

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

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:

No materials are permitted in the exam 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.

The Commonwealth Parliament is anxious to maintain and protect its trade in meat to Japan. The government is satisfied that the increase in this trade, to 42% of all beef exported, is directly attributable to the absence of "mad cow disease". Anxious to maintain Australia's reputation as a source of clean produce the Commonwealth Parliament has passed the *National Livestock Identification Scheme Act 2005* which requires electronic tags to be fitted to cattle. The purpose of the Act is to ensure that if there is an outbreak of "mad cow disease" the animals can be traced back to their source. The main provisions of the Act are:-

- a) All cattle must be electronically tagged at date of birth and reported to the Commonwealth database;
- b) No beef may be exported from Australia unless accompanied by a certificate to certify that the meat was produced from an animal that bore an electronic tag at the time of slaughter;
- c) Any person in possession of cattle that are not electronically tagged is guilty of an offence under the Act and liable to a penalty up to \$500 per animal.

The Federal Cattle Breeder's Association is angry at the new provisions due to both costs and inconvenience whilst the Commonwealth Parliament considers that traceability is the only way product integrity can be maintained. The Federal Cattle Breeders Association seeks your advice.

Consider the validity of a), b), and c).

Question 2.

Due to the increasing number of complaints about the treatment of patients in emergency departments at various hospitals in Australia the Commonwealth Government proposes to introduce a statute obliging every hospital corporation in Australia to appoint a 3 person community board comprising, a medical practitioner, a nurse and a member of the community, who will each be paid no more than \$10,000 per year and meet at least once a month to oversee the governance of each hospital corporation.

The N.S.W. government is angered at the Commonwealth Government's intrusion into matters connected with the hospital system in N.S.W and seeks your advice generally and in relation to two particular hospitals:-

1. The first hospital is operated by the N.S.W. government. It is incorporated by the *Public Hospitals Act 1929* (NSW) and is known as "Royal North Shore Hospital" located at St Leonards, N.S.W. This hospital is funded as to 55% by the N.S.W. government and 40% from the federal government with the balance coming from various fees and charges for its services and

(Question 2 continues)

(Question 2 continued)

2. The second is operated by Healthscope Pty Ltd and is known as “Prince of Wales Private Hospital”, located at Randwick, N.S.W. Healthscope Pty Ltd is a publicly listed company on the Australian Securities Exchange. This hospital is funded as to 30% by the federal government and the balance of its revenue comes from fees and charges paid by the patients. The hospital has been struggling to operate at a profit for the past three years.

Advise the NSW government as to:-

- (a) whether the Commonwealth Parliament could introduce the proposed community boards to Australian hospital corporations?**
- (b) whether the law would apply to Royal North Shore Hospital?**
- (c) whether the law would apply to Prince of Wales Private Hospital?**

Reasons must be provided when answering (a), (b) and (c).

Question 3.

In August 1980 the Commonwealth Government signed the International Covenant on Civil and Political Rights, a Treaty which had been concluded some years previously. The Treaty grew out of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in December 1948 with Australia voting for its adoption. Article 17 of the Declaration includes:

“Everyone has the right to own property alone as well as in association with others”

The Treaty does not include any provision specifically on the ownership of land.

The Commonwealth Government introduces a Bill of Rights Act 1998 (Cth). The preamble to the Act recites the existence of the Universal Declaration of Human Rights and the existence of international obligations under the 1980 Covenant to ensure equal rights to inter alia ownership of land.

The Act then provides for the right to own land and in the machinery provisions provides that any resident of a State may apply to the Government of that State for a grant of unalienated Crown land held by the State and upon proffering a fair price for the land, the resident is entitled to a grant of such land.

Discuss the validity of the Bill of Rights Act 1998 (Cth).

(Question 4 follows)

Question 4.

Assume that the Commonwealth Parliament amends the Defence Force Discipline Act 1982 to establish an Australian Military Court. The court will comprise three members who must have security of tenure which is stipulated as an appointment for a fixed term of 10 years. All members of the court must be legally qualified military judges to be selected from legally qualified members of the reserve Australian Defence Force with the chief judge of the court being a serving member of the Federal Court of Australia.

The Australian Military Court will only exercise jurisdiction under the Defence Force Discipline Act 1982 in respect of matters that involve “maintaining and enforcing service discipline”. When considering whether a “service discipline” offence has been committed that ought to result in a conviction and punishment, the court is to take into account the “morale of the defence forces”, “the maintenance of community confidence in the integrity of the defence forces” and “any other matter the court considers relevant”. The court is obliged to observe procedural fairness in its proceedings and it is to be judicially independent from the military chain of command.

A limited right of appeal, namely limited as to punishment, is given to either party, to a single judge of the Federal Court of Australia. No other right of appeal is conferred by the statute.

B has been prosecuted and convicted for a “service discipline” offence. B contends that the Australian Military Court failed to observe procedural fairness in the proceedings and did not maintain independence from the military chain of command and he wishes to appeal to the High Court in respect of his conviction.

- (a) Is the Australian Military Court validly constituted as a judicial or non-judicial body?**
- (b) What is the nature of the proceedings before the Federal Court of Australia? Explain the constitutional provisions that authorise the jurisdiction.**
- (c) Advise B whether he might appeal to the High Court?**

Question 5.

Assume the NSW Government in its anxiety to increase revenue proposes the following:-

- (a) a tax on beer drinkers at the rate of 10% of the purchase price of beer;
- (b) taxes on interstate road hauliers; and
- (c) a pay-roll tax payable by all employers within the State including the Commonwealth in respect of its employees.

Explain what constitutional difficulties (if any) are involved in the NSW Government imposing these taxes.

(Question 6 follows)

Question 6.

Assume that the Commonwealth Parliament has introduced a Radiocommunications Act 1983 which states in its long title that it is "An Act relating to radiocommunications, interference to radiocommunications and other matters". The Act comprises 11 Parts and 90 sections dealing with radiocommunications. The lengthy and detailed provisions of the Act were intended to control the use of radio frequency spectrum within Australia - dividing the radio spectrum into frequency bands and specifying the purposes and use for each band, the issuing of licences for radio transmitters and also the issuing of licences for receivers which have been declared by regulations to be "receivers" for the purposes of the Act. The Act also deals with common standards for radio equipment and penalties for substandard equipment.

The Victorian Road Safety Act 1986 provided:-

"s. 47 A person must not own, sell, use or possess a device the sole or principal purpose of which is to prevent the effective use of prescribed speed measuring devices or to detect when a prescribed speed measuring device is being used. Penalty 20 points."

The statute then provided for the surrender, forfeiture and destruction of any such device.

X is found in Victoria with a radar detector fitted to his car. The type of radar detector has not been declared by regulation to be a "receiver" under the Commonwealth statute.

- (a) Is X liable under the Victorian Road Safety Act 1986?**
- (b) What difference would it make if the radar detector found in X's car had been declared a "receiver" under the Commonwealth Act and its use was licensed under the Act ?**
- (d) What if after X was arrested but prior to the hearing of the charges the Commonwealth Act was amended to state "this Act is not intended and shall be deemed never to have been intended to exclude or limit the operation of a law of a State which is capable of operating concurrently with this Act"?**

(a), (b) and (c) must be answered.

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