

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

AUSTRALIAN CONSTITUTIONAL LAW

TIME: Three Hours

This paper consists of **six** questions.

Candidates are required to attempt any **four** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **4** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Material:

This is a closed book exam. No materials are permitted in the examination room.

A copy of the Law Extension Committee's Case List and the Course Outline incorporating appropriate excerpts from the Constitution will be attached to this paper.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

An agricultural firm, a partnership of three individuals, has been growing genetically modified corn at a secret location within N.S.W. An environmental lobby group is concerned about the growing of genetically modified crops and seeks assistance from the Commonwealth Government to legislate to ban the growing of genetically modified crops. Advisers to the relevant federal minister report that Australia is a major exporter of corn to the United Kingdom where genetically modified food is outlawed. The relevant federal minister decides to act in respect of the growing of genetically modified corn because of the potential harm to Australia's export market with the United Kingdom.

- (a) **Can the Commonwealth Parliament pass a law prohibiting the exportation of genetically modified corn?**
- (b) **Can the Commonwealth Government pass a law, applying to the firm, prohibiting the growing of genetically modified corn?**

(25 marks)

Question 2

In *Victoria v The Commonwealth* (1971) 122 CLR 353, the High Court held that the State of Victoria must pay pay-roll tax to the Commonwealth in respect of public servants employed by Victoria.

Later the Commonwealth vacated the field and Victoria began to levy its own pay-roll tax.

Could the Victorian Parliament require the Commonwealth to pay pay-roll tax in respect of public servants employed by the Commonwealth Government in Victoria?

If so, briefly explain how the Commonwealth might avoid this consequence?

(25 marks)

Question 3

The Sydney Motor Racing Club Ltd owns two motor racing tracks in Sydney and regularly conducts meetings at those tracks. It is incorporated pursuant to an Act of the NSW Parliament. Under that Act, the Club is authorised and required, in the interests of the public, to participate in the sport of motor racing and to allot its profits to racing generally. The Club charges an entrance fee to its tracks and sells food, drinks and programs at its race meetings. It also receives large sums for the sale of the right to televise races.

(Question 3 continues)

(Question 3 continued)

The Commonwealth Government is concerned that the community is not familiar with the National Anthem but is familiar with “Waltzing Matilda” which tends to be played at all public events. To promote the use of the National Anthem it introduces the *Playing the National Anthem Act 2009*. The Act is expressed to apply to “all trading corporations formed within the limits of the Commonwealth” and obliges such trading corporations to play the National Anthem on all public occasions. The Act defines a “public occasion” as one where more than 50 people are present “for an event open to the public”.

Sydney Motor Racing Club Ltd has for many years commenced its motor racing meetings by playing “Waltzing Matilda” and wishes to continue this tradition and does not wish to use the National Anthem. The Club’s meetings are attended by 30,000 people.

Sydney Motor Racing Club Ltd seeks your advice as to:-

- (a) Whether the Commonwealth law is valid?**
- (b) Whether the Club must comply with the law?**

(25 marks)

Question 4

The Commonwealth Government and other countries negotiated a convention. The final document, executed by the signatory States (including Australia), provided a comprehensive scheme as follows. A list of human rights was arranged in a certain priority with varying sanctions: compliance was to be secured through education, conciliatory conferences or, in the last resort, the ordinary courts of the land.

The Commonwealth Parliament recited the convention in the preamble to its Act. The sole provision in the Act repeated one of the listed rights, adjusting its terminology to that of the Australian federation as follows:- “The several electoral divisions within the Commonwealth or a State or Territorial electorate shall be, respectively and as nearly as practicable, equal in electors”. In his second reading speech on the Bill the responsible Minister explained that the provision was concerned with the statutory electoral divisions in Queensland which, the Minister claimed, differed from those in other States.

Would the Commonwealth law, through s109 of the Constitution pre-empt the Queensland law?

(25 marks)

(Question 5 follows)

Question 5

The *Copyright Act, 1968 (Cth)* establishes the Copyright Tribunal composed of members holding office for a period not exceeding 7 years. The Tribunal can make “a *determination of an equitable remuneration*” to be paid to a copyright owner by the maker of a recording. In addition the Tribunal can be required by the Attorney-General “to hold an inquiry in relation to” a royalty, giving a “*report in writing*” to the Attorney General for his information.

When the Tribunal hears a matter involving the “*determination of an equitable remuneration*” to be paid to a copyright owner, by the maker of a recording the statute provides that the Tribunal “*may of its own motion...refer a question of law arising in the proceedings to the Federal Court of Australia*”. Where the Federal Court “*decides that the question was erroneously determined by the Tribunal...the Tribunal shall reconsider the matter*” allowing the parties an opportunity to present their cases.

But when the Tribunal conducts an inquiry in relation to a royalty, the statute makes no provision for referring any part of those proceedings to the Federal Court of Australia.

- (a) **Is the Tribunal a judicial or non-judicial body? Give reasons for your conclusions.**
- (b) **What is the nature of the proceedings before the Federal Court? Explain the constitutional provisions that authorise the jurisdiction.**
- (c) **Why is the Federal Court authorised to take a referred question of law when the Tribunal is deciding the equitable remuneration to be paid to the owner of copyright but no similar provision is made when the Tribunal is conducting an inquiry in relation to a royalty?**

(25 marks)

(Question 6 follows)

Question 6

The Queensland Government introduces a licensing system for the carriage by road within Queensland of all slaughtered pigs. The statute requires the applicant for a licence (it is issued annually) to establish that he/she is a suitable person to be licensed by proof of appropriate financial resources and facilities to run and operate properly refrigerated trucks within Queensland. The ongoing licence fee for those who qualify to receive a licence is calculated at 40% of the value of slaughtered pigs carried in the period of two months expiring one month preceding the month in which the previous licence expires and the licence fee is payable in advance.

At the same time the New South Wales Government introduces a licensing system in respect of all pig farmers in New South Wales. The licensing system requires pig farmers to file an annual return of pigs held at 1st January each year and a levy is imposed in respect of each animal. The fee is payable into a special fund set up under the Act and the fund is to be expended in research to increase the breeding of pigs. Pig farmers who pay the levy are to have free access to the results of this research.

Discuss the constitutional validity of both these schemes.

(25 Marks)

END OF PAPER