

## **WARNING**

This material has been reproduced and communicated to you by or on behalf of *Charles Darwin University* in accordance with section 113P of the *Copyright Act 1968 (Act)*.

The material in this communication may be subject to copyright under the Act.  
Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

**Do not remove this notice**



Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 1, 2019					

LWZ210 – Equity	DURATION	
	Reading Time:	20 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> <li>1. This examination paper contains <b>FOUR (4) questions</b>.</li> <li>2. Candidates must answer <b>all FOUR (4)</b> questions.</li> <li>3. <b>Each question</b> is of equal marking value of <b>FIFTEEN (15)</b> marks as set out immediately adjacent each question number.</li> <li>4. <b>In questions 1 and 2</b> candidates need only answer their <b>choice of three (3) sub-questions</b>.</li> <li>5. <b>Each sub-question</b> in questions 1 and 2 is of <b>equal marking value of FIVE (5)</b> marks as set out immediately following each sub-question.</li> <li>6. This examination accounts for <b>sixty (60) assessment marks (60% of the total of unit assessment)</b>.</li> <li>7. Use only black or dark blue ink. Do not write in pencil.</li> <li>8. Read ALL questions carefully.</li> <li>9. Please ensure that your Name and Student Number are written clearly in the space provided at the top cover page of the examination answer booklet(s) and on this examination question paper.</li> </ol>		
EXAM CONDITIONS		
<u>You may begin writing from the commencement of the examination session.</u> 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	
None	2 x 20 Page Book 2 x Scrap Paper	

THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.

THIS PAGE HAS BEEN INTENTIONALLY  
LEFT BLANK.

## ANSWER ALL FOUR (4) OF THE FOLLOWING QUESTIONS

**NOTES REGARDING** the terms of reference “explain and discuss” as used in **QUESTIONS 1, 2 and 3.**

Where, in a question, candidates are asked to “explain and discuss” your answer should:

- treat the word “doctrine” as synonymous and interchangeable with the word “principle”;
- review the facts of the case or, in the case of question 3, the cases that are authority the principles under discussion;
- explain the meaning and effect of the doctrine (or doctrines) of the case or, in the case of question 3, the principles under discussion;
- make observations regarding the value, utility and policy of that doctrine (or doctrines) so discussed;
- where possible, contrast that doctrine (or doctrines) to other principles of equity, or rules of law, that may be parallel to, complementary of, or in conflict with the doctrine (or doctrines) of the case; and
- express, where relevant, your own critical observations (or endorsements) of the doctrine (or doctrines) of the case.

### QUESTION 1 (15 MARKS)

Explain and discuss your **choice of any three (3)** of the **cases** set out in the **following sub-questions**.

**Sub-question 1 (a)** Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41 **(5 marks)**

**Sub-question 1 (b)** Milroy v Lord (1862) 45 ER 1185; 4 De G. F. & J. 263 **(5 marks)**

**Sub-question 1 (c)** Giumelli v Giumelli [1999] HCA 10; 196 CLR 101 **(5 marks)**

**Sub-question 1 (d)** Esso Petroleum v Hall Russell (1989) 1 AC 643 **(5 marks)**

**Sub-question 1 (e)** Re Dawson (Deceased): Union Fidelity Trustee Co Ltd v Perpetual Trustee Co Ltd [1966] 2 NSW 211 **(5 marks)**

**Sub-question 1 (f)** Ainsworth and Another v Criminal Justice Commission (1992) 175 CLR 564 **(5 marks)**

### QUESTION 2 (15 MARKS)

Explain and discuss your **choice of any three (3)** of the **cases** set out in the **following sub-questions**.

**Sub-question 2 (a)** Commissioner of Stamp Duties (Qld) v Livingston (1965) AC 694 **(5 marks)**

**Sub-question 2 (b)** Barton v Armstrong (1973) 2 NSWLR 598 **(5 marks)**

**Sub-question 2 (c)** Sarge Pty Ltd v Cazihaven Homes Pty Ltd (1994) 34 NSWLR 658 (5 marks)

**Sub-question 2 (d)** Hewitt v Court (1983) 149 CLR 639 (5 marks)

**Sub-question 2 (e)** David Securities v Commonwealth Bank of Australia [1992] HCA 48; (1992) 175 CLR 353 (5 marks)

**Sub-question 2 (f)** Muschinski v Dodds [1985] HCA 78; (1985) 160 CLR 583 (5 marks)

### QUESTION 3 (15 MARKS)

In Commercial Bank of Australia v Amadio [1983] HCA 14; (1983) 151 CLR 447, Mason J, as he then was, emphasised the distinction between the doctrines of unconscionable dealing and undue influence. Explain and discuss those doctrines and the distinctions between them.

