

Harvey - sample answer

Argument 1

- If the appellants are the native title holders or registered native title claimants, then appellants are entitled to the freeholder rights under s 24MD(6A)
 - [6]
- the appellants are the native title holders or registered native title claimants
 - [2], [6]
- Therefore, appellants are entitled to the freeholder rights under s 24MD(6A)
 - [6]

Argument 2

- If the decision to grant ML 29881 is a future act that involves the creation of a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining, then the appellants are entitled to the procedural rights afforded by s 24MD(6B)
 - [6]
- the decision to grant ML 29881 is a future act that involves the creation of a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining
 - Creation of a right to mine [6], [67], [70-74], [83]
 - Future act [16], [23], [83]
 - Sole purpose of the construction of [6], [40], [83]
 - Infrastructure facility [6], [75-76], [82], [83]
 - Associated with mining [6], [40], [73], [56-63], [83]
- Therefore, the appellants are entitled to the procedural rights afforded by s 24MD(6B)
 - [6]

Argument 3

- If appellants are entitled to the freeholder rights under s 24MD(6A) and if the appellants are entitled to the procedural rights afforded by s 24MD(6B), and if the fed court said it is not the case that the appellants are entitled to the procedural rights afforded by s 24MD(6B), then the Federal Court erred
- appellants are entitled to the freeholder rights under s 24MD(6A)
 - Argument 1
- the appellants are entitled to the procedural rights afforded by s 24MD(6B)
 - Argument 2

- the federal court said it was not the case that the appellants are entitled to the procedural rights afforded by s 24MD(6B)
 - [5], [49-55]
- Therefore, the Federal Court erred
 - [6]

Argument 4

- If the Federal Court erred, then the appeal is allowed
- the Federal Court erred
 - Argument 3
- Therefore, the appeal is allowed
 - [6], [84]

[Alternative argument form that condenses Arguments 3 and 4]

- If (the Federal Court erred and) the appellants are entitled to the procedural rights afforded by s 24MD(6B), then the appeal is allowed
- (the Federal Court erred)
 - [5], [6], [49-55]
- The appellants are entitled to the freeholder rights under s 24MD(6A)
 - Argument 1
- the appellants are entitled to the procedural rights afforded by s 24MD(6B)
 - Argument 2
- Therefore, the appeal is allowed
 - [6], [84]

OUTLINE OF ARGUMENT for Gaegler, Gordon, Edelman (pp 7- 21) [1-43]

Argument 1

- If knowledge of the age of the children was not an element of the offences (in relation to provisions (ss 323 to 324C) in Div 1 of Pt II of the Crimes Act 1958 (Vic) ("the Crimes Act")), then knowledge of the age of the children was not a matter that the Crown had to prove beyond reasonable doubt to establish that the respondent entered into an agreement, arrangement or understanding to commit the offences
 - [15], [31], [33]
- knowledge of the age of the children was not an element of the offences (in relation to provisions (ss 323 to 324C) in Div 1 of Pt II of the Crimes Act 1958 (Vic) ("the Crimes Act")),
 - [15], [29], [32], [30], [31], [33]
- Therefore, knowledge of the age of the children was not a matter that the Crown had to prove beyond reasonable doubt to establish that the respondent entered into an agreement, arrangement or understanding to commit the offences
 - [30], [31], [32], [33]

Argument 2

- If knowledge of the age of the children was not a matter that the Crown had to prove beyond reasonable doubt to establish that the respondent entered into an agreement, arrangement or understanding to commit the offences, and if the trial judge did not direct the jury that, for the offence to be established beyond reasonable doubt the prosecution was required to prove that the agreement was to have the relevant knowledge or belief, then the trial judge did not misdirect the jury
 - [1]
- knowledge of the age of the children was not a matter that the Crown had to prove beyond reasonable doubt to establish that the respondent entered into an agreement, arrangement or understanding to commit the offences
 - [32-34]
- the trial judge did not direct the jury that, for the offence to be established beyond reasonable doubt the prosecution was required to prove that the agreement was to have the relevant knowledge or belief
 - [5]
- Therefore, the trial judge did not misdirect the jury
 - [1], [10]

Argument 3 [nb - this could be condensed with the final argument or even with Argument 2]

