15 June 2011

FNSACCT404A/B Make Decisions in a Legal Context

Time allowed – Three hours plus Ten minutes reading time

21 Pages in this Question Booklet

TOTAL MARKS AVAILABLE = 100

Aids to be supplied by college:

- Additional sheets of ruled paper if students require them.

Instructions to student:

- Each Part is compulsory.
- Part A: Multiple choice questions. Attempt all questions.
- Part B: Case studies. Write TWO case studies.
- Part C: Problem and theory questions. Attempt all questions.
- Part D: Problem and theory questions. Attempt all questions.
- Mobile phones are to be turned off and removed from your person. You cannot access a mobile phone during this test.
- Answer ALL questions on the examination paper.

Aids permitted where indicated:

<table>
<thead>
<tr>
<th>Standard Dictionaries</th>
<th>Bilingual Dictionaries</th>
<th>Technical Dictionaries</th>
<th>Programmable Calculators</th>
<th>Non-programmable Calculators</th>
<th>Textbooks</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Marks Possible</th>
<th>Marks Achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part A</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Part B</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Part C</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Part D</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>
PART A
MULTIPLE CHOICE QUESTIONS (20 MARKS)
CONTRACTS

Part A consists of TWENTY (20) multiple choice questions worth ONE (1) mark each. CIRCLE the most correct response to each question.

QUESTION 1  (1 Mark)

For the creation of a simple contract, there must be:

(a) intention, offer and acceptance
(b) intention, agreement and consideration
(c) agreement, consideration and a written document
(d) agreement, consideration and a written and signed document

QUESTION 2  (1 Mark)

A voidable contract is a contract that:

(a) is of no legal effect from the very beginning
(b) the courts will enforce
(c) an injured party is entitled to rescind
(d) contains the six essential elements

QUESTION 3  (1 Mark)

John persuades Fiona to buy his car by making an innocent misrepresentation about the quality of the car. This is an example of a:

(a) void contract
(b) voidable contract
(c) valid contract
(d) illegal contract

QUESTION 4  (1 Mark)

There is a common law presumption that the parties to a business agreement:

(a) intend to be legally bound
(b) do not intend to be legally bound
(c) intend to be legally bound, but not enforce the agreement in court
(d) do not intend to be legally bound, unless money is paid
QUESTION 5  (1 Mark)

Molly offers to sell her car to Colin for $5000. Colin replies that he will pay $3000, but this is rejected by Molly. Colin then decides to accept Molly’s original offer of $5000. Molly is not bound under a contract with Colin because:

(a) Colin is not providing sufficient consideration
(b) Colin must first communicate his acceptance to Molly
(c) Molly has not signed the contract
(d) Molly’s initial offer lapsed when Colin made his counter offer of $3000

QUESTION 6  (1 Mark)

Sometimes after a contract has been made something happens that prevents the contract being performed or makes the contract totally different from what was agreed. The law may recognise the situation as:

(a) mutual mistake
(b) duress
(c) frustration
(d) misrepresentation

QUESTION 7  (1 Mark)

Which of the following is a rule about consideration?

(a) it may be present or future, but not past consideration
(b) it must be of the current market value
(c) it may be decided by the parties after formation of the contract
(d) it is not required in a written contract

QUESTION 8  (1 Mark)

A common law remedy for breach of contract is:

(a) weekend detention
(b) community service
(c) specific performance of the contract
(d) damages
QUESTION 9  (1 Mark)

Wilson is a person of unsound mind with very little money. Wilson makes a contract with Lincoln for the purchase of a computer. To avoid the contract, Wilson needs to prove that:

(a) at the time of making the contract he was of unsound mind
(b) at the time of making the contract Lincoln took advantage of him
(c) at the time of making the contract, he was of unsound mind and Lincoln was aware, or should have been aware of this
(d) since making the contract he has become ill and cannot now afford to pay for the car

QUESTION 10  (1 Mark)

In determining whether a contract is unjust under the *Contracts Review Act, 1980 (NSW)* the court may consider:

(a) whether there was any inequality of bargaining power
(b) the parties could negotiate the contract before it was made
(c) the economic circumstances, education and literacy of the parties
(d) all of the above.

