

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

EQUITY

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

Candidates are required to attempt all **three** questions.

Question 1 is worth 40 marks. Question 2 is worth 20 marks.
Question 3 is worth 20 marks.

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

Answer **all** parts of this question.

(a) On 30 August 2011, Humphrey entered into a deed with Bernard by which, for valuable consideration, he assigned to Bernard 'all dividends on my shares with Acme Investments Ltd that are to be paid to me on or before 30 September 2012'.

On 28 September 2012, Humphrey received a dividend cheque from Acme Investments Ltd in the sum of \$3,000. This was the first dividend that the company had declared since 2009. Humphrey deposited the funds into his account with Jubilee Banking Corporation Ltd on 29 September 2012.

On 1 October 2012, Humphrey telephoned Bernard and asked him what he wanted done with the money. In response to Humphrey's question Bernard said: 'I want you to hold the money on trust for Jim'. On the same day Humphrey telephoned Jim and said: 'As of now I hold all my shares in Acme Investments Ltd on trust for you'.

On 15 October 2012 Jim died. In his will Jim left his whole estate to Arnold.

Arnold seeks your advice as to what rights or interests, if any, he will inherit pursuant to Jim's will in relation to the shares in Acme Investments Ltd and the dividends received by Humphrey on 28 September 2012.

(15 marks)

(b) Adolf, Bennito and Caesar are all parties to a deed which stipulates that Bennito is to paint Adolf's house and that in return Adolf will pay Caesar \$10,000.

In relation to this deed, what advice would you give in each of the following circumstances:

- (i) Will Adolf be able to obtain an order for specific performance against Bennito if Bennito breaches his obligation to paint Adolf's house?**
- (ii) Will Bennito, having painted Adolf's house, be able to obtain an order for specific performance against Adolf if Adolf refuses to pay Caesar?**
- (iii) Will Caesar be able to obtain an order for specific performance against Adolf if, after Bennito has painted Adolf's house, Adolf refuses to pay Caesar?**

(15 marks)

(Question 1 continues)

(Question 1 continued)

(c) Alf is a solicitor who at all material times was instructed by the trustees of shares in Summer Bay Ltd. Alf attended general meetings of Summer Bay Ltd on behalf of his clients. As a result of attending these meetings Alf gained an intimate knowledge of the nature of the business operated by Summer Bay Ltd. Alf's knowledge of the business of Summer Bay Ltd convinced him that the company was in need of restructuring in order to improve its profitability and hence the value of its shares. In a meeting with Sid and Colleen, the trustees of the shares, Alf discussed the possibility of the trust purchasing further shares to get control of the company and thereby undertake the necessary restructure. Sid thought it was a good idea, but Colleen vigorously opposed it.

Two weeks after the meeting with Sid and Colleen, Alf and Irene, one of the beneficiaries under the trust, purchased sufficient shares in Summer Bay Ltd to acquire a controlling interest in the company. Over the following few months Alf and Irene were able to restructure Summer Bay Ltd and improve its profitability, so much so that the value of its shares doubled.

Colleen seeks your advice as to the basis of any action that the trustees may have against Alf and Irene in relation to the latter's purchase of shares in Summer Bay Ltd.

(10 marks)

(Question 2 follows)

Question 2

Answer all parts of this question.

The facts of this question are set in New South Wales. Simon, a successful industrialist and founder of Izone Corporation, died on the 1 January 2012. In his will, Claudina, Simon's estranged wife, was named as the residuary beneficiary.

By clause 3 of his will, Simon left '\$10 million to be held on trust for the education of employees of Izone Corporation, their children and dependants.' Claudina has now challenged the validity of this provision.

Clause 4 of his will stipulated as follows:

'I give my property at Sommersby on trust to my sister Henrietta for my children for life, and then to any of my grandchildren that marry, on the condition that the grandchildren not marry a Catholic.'

The property at Sommersby was a large freehold, Torrens title cattle station in western New South Wales worth \$100 million. At the time of his death, Simon had three children, namely Leto (aged 50), Lago (aged 32) and Diego (aged 28). At the time of his death Simon had one grandchild, Formia, who was unmarried but had been dating Butchie from Scotland.

