

# **LEGAL PROFESSION ADMISSION BOARD**

**SEPTEMBER 2009**

## **LEGAL INSTITUTIONS**

**Time: Three Hours**

This paper consists of **six** questions.

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

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

All questions are of equal value.

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 Materials:**

**This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought into the examination 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

**This question consists of 2 parts. Students should answer BOTH parts.**

### Part A

“With the *Australian Constitutions Act 1842* an independent and representative government was finally achieved in the colony of NSW. Finally, citizens of NSW elected their own representatives and were free to legislate for themselves, rather than being legislated for by Great Britain.”

**Do you agree?**

### Part B

Your client Marcy Jones is having problems with her neighbour Fred Smith. Despite agreeing to pay for half of the new fence between their properties, he is now refusing to do so. Marcy is also having problems with her landlord who is refusing to perform necessary maintenance on her rented property. She is also in dispute with her mobile phone provider about her bill. She seeks your advice as to how she may have these various disputes resolved. She is interested in a speedy and economical resolution of these disputes, with no formal litigation.

**Advise Marcy.**

**(25 marks)**

## Question 2

The provisional government of Boboland seeks your advice. They are a newly created country, and are in the process of drafting their constitution and considering what form of government and what type of legal structures and institutions they should adopt. Their aim is to develop a democratic country where power cannot easily be usurped by one institution. They are interested in exploring the idea of responsible government.

**Using your knowledge of the English Civil War and the development of English and Australian legal institutions, advise the provisional government of Boboland.**

**(25 marks)**

**(Question 3 follows)**

### Question 3

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 Commonwealth Government wishes to introduce legislation to standardise contract law throughout the whole of Australia. Assuming there are no international conventions with respect to contract law, and considering any existing legislative models. **Advise the government.**
- (b) The Commonwealth Government wishes to construct a series of 'super-highways' around Australia, including a super-highway between Bathurst and Broken Hill. They make money available for this purpose to the NSW Government. The NSW Government wishes to use the money to construct a metro link in Sydney instead, arguing that this better serves the transport needs of the citizens of NSW. **Advise the NSW Government.**
- (c) The *Diving and Seaweed Act 2000* (NSW) provides, inter alia, that diving is prohibited in designated seaweed sanctuaries between the months of January and July. Waving Palms beach is a designated seaweed sanctuary. Bob has been diving at Waving Palms beach every December for a number of years.

In March 2005 Australia becomes a signatory to the United Nations Convention on Preservation of Diversity in Seaweed Species. The Australian Government subsequently enacts the *Seaweed Protection Act 2007* (Cth) which provides, inter alia, that diving is prohibited at designated seaweed sanctuaries.

Bob is arrested while diving at Waving Palms beach in December 2008. **Advise Bob.**

**(25 marks)**

### Question 4

An editorial in the *Sydney Daily Chronicle* in July 2008 bemoaned the increasing amount of litter in public spaces. In part, it trumpeted:

We have become a city of litter bugs, dropping our mess wherever we choose. We don't even bother to put our rubbish into the numerous bins which are provided. If we consistently refuse to take responsibility for our own actions, then sadly, the Government must step in. We need sanctions against public littering to bring this problem under control.

**(Question 4 continues)**

**(Question 4 continued)**

As a response to the problem identified by the *Sydney Daily Chronicle* the NSW Government introduced the *Control of Public Rubbish Bill*. When introducing the Bill to the Legislative Assembly, the Minister noted:

This beautiful State is being besmirched by the actions of irresponsible litterers. We need to remind our citizens of their responsibilities with respect to rubbish. This bill introduces a two pronged response – public education and severe sanctions. We need to achieve cultural change so that people no longer throw rubbish carelessly in the general direction of a bin, but that they place it carefully where it belongs. This Bill is a step towards achieving this cultural change.

The Bill passed both houses and received the Royal Assent on 1 January 2009. It provided, in part, as follows:

**3. Definitions**

In this Act, unless the contrary intention appears:

‘deposit’ means place rubbish wholly within a designated rubbish receptacle;

‘designated rubbish receptacle’ means any bin with the word ‘rubbish’ located on it in a prominent position;

‘litter’ means any rubbish which is lying on any surface outside a designated rubbish receptacle;

‘rubbish’ means any wrapper, covering, paper or other item used in connection with food, but which is not part of the food to be consumed.

**10. Littering**

1. All persons shall deposit all rubbish in a designated rubbish receptacle.
2. Any person whose rubbish is found as litter is guilty of an offence.
3. Penalty for breach of this section: fine not exceeding \$500.

Jeremy and Daniel are walking through the park on 1 February 2009 on their way home from basketball. Jeremy is eating an iceblock and Daniel is munching on an apple.

When they are finished eating, Jeremy drops his iceblock stick in the general direction of the marked rubbish bin, but misses and it lands on the ground. Daniel tries to slam dunk his apple core. He makes the bin, where it rebounds inside and then bounces out of the bin and lands on the grass.

A park ranger, noticing this behaviour, arrests both boys. **Using the rules of statutory interpretation, advise Jeremy and Daniel.**

**(25 marks)**

**(Question 5 follows)**

### Question 5

This question consists of 2 parts. Students should answer BOTH parts.

#### Part A

In a common law system much of our understanding of the law comes from a study of cases. Referring to both *State Government Insurance Commission v Trigwell (1979) 142 CLR 617* and *Mabo v Queensland (No 2) (1992) 175 CLR 1* discuss what is meant by the common law and the importance of the doctrine of precedent for a common law system.

#### Part B

The High Court of Australia plays an important role as the interpreter of the Australian Constitution. From your reading of the *Tasmanian Dams Case* discuss the role of the High Court in broadening the legislative powers of the Commonwealth. Your discussion should include a note of some of the cautions and reservations expressed by the minority in this judgement.

(25 marks)

### Question 6

Emily is a keen ice skater and needs a new pair of skates. She goes to Golden Ice Skates where she speaks to Jan. She tells Jan that she needs a new pair of skates for competition and Jan measures her foot and shows her several pairs, all of which should be suitable for her purposes. Emily selects the Jackson Dominator skates and pays Jan the \$500 price. Although these skates are expensive she is confident that she is receiving a quality pair of skates.

In her first competition three weeks later, the blade snaps from the skate in the middle of Emily's camel spin. She falls to the ground with a sprained ankle, and cannot complete her routine.

**Advise Emily.**

**In your advice you should consider only s71 TPA (and any other sections of the *Trade Practices Act* and case law necessary to interpret and understand the elements of s71.) Your advice should clearly use the IRAC model of problem solving.**

(25 marks)

**END OF PAPER**