

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

INDUSTRIAL LAW

Time: Three Hours

This paper consists of **six** 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 exam. 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 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.

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Question 1

Jessica and her fellow employees are employed by Gus Stables Pty Ltd. Gus Stables Pty Ltd is a constitutional corporation.

The employees (including Jessica) are currently covered by a modern award.

In March 2014 Gus Stables Pty Ltd approaches the employees including Jessica and it is proposed by them that the employees and Gus Stables Pty Ltd enter into an enterprise agreement. However, it is also proposed that the agreement will not apply to jockeys but will apply to all other employees.

Gus Stables Pty Ltd does not provide all employees with a notice of the employee's representation rights prior to commencing negotiating a proposed enterprise agreement.

Gus Stables Pty Ltd proposes to the employees that the agreement will reflect their current terms of employment with the exception of:

- a. The agreement will provide for an 12.5% salary increase made up of five increases of 2.5% from 1 July in each year of the agreement's operation;
- b. The agreement will increase the weekly number of hours from 38 hours to 40 hours per week (the modern award provides for a 38 hour week);
- c. Reduces the casual loading from 25% to 20%;
- d. The agreement will provide the employees with 3 weeks' annual leave which can be taken as leave or can be cashed out at the employer's option;
- e. The agreement will provide for 8 days sick leave per year which may accumulate for 3 years;
- f. The agreement will provide for 2 days' paid compassionate leave;
- g. The agreement will provide that employees will be paid monthly in arrears; and
- h. The agreement will have a term, which will expire on 30 September 2018.

Jessica is concerned about the proposed agreement and seeks your advice.

Jessica is also concerned that if she does not support the agreement Gus Stables Pty Ltd may terminate her employment.

(Question 1 continues)

(Question 1 continued)

Jessica is also concerned because she has sought the assistance of her union in the negotiations, but has been told by Gus Stables Pty Ltd that she cannot involve them in the negotiating of the proposed agreement.

Further, Gus Stables Pty Ltd has refused to provide Jessica with a copy of the proposed agreement or a summary of it.

Jessica is also concerned about whether she will continue to enjoy the conditions in her modern award if the enterprise agreement was made and approved by Fair Work Australia.

Advise Jessica.

(20 marks)

Question 2

“The duties imposed by the Common Law in an employment contract are more onerous on an employee than on an employer.”

Discuss.

(20 marks)

Question 3

Haijin Pty Ltd employs Catherine as its Research Manager in NSW. Catherine’s employment is award free and Catherine has been employed by Haijin for 7 years. Catherine is paid a salary of \$165,000 per year plus superannuation.

Catherine has a written contract of employment which provides that either party may terminate the contract by giving the other party 6 months’ notice or payment in lieu of notice. Haijin Pty Ltd may also terminate the contract summarily for serious and wilful misconduct.

Catherine’s contract does not contain a confidentiality provision.

Catherine is directed by Haijin Pty Ltd to undertake research for a client; the Japanese Tourist Agency is seeking research and information in order to assist it with competing with the Chinese Tourist Agency.

Since Catherine’s family comes from China she refuses to do this for a period of four weeks but undertakes all her other duties. Haijin Pty Ltd is initially unaware of Catherine’s refusal to perform this duty.

(Question 3 continues)

(Question 3 continued)

Catherine in the course of other research tasks becomes aware of plans by the State Rail to build a rail line for a “fast train” between Sydney and Wyong. State Rail is a client of Haijin Pty Ltd.

As a result of this information, Catherine begins to buy up property in the Wyong area and tells her friends about State Rail’s plans.

State Rail discovers that Catherine is telling people about its plans for a “fast train” to Wyong and wants Haijin Pty Ltd to terminate Catherine’s employment.

Haijin Pty Ltd terminates Catherine’s employment summarily by providing her a letter at work.

Following Catherine’s termination, Haijin Pty Ltd discover that Catherine had performed no work as requested for the Japanese Tourist Agency.

One month following her termination Catherine was offered a position with a salary of \$120,000 per year but has not accepted that position.

Catherine comes to you for advice.

Advise Catherine.

(20 marks)

Question 4

Compare and contrast the causes of action an employee may have on termination of his/her employment under the Fair Work Act.

(20 marks)

Question 5

In recent years Courts have placed a greater emphasis on economic independence in determining whether a person is a contractor.

Discuss.

(20 marks)

Question 6

The right for employees to take industrial action in Australia is very limited so as to be illusory.

Discuss.

(20 marks)

END OF PAPER