

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

CONVEYANCING

TIME: Three Hours

This paper consists of **five** questions.

Candidates are required to attempt any **four** questions.

All references to a Contract for the sale of land are to the form approved by the Law Society of New South Wales (2005 edition).

All references to the Regulation are to the Conveyancing (Sale of Land) Regulation 2005.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **4** 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

In Ronald Street, one of the back streets of the Northside City Council area, is located an old building used originally as a workshop and then converted in the late 1930s into a corner grocery store.

The building was used as a corner store, milk bar with takeaway food for many years. Prior to 19 April 1963 the land was zoned light industrial under which the uses did not require prior development consent. However, on this date the land became zoned residential under the Northside Planning Scheme Ordinance, with shops and refreshment rooms prohibited.

By 1985 the property was being used as a café. In 1993 the owner sought and obtained development consent to install an awning in the courtyard for outside eating.

Your clients, John and Fiona have consulted you about their proposal to purchase the property and to also purchase the business. They have furnished to you a contract for purchase of the property and an interdependent contract for purchase of the business. The auction contract contains a section 149(2) certificate which states that the property is still zoned "Residential special redevelopment - shops and refreshment rooms prohibited". John has informed you that the agent has informed him that "the property has existing use rights for the purpose of a cafe". The contract does not contain any reference to any existing use.

Advise your clients as to what must be done before they can be in a position to confidently, with appropriate legal protection, proceed to exchange the two contracts or, alternatively, make an informed choice not to proceed with the matters.

(25 marks)

Question 2

Attempt **BOTH** parts of this question.

- (a) (i) In which circumstances (if any) do you consider a purchaser's solicitor should lodge a caveat to protect his/her client's equitable interest?
- (ii) Are there any relevant actions which cannot be prohibited by such a caveat?

AND

- (b) Does a purchaser of land have an insurable interest from the date of the contract? If so, discuss whether the purchaser should insure that interest?

(25 marks)

(Question 3 follows)

Question 3

Attempt **BOTH** parts of this question.

- (a) (i) Clause 2 of Schedule 1 of the Regulation states that: “A diagram for the land from a recognised sewerage authority (if available from the authority in the ordinary course of administration), indicating the location of the authority’s sewer in relation to the land” is a prescribed document to be attached to a contract for sale of land under section 52A of the Conveyancing Act 1919.

Under what circumstances could the attachment of only a sewerage connections diagram to a contract expose the vendor to rescission by the purchaser under clause 19 of the Regulation?

- (ii) **Does the existence of an undisclosed council stormwater main draining a public road, which passes through a property the subject of a contract, expose the vendor to a claim by the purchaser? If so, what could conceivably be claimed by the purchaser?**

AND

- (b) A vendor of real estate is sometimes said to be a trustee for the purchaser between exchange of contracts and completion.

Discuss.

(25 marks)

Question 4

Discuss each of the following issues:

- (a) the obligation to give vacant possession;**
- (b) the effect of the prescribed term set out in clause 1 of Schedule 2 of the Regulation;**
- (c) the requirements for a valid notice to complete and the meaning of “ready, willing and able” to complete;**
- (d) the requirements for valid requisitions and proper replies.**

(25 marks)

(Question 5 follows)

Question 5

You act for Aussibuild, a developer specialising in small scale projects. Clause 6 of the Happy Valley Local Environmental Plan, inserted in the instrument pursuant to section 28 of the Environmental Planning and Assessment Act 1979, provides: "If any agreement, covenant or similar instrument prohibits a land use allowed by this plan, then it shall not apply to that land use (to the extent necessary to allow that land use)."

The Happy Valley Views Estate, consisting of 50 residential lots, is subject to a section 88B instrument, imposed on each of the lots (with the benefit ascribed to each other lot) which relevantly provides:

- "(k) Unless a registered proprietor obtains prior written consent of Valley Holdings Pty Limited ("Valley Holdings") the registered proprietor shall not:
- (i) construct more than one dwelling on the land burdened;
 - (ii) use or permit to be used the lot burdened for any purpose other than as a private dwelling;
 - (iii)

Aussibuild owns lot 23 in the Estate and has obtained development consent and a construction certificate from Happy Valley Shire Council to construct a town house development containing 2 dwellings on the land. Prior to obtaining the consent Aussibuild unsuccessfully sought the consent of Valley Holdings to the proposed development. The section 88B instrument provides that for a period of 5 years after registration of the subdivision Valley Holdings is entitled to the benefit of the restrictions and shall be entitled to bring enforcement proceedings even though it was not itself the proprietor of any lot benefited by the instrument. The subdivision was registered on 3 February 2007.

Aussibuild has received a letter from Valley Holdings' solicitors threatening injunction proceedings should construction commence.

Advise Aussibuild.

(25 marks)

END OF PAPER