

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

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

Lily seeks your advice about appropriate parenting orders and any other relief that she should seek in relation to arrangements for her 6 year old son, Jack, and to address her concerns relating to Jack's father, George.

Lily instructs you that:

- She and George were never married but lived together on and off after she became pregnant with Jack.
- She and George finally separated when Jack was 2 years old.
- She and George cannot communicate with each other in a civil manner and always end up arguing.
- There is a current parenting plan, which she and George entered into 2 years ago, after attending Family Dispute Resolution.
- Under the parenting plan, Jack lives with Lily and spends supervised time with George, every Sunday for 3 hours, at a private Children's Contact Service.
- At the time she entered into the parenting plan, there was an interim AVO made against George with Lily named as the person in need of protection.
- George defended the AVO and it was subsequently dismissed about 18 months ago.
- George has been spending time with Jack in accordance with the parenting plan.
- George has never played a role in making decisions regarding Jack's education, health and religious upbringing even though she asked for his input and she wants to be the one to continue to make these types of decisions and she believes that because of their poor communication, they would never be able to reach agreement about such decisions in any event.
- She alleges that George was violent and abusive to her, throughout their relationship, but especially at separation and that Jack witnessed the violence and abuse.
- She alleges that the previous week, George asked her to agree to enter a new parenting plan which would allow Jack to spend unsupervised time with George on weekends during the school term and during the school holidays and that when she refused, they argued and George threatened to "take Jack and disappear with him" and then stormed off.
- She is frightened that George will obtain a Chinese passport for Jack and take him to China and she will never see Jack again.
- George is a Chinese citizen and an Australian resident.
- Lily is an Australian citizen and has no connection with China.
- George conducts an import/export business and has extensive business connections in China.
- He travels regularly between Australia and China.
- George is very wealthy and all his family live in China.

(Question 1 continues)

(Question 1 continued)

- China is not a Hague Convention Country.
- Jack is in Year 1 at a private school and has just started playing soccer on Saturdays, and attends soccer training at his school on Wednesdays.
- Jack's school has recently advised Lily that Jack is a "gifted child" and has been assessed as having the maturity expected of an 8-9 year old child.
- She tells you that Jack loves his father and looks forward to seeing him.
- Lily also tells you that over the past 3 months or so, Jack has been telling her that he would like his father to pick him up from school sometimes; watch him play soccer and he wants to be able to do "normal stuff" with his father such as going fishing and camping with him, like his friends do with their dad.

You seek further detailed instructions from Lily about the basis of her allegations of George's violent or abusive conduct, but she is unable to provide any specific details other than that George always yells at her when they argued.

Specifically referring to the facts and the relevant law, advise Lily about the nature of the orders she should seek (including any orders in relation to the alleged threat by George "to take Jack and disappear") and the matters a court will consider in determining whether or not to make such orders.

(20 marks)

(Question 2 follows)

Question 2

You act for Elizabeth who seeks your advice in relation to property settlement after breakdown of her relationship with Chris. Elizabeth instructs you that:

- She and Chris have been in a relationship for 15 years and for most of this period they have lived together in NSW in the same home/s, but Chris has also lived away from their home in NSW for various periods as Chris is a miner and has had to travel to remote locations for work.
- They have 3 children, Peter (aged 14 years); Jill (aged 11 years) and Tom (aged 7 years).
- Her relationship with Chris ended in October 2011 when Chris left their jointly owned home at Smith St, where they had been living together continuously for about 8 months prior to the breakdown in their relationship.
- Elizabeth continues to live in the Smith Street property with Jill and Tom.
- Peter initially lived with Elizabeth and his siblings in the Smith Street property after Chris left, but for the past 18 months he has been living with Chris and will continue to do so.
- When she and Chris started their relationship, neither Chris nor Elizabeth had any assets, other than personal items and neither of them had any liabilities.
- Elizabeth is a trained Nurse but has not worked during the relationship as she was looking after the children and home.
- Chris worked throughout the relationship in the mining industry and is a qualified explosives expert.
- Elizabeth estimates that Chris worked in remote locations for at least 3 months of each year of their relationship.
- They initially lived in rental accommodation and Chris paid for their expenses.
- They purchased the Smith Street property in October 2006 for \$550,000 and the purchase was funded as follows:
 - Elizabeth's father paid the stamp duty and legal expenses - \$72,000.
 - Elizabeth and Chris obtained a mortgage of \$500,000 to fund the balance of the purchase.
- Elizabeth's father also paid \$48,000 for the renovation of the Smith Street property.
- Since Chris left, Elizabeth has been meeting the mortgage repayments and outgoings on the Smith St property and her father has been assisting her in meeting these obligations.
- Elizabeth returned to part-time work 18 months ago and earns \$600 net per week.
- Chris currently earns \$1800 net per week.
- Chris is paying child support in accordance with the child support assessment.

