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Teacher's name:

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Write your **student number** in the boxes above.

Letter

Legal Studies

Question and Answer Book

VCE Units 3&4 Trial Examination 2024 (Trial 1)

- Reading time is **15 minutes**.
- Writing time is **2 hours**.

Materials supplied

- Question and Answer Book of 22 pages.
- Additional space is available at the end of this book if you need extra space to complete an answer.

Instructions

- Write your student number in the space above.
- Write your responses in English.

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

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Section A

Instructions

- Answer all questions in the spaces provided.
 - Write your responses in English.
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Question 1 (2 marks)

The power to make laws about immigration is an exclusive law-making power. How does this impact the ability of the Victorian Parliament to make laws that regulate the circumstances in which people from another country can live in Victoria?

Question 2 (2 marks)

Outline the role of the Crown in making a Commonwealth law.

Question 5 (3 marks)

The Commonwealth government has announced that it will introduce a Bill into the Commonwealth Parliament to make “doxing” a criminal offence. Doxing is the publication of a person's private details on the internet with the intention of encouraging other people to harass that person, including by contacting the person personally or through social media.

Explain **one** reason for changing the law to prohibit doxing.

Question 6 (4 marks)

According to the website of the Victorian Law Reform Commission (VLRC), since 2001, the VLRC has completed 46 inquiries and the recommendations of around 75% of those inquiries have been implemented in whole or in part.

Referring to a recent Victorian Law Reform Commission (VLRC) inquiry in relation to the civil or criminal justice system, explain **two** reasons that the VLRC has been so successful in influencing the Victorian Parliament to change the law.

Section B

Instructions

- Answer all questions in the spaces provided.
- Write your responses in English.
- 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.

Question 1 (24 marks)

Source 1 – criminal case

The police arrested 19-year-old Ali and charged him with carjacking, which is an offence under section 79 of *the Crimes Act 1958 (Vic)* that is punishable by up to 15 years imprisonment. The prosecution's case was that Ali was part of a gang that stopped drivers who were driving alone, threatened to hurt the driver unless the driver got out of the car and handed over the car keys, and then stole the car to go joyriding.

At his committal hearing, Ali plead not guilty, but the magistrate nevertheless decided to commit Ali to trial in the County Court. At Ali's trial in the County Court, Ali represented himself and did not give evidence. Despite the fact that the carjackings occurred at night when it was difficult to see in the dark, each of the victims gave evidence in which they say that Ali was one of the gang members who stole their car. After listening to all the evidence, the jury decided that Ali was not guilty and he is acquitted.

Source 2 – civil case

Vanessa was one of the victims who gave evidence at Ali's trial for carjacking (see Source 1). Vanessa had suffered significant trauma as a result of the carjacking, which meant that she is now too frightened to drive alone and has recurring nightmares about being attacked by men who force her out of her car and threaten to beat her up. Immediately following Ali's acquittal, Vanessa sues Ali in the County Court for damages to compensate her for these psychological injuries. The case is heard by a judge and jury, and Vanessa is awarded damages of \$150,000.

- a. Distinguish between the role of the magistrate and the role of the jury in the criminal case. 4 marks

- b.** Explain how the standard of proof in a criminal case upheld Ali's right to the presumption of innocence in the criminal case. 4 marks

- d.** Compare the role of the jury in the criminal case and the role of the jury in the civil case. 3 marks

e. Distinguish between **one** purpose of the possible sanction in the criminal case and **one** purpose of the remedy in the civil case. 3 marks

- f. Describe **two** factors that Vanessa should have considered before initiating her civil claim against Ali. 4 marks

Question 2 (16 marks)**The Vanderstock case**

Section 90 of the Constitution gives the Commonwealth Parliament the exclusive power to make laws that impose excise duties. This means that any State law that imposes an excise duty can be declared invalid by the High Court. Until the High Court's decision in *Vanderstock v Victoria* [2023] HCA 30 (the Vanderstock case), the High Court had consistently interpreted an excise duty to be any tax that was imposed on the production or sale of goods. For example, the tax that beer manufacturers pay based on the alcohol content of their beer is an excise duty, and that is the reason this tax is imposed by a Commonwealth law rather than a State law. Under this interpretation, State Parliaments had the power to make laws that taxed consumers on the use or consumption of goods because these kinds of taxes were not taxes on the production or sale of goods and were therefore not excise duties.

In the Vanderstock case, the High Court had to decide whether a Victorian law that imposed a tax on the owners of electric vehicles that was calculated based on the number of kilometres travelled by the vehicle was an excise duty. This tax was a tax on the use of electric vehicles rather than a tax on the production or sale of electric vehicles. Nonetheless, a majority of the High Court (four of the seven judges) decided that the Victorian tax was an excise duty and so the Victorian law that imposed the tax was invalid. In other words, the majority decided that a tax on the use or consumption of goods could be an excise duty.

In reaching this decision, the majority stated that their interpretation of excise duties to include taxes on the use or consumption of goods reflected the important political consideration that the Commonwealth should have the exclusive power to decide trade policy, without any interference from the States.

The three judges in the minority vigorously disagreed. One of these judges, Gordon J, wrote in her judgment that:

This new rule marks a departure from long established and fundamental principle... No decision of this Court in the last 120 years has extended the term "excise duty" to any tax on goods [as opposed to just a tax on the production or sale of goods].

- a. Did the majority of the High Court in the Vanderstock case adopt a judicially activist approach or a judicially conservative approach? Justify your answer. 4 marks

- c. Because the High Court’s decision in the Vanderstock case was quite controversial, and because one of the judges in the majority has since retired, it is possible that a case will soon be brought before the High Court in which it will be argued that the High Court should overrule the Vanderstock case and reinstate the previous interpretation of section 90 that an excise duty does not include a tax on the use or consumption of goods. 4 marks

Describe **two** factors that might affect the ability of the High Court to change the law by overruling the Vanderstock case.

- d. Could the Commonwealth Parliament abrogate the High Court's decision in the Vanderstock case? Justify your answer. 2 marks

End of examination questions

