

**PROFESSIONAL STANDARDS BOARD FOR PATENT
AND TRADE MARKS ATTORNEYS
2000 EXAMINATIONS**

***TOPIC GROUP A – LEGAL PROCESS AND OVERVIEW OF INTELLECTUAL
PROPERTY***

Instructions to candidates

- **The duration of the examination is 2.5 hours (plus 10 minutes reading time) for candidates requiring an examination result for the whole topic group. For candidates requiring an examination result only in Overview of Intellectual Property, the duration of the examination is 30 minutes (plus 10 minutes reading time).**
- **Candidates requiring an examination result only in Overview of Intellectual Property must attempt only question 1. After 30 minutes of examination writing time, there will be a five minute break in the examination when all candidates will be required to cease writing. Overview of Intellectual Property-only candidates must then hand in their answer papers and leave the room in a quiet, orderly manner. Other candidates must remain in their seats and resume writing only when instructed to do so, and the examination will conclude 2 hours later.**
- **Candidates requiring an examination result for the whole of Topic Group A may answer the examination questions in the order of their choice.**
- **You should write your candidate number on the front cover of each examination book used.**
- **Candidates may take into the examination room any written material or books.**

Question 1 – Overview of Intellectual Property

For Overview of IP-only candidates, 100 marks; 30 minutes.

For all other candidates, 20 marks; suggested time – no more than 30 minutes.

Provide brief answers to each of the following questions:

- (a) provide a definition of intellectual property;
- (b) what are the main arguments for and against laws recognising intellectual property rights?;
- (c) identify two international conventions relevant to intellectual property and summarise the key aspects of each convention;
- (d) under the *Copyright Act*, what courts have jurisdiction in copyright infringement claims. For each court, identify the rights of appeal, after a first instance decision?;
- (e) identify three ways in which the *Trade Practices Act 1974* is relevant to intellectual property?

Question 2 (Overview of IP-only candidates not to attempt)

40 marks; suggested time – no more than 1 hour.

Tracey Grant, the talented and popular sports reporter and host for the Channel 6 Sport Today program, has not been completely happy there for some time. In the period leading up to her contract re-negotiations with Channel 6, Tracey secretly enters into negotiations with Channel 3.

Channel 3 proposes an exciting new sports program for the prime weekend spot with Tracey to present the show, to do interviews and stories of her choosing and to have overall editorial control over the program. Channel 3 offers Tracey a generous salary.

With the Channel 3 proposal on the table, Tracey then enters into negotiations with Channel 6. The Channel 6 negotiating team is its managing director Kerry Stoked and the senior producer of Sport Today, Johnny Wise, who works for the production company producing Sport Today under contract with Channel 6. Over several meetings, Kerry and Johnny put to Tracey a proposal for a revamped Sport Today with all the elements of Channel 3's proposal but at a higher salary for Tracey.

Tracey, who is personally closer to Johnny than Kerry, asks Johnny to confirm that Channel 6 is committed to the new program. After confirming with Kerry who is a member of the Channel 6 Board of Directors, Johnny assures Tracey that the Board has resolved to proceed with the new program - hopefully with Tracey but even if she is not involved. At the same time, Tracey sees a story in the media (which must have been leaked by Kerry) about Channel 6's new sports program and negotiations underway with a leading personality.

Tracey breaks off negotiations with Channel 3 to concentrate on concluding an agreement with Channel 6. Channel 3, who does not believe its proposal is viable without Tracey, retrenches the team it had working on the program at some considerable cost.

In fact, the Channel 6 Board had not resolved to proceed with the program. At the next Board meeting, there is some hard talking about the Managing Director's breach of protocol and the viability of the project. The Board is not satisfied on either issue and Kerry Stoked is sacked. Tracey reopens negotiations with Channel 3 and a deal is later concluded but at a salary for Tracey significantly lower than that originally proposed by Channel 3.

Considering only claims arising under section 52 of the *Trade Practices Act 1974* and the cases concerning section 52 referred to in the published notes, advise Tracey and Channel 3 on claims for damages each may have against Channel 6, Kerry Stoked and Johnny Wise.

