

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

COMPETITION & CONSUMER LAW

Time: Three Hours

Candidates **must** attempt **one** question only from **Part A** and **two** questions from each of **Part B** and **Part C** for a total of **five** questions. **Please note the marks that have been allocated for each of the questions.**

If more than the specified number of questions is answered, only the **first** question attempted in **Part A** and the first **two** questions attempted in each **Part B** and **Part C** 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 a closed book examination. No materials are permitted in the examination room.

Attached to this paper is a copy of the Case List contained in the Law Extension Committee's subject guide, an abbreviated index of the relevant provisions of the Competition & Consumer Act 2010 (CCA) and an abbreviated index of the relevant provisions of the Australian Consumer Law (ACL).

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.

CCA: Competition & Consumer Act
ACL: Australian Consumer Law

PART A

Attempt one question only in this part.

Question 1

Write notes on only four (4) of the following:

- (a) Conduct by silence (s4(2) CCA & s2 ACL).
- (b) The extension of jurisdiction to Commonwealth government authorities, in so far as they carry on a business. (s2A CCA).
- (c) 5 activities that **do not** constitute the "*carrying on of a business*" by either the Commonwealth or State/Territory governments (s2C CCA).
- (d) 5 forms of activities that would constitute exclusive dealing (s47 CCA).
- (e) 5 acts that would constitute resale price maintenance (s48 CCA).
- (f) 5 examples of unfair terms in a consumer contract (s25 ACL).
- (g) 5 forms of false or misleading representations about goods or services (s29 ACL).
- (h) 5 matters, as prescribed in s22 of the ACL, a court may have regard to in connection with unconscionable conduct as prescribed in s21.

(20 marks)

OR

Question 2

Answer only two (2) of the following:

- (a) "*Competitors who regularly share sensitive market and price information (including at face-to-face meetings) and generally agree that the market within which they operate cannot afford to have another competitor are likely to have entered into an arrangement or understanding which contains an exclusionary provision and or have the purpose or effect or likely effect of substantially lessening competition in breach of s45 of the CCA.*

Discuss.

- (b) The only two online retailers of medieval musical instruments and sheet music wish to merge. Both are operated through a company. Their services are particularly popular in country/remote areas where there are no shops selling such instruments or sheet music.

Advise as to whether the merger may be in breach of s50 of the CCA.

- (c) **Discuss the nature and scope of the harassment and coercion provisions in s50 of the ACL.**

(20 marks)

(Part B follows)

PART B

Attempt any two (2) questions in this part.

Question 1

The Top Target Shooters Club (TTSC):

- i. is incorporated under the Associations Incorporation Act;
- ii. has 1,500 members;
- iii. has owned the only four target shooters facilities (which includes both indoor and outdoor target shooting ranges) located within a 20 km radius of the centre of Sydney;
- iv. has owned the facilities since it was incorporated 50 years ago;
- v. exclusively sells a range of American made pistols and rifles, ammunition, target sighting equipment, clothing and other paraphernalia;
- vi. uses the most advanced European target shooting technology for which they are also the exclusive Australian distributors;
- vii. charges an annual membership fee plus a fee of \$30 per hour for the use one of the facilities.

There are 6 other target shooting clubs in the Sydney region with both indoor and outdoor facilities. Together they have a total membership of 950 members. Their facilities are technologically unsophisticated by comparison with those of TTSC and are located at least 50 km from the centre of Sydney.

The Sure Fire Shooters Club (SFSC), with 390 members, has approached TTSC about having access to the TTSC facilities on a proper commercial basis.

TTSC has offered SFSC the use of only one of its facilities on the strict condition that SFSC:

- i. pay an annual fee to TTSC of \$50,000;
- ii. their members pay TTSC an hourly fee of \$90 for the use of the facility.

TTSC has refused to sell the advanced European target shooting technology to SFSC. SFSC has also approached a number of suppliers of pistols and rifles and associated equipment and has been informed that TTSC has entered into exclusive arrangement so that all retail sales are being conducted through TTSC

Advise SFSC of any action it may have against TTSC under s46 of the CCA.

