

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

CONTRACTS

Time: Three Hours This paper consists of **five** questions.

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

No question is compulsory.

All questions are of equal value.

If a candidate answers more than **four** 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 and could, in some circumstances, result in the candidate receiving a fail grade.

Substantial credit will be given to concise well-reasoned answers based upon principles which are clearly stated. Further credit will be given where principles are properly supported by reference to decided authorities.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may 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

Garth and Frank are keen fans of the pop music of the 1960s and 1970s. Frank is, in particular, a keen fan of the country-rock band of the time, the Flying Burrito Brothers. On 1 February 2013 Garth wrote a letter to Frank in which he said:

“My brother has just given me a copy of the Burrito album ‘Gilded Palace of Sin’. It’s in immaculate condition – it has never been played. You know I don’t like the Burritos, so if you want it I will sell it to you for \$100.”

Frank was keen to buy the album because he knew that such an album in such good condition was a collectors’ item, which he could re-sell for at least \$200. On 5 February 2013 Frank posted a letter to Garth saying that he agreed to buy the album for \$100. The letter was received by Garth on 7 February 2013. However, on 6 February 2013 Garth had telephoned Frank and told him that he did not want to sell the album to Frank, having that day come to learn that it was worth much more than \$100.

Frank replied to Garth that he had already posted a letter in which he had agreed to buy the album for \$100. He told Garth that he believed that he had a contract with Garth and that he would sue Garth for damages for breach of contract if Garth refused to sell the album.

In relation to the above facts, Frank seeks your advice as to the following:

(a) Is there a contract between Garth and Frank?

(15 marks)

(b) Would your advice in (a) be different if Garth’s letter of 1 February 2013 had gone on to say:

Please get back to me about this by 8 February 2013, as I have a friend who is prepared to buy it for \$125.

(5 marks)

(Question 2 follows)

Question 2

On 1 February 2013, Arthur took his car to be repaired at Miller's Garage Ltd (MGL). It was agreed that the repairs to the car would be completed in time for Arthur to collect the car at 8am the next morning. Arthur told MGL that he needed the car to be ready by that time as he needed to drive to a town about 180 kilometres away to exchange contracts for the purchase of a block of land from Vicky who was prepared to sell it to Arthur for a price that was \$20,000 below market value. Arthur also told MGL that Vicky insisted that she would only sell the land to Arthur if Arthur exchanged the contract for sale before 10am on 2 February 2013.

When Arthur called in on 2 February 2013 to collect his car from MGL, he discovered that the repairs had not been completed. In fact the repairs were only completed at midday on that day. As a result of not having his car Arthur was unable to exchange contracts with Vicky because there was no other way for him to get to Vicky's place except by private transport.

In relation to the above facts:

- (a) **Advise Arthur what damages for breach of contract, if any, he can recover from MGL in relation to the fact that he was unable to exchange contracts with Vicky.**
- (10 marks)**
- (b) **Would your advice in (a) be any different if there was a large sign at the entrance to MGL's premises which said: 'MGL excludes all liability for any losses suffered by its customers in the event of any breach of a contract between MGL and any of its customers for repair of vehicles owned by such customers'?**
- (10 marks)**

(Question 3 follows)

Question 3

Carla inserted the following advertisement in a daily newspaper:

Sevres dinner set for sale, believed to have belonged to Emperor Napoleon III.

Penelope, a dealer in antiques who was interested in purchasing the dinner set for her business, inspected the set and asked Carla the basis of her belief. Carla replied:

Each piece in the set has a mark and a number, and Dr Depardieu, the expert at the French Ceramic Centre where I bought it, told me that the marks correspond with the Sevres Catalogue description of a set made for Napoleon III.

Penelope bought the set and had it delivered to her home. Three years later she showed it to a ceramic expert who told her:

That catalogue description is correct, but Sevres made six sets with the mark and number, and only one appears to have been presented to Napoleon III. I doubt whether anyone could certify which one it was.

Penelope claims that, pursuant to principles of common law and/or equity, her contract with Carla is either void or voidable and, if the latter, that she is entitled to rescind it.

