

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2 Special/Summer Semester, 2015

FINAL EXAMINATION	DURATION
PRBL004 – Commercial and Corporate Law for Managers	Reading Time: 20 minutes
	Writing Time: 180 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this exam: 60 marks.

Section A contains 3 short answer questions worth 20 marks.

Section B contains long answer questions worth 40 marks. You must choose and answer 2 (two) of 3 (three) questions, worth 20 marks each.

Identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify answers to questions in both sections.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any non-programmable calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book

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DOUBLE-SIDED.**

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Section A

Short Answer Questions

Total Marks for this section: 20 marks

Please note: Answer all 3 (three) questions below, writing a short answer of about 200 words for each question. You should identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify or support your answers. If more information is required to answer completely, state what that information is and why it is relevant.

Question 1 [Total 6 marks]

The highly praised *The Man Who Loved Children* is said to be the greatest novel by Australian writer Christina Stead. The novel that was first published in Australia in 1940 is based largely on her childhood. Christina Stead died in Australia in 1983.

- (a) Is the novel still protected by copyright today? Why? (Explain when the copyright expired or will expire by referring to the relevant statutory law)

(3 marks)

- (b) If someone told you their life story and you wrote it down in your own words, who would own the copyright over the written work? Give reasons.

(3 marks)

Question 2 [Total 6 marks]

In relation to an action for negligence, what is meant by "voluntary assumption of risk" and "contributory negligence"? How do they differ?

Question 3 [Total 8 marks]

Crocks & Sons Pty Ltd (Crocks) owns a used car dealership in Darwin. It has entered into an arrangement with Gouge Petroleum Ltd (Gouge) that every person who purchases a used car from Crocks in the month of January will receive 45 cents per litre discount on all petrol/diesel purchases from Gouge service stations from the purchase of the car until 31 March.

- (a) Is this a breach of the Exclusive Dealing provisions of *the Competition and Consumer Act 2010* ("CCA")? Why? **(4 marks)**

- (b) Assuming the discounting scheme constitutes a breach of the CCA, what action should Crocks have taken to make the scheme legal? **(4 marks)**

NB: Section B commences on the next page.

Section B

Problem Solving Questions

Total Marks for this section: 40 marks

Please note: Choose and solve 2 (two) out of the following 3 (three) problem questions.

You should identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify or support your answers. Consider the potential arguments either side/party is likely to make.

Question 4 [20 marks]

Damian runs a plant hire business "Rent-A-Plant" as a sole trader. Petra is one of her part-time employees. Although Petra has a degree in horticulture, she is only employed to deliver plants to clients.

One day a client, Carl telephones Damian asking whether he can hire a plant that will match the décor of his office, which Carl then describes. Damian suggests a plant, and without further questions Carl agrees to hire it.

When the plant is delivered, Carl asks Petra whether the plant has allergenic properties. Petra assures Carl that the plant does not, although it is well known amongst specialists, that the plant can cause allergic reactions of various degrees in about 2% of the population.

After a week of sitting in his office next to the plant Carl suffered a severe allergic reaction triggered by the plant and needs to spend several days under observation in hospital.

(a) Is Petra liable to Carl for negligence? Why?

(10 marks)

(b) Assuming Petra is liable, is Damian vicariously liable for Petra's negligence? Why?

(4 marks)

(c) Is Damian in his own right liable to Carl for negligence? Why?

(6 marks)

NB: Question 5 is on the next page.

Question 5 [20 marks]

Whilst browsing the Internet, Sam saw an advertisement on Gumtree (an Internet trading site) for the sale of a used ski boat posted by Tom, a retired boat mechanic. The advertisement read: *"Immaculate ski boat with 150hp [horsepower] in board engine. All safety equipment and trailer included. Only \$14,000 (negotiable)! You won't find a better bargain. SMS or call 0400 007 007 for inspection."*

Sam sent a message to Tom and they agreed to meet so that Sam could see the boat. While inspecting the boat, Sam remarked that Tom appeared to have taken very good care of the boat. Tom gleefully agreed, adding that he had regularly serviced the boat himself and that he had experienced no mechanical problems, as the engine was *"only 12 months old."*

Tom made this statement about the age of the engine based on the information supplied to him by the original owner of the boat. As Sam was a member of a water ski club, he also enquired how many skiers the boat could pull at one time. Tom replied *"I bet she would definitely pull up to four skiers at once. I can guarantee you that."*

After having a final look over the boat, Sam said *"I'll take her for \$13,000"*. Tom responded *"Good man!"* and handed Sam the *"necessary paperwork"*, which Sam signed without properly reading it.

After payment and delivery of the boat, Sam took some friends water skiing. Unfortunately, this did not work out as expected. The boat could not pull more than two skiers at once, and - after 20 minutes of use - the engine began to vibrate and to emit thick smoke before stopping completely.

Sam took the boat to a repair shop where he was told that the engine was at least three years old and had only 110 horsepower. The engine was so worn out and in such a poor condition that it could not be repaired.

Sam is unhappy and starts reading the document he has signed at Tom's. He discovers that it only states the price, registration and serial number of the boat. No other details of the boat are recorded or referred to in the document; however, it contains the following clause: *"Boat is sold as inspected. No warranty or condition implied by statute, common law, or otherwise is given as to fitness for purpose, quality or performance of the boat."*

Until now, Sam was not aware of this clause.

- (d) Does Sam have a legally enforceable contract with Tom for the sale of the boat, and did the statement regarding the power of the engine in the Gumtree advertisement become a term of the contract? **(5 marks)**
- (e) Does Tom's statement *"I bet she would definitely pull up to four skiers at once. I can guarantee you that."* have any impact on the whole contractual agreement? **(5 marks)**
- (f) Assuming there is a contract between Sam and Tom, are there any common law grounds that would allow Sam to challenge the contract? **(10 marks)**

NB: Question 6 is on the next page.

Question 6 [20 marks]

Assume Escol Ltd ("E") and Low'or'whot Ltd ("L") are the two biggest supermarket chains in Australia. Together they have a market share of around 80% of the grocery retail market. Each week both supermarkets use direct mail to send brochures of their weekly specials to most households in Australia.

The brochures are produced 2-3 weeks in advance. As E and L are competing with each other they try to match any specials the other competitor offers. The marketing departments of both competitors have developed strategies to find out in advance what specials the other competitors plans for the next few weeks.

Some of the specials, for instance, seasonal fruit and vegetables, are reasonably easy to anticipate. However, for other products, the marketing departments talk to suppliers and the printers of the weekly brochures and observe what products the competitor stocks in order to anticipate the upcoming specials. This system is so successful that E and L hardly surprise each other and more or less are able to offer the same or very similar specials.

- (a) Does the gathering of intelligence about upcoming specials of the competitor breach provisions of the *Competition and Consumer Act 2010* ("CCA")? Why?

(5 marks)

- (b) Would your answer to question (a) be different if the marketing departments of both companies made drafts of the brochures available to the other company three weeks in advance without further comment or communication? Why?

(3 marks)

Now assume L figured out that E plans a "buy any two – get one free" special on fresh pasta produced and supplied by Anital Ltd ("Anital"). This special is possible because Anital agreed to grant E a 30% discount on the wholesale price of their products. L also wants to offer a special on fresh pasta and approaches Anital asking for the same wholesale discount that E received and signals that they would replace Anital's products with products from San Omer Ltd, if Anital is unwilling and/or unable to match the price offered to E.

- (c) Does L's conduct breach provisions of the *Competition and Consumer Act* ("CCA")? Why?

(12 marks)