

Legal Profession Admission Board

March 2018

Conflict of Laws

Examiner's comments

General observations

1. As in past examinations, all topics in the course were covered in the examination questions. Bearing in mind that, as in past examinations, there was no choice of questions, it was important that candidates covered the full range of Prescribed Topics: Scope of conflict of laws; Jurisdiction; Substance and procedure; Proof of foreign law; Exclusionary doctrines; Choice of law in contract; Choice of law in tort; and Governmental seizure of property (expropriation).
2. Candidates generally displayed a sound understanding of the principles of conflict of laws, the decided cases and statutory provisions and the application of relevant principles in a problem-solving context. As in past examinations since the adoption of the closed book examination format, the overall results were strong with all candidates achieving a PD or PM grade.

Question 1

The focus of this question was choice of law in tort requiring a detailed knowledge of the test(s) for determining the place of a tort, the distinction between local torts and foreign torts, the special considerations which apply to maritime torts and aerial torts, the historical background to modern Australian law (the rule in *Phillips v. Eyre* (1870) LR 6 QB 1), the *lex loci delicti* rule in modern Australian law, the relationship between forum statutes and the *lex loci delicti* rule, concurrent liability in tort and contract, the *renvoi* doctrine, the effect of foreign compensation schemes and, for comparative purposes, choice of law in tort in the European Union.

Question 2

The two parts of this question covered the topics: "Jurisdiction", "Substance and procedure", "Proof of foreign law", "Exclusionary doctrines", "Choice of law in contract" and "Governmental seizure of property (expropriation)". As in all other parts of the examination, detailed discussion of the decided cases was an essential element of a sound answer.

Question 3

This question required candidates to give a critical account of four (out of six) decided cases and explain the significance of each of the four selected cases in the area or areas of conflict of laws in which the cases are relevant. In answering this question, candidates demonstrated a good understanding of the wider context of the decided cases.
