

STUDENT NUMBER

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## LEGAL STUDIES

### Written examination

Wednesday 10 November 2021

Reading time: 2.00 pm to 2.15 pm (15 minutes)

Writing time: 2.15 pm to 4.15 pm (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	6	6	40
B	2	2	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 space to complete an answer.

#### Instructions

- Write your **student number** 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 unauthorised electronic devices into the examination room.**

**SECTION A**

**Instructions for Section A**

Answer **all** questions in the spaces provided.

**Question 1 (5 marks)**

a. Identify **two** participants in the plea negotiation process.

2 marks

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**b.** Under what circumstances might plea negotiations be inappropriate in determining a criminal case?  
Explain your response.

3 marks

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**Question 2 (3 marks)**

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

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**Question 3** (11 marks)

Section 4(d)(i) of the *Summary Offences Act 1966* (Vic) states, ‘Any person who – in a public place – flies a kite to the annoyance of any person shall be guilty of an offence’.

- a. Explain **one** role of Victoria Legal Aid in assisting a person accused of flying a kite in a public place to the annoyance of another person. 3 marks

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b. Referring to the section of the *Summary Offences Act 1966* (Vic) provided on page 5, explain why kite flying is a summary offence rather than an indictable offence.

3 marks

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c. Discuss **one** factor that could affect the ability of the criminal justice system to achieve fairness in relation to the summary offence of kite flying.

5 marks

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**SECTION A – continued  
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**Question 4 (5 marks)**

Analyse how sections 7 and 24 of the Australian Constitution have protected the Australian people.

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END OF SECTION A  
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**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 (26 marks)****Source 1**

Australia does not recognise treaty obligations as a source of law unless the treaty is specifically incorporated into Australian law through legislation. If there is no relevant legislation, a treaty cannot create rights in Australian law.

In some circumstances, even without specific legislation, international law and the terms of treaties can be a legitimate influence on the way courts will interpret and apply Australian laws.

The extent to which human rights obligations should influence Australian judges' interpretation is limited and is still contested. One of the earliest and most significant statements was by Justice Brennan in the High Court:

‘international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights. A common law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration. It is contrary both to international standards and to the fundamental values of our common law to entrench a discriminatory rule ...’

Source: *Mabo and others v State of Queensland (No 2)* [1992] HCA 23

The emphasis is on ‘interpretation’ – the law as it is stated will be given effect, but when there is uncertainty, or a gap in the law, then Australia’s human rights obligations are relevant.

Source: adapted from Jane Stratton, ‘Hot topics: Human rights’, ‘Chapter 4a: Effect of treaties in Australia’ and ‘Chapter 4e: Courts and administration’, State Library of New South Wales, <<https://legalanswers.sl.nsw.gov.au/hot-topics-human-rights>>;  
© Library Council of New South Wales, 2013

**Source 2**

In 1992, the High Court’s judgment in the Mabo case recognised some land rights of Aboriginal and Torres Strait Islander peoples, including the right to make some claims over their traditional land (‘native title’). The High Court decision in this case is considered to be important because it abolished the common law principle that Australia was terra nullius, meaning ‘land belonging to no-one’, before the British came to Australia. As a result of this decision of the High Court, land rights of Aboriginal and Torres Strait Islander peoples were recognised by the Australian legal system.







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- d. Evaluate the ability of the Commonwealth Parliament to respond to the need for law reform as a result of court decisions, such as the land rights recognised in the Mabo judgment, and the effects of such law reforms on the laws of the states.

8 marks

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**SECTION B – continued**  
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**Question 2** (14 marks)

Dani and Sunny contracted a builder to build them a new house in an outer suburb of Melbourne. They engaged an independent building consultant to inspect the building at each stage of the construction process, as they are entitled to according to the *Domestic Building Contracts Act 1995* (Vic). The consultant’s final report identified a range of defects for the builder to rectify, but the builder has refused to do so.

Dani and Sunny want to move into their new house as soon as possible, but they cannot do this until the defects have been rectified. They have already attempted conciliation through Domestic Building Dispute Resolution Victoria (DBDRV), but the builder has continued to ignore the consultant’s report and insists that there are no defects. Dani and Sunny are now refusing to pay the rest of what they owe to the builder for building their house.

After searching for answers online and becoming overwhelmed by the options available, Dani and Sunny decide to seek legal assistance in resolving the dispute with their builder. They are advised that, at this stage, the Victorian Civil and Administrative Tribunal (VCAT) is a more appropriate body than Consumer Affairs Victoria (CAV) to resolve this dispute.

- a. Explain **two** factors that Dani and Sunny would have to consider before initiating a civil claim against the builder.

6 marks

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b. 'The Victorian Civil and Administrative Tribunal (VCAT) is a more appropriate body than Consumer Affairs Victoria (CAV) to resolve this dispute.'

Discuss the extent to which you agree with this statement and justify your response.

8 marks

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Lined area for writing the answer.

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**Extra space for responses**

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

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