

# LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

## LAW OF ASSOCIATIONS

**TIME: Three Hours**

This paper consists of seven 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.

**Permitted Material:**

**This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought with them.**

**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**

Mr and Mrs Holmes were the directors and only shareholders of Blue Ribbon Pty Ltd ("**Blue Ribbon**"). Mr Holmes was the managing director of Blue Ribbon and was active in the day-to-day operations of the company.

In January 2008 Mr Holmes, in his own name, arranged to obtain a loan (the "**loan**") from the Friendly Bank (the "**bank**"). As security for the loan, the bank required a mortgage over a property in which Mr and Mrs Holmes resided (the "**property**"). The registered proprietor of the property was Blue Ribbon. In his discussions with the relevant officers of the bank, Mr Holmes indicated that the loan was to be used for investment purposes and that Blue Ribbon was his "investment" company. The bank did not know or make inquiries as to the purpose of the loan.

The mortgage documents were subsequently executed on behalf of Blue Ribbon. This execution involved the common seal of the company being affixed to the relevant documents together with the signature of Mr Holmes and the forged signature of Mrs Holmes. In addition, underneath Mrs Holmes' purported signature was the word "secretary".

Prior to advancing the loan funds the bank carried out ASIC searches of Blue Ribbon and those searches revealed that Mr and Mrs Holmes were both directors of Blue Ribbon and that Mr Holmes was the company secretary.

The loan funds were subsequently released directly to Mr Holmes and were used for Mr Holmes' personal affairs. Mrs Holmes was unaware of the loan. After default by Blue Ribbon under the mortgage, the bank sought possession of the property. Mrs Holmes argued that as her signature on the mortgage was a forgery the mortgage was void.

**Advise Mrs Holmes.**

**(20 marks)**

### **Question 2**

Frank, a director of Fast Bikes Ltd, a company which makes bicycles used in professional road and mountain bike racing, has alleged that Simon, Mark and Lucy, the three other directors of Fast Bikes Ltd, approved the transfer to Mountain and Road Bikes Ltd of certain intellectual property belonging to Fast Bikes Ltd. Frank voted against the transfer. The intellectual property related to patented designs of both a new bicycle chain that will make bicycles go faster and new lightweight disc brakes. Mountain and Road Bikes Ltd is a competitor of Fast Bikes Ltd and its sole directors and shareholders are Simon, Mark and Lucy.

**(Question 2 continues)**

**(Question 2 continued)**

Frank further alleges that this transfer was made without the consent or knowledge of all the shareholders of Fast Bikes Ltd and that it was made for a nominal consideration. Frank states that the intellectual property is of a substantial commercial value. There are approximately 500 other shareholders in Fast Bikes Ltd.

Frank has approached Simon, Mark and Lucy to undertake in writing that they and their company, Mountain and Road Bikes Ltd will not use the Intellectual Property. Simon, Mark and Lucy refused to give such an undertaking.

**You are required to advise Frank on whether an action can be brought against Simon, Mark and Lucy and Mountain and Road Bikes Ltd. If you think that such an action can be brought you are required to outline the basis of that action and of the procedures involved.**

**(20 marks)**

**Question 3**

In December 2007 Tim joined the Central Tablelands Shooter's Association, an unincorporated association (the "**association**"). Upon joining, Tim paid the association's Treasurer a joining fee of \$50.00 and a subscription fee of \$150.00. He was given a copy of the association's rules (the "**rules**") which were contained in a rule book.

Inside the front cover of the rule book the following was stated:

*"The rules of the association are not legally binding and are only intended to facilitate orderly conduct and relations between the members."*

In addition, rule 47 of the rules provided that the management committee of the association was to be elected annually and rule 23 precluded members of the association from taking any legal action against the committee in consequence of any negligence or breach of duty by the committee.

Despite the above rules the committee for the association comprised the same three persons from 2005. Those persons were Charlton, Buster, and Red (the "**committee**"). The reason for this was because no other member nominated for a position on the committee.

In January 2008 the committee executed a written memorandum of lease (the "**lease**") in relation to 5000 hectares of land (the "**property**") which was to be used by the associations 300 members for the associations' activities. The committee executed the lease "as committee persons for and on behalf of the Central Tablelands Shooter's Association". The term of the lease was stated to be for 2 years.

**(Question 3 continues)**

**(Question 3 continued)**

On 15 January 2009, Jim, Nuggett and Kevin were appointed as committee members replacing Charlton, Buster, and Red who had all resigned. On the very next day the new committee gave notice to the owner of the property that they would be terminating the lease with effect from 15 February 2009.

**You are required to advise the owner of the property whether they have a cause of action and, if so, against whom.**

**(20 marks)**

**Question 4**

Boots and Straps Pty Ltd was a small proprietary company, the shareholders of which included a married couple Mr and Mrs Taylor and their daughter and son-in-law. Mr and Mrs Taylor were divorced after the establishment of the company and thereafter considerable bitterness and animosity prevailed between Mr Taylor on one side and Mrs Taylor and her daughter and son-in-law on the other.

