

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

LEGAL INSTITUTIONS

TIME: Three Hours:

The paper consists of **six** questions.

Candidates are required to attempt any **four** of these questions.

All questions are of equal value.

If a candidate answers more than the specified number of questions, **only** the first **four** 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 materials they have brought into the exam room.

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.

The New South Wales Parliament has enacted the *Snorkelling Control Act 2005* (NSW) which prohibits snorkelling at all beaches inside National Parks. The Commonwealth Parliament has enacted the *Snorkelling Regulation Act 2007* (Cth) which prohibits snorkelling at all beaches inside National Parks during the 'summer' between 1st October and 1st March.

Miranda is snorkelling at NSW's Turtle Beach which is within Turtle National Park on 1st January 2008 when she is arrested by police.

- (a) Advise Miranda.**
- (b) Would your answer in (a) be different if the *Snorkelling Regulation Act 2007* (Cth) was passed 6 months after the Commonwealth had participated in an International Conference considering the protection of native ocean fauna and had become a signatory to the International Convention to regulate Human Behaviour in protected Native Ocean Fauna habitats?**
- (c) Would your answer be different if, assuming all the facts in (b), the Commonwealth Government passed the *Snorkelling Regulation (Amendment) Act 2008* (Cth) which came into force on 10th June 2008 and provided in part that the *Snorkelling Regulation Act 2007* (Cth) was not intended to exclude the operation of State Acts and never had been?**

(Question 2 follows)

Question 2.

This question has **TWO** parts. **BOTH** parts must be answered.

Part A

Sir Gerard Brennan, opening the 12th South Pacific Judicial Conference in Sydney in 14th April 1977, said:

“The principle of judicial independence is not proclaimed in order to benefit the Judges; it is proclaimed in order to guarantee a fair and impartial hearing and an unswerving obedience to the rule of law. That is the way in which our peoples secure their freedom under the law.”

Discuss. In your discussion, identify what is meant by judicial independence and consider the historical development of judicial independence and its continuing importance in our legal system. Support your discussion by reference to appropriate historical examples and legal authority.

Part B

Write a brief case note discussing Mabo v Queensland (No 2) (1992) 175 CLR 1. Your case note should include a brief description of the facts, an analysis of the judgment of Brennan J. and a consideration of the impact of the Mabo decision on the common law of Australia.

(Question 3 follows)

Question 3.

This question has **TWO** parts. **BOTH** parts must be answered and are worth equal marks.

Part A

The following draft letter of advice requires proofreading to identify any mistakes in grammar, punctuation or use of words.

Write out the paragraphs which require correction in your examination booklet making clear what corrections you have made. Do NOT write out any paragraph that does not require correction.

- a) In advising you Michael on your problems arising on your building work. I must refer you to the Building of glass houses Act which was enforce at the time of your construction.
- b) This Act needs to be considered in light of the relevant Interpretation Act. However, upon due consideration, I don't think you will have a problem once this matter is heard by the court.
- c) I don't think any of the Arbitrators' hearing your story are likely to disagree at our argument's and a number of them is likely to have heard similar story's before.
- d) We have deemed you to be a person who didn't intend this affect.
- e) When you built your glass house I understand that these new Regulations alluded you and you would have increased the amount of doors and support structures if you had known that the local counsel required it.
- f) If your wife and I can get together some time next week, I hope I can get this cleared up. She should bring all the letters on your local counsels' stationary that she has kept, so I can look through them and access them.
- g) Between you and she and I, we should be able to make some sense of it all and be ready to present it to the court. I think there will be less problems than you think.

Part B

Discuss briefly the meaning of the following concepts. Support your discussion by reference to appropriate legal authority:

- Judicial power of the Commonwealth
- Separation of powers at the Commonwealth level

(Question 4 follows)

Question 4.

The senior partner at a firm of solicitors where you are employed hands you the following notes he took while attending your client George in conference. He asks you to draft an advice to George, in which you identify the relevant legal issues, and use the following authorities (and only the following authorities) to provide advice to George. The authorities you should use in advising George are:

- Pharmaceutical Society of Great Britain v Boots Cash Chemists [1953] 1QB 401
- Felthouse v Bindley (1862) 11CB(NS)869
- Roscorla v Thomas (1842) 3QB 234
- Eastwood v Kenyon (1840) 113ER 482
- s19 *Trade Practices Act 1974* (Cth)

George wanted to buy a Wide Screen High Definition (HD) TV in time for the Olympics. He had priced 42" TVs and they were about \$3,000. Last Sunday, while reading the newspaper, he saw an ad from Cheap TV Kings advertising their 'Olympic Offer' – a 42" Wide Screen HD TV for \$1500.

