

**LEGAL PROFESSION ADMISSION BOARD EXAMINATIONS
SEPTEMBER 2013**

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 quite detailed factual scenarios. There were 38 candidates enrolled (4 candidates did not sit the examination) and all but 1 student who sat the examination were successful. The pass results for the examination ranged from a low of 41 to a high of 72 out of 80.

The following results were achieved after the assignment mark was added to the examination mark:

Fail	1
Pass	13
Pass Merit	13
Pass Distinction	7

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 parenting dispute where the parents had entered into a parenting plan which had provided for supervised time. There were allegations of family violence and a fear that the child may be removed from Australia to a non-Hague Convention country. The answers to this question were generally satisfactory although the range of answers was quite mixed. The best answers specifically discussed how a court deals with an existing parenting plan when determining competing applications for parenting orders; raised the recent changes to the definitions of "family violence" and "abuse" and the requirement for the Court to now give greater weight to the primary consideration in paragraph 60CC(2)(b); and the availability of injunctions

pursuant to s 68B and a “Watch-List” order. Most students correctly identified the requirement of filing a Form 4 Notice and the likely appointment of an ICE. Most students identified the 60I certificate exemption. Several students did not identify the best interests of the child as being the paramount consideration, which is quite troubling.

There generally was not enough discussion of the impact of the allegations of violence and abuse on the application of the presumption of equal shared parental responsibility; the competing primary considerations on the facts; the relevant additional considerations on the facts; and in particular, the views of the child.

Question 2

This question involved advice in relation to a potential property settlement claim in relation to a de facto relationship. This question was generally well answered. However, 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, and others did not consider the relevant gateway provisions.

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.

Several students did not indicate a likely percentage range as part of the second and third steps. The better answers discussed the relevant principles relating to the treatment of payments towards the acquisition of the matrimonial home made by the client's father, in terms of contribution and whether or not the post-separation debt would be included as a liability, giving valid reasons.

Most students identified the parties' respective contributions, however some students did not provide an assessment of the likely percentage range arising from contribution based entitlement. Most students 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 3

This question was in 2 parts.

Part A involved advice to a client, Jane, who requires urgent surgery and spousal maintenance to cover the cost of the surgery and ongoing periodic maintenance.

On the whole, answers to this question were reasonably well answered, with the majority of students correctly raising the availability of urgent maintenance and interim spousal maintenance.

Most students correctly identified the relevant sections applicable to the spousal maintenance orders sought, although some students did not actually apply the law to the facts.

Better answers specifically discussed the relevant principles in relation to the fact that Jane has funds in a term investment.

Part B concerned the availability of injunctive relief pursuant to s 114.

On the whole, answers to this question were disappointing. The type of orders sought by Jane are commonly raised in interim proceedings.

Whilst most students correctly identified the relevant sections, few students actually applied the law to the facts or addressed the relevant test and discretionary factors. A few students even suggested pursuing injunctive relief against the mortgagor, which in the circumstances, would not have been available.

Question 4

This question was in 2 parts.

Part (a) concerned the requirements necessary to vary a financial agreement which had been made in contemplation of marriage and, in particular, whether this could be done by a simple deed or letter. The question also raised the circumstances under which such an agreement could be challenged.

This question was generally well answered with most students identifying the applicable sections of Part V111A and clearly recognising that a variation could not be so easily effected. However, there was one student who incorrectly advised the client that a variation could be effected by a deed or letter.

The majority of students correctly identified the basis on which this agreement could be challenged.

Part (b) This question required a consideration of options available under the child support scheme in circumstances where the Registrar had refused to accept an application for assessment on the basis that the Registrar was not satisfied that a person to be assessed in respect of the costs of a child is a parent.

Answers to this question were quite mixed. Most students referred to the relevant presumptions of parentage. Better answers specifically raised the option of seeking a declaration pursuant to s 106A and whether a court is likely to make such a declaration, on the facts.