

Legal Profession Admission Board

September 2023

Contracts

Examiner's comments

General observations:

1. As with past examinations, all topics in the course were covered in the examination questions, but with an emphasis of Topic 5 onwards. As with last semester (but unlike recent semesters), there was the choice of an essay style question. However, only a handful of students attempted this question. The other questions were problem style questions, and it was important that candidates considered the full range of examinable topics covered in the course.
2. It was the expectation of the examiners that candidates not only identified the relevant issues in each question, but also cogently applied the principles from the cases and legislation and provided supported conclusions. Particularly as the examination is open book.
3. 120 candidates sat the examination. Final marks were in the range 19 to 79. Three candidates were awarded a Pass Distinction grade, 15 candidates were awarded a Pass Merit grade and 66 candidates were awarded a Pass grade. The final marks and grades saw a slight decrease in the failure rate compared to last semester. Further, compared to last semester, whilst there was some improvement in how some questions were answered, a number of papers still lacked sufficient effective analysis of the problems, as opposed to merely identifying the issues and stating the principles. This was particularly evident in relation to Question 2, which was not answered as well as the others.

Questions:

4. The examination comprised of three problem questions worth 27, 27 and 26 marks, and an essay question worth 26 marks. Candidates were required to attempt questions 1 and 2, and had an option between questions 3 or 4:
 - (a) Question 1 focused on the formation elements of completeness and the requirement of writing; as well as frustration and the vitiating circumstances of common mistake and misrepresentation. Students answered this question reasonably well, but few explored the alternative outcome, depending upon the date of formation.
 - (b) Question 2 focused on types of breach, reward for substantial performance, duress, variation without consideration, and the penalty doctrine. This question appeared to be the one that most students had troubled with, and the nature of some of the answers indicated that the need to focus on what the practical outcomes that arise from the problem and therefore what the students should focus their analysis on.

- (c) Question 3 focused on the incorporation of terms and the interpretation of exclusion clauses. This perhaps, was the best answered question.
 - (d) Question 4 required a discussion of the “four corners rule” in the context of general rules of interpretation of exclusion clauses and the principles set out in *Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500. Most students who attempted this, defined the rule well, but some struggled to effectively contextualize the decision.
5. On the whole students would benefit from practicing at adapting (rather than recapitulating) the key principles to the problems and thinking more deeply on the practical issues that arise from the question.