

Student Name:	
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LEGAL STUDIES UNITS 3&4

2020 Written Trial Examination

Reading time: 15 minutes
Writing time: 2 hours

QUESTION AND ANSWER BOOK

Structure of book

Section	Number of questions	Number of questions to be answered	Number of marks
A	7	7	40
В	3	3	40
			Total 80

- Students are to write in blue or black pen.
- 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 correction fluid/tape.
- No calculator is allowed in this examination.

Materials supplied

- Question and answer book of 23 pages
- Additional space is available at the end of the book if you need extra paper to complete an answer.

Instructions

- Write your **student name** in the space provided above on this page.
- All written responses must be in English.

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

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SECTION A

Instructions for Section A

Answer all questions in the spaces provided.

Question 1 (2 marks)
Distinguish the responsibility of juries when determining verdicts in criminal and civil cases.
Question 2 (3 marks) Using an example, explain how individuals may influence changes in the law through either petitions or demonstrations.

4
Question 3 (4 marks) Compare the roles played by the Legislative Council and Legislative Assembly in passing laws, such as the <i>Road Safety Amendment Act 2020</i> (Vic).

Question 4 (5 marks)

In June 2018, the Victorian Law Reform Commission's (VLRC) report 'Access to Justice: Litigation Funding and Group Proceedings' made 31 recommendations to the Victorian Parliament to improve access to the law for those involved in representative proceedings (class actions).

Identify one way the Victorian Parliament can respond to the VLRC's recommendations	1 m
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The VLRC's report stated, "representative proceedings will improve access to efficient, timely and cost effective resolution."	
To what extent do you agree with the VLRC's assessment?	4 m
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After a two week committal hearing in July 2018, Borce Ristevski was committed to stand trial for the murder of his wife Karen Ristevski.

Describe one purpose of a committal proceeding in the Ristevski case.	2 mar	

Bruce Ristevski entered a plea of guilty to the manslaughter of his wife Karen, after a plea negotiation in March 2019. This resulted in the Prosecutors withdrawing the murder charge, consequently avoiding a likely five-week trial in the Supreme Court. In sentencing, Justice Beale imposed a maximum 9 year term of imprisonment, which the Prosecution described as "manifestly inadequate."

The Court of Appeal later increased Ristevski's maximum prison sentence from 9 to 13 years, and the non-parole period from 6 to 10 years. Chief Justine Ann Ferguson said, "As Mr Ristevski had not shown one ounce of remorse, the Court could not take remorse into account as a mitigating factor."

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Question 6 (8 n			
	narks) sportance of the relationship between the High Court and the separation	on of powers.	3 m
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b. Analyse the significance of **one** High Court case involving either:

an impact on the division of low making movemen	5 ma
an impact on the division of law-making powers.	5 ma

Question 7 (10 marks) Evaluate the ability of Parliament and the courts to respond to the need for law reform.					

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	(10	mar	ks)
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Source 1

a.

The following is a hypothetical scenario that contains errors.

Nicolette was charged by the police with the theft of a \$50,000 car.

Nicolette has been told she has been charged with an indictable offence. Her case will be heard in the Magistrates Court, and a jury will determine whether Nicolette has proven her innocence on the balance of probabilities.

Nicolette's case will be delayed for two years and therefore she will need to remain in prison until her trial.

As Nicolette is unemployed, she has been denied access to VLA funding, and must therefore represent herself at trial.

Consequently, Nicolette believes it is appropriate for her to plead guilty during her sentence indication, since the jury will be made aware of her previous criminal convictions.

Identify two errors in the above scenario and outline outcome or process that should have occurred for each other.	nark
Error 1 and correct outcome/process	

Error 2 and correct outcome/process					

b.	Discuss one recent change or recommendations for change to the criminal justice system that could improve Nicolette's entitlement to one principle of justice.	4 marks
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Source 1

The following is a news report on the case of *Cheng v Lok* (2020).

In February 2020, Judge Katrina Bochner of the South Australian Supreme Court awarded barrister Gordon Cheng a \$750,000 defamation payout against Isabel Lok.

In Gordon 2018, Lok posted a series of one-star reviews of Cheng's Law form on Google my Business. One of the negative reviews stated, "Stay clear of this place! Gordon brings shame to all lawyers and is infamous for his lack of professionalism amongst the law society in Adelaide. He is only concerned about how to get most of your money by giving you false and misleading advice and convincing you to go to court when he doesn't have a case to win."