(20 Marks)

(Part B Question 2 follows)

Question 2

Assume all of the facts contained in Part B Question 1 and that TTSC insist that as a further condition, SFSC's members buy at least 80% of their guns and related apparatus from TTSC and all of their ammunition directly from Bullets Galore Pty Ltd, a company which is not related to TTSC.

Advise TTSC whether it has breached s47 of the CCA.

(20 Marks)

Question 3

Betty, the owner of 100 prize limousine cattle and a professional breeder conferred with a local vet about the fact that several of her livestock exhibited signs of fatigue, fever and glazed eyes. The vet inspected the cattle. On the recommendation of the vet, she purchased 500 vials of a vaccine, manufactured by Animal Ailments Pty Ltd ("AA"), at a cost of \$100 per vial. The instructions on the vaccine packets did not mention that refrigeration was essential, that the equipment used for vaccination must be thoroughly sterilised in solution prior to its use on each beast, and that surgical gloves should be used at all times.

The vet told Betty to vaccinate all of her livestock at least 5 times. Betty emailed the vet to confirm what she had to do and he repeated his oral advice. He never mentioned that sterilisation of the equipment and maximum hygiene were vital when undertaking the vaccination.

Betty religiously followed the vaccination instructions provided with the product.

After 5 days, all of Betty's vaccinated cattle became very sick and half of them died. Each of the limousine cattle is ordinarily worth between \$10,000 and \$50,000.

Tests conducted by both AA and by an independent laboratory confirmed that the vaccines contained a rare form of micro-organism which is likely to become virulent when left unrefrigerated and used in unsterilized equipment.

Advise Betty as to her rights and remedies under the statutory consumer guarantee provisions of the ACL (Part 3 – 2 and Part 5 – 4).

(20 Marks)

(Part B Question 4 follows)

Question 4

Assume the facts in Part B Question 3 and that:

- i. Betty herself became ill, was hospitalised and needed 3 months to recuperate;
- ii. State government authorities issued an order that all of her cattle be put down and cremated;
- iii. An official Quarantining Notice requires that Betty's property be fumigated and not hold livestock for at least 12 months; and
- iv. Betty's elderly mother has had to be moved from the property into an aged care facility for the duration of Betty's illness.

Advise Betty as to any action she may have against Animal Ailments Pty Ltd under the liability of manufacturers for goods with safety defects provisions in Part 3 – 5 of the ACL, including any damages that may be recovered.

(20 Marks)

(Part C follows)

PART C

Attempt any two (2) questions in this part.

Question 1

Assume the relevant facts in Part B Question 3 and that:

In their advertising, AA state that the vaccine:

- “contains a new and improved formula which vets around the world recognise as state-of-the-art”,
- “is perfectly safe”,
- “is guaranteed to protect livestock for up to 5 years, and
- “is manufactured in Tasmania under strict laboratory conditions” when, in fact, the active ingredients are imported in bulk from New Guinea and the vials are only filled and packaged in Tasmania.

The vet repeats what is in the AA advertising.

Advise Betty as to any deceptive trade practices claims she may have, pursuant to the ACL against AA.

(10 marks)

Question 2

Assume the relevant facts in Part B Question 3 and Part C Question 1 and advise Betty as to the basis upon which she may claim damages under s236 of the ACL.

(10 marks)

Question 3

Discuss injunctions, including the requisite standing to apply for an injunction (s80 CCA & s232 ACL).

(10 marks)

Question 4

Explain the operation of the cartel provisions in Part IV, Division 1 of the CCA.

(10 marks)

Question 5

Identify 5 factors a Court may take into account when imposing a penalty on a corporation for a breach of a provision of Part IV, (s76 CCA).

