

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

LEGAL INSTITUTIONS

TIME: Three Hours

This paper consists of six questions.

Candidates are required to attempt any four questions.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **4** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Material:

This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought with them.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

QUESTION 1 HAS TWO PARTS. BOTH PARTS ARE OF EQUAL VALUE AND BOTH PARTS MUST BE ANSWERED.

Part A

What is extrinsic material? Illustrate your answer with examples. When can it be used in the interpretation of NSW and Commonwealth Statutes? Are there any limits on the extrinsic material which may be used in the interpretation of statutes? Support your answer by referring to appropriate authority.

AND

Part B

Jack and Jill have moved into a newly built hillside home in northern NSW and wish to complete the landscaping by laying grass and planting gardens. Their property is located at the top of the hill and the landscape architects they retained for advice informed them that they will need to plant terraced gardens if they wish to retain any rainfall or soil. They have been advised that, as they are located at the top of the hill, unless they protect their garden with terracing, it will be subject to runoff and their soil and other debris will run down the hill into the stream at the bottom, with the potential to create a problem in the local ecosystem.

Jack and Jill have applied to the local Registrar of Watering Permits for permission to install a dripper system in their proposed new garden. Their application advises that the purpose of their proposed dripper system is to sustain ground cover in newly established terrace gardens to stabilise the soil. Their application has been rejected.

The *Watering Permission Act 2008* (NSW) ("the Act") provides, inter alia:

2. The purpose of this Act is to protect the ecosystem of the State and local ecosystems by ensuring that all necessary steps are taken to preserve our fragile environment, especially our scarce water resources.
10. The Minister shall appoint in each region a Registrar of Watering Permits.
11.
 - (1) The Registrar of Watering Permits shall have sole responsibility in each region for deciding which permits shall be granted for the watering of privately owned gardens. No watering of private gardens will be permitted without a permit.
 - (2) The Registrar of Watering Permits in each region shall grant a permit if the watering system the subject of the application:
 - (a) Does not put at risk the State wide water supply; and
 - (b) Protects local water sources.

(Question 1 continues)

(Question 1 continued)

Jack and Jill wish to challenge the decision of the Registrar of Watering Permits. Assuming that there is no risk to State water supply, the Act was in force at all relevant times and is within the power of the NSW government, advise Jack and Jill.

(25 marks)

Question 2

Answer briefly ALL the following questions and hypotheticals. Support your answers with reference to the Commonwealth Constitution as interpreted by the High Court of Australia.

- (a) The Australian Institute of Sport is based in Canberra in the Australian Capital Territory. Could it have been located on Queensland's Gold Coast? Why? Why not?
- (b) Can the *Trade Practices Act 1974* (Cth) regulate the conduct of every trading entity operating in Australia? Why? Why not?
- (c) The Rudd Government wishes to build a fast metro link in NSW between Blackheath and Penrith and has made money available to the NSW Government for this purpose. The Rees Government has no current plans for such a metro link and wishes to use the money for other purposes. Advise the Rudd Government.
- (d) Australia has become a signatory to the United Nations Convention on Preservation of Diversity in Seaweed Species. The Australian Government wishes to legislate to protect seaweed diversity throughout Australian waters. Advise the Australian Government.

(25 marks)

Question 3

QUESTION 3 HAS TWO PARTS. BOTH PARTS ARE OF EQUAL VALUE AND BOTH PARTS MUST BE ANSWERED.

Part A

You receive instructions from the Leader of the Opposition in the NSW Parliament. She informs you that:

- The last election was held 18 months ago;
- At that time the Government was elected with control of the Legislative Assembly but her party controls the Legislative Council;
- The Opposition party wishes to force a new election by using their numbers in the Legislative Council to block the money bills.

(Question 3 Part A continues)

(Question 3 Part A continued)

- (a) Advise the Leader of the Opposition.**
- (b) Would your advice be any different if your client was the Leader of the Opposition in the Commonwealth Parliament?**

AND

Part B

“The only reason solicitors describe themselves as members of a profession is so they can charge more.”

Discuss. What does it mean to be a member of a profession? What are some of the obligations of a Legal Practitioner? In which ways are members of the Legal Profession regulated?

(25 marks)

Question 4

Smith J is 62 and a serving member of the High Court of Australia. An alumnus of Yale, he has just published a book about baseball, suggesting that it should replace cricket as the premier summer sport in Australia. The Prime Minister, a cricket aficionado, is upset by these suggestions and wishes to dismiss Smith J. He has been advised however that the provisions of the Constitution may make this difficult. If this is the case, the Prime Minister is keen to change the Constitution.

Advise the Prime Minister with respect to the possible dismissal of Smith J, the need for any constitutional change, and the procedure for achieving constitutional change.

Support your advice with reference to relevant authorities. If your advice proposes constitutional change, you should also consider the underlying concepts on which the present provisions of the Constitution are based and the historical origins of these concepts.

(25 marks)

(Question 5 follows)

Question 5

QUESTION 5 HAS TWO PARTS. BOTH PARTS ARE OF EQUAL VALUE AND BOTH PARTS MUST BE ANSWERED.

Part A

What is meant by the term “common law”? In what different senses can this term be used? What is the historical understanding of the origins of the common law? What are the sources of law in a common law system, and how do they relate to each other? Support your answer with examples.

AND

Part B

Write a brief case note on State Government Insurance Commission v Trigwell (1979) 142 CLR 617. Discuss the understanding of the common law expressed by Mason J, and what is understood to be the common law received by the Australian colonies on settlement.

(25 marks)

Question 6

Kenny has kept pet sharks all his life, and hopes to develop an aquaculture business farming sharks. After much trial and error, he has developed what he believes to be an effective shark food. He contracts with Smith Co. to make commercial quantities of this shark food, based on the formula provided by Kenny. Smith Co. are animal food manufacturers, but have not previously manufactured shark food. None of the ingredients used in Kenny’s formulation are novel and Smith Co have current supply contracts for all necessary ingredients.

Kenny receives and pays for the shark food. Unfortunately his sharks do not thrive – they slowly begin to die. Kenny’s vet establishes that the cause of the shark deaths is a preservative used in the cod liver oil which forms part of the shark food made by Smith Co. This preservative had not previously caused problems for any animals and was only present in minute quantities.

Kenny wishes to commence proceedings against Smith Co for breach of contract. Advise Kenny. In your advice, consider s19 Sale of Goods Act 1923 (NSW) and/or s71 Trade Practices Act 1974 (Cth) as appropriate.

(25 marks)

END OF PAPER