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Name _____

VCE LEGAL STUDIES

Unit 3 Practice Examination 2019

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	6	6	40
B	2	2	40
			Total 80

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

Instructions

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

SECTION A

Question 1 (12 marks)

Acclaimed pianist Breckin Speed sued tabloid magazine the *Weekly Crier* for defamation after it published a report accusing him of sexual harassment during a recent concert tour. One of his fellow musicians, a younger woman flute player, had spoken to management during the tour about her discomfort with Speed helping her polish and prepare her flute for performances; she said it was unnecessary and unasked-for, and that he made sexual gestures and rubbed against her while doing it. A member of the management team spoke to the *Weekly Crier*, and the musician, Eve Norbert, gave evidence at the trial. The court found in favour of Speed, and awarded him \$1.25m for lost wages plus \$750,000 in emotional distress.

- a. Who was the plaintiff in the above case and who was the defendant?

2 marks

- b. Describe **one** remedy that can be given at the conclusion of a civil matter, and identify **two** of its potential purposes.

4 marks

[illegible]

- c. Discuss the purpose of **one** pre-trial procedure that may have been conducted prior to the resolution of the above case.

6 marks

[illegible]

Question 2

Outline the role of the Victorian Civil and Administrative Tribunal as an alternative to courts in the resolution of civil disputes.

3 marks

Question 3

Explain how committal proceedings achieve **one** of their purposes.

4 marks

Question 4
Distinguish between mediation and arbitration as methods used to resolve civil disputes. 3 marks

To what extent do you believe the responsibilities of the jury contribute to fairness in the resolution of disputes? Give reasons for your answer.

8 marks

[illegible]

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Question 6

The most recent numbers taken from the Annual Reports of the County and Supreme Courts show that 81% of indictable matters resolve in a guilty plea.

Explain the difference between indictable and summary offences, and evaluate whether the processes the criminal justice system has for resolving cases without a trial verdict contribute to the achievement of justice.

10 marks

[illegible]

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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 (20 marks)

Source 1

The following are extracts from the website of the Victorian Department of Justice and Regulation, all concerning the launch of the intermediaries pilot program in 2018.



Victorian intermediaries pilot program

Intermediaries are skilled communication specialists who assist vulnerable witnesses to give their best evidence. Their role is to help communication with the witness and to assist the witness to give evidence to police and in court. Intermediaries are neutral and are officers of the court.

The general function of an intermediary is to:

- **Assess** the witness's communication style and specific communication assistance required.
- **Describe** the communication needs of the witness to the investigating police officer, legal practitioners and judicial officers to enable the individual to participate in the court process. This will include providing recommendations on how to best communicate with the witness, explaining concepts that the individual has difficulty understanding and/or making recommendations to the person questioning the witness and the Judicial Officer on how to pose a question to get the most reliable evidence.
- **Facilitate** communication between the individual and other parties to prevent or overcome a communication breakdown.
- **Write** court reports on the individual's communication needs and provide practical strategies for managing those needs.

The Victorian Government's intermediaries pilot program will start **1 July 2018**.

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Eligible witnesses for the intermediary pilot include:

- Child complainants and adult complainants with a cognitive impairment in matters of a sexual offence.
- Child witnesses and adult witnesses with a cognitive impairment in homicide matters.

The *Criminal Procedure Act 2009*'s definition of "cognitive impairment" includes impairment because of mental illness, intellectual disability, dementia or brain injury.

### Ground rules hearing

After any charges are laid and the case reaches the court, the intermediary will undertake a further assessment and produce a report for the court to consider at a Ground Rules Hearing.

Ground Rules Hearings are required in all hearings and trials that involve an intermediary. During a Ground Rules Hearing the judge or magistrate makes directions for the fair treatment and participation of vulnerable witnesses.

The report prepared by an intermediary, which will provide practical strategies and make recommendations about how best to communicate with the witness, will be discussed by the parties.

The judge will determine what the ground rules are and they should be recorded in open court. The intermediary will follow the ground rules.

The intermediary will be present with the witness during the court hearing or trial, to assist with communication.

