

**QUESTION 1: CONTRACTS (TOTAL 17 MARKS) (28 min)**

On **August 1, 2009**, after lengthy negotiation, Very Good Builders Limited (VGBL) entered into a construction contract with Heavenly Properties Inc. (HPI), under which VGBL was to renovate an apartment building owned by HPI by no later than **October 6, 2009** and HPI was to pay \$ 350,000.00. VGBL began the renovations on **September 1, 2009**, but after a couple of days ran into trouble, because one of its suppliers did not ship the correct amount of lumber. On **September 6, 2009**, the president of VGBL faxed the president of HPI stating that, “if things continue the way they were going and VGBL cannot get the lumber, then it is unlikely that VGBL will be able to finish the renovations on schedule.” At this time, the value of the work done by VGBL was about \$ 30,000.00. By facsimile transmission of **September 7, 2009**, the president of HGI responded asking VGBL to confirm that it would not be able to complete the work on time. However, no response was forthcoming from VGBL and so, thinking that it had no alternative, on **September 8, 2009**, HPI faxed back to VGBL advising that, in light of the fax from VGBL of September 6, 2009, it considered the contract at an end and would look to someone else to complete the work. On **September 9, 2009**, HPI entered into a contract with Last Minute Builders Corp. (LMBC) under which, for \$ 240,000.00, LMBC agreed to complete the renovations to HPI’s building. By fax dated **September 11, 2009**, VGBL advised HPI that it had found a new supplier of lumber (which cost VGBL an extra \$ 25,000.00) and expected to complete its contract with HPI on schedule. On receipt of the fax from VGBL, on **September 12, 2009**, HPI advised VGBL not to bother, because it had contracted with LMBC. After receipt of this fax on **September 14, 2009**, VGBL faxed back to HPI stating “O.K. We will look for new contracts to replace our contract with your company and consider all of our other rights.” VGBL tried to find new

contracts to replace the HPI contract , but was unable to find any. Advise VGBL of its legal rights.

**ANSWER:** Contracts/ Repudiation/Effect of fax of September 6, 2009 from VGBL to HPI/Effect of fax dated September 7 from HPI to VGBL; Effect of HPI fax dated September 12, 2009/Anticipatory Breach/Options of Innocent Party Upon/Mitigation/ Damages.

was the fax of September 6<sup>th</sup> from VGBL to HPI an express repudiation of the contract;

if yes, then constitutes an anticipatory breach of contract by VGBL giving HPI 2 options

1<sup>st</sup> option is to treat the contract as at an end and sue for damages

2<sup>nd</sup> option is to keep contract alive.

HPI’s fax of September 8<sup>th</sup> was an exercise of the first option and it mitigated its damages by contracting with LMBC.

## ADMS 2610 FINAL EXAM AND ANSWER KEY

If no, then the fax of September 8, 2009 from HPI to VGBL constitutes an express repudiation of the contract with VGBL .  
and is an anticipatory breach of contract giving VGBL the same two options  
VGBL's fax of September 11, 2009 to HPI was an exercise of the second option  
and the contract was kept alive.

Thus HPI's fax of September 12, 2009 constituted a second express repudiation  
and an anticipatory breach , leaving VGBL with the same two options .  
VGBL's fax of September 14, 2009 was an exercise of first option treating the  
contract as terminated.

VGBL must mitigate its damages, but was unsuccessful ,  
**VGBL will succeed against HPI** and recover total damages of \$ 345,000.00 (\$  
350,000.00- \$30,000.00 on the contract + \$ 25,000.00 for the extra lumber.)

### QUESTION 2: TORTS (TOTAL 15 MARKS) (28 min)

John Jones owned a home in Toronto. In **November, 2009**, John was having problems with the furnace in his home which kept turning off. John had a service contract with Consumers Gas Company (CGC) and so he called and scheduled an appointment for the repair of his furnace for **November 12, 2009**. John chose this date, because he was taking his family to Disneyland for two weeks on **November 13, 2009** and wanted to ensure that his furnace was working while he was away. In fact, being a cautious man, John was going to have his neighbour, Charley Good, check his house daily. In fact, John had spoken to Mr. Good about checking his house and Mr. Good had agreed to do this, but then John changed his mind and did not confirm the arrangements, so Mr. Good believed that he was not needed and did nothing.

