

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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 **four** 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

On Saturday 29 August 2009 your client Anthony attended an auction and was the successful bidder for a single dwelling residential property "Valhalla". Anthony had attended the auction without previously examining the contract and seeking your advice about its terms.

You have examined the contract and have detected the following:

- (i) The contract contains a provision disclosing an encroachment by the dwelling onto an adjoining property in the following terms:

"The Vendor discloses that the dwelling encroaches onto the land to the east by up to 0.50 metres. The Purchaser cannot raise a requisition, objection or claim for compensation in relation to this encroachment".

- (ii) Attached to the contract is a sewerage connections diagram which shows a Sydney Water sewer which is located under the street footpath servicing the property. No sewer mains diagram was attached to the contract. Seven days after the auction you obtain a sewer mains diagram which shows the location of a separate sewer main running through the property which would preclude Anthony from constructing a swimming pool he proposes. You have ascertained from Sydney Water that it would divert the sewer at a cost of \$25,000 away from the location of Anthony's proposed swimming pool.

- (iii) A special condition provides that: "Notwithstanding any other provision of this contract, if the Purchaser fails to complete on or before the completion date then the Purchaser will pay on completion interest at the rate of 15% per annum on the balance of the purchase price from the completion date until the date of actual completion".

Advise Anthony in relation to each of these matters.

(25 marks)

Question 2

Attempt both parts of this question.

- (a) What are the requirements for a valid notice to complete?
- (b) How 'vacant' must a property be for the Vendor to have given vacant possession?

(25 marks)

(Question 3 follows)

Question 3

Attempt **both** parts of this question.

- (a) Explain by reference to decided cases the principles which determine whether a party has elected to affirm a contract for sale of land.
- (b) What is a 'holding deposit' and does it have any legal basis? If the agent misappropriates the 'holding deposit' prior to exchange of contracts is the vendor liable to the purchaser for the amount?

(25 marks)

Question 4

Attempt **both** parts of this question.

- (a) Your client Amelia tells you that she and her husband Tom are interested in buying the property 'Weddings made in Heaven' at auction. The property has been advertised as having the benefit of existing use rights for weddings and wedding receptions. Amelia has told you that she has spoken to a duty planner from the local council who told her: "That place has been conducting weddings and receptions forever. I believe it does have existing use rights".

The auction will be held in 8 days time and Amelia and Tom want you to act for them on the purchase if they are the successful bidders. The contract contains a section 149(2) certificate which discloses that the property is zoned Residential A1. In this zone use for the purpose of weddings or wedding receptions is prohibited. No warranty is contained in the contract to the effect that the current use for weddings and wedding receptions is an existing use under section 106 of the Environmental Planning and Assessment Act 1979.

Advise Amelia and Tom what needs to be done before they can be in a position to confidently, with appropriate legal protection, bid to purchase the property at the auction.

- (b) Explain the limitations, if any, on a vendor's reliance upon condition 8 of the Contract for sale of land.

(25 marks)

(Question 5 follows)

Question 5

Attempt **both** parts of this question.

- (a) In the NSW Court of Appeal decision of *Carpenter v McGrath* it was held that the right of a council to order demolition of building works carried out without prior approval was not a defect in title.

How did the NSW Legislature overcome the effect of the decision in *Carpenter*?

- (b) **Does a purchaser's solicitor have any responsibility to conduct searches and enquiries in relation to adjoining properties or the surrounding area?**

(25 marks)

END OF PAPER