He rang Cheap TV Kings where he spoke to Mary. He ordered a 42" Wide Screen HD TV to be delivered on Tuesday, Cash On Delivery (COD) for \$1500. Mary advised George that she would have to check about delivery, and would get back to him.

On Monday, Mary rang George at his home and left a message on his answering machine. She confirmed delivery of the 42" Wide Screen HD TV on Tuesday, COD for \$1500.

While George is at work on Monday, he speaks to his boss Jo-anne who knows George wants a new TV for the Olympics. Jo-anne tells him that because of all his hard work over the previous year he can have the brand new 42" wide screen HD TV in the Conference Room. George is so excited by this news he forgets to check his answering machine.

George calls in to TV Furniture Pty Ltd on his way home from work. He asks the salesman Bill for a TV cabinet suitable for a 42" wide screen HD TV. Bill sells him the 'TV Keeper' Cabinet which he assures him will be suitable for his purpose. Similar cabinets are usually \$500, but the model George buys is only \$150.

George brings the TV from work home on Tuesday and places it on his new TV cabinet. It is not strong enough to hold the TV and falls apart, causing George's TV to fall to the ground and smash.

George then answers a knock at the door to find a delivery van from Cheap TV Kings with his new TV and insisting on payment of \$1500. George's boss then calls and asks him to return the TV from work as they will need it for Olympic hospitality they are offering clients.

Advise George – using only the authorities provided above.

(Question 5 follows)

Question 5.

This question has **TWO** parts. **BOTH** parts must be answered and are worth equal marks.

Part A

A major Sydney newspaper included the following editorial:

“We have problems with hospitals. We have problems with roads. We have problems with education, policing and public transport. The government of NSW cannot provide adequate service to the people of NSW. We call on the Opposition and the minority parties in the Legislative Council to join together and block the Government’s ordinary money bills until and unless they agree to change. These are drastic measures but appear necessary to achieve change.”

Discuss. How might your answer differ if instead of the NSW government, the question referred to the Commonwealth government?

Part B

“A Tribunal is simply a cheaper, quicker court.”

Discuss. In your discussion consider the ways in which Tribunals and Courts are different and the role of Tribunals in our justice system. Support your discussion with reference to examples of Courts and Tribunals and appropriate authority.

(Question 6 follows)

Question 6.

In July 2007 The Daily Newspaper carried an editorial criticizing the behaviour of students on public transport. In part, it read:

“As a community we pay for our students to travel to school. And how do they return this generosity? With hooliganism. Students travelling to and from school are noisy, block passageways with their bags and sporting equipment and fail to stand and offer seats to fare paying adults. This situation cannot continue.”

The following week, the Minister for Transport introduced the *Control of Students on Public Transport Bill*, and during the second reading speech on the Bill made the following remarks:

“As well as learning reading and writing our students must also learn respect. Respect is demanded of them at school and in respect of school property. We will demand respectful behaviour when travelling to and from school. This legislation is designed to enforce respect of public transport, officials and other adults by students travelling on public transport.”

The Control of Students on Public Transport Bill successfully passed both the Legislative Assembly and the Legislative Council and commenced on 1 October 2007. It provided in part as follows:

1 Definitions

- ‘public transport’ means any form of transport operated by the government for the convenience of its citizens and includes all trains, buses and ferries.
- ‘student’ means any child attending school full time

7 Respectful behaviour

- (1) All students will behave respectfully on public transport at all times.
- (2) All students will stand on public transport at all times.
- (3) Any breach of this section will result in forfeiture of any free school travel pass, and the student may be banned for life from public transport.

On 10th October 2007 Year 8 students at Green Hills High School are going on an excursion to the Observatory. A government bus has been hired to provide transport. On their way to the Observatory, the students are apprehended by police and charged with a breach of s7(2) of the Control of Students on Public Transport Act, as all the students on the bus are seated.

Advise the students.

- END OF PAPER -