

Examiners Comments

AUSTRALIAN CONSTITUTIONAL LAW September 2013 Examination

The standard of the examination scripts was very good. Most students provided specific answers to the issues being examined and demonstrated an ability to discuss the relevant case law. Those students who scored well did so by demonstrating the ability to debate and resolve the issues by considering the correct case law.

Those who failed did not understand the issues being examined and accordingly were unable to discuss the relevant case law.

Question 1

Examined Constit. s51(i). This problem tested the ability to characterise especially when considering the incidental scope of the power which was necessary for (b) and (c).

Question 2

Examined Constit. s51(ii) and s55. The issues raised in (i) were not understood by some students. The confusion appeared to occur because of the need to consider tax deductions in the context of the power to legislate under Constit. s51(ii). The issues examined by (ii) and (iii) were understood by most students.

Question 3

Examined Constit. s51(xxix). Most students did attempt this question. Those who scored poorly could not identify what legal principles to discuss for (a), (b) and (c) which then caused problems in providing an answer:- (a) "no" *Bradley v Commonwealth* (1973) 128 CLR 557 (b) "no" – "*Melbourne Corporation Case*" and (c) likely "yes".

Question 4

Examined issues arising under Constit. Ch 111. Students did understand the issues examined in each part of this question but overall there was a lack of discussion of the relevant case law. Under part (b) few students discussed *Watson v FCT* (1953) 87 CLR 353. Under (c) some students incorrectly focused on Constit. s75(iii). It was pleasing to see so many understood the effect of privative clauses.

Question 5

Examined Constit. s90. The weakness in this problem was a failure to know when a levy is a "tax". When considering X this required discussion of *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314 and when considering Y and the payment to the Society this required discussion of *Harper v Victoria* (1966) 114 CLR 361).

Question 6

Examined Commonwealth/State relations. The issue to be considered was the power of the State to regulate the Commonwealth. Most students identified this issue as the relevant area to be discussed. Those who scored poorly failed to discuss "*Hendersons Case*" (1997) 190 CLR 410 and the High Court's explanation of the *Cigamic* principle.