EXAMINER'S STATEMENT
AUSTRALIAN CONSTITUTIONAL LAW

Overall the standard was quite satisfactory – surprisingly so given how poor many of the efforts in the Assignment had been. As in prior exams, the most successful exam candidates were those that engaged, directly, with the facts of the problem and then applied the law. The facts were extensive and were designed to test the students’ ability to analyse a problem and apply the law. The marking placed a heavy premium – as was notified to the students by the various memoranda issued, 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.

In this exam, there was an extensive set of facts and then four (4) separate questions with additional facts, in which the students would have to advise four separate clients on their cases and its constitutional issues.

QUESTION 1
This question was answered quite well with most noting the, I think, obvious Kable and IFTC questions. At the same time, most candidates struggled with the free speech issues raised, as well as with the State’s power to legislate for a draconian legislative framework. There was also a workplace relations issue raised, as well, which would touch on the implied freedom. However, overall, I was impressed by most answers.

QUESTION 2
This answer was less satisfactory. There was a problem for many in understanding what business entities that the Commonwealth Parliament may legislate for under the Corporations Power [s.51(xx)] but also what other legislative powers may be employed, such as the Commerce power [s.51(i)]. There was also a lack of ready familiarity with the reach of the Defence Power [s.51(vi)]. I remain worried by the lack of general legal knowledge about basic business associations, as well as basic legal institutions.

QUESTION 3
This question was well answered. Its issues were somewhat obvious given the facts concerned a church, but it was intended to test not just knowledge of the religious freedom issues [s.116], but, also, knowledge of the issues of the implied freedom of political communication, in the context of laws made pursuant to the Commerce and Corporations powers. Overall, most students did pretty well and I was impressed by the effort made by so many to understand and apply Krygger v Williams, Adelaide Company of Jehovah's Witnesses and the DOGS Case. This question will likely provide the basis of a future assignment problem.

QUESTION 4
This was not an easy question to answer but I was impressed by how well it was answered. This question was, on first glance, designed to test the students’ knowledge of the Canavan, Gallagher, Nash, and related cases to do with s44 of the Constitution and the eligibility of MPs and Senators. There was also a strong
emphasis on Chapter III and Polyukhovich issues raised by retrospective laws that affected the client in this problem. At root, also, was a basic Defence Power [s.51(vi)] and External Affairs Power [s.51(xxix)] question of how far legislative competence would reach in respect of a Thomas v Mowbray problem, especially in regards to compelling attendance of a suspect. Overall, I found the answers to have been much better than I was expecting them to be. I think this above-average response to a difficult question reflected the exam preparation memoranda and lectures before the exam.

CONCLUSION

Overall, I am pleased, mostly, with how well this cohort of students performed in the Exam. I am reasonably confident that their competence as Australian constitutional lawyers will only grow with time and through further exposure to the Constitution and the issues that it will often raise in their practice.

Please contact me on (02) 9220 6125 or gafc@ebc44.com should you wish me to amplify on any of the above comments.

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