

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

INSOLVENCY

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

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

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 will 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

HAL 9000 Pty Limited (“HAL”) is a corporation that supplies cloud computing services and storage. It contracts with Macro Software Pty Limited (“Macro”) for Macro to provide software updates and maintenance to the HAL servers. In the written contract between HAL and Macro there is a compulsory mediation clause, if there is a dispute.

HAL finds Macro’s services sub-standard and declines to pay the agreed monthly fee of \$10,000, for six months. HAL terminates the contract with Macro and engages another software company, at considerable expense, to fix glitches in the work done in the past by Macro. Several customers leave HAL and go elsewhere.

Macro serves a statutory demand upon HAL for \$60,000.

Advise the directors of HAL about the legal effect of the statutory demand and what they should do.

Question 2

Europa Pty Limited (“Europa”) goes into liquidation, and the liquidator finds out that there have been dispositions of company property over the last few years. The application to wind up was filed on 23 July 2013 and the court appointed the liquidator on 30 November 2013. The liquidator seeks your legal advice and says that at present all he knows are the following facts:

- a. On 30 June 2012 the two directors paid themselves bonuses of \$100,000 each;
- b. On 30 June 2010 Europa’s book debts (i.e. the debts owed to Europa by its customers) were transferred to the spouses of the two directors. At the time the debtors totalled \$350,000 but there had been problems collecting from some customers. The spouses paid \$200,000 and took an assignment of the debts owed to Europa. They have since obtained payment of the full \$350,000;
- c. On 30 June 2013 a supplier of Europa cancelled Europa’s credit arrangement and insisted on payment of its debt in full before it would resume supply. The debt was paid that same day;
- d. On 1 July 2000, when Europa was incorporated, it could not obtain credit so the brother of a director lent \$200,000 to the company, interest-only for a term of 15 years at an interest rate of 12%. Europa has always made these payments.

Advise the liquidator about each transaction and tell him what further facts you need to fully advise him.

(Question 3 follows)

Question 3

Dave Bowman, an electrician, has been buying high voltage components from Sine Limited ("Sine") for 15 years. He has had a friendship with the Sine sales manager all that time, and if Dave has fallen behind in payment, the sales manager has been happy to wait. However, Dave's friend is made redundant and the new sales manager insists on payment on time. Dave is quite offended and fails to pay for three months just to make a point.

Sine sues Dave for \$15,000 in the Local Court and obtains a default judgment. Sine issues a Bankruptcy Notice which claims \$17,500 but Dave ignores this too. The Notice was left overnight under the windscreen wiper of his ute. Sine presents a Creditor's Petition to the Federal Court, which is listed for hearing in a fortnight. Dave comes to you for legal advice.

Advise Dave how to avoid bankruptcy and what he has to do.

Question 4

Andrei Smyslov ("Andrei") failed to satisfy a judgment of the District Court, given on 2 July 2012, for \$675,000. The judgment creditor applied on 1 August 2012 to the Official Receiver for the issue of a Bankruptcy Notice. It was issued on 2 August 2012. It was served on 6 August 2012. A Creditor's Petition was presented on 1 October 2012. Andrei was made bankrupt by order of the Federal Court, on 2 December 2012.

The Official Trustee seeks your legal advice. He wants to claim the following property and sell it to pay the creditors:

- a. A painting which Andrei gave to his wife on 12 August 2012;
- b. A racehorse which Andrei sold at public auction on 6 September 2012;
- c. A Lamborghini motor vehicle still in Andrei's possession;
- d. Andrei's interest in a self-managed superannuation fund still under Andrei's control as trustee;
- e. The repayment by Andrei of a loan to Westpac on 1 November 2012.

The Official Trustee says to you that he does not have the funds to pursue any claims for void dispositions.

Advise the Trustee about the relation-back period for Andrei and identify the issues which may arise if the Trustee seeks to recover the above property.

(Question 5 follows)

Question 5

Frank Poole goes bankrupt after the Federal Circuit Court makes a sequestration order on 3 March 2014. The date of the commencement of his bankruptcy is 2 December 2013. The Official Trustee seeks your legal advice about the following transactions:

- a. On 1 November 2009 Frank transferred his half share in the family mansion to his wife. His half interest was then worth \$500,000 but the Transfer recited that the consideration paid by his wife was \$200,000. The Trustee has discovered that this amount remains unpaid.
- b. Frank paid the following amounts into the family superannuation fund: \$25,000 on 30 June 2010, 30 June 2011 and 30 June 2102; \$300,000 on 30 June 2013; \$50,000 on 30 November 2013.
- c. On 30 June 2000 Frank gifted his share portfolio, then worth \$100,000, to his mother. The mother sold those shares at the height of the market in 2007 for \$200,000. She invested the proceeds in term deposits, which are now worth \$250,000.

Advise the Official Trustee what he can do about these transactions, including what he would have to prove and what defences might be raised.

END OF PAPER