(Question 2 continues)

(Question 2 continued)

- Chris and Elizabeth are both aged 42 and are in good health.
- Elizabeth has prepared the following balance sheet showing the assets and liabilities of Chris and herself.
- She tells you that there is no dispute between Chris and herself as to the various items on the balance sheet nor as to their values.
- She also tells you that Chris obtained a personal loan after he left and that she has had no benefit from this personal loan.

Item	Ownership	Agreed value
<u>Assets (non – superannuation)</u>		
Smith Street Property	Joint	\$900,000
Share portfolio	Chris	\$50,000
Toyota Ute	Chris	\$10,000
Mazda motor vehicle	Elizabeth	\$20,000
Motorbike	Elizabeth	\$15,000
Furniture/furnishings	Joint	\$5,000
Total Assets (non – superannuation)		\$1 million
<u>Assets (superannuation)</u>		
Mining SuperFund	Chris	\$35, 000
ABX Super	Chris	\$5,000
Industry Super	Elizabeth	\$60,000
Total Assets (superannuation)		\$100,000
<u>Liabilities</u>		
Mortgage – Smith Street Property	Joint	\$450,000
Personal loan (post separation)	Chris	\$50,000
Total Liabilities		\$500,000

Specifically referring to the facts and the relevant law, advise Elizabeth 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. Your answer should also address any relevant jurisdictional issues.

(20 marks)

(Question 3 follows)

Question 3

Answer **BOTH** parts of this question.

(a) You act for Jane who seeks your advice in relation to her entitlement to seek spousal maintenance from John, her former husband.

Jane instructs you that:

- Jane and John married in 2003, separated in March 2011 and are now divorced. The divorce order took effect on 26 June 2013.
- Jane has applied for a property settlement and those proceedings are currently pending in a Family Law Court. Jane and John have each filed a Financial Statement in the pending proceedings.
- Jane is 54 years old and currently in receipt of workers compensation payments, due to an injury to her spine which was sustained during her employment as a nurse at a local aged care facility.
- Jane's specialist spinal surgeon has certified that she is unfit for "any work" and that she requires urgent surgery to her spine which will cost \$10,000 which cannot be delayed by any more than 2 weeks.
- John is 58 years old and a Neurologist employed at a private clinic.
- Jane receives \$650 gross per week from Workcover. She also receives \$150 per week from a term deposit ("Jane's term deposit").
- John receives a weekly income of \$9500 gross.
- Their marriage was the second marriage for each of them.
- There are no children of their marriage and Jane does not have any other children.
- John has 3 children from his first marriage: twins aged 13 years and a son aged 16, all of whom attend private schools and whom he supports.
- Jane currently lives in the former matrimonial home ("FMH") and John is currently meeting the mortgage repayments and outgoings on the FMH.
- John also pays the building and contents insurance on the FMH; all the utility expenses associated with the FMH; and any repairs and maintenance of the FMH.
- He also pays for Jane's private health insurance at the highest cover.
- The FMH was purchased in 2006 for \$400,000 and is subject to a mortgage of \$340,000. It is registered in their joint names. Its current value is \$400,000.
- John owns and occupies a property which was transferred to him as part of the property settlement with his first wife. It is subject to a mortgage of \$300,000 and has a current market value of \$350,000.
- Jane's term deposit will mature on 15 March 2014. Jane's term deposit (\$200,000) represents the sum that Jane received by way of property settlement from her first husband.

(Question 3 continues)

(Question 3 continued)

- John has superannuation of \$150,000 and Jane has superannuation of \$25,000.
- Jane specifically asks your advice in relation to seeking an order that John pay her "at least \$750 per week" in spousal maintenance and pay for the full cost of her spinal surgery which has been tentatively scheduled to occur in 7 days from today.

From their respective financial statements you note:

- John has a cheque account with a current balance of \$60,000.
- John has calculated his total weekly personal expenditure in an amount of \$7,500 leaving an apparent surplus of approximately \$2,000 per week.
- John's major recurrent weekly expenses, apart from mortgage repayments, are: superannuation and life insurance - \$650; credit card payments - \$1,300 food, household supplies and alcohol - \$400; motor vehicle expenses - \$350; and holidays - \$600.
- Jane discloses recurrent weekly expenditure of \$700. Her major expenses are: food and household supplies - \$200; medical expenses - \$75; pharmaceutical expenses - \$75; gardening - \$40; motor vehicle - \$50 and dogs - \$50.