The Supreme Court heard Ms Lok:

- had never engaged the services of Mr Cheng as her legal representative
- did not delete the reviews when requested by Mr Cheng, and changed her name on different reviews
- did not reply to a summons served on her on Mr Cheng's statement of claim
- never appeared in court in-person or engaged a lawyer to appear on her behalf
- never apologised or offered compensation to Mr Cheng

The Supreme Court also heard:

- Google data showed the bad reviews were seen 800 times a month
- every other review of Mr Cheng's business on Google my Business gave it five stars
- by February 2019, Mr Cheng had lost 80% of his clients
- expert witness, accountant Karen Phu, examined previous earnings and reported Cheng's total loss of income to be \$631,229

Judge Katrina Bochner wrote in her judgement that Lok's publications caused Mr Cheng "significant distress, anxiety and financial hardship."

Judge Bochner ordered Lok to pay Cheng \$750,000 in damages (\$550,000 for past and future loss of economic earnings; \$100,000 for general damages; \$100,000 for aggravated damages). Jusge Bochner also made an order for adverse legal costs to be awarded against Lok.

Source 2

The following is an excerpt from Judge Bochner's judgement, on interpreting section 32 of the *Defamation Act 2005* (SA).

Judge Bochner stated that, "In determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded."

Source 3

Judge Bochner stated that,

The following is an excerpt from Judge Bochner's judgement, on determining the amount of damages to be awarded to Mr Cheng.

	"In assessing the damages to which Cheng was entitled, I rely on the principles set out by the S Australian Full Court of the Supreme Court (which is equivalent to Victoria's Court of Appeal) <i>Google Inc</i> (2017).			
	The defamatory publications hit at the heart of the plaintiff's business and reputation. I have no dous significant damage was caused by the publication. Any award of damages must, in the words of Just Blue in the <i>Duffy v Google Inc</i> (2017) case, 'be sufficient to signal the public vindication of his reputation.	tice		
	I assess general damages in the sum of \$100,000."			
a.	Identify the plaintiff and defendant in this case.	2 marks		
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b.	Analyse the scope of liability or limitation of action as a factor Cheng would have considered when initiating legal proceedings against Lok.	3 marks		
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Analyse how Judge Bochner's interpretation and application of the <i>Defamation Act 2005</i> (SA) in Source 2 was able to resolve the <i>Cheng v Lok</i> case.	3 ma

f.	'The precedent set in <i>Duffy v Google Inc.</i> (2017) will always restrict the ability of Victoria's Supreme Court to make law similar in cases in the future.'	e
	To what extent do you agree with this statement? With reference to Source 3, justify your answer.	3 marks
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Question 3 (13 marks)

Source 1

The following is an extract of an Explanatory Statement regarding the *Biosecurity Act 2015*.

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020

The Commonwealth has used its exclusive constitutional powers under s.51 (ix), with respect to quarantine, to create the *Biosecurity Act 2015*. Under s.477 (1) of the *Biosecurity Act 2015*, the Health Minister made determinations in March 2020 to "prevent the entry or spread of a listed human disease (Covid-19) if movement poses a severe and immediate threat."

Source: Federal Register of Legislation, <legislation.gov.au>

Source 2

The following are state Parliament responses to the Covid-19 crisis in March 2020.

Under the *Public Health Act 2016* (WA), **Western Australia** has adopted strict border restrictions, dividing the state into nine regions that residents cannot move between without good reason e.g. transporting freight.

a. Some of Australia's laws that introduced restrictions to deal with the Covid-19 crisis have varied from

Under s.3 of the *Public Health Act 2011* (SA), **South Australia** has opted not to enforce border restrictions, but ordered people to self-isolate for 14 days when entering the state, or face a fine of \$20,000.

state to state, while other laws are consistent throughout the country.	
Explain how the division of powers enables this situation to occur.	4 marks
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b.

Use the stimulus material to justify two reasons that support your proposed ruling.	4 mark

III. If it is found that s.109 applies in this case, outline the impact of the decision on the backpackers,	
South Australia's Public Health Act 2011 (SA) and the Commonwealth's Biosecurity Act 2015.	3 mark
Impact on backpackers	
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Impact on South Australia's Public Health Act 2011 (SA)	
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Impact on Commonwealth's <i>Biosecurity Act 2015</i>	
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Extra space for responses. Clearly number all responses in this space.						
