

COMMONWEALTH OF AUSTRALIA

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FINAL EXAMINATION LAW514 – Commercial Law	Family Name	
	Given Names	
	Student Number	
	Teaching Period	Semester 2 Special/Summer Semester, 2016
DURATION		
	Reading Time:	10 minutes
	Writing Time:	180 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this exam: 50 marks.

This exam contains five (5) legal problem solving questions. Each question is worth 10 marks and you must answer each question (**total of 50 marks**).

Identify and discuss all relevant issues and refer to legislation and/or case law to justify your answers.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only. The overall time for this exam is 3 hours (plus the extra 10 minutes reading time).

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	1 x 20 Page Book

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DOUBLE-SIDED.**

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Problem-solving Questions

Total Marks for this section: 50

All questions should be answered in the Answer Booklet provided.

There are 10 marks for each question. You should aim to write approximately 2-3 pages for each question.

Suggested time to allocate to each question: Approximately 35 mins.

Question 1 [10 marks]

Virat offered to purchase Sachin's vintage Mercedes-Benz car after it was advertised for sale privately. His exact words to Sachin were as follows: "this car is great, I love it; I will definitely buy it. Please don't sell it to anyone else. I just need 10 days to arrange my finances, but it will be no problem." Sachin replied "that's fine". These two are well known to each other and those who know them would consider them to be friends. Sachin is also aware that Virat is quite wealthy. On the strength of Virat's words, Sachin borrowed bridging finance (a high interest loan) to buy another, more expensive, car. Before the 10 days had expired and after Sachin had bought the second car, Virat told Sachin he had been advised by his tax accountant not to buy the car. Sachin was furious as he had turned away other prospective buyers and now cannot find another buyer. Having relied upon the things Virat said about definitely buying the car, and now burdened with a new loan and nowhere to put the second car, Sachin seeks your legal opinion as to whether he might be able to enforce the contract with Virat.

Advise Sachin as to whether there was a valid contract and whether Virat can pull out of the deal in this way? Explain your answer with specific reference to the issues of Intention, Agreement and Consideration. Your answer must refer to the relevant case law.

Question 2 (Total 10 Marks)

Mr Xi has been running a successful security firm over the past few years. His business has expanded rapidly in the Northern Territory with his business taking over some of his immediate rivals. He now plans to expand more rapidly in Australia and needs to raise a substantial sum of money to meet his expansionist objectives and secure his dream of running the most powerful security firm in the region. He views his business prospects as very strong and so does the bank. However, he has insufficient personal assets to secure a large enough bank loan and has decided to ask his elderly mother to be guarantor for his loan application. He asks her to guarantee a loan of \$1.5 million. His father had died some years ago and left his mother the family home which is estimated to be worth this amount. He explains to her how this property could be used as security for his business loan. She speaks very little English but she has a very astute business mind and is fluent in Mandarin, Cantonese and also Shanghai dialect. The local Australian bank advises her to seek independent legal advice in the presence of an experienced, certified interpreter before she signs any formal documents that guarantee her son's business loan. But she trusts Xi's business acumen so much that she does not find this necessary, and signs the guarantee in the office of the bank manager on the spot. Less than two years later Xi's expansion plans are in chaos with a significant legal ruling having been made against his business which is now facing insolvency. The bank plans to enforce the loan guarantee against Mr Xi's mother.

Can Mrs Xi rely on Amadio's case [*Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447] as authority to show that the Bank acted unconscionably against her? What arguments might the Bank rely on in this scenario?

Question 3 [10 marks]

Myra operates a small garden nursery specialising in selling exotic tropical plants and flowers. Myra hires her younger cousin, Natasha (Nat), to work as a shop assistant and to look after the flowers so they are arranged beautifully for sale. Nat is very good at flower arrangement even though she had never been a good student and has no real knowledge about finance or running the business. Myra relies on Nat, however, as she is trustworthy and she cannot always be around the shop. She is often out, dealing with suppliers, marketing and the distribution networks of the business. One day, Nat tells Myra that her boyfriend doesn't think she should work at the shop any more as he thinks she is 'taken for granted' at work. Myra is upset about this accusation and immediately agrees to have a badge made for Nat to wear each day, saying in large, bold, letters: "Assistant Manager". Nat is happy with this and during the first week Nat wore her new badge, Myra is called away to a Home & Garden Display and is away for two days. Before leaving, Myra instructs Nat not to make any purchases from any suppliers until she returns. One regular supplier, Warren, who has known both Myra and Nat for a long time comes into the shop while Myra is away and comments on Nat's new badge. He then proceeds to sell her some heavily discounted flowers which she agrees to take as they seem so much cheaper than usual. Those flowers wilt (droop) very quickly and none are sold to any customers. Warren demands payment in full from Myra the following week.

Was Nat Myra's agent for the period Myra was away? If so, what sort of agent? Can Myra avoid paying Warren? Who do you think will be liable for the flowers that Nat purchased from Warren? Justify your answer with reference to relevant cases.

Question 4 [10 marks]

After commencing a new job 12 months ago, Raul takes all his annual leave (4 weeks) commencing in early December with a 16 day cruise through South East Asia, and starting in Darwin. When Raul booked his ticket costing \$2,500 he was informed that the cruise timetable did fall within the cyclone season and he could take out optional cyclone insurance for the trip. Raul dismissed the idea of extra insurance as he thought the odds were against the ship running into a cyclone in December. Unfortunately, after just 2 days at sea, the Captain misdirects the ship by sailing directly into a very heavy storm. Many people on board, including Raul, became very ill and request to leave the cruise ship at the next port of call (Bali). Raul suffered minor injuries that required treatment in Bali and his baggage was also badly damaged presumably in the turbulent conditions. Raul complained to the ship's staff that the captain had been negligent for steering the ship into cyclonic conditions, but the staff was unsympathetic, saying *it is cyclone season* and he was aware of that and should have taken out insurance in case his trip was ruined. Their point was that his predicament was essentially his own fault.

Does Raul have a cause of action in **tort law** against the Cruise ship company? What would he need to prove and what defences might the Cruise ship company raise? Advise Raul what sort of compensation or remedy he should seek and whether he is likely to win? Refer to relevant case law in making your arguments. (NB. For this question you do not need to refer to the Australian Consumer Law or contract law in your answer).

(Question 5 is on the next page)...

Question 5 [10 marks]

Asif is in the process of buying a new home. It is in an area that has, in the past, been affected by flood water. Because of this history the bank was only prepared to lend him a modest sum of money and the rest he paid from his savings and with some help from his parents. The bank also strongly recommended, in addition to having mortgage insurance, that he arrange comprehensive insurance to cover both flood and storm damage. Asif immediately got in touch with his Insurance Company (*Storm Insurance Company Inc.*) When taking out his policy, Asif disclosed to the insurance company that his land had previously been affected by flooding and he was told that 'if the flooding is directly caused by storm' his policy would cover that. Within 12 months Asif's house is flooded. The nearby river overflowed following a release of excess water from an upstream dam managed by the government. The excess water held in the dam was caused by heavy rain that had occurred much further to the north and had flowed downstream to fill the dam. Storm Insurance has rejected Asif's insurance claim.

Can Storm Insurance succeed in denying Asif's claim? What are the key rules with respect to insurance law that might be applied to this case? Advise Asif.

-----**End of Exam**-----