LAW217 Civil Procedure Residential School

Practice Exam Problem Question

Day 2 – Sunday, 19 April 2020

Group Task: Undertake the problem question with your peers via your Zoom room. Invite Vanessa as a guest to your meeting to facilitate and problem shooting from your lecturer.

One group member should submit the group’s answer via email to vazquez@csu.edu.au by 4pm. General Feedback will be provided in tonight’s live session at 7pm.

Instructions

This is an open book exam. The use of any materials is permitted including the use of any dictionary (of credible academic quality).

Students are reminded of academic integrity and cautioned against plagiarism. All work submitted should be in your group’s own words and referencing throughout is required. Do not copy and paste chunks of legislation or cases into your response.

Legal citations may be abbreviated. For example, Western Australia v Ward [2002] HCA 28; 213 CLR 1 may be cited as WA v Ward. The first time a piece of legislation is cited in your answer paper it should appear for example as: Section 45 of the Real Property Act 1900 (NSW) (‘RPA’) and thereafter s 45 of the RPA (NSW).
PART A: Legal Problem Question (40 marks).

You may use headings, bullet points and numbers in your answers. Ensure you use IRAC to structure your answer and refer to the relevant and primary authorities.

Fuchsia owned a house in Nyngan, New South Wales and in January 2019 she entered into a contract with Deidre, an electrician. The contract provided for Deidre to supply and install on the roof of the house a bank of solar panels. In early February 2019 Deidre completed the work.

In March 2019 Fuchsia’s house suffered extensive damage as a result of a fire which was caused by Deidre’s negligent installation of the solar panels. The cost of repairing the fire damage was $60,000. Fuchsia requested Deidre to compensate her for the $60,000 worth of damage, but Deidre refused. Fuchsia commenced civil litigation proceedings against Deidre to recover the $60,000. In April 2019 the court found that the fire was caused by the negligent installation of the solar panels and ordered judgment in Fuchsia’s favour. Deidre paid $60,000 in satisfaction of the judgement to Fuchsia in May 2019.

In June 2019 Fuchsia suffered further financial loss when the electrical systems in her house shorted. An expert’s report said that the shorting was caused by Deidre’s negligent installation of the solar panels. It cost Fuchsia $35,000 to have her house rewired as a result of the shorting. Fuchsia requested Deidre to pay this, but she refused.

You are a lawyer practising civil litigation in Nyngan. Fuchsia comes to seek your advice about whether she can successfully sue Deidre for $35,000 in respect of the rewiring costs.

Advise Fuchsia in relation to commencing court proceedings against Deidre to recover the $35,000 in the context of her previous proceedings against Deidre.

In your advice, you should discuss with Fuchsia the relevant common law principles of estoppel and supporting case law and explain their effect upon her legal entitlement to bring proceedings against Deidre for the $35,000. (In your advice you do not need to consider or address issues arising from which court or tribunal has jurisdiction to hear and determine the proceedings and you don’t need to refer to building laws).