alan in which he wrote the following:

I want to sell my Bondi unit. If you want to buy it, the price can be as determined by Steve, a highly regarded valuer in Bondi, and the terms of the sale can be those in the standard contract used for conveyancing transactions in New South Wales. If you agree to buy the unit we can later sign a fully legalised contract, drawn up by our solicitors, that spells out these terms and conditions.

On 2 March 2009 Tom approached Bill with a very attractive offer to buy the Bondi unit, which Bill accepted. Tom and Bill entered into a contract of sale on that day. Later on that day Bill posted a letter to Alan in which he advised Alan that the Bondi unit had been sold to Tom.

On 3 March 2009 Alan posted a letter to Bill in which he agreed to buy the unit on the terms set out in Bill's letter of 24 February 2009.

On 4 March 2009 Alan received Bill's letter of 2 March 2009.

On 5 March 2009 Bill received Alan's letter of 3 March 2009.

**(Question 2 continues)**

**(Question 2 continued)**

- (a) Alan seeks your advice as to whether he has an enforceable contract with Bill for the sale of the Bondi home unit.**

**(15 marks)**

- (b) How, if at all, would your advice differ if Bill's letter of 24 February 2009 also included the following additional sentence: 'If you want to buy the unit, let me know before 6 March'?**

**(5 marks)**

**(20 marks)**

**Question 3**

Hot Exhausts Pty Ltd (Hot Exhausts) in Penrith manufactures custom exhaust pipes for V-Twin motorcycles. They have been contracting with Speedy Parcels Ltd (Speedy) to distribute mail-order custom exhaust pipes all over Australia and the world for nearly 10 years. In Australia, Speedy sometimes uses Trust Us Couriers Pty Ltd (Trust Us) to deliver exhausts to customers when they cannot handle the volume of parcels to be delivered. Trust Us have a very good reputation for fast and reliable service, which is why Speedy use them for their Australian deliveries. Hot Exhausts are aware that Speedy uses Trust Us on occasions. On each occasion that Hot Exhausts contracts with Speedy, clause 35 of the contract stipulates as follows:

The carrier shall not be liable in respect of the loss of or damage howsoever caused to any goods while such goods are in the custody or under the control of the carrier.

In the definitions section of the contract, the word 'carrier' is defined as 'Speedy and/or any other person engaged by Speedy to carry the goods'.

On a large delivery worth \$55,000 to a motorcycle shop in Wollongong, Trust Us carelessly left the back door of their van open, and the entire order of chrome exhausts flew out of the door and onto a tar road, scratching and denting all of the exhausts to the point that they cannot be used. Hot Exhausts has commenced proceedings against Trust Us in New South Wales seeking compensation for the damage to the chrome exhausts.

**Trust Us seeks your advice as to whether it can rely on clause 35 as a defence to any liability for compensation it may have to Hot Exhausts.**

**(20 marks)**

**(Question 4 follows)**

#### Question 4

Mark entered into a contract with Harbour Pleasure Cruises Ltd (HPC) for the purpose of hiring one of HPC's cruise boats, *The Himalaya*, between the hours of 7pm on 31 December 2008 and 3am on 1 January 2009. At the time of contracting Mark advised HPC that the purpose of the hiring was so that Mark and his wife Wendy could have a romantic evening on Sydney Harbour in celebration of their tenth wedding anniversary, and so that they could also have a prime position to view the fireworks display that was to be held that evening as part of the celebrations welcoming in the year 2009. The agreed hiring fee was \$5,000, which was paid on the date of signing the contract. In return for that fee HPC was to provide the cruise boat, *The Himalaya*, a licensed captain to drive the boat, and a chef to prepare a set meal for Mark and Wendy.

When Mark and Wendy turned up at the appointed time to begin their cruise on *The Himalaya*, HPC advised them that they were unable to carry out their contract with Mark because they had hired the boat to another person earlier that day.

**In relation to the above facts:**

- (a) What damages, if any, would Mark be able to recover from HPC for breach of contract?**

**(8 marks)**

- (b) Does Wendy have any claim against HPC?**

**(5 marks)**

- (c) Would your advice in (a) above be different if, on the day that Mark and Wendy turned up to begin their cruise, they were advised by HPC that the cruise could not take place because on the previous day *The Himalaya* had been destroyed by terrorists?**

**(7 marks)**

**(20 marks)**

#### Question 5

**Answer BOTH parts of this question.**

(a) After a fairytale romance, Jack and Jill married. Jill had been a partner at a major multi-national accountancy practice and retired to have a family with her beloved Jack. Jack was a diamond trader and had done well for himself in the boom years around the turn of the century, but in recent years things had not gone so well for Jack and his business.

**(Question 5 continues)**

**(Question 5 continued)**

Jill and Jack own a waterfront home in Sydney, two luxury European cars and a holiday home in Surfers Paradise. About five years ago Jack asked Jill to execute documents for a mortgage in favour of his bank to guarantee a loan for his business. Jack told Jill that this was a temporary safeguard and not to worry. Jack had Jill execute four more documents over the following four years for the same purpose. In each case their properties and cars were security for the loans. Jill was busy with her pregnancies over that period of time and preoccupied with one of their sons who had required a number of operations during the first couple of years after his birth.

A few months ago Jill received notice as joint tenant of the real estate and cars that the bank was about to foreclose unless Jack's debt, now totalling just over \$2 million, was paid back to the bank. Jill claims that she did not know the extent of Jack's indebtedness and that she did not know the amounts of money involved in any of the mortgages she had signed.

**Jill seeks your advice as to whether she is bound under the general law by the guarantees she has signed. In answering this question you should ignore any special statutory provisions that might be relied upon by Jill.**

**(10 marks)**

(b) Cameron contracted on 2 September 2008 to sell his Rouse Hill property to Stuart. A settlement date of 2 February 2009 was stipulated, with time being of the essence. The reason for the February settlement date was that Stuart wanted vacant possession of the property, whereas Cameron had a tenant in the property whose lease expired on 31 January 2009. It was expected that the tenant would vacate the property by the end of January 2009 so that Cameron could transfer the property to Stuart with vacant possession on the stipulated settlement date. On 27 January 2009 Cameron advised Stuart that he could not settle the sale of the property on 2 February 2009 because the tenant had stated that he would not leave on 31 January 2009, but would await a court order for his eviction. Cameron further advised Stuart that he would be able to settle the sale as soon as the tenant left the property.

**On the basis of the above facts:**

- (i) Could Stuart have immediately terminated the contract following the telephone call from Cameron on 27 January 2009?**

**(5 marks)**

- (ii) Would your advice in (a) be different if at the time of the telephone call Stuart had no funds to enable him to complete the contract and furthermore had no prospects of having the necessary funds by 2 February 2009?**

**(5 marks)**

**(20 marks)**

**(Question 6 follows)**

**Question 6**

'The rule in *Stilk v Myrick* (1809) 170 ER 1168 is no longer good law. Indeed, there is no longer any need for consideration to support a promise to vary an otherwise valid contract.'

**Discuss.**

**(20 marks)**

**END OF PAPER**