

REVISED EXAMINER'S REPORT ON TERM 1 2013 CONVEYANCING EXAMS

In total 60 papers were marked by me and by Edward Loong. Edward has provided a separate report concerning the papers he marked. It was sent to the Board with my email dated 3 April last. Out of the 67 enrolled students, 5 were not eligible having either failed to submit an assignment or having not reached the minimum mark necessary for referral to the advising examiner. Two candidates who were eligible did not sit for the exam. Of the remaining 60 candidates, 2 (3.3%) failed and 58 succeeded. Of the remaining candidates, those who succeeded, 16 (26.7%) were Passes, 26 (43.3%) were Passes with Merit and 16 (26.7%) were Passes with Distinction.

Against the history of outcomes of conveyancing exams, in an examination designed to test the knowledge and preparation over a broad range of areas in the subject, this low failure rate and high proportion of Passes with Merit and Distinctions is a very successful result.

My experience of the papers marked were similar to that of Mr Loong in his report except that only a few candidates failed to mention all of the 4 most relevant documents in Q1(a). About half the candidates assumed that Q2(a) was about a sewer main instead of the clearly specified stormwater main. Alert candidates distinguished "a Council stormwater main" from a sewer main. There is no mandatory disclosure requirement for a stormwater main in the Conveyancing (Sale of Land) Regulation 2010, but many candidates wrongly assumed that a sewer was the same as a stormwater main.

Part of the challenge of this paper, carefully devised by Mr Henningham, was to test the alertness of candidates, an essential quality of all working lawyers. Q1(b) involved a "vacant property" to alert candidates to consider the possibility that the existing use rights in question had not expired by 12 months non-use, but the question stipulated "recent conduct" of the café use. Regrettably 1 candidate thought that the café business being bought was "vacant land".

Q3 dealt with a Contract for Sale in 2007 in which deceptive and misleading conduct was alleged. Alert candidates noticed that this date preceded the commencement of the Australian Consumer Law 2010 on 1 January 2011 and so the Trade Practices Act 1974 and Fair Trading Act 1987 applied.

Q5(a) dealt with rights in respect of "a narrow right of way over an adjoining property". About half the candidates equated a right of way with "a restrictive covenant" which is quite different in that the former grants rights and the latter limits them. However both are affected as regulatory instruments under s 28 of the *Environmental Planning & Assessment Act 1979*, on which the question invited analysis. As teachers, I am sure Mr Henningham and I will be at pains to alert students to the distinction.

David Ross
Examiner

CONVEYANCING MARCH 2013 EXAMINATION

- Q1(a)** Few mentioned all of the following, considered to be the most relevant additional documents:
- (i) building certificate;
 - (ii) survey report;
 - (iii) section 149(5) certificate; &
 - (iv) sewer location/reference sheet
- Q1(b)** Few recommended requesting inclusion of a special condition.
- Q2(a)** Too many referred, incorrectly, to breach of the Conveyancing (Sale of Land) Regulation 2010.
- Q2(b)** Well answered, as expected.
- Q3** Most referred to the ACL but did not state that it did not apply since it only commenced on 1 January 2011, when the facts related to events before then.
- Q4** (a), (b) & (d) Well answered, as expected.
- (c) Poor reference to CROWE v RINDOCK.
 - (e) Few referred to clause 1, Contract, which also defines those terms.
- Q5(a)** Poor reference to HILLPALM's case, section 28 EPA, & LENNARD v JESSICA HOLDINGS.
- Q5(b)** Most discussed the prudence of lodging a caveat but few mentioned that final searches should be conducted as close as practicable to the settlement date.

Comments

Some answers too detailed, and parts of questions too often not identified.

Highlighting, under-scoring or using CAPITALS when citing authorities or referring to legislation will assist answers which are lengthy or when handwriting is poor.

Less detail and confining answers to the essential issues will leave more time to fully consider questions.

Edward Loong
March 2013