

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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 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

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 2013 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 8% salary increase made up of four increases of 2% 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;
- (e) The agreement will provide for 10 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 for a 30 minute unpaid meal break each day;
- (h) The agreement will provide that employees will be paid monthly in arrears; and
- (i) The agreement will have a term, which will expire on 30 September 2017.

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.

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.

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 follows)

Question 2

“The Fair Work Act places greater emphasis on collective bargaining in setting terms and conditions of employment rather than on Fair Work Australia setting terms and conditions of employment in modern awards.”

Discuss.

(20 marks)

Question 3

The Fair Work Act provides all employees with comprehensive and enforceable minimum conditions of employment.

Discuss.

(20 marks)

Question 4

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

(20 marks)

Question 5

“The Fair Work Act penalises those employers and employees who do not bargain in good faith.”

Discuss.

(20 marks)

(Question 6 follows)

Question 6

Yasmin is an official of the Travel Employees Union (the "TEU"). Flight Central Pty ("FC") operates a number of travel agents in NSW and Victoria.

Members of TEU employed at FC are currently covered by a federally registered enterprise agreement that is due to expire on 1 April 2013.

Yasmin and her members employed by FC are concerned about their future terms and conditions of employment and believe that FC is unlikely to accept their wages offer in the next round of negotiations for a federal enterprise agreement.

Yasmin believes that TEU and their members at FC may have to take industrial action which could close FC and thus disrupt the booking arrangements for FC client's and in particular the corporate clients of FC which regularly book their travel arrangements through FC.

Yasmin is concerned that the TEU (including herself) and the members may be liable for any losses suffered by FC and its customers because of the likely industrial action.

Yasmin comes to you for advice.

Advise Yasmin.

(20 marks)

END OF PAPER