(10 marks)

(Part C Question 6 follows)

Question 6

Write notes on the significance of only two (2) of the following cases:

- (a) *Campomar Sociedad, Limitada & Anor v Nike International Ltd & Anor* (2000) 169 ALR 677
- (b) *TPC v Service Station Assoc* (1993) 116 ALR 643
- (c) *Mark Lyons v Bursill Sportsgear* (1987) 75 ALR 581
- (d) *Dandy Power Equipment v Mercury Marine* (1982) 44 ALR
- (e) *NSW Lotteries Corp Pty Ltd v Kuzmanovski* [2011] FCAFC 106 (24 August 2011/ B
- (f) *Glendale Chemical P/L v ACCC* (1998) 90 FCR 40

(10 marks)

END OF PAPER

COMPETITION & CONSUMER ACT 2010 ("CCA")
INCORPORATING, IN SCHEDULE 2, THE AUSTRALIAN
CONSUMER LAW ("ACL")

ABBREVIATED INDEX FOR EXAM PURPOSES

CCA – PRELIMINARY

- 2. Object of this Act
- 2A. Application of Act to Commonwealth and authorities
- 2B. Application of Act to States and Territories
- 2BA. Application of Part IV to local government bodies
- 2C. Activities that are not business
- 4. Interpretation
- 4B. Consumers
- 4C. Acquisition, supply and re-supply
- 4D. Exclusionary provisions
- 4E. Market
- 4F. References to purpose or reason
- 4G. Lessening of competition to include preventing or hindering competition
- 4K. Loss or damage to include injury

PART IV OF CCA – RESTRICTIVE TRADE PRACTICES

Division 1—Cartel conduct

- Subdivision A—Introduction
- Subdivision B—Offences etc.
- Subdivision C—Civil penalty provisions
- Subdivision D—Exceptions

Division 2—Other provisions

- 45. Contracts, arrangements or understandings that restrict dealings or affect competition
- 46. Misuse of market power
- 47. Exclusive dealing
- 48. Resale price maintenance (refer to Part VIII of CCA as follows)
- 50. Acquisitions that would result in a substantial lessening of competition

PART VIII OF CCA – RESALE PRICE MAINTENANCE

- 96. *Acts constituting engaging in resale price maintenance*
- 96A. *Resale price maintenance in relation to services*
- 97. *Recommended prices*
- 98. *Withholding the supply of goods*
- 99. *Statements as to the minimum price of goods*
- 100. *Evidentiary provisions*

PART IVB OF CCA– INDUSTRY CODES

51ACA. Definitions

51AD. Contravention of industry codes

PART VI OF CCA – ENFORCEMENT AND REMEDIES

75B. Interpretation

76. Pecuniary penalties

76C. Defence to proceedings relating to exclusionary provisions

80. Injunctions

81. Divestiture where merger contravenes section 50 or 50A

82. Actions for damages

83. Finding in proceedings to be evidence

84. Conduct by directors, servants or agents

85. Defences

87. Other orders

THE AUSTRALIAN CONSUMER LAW

CHAPTER 1 OF ACL--INTRODUCTION

- 1 Application of this Schedule
- 2 Definitions
- 3 Meaning of [consumer](#)
- 4 Misleading representations with respect to future matters
- 7 Meaning of *manufacturer*
- 8 [Goods](#) affixed to land or [premises](#)
- 9 Meaning of *safety defect* in relation to [goods](#)
- 11 References to acquisition, [supply](#) and re-supply
- 13 Loss or [damage](#) to include injury

CHAPTER 2 --GENERAL PROTECTIONS

PART 2-1--MISLEADING OR DECEPTIVE CONDUCT

- 18 Misleading or deceptive conduct

PART 2-2--UNCONSCIONABLE CONDUCT

- 20 Unconscionable conduct within the meaning of the unwritten law
- 21 Unconscionable conduct in connection with goods or services
- 22 Matters the court may have regard to for the purposes of section 21

PART 2-3--UNFAIR CONTRACT TERMS

- 23 Unfair terms of [consumer](#) contracts
- 24 Meaning of *unfair*
- 25 Examples of unfair terms
- 26 Terms that define main subject matter of [consumer](#) contracts etc. are unaffected
- 27 Standard form contracts
- 28 Contracts to which this Part does not [apply](#)

CHAPTER 3 --SPECIFIC PROTECTIONS

PART 3-1--UNFAIR PRACTICES

Division 1--False or misleading representations etc.

