

LEGAL PROFESSION ADMISSION BOARD

MARCH 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

The Daily Chronicle, a popular newspaper circulating throughout NSW, began a campaign for a “Friendlier NSW”. As the editorial of February 2011 explained:

We need to become tourist friendly – encourage visitors to our shores and meet them with a smile and a warm welcome. We also need to make sure that our visitors feel safe – physically safe, and also safe from being tricked and conned. We are facing a scourge of cons and petty thefts directed at tourists – we call on the government to stop this now.

This campaign was supported by an online petition calling on the government to introduce measures to stop thefts and deception aimed at tourists. This petition received considerable support, especially in marginal electorates.

In March 2011 the Minister for Tourism introduced the *Tourist Protection Amendment Bill* in the Legislative Assembly. It was designed to amend the existing *Petty Offences Act (2000)* NSW by, as she explained in her Second Reading Speech:

Introducing specific measures to protect tourists, and indeed to keep all the of the people of New South Wales safe from petty tricks and deceptions which, at the moment, seem to fall outside the offences which can be prosecuted. A small theft is still a theft. A small con is still a con. There should be no tolerance in New South Wales for property crimes or crimes of deception.

The *Tourist Protection Amendment Bill* provided in part as follows:

2 Purpose

The purpose of this Act is to introduce amendments to the *Petty Offences Act* to protect tourists in New South Wales from frauds and deceptions.

Division 5 Frauds, unlawful possession, etc.

39 Fortune telling

A person who by pretending or professing to tell fortunes or by using any deception, artifice or trick obtains or attempts to obtain any money or valuable thing, or any benefit, from another person is guilty of an offence.

Penalty: Two hundred Penalty Units

The Bill is duly passed by the NSW Parliament and receives the Royal Assent on 31st July 2011.

(Question 1 continues)

(Question 1 continued)

(a) John has just finished his first year of tertiary studies, and unable to find a vacation job, is unsure how he is going to fund the balance of his degree. He decides to advertise for funds. On 1st November 2011 he places the following ad in *The Daily Chronicle*:

“Today is the last day for sending your one dollar to PO Box 1234, Newtown”.

Forty thousand local residents responded to the advertisement, providing a total to John of \$40,000. Following complaints, John was arrested and charged under s39 of the *Petty Offences Act (2000) NSW* as amended by the *Tourist Protection Amendment Act 2011*.

Advise John.

(b) Fred lives at Mascot, very close to the airport, and uses the airport train to get to work. Every Sunday he sits cross-legged at the airport near the departure gates with a sign around his neck, and a begging bowl in front of him. His sign reads:

“Hope you have had a great time in my country. Please deposit any unused Travel 10 cards or multi-tickets here”.

He usually finds he gets enough tickets to fund the weekly journeys of himself and his entire family.

The airport administration complains and Fred is arrested and charged under s39 of the *Petty Offences Act (2000) NSW* as amended by the *Tourist Protection Amendment Act 2011*.

Advise Fred**In your advice:**

- **Assume all the legislation mentioned in this question is fictitious.**
- **Use and apply the rules of statutory interpretation.**
- **Assume any necessary mental element (mens rea) is present and requires no discussion or reference at all in your answer.**

(40 marks)

(Question 2 follows)

Question 2

The *Domestic Animals Protection Act 2012* (NSW) states, inter alia:

S2 Definitions

'Animal' means dog, cat, mouse, horse or other animal.

'Owner' means any person aged 18 or over who has purchased, been given or otherwise acquired an animal.

S10 Avoidable suffering

Owners of animals must keep animals in clean, protected environments at all times.

Conor, a retired vet, finds a wounded kangaroo and brings it home to treat. He makes a clean bed for it in his old dirty shed out the back, which has some holes in the roof.

Answer the following questions. Each question is worth equal marks. Support your answers by reference to the relevant rules of statutory interpretation:

- (a) Is Conor the owner of the kangaroo?
- (b) Is the kangaroo an animal?
- (c) How, and when, could you use the heading to s10? Would your answer be different if this was Commonwealth legislation?
- (d) Briefly, is Conor likely to be in breach of s10?

(20 marks)

Question 3

Practitioners make extensive use of materials such as the 2nd reading speech and explanatory memorandum when interpreting legislation. Discuss the limits imposed by the various interpretation statutes on the use of extrinsic material and the reasons for these limits.

(20 marks)

END OF PAPER