

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

JURISPRUDENCE

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

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

No question is compulsory.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

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 a closed book examination. No materials are permitted in the examination room.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will 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

HLA Hart argued that legal rules had a settled core of meaning around that with there was a penumbra of potentially unsettled or indefinite meaning. What did Hart intend to convey by these terms and what implications did it have for judicial decision making? What criticisms of this doctrine were made by Dworkin, and how did Dworkin seek to deal with potential uncertainty about the meaning or scope of legal rules.

(20 marks)

Question 2

Is the meaning of the Constitution or of a statute the meaning intended for that legal text by those who drafted it? If not, by what other means does the law seek to ascertain the meaning of the text? Consider also whether or not legal interpretation may involve a search for something other than the meaning of the text as strictly understood.

(20 marks)

Question 3

Do thought experiments such as the Blue and Red bus case show that in the words of Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (at 361) that proof at law “cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality”. Is it, therefore, the case that legal proof does not depend upon the mathematical concept of probability? Alternatively, should we reject these criticisms in favour of the view that the concept of proof at law must be based upon the mathematical concept? Does resolving this issue have implications for the practical application of law?

(20 marks)

Question 4

Does John Locke’s self-ownership argument for a moral right to property explain any part of the modern Australian law of property? What are the arguments to the effect that it fails to provide such an explanation? Are there plausible alternative arguments as to the underlying moral or political purpose served by the law of property?

(20 marks)

(Question 5 follows)

Question 5

John Rawls develops a theory of justice centred around two principles of justice and two priority rules. He then develops two arguments for that theory, the intuitive equal opportunity argument and his own social contract argument where principles of justice are chosen from behind a hypothetical 'veil of ignorance'. Give a brief account of his theory of justice and the two arguments for it. What is the relationship between the theory and those arguments (that is, what is the role of these arguments in Rawls' conception of justice)? Evaluate his position.

(20 marks)

Question 6

Briefly outline BOTH classical natural law theory (with reference to one theorist) and classical positivism. After giving that account then specify, for each theory: What is the nature of legal reasoning under that theory? What is the relationship between law and morality? How does law exist?

(20 marks)

Question 7

i. What are the main theories of punishment? Analyse the different approaches to the issues of justification and purpose of punishment.

(20 marks)

OR

ii. "A criminal should get what he/she deserves". Does this statement comprise a sufficient basis for the legitimisation of punishment? Why or why not? In your answer, compare and contrast at least two theories of punishment, taking into account the purposes of punishment.

(20 marks)

Question 8

There is an obligation to obey the law.

Discuss?

(20 marks)

END OF PAPER