

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

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, 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.

Question 1

Attempt **BOTH** parts of this question.

(a) Your client Ramona tells you that she and her husband Tom are interested in buying the property known as "Precious Pooches". The property has been advertised as having the benefit of existing use rights for the purpose of dog boarding kennels. Ramona has told you that she has spoken to a duty planner from the local council who told her:

"That place has been boarding dogs for at least ten years. I have driven past it many times and I believe it does have existing use rights".

The auction will be held in 14 days time and Ramona and Tom want you to act for them on the purchase if they are the successful bidders. The contract contains a section 149(2) certificate which discloses that the property is zoned as R2 Low Density Residential. In this zone, use for the purpose of "Animal boarding or training establishments" is prohibited. No warranty is contained in the contract to the effect that the current use for boarding dogs is an existing use under section 106 of the Environmental Planning and Assessment Act 1979.

- i. Advise Ramona and Tom what actions would need to be taken before they could be in a position to confidently, with appropriate legal protection, bid to purchase the property at the auction or, alternatively, make an informed choice not to bid at the auction; and**
- ii. How would you protect yourself in giving your advice?**

(b) Discuss:

- i. The requirement for time given by a notice to complete to be reasonable; and**
- ii. The need to include a special condition dealing with such time in a contract for sale of land and the terms of such a condition.**

(20 marks)

Question 2

By what means can a purchaser's solicitor protect his or her client's beneficial interest prior to completion?

(20 marks)

(Question 3 follows)

Question 3

Attempt **BOTH** parts of this question.

- (a) Does the solicitor acting for a purchaser have any responsibility to conduct searches and enquiries, before exchange of contracts, in relation to adjoining properties or the surrounding area?
- (b) What advice would you give to a vendor if the purchaser requests paying only a 5% deposit rather than the usual 10% on exchange of contracts for the sale of land?

Discuss, in particular:

- i. Non cash alternatives available to enable a purchaser to provide a 10% deposit; and
- ii. Whether a special condition in the contract allowing the vendor to recover up to 10% of the price where a lesser deposit is paid can ever be effective protection for the vendor.

(20 marks)

Question 4

Attempt **BOTH** parts of this question.

- (a) "Obtaining extra information from a Council under section 149(5) of the Environmental Planning and Assessment Act 1979 is a waste of clients' money."

Discuss this contention.

- (b) Discuss:
- i. The requirements for appropriate and valid requisitions and proper replies; and
 - ii. Whether a vendor's solicitor in answering requisitions on title could be liable for damages for negligent misrepresentation or for misleading or deceptive conduct? If so, how could such liability be avoided?

(20 marks)

(Question 5 follows)

Question 5

Attempt BOTH parts of this question.

(a) In the NSW Court of Appeal decision of *Carpenter v McGrath* it was held that the right of a council to order demolition of a building erected without prior approval was not a presently existing defect in title.

How did the NSW Legislature overcome the effect of the decision in *Carpenter*?

(b) Explain by reference to decided cases the principles which determine whether a party has elected to affirm a contract for sale of land.

(20 marks)

END OF PAPER