

# COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2, 2016

<b>FINAL EXAMINATION</b>	<b>DURATION</b>				
<b>LAW105 – Introduction to Business Law</b>	<table border="1"> <tr> <td>Reading Time:</td> <td><b>10</b> minutes</td> </tr> <tr> <td>Writing Time:</td> <td><b>180</b> minutes</td> </tr> </table>	Reading Time:	<b>10</b> minutes	Writing Time:	<b>180</b> minutes
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### INSTRUCTIONS TO CANDIDATES

**Total marks for this exam: 50 marks.**

**Section A** contains 2 problem-based questions worth a **total of 30 marks**.

**Section B** contains 3 questions. **Answer 2** out of the 3 questions worth a **total of 20 marks**.

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 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  Lecture Notes (Annotated Permitted)  Lecture Textbook/s (Annotated Permitted)	1 x 20 Page Book

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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## Section A

### Problem-based Questions

**Total marks for this section: 30 marks**

Students **must answer BOTH** questions in this part.

Marks for each question are indicated.

Suggested time allocation for Section A: approx 110 min

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#### Question 1

Gabrielle is a building contractor. On 1 March, she enters into a contract with her good friend Li to build an extension on his town house in Harvey Bay, the work to be completed by 1 August. On 1 April, Gabrielle enters into a separate contract with Bruce to undertake the plumbing work to the extension; that work to be completed by 1 June.

On 15 May, Bruce tells Gabrielle that because of his heavy workload with other jobs he cannot complete the plumbing work by 1 June and he asks for an extension of time of one month. Because this would delay other work to be undertaken with the extension, Gabrielle speaks with Li and asks him whether he is happy to give Bruce extra time, but it would mean the extension would not be completed until after 1 August. Li replied that the extension must be completed by 1 August as he has an important visitor who will be arriving on 3 August and who will be staying in the extension to the town house.

Accordingly, on 17 May Li sends an email to Bruce offering him an extra \$10,000 if he completes the plumbing work by 1 June. On the same day, Gabrielle sends an email to Bruce, offering a further \$5,000 [additional to the \$10,000 offered by Li if he completes the plumbing work by the due date. Bruce does not reply to these messages, but immediately stops work on other projects and sends his staff to complete work on Li's town house.

On 25 May, Li discovers that his visitor will not be arriving until November, so that work on the extension is no longer urgent. He tells Gabrielle that she can have an extension of time to complete the work and sends an email to Bruce telling him that the work is no longer urgent and that he will not be paying him the extra \$10,000. On 26 May, Gabrielle also sends an email to Bruce, explaining that he can have an extension of time to complete the plumbing work and that she will not now be paying him the extra \$5,000.

However, by 25 May, Bruce has almost finished the plumbing work and in fact completes it by 28 May.

Bruce seeks your advice as to whether he is able to claim the \$10,000 from Li and the additional \$5,000 from Gabrielle. Advise him.

**(15 marks)**

## Question 2

Damian runs a plant hire business "Rent-A-Plant" as a sole trader. Petra is one of his 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.

Are either Damian or Petra (or both of them) liable to Carl in negligence? Why?

**(15 marks)**

**Section B commences on the next page**

## Section B

### Total marks for this section: 20 marks

Students **must answer 2** out of the 3 questions in this part.

Each question is worth 10 marks, a total 20 marks is required.

Suggested time allocation for Section B: approx 70 min

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#### Question 3

Lemon & Sons Pty Ltd (Lemons) owns a used car dealership in Alice Springs. It has entered into an arrangement with Orange Petroleum Ltd (Orange) that every person who purchases a used car from Lemons in the month of January will receive 45 cents per litre discount on all petrol/diesel purchases from Orange 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? **(5 marks)**
- (b) Assuming the discounting scheme constitutes a breach of the CCA, what action should Lemons have taken to make the scheme legal? **(5 marks)**

**(10 marks)**

#### Question 4

Gary Reynolds is a sole trader and runs his own business as an architect. Gary tried to expand the business 12 months ago by borrowing \$100,000 from Rap Bank, employing two assistant architects and setting up a new office on Mitchell Street, Darwin. Gary now finds that his operational costs and debts are much higher than the revenue coming in from the architecture services he provides. A number of creditors are now pressing Gary for payment, including the landlord who wants to repossess the Mitchell St office because of unpaid rent. These creditors cannot all be paid within contractual terms. Gary, a single father, owns a house which is mortgaged to Rap Bank and various other assets such as two cars and some cash in his bank account.

Explain how Gary's situation might be different if he was a director of a company (eg, 'GR Architecture Pty Ltd') trading an architecture services business, instead of being a sole trader. Describe the advantages and disadvantages?

**(10 marks)**

## Question 5

Skin Medical Specialists Pty Ltd (“SMS”) is a skin treatment company based in Darwin. It recently developed a nose spray that could penetrate into the blood stream and heal the skin from the inside through the inhalation of vapours. For example, it could reduce facial rashes from the sun, heat and humidity. It advertised extensively across the media, including television, radio, newspapers and billboards, with the advertisements containing statements encouraging people to “Inhale the vapours and heal from the inside. Just call one of our specialists today”. On contacting SMS, patients were offered the opportunity to be medically assessed via telephone consultation and spoke initially with a salesperson who described themselves as a “Clinical Coordinator” then spoke to an SMS doctor and then spoke to the Clinical Coordinator again.

The Clinical Coordinators would arrange for the nasal spray to be sent out with upfront payment required for 12 months use of the spray. Patients were bound to pay for the SMS treatment for the prescribed period whether or not they wished to continue with the treatment or not.

A number of patients were prescribed the nasal spray for use for 12 months. They took the required dose over that time, but found no improvement in their facial rashes.

The patients did some preliminary investigations and found that the Clinical Coordinators were salespeople who were not medically trained and were paid by SMS on a commission, calculated by reference to the cost of the treatment plans sold to patients (the longer the contract period, the greater the commission). The patients also found common experiences in their dealings with the Clinical Coordinators - they did not disclose that they were salespeople paid on a commission; and they were told how effective the SMS treatment is and if they did not use the treatment the patients would suffer unnecessarily. Finally, patients were advised that they would be entitled to a refund of money paid if the SMS treatment purchased was ineffective under the SMS “satisfaction guarantee”, but the conditions of the refund were not explained to the patients.

What potential actions could the patients bring against SMS under the Australian Consumer Law (ACL)?

**(10 marks)**