LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

SUCCESSION

TIME: Three Hours

This paper consists of **seven** questions.

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

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **5** 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 a closed book exam. No materials are permitted in the examination room.**

Attached to this paper is a copy of Law Extension Committee materials (case list and copies of statutory extracts, including the Succession Act 2006) and further extracts from the former Wills, Probate and Administration Act 1898, the Probate and Administration Act 1898 and the Family Provision Act 1982.

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

T died intestate on 1 October 2008. T had been living with Anne in a de facto relationship since 1 September 2007. T is survived by his former wife (whom he divorced in 2005), three grandchildren (of whom one is a child of T's deceased son, Ben, and two are children of T's deceased daughter, Carla), and one great grandchild (who is the grandchild of T's deceased daughter, Denise).

T left the following assets and liabilities:

House (which was occupied by T and Anne)	$400,000
Furniture	$25,000
Horse	$30,000
Painting by a well-known painter	$20,000
Shares in public companies	$50,000
Money in the bank	$10,000
Mortgage on the house	$50,000
Outstanding fees payable to the horse trainer	$100,000
Other debts	$10,000
Funeral and testamentary expenses	$20,000

T was a keen horse punter and he regularly entered his horse at weekend track events.

Anne claims that as T's de facto spouse she is entitled to the whole of T's estate, including the house. T's issue, on the other hand, claim that the de facto is not entitled to anything and that they are entitled to the whole estate in equal shares.

Advise the legal personal representative in relation to these claims, and explain how the estate should be distributed.

(20 Marks)

Question 2

(a) T's will dated 1 February 2006 provides as follows: "I give my house to my friend, Alice, and the residue of my estate to my only son, Barry."

On 1 November 2008, two months before T's death, T married Alice.

T's only surviving relatives are Alice and Barry. The estate comprises valuable personalty and, apart from the house, realty. Barry claims that he is entitled to take the grant of representation and that he is entitled to the whole estate on intestacy.

Advise Alice in relation to the claims of Barry.

(Question 2 continues)

(Question 2 continued)

(b) T wrote to her son, Peter, as follows: "Dear Peter, since dad died I have been thinking about how I should settle things. I've decided that the house is to go to you, the holiday home to your sister, Mary, and all of my personal effects to the grandchildren. The money in the bank will, of course, go to pay my debts and funeral and anything that is left over is for you and Mary. I hope that you are all happy with this. Love Mum. 1/2/09." T died soon after sending this letter.

Peter claims that this letter is ineffective and that he is entitled to the whole of the estate under an earlier will.

Advise Mary, who wishes to know the effect, if any, of the letter.

(c) On 1 December 2008, T, in the presence of A, produced a document, which she stated was her will, and signed it, after which A signed his name as witness. T and A then went to a neighbour's house, where T in the presence of A, asked B to witness her will, saying, "This is my will which A has already signed." A then stated in the presence of T and B that the second signature on the will was his. B thereupon signed his name as witness in the presence of T and A.

Is the will formally valid?

(d) On 1 March 2006 T made a will, which appointed X his executor and disposed of the whole of his estate to A.

On 1 March 2008 T made another will, which appointed Y executor and disposed of the whole of his estate to B.

Does the later will revoke the earlier will?

(20 Marks)

Question 3

(a) T at the date of her last will was 98 years of age and was looked after by a full-time carer, who had been in the testatrix's service for 10 years. The will, which is properly signed and witnessed, leaves the whole of the estate to the carer, who instructed the solicitor to prepare the will. T's earlier will left the whole of her estate to charity.

T's only niece and a cousin seek your advice as to whether the validity of the will may be challenged.

Advise each of them whether they are eligible to challenge the validity of the will, the bases upon which the will might be challenged and what must be shown in each case for the challenge to be successful.

(Question 3 continues)

(Question 3 continued)

(b) On 1 February 2000 T made the following valid will: “I give my house to my daughter, A, my shares to my daughter, B, and the residue of my estate to my son, C. I appoint B my executor and direct that B, who is a solicitor, is entitled to be paid her usual professional fees for legal work done by her or her firm in administering my estate.” The will was witnessed by A and B.

On 1 December 2007, T made a valid codicil to the will of 1 February 2000. The codicil made a gift of $20,000 to his grandson, G (a child of A). The codicil was witnessed by B and X.

T died on 1 February 2009 and was survived by all of the persons named in the will and codicil. X is the wife of G.

Explain whether or not any of the disposition made by the will and codicil are affected by the interested witness rule.

(20 Marks)

Question 4

(a) The dispositive provisions in T’s will, dated 1 April 2006, state, “I give my house to my daughter, A, and my personal estate to my son, B.”

