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Semester 2 Examinations
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Student Number: _____

Student's Name: _____

Faculty: LAW AND MANAGEMENT

Subject Code: L1LCC Subject Name: LAW OF COMMERCIAL CONTRACT

Paper No: 1 Paper Name: FINAL EXAMINATION Section/Part No:

Date: 15/11/00 Start Time: 9.00AM

Reading Time: 30 MINS Writing Time: 3 HOURS

No. of pages (including cover sheet): 4

INSTRUCTIONS TO CANDIDATES:

- 1) Answer **ALL THREE (3) PARTS**. **ALL QUESTIONS IN PART A MUST BE ANSWERED. BOTH PART B AND PART C HAVE INTERNAL CHOICES. STUDENTS MUST CHOOSE ONE QUESTION IN PART B AND ONE QUESTION IN PART C.**
- 2) This examination is worth 75% of the final assessment.
- 3) This is an open book examination. This means that students may use any materials or books, provided only that materials or books borrowed from University libraries may not be used in the examination.
- 4) During the 30 minutes reading time candidates may make notes and consult books, notes, etc they have brought into the examination, but they **must not write on or in the answer booklets**.
- 5) If you consider that insufficient material has been given in a question, you should indicate this. You should also state what further information is required and why.
- 6) Candidates are reminded that in the case of 'problem type' questions, it is not sufficient to 'spot' the issue. A concise discussion of the arguably applicable law, its application to the facts and an indication of your view of the likely outcome is expected.
- 7) Write your name on the cover of each book used.
- 8) Students must state their tutor's name on the front cover of all answer booklets.

This paper MUST NOT BE REMOVED from the examination venue

Part A : **ANSWER ALL THREE QUESTIONS IN PART A**

(i) The purpose and scope of Part 1 and Part IV of the Goods Act 1958 (Vic) are essentially the same. They both deal with implied terms which aim to provide additional levels of protection.

Explain why there are two separate parts to the Goods Act. **10 MARKS**

AND

(ii)"Exclusion clauses are no-longer as effective in re-allocating legal liability on to consumers".

Briefly discuss this statement with reference to cases or statute. **10 MARKS**

AND

(iii)The Trade Practices Act 1974 (Cth) protects consumers by implying certain terms into consumer contracts.

Explain why these terms are implied when the parties involved should ultimately bear the responsibilities and obligations arising under the contract. **5 MARKS**

TOTAL (25 MARKS)

Part B: ANSWER Q1 OR Q2 IN PART B

(i) Sam, a practising accountant, and Carol formed a friendship some years ago. Sam was more strongly attached to Carol than she was to him. She rejected his proposal of marriage, and although he continued to express his deep feelings for her, she told him she did not feel the same way about him but was happy to treat him as a friend. From her point of view, the friendship was clearly one of convenience, which she tolerated because of the material advantages which resulted. For many months, she accepted Sam's generous gifts of money and food for herself and her children, whose father had long abandoned them. He often paid her household bills.

Carol was not well-off financially, and had lived in a house owned by her brother-in-law paying low rent. When her brother-in-law and her sister separated, Carol was asked to vacate the house and live elsewhere. She reported this to Sam, manufacturing an atmosphere of crisis, making suicide threats and playing on his love and infatuation for her (which she manipulated) in order to influence him to provide the money for a house. Eventually Sam, who was not a particularly wealthy man, provided the purchase money for a new house which was bought in Carol's name.

The relationship continued for a time much as before, but when Carol met someone else and stopped seeing Sam, he decides to seek legal advice. He wishes to know whether he can seek an order to have the house transferred into his name, on the grounds that Carol was dishonest and that he was unable to judge what was in his best interests.

Advise Sam as to his rights and remedies (if any) in these circumstances. **25 MARKS**

OR :

(ii) One-Stop Ltd was building a new shopping plaza. Rex had recently retired from the public service and decided to invest his superannuation in a long held dream: a hobby shop. He looked over the One-Stop plaza with one of its representatives, The representative told him,

'This is going to be the shopping plaza to beat all shopping plazas! And we predict that we'll open a month before Christmas, so we'll catch the pre-Christmas shopping rush.'

What One-Stop Ltd did not tell Rex was that it had just heard that the giant discount hobby chain, Hobbies Galore, had decided to lease a large store across the road from the One-Stop plaza.

On 1 November, Rex signed a five-year lease for a small shop in the plaza. The lease contained no term relating to the opening date for the plaza. In fact the One-Stop Ltd plaza did not open until late January the following year, a quiet time for shopping. Rex has found that few people come to his store: Hobbies Galore is full of bargain-hunting customers, and the design of the carpark at the plaza makes it a difficult shopping centre to visit.

Advise Rex whether he has any rights at common law and/or under statute and whether any further information is required in order to give your advice. (You may assume that anything said by the One-Stop representative will bind One- Stop Ltd). **25 MARKS**

Part C: ANSWER Q 1 OR Q2 IN PART C

(i) 'The remedy for all cases of misrepresentation is rescission of the contract, which may be lost in some cases. There is an additional remedy in tort for both negligent and fraudulent misrepresentation. However, the most effective remedies for false pre- contractual representations and other misleading or deceptive conduct are to be found under the Trade Practices Act 1974 (Cth) and/or its state and territory Fair Trading Act equivalent.'

Discuss.

25 MARKS

OR:

(ii) The law of negligence has traditionally shown a concern not to 'open the floodgates of litigation' and in particular not to open a verbal Pandora's box which might expose persons to 'liability in an indeterminate amount for an indeterminate time to an indeterminate class':
Ultramares Corp v Touche (1931) 174 NE 441.

What principles have the courts developed to limit the scope of professional liability for negligently given advice? Do the relevant statutory provisions confirm these common law principles?

25 MARKS