

**LEGAL PROFESSION ADMISSION BOARD EXAMINATIONS
MARCH 2014**

19 FAMILY LAW

EXAMINER'S STATEMENT

The exam comprised four compulsory questions in an open book format. All questions required students to give advice having regard to factual scenarios.

All candidates answered four questions in accordance with the instructions. A few students answered some questions in considerable detail and made only a minor attempt at the other questions and I assume that these students may not have allocated sufficient time to properly attempt all four questions. It was also clear that a few students did not read the questions properly.

Although most candidates presented their answers in a clear and legible way, the handwriting of some candidates was difficult to read at times.

Question 1

This question involved advice in relation to a potential property settlement claim following the breakdown of the parties' marriage. This question was generally well answered.

The majority of students correctly identified the statutory paragraphs relevant to property division and identified and applied the preferred four step approach to the facts, as modified by *Stanford's* case citing and applying relevant principles drawn from the authorities.

The better answers discussed the implications of the recent Full Court authority of *Bevan* in relation to notional "add backs"; treatment of the husband's interest in his father's estate; the obligation of full financial disclosure and the implications of the husband's non-disclosure;

Most students identified the parties respective contributions, however some students did not provide an assessment the likely percentage range arising from contribution based entitlement. Most student also correctly identified relevant future needs factors in relation to each party, however some students did not indicate whether an adjustment would be likely, and if so, the range.

Question 2

This question involved advice in relation to parenting arrangements for a very young child, where the other party proposed entering a parenting plan, with the assistance of a mediator, as opposed to seeking Court orders. In particular dispute, the other parent had not spend time with the child since separation and was firm in his view that he was entitled to spend “equal time” with his very young child .

The answers to this question were generally satisfactory although the range of answers was quite mixed. Most answers addressed the requirements of a parenting plan; its enforceability and how a Court considers a parenting plan. The best answers also specifically addressed the role of a lawyer, as an adviser under the Act, to inform the client that she could consider entering a parenting plan and where she could get assistance about developing a parenting plan and the content and also specifically addressed mandatory pre filing family dispute resolution; the pre-filing requirement to obtain a s 60I certificate and the exceptions. While most students correctly addressed the legislative pathway, several students did not identify the best interests of the child as being the paramount consideration, which is quite troubling.

Question 3

This question was in 2 parts.

Part A involved advice to a client in relation to a potential claim for spousal maintenance.

On the whole, this question were reasonably well answered and the majority of students correctly identified the relevant sections applicable to the spousal maintenance orders and also addressed the threshold test, although some students did not actually apply the law to the facts.

Better answers specifically addressed the relevant s75(2) factors in relation to the relevant factual matters that the Court would consider and the likely quantum. Better answers also clearly distinguished between the client’s financial needs and the child’s financial needs in determining the proper order that a Court is likely to make and discussed the relevant principles in relation to the fact that the client had funds in a term deposit.

Part Binvolved advice to a client in relation to child support and the availability of child support agreements.

Most students correctly advised the client to seek a child support assessment. However, only some students included any advice in relation to the main elements of the formula and avenues for seeking a departure, which was open on the facts.

Most students also correctly noted the availability of limited and binding agreements and advised on the requirements of each type of agreement. However, only a few students specifically advised the client whether or not she should enter into a child support agreement (and if so, whether a limited or binding agreement) as opposed to simply seeking an assessment.

Question 4

This question was in 2 parts and related to a client in a same-sex relationship seeking advice in relation to entering a financial agreement.

Overall, the answers to this question were disappointing.

Some students failed to recognise that the question related to a de facto relationship and answered the question as if it related to parties to a marriage, or even suggested that the Property relationships Act (NSW) applied, which was incorrect.

Part (a) concerned the requirements necessary to enter into a financial agreement during the relationship. The question also raised the circumstances under which such an agreement could be challenged.

The answers were quite mixed. While most students correctly identified the necessary requirements, not all students correctly identified the basis on which this agreement could be challenged.

Part (b) This question required advice to the same client, after the breakdown of their de facto relationship. The question required advice specifically about entering a financial agreement to cover all financial matters including superannuation and spousal maintenance as well as the relevant gateway requirements.

Overall, answers to this question were disappointing. Only a few students specifically addressed the ability to include a superannuation agreement as part of the financial agreement; the need for a separation declaration and the possible concern about inclusion of spousal maintenance in the financial agreement in circumstances where the other party was in receipt of a pension

and likely to continue to require an income tested pension, on the proposed terms of the financial agreement.

Similarly, only a few students specifically addressed the relevant gateway requirements applicable on the facts.