

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

CONTRACTS

TIME: Three hours

The paper consists of **six** questions. Candidates are required to attempt any **five** of these 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 **five** 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 a 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 materials:

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

Simon took his hand-made Italian shoes and his wife's Prada handbag for repairs to Elvira, a well known repairer of leather goods that his family had used for many years. As usual, Simon was handed a docket which, as usual, he placed in his wallet without reading. When he returned to collect the goods the following week, he discovered that his shoes were stained and his wife's handbag was missing. The shop assistant recalled having given the handbag to another customer who had lost her docket. No explanation was offered for the stained shoes. Incensed, Simon demanded compensation. Elvira refused, referring Simon to a clause on the docket which read:

Elvira will not be liable for any loss or damage to any goods left for repair howsoever such loss or damage may be caused.

Elvira also pointed out that the same words were printed on a large sign on the wall. The sign had obviously been there for some time. Simon protested that he had never read either the sign or the docket.

Simon seeks your advice as to his prospects of being able to successfully sue Elvira for compensation for the loss of the handbag and stains to the shoes.

(20 marks)

Question 2

Borgia Constructions Ltd (BC) contracted with Dural Nurseries Ltd (DN) to construct 20 large glasshouses, with construction to be completed by 1 September 2008. This date was crucial to DN, as time was required for the glasshouses to be stocked for the busy summer sales season. Thus the contract provided for liquidated damages to be paid by BC in the event of late completion. BC engaged Ace Developments Ltd (AD) as its sub-contractor to design and build the essential steel frames for the glasshouses at a contract price of \$40,000. The \$40,000 was paid upon the signing of the sub-contract. However, it was soon realised that AD had seriously under-quoted on its sub-contract with BC, to the extent that it ran out of funds well before completing its obligations to BC. AD then advised BC of its predicament, and said that it would be unable to continue. BC, aware that engaging an alternate sub-contractor would result in delays in the glasshouse construction, and inevitable liability to DN under the liquidated damages clause, suggested to AD that AD should continue the work, and that in return BC would pay AD an additional \$20,000. AD accepted this proposal, and BC immediately paid AD \$5,000 of the promised additional funds. AD completed its obligations under its sub-contract with BC, enabling BC to complete the construction of the glasshouses by 1 September 2008.

- (a) BC now refuses to pay AD the remaining \$15,000, claiming that AD provided no consideration for the promise to pay the additional money. AD seeks your advice as to whether BC's claim is correct.**

(Question 2 continues)

(Question 2 continued)

- (b) What would your advice be if BC had agreed to pay the additional \$20,000 only after AD had told BC that, unless BC paid this additional amount for work under the sub-contract, AD would abandon the work as it had a more attractive contract elsewhere to start upon immediately?**

(20 marks)

Question 3

Stackhouse was the captain and star player for the Pistons basketball team in the national competition. His contract with the Pistons was to captain and play for the club for three seasons at \$1 million per season, with a bonus of \$5,000 for each time he scored a three-point basket. Stackhouse is one of the major sporting stars in the country, largely due to his ability to score baskets by shooting from inside his own half. Barkley, a local car dealer and fanatical supporter of the Pistons, promised Stackhouse a new BMW for each of the three seasons that he played for the Pistons.

In the first year of his contract, Stackhouse led the Pistons into the Grand Final. On the day before the Grand Final he took delivery of his first BMW from Barkley. With only a few minutes to go in the Grand Final, the Pistons were comfortably ahead. In a stoppage in play, the Pistons' coach told his team to 'do nothing out of the ordinary', and to play steady basketball, with the aim of playing out time for an easy win. Despite his coach's instructions, Stackhouse decided that the fans needed some entertainment during the last minutes of the game. On each of the next four occasions he received the ball he tried to score a basket from inside his own half. Each time he failed, and the opposition team regained possession and scored. With only seconds remaining in the game the Pistons trailed by two points. Stackhouse remained calm, and upon receiving the ball with just a couple of seconds to go he took a shot for a three-point basket from inside his own half which was successful, thereby winning the game for the Pistons by a single point.

Amid the euphoric celebrations on the court, Radman, the owner of the Pistons, was told by the coach that Stackhouse's play in the last minutes of the game had nearly lost the Pistons the Grand Final, and that by taking shots from inside his own half, Stackhouse had acted against the coach's instructions. Radman walked over to Stackhouse, and in front of his team-mates, reporters and the media shouted to Stackhouse:

You selfish egomaniac! Your self-centred performance out there was outrageous. Show-ponies like you have no part in this organisation! Get the hell out of here! You're fired!

(Question 3 continues)

(Question 3 continued)

Stackhouse cleaned out his locker, collected his clothes and playing gear and was escorted out of the premises by security guards.

Television cameras recorded all these events and they were seen by millions of viewers in what was the highest rating television program in the history of sports broadcasting. The events were also replayed many times over the following weeks. Stackhouse fell into a deep depression and was forced to seek psychiatric counselling for the next two months.

Stackhouse then received an offer of \$900,000 from the Hawks for the next season. He accepted the offer, but the following day he was severely injured in a motor vehicle accident which left him unfit for play for the whole of that season. The Hawks cancelled his contract, as they were entitled to do under the provisions of the contract. The following year, fully recovered and reinvigorated, Stackhouse returned to basketball and was signed by the Bears for \$800,000 per season for two seasons.

