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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1, 2018				

LAW514 – Commercial Law	<b>DURATION</b>	
	Reading Time:	<b>10 minutes</b>
	Writing Time:	<b>180 minutes</b>
<b>INSTRUCTIONS TO CANDIDATES</b>		
<b>EXAM CONDITIONS</b>		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
<b>ADDITIONAL AUTHORISED MATERIALS</b>	<b>EXAMINATION MATERIALS TO BE SUPPLIED</b>	
Any printed material with the exception of CDU Library books	1 x 20 Page Book	

**THIS EXAMINATION IS PRINTED  
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 is approximately **35 minutes**.

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### Question 1 [10 marks]

Ali was interested in purchasing a business class ticket for his flight from Perth to Nairobi (Kenya) to see the magnificent animals of the Masai Mara. As prices can vary between airlines and times of the year he decided to shop around on the internet first. The best deal he could find was from South African Air (SAA). This fare also promised to give benefits in Johannesburg where he would face a minimum 6 hour wait for the connecting flight to Nairobi.

The SAA salesperson quoted a price of \$3,200 for the return business class flight. Ali thought this was relatively cheap and promptly gave his credit card details. Two weeks after he had paid for his return ticket he noticed he had been charged \$3,900 as there were some “unspecified taxes” added to his bill. He had not been directly informed about this by the salesperson when he paid, but when he made further enquiries with SAA he was told of an exclusion clause that is in all their ticket purchases and readily available on the internet which states: “prices may, from time to time, be subject to change due to unspecified taxes”.

**Was there an enforceable contract here? Will Ali be required to pay the extra \$700 and if so, on what grounds? (NB. You are not required to use Consumer Law in this question).**

### Question 2 (Total 10 Marks)

Dilpreet hires Ash’s sister Karen as a dancer to entertain patrons at Dilpreet’s restaurant. Karen urges Bob, a customer who is celebrating his 60th birthday with his family, to join her in a dance. Bob had been drinking some alcohol but later claims he was not drunk. While vigorously attempting to keep up with Karen, Bob breaks his hip. This has never happened at Dilpreet’s restaurant before and it has never happened to Karen either. Bob had no previous history of hip problems.

**Does Bob have an action against Karen in the tort of negligence? Who owed Bob a duty of care? Is there an argument that there was no breach of duty of care to Bob? What defence arguments may be used in this scenario? Use relevant cases to support your answers.**

### Question 3 [10 marks]

Gong Li, the general manager of a courier business, saw an advertisement by a car dealer in the daily paper advertising 'Great Wall' automatic sedans at a special low price of \$18,000. Gong Li showed her assistant, James, the advertisement and said to James, 'I give you authority to purchase one of these advertised sedans for the business immediately. We need an efficient new sedan for our small delivery jobs which are growing in number, but don't spend anything over this amount.'

James went to the car dealership, and spoke to the dealer, Martin, and explained that he was buying a car for his employer, Gong Li. James showed Martin his business card (which has both his name and the business name – Gong Li & Associates – printed on the card). Martin then explained to James that the Great Wall sedan will be more expensive to run in terms of fuel consumption for intensive use deliveries compared to a more evolved Japanese model also on special at \$22,500. Martin convinced him that this would produce substantial savings over the longer term. James phoned Gong Li for instructions but she was not available. James purchased (on the business credit-card) the Japanese sedan and took immediate delivery.

Gong Li upon returning to the office is very upset about the purchase.

**Is Gong Li liable for the payment of the Japanese car when she had wanted the Great Wall car? Can she recover the balance of the money from James? Your answer must refer to relevant agency case law.**

### Question 4 [10 marks]

Deepak was sick and tired of driving taxis to make ends meet. So he became interested in buying a cafe business in the Darwin CBD. He visited a cafe called 'Best Espresso' which was being advertised in the NT News as being 'for sale' and spoke to the owner (Katrina) who showed him around the cafe and kitchen area where the chefs prepared the food and drinks. Deepak noticed that there were 6 tables outside the cafe with enough seating for 24 customers. There were also 3 large fans strategically placed to keep each table reasonably cool. The cafe also displayed a prominent sign showing the business name. Deepak was impressed with the look and feel of the business and, given that he counted 65 seats, including the 24 outside, asked his accountant if it would be a profitable. His accountant said that based on the facts available it probably would be.

Although it was the middle of the wet season and most days the temperature was around 34 degrees, Deepak decided to purchase the business. After the first three months he was making profit. The following week, however, Deepak received a letter from the local Council informing him that he had to remove the outside fans as the cafe never had council permission to have these. Katrina had never mentioned anything about these fans and remained silent when they were discussing the outside area. Deepak was very annoyed that he couldn't keep his outside customers cool and after a few days, almost no customers sat outside. As a result he was losing trade, thus reducing profit. The following month he began losing money as he was only utilising around two thirds of the available seating and the funky atmosphere of the café was altered.

If he could use all 65 tables he could reasonably rely on a profit of \$1000 each week, but with the use of only 51 tables, and with the change of atmosphere, he estimates his business may be unsustainable.

**Can the *Competition and Consumer Act 2010 (Cth)* help Deepak? If so, how? Discuss any defences available to your chosen defendant/s in response to any action taken by Deepak. Outline any possible remedies available to Deepak under the Act if the tribunal finds in his favour. Refer to the relevant sections of the Act and case law in your answer. (NB. You are not required to use contract law in this answer.)**

**Question 5 [10 marks]**

Kapil has created his own website for his new restaurant ‘Flaming Curry’. When he designed it he had trouble thinking of interesting and informative content and layout, so he had a look at what other restaurant websites looked like and plagiarised other’s ideas. He then designed his own website, but has now been contacted by a lawyer representing Sachin who is the owner of ‘Little Master’ restaurant. It is claimed that Kapil copied the ‘Little Master’ website’s colour scheme, font and menu design. In fact they are basically identical. He also claims that he has copied Sachin’s slogan: ‘Every bite takes you on a journey to India’. Kapil insists that he did not deliberately copy the ‘Little Master’ website, although it was one of the websites he looked at when planning his own.

**Is the ‘Little Master’ website, including the slogan, protected by any IP laws? Has Kapil infringed Sachin’s rights and if so, what can he do?**

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