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Name _____

VCE LEGAL STUDIES UNIT 3&4

CPAP Practice Examination No 2

Reading time: 15 minutes

Writing time: 2 hours

QUESTION AND ANSWER BOOK

Structure of book

<i>Section</i>	<i>Number of questions</i>	<i>Number of questions to be answered</i>	<i>Number of marks</i>
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

Explain **one** example of the Victorian Law Reform Commission recommending reform to improve the effective operation of law in Victoria.

3 marks

Question 2

General compensatory damages over one million dollars have been claimed in addition to a fine in a defamation case over Facebook comments.

In April 2021 the claim was filed with the Magistrates’ Court by Sam Zachariah, a property developer, against local councillor Cameron Hearst. Zachariah claims that a Facebook page administered by Hearst hosted a string of comments that suggested Zachariah was acting corruptly.

Zachariah is demanding that Hearst pay both damages and a fine in recognition of the reputation damage he caused, and has requested that the dispute be determined by a jury of their peers. Zachariah is asking the jury to weigh up the value of lost property development contracts in their assessment of damages to be paid by Hearst.

- a. Identify **two** errors in the scenario above and, for each error, explain the correct process or procedure that should have occurred.

4 marks

b. What does it mean to say that Zachariah must have 'standing' in this case?

3 marks

c. How might the judicial power of case management help to resolve this dispute effectively?

5 marks

Question 3

Discuss **one** difference between the role played by the lower house of parliament and the role played by the upper house of parliament.

4 marks

Question 4

In *Gerner v Victoria* [2020] HCA 48 the High Court stated that: “Section 51(ix) of the Constitution confers on the Commonwealth Parliament an express power to make laws with respect to ‘quarantine’. By virtue of s 106 of the Constitution the concurrent legislative power of the States with respect to the same subject matter was expressly preserved.”

a. What does it mean to say that quarantine is a “concurrent legislative power”?

3 marks

b. Analyse the effect that section 109 of the Australian Constitution could have on any quarantine laws passed by the state parliaments.

4 marks

c. Explain **two** possible effects of the High Court interpreting the Constitution in the case of *Gerner*. 4 marks

Question 5

In the recent case of *LibertyWorks Inc v Commonwealth of Australia* [2021] HCA 18, the joint judgment of Kiefel CJ, and Keane and Gleeson JJ commented on the freedom of political communication that the High Court has found through its interpretation of sections 7 and 24 of the Constitution:

“The freedom is recognised as necessarily implied because the great underlying principle of the Constitution is that citizens are to share equally in political power and because it is only by a freedom to communicate on these matters that citizens may exercise a free and informed choice as electors. It follows that a free flow of communication is necessary to the maintenance of the system of representative government for which the Constitution provides.”

Discuss the role played by the High Court in interpreting the Australian Constitution, and the extent to which judgments of the High Court change the scope and meaning of the Constitution.

10 marks

Lined writing area consisting of multiple horizontal lines for text entry.

END OF SECTION A

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 (16 marks)**Source 1**

The following is a media release published by the Parliament of Victoria on 25 June 2021 concerning a parliamentary committee hearing.

Health experts to address impact of COVID on tourism and events industries

Victoria's Chief Health Officer, Professor Brett Sutton, the Secretary of the Department of Health, and the Deputy Secretary of COVID-19 Strategy and Policy will appear at the final hearing of the Legislative Council's inquiry into the impact of the COVID-19 pandemic on tourism and events.

The hearing will be conducted on Monday June 28 via Zoom and broadcast live from 10:00am to 1:00pm on the Parliament's website.

The Legislative Council's Economy and Infrastructure Committee has heard from more than 50 witnesses from Victoria's tourism and events sectors since April.

The full schedule is available [here](#).

The Committee will provide recommendations to the State Government on the best way to restore the tourism and events sectors to their critical role in the Victorian economy, including the thousands of jobs threatened by the ongoing effects of the global pandemic.

The inquiry's terms of reference, submissions and transcripts of earlier hearings are available from the Committee's website.

Issued: 25 June 2021

Parliament of Victoria News
news@parliament.vic.gov.au
(03) 8682 2814
parliament.vic.gov.au/about/news

Source 2

The following is an extract taken from the summary statement of the 2020 hotel quarantine class action, published by the Supreme Court of Victoria.

Hotel Quarantine Class Action
5 Boroughs NY Pty Ltd v State of Victoria & Ors
Case: S ECI 2020 03402
Filed on: 21/08/2020 at 06:21 PM

CLASS ACTION SUMMARY STATEMENT

The Hotel Quarantine Class Action seeks compensation for loss suffered by businesses alleged to have been caused by negligence in relation to the hotel quarantine program in Victoria.