At 7:30 a.m. on **November 12, 2009**, the service man from CGC arrived at John's house. The service man had wanted to stay home that day because he had the flu, but since he was afraid of being fired if he did not do the furnace repairs, he decided to go to work. Since he was not feeling well, the service man completed the repairs quickly, but instead of testing out the furnace, the service man left John's house and went straight home to bed.

The weather forecast for the next two weeks called for extremely cold temperatures of -20 to -30 degrees Celsius. With the furnace working, John's house was very warm and so John opened an upstairs bathroom window to let some cool air in. Looking at his watch, John realized it was getting close to the time for the family to leave for the airport and, in his haste to ensure that everyone was packed and ready to go, John forgot to close the window. Unfortunately, a few hours after John and his family left, the furnace shut off. With the temperature in the house dropping every day, and the upstairs bathroom window left open, one of the water pipes in the bathroom sink froze and then burst, causing water to flow over and through the floors to the downstairs floors and basement, damaging much of the furniture and household contents. Needless to say, when John and his family arrived home from Disneyland, they walked into a disaster. Experts called to

## ADMS 2610 FINAL EXAM AND ANSWER KEY

the scene, advised John that the furnace had stopped working, because it had not been repaired properly and that this probably would have been discovered earlier, if the service man had tested the furnace before he left. They also advised John that it was unclear whether the main cause of the damage was the burst pipe in the bathroom or the furnace being off and there was a real question whether, even with the furnace off, the upstairs bathroom sink pipe would have burst if the window had been closed. John now wants to know his rights against all parties.

Advise John of his rights and chances of success against CGC.

**ANSWER:** Torts: Negligence/ Causation/ Proximate Cause/Duty of Care/Negligent Repair of Furnace/Window Left Open In Extremely Cold Temperatures Causing Pipe to Burst/Contributory Negligence/Vicarious Liability/Damages

**Note: there is no absolutely correct answer to this question.**

A the issue is what is the proximate cause of the damages?

(i) the service man was negligent in both his repair of the furnace , and in not testing the furnace before he left.

CGC, as the service man's employer, would be vicariously liable for the service man's negligence since it occurred in the course of his employment

If the negligent repair of the furnace was the proximate cause of the damage to the house, then CGC would be liable for all damages .

(ii) However, John may well be negligent , the majority of the damage to the home resulted from the burst water pipe in the upstairs bathroom which would not have burst if the upstairs bathroom window been closed.

If the proximate cause of the damages was the failure to close the bathroom window, then John would be responsible for all damages.

(iii) Also, CGC's duty to John was to repair the furnace . It owed no duty to John to check his house from time to time to ensure that everything was alright.

In fact, John could have arranged with his neighbour, Charles Good, to check the house, but chose not to do so

(iv) Conclusion: If the negligent repair to the furnace was the proximate cause, then John's failure in closing the upstairs bathroom window and/or John's failure to have Mr. Good check the house was contributory negligence .

Alternatively, leaving the upstairs window open and/or failing to have Mr. Good check the house was the proximate cause, then John is negligent and the author of his own misfortune, and either has no action against CGC other than for the cost of a new furnace. or might try to argue that CGC was contributorily negligent

**QUESTION 3: FORMS OF BUSINESS (TOTAL 15 MARKS) (20 min)**

John, Michael, Mary and Joan have been friends for 10 years. Five years ago, they started a business which manufactures plastic cups which are sold in hospitals and grocery stores. The four of them do not have any kind of agreement governing their rights and liabilities in the business. At the time they started the business, each of them invested \$ 20,000.00 and their only concern was to build the business and make a profit. Since the time they started the business, each has been responsible for getting more clients, quality control, dealing with suppliers, etc... This year, the business had a profit of 1 million dollars, which they shared equally.

