EXAMINER’S STATEMENT
AUSTRALIAN CONSTITUTIONAL LAW
SUMMER 2019-2020

Overall, the standard of the examination answers returned for Australian Constitutional Law (ACL) over 2019-2020 was highly satisfactory and in line with my expectations. The ACL as subject is difficult, for many, as there is a great deal of material for students to attempt to master in only a relatively short period of time. Also, ACL as a subject, has an enormous diversity of student, from experienced foreign lawyers requalifying in this jurisdiction, to those mature age students returning to obtain a professional qualification, to young students who are working full-time while studying. However, as in all other fields of study, the students earning the highest marks were those who had learned from the session’s lectures and who engaged, closely, with the facts of the problem questions.

In the March 2020 exam, there was a significant amount of factual material to get on top of and comprehend. This is by design. 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.

While there will be complaints about any exam, experience has shown in ACL that a factually-intensive question will best test what students really know in terms of the law, as well as their ability to apply the relevant law to the facts, to spot issues, and to attempt to suggest prudent courses of action to hypothetical clients. As always, the standard to be achieved was not genius, at all, but to demonstrate a competent grasp of ACL and its key foundations. Overall, there was a good standard displayed by most students in most exam answers.

QUESTION 1
This question was answered quite well with most noting the, I think, obvious problems posed by a partnership and a Commonwealth law regime. There was a good grasp of the reach of the Defence [s.51(vi)] and External Affairs [s.51(xxix)] powers, especially in a time of crisis. The implied freedom of political communication aspects were also well answered. Overall, the answers to this question were quite good given it was a complex question.

QUESTION 2
This question was well answered, concerning as it did the Corporations Power [s.51(xx)], as well as implied freedoms, s.92, and a potential s.109 problem. I was pleased, if not pleasantly surprised, by how well most students grappled with this question. Given its overtones with the recent Commonwealth foreign interference laws, most students made a good connexion with the problem being pursued and a matter of public debate, and some good points were made. The issue of what implied freedoms are at large in the question and was well handled in most answers.
QUESTION 3
This question was laden, heavily, with facts, but most students did very well here. There were obvious problems concerning s.44 and Canavan, Gallagher, Nash, and related cases to do with s44 of the Constitution and the eligibility of MPs and Senators. There were also Defence Power [s.51(vi)] and External Affairs Power [s.51(xxix)] questions but also a separation of powers and Thomas v Mowbray problem, especially in regards to compelling attendance of a suspect. The overall performance was good.

QUESTION 4
This question was quite well answered, dealing as it did with s.109 issues and with a religious freedom problem [s.116]. There was also a significant question of whether there is an implied freedom of political communication issue raised for Australians by what are essentially foreign interference laws, especially when the communication is religious in nature. At the same time, there was an obvious Corporations Power [s.51(xx)] answer to most of the facts. All in all, this was a question that was well answered by most students.

CONCLUSION

Therefore, I am very pleased to report that I was highly satisfied with how most in this cohort of students performed in the Exam. They were a pleasant cohort to teach and I wish them all well in all that lies ahead.

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

Connolly 22. Apr. 2020

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