

# LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

## COMMERCIAL TRANSACTIONS

**TIME: Three Hours**

This paper consists of six questions in 2 sections. A and B.

Candidates are required to attempt any two questions from each section for a total of four questions.

If more than four questions are answered, only four will be marked. If more than two questions are attempted from the same section, the last question answered will not be marked.

All questions are of equal value.

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.

**Permitted Material:**

**This is a closed book exam. No materials are permitted in the examination 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.*

## **SECTION A**

### **Question 1**

On 7 January 2008, Wayne Watson (W) delivered 150 head of cattle belonging to him, to "Salia", a property owned by Clancy Millar (CM), for agistment, for a period of 9 months, pursuant to an agreement. W had responded to an advertisement placed by the owner of Salia in a reputable rural magazine. The waybill, signed by both W and CM specified that there were 133 cows (92 of which were in calf), 1 bull and 16 calves.

In October, November and December 2008, W made demands for the return of his cattle together with all calves born during the agistment.

Finally, on 21 December 2008, CM returned 147 head of W's cattle, including the bull, to the agreed delivery yard. They were all in poor condition.

CM claimed that all of the animals were in an emaciated state when delivered to Salia, and that the missing cattle had died from various causes including:

- 38 were poisoned by urea blocks ordered by W
- 2 died during calving
- 7 died from malnutrition the day after delivery
- 9 died from disease
- 11 died from eating bale twine

W has now consulted you for advice on whether he could make a legal claim against CM for his losses, which he estimates to be \$650 per cow and \$300 per calf for the missing cattle and \$100 per cow and \$75 per calf for those that were returned in poor condition. He would also like to know what evidence would be required and his chance of successfully pursuing a claim.

**Advise W.**

**(25 marks)**

### **Question 2**

Samar Valley Orchards Pty Ltd ("Samar") is a large apricot grower in the Riverina. It regularly sells apricots into both the domestic Australian and overseas markets. Farmsales Pty Ltd ("Farmsales"), is an experienced exporter of Australian produce. It offers to find markets, arrange sales, export, and delivery, and to discharge all associated accounting and administrative functions.

In January 2008, there was a vague and casual oral agreement between Samar and Farmsales that Farmsales would sell \$200,000 worth of Samar apricots "as per sample", at the agreed price, to Freshfood Supermarket in Singapore. No other conditions were specified or discussed.

**(Question 2 Section A continues)**

**(Question 2 Section A continued)**

The apricots were picked, stored appropriately, packaged suitably by Samar, and delivered to Farmsales; who shipped them to Freshfood a week later without opening them.

Instead of receiving \$200,000 as expected, Samar received \$120,000. Farmsales explained that Freshfood had deducted \$80,000 as a "purchase discount" for a quality deficiency.

Samar is unhappy with this situation and has consulted you to see whether they can recover the \$80,000.

**Advise Samar on whether and on what legal bases it may be able to do so in each of the following situations:**

- (a) Farmsales is an agent for sale for Samar.**
- (b) Farmsales is a buyer who resells to Freshfood.**

**(25 marks)**

**Question 3**

SnowNet Pty Ltd ("SnowNet") entered into an oral agreement with Technic Time Pty Ltd ("Technic") for the latter to build a Wireless Network Infrastructure for SnowNet in the Snowy Mountains region of NSW. Later, this oral agreement was extended to include a fibre optic cable in Cooma, which was to operate as an integral part of the network.

Other terms of the agreement were:

- Technic was to apply, on behalf of SnowNet, for a carrier licence;
- SnowNet would pay for equipment for the Network, including a router and the fibre optic cable, upon invoices rendered;
- The Network was to be in operation by 30 June 2008.

Subscribers were lined up for a launch date of 30 November 2008.

Technic did not apply for the carrier licence. Delays have meant that the Network was not operational by 10 November 2008 and so SnowNet had to cancel its launch by notification to 1,000 subscribers. The Network did not meet speed and bandwidth requirements specified.

Snownet has paid for all equipment when invoiced, but refused to pay further invoices after 10 November 2008 until the Network is operational. Technic has threatened to remove the equipment if they are not paid.

**(Question 3 Section A continues)**

**(Question 3 Section A continued)**

**Snownet seeks your legal advice on the following issues:**

- (a) How can it stop Technic from removing the equipment until after the dispute is settled?**
- (b) Who owns the equipment?**
- (c) Is Snownet entitled to terminate the agreement, keep the equipment, get someone else to make the Network operational and sue Technic for any additional cost over the total quoted price?**

**(25 marks)**

**SECTION B**

**Question 1**

Tim and Jim are employed at the local court. The court has a poor box, the funds from which are intended for needy people seeking help from the court, charities and welfare groups. Defendants who are found to have broken the law can be ordered to make a payment to the fund, in addition to any conviction and fine.

The Magistrate is a busy person and although she has authority to do so, does not sign any cheques drawn on the poor box fund. At the end of each month, she brackets the payments made and places her initials beside the bracket. She does not see any substantiation payments.

Tim and Jim have authority to sign on behalf of the poor box fund.

The Magistrate, and any one of Tim or Jim must sign cheques drawn on the general court fund.

Tim and Jim like to go to the races. They take approximately \$300/week cash from the poor box to fund their excursions, and replace it with uncrossed cheques drawn on the poor box fund, made out to fictitious persons. They then endorse the cheques "please pay cash" and sign them using the name of the fictitious payee. They then bank them to the account of the fund at River Bank Limited (River Bank) as part of the daily banking.

After a year, and brimming with confidence, Tim and Jim occasionally start to draw cheques from the general court account made payable to fictitious persons. They use the same technique to open them to cash as with the poor box fund, but have to forge the Magistrate's signature on these cheques.

Two years later, the Auditor General uncovers irregularities and calls in the police. Tim and Jim have gone backpacking in Africa; whereabouts unknown. By this time, \$40,000 has been taken by Tim and Jim.

**(Question 1 Section B continues)**

**(Question 1 Section B continued)**

**The Auditor General asks you to advise on what legal action may be taken, and against whom, to recover the missing funds, and the likely outcome of any such action(s).**

**(25 marks)**

**Question 2**

Bill and James are Directors of Staff Super Pty Ltd (“Staff Super”), the Trustee of the Campbell Corporation Limited Superannuation Fund (“the fund”). There are 5,000 members of this fund, mostly employees of Campbell Corporation.

A professional risks insurance policy covered claims notified to the insurer within one month subsequent to the policy period (January to December) if during the policy period the insureds were aware of any fact, situation or circumstances that might give rise to a claim.

According to professional advice received during 2007, the assets of the fund were held in a way that involved insufficient diversification. 82% of the fund’s assets were held in real estate related investments. They were worth only 60% of their book value at the end of December 2007.

Due to changes in superannuation law making other alternatives more attractive, in March 2008, 700 members of the fund requested that their benefit be withdrawn or transferred. The benefits they received were less than expected. They sued Staff Super, Bill and James for breach of their duty.

Staff Super, Bill and James duly made a claim under their professional risks policy.

The insurer has declined the claim on the following grounds:

- The claim was not made within one month from the end of the policy period.
- The claimants were aware that their investment policy meant that they would not be able to cope with member withdrawals of more than 1% per annum and that if there were more withdrawals than this; it might give rise to a claim.

**Advise Bill and James.**

**(25 marks)**

**(Question 3 Section B follows)**

### Question 3

#### **Answer ONLY 5 of the following (each is worth 5 marks)**

- (a) Is barter still relevant to the modern world? If so, why? If not, why not?
- (b) Is it true to say that pure asset lending (lending without regard to the ability of the borrower to repay by instalments in the knowledge that adequate security is available in the event of default) is always unjust within the meaning of the Contracts Review Act or unconscionable within the meaning of the Trade Practices Act?
- (c) Is the carrying out of a transaction, requiring legal skill by a Solicitor, a representation by a Solicitor that they have the knowledge and skill of a competent Solicitor that could expose them to a breach of s.52 of the Trade Practices Act?
- (d) If you find something, can you keep it?
- (e) Does *risk* always pass at the same time as *title* to goods?
- (f) What are the requirements for a valid legal assignment of a chose in action?
- (g) What is the difference between a *sale* and *an agreement to sell* for the purposes of the Sale of Goods Act?
- (h) Describe two forms of misrepresentation referred to in s.53 of the Trade Practices Act.
- (i) Briefly describe two remedies against the buyer and two remedies against the goods available to an unpaid seller.
- (j) You have been asked by your client to list the 5 elements of an internal dispute resolution mechanism you consider as the most important and to explain briefly (one sentence) why each one is important.
- (k) Is the formation of a contract by exchange of emails equivalent in the legal sense to formation by exchange of letters posted?

**(25 marks)**

**END OF PAPER**