Recently, John has not been getting along with Michael, Mary and Joan who have not been treating him very well. To get even, John decided to enter into a contract with a new supplier of plastic at a cost of \$ 400,000.00 which is twice as much as the business pays to its regular supplier. The new supplier shipped the plastic to the business and, not realizing where it came from, the business began to use it in its cups. Later, Michael, Mary and Joan found out what John had done and advised the new supplier that they refused to pay for the plastic, telling this supplier to get payment from John. However, the new supplier decided to sue all four of them.

- (a) Explain the form of business that John, Michael, Mary and Joan have engaged in providing your reasons.

**ANSWER:**

(General) Partnership.

See definition of partner in the Act. They are carrying on business with a view to profit;

They are sharing the profits equally

Each is responsible for clients, quality control and dealing with suppliers

- (b) Based on your answer to (a), given the fact that there is no agreement between John, Michael, Mary and Joan, how will their rights and liabilities be determined?

**ANSWER:** Their rights and liabilities are governed by the Partnership Act

## ADMS 2610 FINAL EXAM AND ANSWER KEY

- (c) Also based on your answer to (a), advise John, Michael, Mary and Joan of their legal position in the law suit by the new supplier, providing your reasons.

**ANSWER:**

A partner can bind the partnership.

Here, John's agreement with the new supplier is binding on his partners.

Partners are jointly and severally liable for the debts of the partnership

Thus, the new supplier can sue one of them, more than one or all of them

And the new supplier will succeed.

- (d) If John, Michael, Mary and Joan had wanted to better protect themselves from liability, explain the business form that they could have chosen, together with your reasons.

**ANSWER:** Corporation

They would each have an ownership interest in the corporation though an equal number of issued common shares

As directors of a corporation, they could still be in charge of the day to day operations of the business of the corporation

However, they would have no liability for contracts entered into by the corporation.

### **QUESTION 4: REAL ESTATE (TOTAL 14 MARKS) (18 min)**

After working very hard for 15 years, George Stone and his wife, Mary, saved all the money they could and on March 1, 2006 bought a home in Toronto for \$ 1.5 million dollars. Having worked so hard, the Stones paid cash for the house. In **February 2009**, because of the economy, Mr. Stone felt he needed invest \$ 400,000.00 into his business, so after discussing the matter with his wife, both of them went to a branch of the Bank of Nova Scotia and met with the manager who agreed to give them a loan of \$ 400,000.00 to be secured by way of mortgage on their home. On **March 1, 2009**, the mortgage papers were prepared and both George and his wife signed them in front of their lawyer. The bank's lawyer was responsible for registering the mortgage on title to their home. The documents were sent to the bank's lawyer on **March 5, 2009**, and the bank's lawyer advised the bank that they would be registered that day, so the bank gave the Stones a certified cheque for \$ 400,000.00. However, a few minutes before the bank's lawyer was to register the mortgage, his wife, who was expecting a baby, called him and he rushed to meet her at the hospital, forgetting to register the mortgage on title.

ADMS 2610 FINAL EXAM AND ANSWER KEY

Unknown to the bank, on **March 2, 2009**, George realized that he had made an error in his calculations and really needed \$ 850,000.00 to invest in his business. Not wanting to cause any problems with the Bank of Nova Scotia mortgage for \$ 400,000.00, George and Mary went to Guarantee Trust Company which agreed to give them a mortgage loan for \$ 450,000.00. **On March 3, 2009**, the Guarantee Trust mortgage documents were signed at the office of the Stone's lawyer and then sent over to the lawyer for Guarantee Trust who registered the Guarantee Trust mortgage on **March 5, 2009** at 1:45 p.m.. On his return from the hospital, the Bank of Nova Scotia's lawyer remembered that he had to register the Bank of Nova Scotia's mortgage and did so at 2:13 p.m. on the same day. Nothing happened for the next few months except that George's business was not doing well and by **January 1, 2010**, George and Mary were not able to pay either of their mortgages. For this question you are to assume that the Land Titles System of registration applies.