Specifically referring to the facts and relevant law, advise Jane of the matters that a court will consider in determining her entitlements to spousal maintenance and the merits of her claims.

(10 marks)

(b) Jane returns to see you. She tells you that John did not make the last mortgage repayment and that he has informed her that he will not be making any more payments in relation to the FMH. He wants her to agree to list the FMH for sale as soon as possible.

Jane tells you that, pending the determination of the property proceedings, she wants:

- To be able to continue to live in the FMH.
- John to continue to meet all the expenses in relation to the FMH that he had been meeting.
- John to continue pay for her current private health, as he has been doing.

Any relevant facts from Part A are applicable to this question.

Specifically referring to the facts and the relevant law, advise Jane about whether or not a court can grant the relief that she seeks. Include in your answer the matters that a court will consider determining whether or not to grant the relief that Jane seeks.

(10 marks)

(Question 4 follows)

Question 4

Answer **BOTH** parts of this question.

(a) You act for James who seeks your advice about a financial agreement that he and Linda entered into pursuant to s90B ("existing BFA") of the Family Law Act, 1975 (Cth), prior to their marriage.

James provides you with a copy of the existing BFA and you note the following:

- The agreement was entered into on 15 July 2010.
- He and Linda married on 15 August 2010, having commenced cohabitation a year earlier.
- Annexure "A" to the existing BFA disclosed James' assets, liabilities and financial resources. It disclosed that James had:
 - Total assets \$3.5 Million
 - Total liabilities \$1 Million
 - Total Net Assets \$2.5 Million
- Annexure "B" to the existing BFA disclosed Linda's assets, liabilities and financial resources. It disclosed that Linda had:
 - Total assets \$1000
 - Total liabilities \$ NIL
 - Total Net Assets \$1000
- At the time they entered into the existing BFA, James was 40 years old and Linda was 26 years old.
- James was self-employed and his annual income was \$100,000 gross.
- Linda was a citizen from an Eastern European country, residing in Australia on an Australian Government Student Visa and was a full time student.
- The existing BFA provided that on the breakdown of their marriage, James would pay Linda an amount, which depended upon the length of their marriage and the number of children born of their relationship.
- Under the existing BFA, neither James nor Linda would have any obligation to pay spousal maintenance to the other on the breakdown of their marriage.
- The existing BFA complies with all the formal requirements.

James instructs you that:

- He and Linda separated on 15 August 2013.
- That they do not have any children.
- Linda completed her studies and is now in full time employment earning \$40,000 gross per annum.
- James' income has not changed i.e. \$100,000 gross per annum.

(Question 4 continues)

(Question 4 continued)

- Under the existing BFA, he would have to pay Linda \$40,000.
- James' financial position, as disclosed in Annexure "A" has not changed.
- Linda's financial position, as disclosed in Annexure "B" has changed, she now has Total net assets of \$50,000.
- He and Linda have remained friends and have agreed to change the existing BFA so that James will pay Linda \$80,000 (as opposed to \$40,000 under the existing BFA), all other terms will remain the same as in the existing BFA.
- James wishes to minimise legal costs and asks specifically whether the existing BFA can simply be modified by a letter or simple deed.

Advise James of the relevant requirements under the Act to achieve what he wants. Include in your answer, the basis upon which the existing BFA may be challenged.

(10 marks)

(b) You act for Tim who seeks your advice in relation to the refusal by the Child Support Registrar to accept his application for an administrative assessment of child support for Fleur.

Tim instructs you that:

- Tina is Fleur's mother.
- He and Tina were in a relationship on and off for 2 years, although they never lived together.
- Fleur is currently 18 months.
- Tim believes that he is Fleur's father and Tina has never indicated otherwise.
- Since Fleur's birth, Tim has deposited \$150 per week into Tina's bank account towards Fleur's financial support. He has also bought clothes, toys and nappies for Fleur.
- Since Fleur's birth, Tim has spent time with Fleur, and while Tina has usually been present, Tim has also spent short periods of time with Fleur in Tina's absence.
- Only Tina is named as a parent on Fleur's birth certificate.
- Tim recently applied to the Child Support Agency for an administrative assessment of child support.

The Child Support Registrar has written to Tim refusing to accept his application for an administrative assessment of child support under s30(2) of the Child Support (Assessment) Act 1989 (Cth) for Fleur because the Registrar was not satisfied under s29 Child Support (Assessment) Act that Tim is a parent of Fleur.

Advise Tim of the options open to him under the Child Support (Assessment) Act to ensure that the Registrar must assess him in respect of the costs of Fleur because he is a parent of Fleur. Include in your answer a reference to any relevant sections of the Family Law Act.

(10 marks)

END OF PAPER