

Student Name: _____

LEGAL STUDIES

UNITS 3&4

2021 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	2	2	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 30 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 unauthorized 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 (3 marks)**Dean v Puleio 2021**

In July 2021, the County Court's Judge July Clayton awarded periodontist Dr Alison Dean, aggravated damages of \$170,000 and all legal costs. Dr Dean's successful claim found four Google Reviews by one of her patients, Catherine Puleio, had defamed her in March 2020. Consequently, she suffered damage to her health and professional reputation. Ms Puleio refused to remove the reviews, did not apologise or attend judicial mediation.

Source: Austlii, <<http://classic.austlii.edu.au/au/cases/vic/VCC/2021/848.html>>

a. Identify who holds the burden of proof in this case.

1 mark

b. Distinguish between the standard of proof required in *Dean v Puleio* and a trial involving armed robbery.

2 marks

Question 2 (4 marks)

The Victorian Supreme Court's Annual Report	2019-2020
Cases referred for mediation	691
Mediations completed	405
Cases resolved on day of mediation	236
Percentage of cases resolved on day of mediation	58%
Number of hearing days saved	1,206

Source: Supreme Court of Victoria, <<https://www.supremecourt.vic.gov.au/about-the-court/annual-reports/supreme-court-of-victoria-2019-20-annual-report>>

Using the data above, discuss the effectiveness of mediation in improving the administrative convenience of the civil justice system.

[illegible]

Question 3 (7 marks)

President of the Law Council of Australia, Dr Jacoba Brasch QC said, “The introduction of the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* into the Upper House of the Commonwealth Parliament is a positive step forward towards the reconsideration and amendments to existing federal discrimination laws.

The Bill aims to engage in important rights such as the right to equality and non-discrimination found in international treaties and declarations that Australia has entered into, such as the International Covenant on Civil and Political Rights (ICCPR).”

Source: <<https://parlwork.aph.gov.au/Bills/s1306>>

- a. It has been argued that, ‘the Upper House is not allowed to initiate any bills, including the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.’

Is this statement correct? Justify your answer.

3 marks

- b. It has also been argued that, ‘Entering into international treaties like the ICCPR, will enhance the Commonwealth’s ability to pass the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.’

To what extent do you agree?

4 marks

[illegible]

In 2020, VCAT’s Residential Tenancies Tribunal (VCAT) presided over *Donaldson v Dore*. The case involved the landlord wanting to terminate a tenancy agreement under the *Residential Tenancies Act 1997*, claiming that the tenant “seriously threatened” the landlord’s agent. Member Crocker dismissed the termination order, arguing the tenant’s conduct amounted to a series of exchanges which solely related to the airing of her grievances. The landlord was considering an appeal.

Source: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2020/1325.html>

- a. Distinguish between one method that could be used by Consumer Affairs Victoria (C.A.V) and one method that could be used the VCAT to resolve similar disputes to the *Donaldson v Dore* case.

3 marks

[illegible]

Question 5 (4 marks)

- a. Using examples, compare the extent of Victoria's residual and concurrent law-making found in the Commonwealth Constitution.

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Question 6 (5 marks)

Discuss the significance of **one** High Court case that has had an impact on the division of constitutional law-making powers.

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‘The use of the VLRC and representative proceedings will enhance the operation of our legal system’. Critically evaluate this statement.

[illegible]

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.

Source 1

The following are extracts of Judge Wraight's sentencing remarks in the County Court case *DPP v LEES 2020* (VCC 375).

In January 2019, unlicensed driver, Robert Lees was speeding in a stolen car, when he veered onto the wrong side of the road, seriously injuring two people. In April 2020, after a plea negotiation, Lees entered a plea of guilty, to seven charges. Judge Wraight sentenced Lees to a "maximum of 7 years and 9 months imprisonment".

- a) Prosecutor Ms D Piekusis QC, submitted "rather than offer assistance to the victims, Lees grabbed a bag from the boot and fled, shouting "My DNA is all over the car".
- b) Mr James Anderson, who was appointed as Lees' Victoria Legal Aid barrister, submitted his client's conduct was "callous", but the offending was "mid-range".
- c) Judge Wraight considered matters in mitigation. Lees apologised to the victims reflecting "remorse" and "acceptance of responsibility". Lees' guilty plea "avoided the need for the victims to relive the trauma at trial and has facilitated the course of justice".
- d) Judge Wraight remarked, "I have considered 7 victim impact statement detailing ongoing pain and mental anguish. Lees' dysfunctional upbringing "where alcoholism, violence and addiction to drugs since the age of 12, were also considered".
- e) Judge Wraight remarked, "I commend the defendant's plea and your commitment during remand to rehabilitate yourself. At the same time, denunciation of your conduct also weighs heavily in my sentencing. You had no regard for the law and put the community at great risk because of your serious offending. Your actions and their consequences are a very important component of the overall assessment of the seriousness of your offending."

