**Student Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ / 80 marks**

**LEGAL STUDIES

Units 3 & 4 – Written examination**

PES

# 2018 Trial Examination 1

## Reading Time: 15 minutesWriting Time: 2 hours

**QUESTION & ANSWER BOOK**

**Structure of book**

|  |  |  |  |
| --- | --- | --- | --- |
| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| A | 10 | 10 | 40 |
| B | 3 | 3 | 40 |
|  |  |  | Total 80 |

* Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers, sharpeners and rulers.
* Students are not permitted to bring into the examination room: blank sheets of paper and/or white out liquid/tape.
* A calculator is not allowed in this examination.

**Materials supplied**

* Question and answer book of 20 pages.

**Instructions**

* Answer all questions in the answer book.
* All written responses must be in English.

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| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |

Students are NOT permitted to bring mobile phones and/or any other unauthorised electronic devices into the examination room.

**SECTION A**

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| **Instructions for Section A**Answer **all** questions in the spaces provided. |

**Question** **1** (3 marks)

Marika is having her criminal case heard in the Magistrates Court. She believes that:

1. She has been charged with an indictable offence
2. Her trial will be heard by a judge and jury
3. The standard of proof is on the balance of probabilities

Explain why each of these statements is incorrect.

1. She has been charged with an indictable offence

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1. Her trial will be heard by a judge and jury

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1. The standard of proof is on the balance of probabilities

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**Question 2** (3 marks)

Explain how Victorian Legal Aid (VLA) assists the criminal justice system to achieve the principle of access.

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**Question 3** (3 marks)

Kiara, 18 years of age, is the complainant in a sexual offence case.

Explain Kiara’s right to give evidence as a vulnerable witness.

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**Question 4** (2 marks)

Explain **one** purpose of sentence indications.

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**Question 5** (4 marks)

Discuss the ability of imprisonment to achieve the purpose of rehabilitation and deterrence.

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**Question 6** (4 marks)

Richelle, 26 has pleaded guilty to the manslaughter of her boyfriend, Aarush, 28, who died of multiple stab wounds. She was originally charged with murder, but this charge was withdrawn after successful plea negotiations.

Richelle admits stabbing Aarush, but initially claimed she was acting in self-defence. However, the evidence overwhelmingly supported the prosecution’s case as Richelle has not suffered any physical injuries and there are no witnesses to support her claims.

Aarush’s family do not understand why the prosecution entered into plea negotiations as they are convinced that she intended to kill him. Nevertheless, they just want to get on with their lives and are relieved they don’t have to go through the trauma of a trial.

Discuss the appropriateness of plea negotiations in this case.

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**Question 7** (3 marks)

Explain the purposes of **one** civil pre-trial procedure.

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**Question 8** (2 marks)

Describe **one** reason a court may need to interpret a statute.

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**Question 9** (6 marks)

There are a number of factors that affect the ability of parliament and the courts to make law.

1. Explain how the representative nature of parliament affects the ability of parliament to make law. (3 marks)

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1. Explain how the requirement for standing affects the ability of courts to make law. (3 marks)

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**Question 10** (10 marks)

“Costs factors have a significant impact on the ability of the civil justice system to achieve the principles of justice”.

Describe **one** recent reform and **one** recommended reform to the civil justice system that addresses costs factors. Discuss the ability of each of these reforms to achieve the principles of justice.

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**SECTION B**

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| **Instructions for Section B**Use stimulus material, where provided, to answer the questions in this section. It is not intended that this material will provide you with all the information to fully answer the questions.Answer **all** questions in the spaces provided. |

**Question 1** (18 marks)

The Banking Royal Commission has heard evidence of ‘dodgy’ activities by banks in numerous areas of its operations during its time.

The Royal Commission has heard evidence of misconduct in the banking sector including alleged bribery, forged documents and charging fees for non-existent services and to clients who have died. This has already resulted in some senior managers losing their jobs.

Despite not initially wanting the Royal Commission to go ahead, the government may now be forced to introduce tougher laws to monitor banking practices.