- 29 False or misleading representations about [goods](#) or [services](#)
- 30 False or misleading representations about sale etc. of land
- 31 Misleading conduct relating to employment
- 32 Offering rebates, gifts, prizes etc.

- 33 Misleading conduct as to the nature etc. of [goods](#)
- 34 Misleading conduct as to the nature etc. of [services](#)
- 35 Bait advertising

Division 4--Pricing

- 47 Multiple pricing
- 48 Single [price](#) to be specified in certain circumstances

Division 5--Other unfair practices

- 49 Referral selling
- 50 Harassment and coercion

PART 3-2--CONSUMER TRANSACTIONS

Division 1--Consumer Guarantees

Subdivision A--Guarantees relating to the [supply of goods](#)

- 51 Guarantee as to title
- 52 Guarantee as to undisturbed possession
- 53 Guarantee as to undisclosed securities etc.
- 54 Guarantee as to acceptable quality
- 55 Guarantee as to fitness for any disclosed purpose etc.
- 56 Guarantee relating to the [supply of goods](#) by description
- 57 Guarantees relating to the [supply of goods](#) by sample or demonstration model
- 58 Guarantee as to repairs and spare parts
- 59 Guarantee as to express warranties

Subdivision B--Guarantees relating to the [supply of services](#)

- 60 Guarantee as to due care and skill
- 61 Guarantees as to fitness for a particular purpose etc.
- 62 Guarantee as to reasonable time for [supply](#)
- 63 [Services](#) to which this Subdivision does not [apply](#)

Subdivision C--Guarantees not to be excluded etc. by contract

- 64 Guarantees not to be excluded etc. by contract
- 64A Limitation of liability for failures to comply with guarantees

PART 3-5—LIABILITY OF MANUFACTURERS FOR GOODS WITH SAFETY DEFECTS

Division 1--Actions against manufacturers for [goods](#) with safety defects

- 138 Liability for loss or [damage](#) suffered by an injured individual
- 139 Liability for loss or [damage](#) suffered by a [person](#) other than an injured individual
- 140 Liability for loss or [damage](#) suffered by a [person](#) if other [goods](#) are destroyed or [damaged](#)
- 141 Liability for loss or [damage](#) suffered by a [person](#) if land, buildings or fixtures are destroyed or [damaged](#)
- 142 Defences to defective [goods](#) actions

Division 2--Defective [goods](#) actions

- 143 Time for commencing defective [goods](#) actions
- 144 Liability joint and several
- 147 Unidentified manufacturer

Division 3--Miscellaneous

- 150 Application of all or any [provisions](#) of this Part etc. not to be excluded or modified

CHAPTER 4 --OFFENCES

Part 4-1--Offences relating to unfair practices

Division 1--False or misleading representations etc.

Division 5--Other unfair practices

Part 4-2--Offences relating to [consumer](#) transactions

CHAPTER 5 OF ACL--ENFORCEMENT AND REMEDIES

Part 5-1--Enforcement

Part 5-2--Remedies

Division 1--Pecuniary penalties

Division 2--Injunctions

- 232 Injunctions
- 234 Interim injunctions

Division 3--Damages

- 236 Actions for [damages](#)

Division 4--Compensation orders etc. for injured [persons](#) and orders for non-party [consumers](#)

Subdivision A--Compensation orders etc. for injured [persons](#)

237 Compensation orders etc. on application by an injured [person](#) or the regulator

Subdivision B--Orders for non-party [consumers](#)

239 Orders to redress etc. loss or [damage](#) suffered by non-party [consumers](#)

240 Determining whether to make a redress order etc. for non-party [consumers](#)

Subdivision C--Miscellaneous

242 Applications for orders

243 Kinds of orders that may be made

PART 5-4--REMEDIES RELATING TO GUARANTEES

Division 1--Action against suppliers

Subdivision A--Action against suppliers of [goods](#)

