

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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 **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 the candidate's results being given.

Permitted Materials:

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

Question 1

Matthew is a director of Shire Investments Pty Ltd. The other director of Shire Investments Pty Ltd is Audrey. Matthew has just been informed that the major asset of Shire Investments Pty Ltd, a factory at Silverwater, has been mortgaged to the Standard Bank. The Standard Bank is now seeking to exercise its power of sale over the factory at Silverwater in consequence of default in repayment of the mortgage. Matthew was unaware that Shire Investments Pty Ltd and Audrey had had any dealings with the Standard Bank.

It appears that the seal of Shire Investments Pty Ltd was affixed to the mortgage given to the Standard Bank and that it was counter-signed by Audrey as a director. Matthew's signature was also under the seal but this was a forgery by Audrey. Above Matthew's signature was the word, "secretary". Matthew was never appointed secretary of Shire Investments Pty Ltd.

Audrey used the mortgage proceeds to repay debts owed by Shire Investments Pty Ltd to its trade creditors. Matthew thought that the debts were repaid out of surplus funds.

Advise Matthew as to the enforceability of the mortgage against Shire Investments Pty Ltd. Give reasons for your answer.

(20 marks)

Question 2

In 2008 Chris operated a business as a sole trader (the "**business**"). The business manufactured machines which were capable of making bone screws. In October 2008 Chris invited Ed to assist him in financing his business. Ed agreed. The parties then signed a written agreement which contained terms to the following effect:

- (i) Chris would manufacture machines for sale;
- (ii) The machines would be sold by Chris and Ed as "joint venturers";
- (iii) Ed would advance \$50,000.00 to the project;
- (iv) Chris would provide engineering expertise to the "joint venture";
- (v) Profits from the "joint venture" would be used first in repaying to Ed the \$50,000.00 that he had advanced and then the profits were to be shared equally;
- (vi) Chris was to meet all expenses associated with the manufacture and sale of machines;
- (vii) Management decisions were to be resolved jointly, however Ed was required to approve all sales prior to them being entered into;
- (viii) The "joint venture" was expressly stated to not make Chris and Ed partners in the business.

(Question 2 continues)

(Question 2 continued)

In January 2009 Chris sold a machine to Neale (the “**machine**”). The machine is faulty and is not fit for the purpose for which it was bought. At the time of the purchase, Ed was unaware of the sale and in any event, did not approve it. Further, at the time of the sale of the machine to Neale, Neale was unaware of the existence of Ed or of his involvement in the business.

Neale seeks your advice as to whether he has any rights against Ed and Chris. Give reasons for your answer.

(20 marks)

Question 3

Mr Ross was a former director of Christen Pty Ltd (“**Christen**”) and the former husband of Lynette. Lynette alleges that in 2005, prior to her divorce to Mr Ross, Mr Ross, while a director of Christen, procured a payment of \$400,000.00 from the settlement of a sale of property in which Christen was the registered owner (the “**Property**”). Mr Ross then transferred the money to other companies in which he and Lynette were both directors and shareholders.

Lynette alleges that this payment was in breach of Mr Ross’s duties as a director of Christen. Lynette acknowledged that her signature as a director of Christen was on the memorandum of transfer for the sale of Property but stated that she was unaware of the money being paid by Christen. She alleges that she merely signed the memorandum of transfer at the request of Mr Ross without question.

Paul, the brother of Lynette, and the other director and shareholder of Christen, objects to Christen bringing an action against Mr Ross. Paul says that the payment by Christen of \$400,000.00 and the subsequent transfer of the moneys to companies associated with Mr Ross and Lynette was made as part of and pursuant to complicated family arrangements that were made between Mr Ross and Lynette and Lynette’s parents, who were the original directors of Christen. Paul also says that the payment for the sale of property was taken into account in the subsequent divorce proceedings between Mr Ross and Lynette. Lynette and Mr Ross were divorced in 2006.

It should be noted that Family law settlements can be reopened if the settlement failed to take into account all of the financial matters of the marriage.

Advise Lynette on her prospects of being granted leave pursuant to the *Corporations Act* to bring an action against Mr Ross in the name of Christen.