- 4 (a) When it comes to mortgages, what does priority mean and with reference to the above fact situation determine which of the Bank of Nova Scotia and Guarantee Trust mortgages has priority, providing your reasons:

**ANSWER:**

In Ontario, under the Land Titles System, priority means which mortgage stands as a first mortgage and which mortgage stands as a second mortgage etc....

This is based on who is first to register the mortgage.

Here, although both mortgages were registered on March 5, 2009, since the Guarantee Trust mortgage was registered at 1:45 p.m. and the Bank of Nova Scotia Mortgage at 2:13 p.m., the Guarantee Trust mortgage stands as a first mortgage and the bank of Nova Scotia mortgage stands behind it as a second mortgage.

- 4 (b) Briefly explain four (4) remedies of a mortgagee in Ontario on default of its mortgage.

**ANSWER:** any four of:

to sue the mortgagors for judgment on the covenant for recovery of all amounts outstanding under the mortgage.

for sue the mortgagors for possession of the mortgaged property.

to sell the property under the Power of Sale provisions in the mortgage.

to bring an action against the mortgagors for foreclosure, by which the mortgagee cuts out the equity of redemption and becomes the legal owner of the property.

- 4 (c) Of all of the remedies available to a mortgagee on default of its mortgage, which one will you **not** normally bring today and why?

**ANSWER:**

Foreclosure

## ADMS 2610 FINAL EXAM AND ANSWER KEY

It is a lengthy action during which mortgagors are given a right to redeem (pay off) the mortgage and this right to redeem has been permitted up to 5 years from the time the action was started. . In today's economy, it makes more sense to sell the property and recover the mortgage money as quickly as possible.

- 2 (d) In the above fact situation, assume that the value of the Stone property has fallen to \$ 500,000.00 and that Guarantee Trust has found someone to buy the property for this price. If Guarantee Trust wants to recover its money and acts first, how will that affect the Bank of Nova Scotia mortgage loan?

**ANSWER:**

On a sale under Power of Sale, Guarantee Trust would recover its \$ 450,000.00.

But the Bank of Nova Scotia would only recover \$ 50,000.00 and would still be owed \$ 350,000.00.

### **QUESTION 5: AGENCY (TOTAL 8 MARKS) (12 min)**

In each of the following situations you are to determine whether there is a contract between the principal and third party and briefly state your reason(s):

- 2 (a) Edward Borden is the president of Redforth Construction Company (RCC). During a lunch meeting, Mr. Borden represents to the vice president of Allied Steel Company (ASC) that his employee, Roger Smith, is his manager of marketing and sales. Unknown to the vice president of Allied Steel Company, Roger can only enter into advertising contracts. Of course Roger now enters into a sales contract with Allied Steel Company on behalf of Redforth Construction.

**ANSWER:**

There is a Contract between RCC and ASC

Roger has ostensible or apparent authority and can bind RCC

- 2 (b) Same situation in (a), but this time the vice president of ASC receives a phone call from Mr. Borden telling him that, in reality, Roger can only enter into advertising contracts.

**ANSWER:**

No contract between RCC and ASC

Third party knows Roger has no authority.

ADMS 2610 FINAL EXAM AND ANSWER KEY

- 4 (c) Allen is employed by Jones and Company (J&C) to make purchases for J&C. In fact, on numerous occasions, Allen had purchased goods for J&C from Medical Supply Company (MSC). A week ago, J&S terminated Allen's employment, but J&C did not tell MSC. Allen wanting to get back at J&S proceeded to purchase \$200,000.00 of goods from MSC saying that they were on behalf of J&S.

**ANSWER:**

There is a contract between J&S and MSC.

Allen had actual authority to purchase for J&S until he was terminated  
J&S had a duty to advise MSC of Allen's termination.

