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**LEGAL STUDIES UNITS 3 & 4**

2019

**TRIAL EXAM A**

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 **25** 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.

|  |  |  |  |
| --- | --- | --- | --- |
| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| A | 6 |  | 40 |
| B | 4 |  | 40 |
|  |  |  | Total 80 |

**SECTION A**

**Instructions for Section A**

Answer **all** questions in the spaces provided

**Question 1** (2 marks)

Explain **one** reason for the Victorian court hierarchy when determining criminal cases.

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**Question 2** (6 marks)

Veronica, a ‘P-Plate’ driver, has received a summons to appear before the Magistrates’ Court for ‘drink driving’. She registered a blood alcohol concentration of 0.07 when tested by officers. Tony, Veronica’s brother, advised his sister that she will be presumed innocent and will receive a fair hearing.

1. Has Veronica been charged with summary or indictable offence? Justify your answer. (2 marks)

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1. Discuss how the presumption of innocence may affect the level of fairness achieved in a criminal proceeding. (4 marks)

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**Question 3** (4 marks)

Discuss **two** factors that limit the parliaments ability to make laws.

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**Question 4** (6 marks)

“Justice delayed is justice denied”

Evaluate how time factors may affect the ability of the justice system to achieve **one** of the principles of justice.

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**Question 5** (4 marks)

Section 128 of the Constitution provides the Commonwealth parliament with the authority to legislate for a referendum.

Describe the significance of **one** referendum that changed or protected the Australian Constitution.

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**Question 6** (8 marks)

Tanya has an on-going dispute with her landlord over a faulty hot-water system. Tanya is considering taking the dispute to the Victorian Civil and Administrative Tribunal(VCAT) to be resolved. Tanya’s friend Anna said she really should take the matter to court and initiate a lawsuit against her landlord.

1. Advise Tanya of the advantages and disadvantages of seeking to resolve her dispute through the Victorian Civil and Administrative Tribunal (VCAT). (6 marks)

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1. Explain how **one** pre-trial procedure allows for fairness in a civil dispute. (2 marks)

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**Question 7 (10 marks)**

A High Court Judge recently said “…except for the express protection of rights, the Australian Constitution is **not** an effective check on parliament’s law-making powers”

Examine to what extent you agree or disagree with the statement made by the High Court Judge.

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**END OF SECTION A**

**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** (17 marks)

**Source 1**

The following is an extract from the Victorian Law Reform Terms of Reference for reviewing committal proceedings.

Recognising legislative reforms, public consultation on an early case management model, and other efforts in recent years to address challenges in the committal system, which forms part of pre-trial criminal procedure, the VLRC is asked to review and report on Victoria's committal system

 In particular, the Commission should consider:

* whether Victoria should maintain, abolish, replace or reform the present committal system
* opportunities for reform that enable early identification of cases that can be determined summarily, encourage appropriate early guilty pleas, facilitate efficient use of court time and encourage parties' proper preparation for trial
* ways of improving early disclosure processes in criminal prosecutions brought in the indictable stream
* if, when and in what circumstances witnesses or classes of witnesses should be examined prior to trial, including consideration of ways to minimise the need for victims and other vulnerable witnesses to give evidence multiple times
* whether a magistrate should determine if there is sufficient evidence to commit an accused to stand trial and, if so, what test to apply, having regard to the Director of Public Prosecutions' power to directly indict, and
* the impacts of any recommended changes on all parts of the criminal justice system, and what will be needed to ensure the successful implementation and operation of those changes, including resource implications.

<https://www.lawreform.vic.gov.au/projects/committals/terms-reference-committals>

**Source 2**

The following is an extract from an article published in The Age newspaper on the 19th January 2019 and is written by Farrah Tomazin.

**Court committals could be abolished to reduce victims' trauma**

In a move that could shake-up the way serious offences are dealt with, the Andrews government has commissioned a review of the committals system to make the courts more efficient and reduce the trauma victims face.

In essence, they give the accused a chance to test the case against them, and ensure prosecutors only push for charges that have a reasonable prospect of success, rather than a broad suite.

However, committals can be traumatic for victims, forcing them to recount their experiences multiple times, which can often be overwhelming.

<https://www.theage.com.au/national/victoria/court-committals-could-be-abolished-to-reduce-victims-trauma-20190119-p50sci.html>

**Question 1**

1. Analyse the way the media can influence a possible reform to the committal proceedings laws in Victoria. (4 marks)

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1. Discuss the ability of the Victorian Law Reform Commission to influence a change to committal proceedings in the Criminal Justice System. (4 marks)

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Justice Hay said “…. If the VLRC does recommend that committal hearings should be abolished it will be easy for the courts to abolish the committal system from the Criminal Procedures Act”

1. Do you agree with Justice Hay? Justify your answer. (3 marks)

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The Victorian law Reform Commission could make recommendations to parliament to reform Victoria’s Committal System.

1. Evaluate the ability of parliament to respond to any recommendations made by the Victorian Law Reform Commission. (6 marks)

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**Question 2** (8 marks)

Tina celebrated her newly announced pregnancy with a dinner at the local chicken restaurant. The chicken she ate contained salmonella, causing Tina to be hospitalised and suffer a miscarriage (premature loss of her baby). Tina is considering suing the restaurant for her personal loss.

1. Explain **one** factor Tina should consider before initiating a civil claim. (2 marks)

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1. To what extent could the responsibilities of the parties affect justice being upheld should Tina’s case go to trial. (6 marks)

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**Question 3 (15 marks)**

**SOURCE 1: Commonwealth Constitution Section 51**

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

## **Legislative powers of the Parliament**

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

1. trade and commerce with other countries, and among the States;
2. taxation; but so as not to discriminate between States or parts of States;
3. bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
4. borrowing money on the public credit of the Commonwealth;
5. postal, telegraphic, telephonic, and other like services;
6. the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
7. lighthouses, lightships, beacons and buoys;
8. astronomical and meteorological observations;
9. quarantine;
10. fisheries in Australian waters beyond territorial limits;
11. census and statistics;
12. currency, coinage, and legal tender;
13. banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
14. insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
15. weights and measures;

**Source 2: Commonwealth Constitution: Section 114 and 115**

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

## **114. States may not raise forces. Taxation of property of Commonwealth or State**

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

## **115. States not to coin money**

A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

**Question 3**

1. In relation to the Australian Constitution, using examples comment on the division of law making powers of the State and Commonwealth parliaments. (6 marks)

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1. Sections 114 and 115 of the Australian Constitution, means section 109 does not apply when considering law making issues surrounding raising an army or issuing currency.

Do you agree or Disagree with this statement? Justify your answer. (3 marks)

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1. What is **one** reason why the High Court may need to interpret the phrase ‘*nor shall the Commonwealth impose any tax on property of any kind belonging to a State*’ from section 114?  (2 marks)

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1. Discuss the significance of **one** High Court case involving the interpretation of the Australian constitution. (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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