



University of Technology, Sydney

**TO BE RETURNED AT THE END OF THE EXAMINATION.  
THIS PAPER MUST NOT BE REMOVED FROM THE EXAM CENTRE.**

**SURNAME:** \_\_\_\_\_

**FIRST NAME:** \_\_\_\_\_

**STUDENT NUMBER:** \_\_\_\_\_

**COURSE:** Bachelor of Construction

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**SPRING SEMESTER, 2006**

**SUBJECT NAME : CONSTRUCTION LAW AND PROFESSIONAL PRACTICE**

**SUBJECT NO. : 16421**

**DAY/DATE : Friday 17 November 2006**

**TIME ALLOWED : Three (3) Hours plus Ten (10) Min. reading time**

**START/END TIME : 6.00pm – 9.10pm**

**NOTES/INSTRUCTIONS TO CANDIDATES:**

**Attempt any four (4) questions.**

**All questions are of equal value.**

**All answers must be written in the answer booklet.**

**This is an open book examination and any materials may be taken into the examination room.**

**Attempt any four questions – all questions are of equal value**

**QUESTION 1. (25 marks)**

John is a keen amateur sailor. He commissions the construction of a yacht from Pacific Yachts. The plans call for the provision of 5mm reinforcing of the deck at the points where the rigging joins the deck. To save construction costs, Pacific Yachts supplied only 3mm reinforcing. John sailed the yacht for eight years and then in a particularly heavy storm the rigging pulled away from the deck causing the mast to fall. John's yacht was badly damaged. Before the rigging could be cut free, Peter motored past on his jet ski and collided with the submerged rigging causing serious injury to him. Do Peter and John have a cause of action and if so against whom?

**QUESTION 2. (25 marks)**

Tom is the owner of an office building at Homebush near the stadium where the rugby league Grand Final is to be played. The match is to be played on Sunday 2 October 2005. On the 1 June 2005 Tom contracts with Bill for the construction of a balcony on his office to enable Tom and his guests to view the grand final. The agreed cost of the work is \$50,000 and Tom and Bill enter a written contract for the work. The contract had a completion date of 15 September 2005. The guests are business associates of Tom's and he hopes the function will create good will and generate more business. Soon after entering the contract

Tom discovers that his guests are soccer fans who are not interested in the rugby league Grand final. Tom wishes to get out of the contract but realizes that he is bound. At this point he obstructs Bill in his efforts to get the work done by failing to make the site available on time, delaying the issuing of instructions and raising doubts about his ability to pay for the work. As a result Bill cannot proceed with the work as he had planned and by the end of August he had made little progress. Tom then cancelled Bill's contract on the basis of Bill's poor progress. Bill now wishes recover his losses from Tom. Does he have a cause of action? What would have been the position if Bill, realizing Tom's improper motives, deployed extra resources and notwithstanding the difficulties completed the job on time. Cite authority.

**QUESTION 3. (25 marks)**

- (a) Compare the decisions of the Australian High Court in *Chester v. Municipality of Waverley* [1939 -1940] 62 CLR 1 and *Perre v. Apand Pty Limited* (1999) 198 CLR 180. How do these cases suggest that the High Court has changed its attitude to moulding the law to meet new circumstances? (13 marks)
- (b) In his dissenting judgment in *Donoghue v. Stevenson* [1932] AC 562 Lord Buckmaster, in finding for the defendant, thought that to allow the plaintiff to succeed in the case would be to open the floodgates of

litigation. Describe the extent to which the success of the plaintiff did open the floodgates. (12 marks)

**QUESTION 4.** (25 marks)

- (a) Martin is an electrician who owns his own truck and tools of trade. He earns his living by wiring new houses for Glamour Homes who build houses for sale to the public. For the past two years Glamour Homes have contracted with Martin to install the electrical wiring and fittings to those houses. Martin agreed to carry out the work for the lump sum payment of \$3,000 for each house completed. He is able to complete one house each week and accordingly on Friday each week, he is paid a cheque of \$3,000. No deductions are made from this sum on account of taxation. Glamour Homes supply the material needed for the work carried out. Martin was careless in fitting a power point receiving an electrical shock and severe burns. At the time Glamour Homes' supervisor was standing nearby checking Martin's work.

Martin suffered substantial losses as a result of the incident. He was unable to work for several months losing wages and incurring medical expenses. What legal remedies does Martin have against Glamour Homes, if any? (13 marks)

- (b) Harold is an estimator who works in the office of XYZ Builders. XYZ have lodged a tender for the construction of a new office building. The tender is the lowest and Mega Insurance Company is in negotiation with XYZ to enter a contract. Harold has a dispute with XYZ and is dismissed. He is then employed by ABC Builders whose tender for the project was next lowest. As he was leaving Harold threatened XYZ that he would disclose to Mega and ABC the excessive profit margin that XYZ had allowed on the project and that XYZ's financial position was precarious. What steps can XYZ take to protect its position? (12 marks)

**QUESTION 5.** (25 Marks)

The *Occupational Health and Safety Act 2000* (NSW) and the *Worker's Compensation Act 1987* (NSW) are statutes concerned with the welfare of workers and other persons in a workplace. Each statute takes a different approach to the problem. Explain the differences in approach referring to sections of the statutes that exemplify the approach. Which of the two approaches do you consider to be the most effective?

**END OF PAPER**