Henrietta, who had possession of the certificate of title to the Sommersby property, saw an opportunity to quickly become very rich. Soon after Simon's death she contracted to sell the property to Joseph. Although it was widely believed in the area that Simon had left the property on trust for this family and Joseph suspected that the circumstances of his purchase of the property were suspicious, he decided that the best thing to do was a basic title searching and then settle the transaction as soon as possible. Joseph became the registered proprietor of the property on 1 June 2012 and Henrietta then disappeared.

In relation to the above facts advise on the following matters:

(a) Can Claudina have the trust referred to in Clause 3 of Simon's will declared invalid and, if so, on what basis? If the trust fails what trust mechanism could be applied to bring the funds back to the estate and into Claudina's possession?

(8 marks)

(b) Does Clause 4 of Simon's will offend the rule against perpetuities and/or public policy?

(6 marks)

(c) Can Simon's sons recover the Sommersby property from Joseph?

(6 marks)

(Question 3 follows)

Question 3

The facts of this question occurred in New South Wales. Patrick ran and owned a trailer building business in Seal Rocks called Seal Rocks Car Trailers. He was a sole trader, meaning that the business was not a separate entity to him. Patrick's business owed large sums to its major creditor, Allcoast Metal Ltd.

Luke was an industrialist who was in the business of making money from short term business loans. He lent a large sum to Patrick on the condition that it would only be used to pay out the debt to Allcoast Metal Ltd. The agreement required the loan funds to be paid into a special account at the Central Coast Bank called Seal Rocks Car Trailers Creditor Account.

Patrick also told Luke of an investment opportunity that they could possibly undertake as joint venturers. It related to a large block of land of Torrens title land at 15 Scenic Road, Phegan's Bay that was for sale and which Patrick believed could be developed into a resort. They agreed that each of them would contribute equally to the project and share the profits equally. However, when the property was purchased it was registered in Patrick's name only, as Luke had previously had poor relationships with the local council and it was thought that his name on the title might adversely affect their prospects of getting the necessary development approval from the council.

Patrick also owned a Torrens title house as joint tenant with his wife Nerida at Little Beach. When they bought the house Patrick provided 20% and Nerida provided 80% of the purchase price.

In the meantime, because the car trailer business was going reasonably well, Patrick held off paying his debt to Allcoast Metal Ltd with the funds he had borrowed from Luke. The joint venture with Luke was also proceeding well until the development application was refused by the council on the grounds that the land was not big enough for the proposed development and that more land was required. The results of the application were published in the local newspaper.

Seeing an opportunity for making a tidy profit, Patrick spoke with the owner of the Torrens title land adjoining the land at 15 Scenic Road, Phegan's Bay and negotiated a price to purchase it. The purchase was settled quickly and the land, known as 16 Scenic Road, Phegan's Bay, was registered in Nerida's name.

Life went on for all concerned and nothing much happened over the next two years. However, things then took a turn for the worse. Patrick was declared bankrupt. The trustee in bankruptcy claimed the funds in the Central Coast Bank account, 50% of the house at Little Beach and all of the land at 15 Scenic Road, Phegan's Bay. When it was discovered that Patrick had provided the purchase price for 16 Scenic Road, Phegan's Bay, the trustee made a claim for its ownership as well. Luke also discovered that Nerida was the registered proprietor of 16 Scenic Road, Phegan's Bay and was incensed at Patrick's betrayal. He felt that Patrick had broken their joint venture agreement by buying the land and putting it into Nerida's name. Because Nerida demanded an exorbitant price for the land, Luke could not afford to purchase it and therefore was unable to further progress the development of 15 Scenic Road, Phegan's Bay.

(Question 3 continues)

(Question 3 continued)

In relation to these facts advise on the following matters:

- (a) Will Nerida, Luke or Allcoast Metal Ltd get the funds in the account with Central Coast Bank?
(4 marks)
- (b) Will the trustee in bankruptcy be able to claim 50% of the house at Little Beach?
(4 marks)
- (c) Does the trustee in bankruptcy have a claim on the house at 15 Scenic Road, Phegan's Bay?
(4 marks)
- (d) Does the trustee in bankruptcy have a claim on the house at 16 Scenic Road, Phegan's Bay?
(4 marks)
- (e) Does Luke have a claim on the house at 16 Scenic Road, Phegan's Bay?
(4 marks)

END OF PAPER