

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

CONVEYANCING

TIME: Three hours. The paper consists of **five** questions.

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

No question is compulsory.

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.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will 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 cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to delay in the candidates results being given.

Permitted Material: This is an open book exam. Candidates may refer to any books and any 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.

Your client Beatrice seeks your advice in relation to the following special conditions contained in a contract for sale of a residential property which will be submitted to auction in 5 days time.

Special condition 4

- 4.1 clause 7.1.1 is deemed to be amended by deleting “5%” and replacing it with “1%”;
- 4.2 clause 8.1 is deemed to be amended by deleting the words “on reasonable grounds”;
- 4.3 clause 8.2 is deemed to be amended by deleting the words “and those grounds”;

Special condition 5

The Vendor discloses that the southern wall of the dwelling erected on the land encroaches upon the adjoining Lot 5 in DP 556435 by up to 0.2m and the eaves and guttering by up to 0.35m. The Purchaser cannot make any objection, requisition or claim in respect of this encroachment.

Special condition 6

The parties agree that risk in respect of damage to the property passes to the purchaser on the date of this contract.

Advise Beatrice on the meaning, effect and validity of each special condition and what representations can appropriately be made to the vendor’s solicitor before the auction as to what changes should be made to the special conditions should Beatrice be the successful bidder.

Question 2.

Attempt **BOTH** parts of this question.

- (a) **What are the responsibilities of the vendor of property between exchange and settlement?**

AND

- (b) **How can the purchaser’s beneficial interest in the property be protected between exchange and settlement?**

(Question 3 follows)

Question 3.

Part 1, Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2005* provides in clause 1 “that, as at the date of the contract and except as disclosed in the contract:

- (a) the land is not subject to any adverse affectation, and
- (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
- (c) the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*. And
- (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order, or if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose”.

Discuss;

- (1) in relation to an adverse affectation, what constitutes a proposal?**
- (2) what is needed to discharge a vendor’s obligations in relation to the existence of a sewer or sewers?**
- (3) what limitations are there in the information provided in a section 149(2) certificate?**
- (4) should information under section 149(5) also be obtained and attached to the contract on behalf of a vendor? If so, why?**
- (5) should a fresh section 149 (2) and (5) be routinely obtained on behalf of a purchaser? If so, why?**
- (6) what is the effect in conveyancing of illegal structures following the enactment of clause 1(d)?**
- (7) what remedy is available to a purchaser for breach of one of the above prescribed warranties?**

(Question 4 follows)

Question 4.

Henry and Janice Jones had been looking for a suitable residence for some time. They had been gazumped more than once. They finally located a property they liked and made an offer of \$2.5m. They advised the agent that they needed to get building and pest reports and asked that the property be taken off the market for 4 or 5 days so that these reports could be obtained and they could get legal advice on the contract. The agent said he would check with the vendors. Two days later the agent told Mr Jones that another offer had been made for the property and that the first purchaser to exchange would get the property. It eventually transpired that this statement was false

Mr and Mrs Jones exchanged immediately even though they had not been able to obtain a pest report and their loan approval was subject to valuation.

The valuation obtained by the lender was shown as the purchase price but the valuation revealed that the property at the rear of the subject property was targeted under SEPP 53 for multi housing development and that the future value would be diminished but it was not possible to judge by how much.

Mr and Mrs Jones sought and obtained their own valuation advice which indicated that the property was not worth more than \$1.8m. They failed to comply with a notice to complete and the Vendors terminated the contract and resold the property for \$1.815m. They then sued Mr and Mrs Jones for damages for their loss on the resale, an order for forfeiture of the deposit and interest.

Mr and Mrs Jones defended the action and cross claimed against the vendors for damages, alleging that the property was worth considerably less than the contract price. They also sued their solicitor in negligence claiming that he had failed to advise them that SEPP 53 applied to the property at the rear.

Discuss the issues in this matter and advise Mr and Mrs Jones on their prospects of success.

(Question 5 follows)

Question 5.

Attempt ALL parts of this question.

- (a)** Time stipulations in contracts for sale are subject to various legal requirements.

Discuss:

- (1)** the requirements for a valid notice to complete;
- (2)** when it would be appropriate to serve a notice to perform.

AND

- (b)** A deposit is required in most transactions for the sale of land.

- (1)** what responsibilities does the depositholder have as stakeholder?;
- (2)** how can a reduced deposit be paid on exchange of contracts with an effective obligation by the purchaser to pay the remainder (up to 10% of the purchase price) on completion or termination of the contract?

AND

- (c)** What functions do requisitions (as distinct from mere reminders) perform?

- END OF PAPER -