259 Action against suppliers of [goods](#)

260 When a failure to comply with a guarantee is a major failure

261 How suppliers may remedy a failure to comply with a guarantee

262 When [consumers](#) are not entitled to reject [goods](#)

263 Consequences of rejecting [goods](#)

264 Replaced [goods](#)

266 Rights of gift recipients

Subdivision B--Action against suppliers of [services](#)

267 Action against suppliers of [services](#)

268 When a failure to comply with a guarantee is a major failure

269 Termination of contracts for the [supply](#) of [services](#)

Division 2--Action for [damages](#) against manufacturers of [goods](#)

271 Action for [damages](#) against manufacturers of [goods](#)

272 [Damages](#) that may be recovered by action against manufacturers of [goods](#)

273 Time limit for actions against manufacturers of [goods](#)

Division 3--Miscellaneous

274 Indemnification of suppliers by manufacturers

275 Limitation of liability etc.

276 This Part not to be excluded etc. by contract

276A Limitation in certain circumstances of liability of manufacturer to seller

COMPETITION & CONSUMER LAW CASE LIST

1. CONSTITUTIONAL ISSUES, EXTENDED JURISDICTION, DEFINITIONS

Re Trade Practices Tribunal: ex parte St George CC (1974) 130 CLR 533
R v Federal Court of Australia: ex parte W A National Football League (1979) 143 CLR 190
State Superannuation Board of Victoria v TPC (1982) 150 CLR 282
O'Brien v Smolonogov (1983) 53 ALR 107
Fencott v Muller (1983) 152 CLR 570
Hughes v WACA (1986) 69 ALR 660
E v The Australian Red Cross Society (1991) 99 ALR 601 at 630-47
SGIC v GIO of NSW (1991) 101 ALR 259
Crisp v ANZ Bank Corp (1994) ATPR 41-294
Nagy v Masters Dairy Ltd (1996) 150 ALR 273
Dataflow P/ L v Goodman (1999) 168 ALR 169

Application to Governments

JS McMillan P/ L v C'w (1997) 77 FCR 337
State of NSW v R.T. & Y.E. Falls Investments P/L; R.T. & Y.E. Falls Investments P/L v State of NSW [2003] NSWCA 54
Village Building v Canberra International Airport (No 2) 2004 208 ALR 98
NT Power Generation Pty Ltd v Power and Water Authority [2004] 210 ALR 312

“In Trade or Commerce”

Concrete Constructions (NSW) v Nelson (1990) 169 CLR 594
Australian Federation of Consumer Organisations v Tobacco Institute of Australia (1991) 98 ALR 670
Pears v Balzer (1996) 137 ALR 180
Martin v TDR (1999) 163 ALR 79
McCormick v Riverwood International (Australia) Pty Ltd (1999) 167 ALR 689

Pritchard v Racecourse (1997) 142 ALR 527

Village Building v Canberra International Airport (No 2) 2004 208 ALR 98;
 FCFA210 ALR 114

Conduct by Silence

Demagogue v Ramensky (1992) 110 ALR 608,
Costa Vraca Pty Ltd v Berrigan Weed & Pest Control Pty Ltd (1998) 155 ALR 714
Peninsular Balmain Pty Ltd v Abigroup Contractors Pty Ltd [2002] NSWCA 211
Forwood Products v Gibbert [2002] ATPR 41-870
Metalcorp Recyclers Pty Ltd v Metal Manufacturers [2004] ATPR 46-243

2. PART IV OF THE ACT – RESTRICTIVE TRADE PRACTICES

(a) Definition of “market”, competition policy

Mark Lyons v Bursill Sportsgear (1987) 75 ALR 581
Qld Co-op Milling Assoc (1976) 8 ALR 481
Singapore Airlines v Taprobane Tours WA (1991) 104 ALR 633
Australian Meat Holdings v Trade Practices Commission (1989) 11 ATPR 40-932
Trade Practices Commission v A I & S (1990) 92 ALR 395
Trade Practices Commission v Arnotts (1990) 97 ALR 555

(b) Cartel Conduct – Division 1

(c) Section 45: anti-competitive non-price

Top Performance Motors v Ira Berk (Queensland) (1975) 5 ALR 465
Trade Practices Commission v Nicholas Enterprises (No. 2) (1979) 26 ALR 609