### What is outside the scope of the intermediary's role?

The intermediary is not a:

- Support person
- Expert witness
- Counsellor
- Legal advisor
- Interpreter
- Advocate

An intermediary should not:

- Express an opinion on the truth or reliability of anything the witness has said/is to present
- Enter into discussions
- Give advice

<http://www.justice.vic.gov.au/home/justice+system/courts+and+tribunals/victorian+intermediaries+program>

- a. Explain **one** role of legal practitioners in the resolution of a legal matter through the courts. 2 marks

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b. Discuss the role played by the judge in the resolution of disputes.

5 marks

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- c. Identify **two** alternative arrangements that may be put in place for witnesses classed as 'vulnerable'.

2 marks

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- d. Describe **one** recommended reform to the criminal justice system and comment on how it might enhance the ability of the system to achieve justice.

5 marks

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- e. To what extent do the provisions made for vulnerable witnesses help the criminal justice system achieve the principles of justice?

6 marks

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## Question 2 (20 marks)

### Source 1

The following are extracts from the March 2018 report of the Victorian Law Reform Commission into litigation funding and representative proceedings, 'Access to Justice – Litigation Funding and Group Proceedings'.

#### The risks of losing

- 5.8 The financial risks that the representative plaintiff takes on are disproportionate not only to the risks borne by other class members, but also to the value of their own claim. In a large class action, the adverse costs risk and the costs of bringing proceedings will be millions of dollars, while the representative plaintiff's claim will be far less. For example, in *Camping Warehouse v Downer EDI*, the average payout per class member was expected to be \$633.29, whereas the legal fees were \$2.85 million.

#### The costs of winning

- 5.17 Unlike the costs of losing, which are solely borne by the representative plaintiff, the costs of winning a class action are shared among the class members. The type and amount of costs depend on how the risks of losing have been covered during proceedings.
- 5.18 Class members receive less money if the representative plaintiff's risks have been covered by a litigation funder, or a law firm acting on a 'no win, no fee' basis during proceedings. This is because the litigation funder, or the law firm, will necessarily be rewarded from any settlement or judgment amounts for taking on this risk.
- 5.23 As set out in Chapter 3, the payment of legal costs in class actions is different to other litigation. If an 'all in' settlement is reached, legal costs will generally be deducted from any settlement amount prior to distribution to class members. Each class member effectively contributes part of their settlement amount toward legal costs, even if they have not signed a legal costs agreement. This is appropriate because all class members enjoy the benefit of the services for which the costs were incurred, as observed by Justice Gordon in *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd*.  
The legal costs were incurred and achieved a settlement for all group members. The group members who did not sign a LCA [legal costs agreement] with [the representative plaintiff's lawyers] should not be entitled to receive a windfall by reason of their refusal to sign a LCA. [...]

#### Conclusion

- 7.1 Victoria's class action regime has improved access to justice. Thousands of Victorians have benefited from the procedures introduced in 2000 by Part 4A of the *Supreme Court Act 1986* (Vic). Combined, they have received more than one billion dollars in compensation that they would have been unable or unwilling to recover in separate claims. Eighty-five class actions have been filed on behalf of a wide variety of claimants, from vulnerable individuals to institutional investors and insurers. Two in every three class actions settled.
- 7.2 Crucially, the regime affirms the Supreme Court's role in ensuring that the procedures are fair and that the outcome takes into account the interests of all class members.



- a. Explain **two** enforcement issues that might affect the decision of a potential plaintiff to launch civil proceedings.

4 marks

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- b. Jeri is considering launching a civil action. How might costs factor into the decision of any potential plaintiff to pursue justice for a civil wrong?

4 marks

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- c. The Supreme Court of Victoria is the only state court with the power to hear representative proceedings. Identify and explain **two** reasons that justify the arrangement of courts into a hierarchy with some having more power than others.

6 marks

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- d. Discuss the ability of representative proceedings to enhance access to justice.

6 marks

[illegible]

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### Extra space for responses

Clearly number all responses in this space.

[illegible]

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