



**Figures**  
**Words**

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**Letter**

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**Name** \_\_\_\_\_

# VCE LEGAL STUDIES 3/4 2019

## CPAP Practice Examination No. 2

**Reading time: 15 minutes**

**Writing time: 2 hours**

### QUESTION AND ANSWER BOOK

#### Structure of book

| <i>Section</i> | <i>Number of questions</i> | <i>Number of questions to be answered</i> | <i>Number of marks</i> |
|----------------|----------------------------|---|------------------------|
| Section A      | 6                          | 6   | 40                     |
| Section B      | 2                          | 2   | 40                     |

- Students are permitted to bring into the practice examination: 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.
- No calculator is allowed in this examination

#### **Materials supplied**

- Question and answer book of 22 pages.
- Additional space is available at the end of the book if you need extra paper to complete an answer

#### **Instructions**

- Write your **student number** and **name** in the space provided above on this page.
- All written responses must be in English.
- You should make use of stimulus material where it is included. However, it is not intended that this material will provide you with all the information to fully answer the question.

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

**SECTION A**

**Question 1** (2 marks)

Outline one recommendation for change in the law that has been made by a royal commission **or** a parliamentary committee.

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**Question 2** (4 marks)

Explain the purpose of the government establishing and funding the Victorian Civil and Administrative Tribunal ('VCAT') in addition to courts in the state.

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**Question 3** (20 marks)

In June 2019 the Australian Federal Police ('AFP') were accused of trying to limit the freedom of the press by conducting a raid on the offices of the Australian Broadcasting Corporation ('ABC') and the home of one private journalist, Annika Smethurst. The ABC and the journalist were in possession of arguably newsworthy information on government defence operations and alleged crimes committed by army personnel in 2017. The warrant gave the AFP the power to alter files and delete files.

- a. What role might Victoria Legal Aid ('VLA') play in assisting the journalist, Annika Smethurst, involved in this criminal investigation?

4 marks

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**Question 4** (4 marks)

Discuss the extent to which the requirement for standing can affect the ability of the courts to make or change the law.

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**Question 5** (5 marks)

Discuss the relationship between the role of the High Court in interpreting the Australian Constitution and the impact of international declarations and treaties on the external affairs power.

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**SECTION B****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** (22 marks)**Source 1**

The following is a case summary from the County Court website.

*DPP v Carter (pseudonym)* [2016] VCC 1173

Sentence summary: Culpable driving

The offender was aged 17 at the time of the offence and had a learner permit. After a night drinking at a football club function and an after party, the offender took a friend's car for a drive with two friends. He took the car without permission after having been warned not to drive. The offender nevertheless drove at high speed in thick fog without lights and with a blood alcohol level of 0.084 and the drug MDMA in his system. He failed to negotiate a bend and left the road. The car rolled several times. The rear seat passenger was not wearing a seatbelt and was thrown from the car. He died as a result of his injuries.

The offender pleaded guilty to one count of culpable driving causing death.

The judge found that the offender's early guilty plea, expressions of remorse, his youth and his good prospects of rehabilitation were all worthy of consideration. The judge also noted that the offender had no previous breaches of the law and came from a close and supportive family.

However the judge also found that the conduct of the offender's driving and the circumstances of the accident were obviously serious. Because of the offender's age at the time of the offence, the judge said he could have sentenced the offender by way of a Youth Justice Order, however the serious nature of the offending and the offender's culpability meant the sentence needed to be more severe. He held that no sentence other than imprisonment would properly reflect the nature and the circumstances of the offending. The judge recommended, however, that the sentence be served in a Youth Justice Centre rather than an adult prison.

The offender was sentenced to five years' imprisonment with a non-parole period of three years.

County Court website: <https://www.countycourt.vic.gov.au/court-decisions/summary-cases/dpp-v-carter-pseudonym-2016-vcc-1173>

**Source 2**

The following is an extract from the judge’s sentencing remarks in the case of *DPP v Carter (pseudonym)* [2016] VCC 1173

32 A psychological report from Mr Patrick Newton was tendered on your plea. Mr Newton reported that you do not suffer from any significant symptoms of mental health disorder. You have normal intelligence and thought processes and you have no personality disorder. Prior to the collision you had regularly engaged in binge-drinking at social events and after sporting activity, but otherwise had not indicated physical dependence on alcohol or other drugs that you had occasionally experimented with. You reported that you had reduced your alcohol drinking and have abstained from using drugs since the collision.

