



**UNIVERSITY OF
TECHNOLOGY SYDNEY**

Cover Page - Type B

This paper must not be removed from Exam Centre
To be returned at the end of the examination

Surname: _____
First Name: _____
Student No.: _____
Course: _____

SPRING SEMESTER EXAMINATION 2009

MONDAY, 16TH NOVEMBER

9.30 AM - 12.40 PM

CONSTRUCTION LAW & PROFESSIONAL PRACTICE

SUBJECT 16421

BACHELOR OF CONSTRUCTION COURSE

Instructions:

Time Allowed: 3 hours plus 10 minutes reading time

All questions are to be attempted.

The value allocated to each question is noted on the question paper.

The questions should be answered in the examination booklet provided (any rough work can be done on the blank pages at the end of the booklet).

The examination is open book.

Your answers should be justified by reference to notes taken in lectures and the course texts.

Question 1: (10 marks)

A meeting of the "Bart Simpson" Fan Club numbering some 350 members assembles in the newly built Gosford Park Town Hall. Prior to the meeting formally commencing the organising committee are standing on the edge of the stage when the stage suddenly collapses, injuring a number of them seriously including Jake, an avid Bart Simpson Fan.

The Hall had been built about 1 year earlier for the Gosford Park Town Council and had been designed by an architect, James, who was properly qualified for the work. However on investigation after the accident, it was discovered that James had provided in his plans joists of insufficient width to support the minimum width required for such a stage by the Council's by laws and prescribed by Standards Australia. The stage had been built exactly to the plans. At the time of the accident the stage would not have been overloaded if the joists had been of sufficient width.

- a) Advise Jake about what he needs to prove for a successful claim against the Council, the architect, and the builder.
- b) Discuss the defences available to the Council, the architect, and the builder.

Question 2: (10 marks)

The Trade Practices Act seeks to provide a broad range of remedies to consumers regarding products and services, in addition to those remedies provided at common law regarding -

- A) misrepresentation;
- B) misleading conduct;
- C) collusive and corrupt practices;
- D) unconscionable conduct.

Discuss the elements which must be met for a claim under the Trade Practices Act relating to paragraphs (A) to (D) above with specific reference to relevant sections of the Act.

Question 3: (10 marks)

Susan is employed as an engineer and works closely with an older male colleague, Don, an experienced senior engineer on an oil rig platform off the coast of NSW operated by GEOTECH Drilling, which uses state of the art equipment and technology. Susan has specifically chosen to specialise in engineering aspects of oil rigs for her Masters of Engineering and was chosen among a field of 150 overseas candidates who applied for this prestigious position.

Susan alleges she was sexually harassed during her employment by Don. Susan alleges that her co-worker, Don is a position of great power over her. She is also concerned at the adverse publicity this is likely to have on her future employment prospects. Don denies the claim completely.

Susan seeks your advice on bringing a claim and her available remedies. Discuss.

Question 4: (10 marks)

ABC Constructions Pty Ltd ("ABC") is constructing a building and seeks the permission of its neighbour, Rockie, to erect scaffolding extending over Rockie's land. Rockie replies that he will give consent only on payment of a lump sum payment of \$50,000.00 and rental of \$1,000.00 per week for 7 months and \$1,500.00 per week thereafter.

ABC rejects these terms and builds the scaffolding which intrudes about 1.5 metres into the airspace above Rockie's property. At ground level there are 2 posts, about 100 millimetres inside Rockie's land. ABC offers to pay \$200 per week.

- a) Advise Rockie about his rights in dealing with the scaffolding; and
- b) What defences does ABC have?

Question 5: (10 marks)

Dick Rock is a legendary businessman who is appointed CEO of an engineering company, DeROCK P/L, founded by Dick in 1966. The company is well known throughout the Pacific Rim for its expertise in engineering, IT and building infrastructure. Under Dick's leadership the company expands and its share price increases. By June 2002 DeROCK employs some 15,000 workers and contractors and has some very lucrative public and private sector contracts.

Jimmy is desperate to work in construction and wins a TV show contest where he is to become Dick's personal assistant. His starting salary is \$75 K pa plus bonuses! In return he signs a contract with the company which prevents him carrying out work in similar industry as an employee or consultant for 10 years or setting up business within 20 km from the company's head office or consulting.

By his second year he is earning \$150 K pa +++ !! After some time in the job Jimmy learns that the company's share price has been carefully manipulated by the chief financial officer, and that it has overstated its cash reserves in its accounts. Also the contracts have been obtained by offering secret inducements to contract administrators, Jimmy is given \$25K in cash each month in a brown paper envelope by 2 contractors marked "Attention - Dick", which he keeps himself.

Several contractors who have been paid money are unsuccessful in being awarded contracts by De ROCK and go to the Australian Competition and Consumer Commission. The scandal becomes public. Dick claims that he was unaware of these practices but in the interests of maintaining the company's reputation and share price, resigns. He dies shortly after of unidentified causes.

Jimmy wishes to keep his salary and bonus and intends to keep quiet. He is approached by a rival organization who offer him a substantial sum to reveal DeROCK's list of upcoming tenders and contacts list.

Jimmy approaches you for advice as to his next move.

- a) Discuss whether he can legally set up his own consultancy using the contacts list which he has been given by Dick over lunch?
- b) What should he do with the money in the brown envelopes he has received ?

(END OF QUESTION PAPER)