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Name _____

VCE LEGAL STUDIES 3&4 2021

CPAP Practice Examination No 1

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	5	5	40
B	2	2	40
			Total 80

- 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.
- You should make use of stimulus material where it is included. However, it is not intended that this material will provide you with all the information to fully answer the question.

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

SECTION A**Question 1**

Describe **one** difference between exclusive powers and residual powers as they relate to the division of law-making powers set out in the Australian Constitution. 2 marks

Question 2

Explain the relationship between the supremacy of parliament in law-making, and the representative nature of parliament. 4 marks

Question 3

The Long Trial Case Management List pilot ('the LTL pilot') commenced in February 2018 to manage criminal trials with an estimated trial duration of 25 days or more. After three years, the LTL pilot has managed 99 matters involving 234 accused and, on average, resolved cases 4.4 weeks prior to the trial date.

- a. Distinguish between summary offences and indictable offences. 3 marks

- b. Explain **one** factor that affects the ability of the criminal justice system to achieve access, and discuss the ability of **one** recent reform to better achieve justice in the resolution of criminal disputes. 6 marks

Question 4

In March 2021, the Australian Republican Movement announced that it would unveil its preferred model for an Australian republic in the second half of the year. A republic could only be achieved by amending the Australian Constitution to remove the Crown as the head of state and replacing it with an elected or appointed member of government.

In 1905, Professor of International Law at the University of Cambridge, L Oppenheim, wrote regarding international law:

“The Law of Nations [expressed in international declarations and treaties] prescribes no rules as regards the kind of head a State may have. Every State is, naturally, independent regarding this point, possessing the faculty of adopting any Constitution it likes and of changing such Constitution according to its discretion. Some kind or other of a head of the State is, however, necessary according to International Law, as without a head there is no State in existence, but anarchy.”

- a. Describe how the double majority measures public support for a change in the Australian Constitution.

4 marks

b. Analyse the significance of **one** referendum in which the Australian people have protected or changed the Australian Constitution.

5 marks

c. Discuss the impact of international declarations and treaties on the power of the Commonwealth Parliament to introduce a bill for an Australian republic. 6 marks

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 (24 marks)

Source 1

The following is an extract taken from the Victorian County Court’s decision in the case of *Borelli v State of Victoria (Department of Education and Training)*. Borelli had requested an extension of the limitation period in his negligence case against the Department.

Borelli v State of Victoria (Department of Education and Training) (Ruling) [2021] VCC 581

Subject: LIMITATION OF ACTIONS
 Catchwords: Personal injury
 Common law claim for damages commenced out of time
 Application to extend time
 Fair trial

Legislation Cited: *Limitation of Actions Act 1958, s23A*
 Cases Cited: *Brisbane South Regional Health Authority v Taylor* [1996] HCA 25

Introduction

- 1 The plaintiff commenced a proceeding in this Court on 30 January 2020. The Writ was endorsed with a Statement of Claim.
- 2 The defendant filed a Defence dated 24 February 2020. The relevant part of the Defence pleads that the plaintiff’s cause of action is barred by reason of the provisions of the *Limitation of Actions Act 1958*.
- 3 The plaintiff filed a Summons dated 11 March 2021 responding to the limitation defence seeking an extension of time.

The pleaded causes of action

- 4 The plaintiff pleaded that he was employed by the Defendant at a secondary college (“the College”) as a science teacher.
- 5 In paragraph 5 of the Amended Statement of Claim, the plaintiff pleaded that in or about 2004 the Plaintiff was subjected to bullying, harassment and intimidation from 2 science teachers within his department.
- 6 The plaintiff was requested to provide details of the instances of bullying, harassment and intimidation. To that request, the plaintiff provided the following Further and Better Particulars:

PARTICULARS

- (i) The bullies made repeated unfair and offensive personal attacks on the Plaintiff including calling the Plaintiff as 'asshole' to other members of staff, including on occasions within earshot of the Plaintiff.
- (ii) The bullies regularly deliberately and publicly ignored the Plaintiff when he attempted to speak with them.
- (iii) When the Plaintiff politely asked one of the bullies whether he could address her by her nickname, as most other members of staff did at the school, she told him 'No you can't!'.

7 The plaintiff swore an affidavit on 10 March 2021. The plaintiff described the steps he took to obtain legal advice, and once he was in possession of legal advice, the steps that were taken in pursuit of a compensation claim, and then a common law claim, culminating in the filing of the Writ and the Summons.

"Shortly after stopping work in October 2015, I sought legal advice from Ms Lisa Paul, a solicitor at Adviceline Injury Lawyers, about my entitlements to compensation. I first met Ms Paul on 30 November 2015, at which time I was told that I may have some entitlements to a lump sum payment and a common law claim but the initial focus should be on attempting to reinstating my weekly income. I accepted that advice and I instructed Ms Paul accordingly, particularly as I had no income at that stage and I was under great financial pressure.

