

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

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, 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

A delegation from New South Wales attended a week long International Planning Forum on City Design in Copenhagen. The final resolutions passed by the Forum included:

Delegates agree that best efforts should be used to maximize the use of existing open space. Psychological and physical impediments to the use of open space should be discouraged.

The report prepared by the delegation on their return appended all the resolutions and included the following comments:

As our cities become more crowded we need to maximize the use of open space. It is clear that people feel uncomfortable in parks which are dirty, full of graffiti, and where they fear their physical safety may be threatened. Accordingly, we need to ensure that our parks are adequately staffed by cleaners and security personnel. As well we need to encourage our citizens to regard their parks as a public resource, and care for them appropriately.

This report was presented to the Minister for Recreational Services. He subsequently introduced the *Park Beautification Bill* into the Legislative Assembly. When introducing the Bill for a second time, he noted:

"We have considerable public resources tied up in Parks and other recreational spaces throughout New South Wales. Too often these areas have been treated either as show gardens or no go areas. We need to reclaim these areas for active public recreation. Building blocks are getting smaller. The backyard cricket pitch is in decline. We need to move the games from private yards into public parks."

In the Legislative Council the representative of the Save our Suburbs party decried the legislation, noting that:

"This legislation is a disgrace. We should be able to encourage our children to play in their own safely fenced yards without shooing them out to maraud in the local parks."

The *Park Beautification Bill* passed both houses and received the Royal Assent on 2nd March 2013. It provided in part as follows:

Long Title

An Act to ensure the hygiene and cleanliness of public spaces; to ensure that our parks remain places of public enjoyment; to encourage the use of our parks by members of the community who wish to engage in recreational pursuits.

4 Definitions

"Rubbish" means rubbish, waste, used wrappings or other material.

"Park" means any area of public space which has been designated as a Park by the Minister for Recreation Services.

8 Maintenance of Park Beauty

(1) A person shall not throw, toss or leave any rubbish within any Park at any time.

(2) The penalty for a breach of (1) shall be a fine of not less than 25 penalty units.

(Question 1 continues)

(Question 1 continued)

Mark and John are twins who were born on April Fool's Day in 2000. As their 13th birthday fell on a Saturday their mother Jennifer decided to celebrate by inviting some of their friends for a picnic in their local park in Bathurst on their birthday.

Mark's friend Harry gave him a special present he had been working on for some time: a ball constructed entirely of used rubber bands which he had scavenged from the bands used to wrap up the newspapers and other reading material delivered regularly to his house. Mark had a great time throwing his new ball against the brick wall at the back of the toilet block. This necessitated Harry making a few running repairs as the rubber bands started to shed. Harry and Mark then went down to the cricket nets, where Harry used the new ball to bowl to Mark.

John was not so pleased with his present – a new Maths text book. Maths was John's worst subject and so his mother thought he needed more revision – that's why she invested in a very expensive new text for him.

After a lovely picnic, they all packed up to go home. On her way to the bin, a piece of wrapping paper from one of the presents escaped from Jennifer's grasp, and fell unnoticed to the ground. John deliberately left his new Maths book on the park bench where they had been sitting.

A park ranger had been observing the entire party, and charges them all with breaches of the *Park Beautification Act*.

Using the rules of statutory interpretation:

- Identify and comment on all extrinsic material; and
- Advise Mark, Harry, Jennifer and John.

(40 marks)**(Question 2 follows)**

Question 2

The following question has three parts. All parts must be answered.

(a) Discussing issues in relation to the identification of parliamentary purpose, and writing extra-judicially, Allsop J commented:

Unfortunately, and this will become a major problem as years go by, the loose-leaf services which the commercial publishers insist on forcing on the profession disguise rather than elucidate in this area. Because of the constant replacement of material in the search for utter contemporaneity in what otherwise should be textbooks, one is deprived of understanding the state of the law at a number of different times in the past, as one can by, say, referring to past editions of major texts. What you can do is buy and keep annual legislative compilations of statutes in your field of expertise. These will provide an invaluable and ready annual resource if kept. (Statutes: Some Comments on Context and Meaning, with Particular Regard to Enactment and Pre-Enactment History Presented to the NSW Bar Association, Justice James Allsop 18 March 2005)

Briefly outline some online legal research tools you could use to help you identify the state of the law at a particular point in time.

(5 marks)

(b) s50 of *The Australian Consumer Law* provides as follows:

Harassment and coercion

(1) A person must not use physical force, or undue harassment or coercion, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the payment for goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the payment for an interest in land.

Briefly discuss how the punctuation of this section would assist you in its interpretation.

(5 marks)

(c) The *Litter Act 2005* (NSW) provided in part as follows:

2. Definitions

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

8. Littering in a public place

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

Jethro always parked his car in a public place while he performed routine maintenance. As part of the oil change procedure, he drained the used oil from the sump depositing it on the ground below.

Could Jethro be convicted of a breach of s8?

(10 marks)

(Question 3 follows)

Question 3

'Historically, those involved in the interpretation of legislation focussed on the words of Parliament – and little else. Now, however, while we must be guided by the parliamentary text, the context of those words – including material labelled as 'extrinsic' is all important. We find the real meaning of the text in its broader context, and so should freely access the widest range of sources to interpret legislation.'

Critically appraise this view of statutory interpretation. Support your discussion by reference to case law and legislation.

(20 marks)

END OF PAPER