



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, 2007**

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

**SUBJECT NO. : 16421**

**DAY/DATE : Thursday 15 November 2007**

**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.**

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

**Question 1:** (25 marks)

(a) Do you think that the views expressed by the High Court in *Chester v. Municipality of Waverly* (1939) 62 CLR 1 are relevant to the way in which the law of negligence is presently developing? (5 marks)

(b) Give an example of a minority judgment that subsequently became the law when similar issues were appealed to a higher court. Show how the principle developed. (5 marks)

(c) Restate Lord Justice Greer's famous example in *Hall v. Brooklands Auto Racing Club* [1933] 1 KB 205 relating to "the man on the Clapham omnibus" in terms of Australian cultural attitudes. (5 marks)

(d) What is meant by the expression standard of care? Cite cases showing how the concept has developed. (5 marks)

(e) Describe the ratio *decidendi* (legal principles) of *Bryan v. Maloney* (1995) 128 ALR 163. (5 marks)

**Question 2:** (25 marks)

The ABC Construction Company is erecting a building in Broadway. Tom Jones is a crane driver employed by ABC and during a lunch hour Tom consumed several glasses of beer with his lunch. On return to work the foreman observed Tom's condition but because the job was behind schedule he directed Tom to continue work. As Tom manoeuvred the crane into position to lift materials from the footpath the jib of the crane struck an overhead power line. As a result of the incident the power lines fall to the footpath. The power line strikes Bill Smith, a pedestrian walking along the footpath underneath, causing him severe injury. The Sydney Council had required as a condition of granting building approval, that a protective barrier be constructed over the foot path adjacent to the site. No such barrier had been constructed. The Council was aware that the barrier had not been constructed but overlooked the fact. At the time Banana Computers were developing a computer program for Westpac. The interruption to the power supply caused Banana's system to go down and the benefit of many months work was lost. It will take Banana Computers several months to replace the work. As a result of Banana Computers not being able to deliver the program to Westpac on time Banana is required to pay \$10 million liquidated damages. Discuss the prospects of Bill Smith and Banana Computers recovering damages for the losses suffered. In your answer indicate the parties against whom action might be brought.

**Over /....**

**Question 3:** (25 marks)

- (a) John is employed by a supermarket to demonstrate the cooking of fish fingers to the persons shopping at the supermarket. The fish fingers are being cooked in an electric frypan of hot oil. Mary tastes one of the fish fingers and says to John that the taste is disgusting and that he (John) should be cooking for pigs. John takes exception to this insult and throws the hot oil at Mary causing her physical injury. Mary now wishes to sue the supermarket to recover damages for her injury. Advise Mary of her chances of success. Cite authority. (13 marks)
- (b) Paul designs and constructs a new roof on Margaret's house. The work is completed in January 1993. The contract for the work was signed in December 1992. Some sagging (deflection) of the roof that a reasonably careful inspection would have revealed was apparent in December 1994. The roof collapsed in June 1995. An inspection revealed that the failure of the roof was due to the movement of the roof rafters that would probably have occurred within one (1) month of installation. Margaret now wishes to bring an action against Paul. Discuss her chances of success. Cite authority. (12 marks)

**Question 4:** (25 marks)

- (a) Charles is a quantity surveyor employed by XYZ Quantity Surveyors. Tenders have been called for the construction of a new hotel and XYZ are engaged to evaluate the tenders. Whilst having a drink with his friends Charles disclosed the tender prices before the contract had been successfully negotiated. This information got back to the tenderers who become angry and withdraw their tenders. It is then necessary to call tenders from another group of tenderers. XYZ would like to terminate Charles' employment for this indiscretion. There is no formal contract of employment between XYZ and Charles. Advise XYZ if this is possible and if so on what legal basis? (9 marks)
- (b) John interviewed applicants for a job as a research assistant. He said to Mary (a female applicant) 'if you will give me a kiss, the job is yours'. Mary refuses and as a consequence did not get the job. Advise Mary what steps she might take to obtain redress. If appropriate, state the statutory basis of any rights that Mary might have. (8 marks)
- (c) Paul is the manager of ABC Building Company. He requires builder's labourers for his site and posts a notice on the site gate offering work for builder's labourers. Five men apply, one of whom is named Ranjit Singh. Ranjit is a Sikh who is required by his religion to wear a turban. Paul needs five labourers and all are well qualified. Ranjit's application poses a dilemma for Paul. Identify the problem and suggest an outcome. (8 marks)

**Over /....**

**Question 5:** (25 marks)

- (a) The NSW Parliament has taken the view that the safety and welfare of workers is a matter of great importance to the community. The Parliament has adopted two very different approaches to promote the objectives mentioned with the enactment of the *Occupational Health and Safety Act 2000* and *Workers Compensation Act 1987*. Compare and contrast the two approaches illustrating your answer by reference to sections of the Acts. (13 marks)
- (c) Harold is employed as a programmer by Kangaroo Computers. After a dispute, he leaves Kangaroo Computers' employment and sets up his own business in competition. He then designs and proposes to market a new program called *Whammo*. This program is almost identical to *Zing* a program that Harold designed whilst working for Kangaroo Computers. Kangaroo Computers now seek a Court order preventing him from stealing their trade secrets and enforcing certain terms of the contract of employment. Discuss Kangaroo Computers' prospect of success mentioning the principles involved. (12 marks)

**END OF EXAM**