

The University of Melbourne

Semester One 2003

**COPY**

***Faculty of Architecture, Building and Planning***

Subject Number: 702-419 & 702-660

Subject Title: Advanced Construction Law

Reading Time: 30 Minutes

Exam Duration: 2 hours

**This paper has 3 pages**

**Instructions to Invigilators:**

Each student should be issued with 3 separate exam books.

Students may bring into the examination and consult material and notes without restriction.

This exam question paper may be removed from the examination room on completion of the exam period.

**Instructions to Students:**

This exam is worth 50% of the marks for this subject.

Students must answer three of the five questions. You may choose which three you answer.

Each question is out of a possible 50 marks and is worth 33.3% of the total marks for this exam.

**USE A SEPARATE EXAM BOOK FOR EACH QUESTION.**

Paper to be held by Baillieu Library

## **Question 1 – Security of Payment & Adjudication**

Penny Plumber is a subcontractor engaged by Cunning Contractor in March 2003 to work on a project involving the construction of a new wing at the Healthy Hospital. She has been carrying out the work according to the program and submitting monthly progress claims in accordance with her subcontract. Everything was fine until last month when Cunning Contractor said he couldn't pay the amount of her progress claim (\$38,000) because he hadn't been paid by the Hospital for the last two months.

Describe the steps that Penny Plumber should take under the *Building and Construction Industry Security of Payment Act (Vic) 2002* to try and secure payment.

(50 marks)

## **Question 2 – Subcontracts**

Explain why, from a head contractor's point of view, it is important that all subcontracts are well drafted in relation to the head contract so as to sit 'back to back' with the head contract. Discuss the type of problems that can arise when subcontracts are not drafted with this objective in mind. Refer to cases to support your answer.

(50 marks)

## **Question 3 – Regulatory Framework**

Chris and Robin have finally saved enough money that they can start building their dream home. Explain and describe the various procedural steps they will need to undertake before and during construction in order to ensure they comply with the *Building Act (Vic) 1993* and the *Domestic Building Contracts Act (Vic) 1995*. In your answer identify who is involved in each step.

(50 marks)

## **Question 4 – Alternative Dispute Resolution**

Explain how Senior Executive Appraisal/Mini Trials (SEA) work in practice. Identify the factors that you might take into account when deciding whether to recommend SEA as the most appropriate form of ADR. Discuss the benefits and downsides of SEA compared to mediation.

(50 marks)

## **Question 5 – Litigation**

A dispute has arisen between Donald Deeandcee and Peter Pickle Pty Ltd over the design and construction of Peter Pickle's new corporate headquarters. Peter Pickle's dream was to have his empire located in a very non-traditional office block. The brief given to Donald Deeandcee was that it was to look like a giant green pickle!

At practical completion, Peter Pickle claimed the colour and shape of the building were all wrong, and having lost all confidence in Deeandcee's ability to achieve the desired finish, retained another firm to replace the cladding and repaint the building. The cost of this work was \$165,000.

Peter Pickle Pty Ltd wishes to commence litigation against Deeandcee for additional costs of \$165,000. Identify which court or tribunal Peter Pickle Pty Ltd should commence the litigation in, and justify your answer. Explain and describe the steps that the parties will need to take in the litigation before the case can go to trial including, but not limited to, pleadings, discovery, gathering evidence and preparing for trial. With each process identify the purpose it serves.

**END OF EXAM**