



University of Technology, Sydney

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Surname: _____
First Name: _____
Student No.: _____
Course: B.Build.(Construction Management/
Economics)

SPRING SEMESTER EXAMINATION, 2005

Wednesday 23rd NOVEMBER

9.30Am, 12.40PM

**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)

It has been said that the law ought to be simple enough to be explained by a solicitor to his client in a solicitors office and that the solicitor ought to be able to advise his or her client on the outcome of any contemplated legal proceedings. Discuss this statement in relation to the ability of a person who has purchased a completed building to sue for a serious defect that is discovered a number of years after the person has entered into possession of the building. In your answer refer to the legal principles involved and the relevant decisions of the courts.

QUESTION 2. (25 marks)

Charles is a solicitor practicing in a small country town in NSW. Previously he had acted for Mary on the purchase from Barry of a cottage in the town. The house had been constructed five years earlier for Barry by Tom Jones a local builder. The cottage was constructed on reactive clay soil and after a bout of heavy rain the cottage developed serious structural cracks and it would take \$10,000 to repair the defects. Mary was a social friend of Charles and at the time of the conveyance Charles had reduced his fee by half. After the cracks developed Mary visited Charles' office and sought his advice as to whether or not there were any legal remedies available to her. Charles requested no fee for the subsequent interview saying to Mary that she could buy him a drink when they next met at the golf club. Charles who had been in practice for forty years answered the question confidently 'no' on the basis of what he had been taught at the university. He had never heard of the decision in *Bryan v. Maloney* (1995) 182 CLR 609 although he had received a circular from the NSW Law Society containing an article describing the possible effect of the case in NSW. On the basis of the advice Mary takes no action. Seven years after the advice was given the damage becomes more serious and it will now take \$50,000 to repair. Does Mary have any legal recourse and if so, against whom? Discuss the legal issues referring to decided cases.

QUESTION 3. (25 marks)

- (a) Paul owns land next to land owned by John. Paul applies to the local council for permission to construct two town houses on his land. The council grants permission on the basis that Paul drains the storm water from his development to the nearest storm water channel. To do this the drainage pipe will need to cross John's land. The intrusion will be across a remote corner of John's land that is not of any significance to John. Paul applies to John for an easement to place his pipe across John's land but John will only give consent on the basis of Paul paying him \$50,000. What steps can Paul take? What would happen if Paul went ahead and constructed the pipeline on John's land without consent? In your answer cite the relevant legal principles, statutes and cases. (13 marks)
- (b) Arthur is a builder who is constructing a hotel for James at a ski resort. The contract requires the hotel to be completed by the start of the ski season. Two months before the start of the season Arthur informs James that the roof tiles he ordered cannot be supplied because the supplier has become bankrupt. It will cost an additional \$20,000 to purchase the tiles

Over /

from another supplier. The hotel is almost complete but without the tiles it will not be ready for the ski season. James has accepted a large number of bookings for this period and stands to lose a great deal of money if the hotel does not open on time. Arthur is aware of this and says to James that the hotel can still be completed on time if James pays the additional \$20,000. Otherwise the hotel will not be completed on the date stated for practical completion in the contract. James reluctantly agrees and the hotel was completed on time after payment of the additional \$20,000. Does James have any legal rights in the matter? If so are the rights subject to any provisions? In your answer cite the relevant legal principles and cases. (12 marks)

QUESTION 4. (25 marks)

- (a) George is employed by the Broadway Cola Company (Broadway) as the new managing director. Broadway has been manufacturing a cola based soft drink. Until George's appointment Broadway has been a moderately successful company with good sales due to the fact that their cola contains a secret ingredient called 'zip'. This secret has been maintained and the product extensively advertised as having the ingredient. George vastly improves the sales by devising a system of marketing the product to university students. This is achieved by special delivery vans that travel on routes to the various NSW universities making deliveries of the product at times when it is needed with appropriate quantities. George resigns his position at Broadway and takes a job with the Harris Street Cola Company (Harris). He announces that he intends to improve Harris's cola by the addition of 'zip' and to market it to students using the delivery system he perfected whilst employed by Broadway. Can Broadway stop him? In your answer cite the relevant legal principles and cases. (13 marks)
- (b) The founding fathers of the Australian Constitution had a view of how the newly formed Parliament of the Commonwealth of Australia might deal with industrial disputes that were beyond the ability of the States to resolve. What was that view? Did the decision of the High Court in *Jumbunna Coal Mine (NL) v. Victorian Coal Miner's Association (1908)* 6 CLR 309 fulfil the expectation of the founding fathers? Have the subsequent decisions of the High Court favoured the States or the Commonwealth? Cite authority in your answer. (12 marks)

QUESTION 5. (25 marks)

The *Occupational Health and Safety Act 2000* (NSW) and the *Worker's Compensation Act 1987* (NSW) are examples of legislation that is ultimately concerned with the welfare of workers. Each statute takes a different approach to the problem. Explain the different approaches by reference to sections that exemplify a particular approach. Does either statute contain provisions that put limits on the protection offered by the statute?

END OF PAPER