Morphett Arms Hotel v Trade Practices Commission (1980) 30 ALR 88
Trade Practices Commission v Email (1980) 43 FLR 383
Trade Practices Commission v Ansett Transport (1978) 20 ALR 31
O'Brien Glass v Cool & Sons (1983) 48 ALR 625
Radio 2UE Sydney v Stereo FM (1982) 44 ALR 557
TPC v Tubemakers (1983) 5 ATPR 40-358
TPC v David Jones (Aust) (1986) 64 ALR 67
TPC v Service Station Assoc (1993) 116 ALR 643
News Limited v Australian Rugby Football League Limited (1996) 139 ALR 193
ACCC v CC (NSW) P/L (1999) 165 ALR 468
News Limited v South Sydney District Rugby League Football Club Ltd [2003] 200 ALR 157
Visy Paper P/L v ACCC [2003] 201 ALR 414
Rural Press Ltd v ACCC [2003] 203 ALR 217
Apco Pty Ltd v ACCC [2005] FCAFC 161
ACCC v Leahy Petroleum Pty Ltd [2007] FCA 794 (29 May 2007)

(d) Section 46: misuse of market power

Top Performance Motors v Ira Berk (Queensland) (1975) 5 ALR 465
Victorian Egg Marketing Board v Parkwood Eggs (1978) 33 FLR 294
TPC v CSBP and Farmers (1980) 53 FLR 135
Mark Lyons v Bursill Sportsgear (1987) 75 ALR 581
QWI v BHP (1989) 167 CLR 177
ASX v Pont Data (1990) 97 ALR 513
Eastern Express v General Newspapers (1992) 106 ALR 297
Singapore Airlines v Taprobane Tours WA (1991) 104 ALR 633
Dowling v Dalgety (1992) 106 ALR 75
General Newspapers v AOTC (1993) ATPR 41-215

TPC v Pioneer Concrete (Qld) (1983) 13 ALR 685
Sita Qld Pty Ltd v Q'land (1999) 164 ALR 18
Melway Publishing Pty Ltd v Robert Hicks Pty Ltd (2001) 178 ALR 253
Monroe Topple & Associates v Institute of Chartered Accountants; (2002) ATPR 41-879
Boral Besser Masonry Ltd v ACCC [2003] 195 ALR 609

(e) Section 47: exclusive dealing (solus agreements, vertical customer and territorial restraints, third line forcing)

S W B Family Credit Union v Parramatta Tourist Services (1980) 48 FLR 445
Victorian Egg Marketing Board v Parkwood Eggs (1978) 33 FLR 294
Shell Co of Australia (1975) 1 TPCD 167A
Nashua Australia (1975) 1 TPCD 168
Trade Practices Commission v Legion Cabs (Trading) Co-operative Society (1978) 35 FLR 372
Dandy Power Equipment v Mercury Marine (1982) 44 ALR 173
Outboard Marine Aust v Hecar Investments (No 6) (1982) 44 ALR 667
O'Brien Glass v Cool (1983) 48 ALR 625
Castlemaine Tooheys v Williams and Hodgson Transport (1986) 162 CLR 395
Paul Dainty Corporation v National Tennis Centre Trust (1990) 94 ALR 225
ACCC v Health Partners (1997) 151 ALR 662
Munday v ACT (No 2) (1999) 137 ACTR 53
Munroe Topple & Associates v Institute of Chartered Accountants; (2002) ATPR 41-879
Universal Music v ACCC [2003] 201 ALR 639
ACCC v Australian Safeway Stores Ltd (No 2) (2001) 119 FCR 1

