



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, 2008**

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

**SUBJECT NO.**      **: 16421**

**DAY/DATE**      **: Monday 17th November 2008**

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

**START/END TIME** : **6.00 PM – 9.10PM.**

**NOTES/INSTRUCTIONS TO CANDIDATES:**

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

**All answers 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.**

**Attempt any four (4) question – all questions are of equal value.**

**Question 1:** (5 marks for each part, maximum total of 25)

(a) What was the reaction in the Australian High Court when it first heard the argument that the law of negligence should be extended to cover situations where the plaintiff suffered nervous shock after seeing a close relative killed in an accident?

(b) What is meant by the expression contributory negligence? How is this problem now dealt with by statute?

(c) Give a reason why the decision of the High Court in *Bryan v. Maloney* might not apply to NSW. Cite authority.

(d) Explain how the foreseeability test for negligence differs from the proximity test. Why was it necessary for the courts to develop the test of proximity?

(e) How were the rules relating to remoteness of damage as decided in *Re Polemis* modified by subsequent case law?

**Question 2:** (25 marks)

Charles is an engineer who has designed the steel frame for a factory. The work has been carried out for his friend Barry and because of their friendship Charles charged Barry only half of his normal fee. Charles is a competent engineer and his work is reputed to be sound and there has never been a problem in the past. Charles is a member of the Institute of Engineers and six months before this project the Institute had forwarded to its members a circular warning that the type of building required by Barry posed new problems and that further measures were needed to strengthen such a building. The circular was filed in Charles' office without him seeing it. Charles designed the building the way he had over the past 20 years. Soon after completion the building fails causing Barry a substantial loss. Barry wishes to sue Charles. Advise Barry discussing the principles involved. Cite authority.

**Question 3** (5 marks for each part, maximum total of 25)

Describe in detail:

(a) The duty of an employee to wear reasonable dress. Cite authority.

(b) The duty of an employer to provide work. Cite authority

(c) The so-called 'multiple indicia' test to determine if a person is an employee or independent contractor. Cite authority.

(d) The *ratio decidendi* of *Ansett Transport Industries (Operations) Pty Limited v. Wardley*.

**Over/ ....**

(e) The provisions of the *Workers Compensation Act 1987* (NSW) relating to psychological injuries.

**Question 4:** (25 marks)

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. Express an opinion as to which you consider the most effective?

**Question 5** (25 marks)

(a) 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 wishes to paint the wall and will need to do 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's airspace. Tom objects to the use of his airspace in this way and refuses permission. What action is open to ABC? Suppose that ABC ignores Tom and goes ahead with the work without his permission, what remedies would then be available to Tom? Cite authorities. (15 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. (10 marks)

**END OF EXAM**