

**LEGAL PROFESSION ADMISSION BOARD**

**SEPTEMBER 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 following question has two parts. All parts are of equal value, and each part must be answered.

(a) In *Maroons v Blues* Referee J made the following comments:

*It is clear from the evidence that the ball was in the plaintiff's yard. The next question I must address is how did the ball get there – and in particular was the ball kicked there? This question arises because I must determine the meaning of kicked within the relevant legislation. 'Kicked' must include any movement of the ball initiated by contact between the ball and the foot. Although not necessary to decide on these facts, hit would, in my opinion, have a similar meaning to kick except that the hand would be engaged rather than the foot.*

*Therefore, as the defendant's foot made contact with the ball and it ended up in the plaintiff's yard, the ball was kicked into the yard in breach of the legislation.*

With respect to the above extract, identify the following:

- i. The ratio
- ii. Any obiter
- iii. Any finding of fact (answer to an issue of fact)
- iv. The decision

(b) New Parliament House in Canberra is home to one of the few extant copies of Magna Carta. What is Magna Carta? Why is it considered so important to the development of Australia's legal institutions, especially our parliamentary institutions?

## Question 2

*'At Federation, the six separate, self-governing colonies agreed to federate to create the Commonwealth of Australia. Although a new country, a new Australia, was being created, there was no intention that the colonies – which were to become the States – would disappear. Rather it was intended that a balance would be created between the existing States and the new Commonwealth of Australia in which the States would have the upper hand. However the reality of Federation has been different'*

**Discuss.**

In your discussion, consider the nature of the balance created at Federation between the States and the Commonwealth, and how this is reflected in the Commonwealth Constitution. Has this balance changed since Federation, and if so, what has been the agent of any change. Ensure your answer is supported by reference to relevant case law.

(Question 3 follows)

### Question 3

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

(a) The *Mutual Recognition (New South Wales) Act 1992* (NSW) provides at s4:

*(1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed under subsection (4) as the day on which the reference under this Act terminates, but not longer, namely, the matters to which the Schedule relates but only to the extent of: (a) the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule, and (b) the amendment of that Act (other than the Schedules), but only in terms which are approved by the designated person for each of the then participating jurisdictions.*

*(2) For the purposes of this section, a "participating jurisdiction" is: (a) a State for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the matters mentioned in subsection (1), or that adopts the Commonwealth Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, or (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact the Commonwealth Act or that enables the Commonwealth Act to apply in relation to it.*

**What does s51(xxxvii) of the Commonwealth Constitution provide? What is the legal effect of s4 above? Why are sections like this necessary? What are the differences between using s51(xxxvii) of the Constitution and an application scheme such as the Australian Consumer Law?**

(b) Lord Edmund in *Attorney-General v British Broadcasting Corporation* [1981] AC 303 at 351 said:

*'At the end of the day it has unfortunately to be said that there emerges no sure guide, no unmistakable hall mark by which a 'court' may unerringly be identified. It is largely a matter of impression.'*

**In the context of Commonwealth, or Chapter III, courts, what matters would you look to in order to identify a court? Support your answer by reference to relevant legal authority.**

(Question 4 follows)

#### Question 4

In 1985 the United Kingdom Parliament passed a law which provided in part as follows.

*All citizens of every State in Australia shall celebrate St George's Day as a public holiday on 23<sup>rd</sup> April each year.*

The NSW government do not wish to declare a public holiday on St George's Day as they are concerned that it will interfere with the celebration of Anzac Day.

**The Attorney – General seeks your advice.**

**Would your advice be different if:**

- (a) The legislation was passed in 1990?
- (b) The legislation was directed towards the Commonwealth, rather than New South Wales?

#### Question 5

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

- (a) According to Sir Gerard Brennan:

*'The principle of judicial independence is not proclaimed in order to benefit the Judges; it is proclaimed in order to guarantee a fair and impartial hearing and an unswerving obedience to the rule of law. That is the way in which our peoples secure their freedom under the law.'*

**Discuss, with particular reference to the historical development of the principle of judicial independence.**

- (b) The *Prevention of Rubbish Act 2010* (NSW) provided in part as follows:

3. Definitions

'rubbish' means bottle, tin, carton, package or other rubbish.

9. Rubbish in a public place

Any person who deposits any litter in a public place shall be guilty of an offence.

Michael was walking home through a public park in NSW, munching an apple. He couldn't see a bin, so deposited his apple core in a garden bed.

**In the absence of any information about the purpose of the legislation and using only any relevant rules of statutory interpretation, could Michael be convicted of a breach of s9?**

**(Question 6 follows)**

**Question 6**

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

- (a) *If you disagree with a decision of a Commonwealth Minister, a Government Department or agency, or an employee of a Department which affects you, you may be able to have it reviewed*

**Discuss the role of the Administrative Appeals Tribunal. What is the relationship between the AAT, the courts and the common law?**

- (b) **In *Ruddock v Vadarlis* the court considered the sources and nature of the executive power. Briefly outline the facts of this case, and explain how it helps us understand the nature of the executive power.**

**END OF PAPER**