

**LITIGATION AND DISPUTE
MANAGEMENT
(CIVIL PROCEDURE)
MODEL EXAM
2010**



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IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question One

Martin, a paper retailer, agrees to purchase 4000 boxes of A4 paper from Paper Whim Pty Ltd. The total cost price Martin will have to pay Paper Whim Pty Ltd for the order is \$26,000. Martin had been told that the paper boxes will be delivered no later than seven business days after it was first ordered. Both Martin and Paper Whim Pty Ltd reside in New South Wales.

After three days of ordering, Paper Whim Pty Ltd delivers 3500 paper boxes. However, Paper Whim Pty Ltd is furious when it finds out that Martin has not deposited the \$26,000 into their banking account. Martin says that the paper he ordered was not of the same quality he had originally been shown when first contemplating whether to buy the A4 paper. As a result, Martin has lost a substantial number of clients, because he has been unable to provide them with quality A4 paper as advertised.

Further, Martin's solicitor Sam believes that Paper Whim Pty Ltd has violated several sections of the Trade Practices Act 1974 (Cth) (TPA). Section 86(1) of the TPA states that jurisdiction is conferred on the Federal Court in any matter arising under this Act...

As a solicitor working for Sam, you are asked to advise Martin on the following matters:

- (i) Which courts could Martin consider bringing an action against Paper Whim Pty Ltd and why?
- (ii) In the event that Martin can bring an action against Paper Whim Pty Ltd, outline which court is the appropriate forum to commence proceedings?
- (iii) Outline one particular method Martin could use to resolve the dispute in question before bringing the matter to court? Is this method feasible in Martin's circumstances?

Question Two

Michael has been a hardworking legal academic for close to forty years. Recently, it has come to the attention of Michael that his health is getting the better of him, and so he decides to take long service leave and then subsequently retire.

Upon taking long service leave for an extended period of twelve months, his employer, the School of Law at the University of Botany Bay (UOBB), is required to pay him what would be his normal salary, amounting to \$90,000 per annum. Upon formal approval of his long service leave application for twelve months, Michael is told by Tom, the Dean of Law at the UOBB, that they will not pay him the \$90,000.

After filing a statement of claim in the NSW Supreme Court alleging that his employer the School of Law at UOBB has breached several provisions of his employment contract by failing to pay his long service leave as required by provisions 3,5 and 7 of that contract, the School of Law files a defence in response to Michael's statement of claim which reads as follows:

"The Defendant refuses to pay the plaintiff Michael the \$90,000 owed because the School of Law needs more time to pay, and therefore, does not need to pay the amount in question."

Question Three

Larry and Bob have been rival radio presenters for the last nine years. Recently, on radio station 2GX, Bob states in an interview on the 3rd of September 2007 with a regular caller of the program that *“Larry is a liar to the utmost degree and is the epitome of a rogue.”* Later that day, Larry receives a phone call from his lawyer, Joe Holdings, who instructs Larry that he has the potential to sue Bob for the defamatory comments he made about him on 2GX.

Several days later, whilst having lunch at Pontoon Sea Restaurant, Larry sees Bob also having lunch three tables down. Larry approaches Bob and attempts to hand him an originating document in relation to the defamation claims. Bob refuses to take the document, which is sealed in a large white envelope. Larry then leaves the document on the table where Bob is sitting, and before leaving, states:

“You will find your words the other day about me quite pleasing in view of what lies inside this envelope.”

Shortly afterwards, Bob leaves the restaurant and places the envelope in the bin. After returning to work the next day, the managing director Andrew Popous of the radio station 2GX provides a transcript of Bob’s program in which he made the statement about Larry to legal counsel. Andrew seeks advice in relation to whether any legal liability will arise for the radio station and Bob regarding Bob’s statement about Larry. Assume all parties reside and work in NSW.



If you have any queries regarding the litigation and dispute management (civil procedure) model exam please email - info@lawskool.com.au