

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

CONVEYANCING

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

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

All references to a Contract for the sale of land are to the form approved by the Law Society of New South Wales (2005 edition).

All references to the Regulation are to the Conveyancing (Sale of Land) Regulation 2010.

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.

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 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

Attempt **BOTH** parts of this question.

(a) Your client, Karl Bosch, has instructed you to act for him and his wife on the purchase of a residential property. You have advised Mr Bosch that the section 149(2) certificate attached to the contract discloses that the property is zoned R2 Low Density Residential. However Mr Bosch has told you that he has heard that properties nearby are zoned R4 High Density Residential and he and his wife fear that potential nearby developments would adversely affect the property he and his wife propose to buy, particularly its privacy and quiet ambience. Mr Bosch wants you to make searches and enquiries of nearby properties in order to gauge the likely potential impact.

What response would you make and why?

(10 marks)

(b) **In what circumstances has repudiation of a contract been inferred?**

(10 marks)

Question 2

In November 2012, your client, Kim Cheong, contracted to purchase a 2 bedroom unit off the plan without legal representation. A draft strata plan was not attached to the contract. However, a sketch plan prepared by the developer was attached. A colour brochure was provided to Ms Cheong stating that the total area of the unit and carspace was 110 square metres. The contract contained a special condition 33 which stated:

“The purchaser cannot make an objection, claim or requisition, delay completion, rescind or terminate because of a difference between the property shown in the attached sketch plan and the Strata Plan as registered unless the difference detrimentally affects the property to an extent which is substantial.”

You have only recently been instructed to act. The construction of the building is now complete and the Strata Plan has been registered. During an inspection, your client has discovered that a king size bed will not fit in the main bedroom. However, the sketch plan attached to the contract showed a king size bed in the main bedroom with ample space around it. You have found by search of the Strata Plan that the area of the lot purchased, including the carspace, is only 99 square metres. Your client has assured you that she would not have purchased the property if she had known that a king size bed would not fit in the main bedroom and that the area of the unit and carspace is 10% less than was shown in the brochure provided to her. The vendor’s solicitor is threatening to issue a notice to complete.

Advise your client on remedies available to her to achieve various outcomes and what action(s) you recommend to achieve such outcomes, referring to decided cases.

(20 marks)

(Question 3 follows)

Question 3

Attempt **BOTH** parts of this question.

- (a) Under what circumstances can the failure to attach a sewer mains diagram to a contract for sale expose the vendor to rescission by a purchaser under clause 16(1)(b) of the Regulation?
(7 marks)
- (b) Explain the effect of a building certificate and discuss the roles this certificate can play in conveyancing transactions.
(13 marks)

Question 4

“Buyers and developers of land benefited by private restrictive covenants or easements, which generally aim to preserve amenity and value, cannot assume that they will remain enforceable.”

Discuss this statement.

(20 marks)

Question 5

Attempt **ALL** parts of this question.

- (a) What are the requirements for an enforceable contract for sale of land?
(5 marks)
- (b) Should a section 149(2) and (5) certificate be routinely obtained on behalf of a purchaser before completion?
(5 marks)
- (c) In relation to an adverse affectation, what constitutes a proposal?
(5 marks)
- (d) What does a vendor have to do to satisfy the obligation to sell with vacant possession?
(5 marks)

END OF PAPER