

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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 and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may 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 Governor-General received the following letter:

Dear Madam,

We the undersigned call on you to exercise the following powers vested in you by the Constitution in the interests of the Australian people:

- *Your power under s68 of the Commonwealth Constitution, as Commander in Chief of the naval and military forces, to urgently order the army to fight bush fires and other environmental degradation threatening our land;*
- *Your power under s5 of the Commonwealth Constitution to dismiss the House of Representatives so that a new election may be called immediately.*

Yours faithfully,

(200,000 signatures follow)

Assume the Governor-General wishes to accede to these requests. Advise the Governor-General. Support your advice by reference to other sections of the Commonwealth Constitution and by identifying important doctrines and conventions which shape our understanding of the Constitution.

Would your advice be different if the letter, without specific Constitutional references, called on the Prime Minister to act in the same manner? Identify the nature of the power which the electors are calling on both the Governor-General and the Prime Minister to exercise.

Could the Governor-General refuse a request from the Prime Minister to dissolve the House of Representatives and call a new election? Why?

Question 2

In *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1 Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ said (at p11):

“the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which powers are reposed.”

Name the key theme of this course which they are discussing, and trace briefly its historical development. How is it reflected in the Commonwealth Constitution? Is it understood differently in the NSW Constitution? Support your answer by reference to any important historical milestones, and relevant cases.

(Question 3 follows)

Question 3

The following question has four parts. All parts are of equal value, and each part must be answered.

- (a) How does *Alexander's case (Waterside Workers Federation v J W Alexander Ltd (1918) 25 CLR 434)* help us to distinguish between the exercise of judicial and non-judicial powers? What sort of power did the court decide was exercised by the Arbitration Court?
- (b) What do we know about the concept of judicial power from the *Boilermakers' case (R v. Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254)*? What section of the Commonwealth Constitution is it referring to?
- (c) What powers are exercised by Commonwealth courts and tribunals? What indicia help you decide if you are appearing before a Commonwealth court or a tribunal?
- (d) S72 of the Commonwealth Constitution closely mirrors provisions found in the 1701 Act of Settlement. What important constitutional theme do these provisions refer to, and why is it important?

Question 4

The Kalamazoo Express reported about the trial of a group of con-men who had successfully stolen the life savings of a group of elderly retirees – leaving them desperate and destitute. The nature of the offence, and the callous targeting of the elderly, had caused outrage throughout Kalamazoo.

The article provided in part as follows:

A Kalamazoo court witnessed high drama today even before the proceedings began against the alleged con-men. When a lawyer showed up to defend the accused, all the other lawyers present in the courtroom vehemently objected. The Kalamazoo Law Society had decided that these crimes were so serious and callous, that none of their members should represent the accused.

This is the first time that a lawyer has come forward to defend the five accused.

Consider the attitude of the Kalamazoo lawyers who oppose the con-men receiving legal representation. Discuss their attitude with respect to:

- Ideas of rule of law;
- Professional values of the legal profession in Australia, with reference to the professional conduct rules of the Bar Association and Law Society;
- The concept of bravery enunciated in the Bar Rules.

(Question 5 follows)

Question 5

The Commonwealth Government, concerned that Australia has never fielded a European handball team in Olympic competition, decides to nurture the development of this sport. A discussion paper presents the following options for consideration:

- (a) The Commonwealth Government establish a European handball academy to be located in either:
 - (i) Darwin or
 - (ii) Adelaide; or
- (b) The Commonwealth Government provide money to each of the State governments for the purpose of establishing State based European handball academies; or
- (c) The Commonwealth Government pursue opportunities for international co-operation by entering into an International Treaty for the promotion of European Handball; or
- (d) The Minister for Sport makes funds available directly to primary schools to fund European handball teams in schools.

The Commonwealth Government seeks your advice about these options. In your advice, consider any legal impediments to each proposed course of action, and assume that none of the State governments consider this a priority and that they do not wish to co-operate. Support your advice by reference to relevant legislation and case law.

(Question 6 follows)

Question 6

This question has two parts. Both parts carry equal marks, and both parts must be answered.

(a) What is meant by the term “extrinsic materials” in Statutory Interpretation? Discuss how extrinsic materials may be used in statutory interpretation, and identify where you would look to find the law governing its use. Briefly outline any relevant legal tests.

(b) When they married, Jennifer and John decided that they would share everything equally, so when Jennifer incorporated the hair dressing business she ran from home, she made John, a nuclear physicist, one of the two directors. Jennifer was the other director. It was understood that Jennifer would conduct the business, and John would play no role at all in the administration of either the company or the business.

The company ran into financial difficulties, became insolvent and was in the process of liquidation. The *Companies in Financial Trouble Act NSW 2000* provided at s12 that unpaid debtors could claim directly against company directors for the satisfaction of their debts. s13 provided:

“A director will incur no liability under s12 if because of illness, lack of education or other good reason the director did not take part in the administration of the company.”

Assuming that the Act was in force at all relevant times and that Jennifer and John were subject to its jurisdiction, advise John whether or not he will be able to take advantage of s13. Support your answer by reference to the relevant rules of statutory interpretation.

END OF PAPER