

# LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

## EQUITY

**Time: Three Hours** This paper consists of five questions.

Candidates are required to attempt any four 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 four 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 and could, in some circumstances, result in the candidate receiving a fail grade.

Substantial credit will be given to concise well-reasoned answers based upon principles which are clearly stated. Further credit will be given where principles are properly supported by reference to decided authorities.

**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.*

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**Question 1**

Andrew is a wealthy professional footballer. Included in his property interests is a painting of a famous footballer in a beneficial interest under a bare trust for which Bruce is the trustee. The trust property consists of a painting by the well-known artist Rhett Blackley, which is valued at \$100,000.

On 4 July 2008 Andrew executed a will. Clause 3 of his will stipulated:

I leave my house at 21 Johns Parade, Pymble to Frank on trust.

The executor and residuary beneficiary under the will was Andrew's brother, George. One of the witnesses to the will was Edward, a friend of Andrew's and a fellow professional footballer who had recently suffered an injury that ended his playing career.

On 20 December 2013 Andrew received a Christmas card from his good friend Colin. The card included the following sentences:

You will recall that Donald owes me \$10,000. You have been a great mate all these years. As my Christmas present to you this year, Donald now owes you the \$10,000.

Colin's signature appeared at the bottom of the card, which was dated 18 December 2013.

On 3 January 2014 Andrew met with Frank. He told Frank that he had made a will, but did not tell him the details of any of its provisions. However, he did say to Frank that he had written a letter to Frank that set out what he wanted Frank to do when he (Andrew) died. Frank agreed to carry out Andrew's wishes. Andrew then gave Frank a key to his safe in which the letter was stored and Frank agreed that he would only access the safe to retrieve the letter after Andrew died.

On 4 January 2014 Andrew telephoned Bruce and said to him the following:

I want Frank to be the absolute owner of the Rhett Blackley painting. Please do what has to be done to make that happen.

On 13 January 2014 Andrew was killed in a car accident. At the date of Andrew's death, Bruce had not done anything in relation to the instructions given to him by Andrew on 4 January 2014.

On 14 January 2014 Frank retrieved the letter from Andrew's safe. In the letter Andrew mentioned the terms of Clause 3 of his will and instructed Frank to hold the Pymble property on trust for Edward.

**George, in his capacity as executor of Andrew's deceased estate, seeks your advice as to who is entitled to the following:**

- (i) The Pymble house; (10 marks)**
- (ii) The Rhett Blackley painting; (5 marks)**
- (iii) The money owed by Donald. (5 marks)**

**(20 marks)**

**(Question 2 follows)**

## Question 2

Clarrie, an elderly farmer who owned 'Flat Tops', a large rural property in the south highlands of New South Wales, died last week. At the time of his death, Clarrie's closest relative was Banjo, his 21 year old grandson who had lived his entire life in the house built on Flat Tops.

Two years ago, having successfully completed his Higher School Certificate, Banjo received an offer to study law at Macquarie University in Sydney. At the time he received the offer Banjo was spending a few days with friends in Byron Bay. In an email that he had sent to Clarrie, Banjo expressed his excitement at receiving Macquarie University's offer and the many career options that a law degree would provide him. He also told Clarrie that he had already accepted the offer.

Although he was very proud of his grandson's achievement, Clarrie was very concerned that, given his age at that time, he would be left alone at Flat Tops. In response to Banjo's email Clarrie sent an email to Banjo, which included the following message:

Although I am mighty proud of your achievement, you are the only family that I have and I would be very lonely if you moved to Sydney. So, if you were not to proceed with the study of law at Macquarie and stay on with me at Flat Tops, I will, with your assistance, build an extension to the house at Flat Tops to give you separate living quarters and will leave Flat Tops to you in my will so that it is all yours when I die.

Banjo, who was very fond of his grandfather, abandoned his plans to study law. He stayed with Clarrie and helped build the extension to the house at Flat Tops.

A year ago, Banjo met and fell in love with Jennie who lived in Jindabyne. Clarrie was not happy with this relationship because he and Jennie's grandfather had been bitter enemies ever since a falling out between the two men over a girl they both fancied when they were young men.

A month ago Banjo told Clarrie that he intended to marry Jennie and that she would live with him in his quarters in the Flat Tops house. Clarrie was very upset with this news.

A few days before his death Clarrie executed a new will in which he stipulated that his entire estate was to be sold and the proceeds given to the public hospital in Jindabyne. Clarrie's solicitor, Prescott, was named as the executor of Clarrie's will.

