

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

UNDERSTANDING LEGAL LANGUAGE AND LEGISLATION

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

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

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 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

This question has three parts. All parts are worth equal marks. Each part should be attempted.

Part A

The *Fair Trading Act 1987* (NSW) s31(3) provides:

The *Interpretation Act 1987* of New South Wales does not apply to:

- a) The *Australian Consumer Law* (NSW), or
- b) Any instrument under that Law.

Why is the NSW Interpretation legislation not relevant to the interpretation of NSW law? What interpretation legislation is to be used in its place in the interpretation of the *Australian Consumer Law*? Why has this interpretative scheme been put in place, and when else may we expect to find the same interpretative regime?

Part B

In *Hornsby Building Information Centre Pty Ltd v Sydney Building Information Centre Ltd* [1978] HCA 11 the High Court considered the use of headings to Parts of legislation in the interpretation of s52 *Trade Practices Act (Cth)* 1974. Stephen J noted [at 13]

To subject the clear and quite general words of s. 52 to some limitation derived from the heading to Pt V is, I think, especially inappropriate in the case of this particular legislation. The Act is intricately drafted, some of its provisions being expressed in terms of broad generalities, as is s. 52, others in elaborate detail.

What approach or tool of interpretation is Stephen J suggesting takes priority over the use of a heading in interpreting this section? Is there any difference between using headings of Parts of legislation and section headings? Is there any difference between different jurisdictions?

(Question 1 continues)

(Question 1 continued)

Part C

(A) The *Prevention of Rubbish Act 2005* (NSW) provided in part as follows:

3. Definitions

'rubbish' means bottle, tin, carton, package or other rubbish.

9. Rubbish in a public place

Any person who deposits any rubbish in a public place shall be guilty of an offence.

Michael was walking home through a public park in NSW, munching an apple. He couldn't see a bin, so deposited his apple core in a garden bed.

Has Michael deposited rubbish within the meaning of s9 in a garden bed? Identify any tools of statutory interpretation you used to determine your answer. Would your answer be different if he deposited a mandarin skin in the garden bed?

Question 2

In *Fothergill v. Monarch Airlines* [1981] A.C. 251 Lord Diplock said (at 279):

"[the Court] is ...mediator between the state in the exercise of its legislative power and the private citizen ...Elementary justice or ... the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publically accessible."

Discuss this argument for limiting access to extrinsic materials in the interpretation of statutes. What other arguments are raised to support the limitation of access to extrinsic materials? How does the interpretation legislation throughout Australia deal with these arguments?

(Question 3 follows)

Question 3

UN Disaster Relief agencies have become increasingly concerned about the problem of feral animals. The combination of warfare across the globe and natural disasters has resulted in agricultural disruption and a consequent feral animal problem. The UN agencies convened an international conference in July 2012 to discuss this issue, attended by Australia's Chief Scientist. On her return she circulated a report to all Commonwealth and State Governments, noting the conference resolutions which included:

"This conference calls on all nations to take all necessary legislative and administrative steps to ensure the control of all animals, and to protect its citizens from animal attack. This conference is also concerned about the problem of feral animals attacking and compromising the continued existence of other animal species."

In September 2012, following a spate of dog attacks on young children in Western Sydney, the *Sydney Broadsheet* editorialised:

"When will this lacklustre government step in and protect our children? Dogs may be a man's best friend, but uncontrolled they are proving to be a child's worst nightmare."

Responding to this editorial pressure, the NSW Government decided to act. In October 2012 the Minister for Public Safety introduced *The Control of Domestic Animals to Prevent Injuries to Children and Vulnerable Citizens Bill*, and on the occasion of its second reading noted:

"This government is committed to public safety, and is committed to a society where Australians can enjoy the companionship and love of their pets. To meet these twin objectives, we have today introduced *The Control of Domestic Animals to Prevent Injuries to Children and Vulnerable Citizens Bill*. This bill will protect all the vulnerable in our society – our children from attack by unrestrained pets, and our precious wildlife from attack by unrestrained predators."

The Bill was passed by both houses of Parliament and received the Royal Assent on 1 December 2012. It provided in part as follows:

1 Short Title

This Act may be cited as The Domestic Animals Act.

2 Interpretation

In this Act:

"domestic animal" means dog, cat, ferret, mouse, guinea pig, horse or other pet.

"owner" includes registered owner, or any other person in possession of the domestic animal; where a minor is in possession of a domestic animal, the parents or guardians of the minor shall be deemed to be the owner.

"restrained" means chained, secured on a lead, or attached to a fixed object.

"registered owner" means the adult person who has registered the domestic animal.

(Question 3 continues)

(Question 3 continued)**3 Object**

The purpose of this Act is to ensure that domestic animals are prevented at all times from injuring citizens or other wildlife.

5 Restraint of domestic animals

(1) The owner of any domestic animal in a metropolitan area shall restrain the domestic animal at all times.

(2) Penalty for breach of this section: 50,000 penalty units.

6 Control of domestic animals

(1) The owner must control the domestic animal at all times.

(2) Penalty for breach of this section: 50,000 penalty units.

Citing and using the relevant rules of statutory interpretation, and considering and commenting on all the extrinsic material, advise in relation to the following:

- a. Richard lives in outback NSW and likes to hunt. He is President of his local Dog Obedience Club, and he and his dog Rover have won numerous awards in obedience competitions. He has trained Rover to hunt possums and other vermin. In February 2011 Richard and Rover were camping on a friend's isolated property 50 km from the nearest small town.

The property has been overrun with possums. In return for the campsite, Richard agrees to hunt possums with Rover. Rover kills 25 possums. Richard is charged with breaching ss5 and 6 of the Act.

Advise Richard.

- b. Frank loves his pet snake, Iggie, which serves as the mascot for his U12 Sydney Football team. Iggie comes to all the games with Frank. In March 2013, Frank, watched by Iggie, is playing with school friends in the park at the end of his street. Unexpectedly, Iggie bites and injures Frank's friend. Frank runs home to fetch his mother for help.

Later that day, the police knock at Frank's door and charge Frank's parents with breaching section 5 of the Act.

Advise Frank and his family.

END OF PAPER