**Question 3 (Overview of IP-only candidates not to attempt)
40 marks; suggested time – no more than 1 hour.**

Refer to and read the *Sunday Trading (Refreshment Rooms) Act 1916*.

Tony is a baker and wants to open a bakery with opening hours including from 6:00am to 11:00am on Sunday mornings. Tony would also like to have a few tables and be able to serve coffee (Italian styles, including espresso and cappuccino) for customers who would like to stop for a quick coffee and fresh pastry. Tony's brother Nick plans to open a pizza bar next door with opening hours including from 12:00 noon until 11:00pm on Sunday evenings. Nick plans to

serve pizzas, pasta and salads with beer, wine and soft drinks. Tony and Nick's shops are in the arcade leading to the local railway station.

Advise Tony and Nick. Explain to them how you interpret the Act and why. Refer to the different approaches to statutory interpretation and explain what assistance you get from them.

Tony is glad to have your advice and obtains a Sunday trading licence. He gets his fifteen year old daughter Maria to come and help him in the school holidays during the week. Maria turns sixteen on the last Saturday of the holidays. On Sunday morning they have coffee and cake for Maria in the shop. Tony is convicted by a Supreme Court judge of employing in his shop a person under sixteen years of age and sentenced to imprisonment of one month. **Advise Tony.**

Nick too applies for a Sunday trading licence which he expects to be issued on Monday. Keen to get business moving, he opens on the Sunday before. As he closes the front door at 10:00pm that evening, Tony drops by. Nick invites him in and makes a fresh pizza for the two of them which they enjoy at about 10:20pm. Tony pops £2 in Nick's till. Nick is convicted of two offences:

- X trading without a Sunday trading licence; and
 - X being open outside Sunday trading hours;
- and fined £5. **Advise Nick.**

Politically, the Act backfires with much criticism that alcohol may not be served or consumed in restaurants on Sunday. The government makes a regulation under the Act allowing sale and consumption of alcoholic beverages in restaurants on Sundays between 6:00pm and 11:00pm. **Consider the validity of the regulation. Discuss the nature of regulations as laws. Explain the role of parliaments in enacting statutory law and regulations made pursuant to statutes.**

SEE NEXT PAGE FOR SUNDAY TRADING (REFRESHMENT ROOMS) ACT 1916

SUNDAY TRADING (REFRESHMENT ROOMS) ACT, 1916

ACT No. XIX., 1916.

An Act to amend the law with respect to Sunday trading in certain shops; and for that purpose to amend certain Acts. [Assented to, 19th April, 1916]

No. 19

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1 This Act may be cited as the "Sunday Trading (Refreshment Rooms) Act, 1916". It shall commence and take effect on and from the first day of July, one thousand nine hundred and sixteen.

Short title and
com-
mencement

2 Notwithstanding anything contained in any Act of prior date, it shall be lawful for any shop described in Part I of Schedule One, licensed under this Act, to be open for the sale of the articles, commodities, and things named in Part I of Schedule Two, and for any person to sell therein such articles, commodities, and things on Sundays within the hours of —

Shops in Part I
of Schedule one
may be opened
for the sale of
certain articles
during certain
hours.

half-past eight and ten in the morning;
one and half-past six in the afternoon; and
half-past eight and ten in the evening;

3 Notwithstanding anything contained in any Act of prior date, it shall be lawful for any shop described in Part II of Schedule One, and licensed under this Act, to be open for the sale of the articles, commodities, and thing named in Part II of

Sunday Trading (Refreshment Rooms)

1916 Schedule Two, and for any person to sell therein such articles,
No.19 commodities and things on Sundays within the hours of —
s. 3. half-past eight and ten in the morning;
 half-past twelve and half-past six in the afternoon; and
 half-past eight and ten in the evening.

Shops in Part
 III of
 Schedule One
 may be
 opened for the
 sale of certain
 articles during
 certain hours.

