

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

COMMERCIAL TRANSACTIONS

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

Candidates are required to attempt **two** questions only from **Part A**, and **two** questions only from **Part B**.

If a candidate answers more than the specified number of questions, only the first **two** questions attempted from each Part 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 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.

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.

Answer 2 questions from Part A and 2 questions from Part B for a total of 4 questions.

PART A

Question 1

In relation to the facts in VIS Moot 21 and International Arbitration thereof, please answer the following questions:

- (a) How would you determine whether CISG applied to the contract?**
- (b) If CISG applies, what claims would you make on behalf of the claimant?**
- (c) What arguments in defence of these claims would you expect from the Respondent?**

(20 marks)

Question 2

Seafood Sanpan Pty Ltd (SS) is the operator of a Restaurant called Sanpan. On 1 August, 2013, Sally and Jim, who were married two weeks later, and 47 other diners, attended that restaurant and consumed meals which included prawns.

Unfortunately, the prawns contained the hepatitis A virus, which made all diners who ate them very sick. SS had purchased the prawns from Avatron Ocean Products Pty Ltd (Avatron), who had imported them to Australia from Myanmar.

Sally and Jim have been sick ever since and may never be free of the virus.

They wish to recover:

- (i) Their economic loss, including the cost of the meal, cancellation of their honeymoon with the associated cost of airfares and accommodation.**
- (ii) Damages for personal Injury.**

Advise Sally and Jim.

(20 marks)

(Question 3 follows)

Question 3

Mr. Baimer (Mr. B) was the sole Director of Baimer Transport Pty Ltd, (BT) which operated a container shipping business from premises owned by BT in Sydney. SOM Bank Limited (SOM) loaned BT \$6m and secured it by a mortgage over the premises, a charge over the assets of BT and a personal guarantee from Mr. B. In June 2012, BT defaulted on the loan and SOM appointed a Receiver who took possession of the premises, auctioned off assets at the premises and sold the land. All proceeds of \$5m went to SOM.

Back in January 2012, Mr. B had stored some of his personal possessions in 2 containers on the premises: 3 unregistered but valuable Porsche's, car parts and furniture. He has now discovered that they were sold along with BT assets when the Receiver took possession.

Advise Mr. B whether he can take any action against anyone to recover his personal items or their value.

(20 marks)

PART B**Question 4**

Gail purchased a Ford Laser car in 2011. She obtained a loan from Emerald Bank Limited (Emerald) and they took security over the vehicle and registered their interest on the Register of Encumbered Vehicles (REVS), the Register at the time under NSW law.

In September 2013, she went on a trip to Melbourne and left the car in the short term parking lot at the airport owned by Sydney Airport Carpark Pty Ltd (SAC). While in Melbourne, she fell in love and went to Paris, defaulted on her loan to Emerald, and cannot be located.

SAC want to treat the car as abandoned and sell it to recover outstanding parking fees of \$4,920, and towing fees for moving it to the long term car park. They claim a lien on it pending sale and recovery of their parking fees.

Emerald claim the car under their security and demand possession of it from SAC, so that they can sell it and use the proceeds in repayment of the loan.

You are the judge in the case brought by Emerald for possession of the car. What is your decision?

(20 marks)

(Question 5 follows)

Question 5

Anata IT Services Ltd (Anata) of Sydney NSW provides sophisticated IT services to many corporations. One of its largest customers was OHO Limited (OHO). Anata took out business insurance in April 2013, including trade credit insurance (insurance against default in payment by a customer) with Clearcut Insurance Limited (Clearcut) covering OHO, amongst other customers.

At the time of taking out the policy Clearcut asked certain questions:

Q. What is your previous experience with this buyer?

A. Highest outstanding balance \$15m. Credit terms now 21 days with weekly settlement.

Q. Have you ever experienced any difficulties or payment delays in dealings with this buyer?

A. No, up to 7-10 days on occasion.

Q. Have you ever extended or rescheduled a due date or put this buyer on a payment plan? If so, please provide details.

A. No. Yes, in bringing terms from 28 to 21 days.

On average, OHO paid 12 days late, 70% of invoices were paid late, 55% more than 14 days late. On 3 occasions, a payment plan had been negotiated by Anata with OHO. Clearcut had had access to the Anata management accounts for the relevant period.

OHO defaulted in payment of its invoices in November, 2013. Anata has made a claim under its insurance for \$7.5m.

Clearcut does not wish to pay the claim. It believes that Anata knew OHO was having difficulty at the time of taking out the policy.

Advise Clearcut as to whether it can refuse to pay the claim, giving reasons for your answer.

(20 marks)

(Question 6 follows)

Question 6

Please answer 5 only of the following questions:

- (a) Would you categorise the following goods as either: specific existing; specific future; unascertained existing; or unascertained future?
1. 100 tons of wheat to be harvested from a particular field next summer
 2. A particular second hand reaping machine owned by someone other than the seller
 3. A book ordered from an internet bookseller
 4. A bag of rice taken from the shelf in a supermarket by a customer
- (b) Describe 2 changes that have been made to the law of Privacy.
- (c) Explain whether the concepts of possession and ownership are distinct.
- (d) Can the Financial Services Ombudsman assist a small business in a complaint against their bank?
- (e) Why was Jinx Nolan unsuccessful in claiming the paintings of her father from Lady Nolan in Nolan v. Nolan?
- (f) Is barter relevant in the modern commercial world?
- (g) Why must every lawyer have an understanding of ADR, regardless of their field?
- (h) A farmer agrees to sell all of the trees on his land. The trees are to be cut down a month after the agreement and payment is to be made at that time. At what point does the property in the trees pass?
- (i) What should you do if you have just discovered that an employee of yours has forged your signature on a cheque for \$92?
- (j) Is the concept of a “holder in due course” for Bills of Exchange and cheques important for commerce?
- (k) I am staying at the Park Hyatt hotel in Sydney to see an exhibition and find a valuable gold watch in the top drawer of the bedside table. What would you recommend that I do?

(20 marks)

END OF PAPER