QUESTION 11  (1 Mark)

An exclusion clause will have no legal effect:

(a) if notice of the exclusion clause is given after the contract is made
(b) if the meaning of the exclusion clause is unclear or ambiguous
(c) if the exclusion clause contains harsh or unusual conditions which were not understood by the other party
(d) all of the above

QUESTION 12  (1 Mark)

When a condition (as opposed to a warranty) in a contract has been breached, the innocent party may:

(a) terminate the contract
(b) sue for damages
(c) terminate the contract or sue for damages, or do both
(d) demand a variation of the contract
QUESTION 13  (1 Mark)

In NSW the limitation period for a simple contract is:

(a) 6 years from the date of breach
(b) 4 years from the date of breach
(c) 3 years from the date of breach
(d) 1 year from the date of breach

QUESTION 14  (1 Mark)

Equity may prevent a party from going back on a promise, even though no consideration has been given for the promise, where it would otherwise lead to an unconscionable result. This is described as the doctrine of:

(a) non est factum
(b) restitution
(c) promissory estoppel
(d) res judicata

QUESTION 15  (1 Mark)

The rule that only the parties to a contract have any rights or obligations under the contract is known as:

(a) privity of contract
(b) contractual capacity
(c) parol evidence
(d) separation of powers

QUESTION 16  (1 Mark)

A court order requiring a person to stop doing something, or not to do that thing in the future, is called:

(a) specific performance
(b) damages
(c) an injunction
(d) quantum meruit
QUESTION 17  (1 Mark)

In NSW, minors:
(a) have unlimited capacity to make contracts
(b) have no capacity to make contracts
(c) can only make contracts for food and clothing
(d) are bound by contracts where the contract is for their benefit and they are mature enough to understand what they are doing

QUESTION 18  (1 Mark)

Damages are a monetary amount paid to a party who has suffered loss. In contract law:
(a) damages aim to compensate the plaintiff rather than punish the defendant
(b) damages can only be claimed for losses that are reasonably foreseeable
(c) the plaintiff must take reasonable steps to mitigate their loss
(d) all of the above are correct

QUESTION 19  (1 Mark)

Undue influence is presumed to exist in the relationship of:
(a) solicitor and client
(b) bookkeeper and client
(c) retailer and consumer
(d) manufacturer and consumer

QUESTION 20  (1 Mark)

A contract in restraint of trade in a sale of business contract is invalid unless:
(a) it is in the public interest
(b) it is reasonable as between the parties
(c) consideration has been paid for the restraint
(d) it is in the public interest and reasonable as between the parties

END OF PART A
PART B

CASE STUDIES - CONTRACTS (10 MARKS)

Give an outline of the facts and legal principle(s) in any TWO of the following cases. Each case study is worth 5 marks.

1. *Carlill v Carbolic Smoke Ball Co (1893)* 1 QB 256
4. *Grant v Australian Knitting Mills (1933)* 50 CLR 387
QUESTION 1  (5 marks)

Cindy runs an accounting practice and receives a catalogue from an Office Supplies store. The catalogue advertises quality laser printers for only $150. Cindy realizes that this is very cheap and immediately goes to the store and requests one of the advertised printers.

The sales assistant explains that there was a printing error in their catalogue and the price of the printer is $1500 and not $150. Cindy argues that the advertisement in the catalogue is an offer and she has now accepted the offer. Cindy demands the printer be sold to her for $150. Explain the legal position of the Office Supplies store under the law of contract. Refer to a case in your answer.

Note: You are not required to refer to consumer protection legislation in your answer.
QUESTION 2  (5 marks)

Maddy is a graphic artist. For the past three years she has been employed by Artworks, and has gained very valuable experience and skills. Artworks is located in the central business district of Sydney, but has clients throughout New South Wales. On joining the firm, Maddy signed an employment contract which stated:

“If the employee leaves Artworks she agrees not to work as a graphic artist for a period of three years anywhere in New South Wales.”