- If the trial judge did not misdirect the jury, and if the Court of Appeal allowed an appeal on the basis of the trial judge's direction, then the court of Appeal erred in quashing the convictions of the respondent
 - [1], [10]
- The Court of Appeal allowed an appeal on the basis of the trial judge's direction
 - [8-9]
- The trial judge did not misdirect the jury
 - [1], [10] Argument 2
- Therefore, the court of Appeal erred in quashing the convictions of the respondent
 - [43 - inferred]

Final argument

- If the court of Appeal erred in quashing the convictions of the respondent, then the appeal is allowed.
 - [10 - inferred]
- The court of Appeal erred in quashing the convictions of the respondent
 - [43 - inferred] Argument 3
- Therefore, the appeal is allowed
 - [43]

Carmichael - sample answer

[POTENTIAL PRIOR ARGUMENT - NO PENALTY IF NOT INCLUDED] 1

- **IF** the impugned clause is an arbitration agreement **AND IF** an application for damages and interlocutory application to restrain the arbitration **AND IF** an interlocutory application to stay proceedings is under s 7(2) of the International Arbitration Act **THEN** questions regarding the standard of proof are to be answered within the framework established by s 7(2) and (5) of the International Arbitration Act
 - [22-24]
- the impugned clause is an arbitration agreement
 - [22-24]
- an application for damages and interlocutory application to restrain the arbitration
 - [22-24]
- an interlocutory application to stay proceedings is under s 7(2) of the International Arbitration Act
 - [22-24]
- Therefore, questions regarding the standard of proof are to be answered within the framework established by s 7(2) and (5) of the International Arbitration Act
 - [22-24]

Argument 1

- **IF** questions regarding the standard of proof are to be answered within the framework established by s 7(2) and (5) of the International Arbitration Act **AND IF** the interlocutory nature of an order under s 7(2) of the International Arbitration Act provides no reason for adopting a lesser standard of proof in making a finding under s 7(5) of the International Arbitration Act **AND IF** pursuant to s 140(1) of the Evidence Act 1995 (Cth), facts are ordinarily to be proved in a civil proceeding on the balance of probabilities **THEN** Art 3(8) of the Australian Hague Rules, on its proper construction, operates on the balance of probabilities
 - [25]
- questions regarding the standard of proof are to be answered within the framework established by s 7(2) and (5) of the International Arbitration Act
 - [22-24], [Potential Prior Argument]
- the interlocutory nature of an order under s 7(2) of the International Arbitration Act provides no reason for adopting a lesser standard of proof in making a finding under s 7(5) of the International Arbitration Act
 - [25]

- pursuant to s 140(1) of the Evidence Act 1995 (Cth), facts are ordinarily to be proved in a civil proceeding on the balance of probabilities
 - [25]
- Therefore, Art 3(8) of the Australian Hague Rules, on its proper construction, operates on the balance of probabilities
 - [25]

Argument 2

- **IF** Art 3(8) of the Australian Hague Rules, on its proper construction, operates on the balance of probabilities **AND IF** Art 3(8) of the Australian Hague Rules is to be applied in the circumstances at the time the court decides their application **AND IF** it is not established on the balance of probabilities that cl 4 of the bill of lading relieves BBC from liability or lessens such liability within the meaning of Art 3(8) of the Australian Hague Rules **THEN** it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules
 - [7-8]
- Art 3(8) of the Australian Hague Rules, on its proper construction, operates on the balance of probabilities
 - [8], [27], Argument 1
- Art 3(8) of the Australian Hague Rules is to be applied in the circumstances at the time the court decides their application
 - [8], [22]
- it is not established on the balance of probabilities that cl 4 of the bill of lading relieves BBC from liability or lessens such liability within the meaning of Art 3(8) of the Australian Hague Rules
 - [8], [69]
- Therefore, it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules
 - [7-8]

Argument 3

- **IF** it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules **AND IF** the Full Court held it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules **THEN** the Full Court did not err

- [6-7]
- it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules
 - [6-7], [69-70] Argument 2
- the Full Court held it was not the case that the conduct of the arbitration, in accordance with cl 4 of the bill of lading, would be such as to lessen the liability of BBC other than as is provided for by the Australian Hague Rules
 - [6-7]
- Therefore, the Full Court did not err
 - [6-7], [70]

Argument 4

- If the Full Court did not err, **THEN** the appeal is dismissed
 - [7-8], [69-70]
- the Full Court did not err
 - [7-8], [69-70] Argument 3
- Therefore, the appeal is dismissed
 - [7-8], [69-70], [71]