(f) Sections 48 and 96-100: resale price maintenance

Bata Shoe Co -Aust v TPC (1980) 44 FLR 149
Ron Hodgson (Holdings) v Westco Motors (Distributors) (1980) 29 ALR 307
Trade Practices Commission v Orlane Australia (1984) 51 ALR 767
Trade Practices Commission v Mobil Oil Australia (1984) 55 ALR 527
BP Australia v Trade Practices Commission (1986) 66 ALR 148
Heating Centre v Trade Practices Commission (1986) 65 ALR 429
Trade Practices Commission v Penfolds Wines (1992) ATPR 41-163
ACCC v Australian Safeway Stores Ltd (1997) 145 ALR 36 & (No 2) (2001) 119 FCR 1
ACCC v Dermalogica Pty Ltd (2005) 215 ALR 482
ACCC v Jurlique International Pty Ltd [2007] FCA 79

(g) Section 50: mergers/acquisitions

Trade Practices Commission v Ansett Transport Industries (1978) 32 FLR 305
TPC v Bowral Brickworks (1984) 55 ALR 733
Australian Meat Holdings v TPC (1989) 11 ATPR 40-932
Trade Practices Commission v Australian Iron and Steel (1990) 92 ALR 395
TPA v Arnotts (1990) 97 ALR 555

3. THE DECEPTIVE TRADE PRACTICES (ACL)

(a) Predictions and promises

ACCC v IMB Group [1999] FCA 819
O'Neill v MBF of Australia [2002] 122 FCR 455
Digitech (Aust) v Brand 2004 NSWCA 58
Sykes v Reserve Bank (1988) 88 FCR 511, 158 ALR 710
McGrath in the matter of Pan Pharmaceuticals v Australian Natural

Care Products Pty. Limited (2008) FCR 230

(b) Misleading and deceptive conduct

Hornsby Building Info Centre v Sydney Building Info Centre (1978) 140 CLR 216
McDonald's System of Australia v McWilliam's Wines (No 2) (1979) 41 FLR 429
Taco Co of Aust v Taco Bell (1982) 42 ALR177
Parkdale Furniture v Puxu (1982) 149 CLR 191
Gates v City Mutual Life Assurance Society (1986) 160 CLR 1
Glorie v WA Chip & Pulp (1981) 55 FLR 310
Smolonogov v O'Brien (1982) 67 FLR 311
Henjo Investments v Collins Marrickville (1988) 79 ALR 83
Campomar Sociedad, Limitada & Anor v Nike International Ltd & Anor (2000) 169 ALR 677
NSW Dairy Corp v Murray Goulburn Co-op (1989) 86 ALR 549
Telmak v Coles Myer (1989) 89 ALR 48
Fraser v NRMA Holdings (1995) 127 ALR 543
NRMA Holdings v Fraser (1995) 127 ALR 577
Cassidy v Saatchi & Saatchi [2004] ATPR 41-980
Bodum v DKSH Australia Pty Limited [2011] FCAFC 98 (5 August 2011)
NSW Lotteries Corp Pty Ltd v Kuzmanovski [2011] FCAFC 106 (24 August 2011)

(c) Unconscionable conduct

NAB v Nobile (1988) 100 ALR 227
Zoneff v Elcom Credit Union (1990) 12 ATPR 41-009
Qantas v Cameron (1996) 145 ALR 294
ACCC v Samton Holdings (2002) 189 ALR 76
Monroe Topple & Associates v Institute of Chartered Accountants (2002) ATPR 41-879
ACCC v Berbatis Holdings [2003] 197 ALR153
ASIC v National Exchange [2005] 147FCR 132

(d) Other sections of ACL

Yorke v Lucas (1985) 158 CLR 661
Global Sportsman v Mirror Newspapers (1984) 55 ALR 25
Brown v The Jam Factory (1981) 53 FLR 340; 35 ALR 79
TPC v Pacific Dunlop (1994) ATPR 41-307
QDSV Holdings (t/as Bush Friends Aust) v TPC (1995) 131 ALR 493
Kizbean v W G and B (1995) 184 CLR 281
Qantas v Cameron (1996) 145 ALR 294
Qantas Airways v Arauco (1996) 136 ALR 510
Nationwide News v ACCC (1996) 142 ALR212
Acohs Pty Ltd v Bashford Consulting (1997) 144 ALR 528; (appeal) *Bialkower v Acohs* (1999) ATPR 41-685
McIlhenry Co v Blue Yonden Holdings Pty Ltd and Another (1997) 149 ALR 496
Effem Foods Ltd v Lake Cumberline Pty Ltd (1999) 161 ALR 599
Burg Design P/ d v Walli (1999) 162 ALR 639
Kenny & Good v MGICA (1999) 199 CLR 413
Henschke v Rosemount [2001] ATPR 41-793
Peninsular Balmain Pty Ltd v Abigroup Contractors Pty Ltd [2002] NSWCA 211
Cassidy v Saatchi & Saatchi [2004] ATPR 41-980

