

# **CONSTITUTIONAL LAW**

## **MODEL EXAM**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

If you are sitting an open book exam, be sure to have concise notes with only the main points for each topic. Too much time will be wasted searching through thick textbooks.

Try to answer the question yourself first before looking at the answer. Do not worry if you do not come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!

**Question One**

Following the devastation caused by Cyclone Larry in Far North Queensland, which destroyed most of Australia's banana crops, banana prices in Australia have risen to almost \$15.00 per kilo. The Queensland Government is concerned that such a sharp price rise will cause substantial consumer discontent and potentially see the importation of cheap and potentially diseased fruit from the Philippines, and the relocation of most of Australia's banana production to the North of New South Wales, threatening the future livelihood of Queensland producers. There has also been some murmuring by the Federal Government that it may investigate the potential to import fruit from the Philippines in the short term should all potential disease risks be cleared by Biosecurity Australia and the Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF).

The Queensland Parliament enacts the *Banana Industry (Protection) Act 2012 (Qld)*, which provides:

1. No person shall import bananas to Queensland from the Philippines.
2. All bananas imported to Queensland from any place other than the Philippines to be sold in Queensland must obtain a Banana Import License (International) from the Minister and comply with Department of Primary Industries quarantine restrictions and will be detained for a period of two months;
  - a. In granting the license the Minister must be satisfied that after the detention the fruit is not contaminated and does not pose a threat to banana crops in Queensland:
    - i. The Minister has the discretion to decide if the fruit is free of disease;
    - ii. Should the Minister not be satisfied that the fruit is not disease free then the Minister can order the fruit be destroyed;
    - iii. The Minister's decisions under this section are not reviewable.
  - b. The Importer bears the onus of meeting costs for transportation and detention of the imported fruits.....

### **Question Two**

In light of growing concern about the prevalence of obesity amongst the population, the New South Wales Department of Health commissioned a scientific study into causes of obesity. The study found that obesity was usually a prelude to early onset of Diabetes. The study also pointed to sugary soft drinks as major contributors to the trend. In an effort to try and stem the rate of obesity the Government enacted the *Soft Drink Reduction Act 2012* (NSW). The Act set up a scheme, comprising of two major parts, to reduce the consumption of soft drinks. The first is to replace soft drinks with less-sugary alternatives. The second is to place a restriction on manufacturers of soft drinks to make the drinks more nutritious.

The *Soft Drink Reduction Act 2012* came into force on 1 January 2013 to act as a compulsory “New Years Resolution” for residents of NSW. The Act provided:

S. 2: The objects and purposes of this Act are to reduce:

- (1) The consumption of soft drinks in NSW; and
- (2) The incidence of obesity amongst the population.....

### **Question Three**

In response to concerns over the increasing use of unmanned military aircraft known as ‘drones’ around the globe, Switzerland spearheads an international effort to eradicate the use of this technology. This effort results in the Treaty on the Eradication of Drones 2013 (TED). Australia becomes a signatory to TED after the Liberal party led by Tony Abbott comes to power in late 2013. Pursuant to the treaty, the Liberal party wants to pass legislation banning the use of this technology in Australia. Accordingly, they prepare the *Banning of Drones (Implementation of TED) Bill 2014* (Cth). The Bill is passed by the House of Representatives but rejected by an opposition controlled Senate.

The Liberal party is unperturbed. They prepare a plan whereby the Commonwealth Government (that is, the executive) establishes National Centres on Drone Danger (NCDD) at universities across the country to increase awareness of the danger of drones, popularize the push to eradicate the use of drones, and conduct research related to the deleterious effect of drones. The NCDDs are to exist for a period of 8 years. In total, \$500m is appropriated by the *Appropriation Act (No 19) 2015* (Cth) to establish and run the NCDDs.....

Accordingly, although the subject matter of NCDDs is an appropriate matter for the Commonwealth executive as the national government to act upon, and although there is a valid appropriation of moneys to this end, the Commonwealth does not have legislative backing to expend the moneys for this purpose and therefore the establishment and running of the NCDDs will be outside the scope of the Commonwealth executive's power as provided in s 61 of the Constitution.

### **Question Four**

**Note:** this is a sample essay question to be completed in an exam situation. **It is not considered at the standard of a Research Essay.** It should be read as an indication of the standard an exam style essay question is expected to be in an exam context. It is common practice in Australian law schools to set essay questions in Constitutional Law exams. It enables students to show their critical analysis abilities and their understanding of Constitutional Law beyond problem style fact scenarios.

As in problem style questions, there are certain methods of answering essay questions that will improve the structure and coherence of the essay. As in problem questions, use your reading time to plan your essay; this will help you clarify your argument and improve the content of your answer. Make sure you answer the question asked (rather than writing out a pre-prepared essay) and that you do argue for a particular viewpoint. As in problem style questions, avoid the 'kitchen sink' and the 'garden path'. When it comes to writing, do use headings, introductions and conclusions. Most importantly, remember that a long essay is not necessarily a good essay – a short, well-planned and persuasive essay will fare better than a long essay that is difficult to read and does not have a clear argument.....

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