

Student Name: _____

LEGAL STUDIES
UNITS 3&4
2020 Written Trial Examination

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	7	7	40
B	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.

Question 3 (4 marks)

Compare the roles played by the Legislative Council and Legislative Assembly in passing laws, such as the *Road Safety Amendment Act 2020* (Vic).

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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).

- a.** Identify **one** way the Victorian Parliament can respond to the VLRC's recommendations 1 mark

- b. 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 marks

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Question 5 (8 marks)

After a two week committal hearing in July 2018, Borce Ristevski was committed to stand trial for the murder of his wife Karen Ristevski.

- a. Describe **one** purpose of a committal proceeding in the Ristevski case. 2 marks

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.”

- b.** Discuss the appropriateness of plea negotiations in this case. 4 marks

[illegible]

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 Justice 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."

- c. Outline how the appeal process in the Ristevski Case justifies the existence of the court hierarchy. 2 marks

Question 6 (8 marks)

- a. Describe the importance of the relationship between the High Court and the separation of powers. 3 marks

Question 7 (10 marks)

Evaluate the ability of Parliament and the courts to respond to the need for law reform.

[illegible]

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

[illegible]

Question 2 (17 marks)**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 firm 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). Judge 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

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

Judge Bochner stated that,

“In assessing the damages to which Cheng was entitled, I rely on the principles set out by the South Australian Full Court of the Supreme Court (which is equivalent to Victoria’s Court of Appeal) in *Duffy v Google Inc* (2017).

The defamatory publications hit at the heart of the plaintiff’s business and reputation. I have no doubt that significant damage was caused by the publication. Any award of damages must, in the words of Justice Blue in the *Duffy v Google Inc* (2017) case, ‘*be sufficient to signal the public vindication of his reputation*’.

I assess general damages in the sum of \$100,000.”

- a. Identify the plaintiff **and** defendant in this case.

2 marks

- 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

- c. Describe the purpose of **one** direction Judge Bochner may have made during the civil pre-trial phase. 2 marks

- d. Discuss Judge Bochner's responsibility to uphold the principle of fairness through managing the trial. 4 marks

- e. Analyse how Judge Bochner's interpretation **and** application of the *Defamation Act 2005* (SA) in Source 2 was able to resolve the *Cheng v Lok* case.

3 marks

[illegible]

[illegible]

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.

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.

- a. Some of Australia’s laws that introduced restrictions to deal with the Covid-19 crisis have varied from state to state, while other laws are consistent throughout the country.

Explain how the division of powers enables this situation to occur.

4 marks

- b.** Suppose the Commonwealth Parliament is planning a High Court challenge against South Australia, laws are not restricting backpackers from moving across Western Australia's borders into South Australia to seek work.

The Commonwealth Parliament is arguing that the measures they introduced under *Biodiversity Act 2015* are granted by their Constitutional power to quarantine people.

South Australia is arguing that they are upholding the backpackers' guaranteed Constitutional express right under s.92 to be free to move "across borders" in order to work.

The High Court's previous interpretation of s.92 in the case of *Nationwide News* (1992) stated the Commonwealth Parliament can "prohibit movement if the law is to protect the State or its residents from injury."

- i.** Outline one reason why s.109 of the Commonwealth Constitution is required in this situation. 2 marks

- ii. In your opinion, what ruling would a Justice in the High Court make in this case?

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

4 marks

[illegible]

- 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 marks

Impact on backpackers

Impact on South Australia's *Public Health Act 2011* (SA)

Impact on Commonwealth's *Biosecurity Act 2015*

Extra space for responses.

Clearly number all responses in this space.

[illegible]

[illegible]