As soon as my weekly payments were reinstated and I was advised to proceed with a common law claim, I provided my instructions to do so."

8 I will now set out the relevant evidence of the Defendant.

"I humbly submit that the inability to locate Witness B will cause specific prejudice to the Defendant's ability to defend this proceeding. Further, it is apparent that while the other witnesses strongly deny the Plaintiff's allegations, their ability to recall exact events of 17 years ago will be compromised. In a claim alleging bullying, with little to no supporting documentary evidence, I humbly submit the ability for witnesses to recall matters with accuracy is essential to the proper carriage of justice."

9 I refer to the oft quoted observations of McHugh J in *Brisbane South Regional Health Authority v Taylor*, in which his Honour made a number of telling observations, among other observations, that evidence may disappear without anyone knowing that it ever existed, and that time will diminish the significance of the known facts or circumstances.

10 The plaintiff bears the onus of persuading me that it is just and reasonable to extend time. That brings me to the question of whether a fair trial can be had in the circumstances. A fair trial does not mean an ideal trial, but one which is acceptably fair. The plaintiff must persuade me that what prejudice there is would not make the chances of an acceptably fair trial unlikely.

11 After weighing up the competing considerations, I think it is just and equitable to grant the plaintiff leave to bring the proceeding out of time.

a. How does the doctrine of precedent affect the ability of courts to make law?

4 marks

b. Describe **two** purposes of civil pre-trial procedures.

6 marks

d. Discuss the trial responsibilities of the judge and the parties in the civil justice system.

8 marks

Question 2 (16 marks)**Source 1**

The following is an extract taken from an opinion piece published on 21 June 2021, regarding the change in leadership of the Nationals Party from Michael McCormack to Barnaby Joyce. The Nationals form government with the Liberal Party at the federal level.

Extract has been edited for length and clarity.

View from The Hill: Nationals give Scott Morrison a muscle man to deal with — especially on net zero

21 June 2021

Michelle Grattan, Professorial Fellow, University of Canberra, for *The Conversation* online journal

Joyce said after his Monday win he hoped he returned to leadership of the National Party “a better person.” The question is whether he will be a better leader.

Everyone acknowledges Joyce’s campaigning ability. He’s larger-than-life and people, especially in the country, warm to a “character.” The crucial relationship for Joyce to manage is with the Prime Minister, Scott Morrison – promoting an agenda on behalf of the National Party but not to the extent of creating destructive divisions that harm the entire Liberal-National coalition government.

The stretch point for Morrison and Joyce will be the net zero 2050 carbon emissions target. Morrison has been inching towards embracing 2050 as a firm climate change policy target, and the feeling by some Nationals that their previous leader, McCormack, would probably roll over and support the Liberal Party was one factor in his demise. Morrison must decide whether to press the case for firming the commitment, as Joe Biden and Boris Johnson urge him to do, or stay with his present loose wording of net zero “preferably” by 2050, to avoid a fight with the Nationals.

Joyce said after his Monday victory he will be guided by his party on this issue. Only a minority in the Nationals would favour endorsing the target. Joyce has varying voices in his party and its broader constituency. But his own view, as of February this year, was clearly stated in an article published in *The Australian*: “Even before you consider the impact on our mining and manufacturing industries, a net-zero emissions policy would destroy any hope of expanding Australian farming. If the Nationals supported net-zero emissions we would cease to be a party that could credibly represent farmers.”

<https://theconversation.com/view-from-the-hill-nationals-give-scott-morrison-a-muscle-man-to-deal-with-especially-on-net-zero-163109>

Source 2

The following is an extract taken from the 2021 Intergenerational Report published by the federal Department of Treasury. The Report analyses a range of issues in the country in order to produce a likely economic forecast for the next 40 years.

Extract has been edited for length and clarity.

2021 INTERGENERATIONAL REPORT

28 June 2021

Australian Government Department of Treasury

The Intergenerational Report projects an outlook for the economy and the Australian Government’s budget over the next 40 years. This outlook has been profoundly affected by the COVID-19 pandemic, which has caused the most severe global economic shock since the Great Depression.

Slower population growth is the main reason for the expected slowdown in economic growth. Australia’s total population is projected to reach 38.8 million in 2060-61. This is lower than previous projections due to the lower level of migration resulting from the COVID-19 pandemic and a lower fertility rate.

The likely physical and social effects of climate change, the impacts of mitigation efforts and the benefits of early adaptation measures will also affect the economy and the budget over the next 40 years. The transition to lower carbon emissions globally will mean that some sectors will need to adjust to falling demand for some exports, while new opportunities will be created in other sectors. The effects will depend on domestic and global actions, as well as the pace, extent and impacts of climate change.

The Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* found that Australia’s natural environment and iconic places are in decline and are under increasing threat, and that the current environmental trajectory is unsustainable.

- a. Illustrating your answer with an example, explain **one** reason why laws may need to change.

3 marks

d. Evaluate the impact of political pressures on the ability of parliament to make and change the law. 6 marks
