

FAMILY LAW
MARCH 2013
EXAMINER'S COMMENTS

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 24 students enrolled (1 candidate was not eligible to sit and 5 candidates did not sit the examination) and all 18 students who sat the examination were successful. The pass results for the examination ranged from a low of 43 to a high of 64 out of 80.

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

Pass	5
Pass Merit	6
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 advising a mother, who wished to relocate, in relation to a parenting dispute where the father had commenced proceedings. The question was generally well answered, although the range of answers was quite mixed. The best answers specifically 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 its likely application on the facts. Most students correctly identified the requirement of filing a Form 4 Notice and the likely appointment of an ICL. Most students identified the 601 certificate exemption. Several students did not appreciate that because the presumption of equal shared parental responsibility would be rebutted on the facts, the Court is not bound to equal time or substantial and significant time. A small number of students did identify the best interests of the child as being the paramount consideration, which is quite troubling.

The impact of the allegations of the father's history of drug and alcohol abuse and related health issues 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 the approach of the court in dealing with issues of relocation was generally well discussed.

It was of concern that a small number of students used the old terminology "access" and "contact".

Question 2

This question involved advice in relation to a potential property settlement claim in relation to a marriage. This question was generally well answered. The majority of students correctly identified the statutory paragraphs relevant to property division and discussed the implication of the High Court's recent decision in *Stanford* on the preferred four step approach identified in *Hickey*.

Several students did not discuss the necessity of obtaining valuations of the assets where value was in dispute and others did not indicate a likely percentage range. The better answers discussed the relevant principles relating initial contributions, inheritances, and the treatment of the increase in liabilities by the husband, giving valid reasons.

Most students correctly identified the parties' respective contributions and the relevant future needs factors in relation to each party, however some students did not provide an assessment of the likely percentage range arising from one of both of these.

Question 3

This question was in 2 parts.

Part (a) This question involved advice in relation to injunctive relief under s114 (exclusive occupation, exclusion of one party from a jointly operated business, payment of mortgage arrears) and s68B (non-denigration, restraint from swearing, abusing or calling the children derogatory names).

On the whole, answers to this question were very disappointing especially in view of the fact that injunctive relief of the type sought is commonly raised in interim proceedings.

While most students correctly identified s114 as relevant, few identified s68B or applied the law to the facts. Most students did not address the applicable tests and matters that a Court would consider in granting such relief.

Part (b) This question involved advice in relation to child support.

This question was generally well answered. Most students referred to the application of the child support formula and its elements and the availability of child support agreements. Better answers identified the requirements for binding and limited agreements and also raised the availability to seek a departure from an assessment.

Question 4

This question was in 2 parts.

Part (a) Concerned the requirements for a financial agreement made after the separation of a de facto relationship to be binding and the circumstances under which such an agreement could be challenged. The question specifically raised the client's desire to include partner maintenance and superannuation in the agreement.

This question was not well answered with most students incorrectly identifying sections of Part VIIIA (financial agreements relating to married couples) as opposed to the applicable sections of Part V111AB. Most students also failed to address the client's specific desire to include partner maintenance and superannuation in the agreement. Several students did not address the circumstances in which such an agreement can be challenged.

Part (b) This question involved advising a client whose former de facto partner seeks urgent and interim partner maintenance.

This question was not well answered with most students incorrectly identifying sections of Part VIII (spousal maintenance relating to married couples) as opposed to the applicable sections of Part V111AB. A large number of students did not refer to the threshold issue; the matters that the Court will consider in determining each application or advised on the merits, all of which were required by the question.