

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

CONFLICT OF LAWS

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

All questions are of equal value.

Candidates are required to attempt all **four** questions.

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

You are a New South Wales legal practitioner who is consulted by the plaintiff in relation to a case the facts of which are indistinguishable from the facts of *Oceanic Sun Line Special Shipping Co v. Fay* (1988) 165 CLR 197 other than that your client (the plaintiff) suffered personal injury in an accident on a cruise ship while the ship was on the high seas (rather than in the territorial sea of a coastal state).

Outline the conflict of laws issues which this case might present.

Question 2

In *John Pfeiffer Pty Ltd v. Rogerson* (2000) 203 CLR 503, Kirby J (at [113]) referred to the rule in *Phillips v. Eyre* (1870) LR 6 QB 1 as “the ghost” that “continues to walk”.

With reference to specific examples from the decided cases, explain the difference between the rule in *Phillips v. Eyre* and modern Australian law in relation to choice of law in tort.

Question 3

In June 2012, the government of Bolivia expropriated the Colquiri tin and zinc mine in eastern Bolivia owned and operated by Glencore, a Swiss corporation.

Suppose a quantity of tin and zinc extracted from the Colquiri mine is exported to New South Wales by Comibol, the Bolivian state-owned corporation which, on the instructions of the government of Bolivia, took control of the mine after its expropriation.

With particular reference to governmental seizure of property (expropriation), comment on the principles of conflict of laws relevant to a claim by Glencore in the Supreme Court of New South Wales against Comibol in which Glencore seeks to establish that it continues to be the owner of the exported tin and zinc.

Question 4

Answer part (a) and part (b). The parts are worth equal marks.

- (a) **Discuss the exclusionary doctrines in respect of foreign revenue laws and foreign penal laws.**
- (b) In *Armar Shipping Co v. Caisse Algérienne d'Assurance et de Réassurance* [1981] 1 All ER 498, Megaw LJ observed (at p 504): [T]here must be a proper law of any contract, a governing law, at the time of the making of that contract.”

Describe the process for the identification of the proper law of a contract.

END OF PAPER