

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

FAMILY LAW

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

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

All questions are of equal value.

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 newly admitted solicitor employed in a suburban legal practice. You act for Kate who seeks your advice in relation to alteration of property interests between herself and her estranged husband, William. Kate gives you the following instructions:

- Kate and William married on 12/4/1998 and commenced cohabitation on that day.
- They have one child, George, born on 25/6/2012.
- They separated **on 25/12/2012** but continued to live under one roof until William vacated the matrimonial unit **in June 2013** and Kate and George continue to live in the unit.
- At commencement of cohabitation and until she commenced maternity leave a week before George was born, Kate was in full-time employment, working as a Practice Manager in a Dental Surgery and she had commenced this employment in early 1995.
- At the commencement of cohabitation, William (who had migrated to Australia in late 1995) worked as a casual labourer until 2003 when he commenced full-time employment as a barman in a registered Club and since 2008 he has been in a managerial position.
- At commencement of cohabitation Kate had savings of approximately \$15,000 and her superannuation entitlements.
- At the commencement of cohabitation William had a motor vehicle valued at approximately \$2000 and, unknown to Kate at the time, was the sole beneficiary of the estate of his late father, Peter.
- Until 2001, the Kate and William lived in rented accommodation.
- In 2001, Kate inherited \$50,000 from the estate of her Aunt.
- In 2001 Kate purchased the matrimonial unit, in her sole name, for \$320,000.
- Kate funded the purchase of the unit including legal expenses as follows:
 - \$80,000 from her inheritance, savings and a gift from her parents
 - \$250,000 loan secured by mortgage over the unit
- Kate received an exemption from stamp duty on the purchase.
- Kate applied the whole of her income towards the joint expenses of the parties.
- During cohabitation Kate undertook all the household chores, except that William occasionally accompanied her when she did grocery shopping.

(Question 1 continues)

(Question 1 continued)

- Kate has been and continues to be the sole caregiver for George.
- During the period late 2005 and separation, as far as Kate is aware, William received monies from Peter's estate as follows:
 - July 2005 - \$150,000 (\$130,000 utilised towards payment of the mortgage on the unit & William retained the rest);
 - July 2006 – \$40,000 (deposited into their joint account & utilised for joint expenses);
 - July 2008 - \$70,000 (utilised to discharge the mortgage on the unit);
 - July 2010 - \$80,000 (William utilised towards the purchase of a Lexus motor vehicle which he currently drives);
 - July 2012 - \$250,000 (initially deposited in a term deposit in the joint names of the parties name for 12 months and subsequently withdrawn by William, without Kate's knowledge or consent.)
- As far as Kate is aware from conversations with William, Peter was an overseas citizen and his estate consisted of large areas of real property, rich in petroleum, and the subject of various exploration and drilling licences from which he derived his income.
- Kate does not know any other details about Peter's estate or William's future entitlements.
- William has refused to answer Kate's questions about his inheritance or entitlements in Peter's estate.
- Kate and William each have superannuation entitlements.
- At separation William earned \$ 65,000 pa.
- At the time she commenced maternity leave, Kate earned \$85,000 pa.
- Kate took 6 months paid maternity leave at ½ pay and this period of paid maternity leave ended on 19 December 2012.
- At separation, William gave Kate \$30,000 which she deposited into her bank account and has utilised to meet her and George's needs.
- Since August 2013 and to date Kate's only source of income is social security benefits.
- Kate wishes to continue her parental role and intends to commence part-time employment during school hours when George his formal education.

(Question 1 continues)

(Question 1 continued)

- Kate is 38 years old and William is 32 years old.
- Kate suffers from severe back pain which has required 2 separate surgical interventions and her prognosis is guarded.
- William is in good health.
- Both Kate and William wanted to have children and George was conceived through IVF, using donor sperm (as William's sperm were non-viable) and Kate underwent 4 cycles of IVF.
- William does not pay child support nor does William spend time with George.
- Kate wants to retain the matrimonial unit "at all costs"
- Kate provides you with the following balance sheet:

Ownership		Description	Kate's value	William's value
ASSETS				
1.	Kate	Matrimonial unit	400,000	500,000
2.	Joint	Account number 123	3000	3000
3.	Kate	Account Number 456	12,000	12,000
4.	William	Account Number 789	5000	5000
5.	William	Lexus	70,000	20,000
6.	Joint	Household contents	5000	5000
7.	William	Beneficiary Peter's estate	NK	Nil
8.	William	Amount withdrawn from joint term deposit	\$250,000	Nil
9	Kate	Superannuation Fund ABC (accumulation interest)	80,000	80,000
10	William	Superannuation Fund XYZ (accumulation interest)	40,000	40,000
		Total	865,000	665,000
LIABILITIES				
		NIL		

Specifically referring to the facts and the relevant law, advise Kate about the approach that a court is likely to adopt in determining her entitlement to a property settlement and the orders that a Court is likely to make.

(20 Marks)
(Question 2 follows)

Question 2

Kate returns to see you to seek your advice in relation to ensuring that appropriate parenting arrangements for George are made.

Kate instructs you that William has recently contacted her wanting to formalise parenting arrangements in relation to George. Kate is very concerned because William has told her that under the law, he (William) is “entitled to 50/50 care of George”. Kate believes that George is far too young for “shared care” to work.

William also wants Kate to enter into a parenting plan for “50/50 shared care” because this parenting plan does not require the involvement of lawyers or the Court and can be done with the help of a mediator.

Any relevant facts from Question 1 are applicable to this question.

