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Semester 1 Examinations
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Student Number: _____

Student's Name: _____

Faculty: LAW AND MANAGEMENT

Subject Code: LST10LCC Subject Name: LAW OF COMMERCIAL CONTRACT

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

Date: 7/6/01 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)** questions.
- 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

Question One

David is the managing director of Things of Stone and Wood Pty Ltd (“TSW Pty Ltd”) which specialises in stone and wood garden sculptures. TSW Pty Ltd has a new and rather large gallery in the heart of Eltham. David decides to cover the floor of his gallery with slate because its hardness and naturally textured surface fully compliment his garden sculptures.

David visits Tiles For All Pty Ltd. David tells Paul, an employee of Tiles for All Pty Ltd, that his garden sculptures are very heavy and require a strong base to support them. Paul recommends African Slate because of its thickness and strength and shows David a display of African Slate tiles laid into the floor as well as an individual tile to examine. David is impressed not only by the African slate’s thickness and strength but also by its beautiful range of warm brown tonings, with the occasional tile being a contrasting grey color, and tells Paul that he has decided on the African Slate. After working out the quantities required, Paul completes an order form noting TSW Pty Ltd as the purchaser, Tiles for All Pty Ltd as the seller, the quantity of African Slate required, the price of the slate at \$20,000, the delivery date and the following clauses:

- “10.1 Tiles for All Pty Ltd is not liable for breach of any express term or terms implied by common law or statute.
- 10.2 Notwithstanding clause 10.1, in the event that Tiles for All Pty Ltd is liable for such breach, its liability will be limited to the replacement or repair, or cost thereof, of the goods.”

David signs the order form, pays for the tiles and awaits delivery.

The slate is delivered and David is most displeased to discover that the slate tiles are predominantly grey with the odd warm brown tile, smooth surfaced and rather thin. In fact, the tiles could be broken in half by a moderate amount of pressure. A friend in the building trade tells David that the slate looks like Indian Slate cut to be suitable for use as roofing tiles. When David phones Paul to tell him that the wrong slate has been delivered, Paul assures David that it is African Slate and, in any event, Tiles For All Pty Ltd relies on its exclusion clause in the contract. David seeks your advice.

- (a) Is Tiles For All Pty Ltd liable for breach of any statutory implied terms?
(15 marks)
- (b) Briefly explain whether Tiles For All Pty Ltd can rely on clauses 10.1 and 10.2 of the contract.
(5 marks)
- (c) Briefly explain what remedies would be available to TSW Pty Ltd having regard to your advice in questions (a) and (b) above.
(5 marks)

Total: 25 marks

Question Two

Jess owns and runs a management consultancy company called "Duke Pty Ltd". The company has a number of clients, including famous sport stars, politicians, accountants, lawyers and business individuals. Jess decides to branch out operations by providing investment and financial advice. He decides to recruit a marketing entity to undertake the marketing and advertising of his new venture. The marketing consists of radio, newspaper and TV advertisements promising consumers: "Advice on the cheapest deal on mortgage and personal loans and interest rates to all Duke customers. Beat the Banks at their own game use the Duke!"

Within one week, Jess attracts one hundred new clients. He advises them to complete and sign application forms, for both new loans and refinancing existing loans with XYZ Pty Ltd. All of the new clients are introduced to a new mortgage loan package which introduces a low interest rate for the first year called the "honeymoon rate". Unknown to many of the clients is a clause within the application form of XYZ Pty Ltd, which reads as follows:

- 5.01 "The honeymoon rate will continue for the first 12 months of the loan and thereafter the new interest rate will be 2% above the current variable interest rate offered by the big banks".
- 5.02 "The loan monies will be denominated in \$US for the duration of the loan and this will be used as a basis for the calculation of interest and principal repayments".

Within one year the value of the \$A depreciates heavily, falling by 20% against the US dollar. This has led to all loans being increased by 20%. A number of the new clients have been requested to pay increased loan repayments. They are not happy with this arrangement and complain bitterly about the high interest and principal payments associated with Duke loans.

The clients seek your advice in relation to any common law or statutory actions which may be available to them against Duke Pty Ltd.

TOTAL 25 Marks

Question Three

Carl is a partner at a large stock market brokerage firm. He has a number of clients and looks after their entire stock portfolios. He reviews a number of client portfolios and advises a number of changes. In particular, he asserts that there should be greater investment in emerging markets. He advises his clients to sell out of boring "blue chip" stocks and invest in new technology shares.

Mavis, an elderly client of Carl decides to listen to Carl's advice. Mavis is a conservative investor who has the following stocks in her share portfolio:

| STOCK | UNITS | PRICE | VALUE |
|--------------|-------|-------|----------------|
| BHP | 5000 | 21.05 | 105,250 |
| CSL | 1000 | 35.50 | 35,500 |
| CBA | 1000 | 30.00 | 30,000 |
| NAB | 1000 | 29.50 | 29,500 |
| TOTAL | | | 200,250 |

Carl advises that Mavis should sell all of her stocks and to place all of her money in a new technology stock called "Kabana Software". Kabana shares are trading at \$20. Carl advises Mavis to purchase 10,000 shares at \$20 to give her a total portfolio of \$200,000. She does so and receives no legal advice. Unknown to Mavis, Carl is receiving generous commission from Kabana for every new shareholder. The share price of Kabana is volatile, rising from \$20 to \$30 and then \$50 within two months. Mavis's investment increases from \$200,000 to \$300,000 and \$500,000 respectively.

However, within the next week Kabana receives bad publicity concerning their software programs. The programs have a number of glitches and computer viruses. Sales of the software programs fall and so does the share price. Within the week the share price plummets from the all time high of \$50 to a new low of \$1. Mavis's investment also falls to \$10,000. She is extremely upset as she has no other income to support herself.

- (a) Mavis seeks your advice as to whether she can recover \$190,250, which represents the difference between her old and new portfolio.
15 Marks
- (b) Explain how your answer would be different, (if at all), if Mavis was an experienced stock market investor with full appreciation of the risks involved.
10 Marks

TOTAL 25 Marks