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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2017				

LAW514 – Commercial Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
EXAM CONDITIONS		
<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)		
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 is approximately 35 minutes.

Question 1 [10 marks]

Sunita wanted to purchase a new iPhone and found the best deal online. But before she gave her credit card details she decided to ring the contact number of the product provider to get more details and some advice as to the best version to buy for her needs. The salesman persuaded her to buy the most expensive model even though he suspected she probably didn't need it based on what she had told him. He indicated to Sunita the cost of the iPhone would be about \$1,200 but when Sunita saw her credit card receipt later, she had been billed "\$1,500". When Sunita realised she might have paid too much for her new iPhone she telephoned the provider to inquire why her receipt said \$1,500 when she understood the price was \$1,200. She was directed to the manager who said he would make inquiries and 'get back to her'. But he did not get back to her.

Was this a valid contract? Give your reasons why or why not. What would be a suitable remedy in this situation? Your answer must refer to the relevant case law. (N.B. You are not required to use Consumer Law in your answer).

Question 2 (Total 10 Marks)

Mr Singh has been running a successful lawn mowing and garden care service firm over the past few years. His business expanded rapidly around Darwin with his business taking over some of rival businesses. He now plans to expand in other parts of the Northern Territory including Katherine and Alice Springs and he needs to raise a substantial sum of money to meet his new business. 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 needs her to guarantee a loan of \$500,000. His father had died some years ago and left his mother the family home which is estimated to be worth approximately this amount. He explains to her how this property could be used as security for his business loan. She is now elderly and is not confident with any documents written in English, but she is alert with a sharp mind. 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 guaranteeing her son's business loan. But she trusts her son's business acumen so much that she does not find this necessary, and she insists on signing the guarantee in the office of the bank manager on the spot so her son could 'get on' with his plans. She even signs a document to say she refuses the suggestion of independent legal advice and an interpreter. Less than twelve months later Singh's expansion plans are disrupted with a severe downturn in the economy resulting in all his projects suffering. His business is facing insolvency and the bank plans to enforce the loan guarantee against Mr Singh's mother.

Advise the bank whether it can enforce the guarantee over this loan? What arguments might Mrs Singh rely on to show that the Bank acted unconscionably against her? Discuss the issues of genuine consent in the above scenario and refer to relevant contract law cases to support your answer.

Question 3 [10 marks]

Xuan is the owner of a fine Chinese tea emporium selling high-grade specialty teas. Ming has been employed by Xuan as store manager and principal salesperson for the past 3 years. One day, Camilla is shopping with her best friend Grace, as she wants to show Grace about the high-grade teas available in this store. Camilla starts negotiating with Ming over some special ginseng which is presented in an exquisite carved wooden box. Ming has been specifically instructed by Xuan to not to sell that particular box of ginseng for anything under \$200 per box as Chinese herbal specialists say this product ‘boosts energy and helps the body’s immune system’. Nevertheless, after 10 minutes of bartering, Camilla persuades Ming to sell four boxes to her and Grace for only \$350. The next day, however, upon discovering that Ming had disobeyed her instructions and sold the special ginseng to Camilla and Grace for only \$350, Xuan immediately calls Camilla and insists that she either returns two of the boxes or pay the extra money.

Under Agency Law is it possible Ming could be liable for the balance of the money? Your answer must refer to the relevant case law. (N.B. You are not required to use consumer protection law or employment law in your answer.)

Question 4 [10 marks]

Air Con Ltd (‘Air Con’) is a company specialising in environmentally friendly air-conditioning systems that are totally driven by solar power. The systems rely on new-generation battery cells that store the solar energy. Extensive trialling of Air Con systems in the Northern Territory have proven that the new batteries are effective.

Air Con is seeking to raise funds to expand into the Australian market, and then in future into hot, wealthy cities of south-eastern China. The company has just issued a short form prospectus and referred investors to further material lodged with ASIC. The prospectus is current and approximately \$32.5 million has already been raised.

In early 2017 one of the Air Con batteries exploded without a clear explanation as to why. No-one was injured, but had anyone been nearby at the time they could have most certainly been killed such was the ferocity of the blast. Although this was a rare incident the Air Con board of directors was immediately informed of the incident.

At the following board meeting, the Chairman of Air Con raised concern about the exploding battery: “We may have a problem here.” He pointed out that in the material lodged with ASIC, Air Con had stated that in all trialling of Air Con systems, no problems had been encountered and that the new battery systems were totally reliable. The Chairman explained to the board that investors may be concerned if they knew about the exploding battery incident. At the same time he acknowledged that the incident was rare and questioned whether Air Con really needed to act further on this information at this stage, other than finding out more internally about what had happened with the exploding battery.

Taking into consideration the nature of the incident and the Chairman’s concerns and comments, discuss whether Air Con’s prospectus may be in breach of Chapter 6D (s710(1)) of the *Corporations Act 2001*.

What is the key legal principle involved in this critical incident? Justify your answer with reference to relevant legislation and/or case law.

Question 5 [10 marks]

Omar is in the process of buying a new home near Darwin. It is in an area that has, in the past, been affected by cyclone damage. 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 financial help from his parents. The bank also strongly recommended, in addition to having mortgage insurance, that he arrange comprehensive insurance to cover him against 'storm damage'. Omar immediately got in touch with his Insurance Company (*Cyclone Insurance Company Inc.*). When taking out his policy, Omar disclosed to the insurance company that his land had previously been affected by a category two cyclone and was told that the company was aware of that fact and that his policy would cover property damage 'directly caused by a cyclone'. Within 12 months Omar's house is flooded. A nearby river overflowed following an earlier cyclone which occurred several weeks before and much further to the north of Omar's property. Cyclone Insurance has rejected Omar's insurance claim on the basis that the flooding was not "directly caused" by the cyclone.

Advise Omar on the key rules of insurance law that relate to this case? Is there a technicality that Cyclone Insurance can rely on to deny Omar's claim? Use relevant insurance law cases to support your answer.

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