

## **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 2 Special/ Summer, 2018				

<b>LAW514 – Commercial Law</b>	<b>DURATION</b>	
	Reading Time:	<b>10 minutes</b>
	Writing Time:	<b>180 minutes</b>
<b>INSTRUCTIONS TO CANDIDATES</b>		
This exam includes five (5) questions worth 10 marks each. You are required to answer each question in the answer book provided. The exam is worth 50% of the subject.		
<b>EXAM CONDITIONS</b>		
<b><u>You may begin writing from the commencement of the examination session.</u></b> The reading time indicated above is provided as a guide only.		
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.**

**THIS PAGE HAS BEEN INTENTIONALLY LEFT  
BLANK.**

## 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 **36 minutes**.

---

### Question 1 [10 marks]

Raj wanted to purchase a new car but only had \$8000 to spend. He saw a car advertised in the NT News for \$8,500 ONO (or nearest offer) and he was interested in buying this one. He went to have a look at the car and told the car's owner, Paul, that he would buy it for \$8,200 maximum and signed the registration transfer papers on the spot, promising to return with the money the following day as he would need time to go to the bank first. He did not leave a deposit. Paul's reply was "see you tomorrow then". The next day, something important came up and Raj couldn't go ahead with the purchase. Paul was very unhappy with Raj changing his mind in this way.

**Advise Paul on whether any action can be taken against Raj as he had signed the registration transfer papers. Is he entitled to any remedy for breach of contract? NB. Your answer must refer to the relevant case law.**

### Question 2 (Total 10 marks)

Vijay runs a popular local restaurant and occasionally hires Dilpreet as a dancer to entertain patrons. One evening a regular customer, Winston, is celebrating his 65th birthday with his family. Winston had been drinking some alcohol but later claims he was definitely not drunk when Dilpreet enticed him to dance with her. As the dance got faster Winston made every effort to keep up with her but, unfortunately, he had a fall breaking his leg. This has never happened at Vijay's restaurant before and it has never happened to Dilpreet either. Winston has no previous history of leg injury.

**Explain how the rules of vicarious liability may be applied to this case. You must use relevant cases to support your answer.**

### 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. Even so, Myra relies on Nat, as she is trustworthy when she cannot be at the shop. For example, 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 away at a Home & Garden Display 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 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.

**If we accept that Nat was Myra's agent was for the period she was away, is it possible that Warren could be liable for the flowers that Nat purchased from him on Myra's behalf? Justify your answer by referring to relevant agency law cases.**

### Question 4 [10 marks]

Grace was interested in purchasing a business class ticket for her flight from Darwin to Shenzhen over the wet season. As prices can vary between airlines she carefully shopped around on the internet first. The best deal she could find was from 'Lioness Air' via Singapore with a cheap fare that also promised "benefits" in Singapore where a 4-hour wait is scheduled between connecting flights.

The Lioness Air salesperson quoted a price of around \$800 for the return flight if she purchased the ticket immediately. Grace thought this was cheap and promptly gave her credit card details. Two weeks after she had paid for her return ticket she noticed she had actually been charged \$1,200 - as there were some "unspecified taxes" added to her bill. She had not been directly informed about this by the salesperson when she paid, but when she made further enquiries with Lioness Air she was told of an exclusion clause that is in all their ticket purchases and readily available on the internet. This clause stated: "prices may, from time to time, be subject to change due to unspecified taxes". In Singapore the unspecified "benefits" turned out to be a free foot-massage in a quiet room next to the business lounge, but at the time Grace was there that service was overbooked and she could not use it.

**Using the relevant sections of the *Competition and Consumer Act 2010 (Cth)* and case law, advise Grace of her rights under the Act. Will Grace be required to pay the extra \$400 and if so, on what grounds? (NB. You are not required to use contract law in this answer.)**

**Question 5 [10 marks]**

Camilla 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 her a modest sum of money and the rest she paid from her savings and with help from her parents. The bank also strongly recommended, in addition to having mortgage insurance, that she arrange comprehensive insurance to cover both flood and storm damage. Camilla immediately got in touch with her Insurance Company (*Storm Insurance Company Inc.*) When taking out her policy, Camilla disclosed to the insurance company that the land had previously been affected by flooding and she was told that 'if the flooding is directly caused by storm' her policy would cover that.

Within 12 months Camilla's house was 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 Camilla's insurance claim.

**Advise Camilla on the key rules of insurance law and her legal options if Storm Insurance rejects her arguments?**

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