Xerri - sample answer

OPTIONAL PRIOR Argument 1 [if not included in answer, no penalty should apply]

- **IF** the replacement of s 66EA constituted an increase in the penalty for the "offence" already created by former s 66EA, **THEN** the current offence is different to the old, and is a new offence.
 - [41]
- the replacement of s 66EA constituted an increase in the penalty for the "offence" already created by former s 66EA
 - [41], [65]
- Therefore, the current offence is different to the old, and is a new offence
 - [41], [65], [66]

Argument 1

- **IF** the current offence is different to the old, and is a new offence, **THEN** s 19 will not apply.
 - [65], [66]
- the current offence is different to the old and is a new offence
 - [41], Optional Prior Argument 1, [65], [66]
- Therefore, s 19 will not apply
 - [41], [65]

Argument 2

- **IF** s 19 will not apply **AND IF** the majority of the Court of Criminal Appeal of New South Wales decided that s 19 of the Procedure Act had no application to the offence with which the appellant had been charged because the current s 66EA had created a new and distinct offence **THEN** the majority of the Court of Criminal Appeal was correct
 - [42], [44], [65]
- s 19 will not apply
 - [41], Argument 1, [65]
- the majority of the Court of Criminal Appeal of New South Wales decided that s 19 of the Procedure Act had no application to the offence with which the appellant had been charged because the current s 66EA had created a new and distinct offence
 - [42], [62]
- Therefore, the majority of the Court of Criminal Appeal was correct
 - [44]

Argument 3

- **IF** the majority of the Court of Criminal Appeal was correct, **THEN** the appeal should be denied
 - [44],
- the majority of the Court of Criminal Appeal was correct

- [44], Argument 2
- Therefore, the appeal should be denied
 - [44], [69]

Lesianawai - sample answer

Argument 1

- **IF** in *Thornton* it was held that that ss 85ZR(2) and 85ZS(1)(d)(ii) of the Crimes Act 1914 (Cth) precluded consideration of offences committed in Queensland by the respondent to that case when he was a child in the determination of whether to revoke the cancellation of his visa under s 501CA(4) of the Migration Act 1958 (Cth) **AND IF** the relevant provisions of the Children Proceedings Act are not materially different to the provisions of the Youth Justice Act considered in *Thornton*, **AND IF** the plaintiff's circumstances are not otherwise materially different to those of the respondent in *Thornton*, **THEN** the delegate was precluded by ss 85ZR and 85ZS of the Crimes Act from taking into account the offences for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years.
 - [5], [6], [7]
- in *Thornton* it was held that that ss 85ZR(2) and 85ZS(1)(d)(ii) of the Crimes Act 1914 (Cth) precluded consideration of offences committed in Queensland by the respondent to that case when he was a child in the determination of whether to revoke the cancellation of his visa under s 501CA(4) of the Migration Act 1958 (Cth)
 - [5], [22-23], [37], [45]
- the relevant provisions of the Children Proceedings Act are not materially different to the provisions of the Youth Justice Act considered in *Thornton*
 - [7], [32], [45]
- the plaintiff's circumstances are not otherwise materially different to those of the respondent in *Thornton*
 - [6], [45]
- Therefore, the delegate was precluded by ss 85ZR and 85ZS of the Crimes Act from taking into account the offences for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years.
 - [7], [46]

[Note - there could potentially be a prior argument to Argument 1 that argues to the second antecedent – but that is not fundamental - as it is stated.]

Argument 2

- **IF** the delegate was precluded by ss 85ZR and 85ZS of the Crimes Act from taking into account the offences for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years **AND IF** the offences [for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years] were material to the delegate's

decision, **THEN** it follows that the decision was affected by jurisdictional error

- [7], [47]
- the delegate was precluded by ss 85ZR and 85ZS of the Crimes Act from taking into account the offences for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years
 - [7], [46], Argument 1
- the offences [for which the plaintiff was sentenced by the Children's Court when he was under the age of 16 years] were material to the delegate's decision,
 - [7], [17], [47]
- Therefore, it follows that the decision was affected by jurisdictional error
 - [7], [47]

Argument 3

- **If** it follows that the decision was affected by jurisdictional error, **THEN** certiorari quashing the decision to cancel the plaintiff's visa should issue
 - [7]
- It follows that the decision was affected by jurisdictional error
 - [7], [47], Argument 2
- Therefore, certiorari quashing the decision to cancel the plaintiff's visa should issue.
 - [7], [47]