

STUDENT NUMBER Letter

LEGAL STUDIES

Written examination

Tuesday 12 November 2019

Reading time: 2.00 pm to 2.15 pm (15 minutes)

Writing time: 2.15 pm to 4.15 pm (2 hours)

QUESTION AND ANSWER BOOK

Structure of book

<i>Section</i>	<i>Number of questions</i>	<i>Number of questions to be answered</i>	<i>Number of marks</i>
A	6	6	40
B	2	2	40
			Total 80

- Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers, sharpeners and rulers.
- Students are NOT permitted to bring into the examination room: blank sheets of paper and/or correction fluid/tape.
- No calculator is allowed in this examination.

Materials supplied

- Question and answer book of 26 pages
- Additional space is available at the end of the book if you need extra paper to complete an answer.

Instructions

- Write your **student number** in the space provided above on this page.
- All written responses must be in English.

Students are NOT permitted to bring mobile phones and/or any other unauthorised electronic devices into the examination room.

SECTION B**Instructions for Section B**

Use stimulus material, where provided, to answer the questions in this section. It is not intended that this material will provide you with all the information to fully answer the questions.

Answer **all** questions in the spaces provided.

Question 1 (23 marks)**Source 1**

The following is an extract of section 22 of the *Defamation Act 2005* (Vic).

22 Roles of judicial officers and juries in defamation proceedings

(1) This section applies to defamation proceedings that are tried by jury.

...

(3) If the jury finds that the defendant has published defamatory matter about the plaintiff and that no defence has been established, the judicial officer and not the jury is to determine the amount of damages (if any) that should be awarded to the plaintiff and all unresolved issues of fact and law relating to the determination of that amount.

Source: Victorian Legislation and Parliamentary Documents, <www.legislation.vic.gov.au>

Source 2

The following is an extract from an article by Michaela Whitbourn, published in *The Sydney Morning Herald* on 31 January 2019.

Ambitious 18-month timetable unveiled for defamation law reform

The states and territories have agreed to an ambitious 18-month timetable for overhauling the country's complex and outdated defamation laws, amid rapid changes in online publishing and calls for the laws to provide robust new protections for public interest journalism.

...

NSW Attorney-General Mark Speakman started a review of the country's defamation laws in June last year, more than a decade after the states and territories passed uniform laws to replace an unworkable system of eight different defamation laws nationwide.

...

Professor David Rolph, a defamation law expert at the University of Sydney, said defamation law was 'notoriously complex ...'.

'Anyone designing a system of law balancing freedom of speech and protection of reputation would not come up with the system of defamation law that we have. There is a lot of scope for reform,' he said.

Source: Michaela Whitbourn, 'Ambitious 18-month timetable unveiled for defamation law reform', *The Sydney Morning Herald*, 31 January 2019, <www.smh.com.au>

Source 3

The following is a hypothetical scenario.

Bradley is an Australian celebrity who has appeared in major films and television series. He has retired from acting and is seeking election as a member of the Victorian Parliament.

Stefani is a journalist for a major newspaper. On a social media website, Stefani wrote the following comment about Bradley: ‘Another brainless celebrity trying to make his way into parliament, thinking he knows better than everybody else. This is the last thing the state needs. Bradley should go back to acting in bad films.’

Stefani repeated her comments in an article published by her employer. Stefani’s comments and the article were shared widely on the internet and have been published by various websites.

Bradley has sued Stefani and her employer in the Supreme Court of Victoria. Bradley claims that Stefani has published defamatory comments about him that have damaged his reputation. Bradley is seeking damages for loss of reputation and is seeking an injunction to remove Stefani’s comments and the article from the internet.

Bradley has elected for his trial to be heard by a jury. The judge in the Supreme Court of Victoria has ordered that the parties attend mediation to try to resolve the dispute.

- a. Is the power to change defamation laws a residual power or an exclusive power? Justify your answer.

2 marks

Question 2 (17 marks)

The following is an extract from an article by Greg Walsh, first published in *The Sydney Morning Herald* on 3 March 2016, about the High Court case of *D’Orta-Ekenaike v. Victoria Legal Aid* (2005).

Should you be able to sue your lawyer if you think they’ve done a bad job?

In Australia a lawyer cannot be sued in negligence for their work during court proceedings or for out-of-court work that leads to a decision affecting the conduct of a case in court.

This ‘advocates’ immunity’ defence has been strongly criticised and there have been repeated calls for the immunity to be abolished or at least narrowed. Those against immunity may have grounds for hope as the High Court will reconsider it this month in an appeal from the NSW Court of Appeal decision of *Jackson Lalic Lawyers v Gregory Ian Attwells*.

...

The issue of advocates’ immunity was last addressed by the High Court in 2005 in *D’Orta-Ekenaike v Victoria Legal Aid*. D’Orta-Ekenaike initially pleaded guilty to a charge of rape but withdrew his plea at trial. Despite withdrawing his plea the prosecution relied upon his initial decision to plead guilty and he was convicted. On appeal his conviction was quashed and in the retrial the evidence of his plea of guilty was not admitted and he was acquitted.

D’Orta-Ekenaike sued his barrister and Victoria Legal Aid claiming that he only pleaded guilty after being advised that he had no defence, that he would receive a suspended sentence if he pleaded guilty, and that if he failed to plead guilty he would receive a custodial sentence.

The High Court found against D’Orta-Ekenaike in a 6:1 decision (Justice Kirby dissenting) that upheld advocates’ immunity. Out of the many reasons considered by the court, the majority strongly emphasised the fundamental importance of ensuring finality in judicial proceedings. The court was concerned that allowing lawyers to be sued for work related to court proceedings would open up the potential for ongoing litigation by providing every losing party the ability to continue to litigate their matter by suing their lawyers. Such an outcome, in the court’s view, had the potential to impair the ability of legal advocates to focus on the administration of justice and would undermine public confidence in the legal system.

Source: Greg Walsh, ‘Should you be able to sue your lawyer if you think they’ve done a bad job?’, *The Sydney Morning Herald*, 4 March 2016, <www.smh.com.au>

- a. Was *D’Orta-Ekenaike v. Victoria Legal Aid* a criminal case or a civil case? Justify your answer.

2 marks

b. Outline **one** responsibility of Victoria Legal Aid (VLA) in assisting Mr D’Orta-Ekenaike in his criminal case.

2 marks

c. How could the principle of ‘advocates’ immunity’ be decided by parliament?

3 marks
