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**LEGAL STUDIES UNITS 3 & 4**

2020

**TRIAL EXAM B**

Reading time: 15 minutes

Writing time: 2 hours

**QUESTION AND ANSWER BOOK**

Structure of book

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

* 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.

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| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| A | 5 | 5 | 40 |
| B | 3 | 3 | 40 |
|  |  |  | Total 80 |

**SECTION A**

**Instructions for Section A**

Answer **all** questions in the spaces provided

**Question 1** **(6 marks)**

1. Explain the meaning of bicameral parliament. (2 marks)

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1. Examine to what extent the double majority acts as a check on parliament in law-making. (4 marks)

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**Question 2 (6 marks)**

**The following excerpt contains errors:**

A Supreme Court judge presiding over a negligence case determined that the defendant was guilty. The Judge saying, they had no choice because the previous ruling by a Supreme Court judge in a similar case formed binding precedent. The defendant unsatisfied with the ruling disagreed, his legal representation saying the judge should have overruled the original precedent and formed new precedent through the obiter dictum.

Identify the **three** errors in the scenario above and provide the correct legal concepts and processes that should be used.

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**Question 3 (15 marks)**

Frank has been charged with a serious sexual assault offence. Jenny his alleged victim, was attacked as she walked home from work, at around 8pm. Frank is denying the charge saying he was home watching television on the night in question. Frank who has Asperger’s syndrome (a condition also known as Autism) cannot afford legal representation and has contacted Victorian legal aid for support.

Since the alleged attack, Jenny has not been able to leave her house and has not worked for several weeks. Doctor reports reveal Jenny is suffering from a severe anxiety condition and that Jenny no longer feels safe outside of her house. Committal proceedings commence in 2 weeks’ time in the Magistrates Court.

1. Explain **one** right Jenny is entitled to as the victim in this case. (2 marks)

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1. Advise how the burden of proof and the standard of proof are applied for Frank to be found guilty of the charge of sexual assault. (4 marks)

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Tim, Frank’s friend, told Frank that if the case goes to trial he will not be entitled to a trial by jury because of his psychological condition.

1. Do you agree with Tim? Why or Why not? (3 marks)

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1. Discuss to what extent the role of Victoria Legal Aid might affect the level of fairness and access achieved by Frank should the case go to trial. (6 marks)

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**Question 4** **(3 marks)**

Identify and explain **one** of the relationships between parliament and the courts in law-making.

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**Question 5 (10 marks)**

A Victorian Supreme Court Judge recently commented…

“Delays and lack of access are the two main barriers to justice facing civil cases in Victoria”

Evaluate whether you agree with the comment. Suggesting features of the Victorian Civil Justice System that might reduce delays and improve access.

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**END OF SECTION A**

**SECTION B**

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| **Instructions for Section A****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** **(17 marks)**

**Source 1:** The following is an extract from Victorian Law Reform Commission: https://lawreform.vic.gov.au/projects/victims-crime-criminal-trial-process/victims-crime-criminal-trial-process-terms-reference

**Attorney General’s Terms of Reference for VLRC 2014**

[Referral to the Commission pursuant to section 5(1)(a) of the Victorian Law Reform Commission Act 2000 (Vic) on 27 October 2014.]

The Victorian Law Reform Commission is asked to review and report on the role of victims of crime in the criminal trial process.
 In conducting the review, the Commission should consider

(c) recent innovations in relation to the role of victims in the criminal trial process in Victoria and in other jurisdictions;
(d) the role of victims in the decision to prosecute;
(e) the role of victims in the criminal trial itself;
(f) the role of victims in the sentencing process and other trial  outcomes;
 The Commission is to report by 1 September 2016.

