

AUSTRALIAN CONSTITUTIONAL LAW

MARCH 2013

EXAMINER'S STATEMENT

Question 1

Most students attempted this question and answered it competently. Those who scored poorly did so because of a failure to discuss the relevant case law.

It was essential to use case law to illustrate the legal principles that apply when the Cth. seeks to change domestic law by implementing obligations assumed under an international agreement.

Question 2

This question was well answered by all who attempted it. There was a clear understanding of all the legal principles and an ability to apply those principles to the factual issues.

Some students lost points by failing to recognize that the Cth. relying on Const. s51(xx) could not deal with matters relating to incorporation.

Question 3

Those students who attempted this problem understood that it examined the separation of powers doctrine and its application to Ch. 111 of the Const.

When considering the powers and functions of the Tribunal some students failed to apply the criteria necessary to determine whether the powers and functions were judicial or non-judicial.

The presence of the privative clause meant that there was no possibility of challenging the decision relying on Const. s76(i) or (ii). The grounds for challenge existed under s75(v) and would succeed as the Tribunal could not validly exercise the power to punish for contempt.

Question 4

This question was poorly answered.

Many students failed to recognise that the problem was examining Const. s90.

The 'bed-tax' needed to be examined to consider whether it was a duty of excise and that needed discussion of the relevant case law to identify when a levy was a "duty of excise"

The second issue [advising the NSW govt how it might impose a 'bed-tax'] required discussion of case law where a State levy is identified as not a duty of excise but a fee for service.

Question 5

Those students who attempted this problem did correctly identify that an initial issue required consideration of the implied limitation of freedom of communication, a limitation that applies to both Cth. and State legislative powers. Most students did understand Lange's Case and could discuss it.

The problem then involved consideration of Const. s109 and the conclusion that the laws dealt with different subject matters.

Question 6

Many students failed to recognise that this problem examined all issues under Const. s51(ii) as well as Const s55.

Provided the area being examined was correctly identified the problem was well answered and correctly answered as to each part.