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

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

PES

# 2020 Trial Examination

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

**QUESTION & ANSWER BOOK**

**Structure of book**

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| --- | --- | --- | --- |
| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| A | 8 | 8 | 40 |
| B | 4 | 4 | 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 24 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 40 marks**

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

**Question 1** (6 marks)

Sudanese refugee Akon Guode killed her four-year old twins and 16-month-old son, driving her car into a lake in 2015.Originally jailed for 26½ years, with a minimum of 20 years, that term was significantly reduced by the Victorian Court of Appeal, which imposed a new sentence of 18 years’ imprisonment with a non-parole period of 14 years.Victorian Director of Public Prosecutions Kerri Judd, QC, was on Friday granted leave to appeal that decision in the High Court.

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| 1. Referring to this case, justify **one** reason for a court hierarchy.   (2 marks) |
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1. Analyse how Victoria Legal Aid (VLA) and Community Legal Centres (CLCs) could have played a role in assisting Akon Guode in the above case.

(4 marks)

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**Question 2** (3 marks)

*A man has pleaded guilty to manslaughter in the Melbourne Magistrate’s Court. His admission came after a plea negotiation downgraded from a charge of murder.*

Explain why a plea negotiation may not be appropriate in this case.

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**Question 3** (9 marks)

Zachary commenced an action in defamation in the Supreme Court of Victoria against an online media company, News Unlimited, alleging that they published a defamatory article about him that has damaged his reputation in the community. The Supreme Court held that News Unlimited was not liable for defamation. Subsequently, Zachary applied to the Court of Appeal for leave to appeal, however, his application was refused, and the court ordered Zachary to pay News Unlimited’s costs. Zachary is considering taking the matter to the High Court of Australia.

1. Analyse **two** factors Zachary should have considered in deciding to initiate civil action given the facts provided. (6 marks)

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1. Explain the purpose of **one** pre-trial procedure that may have taken place prior to the case being heard in the Supreme Court. (3 marks)

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**Question 4** (3 marks)

Judicial independence is important to the concept of **separation of powers.**

Explain how the separation of powers provides a means by which the Australian Constitution acts as a check on parliament’s law-making powers

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**Question 5** (9 marks)

Social media and various types of political pressure can be powerful influences as to whether there is a change to the law, especially when it comes to large scale campaigns for new legislation.

1. Outline **one** advantage of social media compared to traditional media in influencing law reform. (2 marks)

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1. Describe **one** type of political pressure that may prevent a change in the law from occurring. (3 marks)

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1. A government considering new legislation may choose to establish a parliamentary committee or Royal Commission.

Discuss the ability of **either one** parliamentary committee **or one** Royal Commission to influence law reform. (4 marks)

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**Question 6** (10 marks)

‘*Unaffordable and out of reach: the problem of Access to the Australian Legal System’* was the title of a report by Community Law Australia, that led to a bill going before the lower house of the Victorian parliament.

Describe **one** factor hindering the ability of the Victorian civil justice system to achieve **two** of the principles of justice. Discuss the extent to which **one** recommended reform to the Victorian civil justice system may help achieve justice. In your answer, outline **one** reason for law reform.

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**SECTION B 40 marks**

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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** (15 marks)

**Source 1**

**High Court rules Aboriginal Australians are not ‘aliens’ under the constitution and cannot be deported.**

The Australian government has released an Aboriginal man from immigration detention after a landmark high court case decided Aboriginal Australians are not aliens for the purpose of the constitution and cannot be deported. …..

In a four-to-three split decision the high court ruled that Aboriginal people with sufficient connection to traditional societies cannot be aliens, giving them a special status in Australian constitutional law [likely to have ramifications far beyond existing native title law](https://www.theguardian.com/law/2019/dec/05/indigenous-citizenship-test-lawyers-argue-up-to-a-third-of-australians-at-risk-of-deportation).

The majority of the high court ruled that New Zealand-born Brendan Thoms was not an alien and the [commonwealth therefore did not have power to order his deportation](https://www.theguardian.com/australia-news/2019/dec/04/citizenship-test-court-to-decide-whether-indigenous-people-can-be-deported-from-australia).

Source: Paul Karp

‘High Court rules Aboriginal Australians are not ‘aliens’ under the constitution and cannot be deported’

The Guardian, February 11th 2020

**Source 2**

**Love v Commonwealth of Australia; Thoms v Commonwealth of Australia [2020] HCA 3**

Today, the High Court, by majority, answered a question in two special cases to the effect that Aboriginal Australians (understood according to the tripartite test in *Mabo v Queensland [No.2]* (1992) 175 CLR 1) are not within the reach of the power to make laws with respect to aliens, conferred on the Commonwealth Parliament by s51(xix) of the *Constitution* (“the aliens power”). That is the case even if the Aboriginal Australian holds foreign citizenship and is not an Australian citizen under the *Australian Citizenship Act 2007 (Cth).* ….

In their separate reasons, the Justices forming the majority held that it is not open to Parliament to treat an Aboriginal Australian as an “alien” because the constitutional term does not extend to a person who could not possibly answer the description of “alien” according to the ordinary understanding of the word. ….