ACCC v Cadbury Schweppes (2005) 131 ALR 516
BUTCHER V LACHLAN ELDER REAR LIMITED (2004) 218 CLR 592
Campbell v Backoffice Investments Pty Limited [2009] HCA 25; 83 ALJR 903

4. PRODUCT LIABILITY – ACL PARTS 3.2 Div 1, 3 – 5 AND 5 – 4

Glendale Chemical P/L v ACCC (1998) 90 FCR 40
Ryan v Great Lakes Council [1999] FCA 177
Medtel Pty Ltd v Courtney [2003] 198 ALR 630
Effem Foods Ltd v Nicholls [2004] ATPR 42-034

5. ENFORCEMENT AND REMEDIES – PART VI OF CCA & CHAPTER 5 of ACL**(a) Enforcement**

TPC v CSR (1991) 13 ATPR 41-076
TPC v Sun Alliance Aust (1994) ATPR 41-286
NW Frozen Foods v ACCC (1996) 141 ALR 640
TPC v Vales Wine Comp (1996) 145 ALR 241
ACCC v Aust Safeway Stores (1997) 145 ALR 36
ACCC v Aust Safeway Stores (No2) [2001] FCA 861
ACCC v George Weston Ltd & Lonergan [2004] 210 ALR 486
ACCC v Dermalogica Pty Ltd (2005) 215 ALR 482
ACCC v Jurlique International Pty Ltd [2007] FCA79
ACCC v Visy Industries Holdings Pty Limited (No 3) [& Pratt, Debney, Carroll] [2007] FCA 1617

(b) Remedies and other related issues

Phelps v Western Mining (1978) 20 ALR 183
World Series Cricket v Parish (1979) 16 ALR 191
Yorke v Lucas (1983) 49 ALR 672
TPC v Tubemakers of Aust (1983) 5 TPR 321
Gates v The City Mutual Life Assurance Society (1986) 160 CLR 1
Henjo v Collins Marrickville (1989) 89 ALR 539
State of WA v Wardley Aust (1991) 102 ALR 213
Poseidon v Adelaide Petroleum (1992) ATPR 41-164
Kizbeau P/L v W G & B L (1995) 184 CLR 281
ACCC v Shell Comp of Aust (1997) ALR 569
Gregg v Tasmania Trustees (1997) 143 ALR 328
Akron Securities v Iliffe (1997) 143 ALR 457
Collings Construction Co Pty Ltd v ACCC (1998) 152 ALR 510
Marks v GIO Ltd (1998) 196 CLR 497
McKellar v Container Terminal Management Services Ltd (1999) 165 ALR 409
Truth About Motorways P/L v Macquarie Infrastructure Investment Management Ltd (2000) 169 ALR 616
Henville v Walker (2001) 182 ALR 37
Blacker v NAB (2001) ATPR 41-817
I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd (2002) 76 AJLR 1461
Murphy v Overton Invest [2004] 204 ALR 26
HTW Valuers (Central Qld) Pty Ltd v Astonland P/Ltd (2004) 211 ALR 79
Master Education Services v Ketchell [2008] HCA 38 (27/8/8)
A PIR Systems Limited v Donald Financial Enterprises [2009] FCAFC 45 (9/4/9)
Unilever v Goodman Fielder [2009] FCA 1305 (13/11/9)

Keller v L E D Technologies Pty Ltd [2010] FCAFC (9/6/10)
ACCC v Powerballwin Com.FC (23/4/11)
NSWLotteries Corp Pty Ltd v Kuzmanovski [2011] FCAFC 106 (24 August 2011)