1. Describe the role of **either** one parliamentary committee **or** one Royal Commission in influencing law reform. (2 marks)

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1. Explain two reasons why law reform may be needed other than the reason suggested by the case study.

(4 marks)

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1. Law reform is often led by the Victorian Law Reform Commission (VLRC). Explain the role of the VLRC and, using **one** recent example, evaluate the ability of the VLRC to influence a change in the law.

(6 marks)

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1. Individuals are also able to influence law reform in Victoria. Discuss two means by which individuals can influence law reform.

(6 marks)

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**Question 2** (14 marks)

In August 2017 the High Court ruled on a claim that the Australian government can only exercise its powers outside Australia for purposes that would be legal under the law of the relevant foreign country. The High Court therefore rejected the claim that their offshore centre in Papua New Guinea was illegal.

This means the Australian government had and has the power to establish and maintain this facility, despite detention of asylum seekers there violating PNG law.

This decision ended a case that was [commenced](https://theconversation.com/high-court-asked-to-declare-manus-detention-illegal-as-859-detainees-seek-their-day-in-court-58880) in May 2016 and was initiated by a plaintiff (an asylum seeker) after a the decision of the [PNG Supreme Court](https://www.scribd.com/doc/310461159/PNG-Supreme-Court-Decision-on-Manus-Island) [found](https://theconversation.com/png-court-decision-forces-australia-to-act-on-manus-island-detainees-58439) that Australia’s detention of asylum seekers on Manus Island violated PNG law. Unlike in Australia, PNG has constitutional human rights protections. These forbid the deprivation of personal liberty in most cases where a person has not committed a crime.

1. Explain the role of the High Court in acting as a check on the law-making of parliament.

(2 marks)

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1. PNG has constitutional human rights protection. Evaluate the extent to which the express protection of rights in the Australian Constitution acts as a check on parliament in law-making.

(6 marks)

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1. The establishment of the offshore detention centre was allowed under an international treaty signed with PNG. Discuss, with reference to **one** other example, the impact of international declarations and treaties on the interpretation of the external affairs power.

(6 marks)

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**Question 3** (8 marks)

**Source 1**

The Medical Treatment Planning and Decisions Act 2016 (Vic)

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| From 12 March 2018, new laws on medical treatment decisions were introduced which expands the role of the Victorian Civil and Administrative Tribunal (VCAT).The new laws give people more control about the medical treatment they want to receive at a future time when they don’t have the capacity to make those decisions for themselves, for example due to illness or disability.Under the new laws a person can now appoint a ‘*medical treatment decision maker’* with authority to make medical treatment decisions or appoint a support person to help them make decisions for themselves. The new laws also allow for the creation of new legal documents called *‘advance care directives’*. These directives may include legally binding instructions about future treatment the person consents to or refuses. They may also include a directive which documents the person’s values and preferences for future medical treatment. If there is dispute or uncertainty, people can go to VCAT for a decision or advice on behalf of the person needing treatment. |

Yolanda, 90 years of age, has suffered from dementia for a number of years; however, over the last 2 years her symptoms have become more severe.

In May 2018, relying on the advice of her son, Alfonso, she appointed Dr Tran, a 28-year-old General Practitioner (GP), as her medical treatment decision maker. She also signed an advance care directive including instructions that she consents to all appropriate medication and that she values quality of life over longevity.

Yolanda’s daughter, Greta, wants to challenge the validity of the advance care directive and the appointment of Dr Tran. Greta claims that Yolanda always refused medication for her dementia, believing that there was no cure, and that she would rather end her days naturally, the way God intended. She also claims that Yolanda would have preferred her regular GP for the past 30 years, Dr Rizzo, as her medical treatment decision maker.

Greta wants to have the dispute resolved as quickly as possible, as Dr Tran has started prescribing medication to Yolanda. She has been advised by a friend to take the matter to VCAT.

1. Describe the **two** different methods of dispute resolution used by VCAT at compulsory conferences and the final hearing. (4 marks)

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1. Discuss the appropriateness of VCAT to resolve this dispute. (4 marks)

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**END OF QUESTION AND ANSWER BOOK**

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