Carla seeks your advice as to whether Penelope's claims are correct.

(20 marks)

(Question 4 follows)

Question 4

Answer **BOTH** parts of this question.

(a) On 2 September 2012, Cameron contracted to sell his Rouse Hill property to Stuart. A settlement date of 2 February 2013 was stipulated with time being of the essence. The reason for the February settlement date was that Stuart wanted vacant possession of the property, whereas Cameron had a tenant in the property whose lease expired on 31 January 2013. It was expected that the tenant would vacate the property by the end of January 2013 so that Cameron could transfer the property to Stuart with vacant possession on the stipulated settlement date. On 25 January 2013 Cameron advised Stuart that he could not settle the sale of the property on 2 February 2013 because the tenant had stated that he would not leave on 31 January 2013, but would await a court order for his eviction. Cameron further advised Stuart that he would be able to settle the sale as soon as the tenant left the property.

On the basis of the above facts:

(i) Could Stuart have immediately terminated the contract following the telephone call from Cameron on 25 January 2013?

(5 marks)

(ii) Would your advice in (a) be different if, at the time of the telephone call, Stuart had no funds to enable him to complete the contract and, furthermore, had no prospects of having the necessary funds by 2 February 2013?

(5 marks)

(b) In August 2011, Harry completed the sale to Tim of his second-hand furniture shop in Marrickville. Clause 7 of the contract for sale stipulated that Victor could not open 'any shop selling new and/or second-hand furniture' within 25 kilometres of the Marrickville shop for a period of three years. Two weeks ago, at shop premises across the road from Tim's second-hand furniture shop in Marrickville, a sign went up stating that Harry would be opening a second-hand furniture shop in those premises on 1 April 2013.

Tim seeks your advice as to whether he can obtain a court order stopping Harry from opening his second-hand furniture shop in Marrickville.

(10 marks)

(Question 5 follows)

Question 5

Answer **BOTH** parts of this question.

(a) Athena entered into a building contract with Bacchus Building Company Pty Ltd (BBC), a company owned and operated by Bacchus. The contract stipulated that BBC would build Athena a new garage at a cost of \$15,000 and, further, that if the work was completed by 1 February 2013 Athena would pay each of BBC's five employees an extra \$250 by way of bonus. Bacchus inadvertently forgot to tell his employees anything about the bonuses. The garage was completed on 29 January 2013. BBC then told its employees of the bonuses promised by Athena. The employees were delighted at the prospect of the extra funds. However, their joy was short-lived when Athena refused to pay the bonuses and BBC refused to take any action against Athena for failure to pay the bonuses.

The employees seek your advice as what action, if any, they can take to enforce Athena's promise to pay the bonuses.

(10 marks)

(b) Flo and Eddie were travelling around Central America together. While in El Salvador, Flo had her bag stolen together with her travelers' cheques. She asked whether Eddie would lend her \$500 in American dollars while she was arranging to get the travelers' cheques replaced. Eddie agreed, provided Flo would repay the loan in the same currency when she got her replacement travelers' cheques. When Flo obtained her replacement travelers' cheques, Flo and Eddie were in Honduras. The day before they arrived in Honduras a left-wing faction of the Honduran military had overthrown the pro-American government and installed itself in power. The government of the United States immediately cut off all diplomatic relations with Honduras. As a consequence Honduran banks refused to carry out transactions involving American dollars. Eddie asked Flo to repay her the loan in Honduran currency (the lempira). Flo agreed, but said that in view of restrictions imposed by Honduran banks, she could only afford to repay an amount in Honduran lempira that was equivalent to \$300 in American dollars. Eddie, who was, unbeknownst to Flo, in desperate need of funds, was so relieved that he said he would accept that in full discharge of the debt owed to him by Flo. A few days later Flo and Eddie had a bitter argument and agreed to part ways.

Eddie now seeks your advice as to whether, pursuant to the law of New South Wales, he can sue Flo to recover the balance of the loan.

(10 marks)

END OF PAPER