

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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.

PART A

Question 1

ARC Pty Limited (ARC) hires and sells scaffolding.

Scaffolding Pty Ltd (S) supplies and erects scaffolding for building sites. It acquires scaffolding, by hire or purchase, from 9 suppliers, one of which is ARC. The scaffolding is either picked up from the entity S hires or buys it from and delivered directly to the building site, or is stored in S's yard at Milperra, until required. While there is a record of each transaction, there is no way to distinguish scaffolding supplied by one company or another. All of the scaffolding looks similar and is interchangeable. It is not stored in separate piles or usually branded. In any case, scaffolding is often painted to suit a particular building site, covering any pre-existing branding.

On 1 February, 2013, Mr. Hill is appointed Receiver of S. The 9 suppliers of scaffolding have claimed, and demanded, the return of 127,420 items in total. ARC has claimed 23,674 items hired to S since March 2012 and threatened to sue Mr. Hill in conversion if he does not hand them over.

Mr. Hill has catalogued 14,340 scaffolding items at the Milperra yard and 78,000 on building sites. He is unable to decide which items belong to which supplier. Even where an item is branded, he is unable to tell who it belongs to. In addition, loss and theft of scaffolding is fairly common on building sites, and he cannot find a record showing scaffolding to and from building sites.

Advise Mr. Hill on how to respond to the ARC claim.

(20 marks)

Question 2

Prize Foods Limited, (Prize) makes 21 varieties of pet food at its factory in Bankstown and sells its products to supermarkets throughout Australia. It uses imported and local ingredients. One of its products, "Vint", has become very popular over the past 5 years.

Between June and September 2012, Prize received 2,000 reports of dogs and cats becoming very ill or dying after being fed Vint. Prize voluntarily recalled the product in October 2012, while their chief veterinarian investigated the matter. The ACCC was also flooded with complaints and the matter was publicised on a television current affairs program. Prize has received notice of 61,000 pet deaths, claims for economic losses totalling \$110,000,000, and claims for vet bills totalling \$25,000,000.

The veterinary report has blamed the pet deaths on the combination of two chemicals found in Vint-melamine, used in making plastics, and cyanuric acid, used to chlorinate pools. Neither would have caused death on their own, but they would have built up in the kidneys of animals and likely made them sick over time. The chemicals are not approved for use in pet food by either Prize or the Pet Food Industry Association of Australia (a self regulatory body for the pet food industry). They were contained in gluten imported by Prize directly from China.

Advise Prize on its potential liability and generally how to deal with the claims.

(20 marks)

(Part A Question 3 follows)

Question 3

Clingon Limited supplies food packaging products including plastic cling wrap. Orion Limited packages food. Both operate in NSW.

Orion ordered \$3m worth of plastic cling wrap from Clingon. Because the cling wrap arrived late and under pressure to get orders out to customer X, Orion used 15% of it for customer X's order without checking it.

The cling wrap as delivered, did not meet the specifications agreed with Clingon. There is no written agreement between Orion and Clingon.

Clingon is pressing Orion for payment. Orion does not want to pay Clingon anything, because it has had to source alternative plastic film, dedicated 3 members of staff to placating customer X and reassuring other customers, discounted supply to customer X by \$41,000, gave up space to store the unsatisfactory Clingon plastic film, juggled and delayed incoming food deliveries (much to the annoyance and cost of suppliers), and had their employees and machinery stand idle for two days until the alternative film arrived.

Orion has sought your legal advice regarding the following questions:

- (a) If Clingon sues them for the price of the unsatisfactory cling wrap, should they pay it or defend the action?**
- (b) Are they entitled to rescind the contract and refuse to pay anything to Clingon?**
- (c) Is there a legal basis under which they can claim reimbursement for their additional costs from Clingon?**
- (d) What steps should they take to resolve the matter and in what order?**

(20 marks)

(Part B follows)

PART B

Question 4

Liam Rogers responded to a Sydney newspaper advertisement placed by Roofmat Pty Ltd (Roofmat), which franchises the rights to distribute and apply a roof resurfacing product known as M120.

The advertisement invited the public to purchase a “great husband and wife business” with “cashflow, immediate start, guaranteed income over 20 years”.

This was just what Liam and his wife were looking for.

A franchise agreement was signed on 12 December, 2011. The agreement expressly provided that any cheque or bill of exchange would be considered by both parties as cash and that there had been no representations other than those expressly set out. At the same time, Liam also signed the following document:

To: Roofmat Pty Ltd

I Liam Rogers, hereby acknowledge that I am indebted to you for the sum of \$120,000 and I covenant to pay the above mentioned sum to you by the 1st of July 2012.

Signed: Liam Rogers

Liam failed to pay Roofmat \$120,000 on 1/7/2012. He claimed that the advertisements were misleading and deceptive, there was no goodwill, and the product did not do what Roofmat claimed it could do.

Advise Roofmat on what legal action it can take to receive payment of \$120,000 and its chances of success.

(20 marks)

Question 5

On 22 February, 2013 an enormous hail storm struck parts of Sydney, resulting in widespread damage to vehicles.

Sam is a plumber and owned a Ford utility vehicle on 22 February, 2013. He has made a claim for storm damage against his insurer, RIA Limited (RIA).

A forensic investigation report by an expert commissioned by RIA has concluded that there has been some damage caused by the hail storm, but that approximately 90% of the damage is inconsistent with hail, being scratch marks that mostly appear in linear or clustered patterns and not of a type caused by wear and tear. The expert concluded that the insured intentionally caused the damage in an effort to render the vehicle a total loss so that he could recover the agreed value of the vehicle.

Advise RIA whether it is legally entitled to deny the claim in full, or must pay for the repair of the proportion of damage genuinely caused by the hail.

(20 marks)

(Part B Question 6 follows)

Question 6

Please answer 5 only of the following questions:

- (a) Why did Federal and State Governments pass the Electronic Transactions Acts?
- (b) Describe a legal risk for an enterprise using cloud technology, and how it may be managed.
- (c) Sometimes manufacturers choose to minimise legal risks by using warnings rather than safer product designs to impose responsibility for accident prevention on product users. i.e. Good Warning Bad Product. Describe an example, giving reasons for your choice.
- (d) In what circumstances will silence be misleading for the purposes of s.18 of the Australian Consumer Law?
- (e) What is a Purchase Money Security Interest (PMSI)?
- (f) What are 3 vital things to include in an agreement to arbitrate?
- (g) Who bears the risk of deterioration of goods when delivered to a distant place at the request of a purchaser?
- (h) When will a finder lose out to an occupier of the land on which he found an item?
- (i) Describe two ways in which a provider of professional services can manage potential legal risks associated with the supply of those services.
- (j) If I hold a garage sale, do I need to provide internet access so potential buyers can check whether the items I am selling are encumbered under the Personal Property Security Act?

(20 marks)

END OF PAPER