Maddy now wishes to leave Artworks and set up her own graphic arts business at Parramatta in NSW. Artworks want to stop Maddy opening her business and seek to rely on the restraint clause in her employment contract. Advise Maddy whether the restraint clause is enforceable.

In your answer you must explain the legal principles relating to restraint clauses in employment contracts. Refer to any relevant cases in your answer.
QUESTION 3    (10 marks)

Hong purchases a hair dye product for colouring her hair. The product is manufactured by a company named Kosmetic King Ltd.

Hong is in a hurry to colour her hair, and applies the product without first reading the instructions. Shortly after using the product Hong’s head starts to itch and burn and becomes extremely swollen.

She is admitted to hospital and is told she has suffered a severe allergic reaction to a chemical used in the hair dye product.

Advise Hong of what she must prove to succeed in an action in negligence against Kosmetic King Ltd. In your answer explain whether Kosmetic King may have a defence.

You must refer to a case in your answer. (Students are not expected to refer to manufacturers’ liability under the Competition & Consumer Act 2010 in answering this question.)
QUESTION 4 (5 marks)
Explain two significant changes (reforms) made to the law of negligence by the *Civil Liability Act, 2002* (NSW).
QUESTION 5  (10 marks)

Margaret is a stockbroker and is often asked by clients for advice on investing in shares. Margaret is at her office one day when Buster, an old friend, drops in to visit her. In the course of their conversation Buster tells Margaret that he has just retired and has some money to invest. Margaret suggests a few companies that would be safe for investment. They then go to lunch.

Buster invests in one of the companies suggested by Margaret. After six months the company is placed in liquidation and Buster loses most of his money.

Explain what Buster must prove to successfully sue Margaret in negligent misstatement. You must refer to a case in your answer.

Would the situation be any different if Buster had paid Margaret for advice? Explain.
PART D

BUSINESS STRUCTURES AND CONSUMER PROTECTION (35 marks)

QUESTION 1  (5 marks)

The shares in Treadmill Pty Limited are held equally by Jill and her husband Jack. Jill is the sole director and only employee of the company and she is accidentally killed while on company business. Treadmill Pty Limited has a workers’ compensation policy for its employees. On Jill’s death, Jack makes a claim on the policy. The workers compensation insurer refuses to pay. The insurer argues that Jill was the owner of the company and could not therefore, also be an employee.

Explain whether the insurer’s argument is correct. Refer to a case in your answer.
QUESTION 2  (10 marks)

Ronnie operates a real estate agency as a sole trader. Business is booming and he decides to team up with another real estate agent, Bruce. Ronnie and Bruce are considering forming a partnership.

(a) Advise Ronnie on the advantages and disadvantages of operating as a partnership as opposed to remaining a sole trader. (5 marks)

(b) An agent is in a fiduciary relationship with the principal. Explain what this means, and briefly outline the remedies for breach of duty. (5 marks)
QUESTION 3  (10 marks)

Patsy sells mobile phones and mobile phone plans for Astra-Phones Ltd. A brochure she hands to customers states in large print that the phones use the latest technology and are extremely reliable. The brochure also states that customers can call anywhere in the world for no more than 2.5 cents per minute.

Edina reads the brochure and decides to buy the phone and enter into a mobile phone plan.

One month after buying the phone, Edina receives her first monthly account of $800.00. When Edina makes enquiries about the account she is told that the cost of calls is $2.50 per minute. A couple of days later, the phone just stops working. Edina makes enquiries and is told by a technician that the phone needs a major repair which will cost $200.

(i) Has Astra-Phones Ltd breached the *Australian Consumer Law*? Explain.

(ii) Outline the remedies and penalties for breach of the *Australian Consumer Law*.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
QUESTION 4  (5 marks)

Marigold has set up a new homewares shop selling a range of products including cookware, glassware, cutlery and kitchen appliances. She proposes to display signs stating “Choose carefully!! We do not give refunds in any circumstances.”

Advise Marigold on the law relating to “No Refunds” signs and whether her proposed sign will breach the law. Refer to the Australian Consumer Law in your answer.
QUESTION 5  (5 marks)

Explain the role of the Australian Competition & Consumer Commission in consumer protection in Australia.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

END OF EXAMINATION