

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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 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

Michael is a former politician who leased a BMW from Luxury Finance. He fell into arrears leading to the car being repossessed. Luxury Finance commenced proceedings in the Local Court for amounts due under the lease, including penalty interest. Michael negotiated what he believed was a binding settlement with Luxury Finance, by which they agreed to waive penalty interest. Michael then became busy at work and neglected to sign the paperwork to formalise the deal. Luxury Finance proceeded to obtain default judgment for a larger amount in the Local Court, and obtained the issue of a bankruptcy notice. The bankruptcy notice was served at Michael's old electorate office on Wednesday 2 January 2013. The office later posted the notice to Michael. Michael consults you for legal advice on 25 January 2013.

Advise Michael what to do about the notice. Support your advice by reference to any applicable Acts, regulations, rules and decided cases.

(20 marks)

Question 2

Eddy is indebted to Eric for \$7,596 worth of services provided. Eric has already obtained a Local Court judgment in that amount and a bankruptcy notice was served upon Eddy on 2 November 2012. Eddy failed to comply with the notice. Eddy and Eric are old mates and still talk to each other. In December 2012 Eric suggests that the debt which is the subject of the notice could be discharged if Eddy transferred his car to Eric's wife. Eddy agrees and the transfer is done.

There has already been a Creditor's Petition presented by another creditor. It is heard on 1 February 2013 and a sequestration order is made that day. The date of the commencement of Eddy's bankruptcy is 1 October 2012.

The trustee seeks legal advice from you. He says that given the size of the debt he doesn't want to get involved in a preference claim, but just wants the car under relation-back.

Advise the trustee whether there will be any defence to such a claim. Support your advice by reference to any applicable Acts, regulations, rules and decided cases.

(20 marks)

(Question 3 follows)

Question 3

Cataract Coal Pty Ltd (“Cataract”) was the holder of valuable coal exploration licences which were cancelled after an ICAC Hearing. Shortly afterwards, Cataract was wound up in insolvency on 1 February 2013 and the liquidator became aware of the following transactions and seeks your advice in relation to them:

- (a) During the currency of the ICAC Hearing, Cataract paid bonuses to its three directors of \$100,000 each;
- (b) While the ICAC preliminary investigation was going on, Cataract sold its gold exploration licences to a company owned by the three Cataract directors’ wives;
- (c) Cataract paid its legal bills in full during the ICAC Hearing;
- (d) During the ICAC Hearing, Cataract mortgaged its office building to a merchant bank to obtain a loan to pay the legal bills.

Advise the trustee whether he could successfully challenge these transactions. Support your advice by reference to any applicable Acts, regulations, rules and decided cases.

(20 marks)

Question 4

Dave Bowman runs a concrete company Bowman Concrete Pty Limited (“Bowman”). For years he has bought gravel from Frank Poole. The two got on well in business, until Dave started an affair with Frank’s wife. Frank then started dumping random loads of gravel on Dave’s driveway, and to add insult to injury, invoicing him for it. Frank then issues a statutory demand upon Bowman.

Dave comes to you for advice. He says: Bowman is solvent; he never ordered the gravel; three years ago he was supplied with one load of defective gravel, but didn’t do anything as he then got on well with Frank; the statutory demand was sitting on top of the last pile of unwanted gravel in his driveway.

Advise Dave what to do about the statutory demand. Support your advice by reference to any applicable Acts, regulations, rules and decided cases.

(20 marks)

(Question 5 follows)

Question 5

Rum Corps Pty Ltd (Rum Corps) was a company which was the exclusive supplier of rum to the NSW government, its biggest customer. It paid no tax, channelling its profits through a series of trusts and loan accounts, which even its Chief Financial Officer cannot fully explain. With a change of government, Rum Corps loses the NSW government contract. William Bligh, a director of Rum Corps, delays paying creditors and PAYG tax instalments, until Rum Corps can build its business back up. There are statutory demands served by creditors, but he manages to keep them at bay by part-payments. The other director, Nellie Bligh, wife of William, has never played any active role in the management of the business.

Rum Corps attempts then to break into the Queensland market to take market share away from Bundaberg Rum. William causes Rum Corps to borrow \$10 million to fund an advertising blitz during rugby league telecasts, on the advice of a marketing guru. However, a drugs scandal in the sport causes ratings to drop and the ad campaign is largely wasted.

Rum Corps gets further into debt and eventually goes into liquidation. The liquidator sues both directors on an insolvent trading claim in relation to the \$10 million loan. They come to you for legal advice.

Advise the directors what the liquidator has to prove to win, and what avenues they may have to escape a damages verdict. Support your advice by reference to any applicable Acts, regulations, rules and decided cases.

(20 marks)

END OF PAPER