

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

SUCCESSION

TIME: Three Hours.

This paper consists of **seven** questions

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

No question is compulsory.

If a candidate answers more than the specified number of questions, the first **five** questions only 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 Material:

This is a closed book exam. No materials are permitted in the examination room.

Attached to this paper is a copy of the Law Extension Committee's Case List, copies of additional statutory extracts (including the Succession Act 2006) and relevant sections 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 August 2008. T separated from her husband, Sam, in 1990 and since then had lived with Paul, with whom she had a child, Alice, in 1995. In 1996 T and Paul adopted a child, Benjamin. T had two children, Catherine and Daniel, from her marriage with Sam. Catherine and Daniel each have two children. All of the named persons have survived T. After T's separation, Sam went overseas where he lives in rented accommodation.

T left the following assets and liabilities:

Home (which was occupied by T, Paul, Alice and Benjamin)	\$500,000
Holiday home (held as joint tenant with Paul)	\$300,000
Investment apartment on the Gold Coast	\$200,000
Furniture in home shared with Paul	\$50,000
Shares in public companies	\$40,000
Money in the bank	\$60,000
Mortgage on the home shared with Paul	\$250,000
Outstanding charge on television and sound system	\$5,000
Unsecured debts	\$30,000
Funeral and testamentary expenses	\$20,000

Paul and Sam each claims to be entitled as the spouse of T and each has notified the administrator that he is entitled to the home at its market value of \$500,000. Sam also claims that Alice and Benjamin are not entitled to any distribution as children of T.

Advise the legal personal representative in relation to these claims, and explain how the estate should be distributed, who should obtain the grant and what type of grant should be made.

(20 marks)

Question 2.

- (a) On 1 February 2000 T made a will leaving his furniture and household effects to his friend Mary, his car to his friend Barry and the residue of his estate, including his apartment, to his brother. The will appointed Mary, Barry and T's brother as executors. Mary and Barry first met T and his brother at university and rented rooms in T's apartment.

On 14 June 2008 T married Mary.

T, who died in August 2008, was survived by the persons mentioned in the will and by his parents.

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

(Question 2 continues)

(Question 2 continued)

- (b) On 1 April 2000, T made her will in the following circumstances. T signed her will in the presence of her mother. Later, when A and X arrived, T asked them to sign her will. A signed the will but before X could do so T was called away to answer the telephone. When T returned to the room, X had left without signing the will. However, the next day T went to X's home to have X sign the will.

The will left T's estate to her siblings, A, B, and C equally and appointed A her executor. Further, the will provided that A, who is a lawyer, may charge all usual professional fees for the legal work that A performs in administering the estate.

X is the husband of C.

On 10 February 2003, T made a codicil to her will giving a legacy of \$10,000 to her mother. The codicil was signed by T, and witnessed by A and X.

T died on 10 July 2008.

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

(20 marks)

Question 3.

- (a) T's will makes a gift of 100 CBA shares to A. The shares were at all times valued at \$40 each and at all times paid a dividend of \$3 each per year. The executor distributed the gift to the beneficiary exactly two years after the testator's death.

Explain how much A should have received.

- (b) T's will provides, "I give my New Zealand property to A and appoint X my executor." X, who is resident in New Zealand, obtained a grant of probate of the will in New Zealand and now wishes to have the grant resealed in NSW.

Explain whether the reseat may be made in NSW.

- (c) T, who is overseas on vacation, writes to her mother asking her to destroy T's will. T's mother crumpled the will and threw it into a wastepaper basket.

Explain whether or not the will has been revoked.

(Question 3 continues)

(Question 3 continued)

- (d) T's wife died in an aircraft accident. T then formed the view that all pilots were murderers. T and his only son were on good terms until his son decided to become a pilot, after which he never spoke to him again. At T's death, his will was found to read, "I leave all my estate to the Anti-Aviation Society."

T's son wishes to challenge the validity of the will. Advise him.

(20 marks)

Question 4.

- (a) T's will, dated 1 April 2008, provides, inter alia, "I give the residue of my estate to the issue of my friend, X."

T died on 10 August 2008. At T's death X has two children (A and B), three grandchildren (one being a child of A and two being the children of C, a deceased child of X), and two great grandchildren (who are children of a deceased child of C).

Explain how the residue should be distributed among the issue.

- (b) The sole dispositive provision in T's will, dated 1 May 2008, provides, "I give my real estate to my friends A, B, and C."

T is survived by A, B, C, and his parents. C died one week after T.

T's assets at the date of his death comprise a house, shares in public companies, money in the bank, and personal effects.

Explain who is entitled to T's estate.

(20 marks)

(Question 5 follows)

Question 5.

- (a) T's will in part provides that her executor, a lawyer, is entitled to make her "usual professional charges for work done in relation to the administration of my estate." The executor wishes to render a bill for all of her work in relation to the estate, including the conduct of the testator's butchery business pending its sale as a going concern, and also to apply for commission for her pains and trouble in administering the estate.

Advise the executor.

- (b) T's executor, X, published a valid notice of intention to distribute T's estate. X, after the expiration of the time in the notice, distributed the estate. Six months later, X received claims from C, who alleges that the deceased was indebted to him in the sum of \$50,000, and E, who claims that she is an ex-nuptial child of T and entitled to a share of the residue of the estate, which was given by the will to T's children. Both C and E have now brought proceedings against X for the amounts they claim as creditor and beneficiary, respectively, of the estate.

Advise X.

(20 marks)

Question 6.

- (a) **Explain whether or not a foster child is an eligible applicant for family provision in her foster parent's estate.**
- (b) **Explain, with reference to the authorities, the jurisdictional requirements which an applicant for family provision must satisfy before the court may consider the merits of the application.**
- (c) **Does a covenant in a property agreement entered into by the parties to a termination of marriage and approved by the Family Court preclude either former spouse making an application for family provision in the estate of the other?**
- (d) In 2003 T, for no consideration, placed the title of his home in the names of himself and his granddaughter as joint tenants. When T died in August 2008, his interest in the home was his only substantial asset.

May an order for family provision be made out of the house?

(20 marks)

(Question 7 follows)

Question 7.

T's will, dated 1 June 2000, provides as follows:

"I give my house to my wife, my yacht to my son, my jewellery to my daughter, my vintage Ford motor vehicle to my brother, and the money in my term deposit held at the Commonwealth Bank to such of my grandchildren as attain the age of 18 years. I give \$50,000 to the University of Sydney and 1000 BHP shares to my godchild, A. I give the residue of my estate to my sister, Maria. I direct that all of my debts be paid from my ANZ bank account."

T died on 1 August 2007. T was survived by all of the persons mentioned in the will (except for his daughter, who died in 2005, and his sister Maria, who died in June 2008) and three grandchildren, B and C (who are the children of his deceased daughter and are aged 10 and 14 years respectively) and D (who is the child of his son and is aged 6 years). T's son also has twins, who were born one year after T's death.

T left the following assets and liabilities:

House	\$800,000
Jewellery	\$50,000
Vintage Fiat motor vehicle	\$50,000
Term deposit held at the Commonwealth Bank	\$100,000
ANZ bank account	\$50,000
1500 BHP shares (each valued at \$40)	\$60,000
Tabcorp shares	\$40,000
Furniture	\$20,000
Mortgage on the house	\$100,000
Unsecured debts	\$100,000
Funeral and testamentary expenses	\$50,000

Explain how the estate should be administered.

(20 marks)

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