

Legal Profession Admission Board

September 2021

Advanced Statutory Interpretation

Examiners' Comments

This was an open book, on-line exam. The examination circumstances presented challenges for students, but the biggest challenge was not the technology but rather a constant issue with open book exams – over reliance on those open books. Having notes available as aide-memoires or legislation on hand as a reference source can be very useful – copy typing slabs of these notes or transcribing legislative text into the exam booklet never is.

The second question was an essay question – which was well done by those students who had thought about the issues we had discussed in class, but poorly done by those who had spent no time in reflection and copied out s15AB as a substitute for thought. It was also apparent that not all candidates read and reflected on the question – it was not just about context, and so the answers needed to address more than this. It was not just about extrinsic material, and answers needed to address more than this. It did require reference to *Pepper v Hart* but good answers did more than copy type the student's notes about this case into the answer booklet. Good students used these notes as part of the argument they were building to answer the question.

Question 1 required students to demonstrate a knowledge of three different curriculum areas. Most did this very well (especially the legal research question) but not all. The third part of this question required students to be aware of the different statutory and common law regimes in place in Victoria, the ACT and NSW in relation to the protection of rights – including freedom of expression. It was not correct to treat this question as an exercise in purposive construction. Similarly Question 1, Part 1. This required an understanding of the rules applying to construction of international instruments which have been incorporated as part of domestic legislation – and much more than a nod to parliamentary purpose was required.

On the whole, Question 3 was done well with students displaying a strong understanding of the principles of statutory interpretation. Some students demonstrated a sophisticated ability to discuss purpose and context and integrate this with an interpretation of the relevant statutory text.