

# LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

## ADMINISTRATIVE LAW

**TIME: Three hours**

The paper consists of five questions.

Candidates are required to attempt Part A, and any TWO questions only from Part B.

Part A is worth 34 marks. Questions in Part B are both worth 33 marks.

If a candidate answers more than the specified number of questions in Part B, only the first two questions attempted will be marked.

All questions answered 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 a candidate's results being given.

**Permitted materials:**

**This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought with them *except* Sydney University library books or material. No electronic devices of any kind are permitted in 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.*

## **PART A**

### **Question 1.**

In 2003, the Australian Wine and Brandy Corporation decided to prepare a three year "Export Marketing Strategy" aimed at doubling exports of Australian fortified wines, with particular emphasis on Japan and Russia. The Minister for Primary Industry, Bill Farmer, has indicated that he is *"fully behind the Corporation in its endeavour to increase exports worldwide."*

During the latter part of 2006, the Corporation sent a team of five Directors on a three month trip overseas to get *"first hand knowledge"* of markets in Japan and Russia. They also commissioned the market research company Watching and Listening P/L to undertake surveys of the existing markets in both countries and target opportunities for expansion.

The team of Directors returned from their trip somewhat dispirited by the state of the markets in both countries regarding the sale of fortified wines. They prepared a detailed report. It concludes: *"competition from the sale of sake in Japan and Russia is so strong that there would not be sufficient return on the investment to justify the huge advertising campaigns being considered in those countries. There would be little likelihood of major market gains in the short term."*

The Minister is not very happy with these conclusions because he has already given several media conferences publicizing the *"expected huge increase in fortified wine sales, particularly to Russia."* Consequently, he wants the report prepared by the team of Directors to be *"kept under wraps until we get a big order somewhere else and the announcement will be less damaging."* A media release is issued stating that the Corporation has been advised of the team's findings and will modify future marketing strategies accordingly.

Watching and Listening P/L's market research is even less hopeful and the Corporation is somewhat embarrassed when they realize that they have spent \$250,000 for research which duplicates the findings of an earlier study by the French Government two years earlier. The French report concerned the export of red wine to Japan and Russia. Ivan Watching, one of the partners in Watching and Listening P/L, has already told a friend, Peter Penfold, a major player in the wine industry, that the research *"was a bit of a fizzer"*. The Corporation, having had an opportunity to consider the report, has advised Ivan Watching that the report is confidential and to refer any inquiries about it to the Corporation's public relations officer.

Peter Penfold has unfortunately already told several others in the wine industry of the conversation with Ivan Watching and the Corporation begins to receive FOI applications from Australian winegrowers, the media and representatives from the New Zealand wine industry. The latter group wants to confirm the results of the survey before developing its own marketing strategies. The Corporation has been asked for the market research report and *"all documents relating to the overseas fact-finding mission by the Directors of the Corporation including any reports of their findings or conclusions."*

**(Question 1 continues)**

(Question 1 continued)

The Corporation is keen to protect its internal reputation and the Minister wants to avoid embarrassment for his government. As the Corporation's legal adviser, you are asked by the Minister and the Corporation whether they must release documents, or whether there are exemptions upon which they might rely upon to justify withholding them. What procedures should the Corporation follow in responding to the FOI requests?

## **PART B**

Candidates must attempt **ANY TWO** questions from this Part.

**Question 2.**

*"To delegate or not to delegate. That is the question."*

**Discuss delegated legislation. What is it? Why do we have it? Who makes it? What are the requirements for valid delegated legislation? Could we do without it?**

**Question 3.**

*"The state of administrative law in Australia leaves much to be desired."*

**Discuss.**

**Question 4.**

*"The Ombudsman has demonstrated that it is quite a different institution to the courts and tribunals in a number of ways. Some would say that it has more pluses than minuses."*

**Discuss.**

**Question 5.**

*"The establishment of the AAT in 1975 and the subsequent creation of similar tribunals in most States, represented a radical departure from the existing system of judicial review. The tribunals are a hybrid, combining the features of both courts and administrative agencies."*

**Discuss.**

**- END OF PAPER -**