

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

ADMINISTRATIVE LAW

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

Candidates are required to attempt **Part A, and ONE question only from Part B.**

Part A is worth 60 marks, and all questions in Part B are of equal value (20 marks each).

If a candidate answers more than the specified number of questions in Part B, only the **first** question 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.

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.

PART A

Question 1

Answer ALL parts of this Question.

NOTE: For the purposes of this question, you are asked to assume that employment law is a subset of administrative law and that the rules of procedural fairness apply to the situation of a job applicant as if to a licence applicant/licensee. Assume that these principles can be applied to this hypothetical question. (Please do NOT make this assumption for any other purpose than responding to this hypothetical scenario).

Mr Michael Stanley “Quixote” McMurphy is a serial student who wants to make the switch to running a university. He believes he has had enough experience as a consumer of education to make a successful leap to administrator and faculty member.

A position, “grounds and works officer”, in the university maintenance department is advertised, Michael sees his chance to climb the first rung of the ladder of his academic career. He is interviewed for the job but is not successful – in feedback he is told he is overqualified and does not have the appropriate skills of a groundsman.

Later Michael hears on the grapevine that the vice-chancellor’s nephew, Mr Smug, has been appointed Groundsman, Second in charge, Grounds and Works, and that this newly created position has been created by abolishing two of the lower level positions. In effect the job that Michael applied for no longer exists in the University’s organisation chart.

Michael seeks your advice on available legal avenues to pursue his quest for employment as maintenance and grounds worker in the University. Please respond to his specific questions, below:

(a) Assume that the decision to abolish the “grounds and works” officer position that Michael applied for, is valid. Starting from this assumption, advise Michael how he can challenge the appointment of Mr Smug to the newly created position.

(b) Assuming that the “grounds and works” officer position still exists, advise Michael whether he has been treated fairly, and if not, what his rights and avenues of review are in relation to any decisions that have been made.

(60 marks)

(Part B follows)

PART B

Attempt ONE (1) question only in this part.

Question 2

Explain the purpose, and reason for delegated legislation. Discuss principles of validly making delegated instruments, and the challenges which may be brought if these laws exceed their mandate. Refer specifically to the following:

(a) Which arm of government propogates delegated legislation? Which of the three constitutional powers is relied on?

(5 marks)

(b) Specific examples, that you are aware of from your text book and case law, of valid delegated legislation and invalid delegated legislation. What distinguishes valid from invalid delegated legislation?

(15 marks)

Question 3

Explain the process for making a claim for documents or information from government agencies under the new FOI regime. In your answer, please refer specifically to Cabinet documents, and the objects and purpose of the FOI Act, as these have been amended by the *Australian Information Commissioner Act 2010* and the *Freedom of Information Amendment (Reform) Act 2010*.

(20 marks)

END OF PAPER