[Not having done so, it was representing that Allen still had authority to act for it. or

J&S is *estopped* from arguing that Allen did not have the authority to enter into the contract

**QUESTION 6: BAILMENT- (TOTAL 7 MARKS) (12 min)**

- A. Read each of the following fact situations carefully. Then describe the type of bailment as well as the duty of care owed by the bailor to the bailee.
- 2 (i) John owns a truck, but has no garage to store it in. John's neighbour, Edward, has a garage which has space for a truck. Winter is approaching and so John asks Edward if he can store his truck in Edward's garage and Edward agrees, but does require any payment from John.

**ANSWER:** Gratuitous bailment.

Take reasonable care of the truck by protecting it from foreseeable risk of harm )

- 3 (ii) Edward, has to move, but has not yet found an apartment. John owns a warehouse, and Edward and John enter into a contract whereby John agrees to store Edward's furniture for 5 months at a cost of \$ 1,500.00 a month.

**ANSWER:** Bailment for reward

Bailment for Warehouse storage

Protect the furniture from all foreseeable risks.

- 2 B. B owns a car repair shop and A takes his car into B's shop for repairs. B gives A an estimate for repairs of \$ 3,200.00 and A agrees to this. B now completes the repairs, hands A a bill for \$ 3,200.00, but A refuses to pay B. In addition to suing A for the costs of repairs, what other right or rights does B have?

**ANSWER:** B has a lien on A's car.  
If A does not pay B within a reasonable length of time, B can sell the car and recover his money

**QUESTION 7: EMPLOYMENT LAW- (TOTAL 14 MARKS) (18 min)**

Part A: **Read the following fact situation and for each question that follows it state whether or not it is a proper case for wrongful dismissal, providing your reasons.**

John is has a written employment contract with Science and Technology Company (STC) where he is the manager in charge of new inventions and is responsible for a staff of 50 scientists and technicians. The contract is for a term of three years and cannot be terminated during that time. In the contract there is a confidentiality clause under which John cannot disclose anything related to his work with the company. There is also a non-competition clause under which John is prohibited from carrying on any type of business that competes with the business of STC. John is paid a salary of \$ 240,000.00 a year; is given a company car and free gas, the value of which would be equal to \$ 8,000.00 per year, and receives a bonus of \$ 30,000.00 each year.

- 4 (i) John, who needs money to pay off some personal debts, so he secretly sells one of STC's new inventions to its competitor, Nasty Technology Company, for \$ 500,000.00 and keep the money for his own use.

**ANSWER:**

not a proper case for wrongful dismissal  
Just cause exists;  
i.e. John's conduct constitutes conduct incompatible with duties or prejudicial to his employer's business ; and  
STC can terminate John's employment, because John breached the confidentiality clause in employment agreement.

- 2 (ii) John has a disagreement with the president of STC over who the next Prime Minister of Canada should be. The president feels it should be a member of the Liberal party, while John feels it should be a member of the Conservative Party. Because of their political differences, the president of STC tells John that he is no longer going to be the manager in charge of new inventions and instead will be sent to the shipping department of the company. While John will keep his salary of \$ 240,000.00 a year, he will have to give up his company car and his bonuses and he will also have to work 15 hours a week more than he did before.

**ANSWER:**

This is proper case for wrongful dismissal.

ADMS 2610 FINAL EXAM AND ANSWER KEY

The president's actions changing John's job, making him work longer hours, and taking away his bonuses and company car constitute constructive dismissal

Part B: (8 marks)

Assume that John has been wrongfully dismissed by STC and has sued STC for wrongful dismissal. Based on the fact situation at the beginning of Part A, **explain** how John's damages would be calculated. (**You do not have to do the calculation**) For this purpose, add the following facts:

- (i) a reasonable notice period would be 12 months;
- (ii) after John was dismissed, he received Unemployment Insurance Benefits totaling \$20,000.00;
- (iii) Although John tried to find alternative employment, he was unable to do so, principally because STC lied to prospective employers by telling them that John was incompetent and then refused to give John a letter of recommendation.
- (iv) A recent decision of the Ontario Superior Court of Justice held that in a proper case, the minimum award of Wallace damages would be \$ 25,000.00.
- (v) Another recent decision of the Ontario Superior Court of Justice held that where an employee did not mitigate her damages, \$ 20,000.00 should be deducted from any award of damages for wrongful dismissal.

