**Student Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ / 80 marks**

**LEGAL STUDIES  
  
Units 3 & 4 – Written examination**

PES

# 2018 Trial Examination 3

## Reading Time: 15 minutes Writing Time: 2 hours

**QUESTION & ANSWER BOOK**

**Structure of book**

|  |  |  |  |
| --- | --- | --- | --- |
| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| A | 9 | 9 | 40 |
| B | 3 | 3 | 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 white out liquid/tape.
* A calculator is not allowed in this examination.

**Materials supplied**

* Question and answer book of 17 pages.

**Instructions**

* Answer all questions in the answer book.
* All written responses must be in English.

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| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |

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

**SECTION A**

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| **Instructions for Section A**  Answer **all** questions in the spaces provided. |

**Question 1** (1 mark)

Define ‘codification’.

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**Question 2** (4 marks)

Explain how the separation of powers acts as check on the law-making powers of parliament.

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**Question** **3** (2 marks)

Describe the role of Victoria Legal Aid in assisting an accused person.

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**Question 4** (3 marks)

Describe **one** recent example of a recommendation for law reform by either one parliamentary committee or one Royal Commission.

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**Question 5** (6 marks)

Explain how the following features of the Victorian criminal justice system each uphold **one** of the principles of justice:

1. The presumption of innocence. (3 marks)

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1. The right of an accused to be tried without unreasonable delay. (3 marks)

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**Question 6** (4 marks)

Distinguish between judicial activism and judicial conservatism as factors that affect the ability of courts to make law.

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**Question** **7** (4 marks)

Describe the responsibilities of legal practitioners in a civil trial.

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**Question 8** (6 marks)

Using examples, analyse the influence of the media, including social media, in law reform.

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**Question 9** (10 marks)

Discuss the significance of **two** High Court cases involving the interpretation of the Australian Constitution:

* One case interpreting sections 7 and 24, and
* One case which has had an impact on the division of constitutional law-making powers.

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**SECTION B**

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| **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** (14 marks)

Arabella contracted Hank’s Heaters to install a hydronic heating system in her 2-bedroom apartment for $4,000. One week after installation, the heating system stopped working. Arabella contacted Hank’s Heaters, but they refused to either repair the heater or provide a refund, claiming that it was in full working condition after the installation. They have since refused to answer her calls. Arabella then contacted another heater repair company who have provided a quote of $1500 to repair the system.

Arabella wants to have this dispute resolved as quickly as possible, and have a final and binding resolution that Hank’s Heaters pay her $1500 compensation. However, she is concerned about the cost of pursuing her case as she is a single mother and only works part-time in order to look after her 2-year-old son.

Arabella has been advised that she could take the matter to either Consumer Affairs Victoria (CAV), the Victorian Civil and Administrative Tribunal (VCAT) or the Magistrates’ Court.

1. Analyse **two** factors that Arabella should consider before initiating a civil claim. (4 marks)

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1. Describe the main method of dispute resolution used by CAV. (2 marks)

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1. Advise Arabella about whether CAV, VCAT or the Magistrates’ Court is the most appropriate body to resolve this dispute. (8 marks)

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**Question 2** (12 marks)

Theo, 28 years of age, was charged with assaulting and threatening to kill Julia, his wife at the time. Theo entered an early plea of guilty to assault and threats to kill after receiving a sentence indication from the court during plea negotiations.

After hearing submissions from both parties as to sentence, including a Victim Impact Statement from Julia, the County Court judge sentenced Theo to a Community Corrections Order (CCO) of two years, including 6 months of counselling and 100 hours of community work.

The maximum penalty for threats to kill is 10 years’ imprisonment and assault, 5 years.

The offences relate to an incident that occurred 18 months ago. At the time, Theo and Julia had separated and were involved in a legal battle over the custody of their child in the Federal Circuit Court. The court had ordered that the child would live with Julia and would spend a total of four hours per week with Theo – two periods of two hours each.

Theo has no prior convictions and has been in full-time employment as a mechanic since he left school. He has remarried and his second wife is currently pregnant with their first child. He also expressed remorse for his actions.

In her victim statement, Julia, claimed that, since the offences, she has lived in fear for her life. She has had to move to a new house and sell her hairdressing business because she fears that Theo would carry out his threats. She suffers from post-traumatic stress disorder and sees a psychologist.

1. Outline the purposes of plea negotiations. (2 marks)

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1. With reference to the factors considered in sentencing, discuss the appropriateness of the judge’s sentencing decision in this case. (5 marks)

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1. Discuss the extent to which a Community Corrections Order (CCO) is able to achieve its purposes in this case. (5 marks)

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**Question 3** (14 marks)

**Source 1**

Section 8(1) of the Infertility Treatment Act 1995 (Vic)

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| **Section 8(1)**  Provided that, to be eligible to undergo infertility treatment a woman must either be:   * be married and living with her husband on a genuine domestic basis or * be living with a man in a de facto relationship. |

**Source 2**

Section 22 of the Sex Discrimination Ac 1984 (Cth)

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| **Section 22**  Provides that it is unlawful, for a person who provides goods or services, to discriminate against another person - on the ground of the other person’s sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, or breastfeeding – by refusing to provide the other person with those goods or services. |

**Source 3**

McBain v Victoria 2000 Federal Court of Australia

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| **Facts**  Dr McBain wanted to provide infertility treatment (IVF) to Ms Meldrum, who was a single woman not living in a de facto relationship. He sought a declaration from the court that section 8(1) of the Victorian Act was inconsistent with section 22 of the Commonwealth Act, and therefore, under section 109 of the Commonwealth Constitution, the Victorian Act was invalid to the extent of the inconsistency.  **Held**  The court held that infertility treatment is a “service” within section 22 of the Commonwealth Act and that Dr McBain was precluded, by the Victorian Act, from providing the service to Ms Meldrum because of her marital status. Therefore, the Victorian Act is inconsistent with the Commonwealth Act, and is invalid to the extent of the inconsistency. |

1. With reference to this case**,** explain **one** reason for and **one** effect of statutory interpretation. (4 marks)

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1. With reference to this case, discuss the significance of section 109 of the Australian Constitution (5 marks)

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1. With reference to this case, discuss the ability of individuals to influence law reform through the courts. (5 marks)

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**END OF QUESTION AND ANSWER BOOK**

**Extra space for responses**

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