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**Fortify Sample Exam A**

# LEGAL STUDIES

## Written examination

**Reading time: 15 minutes**
**Writing time: 2 hours**

## QUESTION AND ANSWER BOOK

**Structure of book**

| *Section* | *Number of questions* | *Number of questions to be answered* | *Number of marks* |
|---|---|---|---|
| A | 7 | 7 | 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 correction fluid/tape.
- No calculator is allowed in this examination.

**Materials supplied**
- Question and answer book of 24 pages.
- Additional space is available at the end of the book if you need extra paper to complete an answer.

**Instructions**
- 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)

Outline **one** disadvantage of the Victorian court hierarchy.

**Question 2** (3 marks)

Wallace owns a window-cleaning business and rents a shop in the city for his place of business. However, Wallace's landlord Preston decides that he does not like Wallace and tells him to vacate the premises in two days without reason. Despite Wallace still having 6 months left on his lease, Preston refuses to change his mind or discuss the matter further. Wallace has sought help from Consumer Advice Victoria (CAV) to resolve this dispute.

Identify another body that would likely be more suited to resolving this dispute than CAV. Briefly justify your response.

**Question 3** (3 marks)

Explain how **one** high court case has interpreted the external affairs power and how this interpretation has affected the power afforded to the Commonwealth parliament.

**Question 4** (5 marks)

Discuss the extent to which judges enable the legal system to achieve the principle of fairness.

**Question 5** (9 marks)

Bob, a professional builder, suffered a spinal injury at work. He has commenced a civil proceeding in the Supreme Court of Victoria against his former employer for negligence in failing to meet certain workplace safety standards. His employer has engaged legal representation to defend the claim.

**a.** What is the standard of proof in Bob's case? Would the standard of proof be different if it were a criminal trial? 2 marks

**b.** Explain **two** responsibilities of the legal practitioners for Bob's former employer at trial if Bob's case goes to trial. 4 marks

**c.** Could a jury determine Bob's case? If so, describe the size and responsibility of the jury. 3 marks

**Question 6** (8 marks)

The Commonwealth Constitution acts as a check on the Commonwealth Parliament in law-making by giving it a bicameral structure.

**a.** Evaluate the extent of this protection. 6 marks

**b.** Imagine that a referendum proposal was recently voted on in Australia to remove the external affairs power. Fifty-nine percent of all voters in Australia voted in favour; however, a majority of people in Western Australia and Queensland voted against the proposed change. 2 marks

Would this referendum pass under the requirements of section 128 of the Commonwealth Constitution? Explain why.

**Question 7** (10 marks)

'The doctrine of precedent and the use of juries enables the court to fairly and effectively resolve legal disputes.'

Discuss the extent to which you agree with this statement.

**END OF SECTION A**
**TURN OVER**

## 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.

**Question 1** (15 marks)

Seven months ago, Jon, a 25-year-old Victorian resident, falsely reported his wife missing and misled both the police and the media to cover up his crime. Significant police resources were expended on the false statement given by Jon regarding his wife's disappearance. Police were unable to find a body.

Later, police discovered that Jon had a history of domestic violence in previous relationships and, after a repeated search of the park near the family home, found a knife with Jon's prints on the handle and his wife's blood on the blade.

When arrested, Jon broke into tears and expressed immense regret. He immediately told police where they could find his wife's body so that the family may have a proper funeral. However, Jon entered a plea of 'not guilty' at the committal hearing, as he believes he has already been punished enough for his crime.

**a.** What is the difference between the burden of proof and the presumption of innocence in Jon's trial? 2 marks

**b.** Identify in which court Jon's committal proceeding would be held and explain **one** purpose of a committal proceeding. 3 marks

**c.** Describe **one** sanction that may be imposed if Jon is found guilty of murder and discuss the sanction's ability to achieve the purposes of criminal sanctions. 6 marks

**d.** Identify and explain **one** mitigating factor and **one** aggravating factor to be considered in the sentencing of Jon's case. 4 marks

**Question 2** (14 marks)

On June 5, 2019, Australian Federal Police officers raided the ABC's head office in search of evidence to prove that a journalist had illegally obtained secret information when he published articles detailing unlawful killings by Australian soldiers in the Middle East.

The controversial raid led to significant uproar and discussion in the media over freedom of the press in Australia and the effect of secrecy of information laws.

In particular, public criticism has targeted Part 5.6 of the Criminal Code Act 1995, which contains the Commonwealth regulations governing secrecy of information.

**Source 1**

'News Corp Australia, Australian Broadcasting Corp (ABC) and Nine Entertainment released their demands for law reforms following unprecedented police raids on consecutive days early this month at ABC's Sydney headquarters and a News Corp reporter's Canberra home in search of leaked government documents.'

Source: 'Australian media demands press freedom reforms after raids', TRTWORLD, <www.trtworld.com>, 26 June 2019

**Source 2**

The following is an extract from Division 122.5 – Defences under Part 5.6 of the *Criminal Code Act 1995*:

(6) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information in the persons capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and:

(a) at that time, the person reasonably believed that engaging in that conduct was in the public interest.

Source: Federal Register of Information, <www.legislation.gov.au>

**Source 3**

'The public interest needs to be defined [in s(6)(a)]; the act needs to make it clear that anyone doing journalism is presumed to be entitled to the public-interest defence. "Reasonable belief" needs to be dropped, and the onus of proof should be laid on the prosecution.'

Source: D Muller, 'Four laws that need urgent reform to protect both national security and press freedom', Mumbrella, <https://.mumbrella.com.au>, 19 June 2019

**a.** Referring to the example above, explain how the media can influence legislative change. 3 marks

**b.** Why does the phrase 'public interest' in section 6(a) of Division 122.5 of the *Criminal Code Act 1995* require judicial interpretation? Justify your answer. 3 marks

**c.** Describe **one** effect a statutory interpretation of the phrase 'public interest' by a judge could have. 2 marks

**d.** Suppose a high school student wanted to influence law reform on secrecy of information. Evaluate petitions **and** demonstrations as means by which individuals can influence law reform. 6 marks

**Question 3** (11 marks)

The Victorian *Infertility Treatment Act 1995* was passed to help infertile couples access IVF treatments. Section 8 of the Act required that, in order to receive IVF treatment, a woman must be married to a man or in a de facto relationship with a man.

However, section 22 of the Commonwealth *Sex Discrimination Act 1984* prohibits a person from refusing to provide a service based on an individual's marital status. Under the Commonwealth *Sex Discrimination Act 1984*, the provision of IVF is considered a service.

In *John McBain v. The State of Victoria & Ors* [2000], the Federal Court made section 8 of the *Infertility Treatment Act 1995* inoperable.

**a.** Outline what type of law-making power 'marital status' likely is under the Commonwealth Constitution. 2 marks

**b.** Explain why the Federal Court struck down section 8 of the Victorian law. 3 marks

**c.** 'The High Court is always changing the Constitution and taking power from the States. The invalidation of section 8 of the *Infertility Treatment Act 1995* is just another reflection of this.' 6 marks

To what extent do you agree? Discuss.

**END OF QUESTION AND ANSWER BOOK**

# Extra space for responses

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

An answer book is available from the supervisor if you need extra paper to complete an answer. Please ensure you write your **student number** in the space provided on the front cover of the answer book. **At the end of the examination, place the answer book inside the front cover of this question and answer book.**