**ANSWER:**

J's salary is \$240,000.00/year.

Given a 12 month notice period, John's damages would be

(240,000.00 divided by 12 months x 12 months) = \$ 240,000.00

Add John's Bonus of \$30,000.00 30,000.00

Add John's car & gas valued at \$ 8,000.00 8,000.00

Deduct UIC benefits received (20,000.00)

No further deduction since he tried to mitigate, but was unsuccessful

add Wallace damages since this is a proper case for it based on STC's conduct re lies and no letter of reference 20,000.00

Total damages (\$ 278,000.00) [***this figure is unnecessary so long as the other figures are properly explained in ters of additions and subtractions.***]

**QUESTION 8: REAL PROPERTY (TOTAL 5 MARKS) (12 min)**

Read each fact situation below and answer the question or questions relating to it.

- 1 (a) John and his wife have just purchased a farm in Southern Ontario from Harry Good and have taken ownership so that on the death of either John or his wife, the property will be transferred to the other by survivorship. **In this situation, what type of ownership in the farm do John and his wife have?**

**ANSWER: Joint tenancy**

- 2 (b) Same facts as in part (a), but after purchasing the farm, George and his wife found out that some 11 years ago, Harry Good with the help of Ben Watson who owned the farm right beside his own farm, put up a fence between his farm and Mr. Watson's farm. The fence ran the entire length of both farms. Harry and Mr. Watson thought that they were putting the fence on the lot line between his farm and Mr. Watson's farm, but instead they put the fence 30 feet inside of Harry's farm. From that time, Mr. Watson, ploughed the land up to fence, planted corn seed on it, watered it and then harvested it after the corn had grown. Both Harry's farm and Mr. Watson's farm are in the Land Registry system of registration. Having purchased the farm from Harry, John and his wife now want to move the fence back to the lot line between their farm and Mr. Watson's farm. Mr. Watson, however, now objects to this. **What argument can Mr. Watson make, if he brings a law suit to keep the strip of land?**

**ANSWER:** That he has acquired a possessory title to the strip of land  
by adverse possession

- 3 3. Albert owns some vacant forested land in Northern Ontario. John who owns land right beside Albert's decides to take a short cut across Albert's land to get to the main road because it is faster. John takes this short cut day without objection from Albert who really does not care, because John is his neighbour. **In this case what type of interest will George acquire in Albert's land if he continues to take the short cut for 20 years and why?**

**ANSWER:** an easement  
George used the short cut with the knowledge of Albert for 20 years and Albert failed to stop him

**QUESTION 7: REAL PROPERTY (TOTAL 5 MARKS) (12 min)**

Read the following fact situation and answer the questions that follow it.

John and Henry enter into a lease under which Harry rents John's house at 133 Lovely Lane for a term of three years and rental rate of \$ 1,000.00 per month.

- 2 (a) Assume that in the fact situation Harry decides that he cannot afford the rent, so he decides to rent the property to Jane and John gives his consent. In this situation what kind of lease has Harry given to Jane and what are Harry and Jane called?

**ANSWER:** sublease  
Harry is sublessor/sublandlord and Jane is sublessee/subtenant

- 3 (b) Assume that in the fact situation, instead of giving a lease for three years to Harry, the lease is a lease from year to year.

- (i) What type of tenancy would this be?

**ANSWER:** periodic tenancy

- (ii) What, if anything does Harry have to do to renew the lease if he wishes to stay longer than a year and why?

**ANSWER:** nothing  
lease automatically renews itself for a further period of a year.

END OF EXAMINATION