

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

EQUITY

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 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 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.

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Question 1

Critically evaluate the following statement in *Lau Siew Kim v Yeo Guan Guan Terence* [2007] SGCA 54 at [25], where V K Rajah JA (delivering the opinion of the Court of Appeal in Singapore) said:

“Over time ... equity has gradually metamorphosised from a jurisdiction of fluid, pragmatic, conscience-based decision making to one founded primarily upon the application of authoritative rules, maxims, principles and precedents.”

(20 Marks)

Question 2

History Book Ltd (HB Ltd) is a well-known publisher. The overwhelming majority of books it publishes are in the field of history. Charles is employed by HB Ltd as one of its commissioning editors. He is also a member of its board of directors. As part of his duties, Charles visits Australian universities and meets academic staff who teach and research in history, with a view to getting them to submit manuscripts to HB Ltd for consideration.

Two years ago Charles met with George, a history professor at a leading university in Sydney. George was an established author who had already published five books on European history with HB Ltd. During this meeting George told Charles that he had written a crime novel some years ago but had been unable to find a publisher for it. George gave Charles a copy of the manuscript to read. After reading the manuscript Charles was convinced that it would be a best-seller if published.

Charles then told George that he was starting his own publishing company specialising in crime fiction and that he would like George's novel to be its first title. George agreed to this proposal. Shortly afterwards, Charles' publishing company, Crime Fiction Pty Ltd, was formed and it contracted with George for the publication of his novel. By the terms of the contract, George was to receive royalties, but the copyright in the novel became the property of Crime Fiction Pty Ltd.

George's novel was a commercial success. George received \$25,000 in royalty payments and Crime Fiction Pty Ltd earned a profit of \$50,000. Of this profit Charles spent half of it on a holiday in Europe. The holiday exhausted all of Charles' other personal assets. Crime Fiction Pty Ltd's only asset is the remainder of the profits earned on George's novel.

HB Ltd seeks your advice as to possible claims it has in the light of the above facts.

(20 Marks)

(Question 3 follows)

Question 3

Compact Resources Pty Ltd was in financial difficulties. Its managing director, Mr Pearson, believed that liquidation could have been avoided if two major creditors, who were owed a total amount of \$100,000, were paid. Mr Pearson arranged for a loan of \$100,000 from Regal Hastings Finances Ltd. Regal Hastings Finances Ltd sent a cheque for \$100,000 to Compact Resources Pty Ltd with a covering letter which set out the following agreed terms as to the loan:

This sum is lent to Compact Resources Pty Ltd on the following conditions:

- (a) it is repayable on demand,
- (b) it will bear interest until repayment of 10% per annum, and
- (c) it must be used for the purpose of discharging Compact Resources Pty Ltd's indebtedness to its two major creditors.

Compact Resources Pty Ltd paid the cheque to the credit of a new account that it opened with its bank. Before any further steps were taken Compact Resources Pty Ltd went into liquidation.

On the following day Mr Hastings, the managing director of Regal Hastings Finances Ltd, acting within his authority as its managing director, telephoned his friend John Boardman and said to him:

'I have just spoken to Mr Pearson at Compact Resources Pty Ltd and told him that I want you to become the absolute owner of the \$100,000 that I recently advanced to the company. I expect that he will send you a cheque in the next few days'.

Mr Pearson has, to date, failed to send any cheque to John Boardman.

(a) Does John Boardman have any entitlement to the \$100,000 and, if not, who is entitled to the money?

(15 marks)

(b) How, if at all, would your answer to (a) above differ if, in his telephone conversation with John Boardman, Mr Hastings had instead said:

'I hereby immediately and irrevocably assign to you all my right, title and interest in the loan of \$100,000 that I recently advanced to Compact Resources Pty Ltd'.

(5 marks)

(Question 4 follows)

Question 4

Enzo and Maria were friends who migrated to Australia from Italy in search of a better life. Neither Enzo nor Maria was very well educated. After their arrival to Australia they were only able to obtain jobs that involved menial and low-paid work. In 1995 Maria inherited \$60,000 following the death of a distant relative. She used all the money to purchase 10 hectares of Torrens title land in the Hunter Valley. Although title to the land was registered in the names of Enzo and Maria as tenant-in-common in equal shares, there was no discussion between Enzo and Maria at the time of purchase as to beneficial ownership of the land.

At the time of purchase of the Hunter Valley property there was a fence that ran across the middle of it. A small house was built on the land to the east of the fence. A large but dilapidated shed was built on the land to the west of the fence. Maria lived in the house and Enzo lived in rented accommodation not far from the property.

In 2007, Enzo was in a position to be able to sponsor the migration of his elderly parents to Australia. However, he was concerned about where they would live when they arrived. Maria suggested that he convert the shed into a residence. Over the next 10 months Enzo spent \$20,000 making the shed habitable and began living there when it was finished. Maria was very impressed by the work that Enzo had done and said to him at the time: 'You have done a wonderful job in making a home from a shed. It is a place for your family to live forever'. In 2010, Enzo's parents migrated to Australia and lived with Enzo in the home that he had built on the western part of the Hunter Valley property.

Two weeks ago, Maria died. In her will she left her interest in the Hunter Valley property to the 'Hunter Valley Antivivisection Association', whose objectives were aimed at encouraging public debate in New South Wales for the introduction of legislation prohibiting vivisection.

The executor of Maria's estate seeks your advice as to who is entitled to the Hunter Valley property.

(20 marks)

(Question 5 follows)

Question 5**Answer BOTH parts of this question.**

(a) Monica, aged 27, and Chandler, aged 26, were married five years ago. Three years ago they purchased, as joint tenants, a house in Balgowlah under Torrens title. About a year ago their marriage began to break down. They decided to keep up the pretence of being married because a divorce would have damaged their respective careers. Six months ago Monica was diagnosed as having breast cancer.

One week ago Monica met with her brother Ross and told him that she wanted him to have her interest in the house at Balgowlah. To effectuate this gift she handed Ross a duly executed Memorandum of Transfer transferring her interest in the house to Ross, together with a letter addressed to Ally, the solicitor in whose office the certificate of title was held. The letter directed Ally to release the certificate of title to Ross.

The next day Ross went to Ally's office to collect the certificate of title Ally refused to release it to Ross on the ground that she could not do so without also having a direction to that effect from Chandler. Ross left Ally's office without the certificate of title. Before anything else was done in relation to this matter Monica was killed in a car accident.

Ross seeks your advice as to whether he is entitled to Monica's interest in the house at Balgowlah.

(10 marks)

(b) Maxine is an opera singer who lives in her unit at Mosman. Two years ago Maxine engaged Russell as her sole professional agent for a period of five years. Since entering into the agency contract Russell has failed to arrange any operatic engagements for Maxine. Two weeks ago Maxine advised Russell that she was going to leave Australia and permanently relocate to London. She also gave Russell notice that she was terminating the agency relationship. In response to Maxine's actions, Russell told her that he intended to sue her for damages for breach of the agency contract. Russell then proceeded to lodge a claim in the Supreme Court of New South Wales seeking damages for breach of agency contract.

Russell seeks your advice as to whether he can prevent Maxine from:

- **Engaging another professional agent; and**
- **Selling her Mosman unit and taking the proceeds with her when she leaves Australia.**

(10 marks)**END OF PAPER**