**Assuming that the gift in Clarrie's will to the local hospital is a gift for a valid charitable purpose, Banjo seeks your advice as to whether:**

- (i) The above facts give him any rights based upon equitable principles or doctrines and,**
- (ii) If so, what orders a court would likely make in his favour.**

**(20 marks)**

**(Question 3 follows)**

### Question 3

In 2003 Estelle and her husband Frank purchased a house in Lithgow. The house was purchased in their names as tenants-in-common and served as their home. At the time of purchasing the house they agreed that they had to execute new wills that would have the effect of leaving the Lithgow house to their son George after the two of them died. Estelle and Frank then sent written instructions in relation to the new wills they wanted to execute to Larry, their solicitor, which included the following message:

No matter what may happen in the future George must inherit the Lithgow house after we both have died.

Larry prepared wills in accordance with these instructions. The wills were signed and appropriately witnessed a few days later. Clause 3 of Estelle's will stipulated that she left her interest in the Lithgow house to George. Clause 3 of Frank's will stipulated that he left his interest in the Lithgow house to George.

In 2011 Estelle died and, in due course, her interest in the Lithgow house was transferred to George.

In December 2013 Frank and George had a major falling out after George converted to the Orthodox Christian faith and joined the Latvian Orthodox Church. Angered and disappointed by George's decision, Frank sent written instructions to Larry for a new will to be prepared.

In early January 2014, Frank attended Larry's office to execute his new will. Clause 2 of this will revoked any earlier will that he had made. Clause 4 of the will stipulated as follows:

I give \$200,000 to the Festivus Lending Trust.

In relation to this provision, Frank told Larry the following: (a) that the Festivus Lending Trust was engaged in mortgage lending on low interest terms; (b) that the lending scheme was based upon Biblical principles; (c) that borrowers received significant Biblical literature on Christian perspectives in relation to financial dealings; and (d) that the lending scheme's profits were used to increase the lending capital available to the Trust.

Clause 5 of the will stipulated as follows:

I give \$200,000 to the Animal Welfare League to be used for the preservation of the habitat of the colony of badgers that is threatened by work on the widening of the highway between Bathurst and Lithgow.

By Clause 6 of the will Frank left the residue of his estate, which included his interest in the Lithgow house, to Jerry, who was also appointed as executor of the will.

Two weeks ago Frank was killed in an automobile accident while travelling to Bathurst to visit a friend.

**(Question 3 continues)**

**(Question 3 continued)**

**Jerry, as the executor of Frank's will, seeks your advise as to the following matters**

- i. Who is entitled to Frank's interest in the Lithgow house?  
(10 marks)**
- ii. Is the Festivus Lending Trust entitled to the money given to it by the terms of Clause 4 of Frank's will?  
(5 marks)**
- iii. Is the Animal Welfare League entitled to the money given to it by the terms of Clause 5 of Frank's will?  
(5 marks)**

**(20 marks)**

**Question 4**

**Answer both Parts A and Part B.**

**Part A**

**(10 marks)**

Pursuant to a voluntary deed, Angela covenanted with Beryl that, if paintings owned by Angela were subsequently sold, the proceeds of sale would be transferred to Beryl to hold on trust for Charlene. The paintings were subsequently sold but Angela refused to comply with the terms of the said covenant. Beryl refuses to take any action against Angela to enforce the covenant.

**Charlene seeks your advice as to the basis of any rights to enforce the covenant that she may have.**

**Part B**

**(10 marks)**

Several years ago High Country Council in the southern highlands of New South Wales developed a particular form of street-marketing equipment. This equipment was in the form of a single street-pole to which things such as street lighting, traffic lights, street signs and electronic message boards could be attached, depending upon what was required at any given place. The principal benefit of the single pole was that it eliminated the need for multiple poles to be erected in the one place. The council entered into a comprehensive written contract with Flashy Projects Ltd (FPL) to grant the latter a licence to sell the poles within Australia, New Zealand and Papua-New Guinea. FPL, without the council's knowledge or consent, subsequently sold the technology to various other foreign governments, thereby generating significant profits for itself.

**High Country Council seeks your advice as whether it has any claim against FPL for breach of any equitable principle or doctrine.**

**(20 marks)**

**Question 5**

**Answer both Parts A and Part B.**

**Part A**

**(15 marks)**

Adolf, Bennito and Caesar enter into a contract in the form of a deed which stipulates that Bennito will paint Adolf's house and that in return Adolf will pay Caesar \$10,000.

**In relation to this contract, what advice would you give in each of the following circumstances:**

- (a) Will Adolf be able to obtain an order for specific performance against Bennito if Bennito breaches his obligation to paint Adolf's house? (5 marks)**
- (b) Will Bennito, having painted Adolf's house, be able to obtain an order for specific performance against Adolf if Adolf refuses to pay Caesar? (5 marks)**
- (c) Will Caesar be able to obtain an order for specific performance against Adolf if, after Bennito has painted Adolf's house, Adolf refuses to pay Caesar? (5 marks)**

**Part B**

**(5 marks)**

**To what extent can a trust instrument exclude or excuse a trustee from liability for a breach of trust?**

**(20 marks)**

**END OF PAPER**