



## LAWS2150 – Federal Constitutional Law

FINAL EXAMINATION - Session 2 2007

- Time allowed: 3 hours, plus 10 minutes reading time
- Examination condition: THIS IS AN OPEN BOOK EXAMINATION.  
You are permitted to bring any printed or handwritten materials into the examination room.
- Total number of questions: 5
- Value of questions: 20 marks each
- Questions to be answered: You must choose THREE questions in TOTAL to answer, however you MUST answer at LEAST ONE question from Part A and at LEAST ONE question from Part B.

### **OTHER INSTRUCTIONS:**

1. Your **NAME** and **STUDENT ID** should be written on the front of each exam booklet you use.
2. Your **TEACHER'S NAME** and your **CLASS NUMBER** should be written at the top right hand corner of each exam booklet you use.
3. Write legibly in ink and leave a whole blank page between questions.
4. You **MAY** retain the examination paper.

PPS

## PART A

Students must answer at LEAST ONE question in this Part.

### QUESTION 1 (20%)

The New South Wales Parliament enacts a new *Animal Epidemic Act 2007* (NSW). The legislation applies to 'livestock' which is defined to mean "birds, dogs, pigs, horses, cattle, asses, mules, camels, sheep, or goats". Section 4 of the Act provides:

4. (1) Subject to subsection 2, the Governor may, by proclamation published in the Gazette, restrict or absolutely prohibit the importation or introduction into the State of any livestock that, in the Governor's opinion, might be infected or contaminated with disease or might carry or spread disease.
- (2) Before issuing a proclamation under subsection (1) the Governor shall request the Chief Justice of New South Wales to advise whether the proposed proclamation is appropriate and adapted to further the objects of this Act and is not inconsistent with any law of the Commonwealth.

Using these powers, the Governor, proclaims a total ban on the movement into New South Wales of all livestock for the next two months. The Governor is acting upon ministerial advice which points to ongoing concern about equine influenza (or 'horse flu'), though there have been no reported cases of this in States other than NSW and Queensland.

Hoof & Snout Ltd is a company that contracts for the long haul transportation of cattle and pigs. It is due to fulfil several contracts for the importation of pigs to NSW from South Australia but has received advice that this would be in breach of the Governor's order.

Hoof & Snout Ltd asks you to advise on the prospects, if any, for challenging the constitutional validity of s 4 of the *Animal Epidemic Act 2007* (NSW) or the specific order.

Advise accordingly giving reasons.

### QUESTION 2 (20%)

The Commonwealth Parliament has passed the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007*. The Act confers upon the Classification Review Board the power to refuse classification ('RC') to 'publications, films or computer games that advocate terrorist acts'.

The main provision is as follows:

9. (1) A publication, film or computer game that advocates the doing of a terrorist act must be classified RC.
- (2) Subject to subsection (3), for the purposes of this section, a publication,

film or computer game advocates the doing of a terrorist act if:

- (a) it directly or indirectly counsels or urges the doing of a terrorist act;  
or
  - (b) it directly or indirectly provides instruction on the doing of a terrorist act; or
  - (c) it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3 of the Criminal Code) that the person might suffer) to engage in a terrorist act.
- (3) A publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.

In introducing the Act to the Parliament, the Attorney-General has stressed the importance of restricting speech in this way as a strategy for protecting the community from the threat of terrorist attack. He also indicated that the new legislation was justified as a response to the calls by the United Nations for nations to adopt measures which prevented terrorism.

Dr Leonie Hirst, the leader of a newly created political party, 'Australians for Global Justice', which currently holds three seats in the Tasmanian Legislative Council, has just published an autobiography. Throughout the book Dr Hirst reveals her hopes for Australia's role in world affairs. Dr Hirst advocates that Australia's foreign policy be shaped by a commitment to global justice. In particular, she argues that the Commonwealth should provide support to oppressed peoples around the world by enabling their armed resistance to despotic regimes. In doing so, Dr Hirst praises the leadership shown by Mahatma Ghandi and Nelson Mandela in their campaigns for freedom.

The Classification Board refuses classification to Dr Hirst's book. Advise her of constitutional arguments she may raise against the Board's power to do so.

**END OF PART A**

## PART B

Students must answer at LEAST ONE question in this Part.

### QUESTION 3 (20%)

In *New South Wales v Commonwealth (Work Choices)* (2006) 231 ALR 1 the majority judgment cited with approval the opinion expressed by Justice Dixon in *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31 at 82 that:

‘The foundation of the Constitution is the conception of a central government and a number of State governments separately organized. The Constitution predicates their continued existence as independent entities. Among them it distributes powers of governing the country. The framers of the Constitution do not appear to have considered that power itself forms part of the conception of a government. They appear rather to have conceived the States as bodies politic whose existence and nature are independent of the powers allocated to them.’

What does agreement with this idea mean for the viability and scope of an interpretative method based, at least in part, upon ‘federal balance’? Support your answer with examples.

### QUESTION 4 (20%)

In *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 186, Justice Dawson, in dissent, said:

‘...those responsible for the drafting of the Constitution saw constitutional guarantees of freedoms as exhibiting a distrust of the democratic process. They preferred to place their trust in Parliament to preserve the nature of our society and regarded as undemocratic guarantees which fettered its powers. Their model in this respect was, not the United States Constitution, but the British Parliament, the supremacy of which was by then settled constitutional doctrine.’

With reference to caselaw, examine the extent to which responsible government has influenced the High Court’s approach to constitutional interpretation? How has the weight accorded to this doctrine impacted upon the Court’s approach to federal relations and also individual rights under the Commonwealth Constitution?

**QUESTION 5 (20%)**

In *Eastman v The Queen* (2000) 203 CLR 1 at 81, Justice Kirby said:

‘This Court should adopt a single approach to the construction of the basic document placed in its care. Constitutional elaboration, above all, should be approached in a consistent way, lest the inconsistencies of an *originalist* approach here and a *contemporary* approach there be ascribed to the selection of whichever approach produces a desired outcome.’

How significant in practice are these competing methodologies? With discussion of relevant case examples in a number of areas, consider the degree to which selection of one methodology over the other impacts upon the result of constitutional litigation.

**END OF PART B**

**END OF PAPER**