

**LEGAL PROFESSION ADMISSION BOARD**

**MARCH 2013**

**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

In *Insight Vacations Pty Ltd v. Young* (2011) 276 ALR 497, the High Court of Australia was concerned with a claim to recover damages brought in the Supreme Court of New South Wales by a resident of New South Wales, Mrs Stephanie Young, who had suffered personal injury in an accident in Slovakia (a member state of the European Union) caused by the negligence of the defendant, a New South Wales based tour operator.

**Explain the conflict of laws issues which a case of this kind might present to a New South Wales legal practitioner representing the plaintiff. What would your answer be if the rule in *Phillips v. Eyre* (1870) LR 6 QB 1 remained part of modern Australian law?**

### Question 2

“[I]n most cases of torts occurring on board ships, at least if related to matters internal to the ship, the law of the flag would appear to be the most appropriate governing law, whatever the nationality, domicile or residence of the parties. Similar considerations might suggest that the law of the country in which an aircraft is registered should govern liability for torts committed thereon.” (CGJ Morse, *Torts in Private International Law*, 1978, p 291)

**With particular reference to the decided cases, discuss whether Professor Morse’s statement reflects the current state of conflict of laws with regard to maritime and aerial torts. In your answer, comment on the test which is used for determining the place of a tort for conflict of laws purposes.**

### Question 3

In *Garsec Pty Ltd v. His Majesty Sultan of Brunei* [2008] NSWCA 211, Campbell JA observed (at [109]):

It is well recognised that it is impossible to draw a bright line, good for all purposes, between matters of substance and matters of procedure.

**Explain this observation, with reference to limitation of actions and damages.**

### Question 4

**With particular examples from the decided cases, explain how considerations of Australian public policy may lead to the exclusion or rejection of foreign law. In your answer, also comment on the status of foreign revenue laws, foreign penal laws and foreign governmental interests in Australian conflict of laws.**

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