T’s estate comprises the house devised to A, other real estate, and personal estate. A has one child, and two grandchildren (who are the children of a deceased child of A). B has one child.

- **(i)** **How would you distribute the estate if T died on 1 January 2007, and A had predeceased him?**
- **(ii)** **Would the distribution be different if T died on 1 February 2009 and A had died on 1 December 2008?**

(b) T leaves the residue of her estate “to my sister Barbara for life and then to the children of my brother Charles on their attaining the age of 21 years.”

- **(i)** **Explain, considering all of the possibilities, how the class closing rules apply to the distribution of the above gift of residue where:**

  1. **Barbara predeceases T, and**
  2. **Barbara survives T, and**

- **(ii)** **Explain the rationale of the class closing rules using their application in the present example.**

(20 Marks)

(Question 5 follows)

Question 5

(a) Explain whether or not the following proposition is true or false: A will, which does not dispose of any of the testator's property in New South Wales, is not admissible to a grant.

(b) Set out and explain the usual order of priority of those entitled to take a grant of administration in a partially testate estate.

(c) T's will appoints A, a lawyer, as executor. The will includes a provision that any executor who practices a profession shall be entitled to make his/her "usual professional charges for legal work done in relation to the administration of my estate".

Explain whether A is entitled to render a bill for her professional services and seek commission for all her pains and trouble in administering T's estate.

(d) After the expiration of the time in the notice of intended distribution of the estate, T's executor, X, commenced to distribute the estate. X then received a notice from C claiming that the deceased was indebted to him in the sum of $20,000. At the date of the claim, T had only $5,000 of estate funds in his hands. C sues X for the $20,000.

Assuming that C is able to prove that the debt was due to him, advise X.

(20 Marks)

(Question 6 follows)

Question 6

T, who had no children and whose spouse predeceased him, died in November 2008. T's spouse never took paid employment after her marriage to T and brought only a very modest amount of money to the marriage.

T's spouse had a child, Albert, from a former marriage, who also lived with T. At T's marriage Albert was 16 years of age and was still attending school. Albert completed high school a year after the marriage and then moved to Sydney to take an apprenticeship, which T found for him. During the apprenticeship, T sent money to Albert to supplement his income. Albert came home most weekends during his apprenticeship, and after he commenced work he lived at home for about a year. Albert was never required to contribute to the household expenses. For many years T and Albert had a good relationship. They went to football together on weekends and Albert's friends were always welcome at home. Albert did gardening and maintenance work around the house over the years, and when he lived at home with T and his mother he also did some household chores.

Albert married but the marriage failed. He is now 50 years of age and in poor health. He has a modest income, most of which is expended on living expenses and the mortgage on his house, which he owns with a friend as he could not afford to buy a house alone. He has a dependent child who hopes to go to university.

Six years before T's death Albert became estranged from T because of T's failure to contribute to his mother's expenses whilst she was living in a nursing home.

T subsequently left his estate (valued at $450,000) to a niece and nephew. The nephew regularly visited T on weekends until he finished university, after which he saw less of T. T's niece did not have any particular contact with T. They are both university graduates in receipt of a substantial income and own their homes, which have small mortgages on them.

Albert wishes to bring a family provision application in T's estate. Advise T's niece and nephew, who are also the executors of the estate.

(20 Marks)

(Question 7 follows)

Question 7

T’s will, dated 1 March 2000, provides as follows:

“I give my house to my wife, my shares in ABC Co Ltd to my daughter, and my coin collection to my grandson. I give the sum of $20,000 to my granddaughter to be paid initially from the money in my ANZ bank account and I give $100,000 to the University of Sydney. I direct that all of my debts be paid from the residue of my estate.”

T died on 1 August 2008. T was survived by all of the persons mentioned in the will.

At the date of the will T had 5,000 shares in ABC Co Ltd but before T’s death there was a takeover of the company by XYZ Co Ltd, which gave 1 of its shares for every 2 shares held in ABC Co Ltd.

T, at the date of the will, had only a modest coin collection. However, he later decided to purchase coins as an investment so that the value of the collection increased fourfold by the date of his death.

At his death, T left the following assets and liabilities:

House	$800,000
Furniture	$20,000
Personal effects	$20,000
Coin collection	$100,000
Westpac bank account	$50,000
ANZ bank account	$10,000
2500 XYZ Co Ltd shares	$25,000
5000 CBA shares	$150,000
Mortgage on the house	$300,000
Outstanding council rates on the house	$20,000
Charge on the CBA shares to finance the purchase of coins	$25,000
Other debts	$30,000
Funeral and testamentary expenses	$40,000

Explain how the estate should be administered, who should obtain the grant and what type of grant should be made.

(20 Marks)

END OF PAPER