34 Whilst well socialised, Mr Newton concluded that you were quite immature for your age and that detailed evaluation suggested that you are almost certainly experiencing more intense distress than you are willing or able to acknowledge. These issues are likely to resurface after you are sentenced. In a custodial context you will be more vulnerable to negative influence from hardened criminals and there would be some risk that your personality development could be diverted into more pathological paths.

County Court website link to the transcript: <https://jade.io/article/489757?at.hl=vcc+1173>

- a. Explain how mitigating and aggravating factors might have been taken into account in the above case.

5 marks

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- b. Identify the role that the Office of Public Prosecutions might have played in the offender's early guilty plea. 2 marks

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- c. Explain the different standards of proof that apply to criminal matters versus civil matters. 3 marks

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d. To what extent is imprisonment an appropriate sanction in this case?

6 marks

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**Question 2** (18 marks)**Source 1**

The following is an extract from a 2014 legal update paper published by Gilshenan & Luton Legal Practice, making the case for parliamentary reform of the law.

***Barbaro v The Queen and the Significant Change of Landscape for Submissions on Sentence***

On 12 February 2014 the High Court handed down judgment in the case of *Barbaro v The Queen; Zirilli v The Queen* [2014] HCA 2. Whilst the case related to an appeal against the decision of the Victorian Court of Appeal to dismiss sentencing appeals of two convicted drug traffickers, the judgment has cast its effects Australia-wide insofar as placing significant restrictions upon the prosecution, and arguably the defence, when the time comes to making submissions on sentence. [...] The appeal to the High Court was not on the basis that the sentences were excessive, but rather that the sentencing process had miscarried by virtue of the Sentencing Judge's refusal to hear submissions from the Crown Prosecutor on what would be the appropriate sentencing range for both men.

[...]

In a recently-published District Court decision of *R v Costin* [2014] QDC 39, His Honour Judge Smith was of the view that [...] because of the different roles that lawyers for the defence and prosecution play, it remained the law that it was still permissible for the defence to make a specific submission as to a particular result.

[...]

For these reasons it is this writer's opinion that legislative amendment is urgently required restoring the ability of both sides of the bar table to offer their learned opinions – based on appropriate precedent where available, to assist court in arriving at the most just decision in sentencing matters.

Firm website: <https://www.gnl.com.au/sites/default/files/imce/documents/BarbaroVTheQueen.pdf>

**Source 2**

The following is an extract from a presentation to the Central Queensland Law Association made by His Honour Judge P E Smith regarding his decision in *R v Costin* [2014] QDC 39.

The recent decision in *R v Barbaro and Zirilli* [2014] HCA 2 has had a substantial effect upon the conduct of sentencing proceedings in Queensland. It had long been the practice in this State for both prosecution and defence to make submissions as to the range of sentence available to a sentencing judge. This was by no means binding on a sentencing judge, nor was it done to fetter judicial discretion, but it did provide assistance in the determination of the appropriate sentence. [...] The decision in *Barbaro* brought an immediate end to this practice.

[...]

To provide some certainty, at least in my court, as to the application of the *Barbaro* decision, I ruled on the matter in *R v Costin* [2014] QDC 39. [...] My view of the case was that the defence is not prohibited from making a specific submission for which the party contends.

Transcript of presentation: <http://kirra.austlii.edu.au/au/journals/QldJSchol/2014/38.pdf>



- a. The Queensland Parliament responded to this call for reform in 2016 and passed an act. Outline the role played by the Crown in this process.

2 marks

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- b. Would the reform enacted by the Queensland Parliament make the change uniform across the whole of Australia? Refer to the constitutional division of legislative powers in your answer.

4 marks

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d. Explain the role played by His Honour Judge Smith in the development of the law.

3 marks

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- e. Was the Queensland Parliament's 2016 reform an example of the codification of common law or the abrogation of common law? Explain your answer, using the principle of the supremacy of parliament.

4 marks

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**END OF QUESTION AND ANSWER BOOK**



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**END OF QUESTION BOOKLET**