

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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 November 2010, an aerial incident occurred over Indonesia in which an engine on an Airbus A380 passenger aircraft operated by Qantas Airways Ltd on a flight from England to New South Wales exploded thereby creating a life-threatening situation which was averted when the aircraft safely made an emergency landing in Singapore.

In June 2013, proceedings were commenced in the Supreme Court of New South Wales by a member of the crew of the aircraft against Rolls-Royce plc, the English manufacturer of the aircraft engine in question. In these proceedings, the plaintiff, a New South Wales resident, seeks to recover damages in tort for psychiatric injury suffered by her in this incident which the plaintiff contends was caused by the negligence of Rolls-Royce plc in the manufacture and inspection of the aircraft engine.

With particular reference to choice of law, substance and procedure and proof of foreign law, explain the conflict of laws issues which might arise in these proceedings. What would your answer be if the common law of Australia continued to include the rule in *Phillips v. Eyre* (1870) LR 6 QB 1?

Question 2

In *Joye v. Sheahan* (1996) 62 FCR 417, the Federal Court of Australia (Sheppard, Spender and Hill JJ) made the following observation (at p 421):

It would be a curious result if the mere transient presence of a traveller at the international transit lounge of an Australian airport or in Australian air space, at the time of the issue of the writ, but where that person had no knowledge of the proceedings, let alone any intention to evade service, would entitle an order for substituted service later to be made on that person.

Comment on this observation and explain the conflict of laws principles which govern the personal jurisdiction of the Supreme Court of New South Wales in proceedings involving breach of contract or tort where such jurisdiction is based on the defendant's presence. In your answer also comment on voluntary submission as a basis of the personal jurisdiction of the Supreme Court of New South Wales and the circumstances in which the Supreme Court of New South Wales will have personal jurisdiction in proceedings involving breach of contract or tort where the defendant is a resident of a country outside Australia.

(Question 3 follows)

Question 3

Karen, a resident of New South Wales, purchased, with a view to speculative resale, a large number of tickets for the Pan African Games ("the Games") to be held in Nigeria.

Fred, aged 19, a resident of New York, U.S.A. was interested in speculating in tickets for the Games. He wrote to Karen offering to purchase 500 tickets. Karen accepted this offer in a letter sent from New South Wales and received by Fred in New York. A term of the contract provided for payment by Fred to Karen's agent in Nigeria and for collection of the tickets by Fred in that country.

Several months before the Games, a number of states announced that, for political reasons, they would not be attending. This had a disastrous effect on ticket sales. On hearing this news, Fred telephoned Karen from New York and repudiated the contract. In an attempt to mitigate her loss, Karen immediately resold the 500 tickets reserved for Fred but at a price substantially less than the price Fred had agreed to pay.

The law of New York provides that a commercial contract made by a person under the age of 21 is void for lack of capacity. The law of Nigeria provides that a contract for the speculative resale of tickets for the Games is illegal. The contract between Karen and Fred is a commercial contract as defined by the law of New York and a speculative resale contract as defined by the law of Nigeria.

With particular reference to choice of law, advise Karen of the conflict of laws principles relevant to proceedings by her in New South Wales against Fred to recover damages for breach of contract. What would your advice be if Karen contends that the contract between the parties includes an exclusive New South Wales jurisdiction clause but Fred contends that no such provision is a term of the contract?

Question 4

Explain the role of the lex situs and the foreign act of state doctrine as general rules for the recognition of foreign governmental seizure of property. In this context, comment on the scope of forum public policy as an exclusionary doctrine.

END OF PAPER