

COMMONWEALTH OF AUSTRALIA

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	Family Name	
	Given Names	
	Student Number	
	Teaching Period	Semester 2, 2016
FINAL EXAMINATION	DURATION	
LWZ118 - Contracts	Reading Time:	20 minutes
	Writing Time:	120 minutes

INSTRUCTIONS TO CANDIDATES

In **Section A** you must answer **ALL THREE (3)** questions.

In **Section B** you must answer **ANY ONE (1)** of the questions.

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

No calculators are 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	2 x 16 Page Book

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

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Section A
Problem-based Questions
Total marks for this section: 50 marks

Answer ALL THREE (3) questions in this section in the Answer Booklet provided.
Marks and suggested time allocation for each question are indicated.

Question 1 – 20 marks

(Recommended writing time: 40 minutes)

The Magicians are a world famous American basketball team who tour the world playing exhibition matches. They are renowned for their ball skills, dazzling style of play, and for the humorous high energy on-court routines. Recently, the Magicians' management became concerned at falling attendances at their performances and feared that they were 'going stale'. Normally they toured with a hand-picked opposition team, but it was decided to save money and increase local interest by playing against a local team in each location.

Before the Magicians arrived for their recent tour of Australia, scouts sought out prospective opposition teams. They settled on an 'A'-grade club team for their first game. The relevant provisions of the contract signed by the parties were:

Clause 1: The club team is to be promoted by the name 'The Losers'.

Clause 5: The Losers will be paid the sum of \$1,000 for each of four (4) performances, making a total payable of \$4,000.

Clause 9: The Losers undertake to 'put on a good show.

In the first of the four matches scheduled, the Magicians attempted to display their usual skills and comic antics. However, The Losers played as if it were a serious match, with the result that they beat the Magicians by a large margin. Members of the crowd began jeering and boo-ing the players shortly after half-time and, by full-time, only half the crowd was left in the stadium.

Immediately after the match, the manager for the Magicians stormed into The Losers' dressing room and shouted:

'What the hell did you think you were doing out there? You have made us into a laughing stock! You know you were supposed to lose!'

He then told them to pack up their things and to 'get out of my sight — the deal's off'.

Advise The Losers whether the Magicians were entitled to terminate the contract, fully explaining relevant legal principles and citing authorities.

Question 2 – 20 marks

(Recommended writing time: 40 Minutes)

Wilona's husband of 50 years passed away recently. Wilona was a loving and committed wife and mother, but had little formal education and no understanding of 'business matters' which had always been handled by her late husband. She is confused by, and therefore distrusts, banks, accountants and lawyers.

Wilona was a regular church attender and freely declared to all 'my faith is my solace and my security'. She was often heard to appreciate the support of her church friends in general, and Pastor Devout in particular. Not surprisingly, Wilona often talked to Pastor Devout about her future hopes and fears.

After some months, Wilona came to the conclusion that she should sell her matrimonial home and move into a small unit. Wilona very quickly found a lovely new unit to buy and signed a contract for it.

As it happened, Pastor Devout was himself looking for a new home as the church urgently needed to sell the modest Pastor's residence to cover a budget shortfall. He mentioned this in passing to Wilona. Wilona insisted that she sell her house to Pastor Devout. When he asked how much she would want for the property, Wilona said she had no idea of its worth. However, she recalled a neighbour saying that a house in the street had recently sold for \$200,000. Because she knew that her house would be going to someone deserving, she offered to sell it to Pastor Devout for \$100,000. This was, in fact, approximately half of its true value.

No matter what Pastor Devout said or did, Wilona wouldn't take 'no' for an answer. In the end Pastor Devout, knowing Wilona to be both generous and extremely stubborn, accepted her offer and contracted to buy the house.

Wilona needed a bridging loan in order to settle the purchase of her new unit. She approached Sly, a wealthy fellow church member. Sly agreed to lend her the money if she would sign a receipt for it so he 'would have something to show the taxman'. In fact, the 'receipt' was a basically-worded loan contract which provided that she was liable to pay interest at twice the rate that she could have obtained from a bank. Wilona signed the document without reading it because she thought Sly, as a fellow church member, was 'a good man'

Wilona's son and daughter have just flown in from their respective homes interstate and discovered what Wilona has been doing. They seek your advice on whether Wilona can undo what she has done.

Advise Wilona's children, discussing all potential grounds for relief and possible remedies.

Question 3 – 10 marks

(Recommended writing time: 20 minutes)

Dan is a land developer who is interested in building a large shopping centre in the semi-rural shire of Hinterland. Dan has always tried to be an honest businessman, which has not always positioned him well against his competitors. Dan knows that the proposed development has received a mixed reception from the community, which is reflected in the views of Hinterland Local Council members. Indeed, a recent poll predicted the likely outcome of the upcoming Hinterland Council vote at 5:4 against the development.

One night while at the local club, Dan was approached by Calvin, one of the Councillors who was against the development. Calvin slipped into the chair beside Dan and, in a low voice, began telling him that he knew how to swing the vote in Dan's favour. All Dan had to do was to leave \$100,000 in a brown paper bag under a particular picnic table in the park.

Tired of always playing it straight and losing, Dan did as Calvin suggested.

The following day, Dan was wracked by a guilty conscience. Half an hour before the final vote, Dan approached Calvin outside the Council offices to tell him that the deal was off. Dan told Calvin he was prepared to 'face the music'. Dan also asked Calvin to return the money, which Dan now intended to use for an early retirement. Calvin denied that he had ever met Dan before or received money from him.

Dan wants to know if he can recover the \$100,000 from Calvin.

Advise Dan.

Section B
Short Essay Question
Total marks for this section: 10 marks

Answer **ANY ONE (1)** of the questions in this section in the Answer Booklet provided.
Recommended writing time: 20 minutes

Question 4 – 10 marks

EITHER

In what ways does s.18 ACL (Australian Consumer Law) extend and/or limit the general law relating to misrepresentation?

OR

Mistake as a vitiating factor in contract is as good as dead. The majority of mistake cases could be decided on the basis of other principles applicable in contract law. Discuss.

OR

Discuss the importance of *Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (No 1)* to the law relating to Misleading or Deceptive Conduct.