**Trial Examination Legal Studies Units 3 and 4 2011**

9 questions

70 marks

All Questions to be answered

**Question 1**

***In November 2010 the High Court decided a case concerning two Sri Lankan asylum seekers who had been refused permission by the Department of Immigration and Citizenship to ask for a protection visa. In a unanimous decision, the court held that the asylum seekers were entitled to procedural fairness.***

Explain the principle of the separation of powers. In your response:

i. Use the above case to highlight the importance of this principle.

ii. Discuss how the operation of this principle in Australia allows for the operation of responsible government. **2+1+1 marks**

**Question 2**

**10 February 2011 ASSEMBLY**

**CIVIL PROCEDURE AND LEGAL PROFESSION AMENDMENT BILL 2011**

**Statement of compatibility**

Mr CLARK (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, I make this statement of compatibility with respect to the Civil Procedure and Legal Profession Amendment Bill 2011.

 In my opinion, the Civil Procedure and Legal Profession Amendment Bill 2011, as introduced in the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

**Overview of bill**. The Civil Procedure and Legal Profession Amendment Bill 2011 ('the bill') repeals chapter 3 of the Civil Procedure Act 2010 ('the act') and makes other technical and consequential amendments to remove prelitigation requirements from the act. It also removes the need for applications for the renewal of practising certificates under the Legal Profession Act 2004 to be accompanied by a statutory declaration. **Hansard Extract**

1. Give **TWO** contemporary examples of reasons why laws need to change. **2 marks**
2. Using contemporary examples, critically evaluate 2 strengths of Parliament as the body best equipped to put in places the amendments suggested by the Attorney General in the above extract. **4 marks**
3. At what stage in the legislative process are amendments most likely to be made? **1 mark**
4. Evaluate the extent to which civil processes and procedures for the resolution of civil disputes contribute to an effective legal system. The response must cover aspects selected from pre-trial, trial, and post trial process and procedure**. 6 marks**

**Question 3**

***Senate gives OK to broadband laws***

*Clancy Yeates*

*March 26, 2011*

*CONTROVERSIAL broadband laws passed through the Senate late last night, after the federal government was forced to make last-minute changes curbing the power of NBN Co.*

*After a marathon session, the Senate voted 34 to 32 to pass two key NBN bills, with the Greens and crossbench senators Nick Xenophon and Steve Fielding backing Labor on 23 pages of amendments governing the company behind the $36 billion project.*

**Source: The Age**

a) With reference to the above newspaper extract evaluate **ONE** weakness of the Senate in its role as a House of Review. **(2)**

 b) The Victorian Law Reform Commission has a role to play as a Formal Law reform body.

 Evaluate the effectiveness of **TWO** aspects of its reporting process. **(4)**

**Question 4**

***Through its website Nature Conservation Victoria is running a campaign to pressure the Victorian Government to keep cattle out of the Alpine national Park.***

***As part of this campaign the website has an online petition.***

***On the same issue the National Parks Association organised a demonstration. Protesters, dressed as cows, staged a rally on the steps of State Parliament, calling for an end to cattle grazing in the Alpine National Park.***

***Greens member Adam Bant introduced a bill into the Federal Parliament to prevent any further grazing of cattle in the Alpine national park.***

***With reference to the above information.***

1. Explain the extent to which the signing of this petition would effectively put pressure on the Victorian Government to change the law and ban grazing. **(3)**
2. Make 2 evaluative points regarding the cow demonstration and its potential effectiveness in achieving its aim. **(2)**

c) If Adam Bandt’s bill becomes an Act of Parliament which court would deal with any case arising between the Commonwealth and Victoria over the Commonwealth’s Constitutional power to legislate in this matter? Explain. **(2)**

**Question 5**

***In the case of Arthur Phillip Freeman, jurors took 5 days to reach a decision and at times were doubtful that a unanimous decision could ever be reached. The man threw his four year old daughter off the West Gate Bridge.***

***The jury were particularly perplexed by the conflicting expert opinion. Party control allows each side to the case to prepare their own case and this feature can lead to the use of conflicting expert opinion. This would not occur in most inquisitorial systems of trial.***

***Supreme Court Justice Paul Coghlan sentenced Freeman to life in Jail with a non-parole period of 32 years.***

1. Critically evaluate one strength and one weakness of the jury system .**(4)**
2. Outline an actual or suggested reform to the jury system and explain the extent to which this would improve the operation of the jury system. (**1+2)**
3. Party control is a key feature of the Adversarial System of Trial.

Compare the operation of one other key feature of the Adversarial System of trial with that of the inquisitorial system of a **named country**. **(2)**

**Question 6**

***Tom went to his landlady to sign a rent assistance form. He had lost his job. The landlady, fearful that he would not be able to meet the rental payments, asked him to leave the premises. In the space of 2 months the landlady visited Tom on 26 occasions insisting that he leave the premises and on the last occasion threatening to withhold his bond if he were not out of the premises by the next day. Tom could not afford to lose his bond. He has been sleeping rough since that day.***

***Tom is advised to take a case to the Residential Tenancies list at VCAT.***

1. Outline the role that VCAT plays within the legal system. **(2)**
2. Tom has knowledge of how the court system works but wants to know how different the VCAT process will be. He is also anxious to know whether the VCAT process will be effective in resolving his dispute.

Advise Tom **(3+3)**

**Question 7**

 ***The Department of Foreign Affairs and Trade makes the following statement as part of its explanation of the legal system:***

***The chief feature of the common law system is that judges’ decisions in pending cases are informed by the decisions of previously settled cases.***

* 1. Using an example, explain the operation of the doctrine of precedent. **(3)**
	2. Use a contemporary case to demonstrate the effect of statutory interpretation by judges. **(3)**
	3. State one reason why the legislature does not have to be concerned by the unrepresentative nature of the judiciary when case law is made. **(1)**

**Question 8**

***In Victoria from 1 January 2010 all law was to be written in plain English to aid access to the law.***

 Choose one other suggested or actual reform to the legal system and outline how this would improve outcomes for people accessing the system. **(1+2)**

 **Question 9**

**Hogan v Hinch [2011] HCA 4 (10 March 2011)**

 Derryn Hinch found himself on the wrong side of the law following the public naming of sex offenders. The case began in the Magistrates Court and was sent to the High Court for determination of the scope of the implied freedom of political communication.

At the conclusion of the High Court case Derryn Hinch made the comment:

".....now I will be sent back to the Magistrate’s Court to be sentenced on five charges which carry a maximum penalty of five years jail and/or $60,000 in fines. More than some real crims get. “

(**source: Hinch website**)

a) State the civil jurisdiction of the Victorian Magistrates Court? (1)

b) State one sanctioning purpose of sending Mr Hinch to prison.(1)

c) Using ONE case example evaluate the impact upon the Constitutional division of powers of High Court interpretation. (3)

d) Compare Australia’s constitutional approach to the protection of rights with the approach adopted by one other country you have studied this year.(8)