At a meeting after the dissolution of marriage between Mr and Mrs Taylor, Mrs Taylor, her daughter and son-in-law passed a resolution that 1500 ordinary shares be issued to existing shareholders proportionate to their existing shareholding. At the time of passing the resolution, Mrs Taylor, her daughter and son-in-law knew that Mr Taylor would not at his age, and because of existing financial constraints caused by his divorce, want to make a further investment in the company. Therefore the resolution effectively meant that, upon the purchase of the 1500 shares by Mrs Taylor, her daughter and son-in-law, Mr Taylor's shareholding in the company would be diluted.

**Mr Taylor seeks your advice in relation to any remedy he may have in the circumstances. Your advice should contemplate Mr Taylor's express wish that he no longer have any involvement in the company or in its management or ownership.**

**(20 marks)**

**Question 5**

Bill and Wayne decided to commence a seaside restaurant business together. They approached Matthew, who was known to have some capital, to join them in the venture. Subsequently, Bill, Wayne and Matthew reached agreement about the basic terms of their relationship, registered a business name known as "*Fish by the Sea*" and then set about trying to obtain suitable premises from which to run the business. Terms of their relationship included that all profits from the business were to be shared equally and all decision-making was to be made jointly.

**(Question 5 continues)**

**(Question 5 continued)**

Bill advised Wayne and Matthew that he had located premises adjacent to a beach just north of Wollongong. Following inspection of those premises, Bill, on behalf of Wayne and Matthew, commenced negotiations with the owner, Tom, with a view to renting the premises for five (5) years. Subsequently, a lease of the premises was entered into between Tom as lessor, and Bill, Wayne and Matthew as lessees. It was a term of the lease that no material alterations could be made to the premises without Tom's consent.

After obtaining possession of the premises Bill immediately commissioned a builder to design and renovate them. Bill told the builder that he was the principal of the business and he signed the building contract "*on behalf of Fish by the Sea*". Tom was unaware of the proposed changes to the premises and did not give consent for them to occur and, Wayne and Matthew were not advised that Bill had entered into a building contract with the builder. Within a short time the builder commenced renovation work which was partially completed when Tom found out about it when he drove past the premises.

Tom immediately saw his solicitor who obtained an injunction preventing the work being completed. Tom also sought compensation for breach of the lease and for the damage to the property. These actions meant that the builder could not complete the work resulting in the builder commencing proceedings against Bill, Wayne and Matthew.

**You are required to advise Tom as to his prospects of successfully obtaining damages against each of Bill, Wayne and Matthew and, in addition, you are required to advise Wayne and Matthew whether they may be liable in damages to the builder.**

**(20 marks)**

**Question 6**

Frances was one of four directors of a company, Executive Training Pty Ltd ("**Executive Training**") which had purchased training DVDs from Corporate Education Pty Ltd ("**Corporate Education**"). The purchase price for the DVDs was \$350,000.00 and this amount remained unpaid. At the time when the DVDs were purchased Frances was the Executive Director of the company whose main job was to encourage new business for the company but she was also involved in the process of considering whether the company should acquire the DVDs. It was the case that she was asked by the Managing Director to do so and that she willingly co-operated in this function although the purchase of the DVDs was the responsibility of someone else within the company.

**(Question 6 continues)**

**(Question 6 continued)**

Subsequently, Executive Training later went into liquidation without paying for the DVDs.

**Corporate Education seeks your advice as to whether it can institute proceedings against all four directors of Executive Training including Frances for the amount outstanding under the contracts for sale of the DVDs. In your answer you are expected to analyse the procedure involved and to assess the possible defences that may be available to the directors as well as the remedies that can be obtained.**

**(20 marks)**

**Question 7**

Keith was the holder of a governing director's share in a family pastoral company known as Central West Pastoral Company Pty Ltd (the "**Company**"), which held significant rural land holdings throughout New South Wales and Queensland. The Company had issued only one governing director's share and this was the share which Keith held. The other shareholders comprised Keith's sons, Brett, Patrick and Mark who each held 10,000 ordinary class shares and who each worked in the business on a full-time basis.

Pursuant to the constitution of the company, the governing director's share would convert into an ordinary class share upon the death of Keith. Importantly, the share, although transferable and transmissible, could only be transferred or transmitted upon the death of Keith and only as an ordinary class share. Further, none of the holders of the ordinary class shares could outvote Keith on matters requiring a resolution to be taken.

Keith's wife Mavis, died in 2005. Shortly thereafter, Keith formed a friendship with Betty who worked in a shop in the local town. Eventually Keith and Betty married and she moved into the family home. Each of Brett, Patrick and Mark did not get on with Betty who they saw as an opportunist and this view was reinforced when Keith advised his sons that the Company proposed to issue a special category of shares direct to Betty which would give her control over the Company upon Keith's death or whenever he may have been away or incapacitated.

In January 2009 a meeting of the shareholders of the Company was held. At this meeting Keith voted in favour of the resolutions that he proposed which, if passed, would result in Betty obtaining control of the Company upon Keith's death. Each of Brett, Patrick and Mark voted against the resolution however as Keith was the Governing Director the resolution was passed.

**Brett, Patrick and Mark seek your advice concerning the validity of the resolution and as to whether Keith may have breached any duty that he owed to either the Company or to them as shareholders.**

**(20 marks)**

**END OF PAPER**