4 Notwithstanding any thing contained in any Act of prior date, it shall be lawful for any shop described in Part III of Schedule One, and licensed under this Act, to be opened for the sale of the articles, commodities and things named in Part III of Schedule Two, and for any person to sell therein such articles, commodities and things on Sundays within the hours of —
 eight and ten in the morning;
 twelve noon and two in the afternoon;
 five and ten in the evening.

Not to apply
 to railway
 refreshment
 rooms

5 The two last preceding sections shall not apply to railway refreshment rooms.
 Notwithstanding anything contained in any Act of prior date, it shall be lawful for any such refreshment room to be open for the sale of the articles, commodities, and things named in Schedule Two, and for any person to sell therein such articles, commodities, and things on Sundays at any time.

Penalties

6 Any person who on any Sunday—
 (a) at any time other than within the hours above prescribed opens, or keeps open to the to the public for purposes of trade any shop described in Schedule One, or offers for sale, or sells therein any article, commodity, or thing; or
 (b) offers for sale or sells in any such shop within the hours above prescribed any article, commodity, or thing not authorised by this Act to be sold; or
 (c) offers for sale or sells in any such shop any article, commodity, or thing named in Part I of Schedule Two for consumption otherwise than on the premises of the vendor; or
 (d) employs in any shop any person under sixteen years of age; shall be liable to a penalty not exceeding five pounds, or in default to be imprisoned for a period not exceeding one month.

Sunday Trading (Refreshment Rooms)

7 No restaurant or dining-room keeper shall be guilty of the said offence by reason only that within one half-hour after the said closing time goods have been offered or sold to a customer who at the said closing time was in the said restaurant or dining-room being served or waiting to be served.

1916
No. 19
s. 7.
Customer
waiting to be
served

8 On payment of the prescribed fee licenses called "Sunday Trading Licenses" may be granted under this Act in the prescribed form to the occupier of any shop described in Schedule One hereto. Applications for such licenses shall be made to the court of petty sessions in the police district within which the shop in respect of which the application is made is situated.

Applications for
licenses

9 Penalties under this Act may be imposed by a stipendiary or police magistrate, or by any two justices of the peace in petty sessions.

Recovery of
penalties

10 (1) It shall be lawful for the Governor from time to time to frame regulations not being inconsistent with the provisions of this Act for any of the following purposes, namely;—

- (a) For prescribing the forms of applications, licenses, and other documents not provided for by the Schedule to this Act, and for correcting or varying any such form when necessary.
- (b) For prescribing the fees to be paid for licenses granted under this Act, and the person or persons to whom such fees shall be paid and for the due accounting therefor.
- (c) And generally for the purpose of giving effect to he provision of this Act.

(2) Such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session; and if not, then within fourteen days after the commencement of the next session.

If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid

Sunday Trading (Refreshment Rooms)

1916 before such House disallowing any regulation, such regulation shall
No. 19, thereupon cease to have effect.
s. 10.

SCHEDULES

SCHEDULE ONE

PART I

Pastrycooks' or bakers' shops for the sale of bread in various forms, cake or biscuits.
 Any shop in combination of any or all of the above noted utilities.

PART II

Tea rooms.
 Fruiterers' shops.
 Ice-cream shops.
 Confectioners' shops.
 Milk shops.
 Shops for the sale of non -alcoholic drinks.
 Any shop in combination of any or all the above noted utilities.

PART III

Restaurants and dining-rooms.
 Fish and oyster shops and saloons for the sale of oysters and cooked fish.
 Any shop in combination of any or all of the above noted utilities.

SCHEDULE TWO

PART I

Milk, tea, coffee, cocoa, chocolate, and similar drinks.
 Temperance and non-alcoholic drinks.
 Ice cream or ices or confectionery.
 Bread in various forms, pastry, cakes, or biscuits.

PART II

Milk, tea, coffee, cocoa, chocolate, and similar drinks.
 Ice-cream or ices.
 Confectionery.
 Fruit of all kinds.
 Bread in various forms, pastry, cakes, or biscuits, with butter jam, or honey to be consumed in conjunction therewith.
 Temperance or non-alcoholic drinks.

PART III

Meals.
 Cooked fish and oysters.
 Bread in various forms.
 Temperance and non-alcoholic drinks