Specifically referring to the facts and the relevant law, advise Kate of the approach that a Court is likely to adopt in making parenting orders in relation to George. Include in your advice:

- **The relevant law in relation to parenting plans including their effect and whether or not Kate should enter into a parenting plan and,**
- **The role of mediation in parenting matters under the Act.**

(20 Marks)

Question 3

Answer BOTH PART A and PART B

Any relevant facts from Question 1 are applicable to this question.

PART A

Kate returns to see you in relation to her entitlement to receive spousal maintenance from William.

Kate instructs you that:

- She continues to use her savings (account number 456 being item 3 in the balance sheet in Question One) to meet the shortfall in the ongoing expenses of George and herself.
- She has recently spent \$3000 from her savings to undertake the urgent repairs to various items in the matrimonial unit.
- The current balance in her savings account is \$3800.
- She continues to receive social security benefits (parenting payment), her only source of income.

(Question 3 PART A continues)

(Question 3 PART A continued)

- There is currently a shortfall of 480 per week after receipt of her social security benefit, which she has to meet from her savings, on an ongoing basis.
- She estimates that \$200 per week on this shortfall is directly attributable to George's expenses (for example, formula, nappies, clothes, entertainment, transport expenses, taxi fares).
- She estimates that \$280 per week is directly attributable to her expenses (for example, private health insurance, physiotherapy, gym membership, books, magazines and taxi fares).
- As her father no longer has a car, she needs to obtain her driver's licence and wishes to take driving lessons so that she is able to transport George as well as drive herself to enable her to continue to undertake usual chores including shopping.
- Kate estimates that William has recently been promoted to Manager of the Club, and is currently earning \$60,000pa.
- Kate is aware from a recent conversation with William that he (William) has recently received \$100,000 from Peter's estate.

Specifically referring to the facts and the relevant law, advise Kate of the approach that a Court is likely in determining her entitlement to spousal maintenance from William and the orders that a Court is likely to make.

(10 Marks)

PART B

Any relevant facts from Question 1 and Question 3 PART A are applicable to this question.

Kate also seeks your advice in relation to seeking payment of financial support for George from William.

Specifically referring to the facts and the relevant law, advise Kate in relation to her entitlement to seek payment of financial support for George, from William.

Include in your advice the options available under the relevant law, for Kate and William to reach agreement in relation to William's payment of financial support for George and whether or not Kate should enter into any such agreement.

(10 Marks)

(Question 4 follows)

Question 4**Answer BOTH PART A and PART B****PART A**

You are a solicitor employed by Rainbow Lawyers and Solicitors, and a boutique legal firm that specialises in same-sex relationships law.

Jack seeks your advice in relation to financial matters arising from his ongoing his relationship with David.

Jack instructs you that:

- He and David commenced dating in 2005 and at this time each of them owned their own home, in Sydney.
- Each was a well known and successful TV personality.
- In 2008, he and David commenced living together, either at David's home or at Jack's home and they each continued as well known and successful TV personalities.
- At least since 2008, he and David socialised, entertained and holidayed together.
- In 2010, he and David held a commitment celebration to which their family and close friends were invited.
- In 2012, David's then TV contract was not renewed and since then he has been unemployed and Jack has been supporting him.
- Jack has recently been offered a lucrative TV deal which requires Jack to live in Melbourne for a year and host a reality TV program from his Melbourne home (yet to be purchased) during this period.
- One part of the lucrative TV deal is that the TV Network has given Jack \$15 Million to use to purchase his Melbourne home, which will be registered in Jack's name and to which Jack will be legally and beneficially entitled.
- The other part of the lucrative TV deal is that the TV Network will pay Jack a amount of \$1 Million for each episode of the reality TV program which goes to air.
- Jack has discussed this deal with David and they have agreed that Jack should accept this TV deal.
- To protect his assets under this TV deal, in the event that their relationship breaks down, Jack wants to ensure that David is not able to make a claim against any of the assets, income and other benefits associated with the lucrative TV deal but Jack is prepared to divide all other assets equally between himself and David.

(Question 4 PART A continues)

(Question 4 PART A continued)

Advise Jack as to the following:

- i. Whether there are any options available to him under any relevant legislation which he can utilise to protect his assets under the TV deal from a claim by Jack in the event that their relationship broke down; and
- ii. In relation to any such options, whether there any specific requirements that must be satisfied under the relevant legislation;
- iii. In relation to any such options (assuming that any specific requirements which need to be satisfied under the legislation are met) are there any other circumstances in which David may nevertheless be able to make a claim against Jack's assets under the TV deal.

(10 Marks)

PART B

Any relevant facts from Question 4 PART A are applicable to this question.

Jack returns to see you. He instructs you his relationship with David broke down shortly after he moved to Melbourne, earlier this year.

He now instructs you that:

- He and David still own their own respective homes (unencumbered) in Sydney;
- Jack owns a home in Melbourne which he purchased for \$15Million;
- Jack has entitlements in separate self- managed superannuation fund and his current member balance is \$2M. David's superannuation entitlements are modest (\$20,000);
- David is still unemployed and Jack stopped supporting him after their relationship broke down;
- David is currently receiving a disability benefit from the Government.

Jack wants to resolve **ALL** financial matters arising from his relationship with David, once and for all and he and David wish to formalise all financial matters between them **WITHOUT** resort to litigation, including any claim in relation to superannuation and any maintenance.

Specifically referring to the facts, advise Jack in relation to the applicable law pursuant to which ALL financial matters arising from his relationship with David will be determined. Include in your answer any relevant jurisdictional facts. Do NOT advise on the merits.

(10 marks)

END OF PAPER