

LAWS203 FALSE OR MISLEADING CONDUCT AND ECONOMIC TORTS

Assignment 1 – 2017 s 2

PLEASE NOTE THE INSTRUCTIONS BELOW & ADDITIONAL POINTERS AT THE END OF THIS DOCUMENT

ASSIGNMENT 1: Problem Solving Question (question released at week 4)

- Due date:** End of Common Vacation week **Saturday 30/9/17 at 11.00 pm (23:00)** Please **DO NOT** refer to information provided at **Extended Unit Outline.**
- Length and/or format:** 2500 words excluding footnotes (word limits enforced following Law School policy). Footnotes are only for citation purposes.
- Purpose:** To assess understanding of the general economic torts, statutory false, misleading & deceptive conduct in problem context.
- How to submit:** Online submission using Turnitin on or before the due date. Students will need to complete an electronic declaration of originality for the online submission. A Turnitin report will automatically be made available for the online submission.
- Return of assignment:** In accordance with the Assessment Policy, assignments will be returned within three weeks of submission or at least five calendar days before the next related assessment task is due.
- Assessment criteria:** **PLEASE USE THE UPDATED RUBRIC (in PDF) WHICH IS UPLOADED AT LEO TOGETHER WITH THIS DOCUMENT. Please DO NOT USE Rubric attached to Extended Unit Outline.**
- Weighting:** 50%

This assessment consist of two parts: please answer all the questions in both parts.

PART ONE

- (a) AzGroup is seeking funds to invest in a new genetically modified crop (GMO) it had developed. The GMO crop produces higher crop yield for the Australian climate. The CEO of AzGroup, Peter, is close friends with Cecilia who is an investor. Peter seeks out Cecilia and tells her that the majority of their funding normally comes as grants from a private research institute called SeedCo. Cecilia tells AZ Group that she will only invest if there is good chance of AZ Group obtaining funding from SeedCo.

AzGroup contacts Seedco for information as to the funding process but is informed that they do not provide this information. Peter knows his cousin's wife, Serene, works at SeedCo as a policy officer. At family dinner, Peter asks Serene how work is going and how the grant process works. Peter does not say why he is asking for the information and neither does Serene ask him any further. Serene tells Peter that groups that have received funding in previous years are generally favoured as it demonstrates a good track record and SeedCo looks at crop that maximises yield.

Peter tells Cecilia an internal source has confirmed that it is likely AZ Group will receive funding again as they have a good track record and are the right type of crop SeedCo is looking to give grants to. Cecilia agrees to invest in AZ Group and advances \$1,000,000.

Unbeknownst to Serene, the SeedCo funding committee has decided to take a new approach to grants and decided to only give grants to first-time applicants and crops which have higher resilience to disease rather than higher yield. AZ Group does not receive funding from SeedCo, and as a result of lack of funding, falls into financial difficulties and faces being wound up.

Discuss the potential causes of action for negligent misrepresentation. (8 Marks)

- (b) AZ Group also sells directly to farmers to use their seed for their crop. However, GMO crop is strictly regulated – different councils have different restrictions on the types of GMO crop that can be planted. AZ Group believes that they had council approval for their seeds to be used for the GMO crop and had informed the farmers that their seed was council approved. However, AZ Group did not realise their seeds did not have approval. The final approval was not given due to a failure of a retiring staff member of AZ Group failing to lodge the required documents and sending samples to the council. The farmers are now left with seeds they cannot plant.

Discuss whether the farmers would be successful in action against AZ Group for fraudulent misrepresentation/deceit. (7 Marks)

- (c) During the application process, Sally, who works at AzGroup becomes frustrated in dealing with Anthony, one of the newer senior staff members at Orun & Co, a rival competing company. Sally sends out emails to clients of Orun & Co purportedly from Anthony's email containing lewd and inappropriate content. The clients of Orun & Co are shocked and horrified at receiving the emails, and Anthony, who has not completed his 6 month probation period, is terminated by his employer, Orun & Co. His reputation is also badly damaged as the genetically modified crop industry is close-knit.

Discuss whether Anthony and/or Orun & Co would be successful in action against Sally and/or AzGroup for **injurious falsehood**. (7 Marks)

- (d) Bonsai Ltd produces a line of plants that is suited to growing indoors in apartments and small houses called "Plantit". Plantit plants come in a distinctive white triangle pot that has a special hook behind it, allowing the plants to be hung from the wall. A key feature of Plantit plants is that the plants are "stackable" – the plants can be hung very close to each other because of the triangular pot and hook, creating a mini garden on the wall. Plantit is popular amongst the younger generation who are often space conscious and want some greenery in their home.

A home décor company, Stella's Life, launches a new line called "Growit" which has similar features to Planit – it features stackable plants for indoor areas. The main difference is the type of crop that the two companies offer. Growit only has flowers whereas Planit only has herbs. The other difference is the pots for Growit are yellow triangle shaped.

Peter is a great enthusiast of indoor plant décor and a social media influencer. Peter has been photographed recently posing with Plantit plants at a home décor show recently and the photo was posted on Instagram. Stella's Life puts a photo of the Peter's Instagram post on its Stella Life Facebook. Advise whether Peter or Bonsai Ltd can bring an action for **passing off** against Stella's Life. (12 Marks)

Maximum word count for Part One – 1750 words

PART TWO

Would section 18 of the Australian Consumer Law apply in any of the situations outlined above? If so, please discuss as concisely as possible how section 18 of the Australian Consumer Law may be applicable to EACH of the scenarios in parts (a) through (d) above. (16 Marks)

Maximum word count for Part Two – 750 words

USEFUL POINTERS:

1. Before starting to write out your advice, read the question carefully taking note of relevant facts and identifying legal issues arising out of a specific factual scenario.
2. State the legal issue and the relevant principles of law applicable to that issue. The relevant applicable law may be the common law or statute law as applicable.
3. Apply the law to the facts of the problem, providing a tentative conclusion where possible. If a clear conclusion cannot be arrived at, state the reasons why it is so.
4. Apply a similar process as above for each identified legal issue.
5. Provide an overall analysis and state your advice accordingly.
6. Go through your draft advice and review your structure and content.
7. Refine and edit your draft as necessary bearing in mind also the legal writing style and referencing requirements.

ADDITIONAL POINTERS

8. It is not necessary to print out and scan a hard copy of the declaration of originality. When you submit via Turnitin, you will have to complete an electronic declaration of originality for the online submission.
9. Please use footnotes, not endnotes.
10. The word count is based on the text; footnotes are not included (this is to encourage students to make the necessary references and acknowledgements of materials used). Footnotes are meant for citations only. The discussion of your assignment should be placed in the main text itself, and not in footnotes.
11. It is normal to use font 12 for the text, and font 10 for footnotes.

All the best for your assignments.

May Cheong (NLIC) & John O'Shannassy (Tutor)

24 August 2017