Legal Profession Admission Board

March 2019

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 passing grade.

Question 1

The principal 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 and the renvoi doctrine. The question also required detailed consideration of the bases of jurisdiction of the Supreme Court of New South Wales, the grounds for discretionary non-exercise of jurisdiction, substance and procedure and proof of foreign law.

Question 2

Part (a) of this question addressed the topics “Exclusionary doctrines” and “Governmental seizure of property (expropriation)”. In this regard, candidates needed to discuss in detail the doctrines according to which particular kinds of foreign law will not be given effect in an Australian court, the situs rule and the foreign act of state doctrine, public policy exceptions to those principles and recognition of foreign governments.
The focus of part (b) of this question was choice of law in contract requiring discussion of the concept of the proper law and its identification, formation of contracts, capacity to contract, illegality, duress and forum public policy, performance, variation and discharge of contracts and damages for breach of contract.