



University of Technology, Sydney

Cover Page - Type B

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Surname: _____

First Name: _____

Student No.: _____

Course: B.Build.(Construction Management/
Economics)

AUTUMN SEMESTER EXAMINATION, 2004

Wednesday, 16th JUNE

9.30 AM – 12.40 PM

CONSTRUCTION LAW AND PROFESSIONAL PRACTICE SUBJECT 16421

CONSTRUCTION MANAGEMENT/ECONOMICS DEGREE COURSE

Instructions:

Time Allowed: 3 hours plus 10 minutes reading time

Attempt any four questions.

All questions are of equal value.

All answers must be written in the answer booklet.

This is an open book exam and any material may be taken into the examination room.

QUESTION 1. (25 marks)

- (a) Tom is a lecturer at the University of Broadway. He meets one of his students on the stairway. The student says to Tom: 'You are an incompetent lecturer and I have learnt nothing from your lectures.' The student attempts to slap Tom on the chest to make his point. Tom believes he is about to be assaulted and pushes the student away. The student falls backwards down the stairs suffering a serious injury. The student now wishes to sue the University on the basis that Tom does not have enough resources to pay any likely damages. Advise the student of his chances of success against the University. (12 marks)
- (b) Dick is a civil engineer who designs a bridge. He incorporated into the design XYZ bolts. Dick is a member of an engineering professional association that has warned its members against the use of XYZ bolts in bridges as the bolts were likely to fail. Dick was unaware of this warning as he did not read the warning in the association magazine. Some months after the bridge is completed the bolts fail causing the bridge to collapse. A driver of a vehicle that is on the bridge at the time suffered an injury and now wishes to sue both Dick and the local council that owns the bridge. Advise the driver of his chances of success against Dick explaining the nature of the duty of care owed by a professional person. (13 marks)

QUESTION 2. (25 marks)

- (a) John completes a building pursuant to contract with Suzy. At the conclusion of the work John claims the sum of \$100,000 as his last progress payment. Suzy knows that John is in financial trouble and needs the money. She tells him that she will only pay the sum of \$50,000 otherwise John must sue for the whole sum and face the court delay and possible bankruptcy. He reluctantly agrees to accept the offer of \$50,000. Two years later Suzy claims that there are defects in the building and sues John for the sum of \$50,000, the estimated repair cost. John wishes to defend this claim by a cross-claim in respect of the \$50,000 that he alleges should have been paid for the original work. Advise John of his chances. (13 marks)
- (b) Charles visits Dr Smith complaining that he has problems with his digestion. Dr Smith prescribes the appropriate medication for Charles' symptoms. In fact Charles is suffering from a rare tropical disease that he contracted whilst a missionary in the Congo. His condition rapidly deteriorates resulting in his death. Charles' estate now desires to sue Dr Smith alleging negligence on the basis of the failure to detect the disease. Advise Dr Smith of his chances of, successfully defending the claim stating the principles involved. (12 marks)

QUESTION 3. (25 marks)

Compare the decisions of the Australian High Court in *Victoria Park v. Taylor* (1937) 58 CLR 479 and *Bryan v. Moloney* (1995) 182 CLR 609. How do these cases suggest that the High Court has changed its attitude to moulding the law to meet new circumstances? Have any recent decisions changed the position?

QUESTION 4. (25 marks)

- (a) The UTS Alpine Club has arranged a demonstration of bungy jumping off the bridge across Harris Street that connects the DAB building with the University. Ruth, whilst crossing the bridge, informs the club members that she has always wanted to try bungy jumping. The Club agrees to let her have a try. The length of the rope needed is miscalculated and Ruth falls into Harris Street injuring herself. She now wishes to sue the Club. Advise her. (12 marks)
- (b) ABC Properties owns a three (3) story building in Broadway. On the western boundary of the building is a brick wall which extends the full height of the building and is constructed against the boundary of ABC's land with that of Tom Jones. ABC needs to paint the wall and does so by suspending workmen over the side of its building in bosun's chairs (a suspended working platform). The workmen, whilst in the bosun's chair, are suspended in Tom Jones' airspace. ABC did not get Tom's permission to use his airspace in this way and he objects. What action is open to Tom? Suppose that ABC ignores any action taken by Tom, what remedies would then be available to Tom? (13 marks)

QUESTION 5. (25 marks)

Peter is an electrician who owns a truck and his tools of trade. He earns his living by wiring new houses. Sunset Homes builds houses for sale to the public. For the past two years Sunset Homes has contracted with Peter to install the electrical wiring and fittings to those houses. Peter agreed to carry out the work for a lump sum payment of \$2,000 for each house completed. He is able to complete one house each week and accordingly, on Friday of each week, he is paid a cheque for the sum of \$2,000. No deductions were made from this sum on account of taxation. Sunset Homes supplied the material needed for Peter to complete his work. Peter was careless whilst installing a power point and when testing the installation received an electric shock and severe burns. At the time of the incident the supervisor was standing nearby checking the quality of the work. Peter suffered substantial loss as a result of the incident. He was unable to work for several months thereby losing wages and in addition, incurring substantial medical expense. What legal remedies are open to Peter, if any?

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