EXAMINER'S STATEMENT
AUSTRALIAN CONSTITUTIONAL LAW

Overall the standard was highly satisfactory. As in March 2018, the exam candidates that achieved high marks were those who engaged, directly, with the actual facts of the problem and then applied the law. Marking placed a heavy premium, as had been set out in various memoranda, on applying the law to the facts, the spotting of issues, and the suggestion of a wise course of action. Moreover, the number of people using only one 20 page exam booklet has increased.

QUESTION 1

This question was quite well, albeit its Bon Jovi theme was, weirdly, ignored. The obvious Kable and IFTC points were made. Moreover, most answers comprehended that the question concerned a State law, not a law of the Commonwealth. I was surprised, pleasantly, by how many answers noted the problem of significant post-release restrictions on personal freedoms. The law concerned draconian provisions that most students readily understood. Overall, a good job was mostly done.

QUESTION 2

This answer was well done and covered the expected range of defence and external affairs powers’ cases, especially the Communist Party case and the Tasmanian Dams cases. Most of the answers were pretty good and grappled with the s109 issues raised by the Commonwealth law and its interaction with areas of traditional State regulation. I would have liked more answers that dealt with the s.80 and the inquisitorial trial problems. There may have been a lack of comfort in dealing with the obvious issues between common law and civil law processes, and how these interacted with a public international law problem.

QUESTION 3

This question was well-answered. There were mostly good answers to questions on issues of preferences, levies and taxes, as well as fees. I remain surprised as to how poor the geographical knowledge is of most students, even despite making myself clear, in preparatory lectures, that they had to know their States and Territories. Australia is a federation and many students seem to have a problem in understanding the very “federalness” of the Australian compact. The issue of retrospective prosecutions was well handled, mostly, albeit most seem to struggle to distinguish between civil and criminal prosecutions, suggesting a lack of knowledge of how the state enforces the law in these two different processes. I have discussed this problem with the University.

QUESTION 4

This answer was done quite well and the conflict between the laws of the Commonwealth and of the State. The problem question was pretty clear and just needed a level head applied to the problem. There was a good appreciation of the conflicts and competencies, generally. There was a surprising lack of quality answer to the forfeiture questions. This surprised me as I can recall mentioning these matters at some length during the preparatory lecture.
QUESTION 5

This was a somewhat difficult question which was designed to test the knowledge of the commerce and corporations powers, as well as the religious freedom arguments. There was also a s92 issue in the problem for students to discover. Overall, most students did satisfactorily. The religious freedom answers were mostly satisfactory and mentioned Krygger v Williams, Adelaide Company of Jehovah's Witnesses and the DOGS Case. Overall, I was quite impressed by the answers given and, to be frank, I was expecting much worse answers.

QUESTION 6

This question was aimed to extensively test the students' knowledge of the Canavan, Gallagher, Nash, and other cases to do with s44 of the Constitution and the eligibility of MPs and Senators. There was also a retrospective laws question which required attention to Chapter III and the Polyukhovitch case. There were also public international issues raised by the facts that touched on questions of jurisdiction. There was a practical aspect to the question as it was designed to see what quality of advice a student could give to a person with significant constitutional law problems. I was quite impressed by how well students grappled with the question and, again, expected much worse.

Conclusion

The students did very well in these exams and I am confident that they will develop into competent lawyers with a sound knowledge of Australian constitutional law.

Please contact me on (02) 9220 6100 or gafc@ebc44.com should you have any questions in relation to any of the above comments.

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