The plaintiffs, Mr Thoms and Mr Love, were both born outside Australia and are not Australian citizens. …. The plaintiffs were sentenced for separate and unrelated offences against the *Criminal Code* (Qld). After the convictions, the visas of both men were cancelled by the delegates of the Minister for Home Affairs (Mr Peter Dutton) under s501(3A) of the *Migration Act 1958* (Cth). They were taken into immigration detention, under s189 of that Act, on suspicion of being “unlawful non-citizens” and were liable to deportation. …..

Source: High Court of Australia Judgement Summaries

‘Love v Commonwealth of Australia; Thoms v Commonwealth of Australia [2020] HCA 3’

hcourt.gov.au, February 11th 2020

**Source 3**

***High Court ruling on indigenous deportation ‘will lead to racial division and strife’***

Speaking today, Attorney General, Christian Porter said while the ruling applied to a very specific group of people, the government was carefully looking at the “broader implications”.

He indicated the government would not back down from its policy of deporting non-citizens who commit crimes. “(The decision) has a clear impact for that group of people and that policy for deporting people who’ve committed serious offences while on a visa and who are non-citizens,” he said. “We’ll be looking for ways in which we might be able to effect that policy without reliance on the power we were previously relying on, but we’ll look into that.”

The government could take its lead from Justice Stephen Gageler, who wrote in his minority opinion that the “complications and uncertainties” the decision would create “for the maintenance of an orderly national immigration program … might perhaps be addressed by the Commonwealth parliament reverting to the approach of relying on the power conferred by section 51(xxvii) to make laws with respect to ‘immigration …

Source: Frank Chung;

‘High Court ruling on indigenous deportation will lead to racial division and strife’

news.com.au, February 12th 2020

**Source 4**

***Indigenous ‘aliens’ case sets dangerous precedent: Morrison***

Scott Morrison has flagged new laws which could overturn a landmark High Court decision on Indigenous “aliens”, warning Australia’s laws should remain “blind to race”. ….

Mr Morrison said on Monday the decision risked “setting up a pretty dangerous precedent”.

“I respect the High Court and their judgements, they’re entitled to make the decisions, but equally the government and the Parliament can make laws about these matters and I think it’s important that we carefully consider the implications of that judgement.”

Source: Tom McIlroy;

‘Indigenous ‘aliens’ case set dangerous precedent: Morrison’

afr.com, February 17th 2020

1. Explain the role of the High Court in this case.

(3 marks)

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1. Explain why ‘the requirement for standing’ was not a barrier to the High Court in this case. (3 marks)

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1. Discuss the supremacy of parliament in law-making in this case. (5 marks)

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1. *A precedent may be either binding or persuasive.*

Distinguish between the terms ‘binding’ and ‘persuasive’ precedents. (4 marks)

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**Question 2** (10 marks)

*An accused person’s right to remain silent and thus choose not to give evidence when facing court charged with a crime is contained in the common law. However, where a guilty plea is given, the law should compel an offender to disclose all relevant facts (in relation to the crime they have admitted to), otherwise be hit with an aggravated sentence.*

1. Identify **one** further right of an accused. (1 mark)

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1. Describe **two** responsibilities of the legal practitioners in this case. (4 marks)

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1. With reference to the relationship between parliament and the courts, explain how each could be involved in law-making, given the statement *‘the law should compel an offender to disclose all relevant facts (in relation to the crime they have admitted to), otherwise be hit with an aggravated sentence’*.

(5 marks)

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**Question 3** (15 marks)

***‘Record fine for dive death: Shelley Hodgson, Herald Sun, May 3, 2007 (extract)***

A DIVING company has been fined $200,000 over the death of an inexperienced diver who drowned near Portsea. It is believed to be the largest fine for an offence of its kind handed in Victoria. But Judge Lance Pilgrim of the County Court acknowledged that Melbourne Diving Services has gone into liquidation and will simply never pay the $200,000.

Robert David Grant, 32, died on January 17, 2004, while on a diving trip with the company. Melbourne Diving Services pleaded not guilty to one count of failing to ensure the safety of people other than employees. The company was found guilty by a jury.

The court heard that Mr Grant had not dived for 18 months but staff with Melbourne Diving Services did not properly inquire about his experience. It was hoped the fine would send a message to the diving industry.

1. Discuss whether the sanction imposed is appropriate in this case. Refer to sanction purposes in your response. (6 marks)

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1. Explain the possibility for the case to involve the civil justice system.

(3 marks)

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Section 108 of the Commonwealth of Australia Constitution Act 1900 (UK) states (in part):

*Every law in force in a colony which has become or becomes a State …… shall, subject to this Constitution, continue in force in the State …… the Parliament of the State shall have such powers of alteration and of repeal of any such law …*

1. Explain how Section 108 applies when legislation is written in relation to sanctions.

(3 marks)

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*For legislation in relation to criminal sanctions to be enacted by the Victorian parliament, the Crown has a role to play.*

**d.** Explain why the above statement is correct? (3 marks)

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**END OF QUESTION AND ANSWER BOOK**

**Extra space for responses**

**Clearly number all responses in this space.**

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