Question 1 (19 marks)

a. Identify the two parties in this case.

2 marks

b. Explain how the purpose of denunciation is achieved in this case.

2 marks

c. Outline the impact of aggravating **or** mitigating factors in the sentencing of Lees.

- d. Describe **one** responsibility held by Judge Wraight in this case and discuss its ability to achieve the principle of fairness.

5 marks

[illegible]

- e. A social commentator wrote, “the criminal justice system favours the accused with extra rights and considerations, including the plea negotiations and assistance by Victorian Legal Aid. The victims’ rights are forgotten”.

Evaluate this statement.

7 marks

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Question 2 (21 marks)**Source 1**

The following is an extract from an article by Christopher Knaus, published in The Guardian on 29 June 2021.

High Court to hear bid to overturn New South Wales hidden camera laws

Animal rights activists, The Farm Transparency Project (FTP), have launched a landmark High Court bid, to overturn laws suppressing secretly recorded vision of animal cruelty.

The FTP is arguing NSW's "ag gag laws are not compatible with the system of representative and responsible government".

Many states, including New South Wales have passed "ag gag laws". Section 11 of the *Surveillance Devices Act (NSW) 2007* has been criticised, as police have pursued and laid criminal charges against animal rights activists, for exposing "private activities" in commercial animal-use industries, like intensive factory farms.

In 2015, The FTP's Director Chris Delforce, was charged with breaching Section 11 of *The Surveillance Devices Act (NSW) 2007* which carries a penalty of 5 years imprisonment.

Delforce said the case has broader implications. "Ag gag laws are a serious threat to democratic debate. Our parliaments are not representing us on this issue. High Court action has the capacity to challenge the validity of these laws and lead Parliaments throughout Australia to scrap these unconstitutional laws".

The FTP is now crowdfunding to finance the case and change national ag gag laws.

Source: The Guardian, <<https://www.theguardian.com/australia-news/2021/jun/29/high-court-to-hear-bid-to-overturn-new-south-wales-ag-gag-laws>>

Source 2

The following is a summary of the High Court case of *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd 2001 HCA [63]*.

The Australian Constitution has no explicit right to freedom of expression, however, in a majority 6-1 decision, the High Court's Case, *ABC v Lenah Game Meats Pty Ltd 2001*, recognised the implied freedom of political communication extends to animal welfare issues. Lenah Meats sought an injunction to stop the ABC's Four Corners from infringing its "privacy" by showing illegally secured footage of animal abuse on their business practices. The High Court argued an "injunction would not be properly exercised if it prevented free and open debate in areas of legitimate public concern".

Source: <<https://eresources.hcourt.gov.au/showCase/2001/HCA/63>>

Source 3

The following excerpt is from the Hon. Justice Kirby, in the High Court case *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd 2001 HCA [63]*.

"Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups, that often requires media attention. Improvements in live sheep exports and in the condition of battery hens followed such community debate."

- a. Outline **one** possible reason for law reform in Section 11 of *The Surveillance Devices Act (NSW) 2007*.

2 marks

[illegible]

- b.** Define injunction **and** outline **one** of its purposes in *ABC v Lenah Game Meats Pty 2001*.

3 marks

[illegible]

- c. Describe **one** reason that it will be necessary for the High Court to interpret the words “private activities” in the *Surveillance Devices Act (NSW) 2007*. 3 marks

[illegible]

- d. Explain **one** effect of the High Court’s statutory interpretation of “private activities” may have on the Victorian County Court when adjudicating similar cases. Justify your answer. 3 marks

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- e. Discuss **two** factors that may affect the ability of Chris Delforce to influence law reform of ag gag laws through the courts. 6 marks

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- f. Analyse the ability of the media, including social media, to promote reform of ag gag laws.

4 marks

[illegible]

Extra space for responses.

Clearly number all responses in this space.

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