Who is a group member in the Hotel Quarantine Class Action?

You are a group member if:

- (a) as at 1 July 2020 you carried on a business involving the supply of goods or services to members of the general public from one or more premises physically located within Victoria;
- (b) your ability to supply goods or services to members of the general public from those premises was adversely affected by one or more of the “stage 3” restrictions put in place in certain postcodes of Melbourne in July 2020; the “stage 4” restrictions put in place in Melbourne from 2 August 2020; and
- (c) you have suffered economic loss by reason of one or more of the above-mentioned matters.

How is the Hotel Quarantine Class Action funded?

Quinn Emanuel Lawyers is acting on the basis that its fees will not be payable until and unless there is a successful resolution of the class action, by Court approved settlement or judgment. In the event that there is not a successful outcome in this class action, group members cannot be pursued for costs by the defendants as the Supreme Court Act prohibits orders for costs against group members.

a. Discuss the ability of representative proceedings to achieve the principle of equality.

5 marks

b. Describe costs as **one** factor that a plaintiff should consider when deciding whether to bring a civil claim. 3 marks

- c. Evaluate the ability of law reform bodies, including either a royal commission or a parliamentary committee, to influence a change in the law.

8 marks

Question 2 (24 marks)**Source 1**

The following is an extract taken from the judgment of the Supreme Court of Victoria (Court of Appeal) in the case of *Baker v The Queen* [2021] VSCA 158. Baker was found guilty of assault in the County Court in 2019, and appealed to the Court of Appeal on the grounds that his sentence was too severe.

Extract has been edited for length and clarity.

<u>SUPREME COURT OF VICTORIA</u>		
<u>COURT OF APPEAL</u>		
	S EAPCR 2020 0005	
JOHNIE BAKER (A PSEUDONYM) ¹		Applicant
v		
THE QUEEN		Respondent

<u>JUDGES:</u>	McLEISH and OSBORN JJA	
<u>WHERE HELD:</u>	MELBOURNE	
<u>DATE OF HEARING:</u>	26 May 2021	
<u>DATE OF JUDGMENT:</u>	9 June 2021	
<u>MEDIUM NEUTRAL CITATION:</u>	[2021] VSCA 158	
<u>JUDGMENT APPEALED FROM:</u>	[2019] VCC 2096 (Judge Carmody)	

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Applicant	Mr P J Smallwood	Tyler Tipping & Woods
For the Respondent	Mr J Dickie	Ms A Hogan, Solicitor for Public Prosecutions
1	The applicant pleaded guilty in the County Court to 14 charges arising out of violence inflicted by him on his former partner over a period of some 18 months. He seeks leave to appeal against the sentence imposed on two of those charges.	
2	The applicant was sentenced on 12 December 2019 to be imprisoned for 5 years and 3 months, with a non-parole period of 3 years and 6 months.	
3	At the time of the offending, the applicant was between 21 and 23 years old. The victim of the offending, Ella Anderson, was between the ages of 18 and 20.	

4	The applicant accepted that the offending was serious and involved disgraceful conduct on his part. It was conceded that a significant term of imprisonment was warranted. However, the applicant submitted that the sentence imposed was manifestly excessive because it failed to give sufficient weight to a number of important mitigating factors.
5	It was submitted that the applicant had demonstrated real remorse.
6	Next, the applicant was youthful at the time of the offending and ill-equipped to handle a domestic relationship. He was a person who presented with a traumatic background, having been exposed to violence and neglect from caregivers at an early age. A report prepared by forensic psychologist Dr Aaron Cunningham concluded that the applicant’s intellectual functioning was in the extremely low range. His overall thinking and reasoning skills were consistent with an intellectual disability.
7	At the time of the plea hearing, the applicant had spent 477 days in custody, housed in maximum security and for much of that time in solitary confinement. He had remained drug-free whilst in custody and had attended an anger management course and a drug and alcohol course. He had also taken up religion and engaged in daily prayer.
8	In our view, the argument that the sentence imposed was manifestly excessive cannot be sustained. This was an extremely grave case of recklessly causing injury.
9	Leave to appeal should be refused.

a. Compare the responsibilities of trial personnel in a criminal trial with the responsibilities of personnel in a civil trial.

6 marks

b. How has the criminal court hierarchy been relevant to the resolution of this case?

4 marks

- d. Analyse the role played by factors considered in sentencing in achieving a fair outcome in a criminal dispute. 8 marks