[Sections (a), (b), (g) and (h) have been removed]

**Source 2: Sub section 7 & 11 [**Victims and Other Legislation Amendment Act 2018 (Vic)]

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1. Outline **one pressure** that may have influenced parliament to pass the Act. (2 marks)

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1. With reference to the *Victims and Other Amendment Act 2018*, describe the strengths and weaknesses of parliament in making law. (4 marks)

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1. Evaluate the effect of these changes on the level of fairness achieved by victims before the Victorian Criminal Justice System. (6 marks)

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1. Analyse the ability of the Victorian Law Reform Commission to influence law reform. (5 marks)

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**Question 2 (10 marks)**

**SOURCE 1: Koori Court Article (County Court Victoria news)**

**New Koori Court for Shepparton**

26 July 2018

Aboriginal Elders will play a major role in Shepparton’s justice system, when Victoria’s newest Koori Court opens in the regional centre today.

“The Shepparton County Koori Court represents a significant step towards improving the justice outcomes for the Koori community in our State.”

Judge-In-Charge Paul Grant said the County Koori Court used the same sentencing law as the criminal division of the County Court.

“What’s different about the Koori Court is that it provides an opportunity during the plea hearing for Elders to speak directly with offenders about their offending and the importance of offenders changing their behaviour,” Judge Grant said.

“Offenders can only come into the Court if they plead guilty and consent to participate in a process that involves engaging with Elders and Respected Persons from the Aboriginal community.”

The sentencing conversation follows and includes the Judge, the Elders and Respected Persons, the accused, the lawyer for the accused, the Prosecutor, the Koori Court Officer, the Corrections Officer and those people who may be present to support the offender.

Aboriginal Elders and Respected Persons are appointed from each region where a County Koori Court is located and have strong cultural ties and knowledge of the local area and their community.

**https://www.countycourt.vic.gov.au/news-and-media/news-listing/2018-07-26-new-koori-court-shepparton**

1. Examine the extent to which cultural differences limit the ability of the Victorian Criminal Justice system to achieve the principles of justice. (6 marks)

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1. Explain how the Koori Court reforms may influence the level of reoffending by indigenous Australians. (4 marks)

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**Question 3 (13 marks)**

**SOURCE 1: Commonwealth Constitution: Section 92**

The following is an extract from the Commonwealth of Australia Constitution Act 1900.

# COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 92

**Trade within the Commonwealth to be free**

On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

**SOURCE 2: Commonwealth Constitution: Section 117**

The following is an extract from the Commonwealth of Australia Constitution Act 1900.

# COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 117

**Rights of residents in States**

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

**SOURCE 3:** Excerpts from the ABC article published https://www.abc.net.au/news/2020-04-23/fact-check-state-border-closures-australian-constitution-corona/12164440

**Is it illegal under the constitution for a state to close its borders to other Australians?**

**Thursday 23 April 2020 ABC News.net.au**

Efforts to halt the spread of COVID-19 have led to a range of restrictions at some interstate and territory borders.

When Queensland closed its borders on April 3, former foreign minister and high commissioner to the United Kingdom Alexander Downer took to Twitter, questioning the constitutional validity of the move: "I don't think an Australian state can legally close its borders to other Australians under section 117 of the constitution."

Anne Twomey, a professor of constitutional law at the University of Sydney, told Fact Check section 117 "is not absolute in its application".

"Most importantly, section 117 does not affect state laws that are reasonably necessary for the safety of the state or its people," Professor Twomey said.

Constitutional law experts contacted by Fact Check said that while section 117 is relevant to the legality of state border closures, section 92 of the constitution is the more applicable provision.

Section 92 says that "trade, commerce, and intercourse among the states, whether by means of internal carriage or ocean navigation, shall be absolutely free."

George Williams from the University of NSW told Fact Check the key word is "intercourse", which refers to movement and travel.

In effect, it guarantees free movement throughout the federation.

1. What is one purpose of express rights entrenched in the Australian Constitution?

(2 marks)

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1. Discuss whether state governments might be breaching these express rights protected by the constitution. (4 marks)

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In a recent interview the Australian prime minister Scott Morrison said,

“… if the state borders are not opened soon the Commonwealth will abrogate the border restriction laws”

1. Is it possible for the Commonwealth to abrogate the state made laws? Justify your response. (3 marks)

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1. Analyse how influential traditional media may be in influencing state governments to remove ‘hard’ border closures within Australia. (4 marks)

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**END OF QUESTION AND ANSWER BOOK**

**Extra space for responses**

Clearly number all responses in this space

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