Stackhouse seeks your advice as to what contractual damages he might be able to recover from the Pistons, and whether these might include damages for the humiliating manner in which he was dismissed and the consequent psychiatric illness he had suffered.

(20 marks)

Question 4

Answer BOTH parts of this question.

- (a) Robert entered into a contract with Assets Managers Ltd (Assets) who were investment managers. Under the terms of the contract Assets were to invest \$2 million for Robert on the stock market. In accordance with the contract, Assets bought shares worth \$2 million in Skase Mining Ltd (Skase). One month after the purchase of the shares, their value fell sharply. Robert directed Assets to sell the shares. The shares were sold for \$1.5 million, and the sale proceeds were forwarded by Assets to Robert.

Section 1 of the *Prevention of Fraud (Investments) Act, 1982* provides:

No person shall –

- (a) carry on or purport to carry on the business of dealing in shares except under the authority of a principal's licence, that is to say, a licence under this Act authorising him to carry on the business of dealing in shares, or

(Question 4 continues)

(Question 4 continued)

- (b) in the capacity of a servant or agent of any person carrying on or purporting to carry on that business, deal or purport to deal in shares except under the authority of a representative's licence, that is to say, a licence under this Act authorising him to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force.

Section 2 of the *Prevention of Fraud (Investments) Act* stipulates that for 'any and every breach of the provisions of section 1 of this Act' the person in breach is liable to a fine of \$20,000 and/or two years imprisonment.

At all material times in relation to Robert's contract with Assets, the latter had a principal's licence pursuant to section 1(a) of the *Prevention of Fraud (Investments) Act*. However, Christopher, the managing director of the company who actually signed the all documents relating to the investment of Robert's money, did not have a representative's licence pursuant to section 1(b).

Robert has been advised that, if it can be established that his contract with Assets is void and unenforceable, he can recover from the latter \$500,000, being the loss that he suffered on the share dealings in Skase.

Robert seeks your advice as to status of his contract with Assets.

(10 marks)

- (b) Matthew is an elderly and frail gentleman, who speaks very little English and cannot read it at all. In early 2008 he granted Larry, a property developer, an option to purchase his property at Redfern. Larry paid \$500 as an option fee. The option was to be exercised within three months of being granted. At the time of the grant of the option, Larry intimated to Matthew that he would receive another \$500 within three months. The day before the option expired, Larry's agent, Pixie, asked Matthew to sign a document acknowledging receipt of the extra \$500. Matthew signed the document, which was in fact an extension of the option for a further three months. Larry exercised the option within the extended period of time, and now seeks to enforce the option against Matthew. Matthew does not want to proceed with the transaction. Frank, who is Matthew's neighbour and also a part-time law student, tells Matthew that the extension of the option is unenforceable against Matthew because it is void at common law.

Matthew seeks your advice as to whether what he has been told by Frank is correct.

(10 marks)

(Question 5 follows)

Question 5

Answer **BOTH** parts of this question.

- (a) Monica owns and operates a small self-service salad bar in the central business district. Her business has a variety of salads and freshly squeezed juices on display, and a customer selects whatever salads he or she likes and puts them into a plastic tub. Together with any juice that the customer may have selected, the customer then proceeds to a checkout and pays a set price for the salad and, if applicable, the juice.

Bill, a first-time customer at Monica's salad bar, selects a tub of salad, but before he moves to the checkout he changes his mind and decides that he would rather have pizza for lunch. He leaves the tub of salad on the salad bar and then moves to the checkout, He tells Monica that he has changed his mind and that he does not want to buy the tub of salad.

Monica insists that he is liable to pay the set price for a tub of salad.

Monica seeks your advice as to whether Bill is liable in contract for the set price of the salad. Would your advice differ if there was a clearly visible sign adjacent to the entry to Monica's salad bar that made it clear that a customer was obliged to pay for the salad once he or she had placed selected salads into the plastic tub?

(10 marks)

- (b) Angela, Barbara and Cindy entered into a deed which stipulated that Barbara would paint Angela's garage and that in return Angela would pay Cindy \$1,500. The \$1,500 was to be paid immediately upon the execution of the deed. After approximately half of the painting work had been completed, Angela's garage was totally destroyed when the engine of a helicopter flying in the area failed and the helicopter crashed from the air directly into the garage. Angela who had not paid the \$1,500 to Cindy as stipulated in the deed now refuses to make the payment.

Cindy seeks your advice as to whether she can sue Angela under the general law to recover the unpaid \$1,500.

(10 marks)

(Question 6 follows)

Question 6

In cases of concurrent liability there are three possible approaches that the courts could take:

- (a) merge the principles of tort law and contract law into a single body of principles;
- (b) allow a plaintiff to choose between proceeding in tort and proceeding in contract;
- (c) limit the circumstances in which concurrent liability can arise.

In relation to the issues of remoteness and contributory negligence, which of these approaches has been adopted by the law? Which of these approaches should the law adopt?

(20 marks)

- END OF PAPER -