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

**LEGAL STUDIES

Unit 3 – Written examination**

PES

# 2021 Trial Examination

## 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 | 9 | 9 | 40 |
| B | 2 | 2 | 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 21 pages.

**Instructions**

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

|  |  |  |  |
| --- | --- | --- | --- |
| *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 \_\_\_\_\_\_\_/40 marks**

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

**Question** **1** (2 marks)

Define representative proceedings.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 2** (2 marks)

Explain the purpose of Consumer Affairs Victoria in relation to resolving civil disputes. (2 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 3** (2 marks)

Explain the role of Victorian Legal Aid (VLA) in relation to assisting an accused.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 4** (4 marks)

Explain one right of an accused person and one right of a victim of a crime.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 5** (4 marks)

|  |
| --- |
| Thomas was found guilty of culpable driving by a County Court jury. As Thomas was under the influence of alcohol at the time of his offence, he now attends rehab for his addiction to alcohol. Due to this, his lawyer argued for a lighter sentence to be imposed, even though it is his third conviction.Distinguish between mitigating factors and aggravating factors that the judge may consider in this case when sentencing Thomas. Include examples to support your response.  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 6** (4 marks)

Explain the difference between mediation and arbitration as methods used to resolve civil disputes.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question** **7** (4 marks)

Explain two reasons for the Victorian court hierarchy in determining criminal cases.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question** **8** (8 marks)

Analyse **two** factors a plaintiff should consider before initiating a civil claim.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

|  |
| --- |
|  |
|  |
|  |
|  |

**Question** **9** (10 marks)

*‘Achieving justice is one of the main aims of the criminal justice system’.* Indicate the extent to which you agree with this statement, providing reasons. Include in your response the ability of the criminal justice system to achieve two principles of justice.

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**SECTION B \_\_\_\_\_\_\_/40 marks**

|  |
| --- |
| **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** (20 marks)

|  |
| --- |
| Two Echuca men charged with Cohuna murder face court committal Daniel Oberin and Kevin Johnson appeared at Bendigo Magistrates’ Court via video link for the start of a three-day committal hearing into the shooting murder of 29-year-old Matthew Alexander at Daltons Bridge on 13th September, 2019.*Australian Community Media* (ACM) reported that witness Ebony Bennett gave evidence in court that the day before the shooting, Mr Oberin told her he wanted to go to Mr Alexander’s Eastons Rd address to collect his ‘‘stolen gas bottle and tool trailer’’. Ms Bennett told the court that during several messages and phone calls, Mr Oberin told her he believed a woman had stolen the items and Mr Alexander was in possession of them. Ms Bennett said Mr Oberin told her no-one was going to get hurt and he just wanted to talk to Mr Alexander. She also said Mr Oberin asked her to delete their message and call history from her mobile phone. The court heard Ms Bennett’s partner Cameron Warby was with Mr Alexander when he was shot and killed. Ms Bennett said Mr Warby was hysterical when he called her after the shooting and told her Mr Oberin had been at the Eastons Rd property.In giving evidence, Mr Warby told the court he had taken the drug ice with Mr Alexander in the hours before the shooting and couldn’t remember much of that morning. According to ACM, Mr Warby told the court he had been working under the bonnet of a Holden Commodore when two men drove into the driveway in a ute. He said he didn’t look up from his work but heard Mr Alexander say Mr Oberin had arrived. Mr Warby told the court he then heard the sound of a gunshot and looked up, but one of the men ordered him to sit down with his head in his hands. He said he stayed in that position until the two men drove away from the scene. He also said he heard a second gunshot and raised voices during the incident.Mr Oberin and Mr Johnson were remanded in custody.Source: https://www.sheppnews.com.au/police--court/2021/02/11/3054791/echuca-men-charged-with-cohuna-murder-face-court-committal |

1. With reference to this case and use of examples, distinguish between summary offences and indictable offences. (4 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|   |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. With reference to this case, explain what is meant by the term ‘presumption of innocence’. (2 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Referring to this case, explain one purpose of a committal proceeding. (3 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|   |
|  |
|  |
|  |

1. Distinguish between the burden of proof and standard of proof in criminal cases

(3 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Explain the likely sanction to be imposed on the accused in this case if the case proceeds to trial and the accused are found guilty. (2 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Discuss the ability of sanctions to achieve three purposes of sanctions. (6 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Question 2** (20 marks)

|  |
| --- |
| Geoffrey Rush has major court win against Daily TelegraphThe publisher of a Sydney newspaper has lost its appeal in the high-stakes defamation case of actor Geoffrey Rush, who was awarded a record multi-million dollar payout.Nationwide News appealed after the Oscar winner was awarded almost $2.9 million in damages over defamatory articles published by The Daily Telegraph in 2017. The [record payout included $850,000 in general and aggravated damages](https://www.abc.net.au/news/2019-04-11/geoffrey-rush-wins-defamation-case-against-nationwide-news/10991756), $1.9 million for past and future economic loss, and $42,000 in interest.The stories alleged Rush behaved inappropriately towards Eryn Jean Norvill, his co-star in the Sydney Theatre Company production of King Lear. He denied the claims.The Federal Court dismissed all grounds of the Nationwide News appeal, meaning the awarded damages stand. The appeal judges upheld the original judgement that Eryn Jean Norvill's evidence was unreliable. They said the damages awarded to Rush were "not manifestly excessive"This decision comes eight months after [the appeal was heard before the full Federal Court](https://www.abc.net.au/news/2020-07-02/geoffrey-rush-defamation-payout-appeal-to-be-revealed-today/12409054), comprising Justices Jacqueline Gleeson, Richard White and Michael Wheelahan.Nationwide News said the damages awarded were excessive and singled out several legal decisions made by the original judge, Justice Michael Wigney, which it argued were legal errors.The appeal also had legal ties to a defamation case involving actor Rebel Wilson, who was initially awarded $4.7 million in damages against Bauer media before the amount was reduced on appeal to $600,000.Source: https://www.abc.net.au/news/2020-07-02/daily-telegraph-loses-defamation-appeal-in-geoffrey-rush-case/12414536 |

1. Identify whether this case involving Geoffrey Rush is a civil case or a criminal case, justifying your response with a reason. (2 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Distinguish between the burden of proof and standard of proof in civil cases. (3 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. With reference to this case, analyse the responsibilities of the judge and jury in a civil trial, with reference to this case.

(6 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Identify and describe the remedy awarded to Geoffrey Rush in this case. (3 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

1. Referring to this case, discuss the ability of the remedy identified in part d. to achieve its purposes. (6 marks)

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**END OF QUESTION AND ANSWER BOOK**

**Extra space for responses**

**Clearly number all responses in this space.**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |