

LEGAL PROFESSION ADMISSION BOARD EXAMINATIONS

MARCH 2019

19 FAMILY LAW

EXAMINER'S COMMENTS

The exam comprised four compulsory questions in an closed book format. All questions required students to give advice having regard to factual scenarios.

Most candidates answered four questions in accordance with the instructions. A few students answered some questions in considerable detail and made only a minor attempt at the other questions and I assume that these students may not have allocated sufficient time to properly attempt all four questions. It was also clear that a few students did not read the questions properly.

Although most candidates presented their answers in a clear and legible way, the handwriting of some candidates was difficult to read.

All candidates answered four questions in accordance with the instructions. Some students answered some questions in considerable detail and made only a minor attempt at the other questions and I assume that these students may not have allocated sufficient time to properly attempt all four questions.

Question 1

This question involved advising James about a potential property settlement claim consequent upon the breakdown of his de facto relationship.

This question was generally well answered.

Most students referred to the relevant gateway provisions also correctly identified the statutory paragraphs relevant to property division and identified and applied the preferred four-step approach to the facts, as modified by *Stanford's* case citing and applying relevant principles drawn from the authorities.

The better answers discussed the relevant principles relating to the treatment of James' significant initial contributions and Anna's significant parenting and homemaker contributions.

While most students identified the parties respective contributions, some students did not provide an assessment of the likely percentage range arising from contribution based entitlement. Similarly, while most student correctly identified relevant future needs factors in relation to each party, some students did not indicate whether an adjustment would be likely, and if so, the range.

Question 2

This question involved advising Sam in relation to a parenting dispute about his 4 years old son. Final parenting orders which provided for equal shared parental responsibility and equal time had been made, and these arrangements were working well even though both parents had relocated some 2- 2.5 hours drive away from each other. However, the young child was about to start school the following year, and the parents were unable to agree to the child's schooling or living arrangements.

This question was generally well answered by most candidates, although a number of students confused the commencement dates of the referral of powers (by New South Wales to the Commonwealth) over ex-nuptial children with that for de facto financial matters, which was quite concerning.

Most candidates correctly noted that the *Rice and Asplund* principle was likely to be overcome in the circumstances. Most candidates also discussed the likely application of presumption of equal shared parental responsibility on the facts, and the consequences of its application on the consideration of time arrangements, in the context of the travel time between the parent's respective residences. Most candidates also correctly advised Sam of the necessity to disclose his relationship with Charles as they plan to cohabit, and correctly advised that Sam that the nature of their relationship (same-sex) was relevant only in the context of the child's best interests. Better students clearly followed the legislative pathway.

Question 3

This question was in 2 parts.

Part A involved advice in relation to a potential claim for partner maintenance. This question was reasonably well answered, although the range of answers was quite mixed. Most candidates correctly identified the statutory paragraphs relevant to partner maintenance, including urgent partner maintenance.

While most students adequately discussed and applied the law to the facts, a few students simply did not address the actual facts given in the question, and these facts would be important for the court exercising its discretion.

Part B involved advice in relation to the requirements for a financial agreement to be binding and circumstances in which such an agreement may be set aside and validity if the parties later married. This question was generally well answered.

Question 4

This question was in 2 parts.

Part A involved advice in relation to parenting plans, consent orders and child support agreements. This question was reasonably well answered, although the range of answers was quite mixed. Most candidates correctly noted that parenting plans can vary earlier parenting orders but are unenforceable. The availability of child supports agreements was less well answered.

Part B concerned the availability of seeking injunctive relief (s 114) against a de facto partner. This question was very poorly answered. Only a few students identified the availability of injunctive relief as the issue in the question; and fewer of these students applied the relevant law to the facts. Many students appeared confused between the application of injunctive relief under s 114 and s68B.

Many students incorrectly identified the availability of urgent maintenance pursuant to s77 as the relevant issue.