

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

CONVEYANCING

Time: Three Hours This paper consists of **five** questions.

Candidates are required to attempt any **four** questions.

All references to a Contract for the sale of land are to the form approved by the Law Society of New South Wales (2005 edition).

All references to the Regulation are to the Conveyancing (Sale of Land) Regulation 2010.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Attempt **BOTH** parts of this question.

(a) For the purposes of section 52A(2)(a) of the Conveyancing Act 1919, the prescribed documents required to be annexed to the Contract for sale of land are those of the documents specified in Schedule 1 to the Regulation as are relevant to the land the subject of the contract.

Which documents listed on page 2 of the Contract for sale of land, apart from those specified in Schedule 1, do you consider should be attached to the contract for sale of a dwelling house property, giving your reasons?

AND

(b) Your client, Sandeep, is interested in purchasing a vacant property zoned "Residential A" under the local Council's Local Environmental Plan which has been advertised by the selling agent as having existing use rights as a café. There is no warranty in the contract as to the use of the property.

What advice would you give to Sandeep who is keen to purchase the property and continue to operate a café which has until very recently been conducted on the site?

(20 marks)

Question 2

Attempt **BOTH** parts of this question.

(a) Your clients Alan and Joseph are the purchasers of a property with a substantial backyard space in which they intend to build a swimming pool. The vendor's solicitor has disclosed in an answer to a requisition that a council stormwater main, which serves to drain a road, intersects the property. Your clients have told you that unless the main is relocated it would prevent construction of the pool. The main was not disclosed in the contract for sale of land. In response to an enquiry to the council it has indicated that it would be prepared to relocate the main at a cost which would exceed an amount equal to 5% of the purchase price. Clause 7.1.1 of the contract for sale has not been amended. Alan and Joseph want to proceed with the purchase as long as the vendor is prepared to pay for relocation of the stormwater main.

Advise your clients on their options under the contract.

AND

(b) **How 'vacant' must a property be for the vendor to have given vacant possession?**

(20 marks)

(Question 3 follows)

Question 3

Your client Ming purchased 2 'off the plan' apartments in February 2007 and purchases were settled in January 2009. Ming has told you that she bought the apartments as an investment and that she had relied upon promotional material which guaranteed a 7% net return on the investment. The net return on the investment has proved to be far less than 7%. The vendor was a subsidiary of World Class Apartments Ltd ("World Class"). The material was written and approved by World Class and Ming had received a copy from the Vendor's real estate agent. Ming has also told you that the misrepresentations caused her to purchase the apartments and she had incurred continuing losses from her investment. Ming has spoken to a representative of World Class who said to her: "We are not liable as we weren't involved in your purchase from one of our subsidiary companies. In any event, I am aware that there was a special condition in your contracts acknowledging that the purchaser did not rely upon on any warranties or representations which were not specifically stated in the contract and there were no such warranties or representations in the contracts".

Advise Ming what, if any, rights she has to relief. If you consider she has rights, against whom should any claim be made? Prepare a letter (or letters) of claim to the party or parties you consider to be liable.

(20 marks)

Question 4

Discuss each of the following issues:

- (a) The failure by a purchaser to serve the transfer at least 14 days before the completion date;**
- (b) The requirements for a valid notice to complete;**
- (c) The need to make requisitions appropriate to the subject property and give proper replies;**
- (d) Whether a vendor of real estate can validly be called a trustee for the purchaser between exchange of contracts and settlement;**
- (e) The distinction between rescission and termination of a contract for sale of land and the respective consequences of these remedies.**

(20 marks)

(Question 5 follows)

Question 5

Attempt BOTH parts of this question.

(a) Your client Ronald has consulted you about the prospective purchase of a property which has its only access to a public road via a narrow right of way over an adjoining property situated between the subject property and the public road.

Advise Ronald on what, if any, enquiries should be made in relation to this issue and on any potential risk in relation to the current access to and from the public road.

AND

(b) Discuss the effect of the High Court decision of *Black v Garnock* [2007] HCA 31. What, if anything, should practitioners do in the light of that decision to protect their purchaser client's interests?

(20 marks)

END OF PAPER