(20 marks)

(Question 4 follows)

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

Simon was the holder of a governing director's share in a family pastoral company known as Central Pastoral Company Pty Ltd (the "**Company**"), which held significant rural land holdings throughout New South Wales. The Company had issued only one governing director's share and this was the share which Simon held. The other shareholders comprised Simon's wife, Mavis who held one "B" class share prior to her death and Simon and Mavis' sons, Peter, Clive and Don who each held 10,000 "C" 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 a "C" class share upon the death of Simon. Importantly, the share, although transferable and transmissible, could only be transferred or transmitted upon the death of Simon and only as a "C" class share. Further, none of the holders of the "B" and "C" class shares could outvote Simon on matters requiring a resolution to be taken, however the holder of the "B" class share could outvote all of the holders of the "C" class shares.

(Question 5 continues)

Mavis died in 2007 leaving her shares in the Company to her three sons. Shortly thereafter, Simon formed a friendship with Betty who worked in a shop in the local town. Eventually Simon and Betty married and she moved into the family home. Each of Peter, Clive and Don did not get on with Betty who they saw as an opportunist and this view was reinforced when Simon 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 Simon'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 Simon voted in favour of the resolutions that he proposed which, if passed, would result in Betty obtaining control of the Company upon Simon's death. Each of Peter, Clive and Don voted against the resolution however as Simon was the Governing Director the resolution was passed.

Peter, Clive and Don seek your advice concerning the validity of the resolution and as to whether Simon may have breached any duty that he owed to either the Company or to them as shareholders. If so, does Simon have any defences to such allegations?

(20 marks)

Question 6

Green Gardens Pty Ltd ["**Gardens**"] carried on a business which included designing, restoring and creating landscapes for clients. Dane and Ingrid were the company's sole shareholders and directors. Dane also acted as the company's managing director being responsible for estimating, approving and paying invoices and the day-to-day running of the company.

In the period from 2007 – 2008 Gardens worked on a large project to construct a botanical garden in Strathfield. This project involved Gardens purchasing materials from Leafy Trees Ltd, ("**Leafy**"), a wholesale nursery and from Rocks and Walls Pty Ltd, ("**Rocks**"), a company which supplied material to be used in retaining walls. Dane negotiated with both these suppliers on his own and entered into contracts on behalf of Gardens with Leafy in November 2007 and with Rocks in July 2008. Ingrid was unaware of both the negotiations and the ensuing contracts.

Due to underestimating the size of the botanical gardens project, Dane miscalculated the quantities of materials that he would need and stood to incur heavy losses on the project. Further Dane became friendly with Katja, a woman whom he had previously met skiing in Norway and he decided to give up both landscaping and Ingrid. The botanical gardens remained unfinished, Gardens was put into liquidation and Leafy and Rocks began demanding payment from Ingrid personally.

Advise both Leafy and Rocks as to possible causes of action (if any) against Ingrid and of any defence Ingrid may have to such causes of action.

(20 marks)

(Question 7 follows)

Question 7

Peter joins the Inner West Cyclists Association, an unincorporated association (the "**Association**"). He pays a joining fee of \$50.00 and a \$25.00 subscription fee. He is subsequently given a copy of the constitution for the Association. Peter is required to pay the subscription fee annually.

The committee for the Association comprises of three persons: Tom, Jeremy and Frank. The committee has just executed a lease "as committee persons for and on behalf of the Inner West Cyclists Association". The lease is for a hall in Birchgrove where all administrative activities of the association are conducted as well as regular social functions after bike rides. The term of the lease is for 4 years.

Two years after commencement of the lease Quentin, Sylvia and Mario are appointed as committee members to the Association replacing Tom, Jeremy and Frank. Mario convinces Sylvia that the Association ought to move from the existing leased premises and move to his uncle's hall in Balmain. Sylvia agrees. Quentin is unaware of Mario and Sylvia's actions. Shortly thereafter Mario and Sylvia execute a lease over a hall in Balmain and give notice to the landlord of the Birchgrove premises.

Advise the owner of the Birchgrove premises whether he has a cause of action and, if so, against whom.

(20 marks)

END OF PAPER