### QUESTION 4 (15 MARKS)

In 2012, Veronica and her husband George purchased a 16 hectare (40 acre) property at Clark Road, Humpty Doo, NT ("the Clark Road property") with the assistance of a loan from a financier secured by a registered mortgage. The couple did not put the asset in both names. It was registered in Veronica's name only.

George and Veronica subsequently built a house on, and took up residence at, the Clark Road property and made other improvements to it. That became their place of residence. The expenditure for those improvements was made from their joint personal resources and did not involve any borrowed money. The improvements were all located in a road frontage corner of the Clark Road property which left approximately 12 hectares of undeveloped vacant land within the title.

In 2013, George's brother Leon, his wife Sophie together with George and Veronica, all acquired a parcel of vacant unimproved land, also of 16 hectares, at Penfield Road, Humpty Doo for \$260,000 ("the Penfield Road property"). Leon, Sophie, George and Veronica were all registered as proprietors with each couple holding a half-share as joint tenants in co-ownership with the other couple as tenants in common. This purchase was partly financed by a loan from the same financier as had loaned the money on the Clark Road property. That loan was secured by a mortgage for which all of Leon, Sophie, George and Veronica were equally responsible.

However the part of the purchase price of the Penfield Road property which was not borrowed, amounting to \$75,000, was paid exclusively by Leon and Sophie. Leon agreed to provide that funding because of an agreement that Leon and Sophie were to acquire half of Veronica's interest in the unimproved land at the Clark Road property. That agreement was made in conversation between Leon and George, in Veronica's presence, during a pre-purchase inspection of the Penfield Road property.

Leon told George and Veronica that he and Sophie were intending to purchase the Penfield Road property. George said that he and Veronica wanted to be partners on it. Leon told George that, if he wanted to have a half-interest in the Penfield Road property, he would have to contribute between \$35,000 and \$40,000 to the transaction. George answered that he and Veronica did not have the funds available but could agree to do a deal by which Leon and Sophie could have a half interest in the vacant surplus land at the Clark Road property in exchange.

If that was agreed, George said, the brothers, with their respective spouses, would then each own a half-share of both properties. Leon agreed and he and George also agreed that the value of the unimproved land of the Clark Road property was approximately \$80,000 to \$90,000, and therefore they settled on a purchase price of \$45,000. When the purchase of the Penfield Road property was

finalised, Leon gave George \$7,500 to balance out the difference between the agreed value of the Clark Road vacant land and Leon's financial contribution to the Penfield Road property.

After the purchase of the Penfield Road property, George and Veronica continued to live at the Clark Road property. They did not pay Leon and Sophie any rent or otherwise account for their occupation of it nor did they in any other way acknowledge the part ownership or financial help of Leon and Sophie. George and Veronica continued to pay the mortgage obligations on the Clark Road property and all other outgoings.

In October 2015, George and Veronica suffered marital problems and separated. In May 2016 they mutually consented to the Family Court making a matrimonial property settlement order by which George surrendered any claim to both properties to Veronica and she assumed his liabilities in relation to them. From then, she, Leon and Sophie agreed that both properties were to be rented with Veronica collecting the rents and making the payments on the mortgages and outgoings.

However in August 2016, the lender served default notices in respect of both mortgages. This caused Leon and Sophie to believe that Veronica was misappropriating some of the rent. For that reason Leon took over the rent collections but he found that the proceeds were insufficient to keep abreast of the liabilities under the mortgages. As a result of these misfortunes, both the Clark Road and the Penfield Road properties were in mortgage default until January 2017.

That situation was temporarily resolved in January 2017 when Leon paid the arrears on each mortgage from his own personal funds. However by July 2017 Leon could no longer service the mortgage debts and both mortgages fell into default again. In October 2018 the lender instituted proceedings for the possession and sale of the properties.

Prior to the lender's sale of the Clark Road property, Leon asked the lender for confirmation that it would pay him half of surplus proceeds of sale after satisfaction of the original debt on the Clark Road property. The lender advised that as Veronica was the sole registered proprietor of the Clark Road property, any such surplus proceeds would be paid to her in full.

On receipt of this information Leon approached Veronica and requested her to instruct the lender to split the proceeds. Veronica declined.

Leon has consulted the senior partner of a law firm in which you are employed as a junior solicitor. The senior partner has asked you to prepare a draft of a proposed comprehensive written advice to Leon providing guidance as to his rights against Veronica in respect of the Clark Road property. Prepare the draft advice.

---

**END OF EXAMINATION PAPER**

---