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Name _____

VCE LEGAL STUDIES 3/4 2019

CPAP Practice Examination No. 1

Reading time: 15 minutes

Writing time: 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>
Section A	6	6	40
Section B	2	2	40

- Students are permitted to bring into the practice examination: 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.
- No calculator is allowed in this examination

Materials supplied

- Question and answer book of 21 pages.
- Additional space is available at the end of the book if you need extra paper to complete an answer

Instructions

- Write your **student number** and **name** in the space provided above on this page.
- All written responses must be in English.
- You should make use of stimulus material where it is included. However, it is not intended that this material will provide you with all the information to fully answer the question.

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

b. Explain the burden of proof in a civil trial.

2 marks

Question 4 (9 marks)

Section 76(i) of the Constitution gives the High Court of Australia the power to judge matters arising under the Australian Constitution or involving its interpretation, but only a referendum can change the wording.

a. Describe one instance in which the Australian people used the referendum procedure to either protect the existing form of the Constitution or to change it.

3 marks

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 (22 marks)

Source 1

The following is the Issues Paper notice for the Committals inquiry being conducted during 2019 by the Victorian Law Reform Commission.

Committals: Issues Paper

The Victorian Law Reform Commission invites input on its review of the committals process. It has published an issues paper to assist with responses. See the link below.

The Commission has been asked by the state government to review the committals process to:

- make it more efficient
- reduce the trauma to victims of crime
- ensure fair trial rights.

Options under consideration include reforming the process or abolishing committals completely.

The paper includes questions on the best ways to reform the system. You can have your say by completing an online form or writing to the Commission.

Submissions are invited by **16 August 2019**.

<https://www.lawreform.vic.gov.au/projects/committals/committals-issues-paper>

Source 2

The following is an extract from the Policy Paper on Committals published by the Office of Public Prosecutions in October 2018, suggesting that the prosecution commit an accused to trial instead of the current procedure.

The Proposal

This new process strikes the right balance by improving the experience of victims and witnesses in criminal proceedings without compromising the rights of the accused and the need to prove a case beyond reasonable doubt. This proposal will expand the essential role magistrates play in ensuring the proper disclosure of evidence, narrowing the issues in dispute and obtaining fair resolutions (and avoiding trials) as early as possible. The role of assessing the strength of evidence will fall, at this pre-trial phase, to the Director of Public Prosecutions.

Office of Public Prosecutions website: <http://www.opp.vic.gov.au/getattachment/0da88912-0a57-48f0-9048-31a0ad1b15df/DPP-Policy-Paper-Proposed-reforms-to-reduce-further.aspx>

Question 2 (18 marks)**Source 1**

The following is a case summary taken from the website of the County Court of Victoria.

Kalibrate Asset Management Solutions Pty Ltd v IBM Australia Limited (No 2) [2018] VCC 414

HIS HONOUR JUDGE COSGRAVE

- 7 Thus, the only remaining issue for determination was whether the plaintiff should pay the defendant costs to be taxed on an indemnity basis for 1.5 days of the trial (or some lesser time) because of the delay in completing the trial and its prolongation beyond the trial duration which the parties advised the court.
- 8 The defendant pointed to the difference between the estimated time for final address, two hours for each party, and the actual time taken by the plaintiff, namely about two days. It was argued that a major reason for the increase in time was the time spent dealing with unpleaded claims and the fruitless claim based on the alleged representation made by the defendant, whether in the guise of misleading and deceptive conduct or estoppel. The defendant argued that pursuing matters not pleaded wasted time for all parties, increased costs and was contrary to the plaintiff's obligations under the *Civil Procedure Act 2010* (Vic).
- 11 In my view, the plaintiff's conduct at the trial undoubtedly extended its duration longer than was necessary. Its attempt in closing submissions to run arguments which lacked a proper foundation in the amended statement of claim was unhelpful – it was a waste of both the parties' time and the court's time. The plaintiff's own evidence regarding part of the representation claim was unsatisfactory and the plaintiff ought to have been advised that this aspect of the case would likely fail.
- 13 Overall, making due allowance for the competing arguments and doing the best I can, I consider it appropriate that the plaintiff pay the defendant's costs for two hours of court time on an indemnity basis. This is a reflection of the time spent on unpleaded matters, the time spent on repetitive and needlessly drawn out submissions and the inefficient or wasteful use of court time.

County Court website: <https://www.countycourt.vic.gov.au/files/documents/2018-08/kalibrate-asset-management-solutions-pty-ltd-v-ibm-australia-limited-no-2-2018-vcc-414.pdf>

